

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 to establish the amount of the retroactive payments.

(e) *Special adjustments.* When calculating the total rent adjustments and establishing the amount of the retroactive payments under paragraphs (a) and (b) of this section, any special adjustments granted under 24 CFR 882.410(a)(2) during the period from October 1, 1979 to May 31, 1991, to reflect substantial general increases in real property taxes, assessments, utility rates, utilities not covered by regulated rates, or for special adjustments for any other purpose authorized by a waiver of the regulations, will be deducted from the base rent before applying the AAF.

(f) *AAFs less than 1.0.* For any area where an AAF of less than 1.0 was published, a factor of 1.0 will be used to recalculate the total rent adjustments and to establish the amount of the retroactive payments under paragraphs (a) and (b) of this section.

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§ 888.410 Notice of eligibility requirements for retroactive payments.

(a) *Notice of eligibility requirements.* PHAs will give written notice to all current owners of projects, for which they are the Contract Administrators, of the eligibility requirements for retroactive payments. Eligible project owners must make a request for pay-

ment or a request for a one-time contract determination within 60 days from the date of the notice.

(b) *Request for payment.* (1) Owners eligible for retroactive payments under § 888.401(c) must submit a request for a calculation of the total rent adjustments and the establishment of the amount of the retroactive payment, as described in § 888.401 (a) and (b), and documentation of the occupancy rate for the period from October 1, 1979 to May 31, 1991, if available.

(2) Owners claiming eligibility under § 888.401(c)(2) must certify that a request was not made because of an anticipated reduction in the Contract Rents as a result of a comparability study. The certification must contain the year or years upon which the request for payment is based and a statement of the basis for the belief that rents would have been reduced.

(3) Retroactive payments will be made to owners over a three-year period as funds are appropriated for that purpose. When funds are available for payment, HUD will publish a FEDERAL REGISTER Notice containing procedures for claiming payments.

(c) *Request for one-time contract rent determination.* When making a request for payment, eligible owners may also request a one-time contract rent determination, as described in § 888.420. Eligible owners may request a one-time contract rent determination even if they choose to forgo receiving retroactive payments, provided they are eligible for retroactive payments.

(d) *Transfer of ownership since October 1, 1979.* Eligible owners requesting retroactive payments must certify that they are entitled to the entire amount of the payment. Any owner who is unable to certify must present documentation of an agreement between the current and former owners of the proportionate share of the payment for which each is eligible.

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§ 888.415 Restrictions on retroactive payments.

(a) *Restrictions.* Retroactive payments are subject to all regulations, procedures, or restrictions that apply to Housing Assistance Payments.

§ 888.420

(b) *Review of initial rents.* Before calculating the amount of any retroactive payment, the PHA, if directed by HUD, will review whether rents were excessive when initially set.

(c) *Physical condition of projects.* If the most recent physical inspection report by the PHA shows significant deficiencies that have not been addressed to the satisfaction of the PHA by the date the retroactive payment is deposited into the project account, the payment will not be made available until the deficiencies are resolved or a plan for their resolution has been approved by the PHA.

§ 888.420 One-time Contract Rent determination.

(a) *Determining the amount of the new Contract Rent.* Project owners eligible for retroactive payments, as described in § 888.401(c), may request a one-time Contract Rent determination, to be effective as described in paragraph (c) of this section. The request for a one-time rent determination must be made when submitting a request for retroactive payments, as described in § 888.415. If no claim for retroactive payments is made, an owner may submit only the request for a one-time rent determination, provided the owner is eligible for retroactive payments. The new Contract Rent under this provision will be the greater of:

(1) The Contract Rent currently approved by the PHA; or

(2) An amount equal to the Contract Rent as adjusted to May 31, 1991 under § 888.405(a).

(b) *Currently approved rent.* The Contract Rent currently approved by the PHA is the Contract Rent stated in the most recent amendment to the HAP Contract signed by both the PHA and the owner.

(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.

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

PART 891—SUPPORTIVE HOUSING FOR THE ELDERLY AND PERSONS WITH DISABILITIES

Subpart A—General Program Requirements

- Sec.
- 891.100 Purpose and policy.
- 891.105 Definitions.
- 891.110 Allocation of authority.
- 891.115 Notice of funding availability.
- 891.120 Project design and cost standards.
- 891.125 Site and neighborhood standards.
- 891.130 Prohibited relationships.
- 891.135 Amount and terms of capital advances.
- 891.140 Development cost limits.
- 891.145 Owner deposit (Minimum Capital Investment).
- 891.150 Operating cost standards.
- 891.155 Other Federal requirements.
- 891.160 Audit requirements.
- 891.165 Duration of capital advance.
- 891.170 Repayment of capital advance.
- 891.175 Technical assistance.
- 891.180 Physical condition standards; physical inspection requirements.
- 891.185 Preemption of rent control laws.

Subpart B—Section 202 Supportive Housing for the Elderly

- 891.200 Applicability.
- 891.205 Definitions.
- 891.210 Special project standards.
- 891.215 Limits on number of units.
- 891.220 Prohibited facilities.
- 891.225 Provision of services.
- 891.230 Selection preferences.

Subpart C—Section 811 Supportive Housing for Persons With Disabilities

- 891.300 Applicability.
- 891.305 Definitions.
- 891.310 Special project standards.
- 891.315 Prohibited facilities.
- 891.320 Site and neighborhood standards.
- 891.325 Lead-based paint requirements.

Subpart D—Project Management

- 891.400 Responsibilities of owner.
- 891.405 Replacement reserve.
- 891.410 Selection and admission of tenants.
- 891.415 Obligations of the household or family.
- 891.420 Overcrowded and underoccupied units.
- 891.425 Lease requirements.
- 891.430 Denial of admission, termination of tenancy, and modification of lease.
- 891.435 Security deposits.
- 891.440 Adjustment of utility allowances.
- 891.445 Conditions for receipt of vacancy payments for assisted units.