

~~Purpose and applicability.~~  
 Part establishes definitions, policies and procedures related to income limits and the determination of eligibility, income and rent for applicants and tenants in housing assisted under section 8 of the United States Housing Act of 1937 ("the 1937 Act"). However, § 813.107 and the definitions of Tenant Rent, Total Tenant Payment, Utility Allowance and Utility Reimbursement found in § 813.102 do not apply to families assisted under the Housing Voucher Program (24 CFR part 887). The definitions, policies and procedures also apply to projects that are assisted with loans under section 202 of the Housing Act of 1959 and that receive housing assistance payments under section 8 of the 1937 Act (see 24 CFR part 885, subpart B) or project assistance payments under section 202(h) of the Housing Act of 1959 (see 24 CFR part 885, subpart C). (See 24 CFR part 913 for the analogous rule applicable to the Public Housing program and 24 CFR part 905, subpart D for the rule applicable to the Indian Housing program.)

(54 FR 25979, June 20, 1989, as amended at 56 FR 921, Jan. 9, 1991)

§ 813.102 Definitions.

**Adjusted Income.** Annual Income less the following allowances, determined in accordance with HUD instructions:

- (a) \$480 for each Dependent;
- (b) \$400 for any Elderly Family;
- (c) For any Family that is not an Elderly Family but has a Handicapped or Disabled member other than the head of household or spouse, Handicapped Assistance Expenses in excess of three percent of Annual Income, but this allowance may not exceed the employment income received by Family members who are 18 years of age or older as a result of the assistance to the Handicapped or Disabled Person;
- (d) For any Elderly Family
  - (1) That has no Handicapped Assistance Expenses, an allowance for Medical Expenses equal to the amount by which the Medical Expenses exceed three percent of Annual Income;

(2) That has Handicapped Assistance Expenses greater than or equal to three percent of Annual Income, an allowance for Handicapped Assistance Expenses computed in accordance with paragraph (c) of this section, plus an allowance for Medical Expenses that is equal to the Family's Medical Expenses;

(3) That has Handicapped Assistance Expenses that are less than three percent of Annual Income, an allowance for combined Handicapped Assistance Expenses and Medical Expenses that is equal to the amount by which the sum of these expenses exceeds three percent of Annual Income; and

(e)(1) Child care expenses; or (2) in the case of families assisted by Indian housing authorities, the greater of (i) child care expenses, or (ii) excessive travel expenses, not to exceed \$25 per family per week, for employment or education related travel.

**Annual income.** See § 813.106.

**Child care expenses.** Amounts anticipated to be paid by the Family for the care of children under 13 years of age during the period of which Annual Income is computed, but only where such care is necessary to enable a Family member to be gainfully employed or to further his or her education and only to the extent such amounts are not reimbursed. The amount deducted shall reflect reasonable charges for child care, and, in the case of child care necessary to permit employment, the amount deducted shall not exceed the amount of income received from such employment.

**Contract rent.** The total amount of rent specified in the Housing Assistance Payments (HAP) Contract as payable to the owner by the Family, and by HUD or the PHA on the Family's behalf. In the case of the rental of only a manufactured home space, Contract Rent is the total rent specified in the HAP Contract as payable by the PHA and the Family to the Owner for rental of the space, including fees or charges for management and maintenance services with respect to the space, but excluding utility charges for the manufactured home. In the case of a cooperative, Contract Rent means charges under the occupancy agree-

ment between the members and the cooperative.

**Dependent.** A member of the Family household (excluding foster children) other than the Family head or spouse, who is under 18 years of age or is a Disabled Person or Handicapped Person, or is a Full-time Student.

**Disabled person.** A person who is under a disability as defined in section 223 of the Social Security Act (42 U.S.C. 423), or who has a developmental disability as defined in section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(7)).

**Elderly family.** A Family whose head or spouse (or sole member) is an Elderly, Disabled, or Handicapped Person. It may include two or more Elderly, Disabled, or Handicapped Persons living together, or one or more of these Persons living with one or more Live-in Aides.

**Elderly person.** A person who is at least 62 years of age.

**Family.** See definition in part 812 of this chapter.

**Full-time student.** A person who is carrying a subject load that is considered full-time for day students under the standards and practices of the educational institution attended. An educational institution includes a vocational school with a diploma or certificate program, as well as an institution offering a college degree.

