

the amount of the fee for PHA costs of administration, and (iii) other costs specifically approved by the Secretary.

(2) When a HUD-approved estimate of required payments under the ACC for a fiscal year exceeds the maximum annual commitment, and would cause the amount in the project account to be less than 40 percent of the maximum, HUD will, within a reasonable period of time, take such additional steps authorized by Section 8(c)(6) of the U.S. Housing Act of 1937, as may be necessary, to assure that payments under the ACC will be adequate to cover increases in Contract Rents and decreases in Gross Family Contributions.

(c) *Term of Housing Assistance Payments Contract.* The Contract for any unit rehabilitated in accordance with the Program must be for a term of 15 years.

(d) *Term of Lease.* (1) The initial lease between the family and the Owner must be for at least one year or the term of the HAP contract, whichever is shorter. In cases where there is less than one year remaining on the HAP contract, the owner and the PHA may mutually agree to terminate the unit from the HAP contract instead of leasing the unit to an eligible family.

(2) Any renewal or extension of the lease term for any unit must in no case extend beyond the remaining term of the HAP contract.

[47 FR 34379, Aug. 9, 1982, as amended at 64 FR 53869, Oct. 4, 1999]

**§ 882.404 Physical condition standards; physical inspection requirements.**

(a) *Compliance with physical condition standards.* Housing in this program must be maintained and inspected in accordance with the requirements in 24 CFR part 5, subpart G.

(b) *Space and security.* In addition to the standards in 24 CFR part 5, subpart G, a dwelling unit used in the Section 8 moderate rehabilitation program that is not SRO housing must have a living room, a kitchen area, and a bathroom. Such a dwelling unit must have at least one bedroom or living/sleeping room for each two persons.

(c) *Special housing types.* The following provisions in 24 CFR part 982, subpart M (Special Housing Types)

apply to the Section 8 moderate rehabilitation program:

(1) 24 CFR 982.605(b) (for SRO housing). For the Section 8 moderate rehabilitation SRO program under subpart H of this part 882, see also § 882.803(b).

(2) 24 CFR 982.609(b) (for congregate housing).

(3) 24 CFR 982.614(c) (for group homes).

(d) *Lead-based paint.* The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at part 35, subparts A, B, H, and R of this title apply to the Section 8 moderate rehabilitation program.

[63 FR 46579, Sept. 1, 1998; 64 FR 50227, Sept. 15, 1999]

**§ 882.405 Financing.**

(a) *Types.* Any type of public or private financing may be utilized with the exception of the rehabilitation loan program under Section 312 of the Housing Act of 1964.

(b) *Use of Contract as security for financing.* An Owner may pledge, or offer as security for any loan or obligation, an Agreement or Contract entered into pursuant to this Program, *Provided* That (1) such security is in connection with a unit(s) rehabilitated pursuant to this Program and (2) the terms of the financing or any refinancing must be approved by the PHA in accordance with standards provided by HUD. Any pledge of the Agreement or Contract, or payments thereunder, will be limited to the amounts payable under the Contract in accordance with its terms.

**§ 882.406 [Reserved]**

**§ 882.407 Other Federal requirements.**

The moderate rehabilitation program is subject to applicable federal requirements in 24 CFR 5.105.

[63 FR 23855, Apr. 30, 1998]

**§ 882.408 Initial contract rents.**

(a) *Fair Market Rent limitation.* The Fair Market Rent Schedule for Moderate Rehabilitation is 120 percent of the Existing Housing Fair Market Rent Schedule, except that the Fair Market

Rent limitation applicable to single room occupancy housing is 75 percent of the Moderate Rehabilitation Fair Market Rent for a 0-bedroom unit. The initial Gross Rent for any Moderate Rehabilitation unit must not exceed the Moderate Rehabilitation Fair Market Rent applicable to the unit on the date that the Agreement is executed except by up to 10 percent as provided in paragraph (b) of this section. Additionally, to the extent provided in paragraph (d) of this section, the PHA may approve changes in the Contract Rent subsequent to execution of the Agreement which result in an initial Gross Rent which exceeds the Moderate Rehabilitation Fair Market Rent applicable to the unit by up to 20 percent.

(b) *Exception rents.* With HUD Field Office approval, the PHA may approve initial Gross Rents which exceed the applicable Moderate Rehabilitation Fair Market Rents by up to 10 percent for all units of a given size in specified areas where HUD has determined that the rents for standard units suitable for the Existing Housing Program are more than 10 percent higher than the Existing Housing Fair Market Rents. The PHA must submit documentation demonstrating the necessity for such exception rents in the area to the HUD Field Office. In areas where HUD has approved the use of exception rents for 0-bedroom units, the single room occupancy housing exception rent will be 75 percent of the exception rent applicable to Moderate Rehabilitation 0-bedroom units.

