

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**Office of the Assistant Secretary for Housing—Federal Housing Commissioner; Consolidation of Regulations for Project-Based Section 8 Programs****24 CFR Parts 880, 881, 883, and 884****[Docket No. FR-3984-F-01]****RIN 2502-AG65****AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner (HUD).**ACTION:** Final rule.

SUMMARY: This rule removes obsolete provisions concerning development of housing under regulations for the Section 8 project-based assistance programs for New Construction, Substantial Rehabilitation, and State Housing Agencies, and Rural Rental Housing now found in 24 CFR parts 880, 881, 883, and 884. It also consolidates into one part, the certain nearly identical provisions concerning the housing assistance payments contract and management for the New Construction, Substantial Rehabilitation, and State Housing Agencies programs that are now found in three parts.

EFFECTIVE DATE: April 26, 1996.

FOR FURTHER INFORMATION CONTACT: For development issues: Jane Luton, Director, New Products Division (telephone: (202) 708-2556, ext. 2537) or for management issues: Barbara D. Hunter, Director, Program Management Division (telephone: (202) 708-4162, ext. 2632), Office of Multifamily Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, D.C. 20410. The above telephone numbers may be accessed through TDD by calling the Federal Relay Service at (202) 708-9300 or 1-800-877-TDDY (1-800-877-8389). (Other than the "1-800" number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:**Paperwork Reduction Act Statement**

This rule does not alter existing information collection requirements. An agency may not conduct or sponsor, and person is not required to respond to a collection of information unless the collection displays a valid control number.

Background

On March 4, 1995, President Clinton issued a memorandum to all Federal departments and agencies regarding

regulatory reinvention. In response to this memorandum, the Department of Housing and Urban Development conducted a page-by-page review of its regulations to determine which can be eliminated, consolidated, or otherwise improved.

The authority for funding activity under the Section 8 project-based assistance programs affected by this rule was repealed in 1983, and there have been no projects in the development stage for a substantial period. This rule, accordingly, removes from 24 CFR parts 880, 881, 883, and 884 obsolete provisions relating to the development of projects under these parts. The removed provisions include but are not limited to: part 880, subparts C and D; part 881, subparts C, D, and G; and part 883, subparts B, D, and E. Section 883.106, added by this rule, replaces current § 883.201, which was in subpart B. In part 884, individual sections have been removed.

This rule also consolidates into part 880, subparts E and F, the closely-related housing assistance payments (HAP) contract and the management regulations currently contained in parts 880, 881, and 883. Because of the similarity of the two sets of HAP contract regulations, §§ 881.505 through 881.508 have been removed and replaced by a cross-reference to the same sections in part 880, subpart E. (See § 881.503) In part 883, which is not as closely related to part 880, §§ 883.605 and 883.608 have been replaced by cross-reference to the comparable §§ 880.504 and 880.508 provisions in part 880, subpart E.

In both parts 881 and 883, the respective Management subparts have been removed and replaced by cross-references to part 880, subpart F. Part 880, subpart F has been revised to include certain part 883-specific requirements, where the current part 883 requirements differ from those applicable to part 880 and part 881 projects.

The New Construction Set-Aside for Section 515 Rural Rental Housing Projects program, contained in part 884, is administered by the Rural Housing and Community Development Service, successor agency to the Farmers Home Administration, under a memorandum of understanding. The part 884 provisions have not been consolidated into part 880.

Justification for Final Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. However, part 10 provides for

exceptions to the general rule if the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). HUD finds that good cause exists to publish this rule for effect without first soliciting public comment. This rule merely consolidates existing CFR parts and removes obsolete regulatory provisions and does not establish or affect substantive policy. Therefore, prior public comment is unnecessary.

Findings and Certifications***Impact on the Environment***

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule do not have significant impact on States or their political subdivisions since the rule merely consolidates existing provisions into one part.

Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, since it only consolidates and streamlines existing provisions. Therefore, the rule is not subject to review under the Order.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule will not have a significant impact on a substantial number of small entities, because it makes no substantive changes in the regulations affected.

Catalog

The Catalog of Federal Domestic Assistance number for the programs affected by this rule is 14.182.

List of Subjects

24 CFR Part 880

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 881

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 883

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 884

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements, Rural areas.

Accordingly, under the authority of 42 U.S.C. 3535(d), for the reasons stated in the preamble, parts 880, 881, 883, and 884 of title 24 of the Code of Federal Regulations are amended as follows:

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

1. The authority citation for part 880 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611–13619.

Subpart A—Summary and Applicability

2. Section 880.101 is revised to read as follows:

§ 880.101 General.

(a) The purpose of the Section 8 program is to provide low-income families with decent, safe and sanitary rental housing through the use of a system of housing assistance payments. This part contains the policies and procedures applicable to the Section 8 new construction program. The assistance may be provided to public housing agency owners or to private owners either directly from HUD or through public housing agencies.

(b) This part does not apply to projects developed under other Section 8 program regulations, including 24 CFR parts 881, 882, 883, 884, and 885, except to the extent specifically stated in those parts. Portions of subparts E and F of this part 880 have been cross-referenced in 24 CFR parts 881 and 883.

§§ 880.102 and 880.103 [Removed]

3. Sections 880.102 and 880.103 are removed.

4. Section 880.104 is revised to read as follows:

§ 880.104 Applicability of part 880 in effect as of November 5, 1979.

