

§ 886.310

24 CFR Ch. VIII (4-1-05 Edition)

with revenues at least equal to the project costs incurred by the Owner, and that the amount of the payments requested is not in excess of that portion of the deficiency which is attributable to the vacant units for the period of the vacancies.

(v) The Owner has submitted, in connection with the semiannual claim, a statement with relevant supporting evidence that there is a reasonable prospect that the project can achieve financial soundness within a reasonable time. The statement shall indicate the causes of the deficiency; the corrective steps that have been and will be taken; and the time by which it is expected that the project revenues will at least equal project costs without the additional payments provided under this paragraph.

(3) HUD may deny any claim for additional payments or suspend or terminate payments if it determines that based on the Owner's statement and other evidence, there is not a reasonable prospect that the project can achieve financial soundness within a reasonable time.

[44 FR 70365, Dec. 6, 1979, as amended at 49 FR 19949, May 10, 1984; 53 FR 3369, Feb. 5, 1988; 58 FR 43722, Aug. 17, 1993]

§ 886.310 Initial contract rents.

HUD will establish contract rents at levels that, together with other resources available to the purchasers, provide sufficient amounts for the necessary costs of rehabilitating and operating the multifamily housing project and do not exceed 120 percent of the most recently published Section 8 Fair Market Rents for Existing Housing (24 CFR part 888, subpart A).

[60 FR 11859, Mar. 2, 1995]

§ 886.311 Term of contract.

The contract term for any unit shall not exceed 15 years, except that the term may be less than 15 years as provided under either paragraph (a) or (b) of this section.

(a) The contract term may be less than 15 years if HUD finds that, based on the rental charges and financing for the multifamily housing project to which the contract relates, the financial viability of the project can be

maintained under a contract having a term less than 15 years. Where a contract of less than 15 years is provided under this paragraph, the amount of rent payable by tenants of the project for units assisted under such a contract shall not exceed the amount payable for rent under section 3(a) of the United States Housing Act of 1937 for a period of at least 15 years.

(b) The contract term may be less than 15 years if the assistance is provided under a contract authorized under section 6 of the HUD Demonstration Act of 1993, and pursuant to a disposition plan under this part for a project that is determined by the HUD to be otherwise in compliance with this part.

[60 FR 11859, Mar. 2, 1995]

§ 886.311a Notice upon contract expiration.

(a) The Contract will provide that the owner will notify each assisted family, at least 90 days before the end of the Contract term, of any increase in the amount the family will be required to pay as rent which may occur as a result of its expiration. If the Contract is to be renewed but with a reduction in the number of units covered by it, this notice shall be given to each family who will no longer be assisted under the Contract.

(b) The notice provided for in paragraph (a) of this section shall be accomplished by: (1) Sending a letter by first class mail, properly stamped and addressed, to the family at its address at the project, with a proper return address, and (2) serving a copy of the notice on any adult person answering the door at the leased dwelling unit, or if no adult responds, by placing the notice under or through the door, if possible, or else by affixing the notice to the door. Service shall not be considered to be effective until both required notices have been accomplished. The date on which the notice shall be considered to be received by the family shall be the date on which the owner mails the first class letter provided for in this paragraph, or the date on which the notice provided for in this paragraph is properly given, whichever is later.

(c) The notice shall advise each affected family that, after the expiration date of the Contract, the family will be required to bear the entire cost of the rent and that the owner will be free (to the extent the project is not otherwise regulated by HUD) to alter the rent without HUD approval, but subject to any applicable requirements or restrictions under the lease or under State or local law. The notice shall also state:

(1) The actual (if known) or the estimated rent which will be charged following the expiration of the Contract;

(2) The difference between the rent and the Total Tenant Payment toward rent under the Contract; and

(3) The date the Contract will expire.

(d) The owner shall give HUD a certification that families have been notified in accordance with this section with an example of the text of the notice attached.

(e) This section shall apply to (1) Contracts involving Substantial Rehabilitation entered into pursuant to Agreements executed on or after October 1, 1981, or Contracts involving Substantial Rehabilitation entered into pursuant to Agreements executed before October 1, 1981, but renewed or amended on or after October 1, 1984 and (2) all other Contracts executed, renewed or amended on or after October 1, 1984.

[49 FR 31285, Aug. 6, 1984]

§ 886.312 Rent adjustments.

(a) *Limits.* Housing assistance payments will be made in amounts commensurate with contract rent adjustments under this paragraph, up to the maximum amount authorized under the contract. (See § 886.308.)

(b) *Annual adjustments.* The contract rents may be adjusted annually, at HUD's option, either (1) on the basis of a written request for a rent increase submitted by the owner and properly supported by substantiating evidence, or (2) by applying, on each anniversary date of the contract, the applicable automatic annual adjustment factor most recently published by HUD in the FEDERAL REGISTER. If HUD requires that the owner submit a written request, HUD within a reasonable time shall approve a rental schedule that is necessary to compensate for any in-

crease occurring since the last approved rental schedule in taxes (other than income taxes) and operating and maintenance costs over which owners have no effective control, or shall deny the increase stating the reasons therefor. Increases in taxes and maintenance and operating costs shall be measured against levels of such expenses in comparable assisted and unassisted housing in the area to ensure that adjustments in the contract rents shall not result in material differences between the rents charged for assisted and comparable unassisted units. Contract rents may be adjusted upward or downward as may be appropriate; however, in no case shall the adjusted rents be less than the contract rents on the effective date of the contract, provided there was no fraud or mistake adverse to the Department's interest in determining the initial contract rent.

(c) *Special adjustments.* Special adjustments in the contract rents shall be requested in writing by the owner and may be authorized by HUD to the extent HUD determines such adjustments are necessary to reflect increases in the actual and necessary expenses of owning and maintaining the contract units which have resulted from substantial general increases in real property taxes, utility rates or similar costs (i.e., assessments and utilities not covered be regulated rates) which are not adequately compensated for by the adjustment authorized by paragraph (b) of this section.

(d) *Comparability between assisted and unassisted units.* Notwithstanding any other provisions of this subpart, adjustments as provided in this section shall not result in material differences between the rents charged for assisted and comparable unassisted units, as determined by HUD: *Provided, however,* That this limitation shall not be construed to prohibit differences in rents between assisted and comparable unassisted units to the extent that such differences may have existed with respect to the initial contract rents assuming no fraud or mistake adverse to the Department's interest.

(e) *Addendums to contract and leases.* Any adjustment in contract rents shall be incorporated into the contract and