

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT****24 CFR Part 882**

[Docket No. FR-4472-I-01]

RIN 2577-AB98

**Section 8 Moderate Rehabilitation
Program; Executing or Terminating
Leases on Moderate Rehabilitation
Units When the Remaining Term of the
Housing Assistance Payments (HAP)
Contract is for Less Than One Year**

AGENCY: Office of the Assistant
Secretary for Public and Indian
Housing, HUD.

ACTION: Interim rule.

SUMMARY: The current program regulations for the Section 8 Moderate Rehabilitation Program state that the initial lease term between an owner and a family must be for at least one year. The regulation is silent on the requisite lease term when the Housing Assistance Payments (HAP) contract term expires in less than one year. The purpose of this interim rule is to implement the statutory language that requires that any initial lease term not extend beyond the term of the HAP contract. This interim rule also revises the program regulation to allow an owner and a public housing agency (PHA) to mutually agree to terminate a unit from the HAP contract if a unit becomes vacant and the term of the HAP contract is for less than one year.

DATES: *Effective Date:* November 3, 1999.

Comments Due Date: December 3, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Office of General Counsel, Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, Washington, DC 20410-0500. FAX comments will not be accepted. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying on weekdays between 7:30 a.m. and 5:30 p.m. (eastern time) at the above address.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Director, Real Estate and Housing Performance Division, Office of Public and Assisted Housing Delivery, Room 4210, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-5000; telephone: (202) 708-0477 (this is not a toll-free number). Persons with hearing or speech

impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:**I. Background***a. General*

Section 8(d)(1)(B)(i) of the United States Housing Act of 1937 (42 U.S.C. 1437f) requires that the initial lease between the tenant and the owner be for at least one year or the term of the HAP contract, whichever is shorter. In most cases, Section 8 Moderate Rehabilitation dwelling leases will terminate concurrently with Housing Assistance Payments (HAP) contract expirations. In some cases, however, a dwelling lease may end prior to the expiration of the Moderate Rehabilitation HAP contract. A lease may end as a result of (1) an action by an owner to terminate tenancy in accordance with the lease addendum and program regulations; (2) a tenant's action to terminate the lease agreement; or (3) an action by a housing authority to terminate the family from the program for failure to comply with the family's obligations under the Statement of Family Responsibility and the owner chooses to terminate the lease with the family.

Section 882.403(d) of the program regulations at 24 CFR part 882 provides, in pertinent part, that the initial lease between the family and owner must be for at least one year. If a lease agreement ends with less than twelve months remaining on the HAP contract, § 882.403(d) effectively prohibits an owner from reoccupying the unit with a new family. Thus, Section 8 Moderate Rehabilitation owners may lose rental income on units because the remaining term of the HAP contract is for less than twelve months and § 882.512(a) prohibits an owner from occupying a unit under a HAP contract with an ineligible family (*i.e.* a family other than one participating in the Section 8 Moderate Rehabilitation program). The statutory language supersedes the limited regulatory language and requires PHAs to allow owners to enter into initial leases with assisted families for less than one year provided the lease does not extend beyond the term of the HAP contract.

b. Reoccupying a Unit for Less Than One Year

When a unit becomes vacant, and less than twelve months remain on the HAP contract, the lease agreement must clearly state that the lease is for less than one year and provide the date on which the HAP contract and Section 8

Moderate Rehabilitation assistance will terminate. Families renting Moderate Rehabilitation units with contracts that have terms of less than one year must be informed at their Section 8 briefing that when the Moderate Rehabilitation HAP contract expires, the units will be replaced with Section 8 tenant-based vouchers (in cases where the Moderate Rehabilitation HAP contract is not renewed in accordance with HUD procedures) and that they must find a suitable unit in which to relocate upon expiration of the Moderate Rehabilitation HAP contract or remain in the unit with tenant-based rental voucher assistance if the owner wishes to participate in the Section 8 rental voucher program.

c. Mutual Agreement To Terminate

If less than one year remains on the HAP contract and a unit becomes vacant, an owner and a PHA may mutually agree to terminate the unit from the HAP contract. An owner who will not be eligible for a one year HAP contract renewal or who does not wish to renew his Moderate Rehabilitation HAP contract, may choose to terminate the HAP contract on the vacant unit and rent to a market-rate tenant rather than execute an assisted lease for less than one year. An owner may possibly choose this course when, for example, costs involved in preparing the unit for a new assisted tenancy for less than twelve months would be greater than costs associated with terminating the assisted unit and renting to a market-rate tenant.