(a) Part 880, in effect as of November 5, 1979, applies to all proposals for which a notification of selection was not issued before the November 5, 1979 effective date of part 880. (See 24 CFR part 880, revised as of April 1, 1980.) Where a notification of selection was issued for a proposal before the November 5, 1979 effective date, part 880, in effect as of November 5, 1979, applies if the owner notified HUD within 60 calendar days that the owner wished the provisions of part 880, effective November 5, 1979, to apply and promptly brought the proposal into conformance.

(b) Subparts E (Housing Assistance Payments Contract) and F (Management) of this part apply to all projects for which an Agreement was not executed before the November 5, 1979, effective date of part 880. Where an Agreement was so executed:

(1) The owner and HUD may agree to make the revised subpart E of this part applicable and to execute appropriate amendments to the Agreement and/or Contract.

(2) The owner and HUD may agree to make the revised subpart F of this part applicable (with or without the limitation on distributions) and to execute appropriate amendments to the Agreement and/or Contract.

(c) Section 880.607, Termination of Tenancy and Modification of Leases, applies to new families who begin occupancy or execute a lease on or after 30 days after the November 5, 1979, effective date of part 880. This section also applies to families not covered by the preceding sentence, including existing families under lease, with respect to all leases in which a renewal becomes effective on or after the 60th day following the November 5, 1979 effective date of part 880. A lease is considered to be renewed where both the landlord and the family fail to terminate a tenancy under a lease permitting either party to terminate.

(d) Notwithstanding the provisions of paragraph (b) of this section, the provisions of 24 CFR part 5 (concerning preferences for selection of applicants) apply to all projects, regardless of when an Agreement was executed.

Subpart B—Definitions and Other Requirements

5. The heading for subpart B of part 880 is revised as set forth above.

6. Section 880.201 is amended by removing the definitions of “Allocation

area”, “New Communities”, and “Preliminary proposal” and by adding in alphabetical order, the definition of “Agency”, to read as follows:

§ 880.201 Definitions.

* * * * *

Agency. As defined in 24 CFR part 883.

* * * * *

§§ 880.202, 880.203, 880.204, 880.206, 880.209, and 880.210 [Removed]

7. Sections 880.202, 880.203, 880.204, 880.206, 880.209, and 880.210 are removed.

Subparts C and D—[Removed and Reserved]

8. Subpart C (§§ 880.301 through 880.311) and subpart D (§§ 880.401 through 880.405) of part 880 are removed and reserved.

Subpart E—Housing Assistance Payments Contract

9. Section 880.501 is amended by revising paragraph (a), and by removing and reserving paragraph (b), to read as follows:

§ 880.501 The contract.

(a) *Contract.* The Housing Assistance Payments Contract sets forth rights and duties of the owner and the contract administrator with respect to the project and the housing assistance payments. The owner and contract administrator execute the Contract in the form prescribed by HUD upon satisfactory completion of the project.

(b) [Reserved]

* * * * *

10. In § 880.504, paragraphs (b), (c) introductory text, (c)(1), and (e) are revised, to read as follows:

§ 880.504 Leasing to eligible families.

* * * * *

(b) *Reduction of number of units covered by Contract.* (1) *Part 880 and 24 CFR part 881 projects.* HUD (or the PHA at the direction of HUD, as appropriate) may reduce the number of units covered by the Contract to the number of units available for occupancy by eligible families if:

(i) The owner fails to comply with the requirements of paragraph (a) of this section; or

(ii) Notwithstanding any prior approval by the contract administrator to lease such units to ineligible families, HUD (or the PHA at the direction of HUD, as appropriate) determines that the inability to lease units to eligible families is not a temporary problem.

(2) *For 24 CFR part 883 projects.* HUD and the Agency may reduce the number

of units covered by the Contract to the number of units available for occupancy by eligible families if:

(i) The owner fails to comply with the requirements of paragraph (a) of this section; or

(ii) Notwithstanding any prior approval by the Agency to lease such units to ineligible families, HUD and the Agency determine that the inability to lease units to eligible families is not a temporary problem.

(c) *Restoration.* For this part 880 and 24 CFR part 881 projects, HUD will agree to an amendment of the ACC or the Contract, as appropriate, to provide for subsequent restoration of any reduction made pursuant to paragraph (b) of this section, and for 24 CFR part 883 projects, HUD will agree to an amendment of the ACC and the Agency may agree to an amendment to the Contract to provide for subsequent restoration of any reduction made pursuant to paragraph (b) of this section, if:

(1) HUD determines (for 24 CFR part 883 projects, HUD and the Agency determine) that the restoration is justified by demand,

* * * * *

(e) *Termination of assistance for failure to submit evidence of citizenship or eligible immigration status.* If an owner who is subject to paragraphs (a) and (b) of this section is required to terminate housing assistance payments for the family in accordance with 24 CFR part 5 because the owner determines that the entire family does not have U.S. citizenship or eligible immigration status, the owner may allow continued occupancy of the unit by the family without Section 8 assistance following the termination of assistance, or if the family constitutes a mixed family, as defined in 24 CFR part 5, the owner shall comply with the provisions of 24 CFR part 5 concerning assistance to mixed families, and deferral of termination of assistance.

Subpart F—Management

11. Section 880.601 is amended by revising paragraphs (a)(4), (b), (c), and (e), to read as follows:

§ 880.601 Responsibilities of owner.

(a) * * *

(4) At the time of Contract execution, the owner must submit a list of leased and unleased units, with justification for the unleased units, in order to qualify for vacancy payments for the unleased units.