**Gross rent.** The total monthly cost of housing an eligible Family, which is the sum of the Contract Rent and any Utility Allowance. In the case of rental of only a manufactured home space, Gross Rent also includes the Family's monthly payment to amortize the purchase price of the manufactured home.

**Handicapped Assistance Expenses.** Reasonable expenses that are anticipated, during the period for which Annual Income is computed, for attendant care and auxiliary apparatus for a Handicapped or Disabled Family member, and that are necessary to enable a Family member (including the Handicapped or Disabled member) to be employed, provided that the expenses are neither paid to a member of the Family nor reimbursed by an outside source.

**Handicapped Person.** A person having a physical or mental impairment that (a) is expected to be of a long-continued and indefinite duration, (b) substantially impedes his or her ability to live independently, and (c) is of such a nature that such ability could be improved by more suitable housing conditions.

**Indian.** Any person recognized as being an Indian or Alaska Native by an Indian tribe, the Federal Government, or any State.

**Indian Housing Authority.** An entity that is authorized to engage in or assist in the development or operation of lower income housing for Indians that is established either (a) by exercise of the power of self-government of an Indian tribe independent of State law; or (b) by operation of State law providing specifically for housing authorities for Indians, including regional housing authorities in the State of Alaska.

**Indian tribe.** Any tribe, band, pueblo, group, community, or nation of Indians or Alaska Natives.

**Live-in aide.** A person who resides with an Elderly, Disabled, or Handicapped Person or Persons and who—

- (a) Is determined to be essential to the care and well-being of the Person(s);
- (b) Is not obligated for the support of the Person(s); and
- (c) Would not be living in the unit except to provide the necessary supportive services.

(See § 813.106(d) for treatment of a Live-in Aide's income.)

**Lower Income Family.** A Family whose Annual Income does not exceed 80 percent of the median income for the area, as determined by HUD with adjustments for smaller and larger families. HUD may establish income limits higher or lower than 80 percent of the median income for the area on the basis of its finding that such variations are necessary because of the prevailing levels of construction costs or unusually high or low family incomes.

**Medical expenses.** Those medical expenses, including medical insurance premiums, that are anticipated during the period for which Annual Income is

1258

EXHIBIT A

Insurance Adjusted Income. One-twelfth of Adjusted Income. Monthly income. One-twelfth of Annual Income.

**Net Family assets.** Net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust land and the equity in a housing cooperative unit or in a manufactured home in which the family resides. The value of necessary items of personal property such as furniture and automobiles shall be excluded. (In cases where a trust fund has been established and the trust is not revocable by, or under the control of, any member of the Family or household, the value of the trust fund will not be considered an asset so long as the fund continues to be held in trust. Any income distributed from the trust fund shall be counted when determining Annual Income under § 813.106.) In determining Net Family Assets, PHAs and Owners shall include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or reexamination, as applicable, in excess of the consideration received therefor. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollars terms.

**Owner.** The meaning ascribed to such term in the pertinent program regulations. As used in this part, where appropriate, Owner shall also include a Borrower, as defined in 24 CFR part 885.

**Public Housing Agency.** Any State, county, municipality, or other governmental entity or public body, or agency or instrumentality thereof, that is authorized to engage in or assist in the development or operation of lower income housing. The term includes any Indian housing authority.

ate, PHA shall include an Agency as defined in 24 CFR part 883.

**Shared housing.** A housing unit occupied by two or more families, consisting of common space for shared use by the occupants of the unit and (except in the case of a shared one-bedroom unit) separate private space for each assisted Family. Part 882, subpart C of this chapter contains special requirements for Shared Housing in the Section 8 Certificate Program and part 887, subpart K of this chapter contains special requirements for Shared Housing in the Housing Voucher Program.

**State.** Any of the several States of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, the Trust Territory of the Pacific Islands, and Indian tribes.

**Tenant Rent.** The amount payable monthly by the Family as rent to the Owner (including a PHA). Where all utilities (except telephone) and other essential housing services are supplied by the Owner, Tenant Rent equals Total Tenant Payment. Where some or all utilities (except telephone) and other essential housing services are not supplied by the Owner and the cost thereof is not included in the amount paid as rent to the Owner, Tenant Rent equals Total Tenant Payment less the Utility Allowance. In the case of a Family renting only a manufactured home space, Tenant Rent equals the space rental minus the Housing Assistance Payment, as defined in the applicable program regulation.

**Total Tenant Payment.** The portion of the Gross Rent payable by an eligible Family participating in a program covered by this part, determined in accordance with § 813.107.