If an owner agrees to terminate the vacant unit from the HAP contract, the housing authority must amend the HAP contract to reflect the reduced number of units. Both the housing authority and owner must sign and date the amendment. The housing authority should attach the amendment to the original HAP contract. In addition, the housing authority must send a copy of the HAP contract amendment to the Section 8 Financial Management Center (FMC). Upon receipt of the amendment, the Section 8 FMC will enter the change into HUDCAPS.

d. This Interim Rule

For the reasons set forth above, § 882.403(d) is revised to permit an initial lease for at least one year or the term of the HAP contract, whichever is shorter. If the initial term of the lease is for less than one year because the remaining term of the HAP contract is for less than one year, the Owner and the PHA may mutually agree to terminate the unit from the HAP contract. The provision that any renewal

or extension of the lease term may not extend beyond the remaining term of the HAP contract remains unchanged.

e. Justification for Interim Rule

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. Part 10, however, provides in § 10.1 for exceptions from that general rule where the Department finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is "impracticable, unnecessary, or contrary to the public interest."

The Department finds that good cause exists to publish this interim rule for effect without first soliciting public comment. To require public comment first would be impracticable and contrary to the public interest. In keeping with the statute, this rule allows leases for terms of less than twelve months where the remaining term of the HAP contract is less than twelve months. It also permits the Owner and the PHA to mutually agree to terminate a unit from the HAP contract where the remaining term of the HAP contract is for less than one year. The existing rule would continue a prohibition that would prevent an owner from reoccupying a vacant unit with a new family.

II. Findings and Certifications

Environmental Impact

A Finding of No Significant Impact with respect to the environment for this rule 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 (42 U.S.C. 4332). 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, Office of the General Counsel, U.S. Department of Housing and Urban Development, Room

10276, 451 Seventh Street, SW, Washington, DC 20410.

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, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order. The rule merely provides an exception to allow leases for terms of less than twelve months under the Moderate Rehabilitation Program.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. The Secretary, in accordance with UMRA, has reviewed this rule before publication and by approving it has determined that it does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector that will result in the expenditure of State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year.

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 does not place major burdens on housing authorities or housing owners. The rule merely provides an exception to allow leases for terms of less than twelve months

under the Moderate Rehabilitation Program. Nevertheless, the Department is sensitive to the fact that the uniform application of requirements on entities of differing sizes often places a disproportionate burden on small entities. The Department, therefore, is soliciting alternatives for compliance from small entities.

List of Subjects for 24 CFR Part 882

Grant programs—housing and community development, Homeless, Lead poisoning, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 882 is amended as follows:

PART 882—SECTION 8 MODERATE REHABILITATION PROGRAM

1. The authority citation for part 882 continues to read as follows:

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

2. Revise paragraph (d) of § 882.403 to read as follows:

§ 882.403 ACC, housing assistance payments contract, and lease.

* * * * *

(d) *Term of Lease.* (1) The initial lease between the family and the Owner must be for at least one year or the term of the HAP contract, whichever is shorter. In cases where there is less than one year remaining on the HAP contract, the owner and the PHA may mutually agree to terminate the unit from the HAP contract instead of leasing the unit to an eligible family.

(2) Any renewal or extension of the lease term for any unit must in no case extend beyond the remaining term of the HAP contract.

Dated: August 13, 1999.

Deborah Vincent,

General Deputy Assistant Secretary for Public and Indian Housing.

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