(b) *Management and maintenance.* The owner is responsible for all management functions, including

determining eligibility of applicants in accordance with 24 CFR parts 5 and 24 CFR part 813, provision of Federal selection preferences in accordance with 24 CFR part 5, selection of tenants, obtaining and verifying Social Security Numbers submitted by families (as provided by 24 CFR part 5), obtaining signed consent forms from families for the obtaining of wage and claim information from State Wage Information Collection Agencies (as provided by 24 CFR part 5), reexamination of family income, evictions and other terminations of tenancy, and collection of rents, and all repair and maintenance functions (including ordinary and extraordinary maintenance and replacement of capital items). All these functions shall be performed in compliance with applicable Equal Opportunity requirements.

(c) *Contracting for services.* (1) For this part 880 and 24 CFR part 881 projects, with HUD approval, the owner may contract with a private or public entity (except the contract administrator) for performance of the services or duties required in paragraphs (a) and (b) of this section.

(2) For 24 CFR part 883 projects, with approval of the Agency, the owner may contract with a private or public entity (but not with the Agency unless temporarily necessary for the Agency to protect its financial interest and to uphold its program responsibilities where no alternative management agent is immediately available) for performance of the services or duties required in paragraphs (a) and (b) of this section.

(3) However, such an arrangement does not relieve the owner of responsibility for these services and duties.

* * * * *

(e) *Use of project funds.* (1) Project funds must be used for the benefit of the project, to make required deposits to the replacement reserve in accordance with § 880.602 and to provide distributions to the owner as provided in § 880.205, § 881.205 of this chapter, or § 883.306 of this chapter, as appropriate.

(2) For this part 880 and 24 CFR part 881 projects:

(i) Any remaining project funds must be deposited with the mortgagee or other HUD-approved depository in an interest-bearing residual receipts account. Withdrawals from this account will be made only for project purposes and with the approval of HUD.

(ii) Partially-assisted projects are exempt from the provisions of this section.

(iii) In the case of HUD-insured projects, the provisions of this paragraph (e) will apply instead of the otherwise applicable mortgage insurance provisions.

(3) For 24 CFR part 883 projects:

(i) Any remaining project funds must be deposited with the Agency, other mortgagee or other Agency-approved depository in an interest-bearing account. Withdrawals from this account may be made only for project purposes and with the approval of the Agency.

(ii) In the case of HUD-insured projects, the provisions of this paragraph will apply instead of the otherwise applicable mortgage insurance provisions, except in the case of partially-assisted projects which are subject to the applicable mortgage insurance provisions.

* * * * *

12. Section 880.602 is revised to read as follows:

§ 880.602 Replacement reserve.

(a) A replacement reserve must be established and maintained in an interest-bearing account to aid in funding extraordinary maintenance and repair and replacement of capital items.

(1) *Part 880 and 24 CFR part 881 projects.* (i) For this part 880 and 24 CFR part 811 projects, an amount equivalent to .006 of the cost of total structures, including main buildings, accessory buildings, garages and other buildings, or any higher rate as required by HUD from time to time, will be deposited in the replacement reserve annually. This amount will be adjusted each year by the amount of the automatic annual adjustment factor.

(ii) The reserve must be built up to and maintained at a level determined by HUD to be sufficient to meet projected requirements. Should the reserve achieve that level, the rate of deposit to the reserve may be reduced with the approval of HUD.

(iii) All earnings including interest on the reserve must be added to the reserve.

(iv) Funds will be held by the mortgagee or trustee for bondholders, and may be drawn from the reserve and used only in accordance with HUD guidelines and with the approval of, or as directed by, HUD.

(v) Partially-assisted part 880 and 24 CFR part 881 projects are exempt from the provisions of this section.

(2) *Part 883 of this chapter projects.*

(i) For 24 CFR part 883 projects, an amount equivalent to at least .006 of the cost of total structures, including main buildings, accessory buildings, garages and other buildings, or any higher rate as required from time to time by:

(A) The Agency, in the case of projects approved under 24 CFR part 883, subpart D; or

(B) HUD, in the case of all other projects, will be deposited in the replacement reserve annually. For projects approved under 24 CFR part 883, subpart D, this amount may be adjusted each year by up to the amount of the automatic annual adjustment factor. For all projects not approved under 24 CFR part 883, subpart D, this amount must be adjusted each year by the amount of the automatic annual adjustment factor.

(ii) The reserve must be built up to and maintained at a level determined to be sufficient by the Agency to meet projected requirements. Should the reserve achieve that level, the rate of deposit to the reserve may be reduced with the approval of the Agency.

(iii) All earnings, including interest on the reserve, must be added to the reserve.

(iv) Funds will be held by the Agency, other mortgagee or trustee for bondholders, as determined by the Agency, and may be drawn from the reserve and used only in accordance with Agency guidelines and with the approval of, or as directed by, the Agency.

(v) The Agency may exempt partially-assisted projects approved under 24 CFR part 883, subpart D, from the provisions of this section. All partially-assisted projects not approved under the Fast Track Procedures formerly in 24 CFR part 883, subpart D, are exempt from the provisions of this section.

(b) In the case of HUD-insured projects, the provisions of this section will apply instead of the otherwise applicable mortgage insurance provisions, except in the case of partially-assisted insured projects which are subject to the applicable mortgage insurance provisions.

13. Section 880.603 is revised to read as follows:

§ 880.603 Selection and admission of assisted tenants.

(a) *Application.* The owner must accept applications for admission to the project in the form prescribed by HUD. Both the owner (or designee) and the applicant must complete and sign the application. For this part 880 and 24 CFR part 881 projects, on request, the owner must furnish copies of all applications to HUD and the PHA, if applicable. For 24 CFR part 883 projects, on request, the owner must furnish to the Agency or HUD copies of all applications received.