**Utility Allowance.** If the cost of utilities (except telephone) and other housing services for an assisted unit is not included in the Contract Rent but is the responsibility of the Family occupying the unit, an amount equal to the estimate made or approved by a PHA or HUD under applicable sections of these regulations (see 24 CFR parts 880, 881, 882, 883, 884, 885, and

886) of the monthly costs of a reasonable consumption of such utilities and other services for the unit by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment. (In the case of shared housing, the amount of the Utility Allowance for an assisted Family is calculated by multiplying the Utility Allowance for the entire unit by the ratio derived by dividing the number of bedrooms in the Assisted Family's private space by the number of bedrooms in the entire unit. In the case of an assisted individual sharing a one-bedroom unit with another person, the amount of the Utility Allowance for the assisted individual is one-half of the Utility Allowance for the entire unit).

**Utility reimbursement.** The amount, if any, by which the Utility Allowance exceeds the Family's Total Tenant Payment.

**Very-Low-Income Family.** A Lower Income Family whose Annual Income does not exceed 50 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families. HUD may establish income limits higher or lower than 50 percent of the median income for the area on the basis of its finding that such variations are necessary because of unusually high or low family incomes.

**Welfare assistance.** Welfare or other payments to families or individuals, based on need, that are made under programs funded, separately or jointly, by Federal, State or local governments.

(49 FR 19936, May 10, 1984; 49 FR 26718, June 20, 1984, as amended at 50 FR 29851, June 24, 1985; 50 FR 30096, Sept. 27, 1985; 51 FR 21307, June 11, 1986; 52 FR 34113, Sept. 9, 1987; 53 FR 4388, Feb. 16, 1988; 53 FR 7734, Mar. 10, 1988; 53 FR 34412, Sept. 6, 1988; 53 FR 37500, Sept. 26, 1988; 54 FR 25980, June 20, 1989)

~~§ 813.106 Overall income eligibility for admission.~~

No Family other than a Lower Income Family shall be eligible for admission to a program covered by this part.

~~§ 813.104 Admission to unit~~ ~~valid until before October 1, 1981.~~

(a) General. Section 16(a) of the 1937 Act (42 U.S.C. 1437n) provides that not more than 25 percent of the dwelling units that were available for occupancy under public housing Annual Contributions Contracts and Section 8 HAP Contracts before October 1, 1981 and that are leased on or after that date shall be available for leasing by Lower Income Families other than Very Low-Income Families. HUD reserves the right to limit the admission of Lower Income Families other than Very Low-Income Families to these units.

(b) Reporting. PHAs (including State Housing Finance Agencies) and Owners shall comply with HUD-prescribed reporting requirements that will permit HUD to maintain reasonably current data as to

(1) The number of dwelling units that are subject to paragraph (a) of this section and are encompassed by the categories specified in paragraph (a) of § 813.105 for which the effective date of the HAP Contract is before October 1, 1981, as well as dwelling units assisted under the Section 10(c) and Section 23 Programs;

(2) The number of units that are subject to paragraph (a) of this section and are occupied by Families for whom HAP Contracts were effective under part 882, subpart B (Section 8 Housing Assistance Payments Program—Existing Housing (Flinders-Keepers)), before October 1, 1981; and

(3) The number of Families occupying units described in paragraph (b)(1) of this section that were admitted to such units on or after July 1, 1984 and were not Very Low-Income Families when admitted.

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

(49 FR 19936, May 10, 1984; 49 FR 26718, June 20, 1984)

§ 813.105 Admission to units available on or after October 1, 1981.

(a) General. Section 16(b) of the 1937 Act (42 U.S.C. 1437n) provides that not more than five percent of the dwelling units that initially become

or occupancy under public housing Annual Contributions Contracts and Section 8 HAP Contracts on or after October 1, 1981 shall be available for leasing by Lower Income Families other than Very Low-Income Families. Except with the prior approval of HUD, no Lower Income Family other than a Very Low-Income Family shall, after July 1, 1984, be approved for admission to any unit assisted under the following programs for which the effective date of the HAP Contract is October 1, 1981 or later:

- (1) Part 880 (Section 8 Housing Assistance Payments Program for New Construction);
- (2) Part 881 (Section 8 Housing Assistance Payments Program for Substantial Rehabilitation);
- (3) Part 882, subparts D and E (Section 8 Housing Assistance Payments Program, Moderate Rehabilitation);
- (4) Part 883 (Section 8 Housing Assistance Payments Program—State Housing Agencies);
- (5) Part 884 (Section 8 Housing Assistance Payments Program, New Construction Set-Aside for Section 515 Rural Rental Housing Projects);
- (6) Part 885 (Loans for Housing for the Elderly or Handicapped);
- (7) Part 886, subpart A (Section 8 Housing Assistance Payments Program—Special Allocations (Loan Management Set-Aside)); or
- (8) Part 886, subpart B or C (Section 8 Housing Assistance Payments Program—Special Allocations (Disposition of HUD-Owned Projects)).