(c) *Determination Initial Contract Rents.* (1) The initial Contract Rent and base rent for each unit must be computed in accordance with HUD requirements. These amounts may be determined in accordance with paragraph (c)(2), or in accordance with an alternative method prescribed by HUD. However, the initial Contract Rent may in no event be more than—

(i) The Moderate Rehabilitation Fair Market Rent or exception rent applicable to the unit on the date that the Agreement is executed, minus

(ii) Any applicable allowance for utilities and other services attributable to the unit.

(2) When the initial Contract Rent is computed under this paragraph, the

rent will be equal to the base rent plus the monthly cost of a rehabilitation loan (but not more than the maximum stated in paragraph (c)(1)). The base rent must be calculated using the rent charged for the unit or the estimated costs to the Owner of owning, managing and maintaining the rehabilitated unit. The monthly cost of a rehabilitation loan must be calculated using:

(i) The actual interest rate on the portion of the rehabilitation costs borrowed by the Owner,

(ii) The HUD-FHA maximum interest rate for multifamily housing (or another rate prescribed by HUD) for rehabilitation costs paid by the Owner out of nonborrowed funds, and

(iii) At least a 15 year loan term, except that if the total amount of rehabilitation is less than \$15,000, the actual loan term will be used for the portion of the rehabilitation costs borrowed by the Owner. (HUD Field Offices may authorize loan terms which differ from the above in accordance with HUD requirements.)

(d) *Changes in Initial Contract Rents during rehabilitation.* (1) The initial Contract Rents established pursuant to paragraph (c) of this section will be the Contract Rents on the effective date of the Contract except under the following circumstances:

(i) When, during rehabilitation, work items (including substantial and necessary design changes) which (A) could not reasonably have been anticipated or are necessitated by a change in local codes or ordinances, and (B) were not listed in the work write-up prepared or approved by the PHA, are subsequently required and approved by the PHA.

(ii) When the actual cost of the rehabilitation performed is less than that estimated in the calculation of Contract Rents for the Agreement or the actual, certified costs are more than estimated due to unforeseen factors beyond the owner's control (e.g., strikes, weather delays or unexpected delays caused by local governments).

(iii) When the PHA (or HUD) approves changes in financing.

(iv) When the actual relocation payments made by the Owner to temporarily relocated Families varies from

the cost estimated in the calculation of Contract Rents for the Agreement.

(v) When necessary to correct errors in computation of the base and Contract Rents to comply with the HUD requirements.

(2) Should changes occur as specified in paragraph (d)(1) (either an increase or decrease), the PHA will approve any necessary change in work and amendment of the work write-up and cost estimate, recalculate the initial Contract Rents in accordance with paragraph (d)(3) of this section, and amend the Contract or Agreement, as appropriate, to reflect the revised rents.

(3) In establishing the revised Contract Rents, the PHA must determine that the resulting Gross Rents do not exceed the Moderate Rehabilitation Fair Market Rent or the exception rent in effect at the time of execution of the Agreement. The Fair Market Rent or exception rent, as appropriate, may only be exceeded when the PHA determines in accordance with paragraph (d)(1) of this section that it will be necessary for the revised Gross Rent to exceed the Moderate Rehabilitation Fair Market Rent or exception rent. Should this determination be made, the PHA may not execute a revised Agreement or Contract for Gross Rents exceeding the Fair Market Rents by more than 10 percent until it receives HUD Field Office approval. The HUD Field Office may approve revised Gross Rents which exceed the Fair Market Rents by up to 20 percent for reasons specified in paragraph (d)(1) of this section upon proper justification by the PHA of the necessity for the increase.

[47 FR 34379, Aug. 9, 1982, as amended at 52 FR 19725, May 27, 1987]

**§ 882.409 Contract rents at end of rehabilitation loan term.**

For a Contract where the initial Contract Rent was based upon a loan term shorter than 15 years, the Contract must provide for reduction of the Contract Rent effective with the rent for the month following the end of the term of the rehabilitation loan. The amount of the reduction will be the monthly cost of amortization of the rehabilitation loan. This reduction should result in a new Contract Rent equal to the base rent established pur-

suant to § 882.408(c) plus all subsequent adjustments.

**§ 882.410 Rent adjustments.**

(a) *Annual and special adjustments.* Contract Rents will be adjusted as provided in paragraphs (a) (1) and (2) of this section upon submittal to the PHA by the Owner of a revised schedule of Contract Rents, provided that the unit is in decent, safe, and sanitary condition and that the Owner is otherwise in compliance with the terms of the Lease and Contract. Subject to the foregoing, adjustments of Contract Rents will be as follows:

(1) The Annual Adjustment Factors which are published annually by HUD (see Schedule C, 24 CFR part 888) will be utilized. On or after each annual anniversary date of the Contract, the Contract Rents may be adjusted in accordance with HUD procedures, effective for the month following the submittal by the Owner of a revised schedule of Contract Rents. The changes in rent as a result of the adjustment cannot exceed the amount established by multiplying the Annual Adjustment Factor by the base rents. However, if the amounts borrowed to finance the rehabilitation costs or to finance purchase of the property are subject to a 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