(b) *Determination of eligibility and selection of tenants.* The owner is

responsible for obtaining and verifying information related to income in accordance with 24 CFR part 813, and evidence related to citizenship and eligible immigration status in accordance with 24 CFR part 5, to determine whether the applicant is eligible for assistance in accordance with the requirements of 24 CFR part 5, and 24 CFR part 813, and to select families for admission to the program, which includes giving selection preferences in accordance with 24 CFR part 5, subpart D.

(1) If the owner determines that the family is eligible and is otherwise acceptable and units are available, the owner will assign the family a unit of the appropriate size in accordance with HUD standards. If no suitable unit is available, the owner will place the family on a waiting list for the project and notify the family of when a suitable unit may become available. If the waiting list is so long that the applicant would not be likely to be admitted for the next 12 months, the owner may advise the applicant that no additional applications are being accepted for that reason, provided the owner complies with the procedures for informing applicants about admission preferences as provided in 24 CFR part 5, subpart D.

(2) If the owner determines that an applicant is ineligible on the basis of income or family composition, or because of failure to meet the disclosure and verification requirements for Social Security Numbers (as provided by 24 CFR part 5), or because of failure by an applicant to sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies (as provided by 24 CFR parts 5 and 813), or that the owner is not selecting the applicant for other reasons, the owner will promptly notify the applicant in writing of the determination and its reasons, and that the applicant has the right to meet with the owner or managing agent in accordance with HUD requirements. Where the owner is a PHA, the applicant may request an informal hearing. If the PHA determines that the applicant is not eligible, the PHA will notify the applicant and inform the applicant that he or she has the right to request HUD review of the PHA's determination. The applicant may also exercise other rights if the applicant believes that he or she is being discriminated against on the basis of race, color, creed, religion, sex, or national origin. See 24 CFR part 5 for the informal review provisions for the denial of a Federal preference or the failure to establish citizenship or

eligible immigration status and for notice requirements where assistance is terminated, denied, suspended, or reduced based on wage and claim information obtained by HUD from a State Wage Information Collection Agency.

(3) Records on applicants and approved eligible families, which provide racial, ethnic, gender and place of previous residency data required by HUD, must be maintained and retained for three years.

(c) *Reexamination of family income and composition.*—(1) *Regular reexaminations.* The owner must reexamine the income and composition of all families at least every 12 months. After consultation with the family and upon verification of the information, the owner must make appropriate adjustments in the Total Tenant Payment in accordance with 24 CFR part 813 and determine whether the family's unit size is still appropriate. The owner must adjust Tenant Rent and the Housing Assistance Payment to reflect any change in Total Tenant Payment and must carry out any unit transfer required by HUD. At the time of the annual reexamination of family income and composition, the owner must require the family to disclose the verify Social Security Numbers, as provided by 24 CFR part 5. For requirements regarding the signing and submitting of consent forms by families for the obtaining of wage and claim information from State Wage Information Collection Agencies, see 24 CFR part 5. At the first regular reexamination after June 19, 1995, the owner shall follow the requirements of 24 CFR part 5 concerning obtaining and processing evidence of citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner shall follow the requirements of 24 CFR part 5 and verify the immigration status of any new family member.

(2) *Interim reexaminations.* The family must comply with provisions in its lease regarding interim reporting of changes in income. If the owner receives information concerning a change in the family's income or other circumstances between regularly scheduled reexaminations, the owner must consult with the family and make any adjustments determined to be appropriate. Any change in the family's income or other circumstances that results in an adjustment in the Total Tenant Payment, Tenant Rent and Housing Assistance Payment must be verified. See 24 CFR part 5 for the requirements for the disclosure and verification of Social Security Numbers

at interim reexaminations involving new family members. For requirements regarding the signing and submitting of consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, see 24 CFR part 5. At any interim reexamination after June 19, 1995, when a new family member has been added, the owner shall follow the requirements of 24 CFR part 5 concerning obtaining and processing evidence of the citizenship or eligible immigration status of any new family member.

(3) *Continuation of housing assistance payments.* A family's eligibility for Housing Assistance Payments continues until the Total Tenant Payment equals the Gross Rent. The termination of eligibility at such point will not affect the family's other rights under its lease, nor will such termination preclude the resumption of payments as a result of later changes in income, rents, or other relevant circumstances during the term of the Contract. However, eligibility also may be terminated in accordance with HUD requirements, for such reasons as failure to submit requested verification information, including failure to meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 5, or failure to sign and submit consent forms for the obtaining wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 5. See 24 CFR part 5 for provisions requiring termination of assistance for failure to establish citizenship or eligible immigration status and also for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

(Approved by the Office of Management and Budget under control number 2502-0204.)

14. In § 880.606, paragraph (b) is revised to read as follows:

§ 880.606 Lease requirements.

* * * * *

(b) *Form.* (1) *Part 880 and 24 CFR part 881 projects.* For this part 880 and 24 CFR part 881 projects, the form of lease must contain all required provisions, and none of the prohibited provisions specified in the developer's packet, and must conform to the form of lease included in the approved final proposal.

(2) *24 CFR part 883 projects.* For 24 CFR part 883 projects, the form of lease must contain all required provisions,

and none of the prohibited provisions specified below.

(i) *Required provisions (Addendum to lease).*

Addendum to Lease

The following additional Lease provisions are incorporated in full in the Lease between ____ (Landlord) and ____ (Tenant) for the following dwelling unit: _____. In case of any conflict between these and any other provisions of the Lease, these provisions will prevail.