(b) *Request for exception.* A request by a PHA or Owner for approval of admission of Lower Income Families other than Very Low-Income Families to units described in paragraph (a) of this section must state the basis for requesting the exception and provide supporting data. Bases for exceptions that may be considered by HUD include the following:

- (1) Lower Income Families that would otherwise be displaced from Section 8 Substantial Rehabilitation or Moderate Rehabilitation projects;
- (2) Lower Income Families that are displaced as a result of Rental Rehabilitation or Development activities assisted under Section 17 of the 1937

Act, or as a result of activities assisted under the Rental Rehabilitation Demonstration Program;

(3) Need for admission of a broader range of tenants to preserve the financial or management viability of a project because there is an insufficient number of potential applicants who are Very Low-Income Families;

(4) Commitment of an Owner to attaining occupancy by Families with a broad range of incomes, as evidenced in the application for development. An application citing this basis should be supported by evidence that the Owner is pursuing this goal throughout its assisted projects in the community; and

(5) Project supervision by a State Housing Finance Agency having a policy of occupancy by families with a broad range of incomes, supported by evidence that the Agency is pursuing this goal throughout its assisted projects in the community, or a project with financing under Section 11(b) of the 1937 Act or under Section 103 of the Internal Revenue Code.

(c) *Specific limitation on certificates.* (1) Except with the prior approval of HUD, no Certificate of Family Participation shall be granted under part 882, Existing Housing, subparts A and B or F, of this chapter on or after July 1, 1984 to any Lower Income Family that is not a Very Low-Income Family, except a Family (i) that resided in a unit with assistance under subparts A and B or F before that date, (ii) whose participation in the Program has been continuous, and (iii) that wants to move to another dwelling unit with continued participation in the Section 8 Existing Housing Program under § 882.209(m).

(2) A request by a PHA for HUD approval to grant a Certificate of Family Participation under part 882, subparts A and B or F, of this chapter on or after July 1, 1984 to Lower Income Families other than Very Low-Income Families must state the basis for requesting the exception and provide supporting data. One basis for exception that may be considered by HUD is that Lower Income Families would otherwise be displaced or are actually displaced as a result of Rental Rehabilitation or Development activities assisted under section 17 of the 1937 Act

or as a result of activities assisted under the Rental Rehabilitation Demonstration Program.

(d) *Action on request for exception.* Whether to grant any request for exception is a matter committed by law to HUD's sole discretion, and no implication is intended to be created that the Department will seek to grant approvals up to the maximum limits permitted by statute, nor is any presumption of an entitlement to an exception created by the specification of certain grounds for exception that HUD may consider. HUD will review exceptions granted to Owners or PHAs at regular intervals. HUD may withdraw permission to exercise those exceptions for program applicants at any time that exceptions are not being used or after a periodic review, based on the findings of the review.

(e) *Reporting.* PHAs and Owners shall comply with HUD-prescribed reporting requirements that will permit HUD to maintain reasonably current data as to:

- (1) The number of dwelling units that are subject to paragraph (a) of this section;
- (2) The number of dwelling units that are subject to paragraph (c) of this section for which HAP Contracts were first effective under part 882, subpart B of this chapter on or after October 1, 1981 (including new HAP Contracts for Families for whom HAP Contracts had been in effect before that date for a different unit);
- (3) The number of Families occupying units described in paragraph (e)(1) of this section that were admitted to such units on or after July 1, 1984 and were not Very Low-Income Families when admitted, and
- (4) The number of Families occupying units described in paragraph (e)(2) of this section with Certificates issued on or after July 1, 1984 and were not Very Low-Income Families when such Certificates were granted.

(The information collection requirements contained in paragraph (b) and (c)(2) were approved by the Office of Management and Budget under control number 2502-0315; the requirements contained in paragraph (e) were approved under control number 2502-0204.)

