

the same rent levels prevail. The HUD Field Office will publish appropriate notice of the establishment of any such revised Automatic Annual Adjustment Factors. These factors will remain in effect until superseded by the subsequent publication of Automatic Annual Adjustment Factors pursuant to § 888.202.

[44 FR 21769, Apr. 12, 1979]

Subpart C—Retroactive Housing Assistance Payments for New Construction, Substantial Rehabilitation, State Finance Agencies, Section 515 Farmers Home Administration, Section 202 Elderly or Handicapped, and Special Allocations Projects

SOURCE: 56 FR 20084, May 1, 1991, unless otherwise noted.

§ 888.301 Purpose and scope.

(a) *Purpose.* This subpart describes the basic policies and procedures for the retroactive payment of Housing Assistance Payments to eligible project owners for the period from October 1, 1979 to May 31, 1991 and for one-time Contract Rent determinations for such eligible project owners.

(b) *Applicability.* This subpart applies to all project-based Section 8 Housing Assistance Payments Contracts under New Construction (Part 880); Substantial Rehabilitation (Part 881); State Finance Agencies (Part 883); and Section 515 Farmers Home Administration (Part 884). It also applies to those projects under Section 202 Elderly or Handicapped (Part 885) and Special Allocations (Part 886, Subparts A and C) whose Contract Rents are adjusted by use of the Annual Adjustment Factors (AAFs), as described in subpart B of this part.

(c) *Eligible project owners.* Project owners may be eligible for retroactive payments if, during the period from October 1, 1979 to May 31, 1991:

(1) The use of a comparability study by HUD (or the Contract Administrator), which was conducted as an independent limitation on the amount of rent adjustment that would have re-

sulted from use of the applicable AAF, resulted in the reduction of the maximum monthly Contract Rents for units covered by a Housing Assistance Payments (HAP) contract or resulted in less than the maximum increase for those units than would otherwise be permitted by the AAF; or

(2) The HAP contract required a project owner to request annual rent adjustments, and the project owner certifies that a request was not made because of an anticipated reduction of the maximum monthly Contract Rents resulting from a comparability study.

§ 888.305 Amount of the retroactive Housing Assistance Payments.

(a) *Recalculating the total rent adjustment.* To establish the amount of the retroactive HAP payment for which a project owner meeting the criteria in § 888.301(c) is eligible, the total rent adjustment will be recalculated for the period from October 1, 1979 to May 31, 1991. For purposes of establishing the amount of the retroactive payment only, the total rent adjustment will be an amount equal to the Contract Rent, minus the amount of the Contract Rent attributable to debt service, multiplied by the applicable AAF, for each year.

(b) *Calculating the retroactive payment.* HUD (or the Contract Administrator) will pay, as a retroactive Housing Assistance Payment, the amount, if any, by which the total rent adjustment, calculated under paragraph (a) of this section, exceeds the rent adjustments actually approved for the same time period, except that in no event will any payment be an amount less than 30 percent of the aggregate of the full Contract Rent multiplied by the applicable AAF, minus the sum of the rent adjustments actually approved for the same time period, adjusted by the average occupancy rate.

(c) *Occupancy rates.* (1) Retroactive payments will be made only for units that were occupied, based on average occupancy rate, including units qualifying for vacancy payments under 24 CFR 880.611, 881.611, 883.712, 884.106, 885.985, 886.109, or 886.309, during the time period from October 1, 1979 to May 31, 1991.