- a. The total rent will be \$ ____ per month.
- b. Of the total rent, \$ ____ will be payable by the State Agency (Agency) as housing assistance payments on behalf of the Tenant and \$ ____ will be payable by the Tenant. These amounts will be subject to change by reason of changes in the Tenant's family income, family composition, or extent of exceptional medical or other unusual expenses, in accordance with HUD-established schedules and criteria; or by reason of adjustment by the Agency of any applicable Utility Allowance; or by reasons of changes in program rules. Any such change will be effective as of the date stated in a notification to the Tenant.
- c. The Landlord will not discriminate against the Tenant in the provision of services, or in any other manner, on the grounds of race, color, creed, religion, sex, or national origin.
- d. The Landlord will provide the following services and maintenance: _____
- e. A violation of the Tenant's responsibilities under the Section 8 Program, as determined by the Agency, is also a violation of the lease.

Landlord _____
By _____
Date _____
Tenant _____
Date _____

[End of addendum]

(ii) *Prohibited provisions.* Lease clauses which fall within the classifications listed below must not be included in any Lease.

Lease Clauses

[End of addendum]

(i) *Prohibited provisions.* Lease clauses which fall within the classifications listed below must not be included in any Lease.

Lease Clauses

a. *Confession of Judgment.* Consent by the tenant to be sued, to admit guilt, or to accept without question any judgment favoring the landlord in a lawsuit brought in connection with the lease.

b. *Seize or Hold Property for Rent or Other Charges.* Authorization to the landlord to take property of the tenant and/or hold it until the tenant meets any obligation which the landlord has determined the tenant has failed to perform.

c. *Exculpatory Clause.* Prior agreement by the tenant not to hold the landlord or landlord's agents legally responsible for acts done improperly or for failure to act when the landlord or landlord's agent was required to do so.

d. *Waiver of Legal Notice.* Agreement by the tenant that the landlord need not give any notices in connection with (1) a lawsuit against the tenant for eviction, money damages, or other purposes, or (2) any other

action affecting the tenant's rights under the lease.

e. *Waiver of Legal Proceeding.* Agreement by the tenant to allow eviction without a court determination.

f. *Waiver of Jury Trial.* Authorization to the landlord's lawyer to give up the tenant's right to trial by jury.

g. *Waiver of Right to Appeal Court Decision.* Authorization to the landlord's lawyer to give up the tenant's right to appeal a decision on the ground of judicial error or to give up the tenant's right to sue to prevent a judgment being put into effect.

h. *Tenant Chargeable with Cost of Legal Actions Regardless of Outcome of Lawsuit.* Agreement by the tenant to pay lawyer's fees or other legal costs whenever the landlord decides to sue the tenant whether or not the tenant wins. (Omission of such a clause does not mean that the tenant, as a party to a lawsuit, may not have to pay lawyer's fees or other costs if the court so orders.)

[End of clauses]

15. Section 880.607 is amended by:
 - a. Removing from paragraph (b)(3)(ii), the words "part 812", "part 750", "part 760", and by adding, in their respective places, the words "part 5"; and
 - b. Revising paragraphs (c)(4) and (d), to read as follows:

§ 880.607 Termination of tenancy and modification of lease.

* * * * *

(c) * * *
(4) See 24 CFR part 5 for provisions related to termination of assistance because of failure to establish citizenship or eligible immigration status, including informal hearing procedures and also for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

(d) *Modification of Lease form.* The owner, with the prior approval of HUD or, for a 24 CFR part 883 project, the Agency, may modify the terms and conditions of the lease form effective at the end of the initial term or a successive term, by serving an appropriate notice on the family, together with the offer of a revised lease or an addendum revising the existing lease. This notice and offer must be received by the family at least 30 days prior to the last date on which the family has the right to terminate the tenancy without being bound by the modified terms and conditions. The family may accept the modified terms and conditions by executing the offered revised lease or addendum, or may reject the modified terms and conditions by giving the owner written notice in

accordance with the lease that the family intends to terminate the tenancy. Any increase in rent must in all cases be governed by § 880.609 and other applicable HUD regulations.

* * * * *

§ 880.608 [Amended]

16. In § 880.608, paragraph (f) introductory text is amended by removing the words "HUD or the PHA, as appropriate," and by adding, in their place, the words "the contract administrator".

17. In § 880.609, paragraph (b) is revised to read as follows:

§ 880.609 Adjustment of contract rents.

* * * * *

(b) *Special additional adjustments.* For all projects, special additional adjustments will be granted, to the extent determined necessary by HUD (for 24 CFR part 883 projects, by the Agency and HUD), to reflect increases in the actual and necessary expenses of owning and maintaining the assisted units which have resulted from substantial general increases in real property taxes, assessments, utility rates, and utilities not covered by regulated rates, and which are not adequately compensated for by annual adjustments under paragraph (a) of this section. The owner must submit to the contract administrator required supporting data, financial statements and certifications.

* * * * *

18. In § 880.611, the introductory text to paragraph (d)(3) is revised to read as follows:

§ 880.611 Conditions for receipt of vacancy payments.

* * * * *

(d) * * *

(3) The owner has (for 24 CFR part 883 projects, the owner and the Agency have) demonstrated to the satisfaction of HUD that:

* * * * *

19. In § 880.612, paragraph (b) is revised to read as follows:

§ 880.612 Reviews during management period.