(40 FR 10026, May 10, 1975; 40 FR 26718, June 20, 1975; as amended at 50 FR 39097, Sept. 27, 1985; 53 FR 34412, Sept. 6, 1988)

§ 813.106 Annual income.

(a) Annual income is the anticipated total income from all sources received by the Family head and spouse (even if temporarily absent) and by each additional member of the Family, including all net income derived from assets for the 12-month period following the effective date of certification of income, exclusive of certain types of income as provided in paragraph (c) of this section.

(b) Annual Income includes, but is not limited to:

(1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;

(2) The net income from operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the Family;

(3) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as a deduction in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (b)(2) of this section. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the Family. Where the Family has Net Family Assets in excess of \$5,000, Annual Income shall include the greater of the actual income derived from all Net Family Assets or a percentage of the value of such Assets based on the cur-

rent passbook savings rate, as determined by HUD.

(4) The full amount of periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts, including a lump-sum payment for the delayed start of a periodic payment;

(5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (but see paragraph (c)(3) of this section);

(6) Welfare Assistance. If the Welfare Assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the Welfare Assistance agency in accordance with the actual cost of shelter and utilities, the amount of Welfare Assistance income to be included as income shall consist of:

(i) The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities;

(ii) The maximum amount that the Welfare Assistance agency could in fact allow the Family for shelter and utilities. If the Family's Welfare Assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph (b)(6)(ii) shall be the amount resulting from one application of the percentage;

(7) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from persons not residing in the dwelling;

(8) All regular pay, special pay and allowances of a member of the Armed Forces (but see paragraph (c)(7) of this section); and

(9) Any earned income tax credit to the extent it exceeds income tax liability.

(c) Annual income does not include the following:

(1) Income from employment of children (including foster children) under the age of 18 years;

(2) Payments received for the care of foster children;

(3) Lump-sum additions to Family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (but see paragraph (b)(6) of this section);

(4) Amounts received by the Family that are specifically for, or in reimbursement of, the cost of medical expenses for any Family member;

(5) Income of a live-in aide, as defined in § 813.107;

(6) Amounts of educational scholarships paid directly to the student or to the educational institution, and amounts paid by the Government to a veteran, for use in meeting the costs of tuition, fees, books, equipment, materials, supplies, transportation, and miscellaneous personal expenses of the student. Any amount of such scholarship or payment to a veteran not used for the above purposes that is available for subsistence is to be included in income;

(7) The special pay to a Family member serving in the Armed Forces who is exposed to hostile fire;

(8)(i) Amounts received under training programs funded by HUD;

(ii) Amounts received by a Disabled person that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS); or

(iii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;

(9) Temporary, non-recurring or sporadic income (including gifts); or

(10) Amounts, specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under the United States Housing Act of 1937. A notice will be published in the FEDERAL REGISTER and distributed to PHAs and owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary.

(d) If it is not feasible to anticipate a level of income over a 12-month period, the income anticipated for a shorter period may be annualized, subject to a redetermination at the end of the shorter period.

149 FR 19936, May 10, 1984, as amended at 50 FR 29591, June 24, 1985; 50 FR 30097, Sept. 27, 1985; 51 FR 21908, June 11, 1986; 52 FR 34113, Sept. 9, 1987; 53 FR 4388, Feb. 16, 1988; 53 FR 7734, Mar. 10, 1988

§ 813.107 Total tenant payment

(a) Total tenant payment for families whose initial lease is effective on or after August 1, 1982. Total Tenant Payment shall be the highest of the following, rounded to the nearest dollar:

(1) 30 percent of Monthly Adjusted Income;

(2) 10 percent of Monthly Income; or

(3) If the Family receives Welfare Assistance from a public agency and a part of such payments, adjusted in accordance with the Family's actual housing costs, is specifically designated by such agency to meet the Family's housing costs, the monthly portion of such payments which is so designated. If the Family's Welfare Assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph (a)(3) shall be the amount resulting from one application of the percentage.

