

§ 888.401

Administrator) and the owner, or as shown on HUD Form 92458 (Rental Schedule) if the most recent amendment to the HAP Contract cannot be located.

(c) *Effective date of new Contract Rent.* The new Contract Rent, determined under paragraph (a) of this section, will be effective on May 31, 1991.

(Approved by the Office of Management and Budget under control number 2505-0042)

Subpart D—Retroactive Housing Assistance Payments for Moderate Rehabilitation Projects

SOURCE: 56 FR 20085, May 1, 1991, unless otherwise noted.

§ 888.401 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 a one-time Contract Rent determination for such eligible project owners.

(b) *Applicability.* This subpart applies to all Moderate Rehabilitation projects under 24 CFR part 882, subparts D, E, and H.

(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 the Public Housing Agency (PHA) as contract administrator, which was conducted as an independent limitation on the amount of rent adjustment that would have resulted 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 project owner certifies that a request for an annual rent adjustment was not made because of an anticipated reduction of the maximum monthly Contract Rents resulting from a comparability study.

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

§ 888.405 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 § 888.401(c) is eligible, the total rent adjustment will be recalculated for the period from October 1, 1979 to May 31, 1991. Rents for that period will be recalculated, under the procedures set out in 24 CFR 882.410(a)(1), by applying the AAF for any affected year, and recalculating the rents for the remainder of the period as necessary. For each year thereafter, all rent adjustments made at the request of the owner at the time will be recalculated, under the procedures in 24 CFR 882.410(a)(1), to account for the new adjustments.

(b) *Calculating the retroactive payment.* HUD will pay, through the PHA, 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.

(c) *Occupancy rate.* (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 882.411, during the time period from October 1, 1979 to May 31, 1991.

(2) When requesting a retroactive payment, a project owner must, if the information is available, submit documentation of occupancy rates, on either an annual or monthly basis, for the same time period. The average occupancy rate will be based on these records. If records are unavailable for the full time period, the PHA will establish an average occupancy rate, to be used for the entire period, from the occupancy rate for the three years immediately preceding May 31, 1991.

(d) *Revised AAFs.* For any year during the period from October 1, 1979 to May 31, 1991, where a HUD field office published a revised Annual Adjustment Factor that replaced the applicable AAF for a specific locality under 24 CFR 888.204, the revised Annual Adjustment Factor, which applied to all projects in that area, will be used to recalculate the total rent adjustment under paragraph (a) of this section, and