* * * * *

(b) In addition:

(1)(i) For this part 880 and 24 CFR part 881 private-owner/PHA projects, HUD will review the PHA's administration of the Contract at least annually to determine whether the PHA is in compliance with the ACC; and

(ii) For 24 CFR part 883 projects, HUD will periodically review the Agency's administration of the Contract to determine whether it is in compliance with the Contract.

(2) HUD may independently inspect project operations and units at any time.

* * * * *

PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

20. The authority citation for part 881 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611–13619.

Subpart A—Summary and Applicability

21. Section 881.101 is revised to read as follows:

§ 881.101 General.

(a) The purpose of the Section 8 program is to provide low-income families with decent, safe and sanitary rental housing through the use of a system of housing assistance payments. This part contains the policies and procedures applicable to the Section 8 substantial rehabilitation program. The assistance may be provided to public housing agency owners or to private owners either directly from HUD or through public housing agencies.

(b) This part does not apply to projects developed under other Section 8 program regulations, including 24 CFR parts 880, 882, 883, 884, and 885, except to the extent specifically stated in those parts.

§§ 881.102 and 881.103 [Removed]

22. Sections 881.102 and 881.103 are removed.

23. Section 881.104 is revised to read as follows:

§ 881.104 Applicability of part 881 in effect as of February 20, 1980.

(a) Part 881, in effect as of February 20, 1980, applies to all proposals for which a notification of selection was not issued before the February 20, 1980 effective date of part 881. (See 24 CFR part 881, revised as of April 1, 1980). Where a notification of selection was issued for a proposal before the February 20, 1980, effective date, part 881 in effect as of February 20, 1980 applies if the owner notified HUD within 60 calendar days that the owner wished the provisions of part 881, effective February 20, 1980, to apply and promptly brought the proposal into conformance.

(b) Subparts E (Housing Assistance Payments Contract) and F (Management) of this part apply to all projects for which an Agreement was not executed before the February 20, 1980, effective date of part 881. Where an Agreement was so executed:

(1) The owner and HUD may agree to make the revised subpart E of this part

applicable and to execute appropriate amendments to the Agreement and/or Contract.

(2) The owner and HUD may agree to make the revised subpart F of this part applicable (with or without the limitation on distributions) and to execute appropriate amendments to the Agreement and/or Contract.

(c) Section 880.607 of this chapter, Termination of Tenancy and Modification of Leases, applies to new families who begin occupancy or execute a lease on or after 30 days after the February 20, 1980, effective date of part 881. This section also applies to families not covered by the preceding sentence, including existing families under lease, with respect to all leases in which a renewal becomes effective on or after the 60th day following the February 20, 1980 effective date of part 881. A lease is considered to be renewed where both the landlord and the family fail to terminate a tenancy under a lease permitting either party to terminate.

(d) Notwithstanding the provisions of paragraph (b) of this section, the provisions of 24 CFR part 5 (concerning preferences for selection of applicants) apply to all projects, regardless of when an Agreement was executed.

Subpart B—Definitions and Other Requirements

24. The heading for subpart B of part 881 is revised to read as set forth above.

§ 881.201 [Amended]

25. Section 881.201 is amended by removing the definitions of "Allocation area", "New Communities", and "Preliminary proposal".

§§ 881.202, 881.203, 881.204, 881.206, 881.209, and 881.210 [Removed]

26. Sections 881.202, 881.203, 881.204, 881.206, 881.209, and 881.210 are removed.

Subparts C and D—[Removed and Reserved]

27. Subpart C (§§ 881.301 through 881.312) and subpart D (§§ 881.401 through 881.405) of part 881 are removed and reserved.

Subpart E—Housing Assistance Payments Contract

28. In § 881.501, paragraph (a) is revised and paragraph (b) is removed and reserved, to read as follows:

§ 881.501 The contract.

(a) *Contract.* The Housing Assistance Payments Contract sets forth rights and duties of the owner and the contract administrator with respect to the project

and the housing assistance payments. The owner and contract administrator execute the Contract in the form prescribed by HUD upon satisfactory completion of the project.

(b) [Reserved]

* * * * *

29. Section 881.503 is revised to read as follows:

§ 881.503 Cross-reference.

All of the provisions of §§ 880.503, 880.504, 880.505, 880.506, 880.507, and 880.508 of this chapter apply to projects assisted under this part, subject to the requirements of § 881.104.

§§ 881.504, 881.505, 881.506, 881.507, and 881.508 [Removed]

29a. Sections 881.504, 881.505, 881.506, 881.507, and 881.508 are removed.

30. Subpart F of part 881 is revised to read as follows:

Subpart F—Management

§ 881.601 Cross-reference.

All of the provisions of part 880, subpart F, of this chapter apply to projects assisted under this part, subject to the requirements of § 881.104.

Subpart G—[Removed]

31. Subpart G (§§ 881.701 through 881.709) of part 881 is removed.

PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES

32. The authority citation for part 883 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

Subpart A—Summary and Guide

33. Section 883.101 is revised to read as follows:

§ 883.101 General.

(a) The purpose of the Section 8 program is to provide decent, safe and sanitary housing for low-income families through the use of a system of housing assistance payments. These needs may be met by statewide or special purpose housing agencies established by the various States.

(b) The regulations in this part 883 contain the policies and procedures applicable to the Section 8 program for these State agencies.

§§ 883.102, 883.103, and 883.104 [Removed]

34. Sections 883.102, 883.103 and 883.104 are removed.

35. Section 883.105, is revised to read as follows:

§ 883.105 Applicability of part 883 in effect as of February 29, 1980.