(b) Total tenant payment for families whose initial lease was effective before August 1, 1982. Total Tenant Payment shall be calculated in accordance with paragraph (a) of this section, except that instead of 30 percent, the percentage applied to Monthly Adjusted Income shall be in accord with the following table:

Effective date of reamortization	Percent age
Aug. 1, 1982 to Sept. 30, 1982	30
Oct. 1, 1982 to Sept. 30, 1983	27
Oct. 1, 1983 to Sept. 30, 1984	25
Oct. 1, 1984 to Sept. 30, 1985	20

(c) Special conditions. (1) For purposes of this section, a Family is considered to be a Family whose initial lease was effective before August 1, 1982 only if it satisfies one of the following conditions:

(i) The Family resided on July 31, 1982 in a unit under lease with assistance under the Section 8, Section 10(c), Section 23, Public Housing or Indian Housing Program, and its assistance has been continuous thereafter in the same project; or

(ii) The Family resided in a unit under lease in a HUD-owned project paying a below market rent at the time HUD sold the project; received assistance under the Section 8 Program immediately after sale; and the Family's assistance has been continuous thereafter in the same project; or

(iii) The Family resided on April 30, 1983 in a unit under lease with assistance under the Rent Supplement Program (Section 101 of the Housing and Urban Development Act of 1985), or the Section 236 Rental Assistance Program (Section 236(f)(2) of the National Housing Act); continued to receive such assistance until the Family was converted to assistance under the Section 8 Program; and after conversion its assistance has been continuous in the same project; or

(iv) The Family resided in a unit under lease with assistance under the Rent Supplement Program or the Section 236 Rental Assistance Program; was converted to assistance under the Section 8 Program on or after August 1, 1982 and before May 1, 1983; and continued to receive assistance under the Rent Supplement of the Section 236 Rental Assistance Program until the time of conversion, and after conversion its assistance has been continuous in the same project.

(2) So long as a Family whose initial lease was effective prior to August 1, 1982, continues to reside in the same Project, its Total Tenant Payment shall not be increased by more than 10 percent during any 12-month period as

a result of: (i) Application of the percentages in subsection (b) of this section, and (ii) application of the changes in the definitions contained in §§ 813.102 and 813.106 from definitions of comparable terms in regulations in effect immediately prior to July 1, 1984.

(3) So long as a Family whose initial lease was effective on or after August 1, 1982, but which was in occupancy on June 30, 1984, continues to reside in the same project, its Total Tenant Payment shall not be increased by more than 10 percent during any 12-month period as a result of application of the changes in the definitions contained in §§ 813.102 and 813.106 from definitions of comparable terms in regulations in effect immediately prior to July 1, 1984.

(4) In the case of a Family receiving rental assistance under Section 521(a) of the Housing Act of 1949 on November 30, 1983, whose assistance is converted to Section 8 assistance on or after such date, the Total Tenant Payment payable by such Family shall not be increased by more than 10 percent during any 12-month period as a result of (i) such conversion, and (ii) if such Family was in occupancy on June 30, 1984, and continues to reside in the same project, application of the changes in the definitions contained in §§ 813.102 and 813.106 from definitions of comparable terms in regulations in effect immediately prior to July 1, 1984.

(5) This paragraph (c)(5) applies to any Family that was converted to Section 8 assistance from assistance under the Rent Supplement Program, the Section 236 Rental Assistance Program, or the Section 23 Program on or after October 1, 1984, whose head of household, spouse or sole member was 62 years of age or older on the date of conversion. So long as such Family continues to reside in the same project, its Total Tenant Payment shall not be increased by more than 10 percent during any 12-month period as a result of such conversion.

(6) This paragraph (c)(6) applies to any Family that was converted to Section 8 assistance from assistance under the Rent Supplement Program, the Section 236 Rental Assistance Pro-

gram, or the Section 23 Program on or after October 1, 1981, and before October 1, 1984, whose head of household, spouse or sole member was 62 years of age or older on the date of conversion and that continued to reside in the same project on November 30, 1983. At the first regularly scheduled or interim reexamination for such Family using the 1984 revised definitions of income, the PHA or Owner shall recompute the contribution due from such Family for the period from December 1, 1983, or the date of conversion, whichever is later, to the effective date of such reexamination. Such recomputation shall be based on an assumption that the Family's contribution immediately prior to conversion was the lesser of (i) the actual contribution charged to the Family, or (ii) 25% of such Family's Annual Income After Allowances as determined as of the date of conversion or, if no reexamination was conducted as of such date, as determined at the first reexamination thereafter. The contribution of such Family for periods following conversion and prior to the effective date of the first reexamination using the 1984 revised definitions of income, shall be recomputed on a basis which provides that such contribution is not increased by more than 10% during any 12-month period as a result of conversion. If the contribution actually charged to such Family during the period commencing December 1, 1983 (or the date of conversion, if later) exceeds the maximum amount chargeable according to such recomputation, the excess amount collected shall first be offset against any amounts due from the Family to the PHA or Owner and any remaining balance shall be the amount due to the Family. This amount due the Family may be paid to the Family, or it may be applied as a credit to the Tenant Rent due immediately after the effective date of such reexamination. If the amount of any such credit to a Family exceeds 25 percent of the Total Tenant Payment due from such Family, such credit may be applied in not more than four installments. So long as such Family continues to reside in the same project, its Total Tenant Payment for periods com-

