

§ 886.108

24 CFR Ch. VIII (4-1-06 Edition)

subject project, or (2) substantial diversion of prospective applicants from such projects to the subject project.

(f) A first priority is given to HUD-Insured or Secretary-Held projects with presently serious financial problems, which are likely to result in a claim on the insurance fund in the near future. To the extent resources remain available, assistance also may be provided to projects with potentially serious financial problems which, on the basis of financial and/or management analysis, appear to have a high probability of producing a claim on the insurance funds within approximately the next five years.

(g) The infusion of Section 8 assistance into the subject project solves an identifiable problem, e.g., high vacancies and/or turnover, and provides a reasonable assurance of long-term project viability. A determination of long-term viability shall be based upon the following considerations:

(1) The project is not subject to any serious problems that are non-economic in nature. Examples of such problems are poor location, structural deficiencies or disinterested ownership.

(2) The Owner is in substantial compliance with the Regulatory Agreement. Owners are not diverting project funds for personal use. No dividends are being paid during any period of financial difficulty.

(3) The management agent is in substantial compliance with the management agreement. The current management agreement has been approved by HUD. Financial records are adequately kept. Occupancy requirements are being met. Marketing and maintenance programs are being carried out in an adequate manner, based upon available financial resources.

(4) The project's problems are primarily the result of factors beyond the control of the present ownership and management.

(5) The major problems are traceable to an inadequate cash flow.

(6) The infusion of Section 8 assistance will solve the cash flow problem by:

(i) Making it possible to grant needed rent increases;

(ii) Reducing turnover, vacancies and collection losses.

(7) The Owner's plan for remedying any deferred maintenance, financial problems, or other problems is realistic and achievable. There is positive evidence that the Owner will carry out the plan. Examples of such evidence are the Owner's past performance in correcting problems and, in the case of profit-motivated Owners, any cash contributions made to correct project problems.

(h) Any plan submitted pursuant to § 886.105(d) is found by HUD to be adequate.

§ 886.108 Maximum annual contract commitment.

(a) *Number of units assisted.* Based on analysis of housing assistance needs of families residing or expected to reside in the project, HUD shall determine the number of units to be assisted up to 100 percent of the units in the project. All units currently assisted under section 23 or section 8 shall be converted and included under the Contract pursuant to this subpart, unless the parties to the Lease or Contract object to such conversion. Units assisted under section 101 of the Housing and Urban Development Act of 1965 or under section 236(f)(2) of the National Housing Act shall not be included under the Contract pursuant to this subpart unless the Owner proposes and HUD approves such conversion.

(b) *Maximum annual Contract commitment.* The maximum annual housing assistance payments that may be committed under the Contract shall be that amount which, when paid annually over the term of the Contract, is determined by HUD to be sufficient to provide for all housing assistance payments and fees under the Contract.

(c) *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 for each project 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 allocation of a portion of new authorizations for the purpose of amending housing assistance contracts."

§ 886.109 Housing assistance payments to owners.

(a) *General.* Housing Assistance Payments shall be paid to Owners for units under lease by eligible families, in accordance with the Contract and as provided in this section. These Housing Assistance Payments will cover the difference between the Contract Rent and the Tenant Rent. Where applicable, the Utility Reimbursement will be paid to the Family as an additional Housing Assistance Payment. The Contract will provide that the Owner will make this payment on behalf of HUD. Funds will be paid to the Owner in trust solely for the purpose of making this additional payment. If the Family and the utility company consent, the Owner may pay the Utility Reimbursement jointly to the Family and the utility company or directly to the utility company.

(b) No Section 8 assistance may be provided for any unit occupied by an Owner; cooperatives are considered rental housing.

(c) If an Eligible Family vacates its unit (other than as a result of action by the Owner which is in violation of the Lease or the Contract or any applicable law), the Owner shall receive housing assistance payments in the amount of 80 percent of the Contract Rent for a vacancy period not exceed-

ing 60 days: *Provided, however,* That if the Owner collects any of the Family's share of the rent for this period, or applies security deposits for unpaid rent, in amounts which when added to the 80 percent payments, results in more than the Contract Rent, such excess shall be payable to HUD or as HUD may direct. (See also § 886.116.) The Owner shall not be entitled to any payment under this paragraph unless he:

(1) Immediately upon learning of the vacancy, has notified HUD of the vacancy or prospective vacancy and the reasons for the vacancy, and

(2) Has taken and continues to take all feasible actions to fill the vacancy including, but not limited to, contacting applicants on his waiting list (if any), and advising them of the availability of the unit, and

(3) Has not rejected any eligible applicant except for good cause.

[42 FR 5603, Jan. 28, 1977, as amended at 49 FR 19948, May 10, 1984]

§ 886.110 Contract rents.

(a) The sum of the Contract Rents plus an Allowance for Utilities and Other Services shall not exceed the published Section 8 Fair Market Rents for Existing Housing, except that they may be exceeded by:

(1) Up to 10 percent if the Field Office Director determines that special circumstances warrant such higher rents, or

(2) By up to 20 percent where the Regional Administrator determines that special circumstances warrant such higher rents, and in either case, such higher rents meet the test of reasonableness in paragraph (c) of this section.

(b) In the case of any project completed not more than six years prior to the application for assistance under that part, or in the case of units converted to Section 8 which were previously assisted under Section 101 of the Housing and Urban Development Act of 1965 or Section 236(f)(2) of the National Housing Act, contract rents plus any allowance for utilities and other services may be as high as 75 percent of the published Section 8 Fair Market Rents for New Construction, which limitation may be increased: (1) By up to 10 percent if the Field Office