(a) Part 883, in effect as of February 29, 1980, applies to projects for which the initial application was submitted on or after the February 29, 1980, effective date. (See 24 CFR part 883, revised as of April 1, 1980.) Projects for which applications or proposals were submitted before the February 29, 1980, effective date of part 883 have been processed under the part 883 regulations and procedures in effect at the date of submission. If, however, the agency notified HUD within 60 calendar days of the February 29, 1980, effective date of the part 883 regulations that they chose to have the provisions of part 883, in effect as of February 29, 1980, apply to a specific case, it must have promptly modified the application(s) and proposal(s) to comply.

(b) Subpart F of this part, dealing with the HAP contract and subpart G of this part, dealing with management, apply to all projects for which an Agreement was not executed before the February 29, 1980, effective date of part 883. In cases where an Agreement has been executed:

(1) The Agency, owner and HUD may agree to make the revised subpart F of this part applicable and execute appropriate amendments to the Agreement or Contract;

(2) The Agency, Owner and HUD may agree to make the revised subpart G of this part applicable (with or without the limitation on distributions) and execute appropriate amendments to the Agreement or Contract.

(c) Section 883.708, Termination of Tenancy and Modifications of Leases, applies to new families who begin occupancy or execute a lease on or after 30 days following the February 29, 1980, effective date of part 883. This section also applies to families not covered by the preceding sentence, including families currently under lease, who have a lease in which a renewal becomes effective on or after the 60th day following the February 29, 1980 effective date of part 883. A lease is considered renewed when both the landlord and the family fail to terminate a tenancy under a lease permitting either to terminate.

(d) Notwithstanding the provisions of paragraph (b) of this section, the provisions of 24 CFR part 5 (concerning preferences for selection of applicants) apply to all projects, regardless of when an Agreement was executed.

36. A new § 883.106 is added to subpart A to read as follows:

§ 883.106 Applicability and relationships between HUD and State agencies.

(a) *Applicability.* This subpart A applies to contract authority set aside for a State Agency.

(b) *General responsibilities and relationships.* Subject to audit and review by HUD to assure compliance with Federal requirements and objectives, Housing Finance Agencies (HFAs) shall assume responsibility for project development and for supervision of the development, management and maintenance functions of owners.

(c) *Certifications and HUD monitoring.* (1) Generally, when reviewing any of the certifications of an HFA required by this part, HUD shall accept the certification as correct. If HUD has substantial reason to question the correctness of any element in a certification, HUD shall promptly bring the matter to the attention of the HFA and ask it to provide documentation supporting the certifications. When the HFA provides such evidence, HUD will act in accordance with the HFA's judgment or evaluation unless HUD determines that the certification is clearly not supported by the documentation.

(2) HUD will periodically monitor the activities of HFA's participating under this part only with respect to Section 8 or other HUD programs. This monitoring is intended primarily to ensure that certifications submitted and projects operated under this part reflect appropriate compliance with Federal law and requirements.

Subpart B—[Removed and Reserved]

37. Subpart B (§§ 883.201 through 883.207) of part 883 is removed and reserved.

Subpart C—Definitions and Other Requirements

38. The heading for subpart C of part 883 is revised to read as set forth above.

§ 883.302 [Amended]

39. Section 883.302 is amended by removing the definitions of "Allocation area", "Allocation plan", "Impacted jurisdiction", and "New Communities".

§§ 883.303, 883.304, 883.305, 883.309, 883.311, and 883.312 [Removed]

40. Sections 883.303, 883.304, 883.305, 883.309, 883.311, and 883.312 are removed.

41. In § 883.307, paragraph (a) is revised to read as follows:

§ 883.307 Financing.

(a) *Types of financing.* A State Agency that used the Fast Track Procedures formerly in this part must provide

permanent financing for any new construction or substantial rehabilitation project without Federal mortgage insurance, except coinsurance under section 244 under the National Housing Act (12 U.S.C. 1701 et seq). Obligations issued by the HFA for this purpose may be taxable under section 802 of the Housing and Community Development Act of 1974 (42 U.S.C. 1440) or tax-exempt under section 103 of the Internal Revenue Code (26 U.S.C. 103), 24 CFR part 811 or other Federal Law.

* * * * *

Subparts D and E—[Removed and Reserved]

42. Subpart D (§§ 883.401 through 883.412) and subpart E (§ 883.501) of part 883 are removed and reserved.

Subpart F—Housing Assistance Payments Contract

§ 883.602 [Amended]

43. Section 883.602 is amended by:

- Removing paragraph (b);
- Redesignating paragraphs (c), (d), and (e) as paragraphs (b), (c), and (d), respectively; and
- By amending newly redesignated paragraphs (b)(2), (c)(2), and (c)(3) by removing the words “§ 883.712” in each place they appear, and by adding the words “§ 880.611 of this chapter”, in their place.

§ 883.604 [Amended]

44. In § 883.604, paragraph (b)(2) is amended by removing the words “U.S. Housing Act of 1937” and adding, in their place, the words “1937 Act”.

45. Section 883.605 is revised to read as follows:

§ 883.605 Leasing to eligible families.

The provisions of § 880.504 of this chapter apply, subject to the requirements of § 883.105.

46. Section 883.608 is revised to read as follows:

§ 883.608 Notice upon contract expiration.

The provisions of § 880.508 of this chapter apply, subject to the requirements of § 883.105.

47. Subpart G of part 883 is revised to read as follows:

Subpart G—Management

§ 883.701 Cross-reference.

All of the provisions of part 880, subpart F, of this chapter apply to projects assisted under this part, subject to the requirements of § 883.105. For purposes of this subpart G, all references in part 880, subpart F, of this

chapter to “contract administrator” shall be construed to refer to “Agency”.

PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS

48. The authority citation for part 884 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

Subpart A—Applicability, Scope and Basic Policies

49. In § 884.101, paragraph (a) is revised to read as follows:

§ 884.101 Applicability and scope.

(a) The policies and procedures in subparts A and B of this part apply to the making of Housing Assistance Payments on behalf of Eligible Families leasing newly constructed housing pursuant to the provisions of section 8 of the 1937 Act. They are applicable only to proposals submitted by the Department of Agriculture/Farmers Home Administration (now the Department of Agriculture/Rural Housing and Community Development Service) that have been charged against the set-aside of section 8 contract authority specifically established for projects to be funded under section 515 of title V of the Housing Act of 1949 (42 U.S.C. 1485).

* * * * *

§ 884.102 [Amended]

50. Section 884.102 is amended by:

- Amending the definition of “*Agreement to enter into housing assistance payments contract* (*‘agreement’*)”, by removing the word “FmHA” in each place it appears in paragraphs (a) and (b), and by adding, in each place, the word “RHCDS”;
- Removing the definition of “*FmHA*” and by adding, in alphabetical order, the definition “*RHCDS*”; and
- Placing the definition of “*Proposal*” in alphabetical order and amending it by removing the word “FmHA”, and by adding in its place, the word “RHCDS”, to read as follows:

§ 884.102 Definitions.

* * * * *

RHCDS. The Rural Housing and Community Development Service.

* * * * *

§ 884.103 [Removed]

51. Section 884.103 is removed.

§ 884.105 [Amended]

52. Section 884.105 is amended by removing the word “Act” from

paragraphs (b)(1) and (b)(2) in each place it appears and adding, in each place, the words “1937 Act”.

§§ 884.107, 884.111, 884.112, and 884.113 [Removed]

53. Sections 884.107, 884.111, 884.112, and 884.113 are removed.

§§ 884.108, 884.118, 884.119, and 884.120 [Amended]

54. Sections 884.108(a), 884.118(a)(9), 884.119(b), and 884.120(b)(3) are amended by removing the word “FmHA”, each place it appears, and by adding in each place the word “RHCDS”.

§ 884.117 [Amended]

55. Section 884.117 is amended by removing the words “part 705” and adding, in their place, the words “part 5”.

56. In § 884.118, paragraphs (a)(3) and (a)(7) are revised, to read as follows:

§ 884.118 Responsibilities of the owner.

(a) * * *

(3) Performance of all management functions, including the taking of applications; determining eligibility of applicants in accordance with 24 CFR parts 5 and 813; selection of families, including verification of income, provision of Federal selection preferences in accordance with 24 CFR part 5, obtaining and verifying Social Security Numbers submitted by applicants (as provided by 24 CFR part 5), obtaining signed consent forms from applicants for the obtaining of wage and claim information from State Wage Information Collection Agencies (as provided in 24 CFR part 5), and other pertinent requirements; and determination of the amount of tenant rent in accordance with HUD established schedules and criteria;

* * * * *

(7) Reexamination of family income and composition; redetermination, as appropriate, of the amount of Tenant Rent and the amount of housing assistance payment in accordance with 24 CFR part 813; obtaining and verifying Social Security Numbers submitted by participants, as provided by 24 CFR part 5; and obtaining signed consent forms from participants for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 5;

* * * * *

Subpart B—Project Development and Operation

§§ 884.201, 884.202, 884.203, 884.204, 884.205, 884.206, 884.207, 884.208, 884.209, 884.210, and 884.211 [Removed]

57. Sections 884.201, 884.202, 884.203, 884.204, 884.205, 884.206, 884.207, 884.208, 884.209, 884.210, and 884.211 are removed.

§ 884.214 [Amended]

58. In § 884.214, paragraph (b)(1) is amended by removing the phrase “part 812,” and adding, in its place, the phrase “part 5,”.

§ 884.216 [Amended]

59. Section 884.216 is amended by:

a. Removing the words “part 760,” and adding in their place, the words “part 5,”; and

b. Removing the words “24 CFR 812.9, and also 24 CFR 812.10” and adding, in their place, the words “24 CFR part 5 and also”.

§ 884.218 [Amended]

60. Section 884.218 is amended by:

a. Amending paragraph (a) by removing the words “part 750” where it appears, by removing “part 760” where it appears, and by removing “part 812” each place it appears, and by adding in each place the words “part 5”;

b. Amending paragraph (b) by removing the words “part 760”, where it appears, and by removing “part 812”, where it appears, and by adding in each place the words, “part 5”;

c. Amending paragraph (c) by removing the words “part 750”, where it appears, and by removing the words “part 760”, where it appears, and by

adding in each place the words, “part 5”; and

d. Further amending paragraph (c), by removing the words “24 CFR 812.9, and also 24 CFR 812.10” and adding, in their place, the words “24 CFR part 5 and also”.

§ 884.223 [Amended]

61–62. In § 884.223(e), remove the words “§ 812.9 of this chapter” and add, in their place, the words “24 CFR part 5” and remove the words “24 CFR 812.10” in each place they occur and add, in each place, the words “24 CFR part 5”.

Dated: February 28, 1996.

Stephanie A. Smith,

Acting General Deputy, Assistant Secretary for Housing-Federal Housing Commissioner.
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