mencing on the effective date of the first reexamination using the 1984 revised definitions of income, shall not be increased by more than 10 percent during any 12-month period as a result of the conversion, and application of the changes in the definitions contained in §§ 813.102 and 813.106 from definitions of comparable terms in regulations in effect immediately prior to July 1, 1984. If a Family to which this paragraph (c)(6) would otherwise apply vacates a unit after November 30, 1983, and before the first reexamination using the 1984 revised definitions of income, the PHA or Owner will notify the Family of the possibility of a rent adjustment for the period commencing December 1, 1983 (or the date of conversion, if later). In order to obtain a refund, such a Family must submit (within 60 days of receiving the notice) a request therefor, including a current address to which any refund can be sent. For any Family making such a timely request, the PHA or Owner will make all calculations necessary to determine whether an adjustment is due to the Family under this paragraph (c)(6) and, if so, the amount of any such adjustment will first be offset against any amounts due from the Family and any Section 8 damage and rent claims HUD has paid to the Owner on the Family's behalf, and any balance will be refunded to the Family.

(7) For the purposes of paragraphs (c) (1) through (6) of this section, the "same project" includes—

(i) For the Public Housing, Section 10(c), Section 23, and Section 8 Existing Housing (Finders-Keepers) and Moderate Rehabilitation Programs, units in the same program of a PHA and, in the case of an involuntary move, units in any of a PHA's program; and

(ii) For all other programs, units in buildings located in adjacent sites that are managed as one project.

(8) The limitations contained in paragraphs (c) (2) through (6) of this section do not apply to portions of increases in Total Tenant Payment which are attributable to increases in income or changes in Family composition or circumstances unrelated to the

factors referred to in paragraphs (c) (2) through (6) of this section.

(9) The limitations contained in paragraphs (c) (2) through (6) of this section do not apply to Families subject to paragraph (a)(3) of this section when the welfare agency includes as the housing component of the Family's grant an amount equal to the Total Tenant Payment, without reduction.

(10) In order to facilitate administration of the limitations provided in paragraphs (c) (2) through (4) and (6) of this section, upon any regular or interim reexamination of a Family which was in occupancy on June 30, 1984, the PHA or Owner shall continue to collect and verify information which would have been taken into account in calculating Annual Income and Annual Income After Allowances, as defined in regulations in effect immediately prior to July 1, 1984, as if such regulations were in effect at the date of such reexamination.

(11) The limitations prescribed in paragraphs (c) (2) through (6), of this section, shall be applied in accordance with procedures prescribed by HUD.

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

[49 FR 19936, May 10, 1984; 49 FR 26718, June 29, 1984, as amended at 50 FR 24021, June 12, 1985]

~~§ 813.108 Utility reimbursement~~

Where applicable, the Utility Reimbursement shall be paid to the Family in the manner provided in the pertinent program regulation. If the Family and the utility company consent, a PHA or Owner may pay the Utility Reimbursement jointly to the Family and the utility company, or directly to the utility company.

~~§ 813.109 Initial determination, verification, and reexamination of family income and composition.~~

~~(a) Responsibility for initial determination and reexamination. The owner or PHA shall be responsible for determination of eligibility for admission, for determination of Annual Income, Adjusted Income and Total Tenant Payment, and for reexamining~~

1758

Person not residing in Section 8 assisted housing assistance payments for each of the Section 8 recipients would be based on 1/2 of the Gross Rent; the person not receiving Section 8 assistance would pay 1/2 of the Gross Rent. However, if a Section 8 recipient, a person not receiving Section 8 assistance, and two Resident Assistants each occupy a bedroom in a 4-bedroom unit, the housing assistance payment for the Section 8 recipient would be based on 1/2 of the Gross Rent and one of the Resident Assistants would be considered a person not receiving Section 8 assistance since this section prohibits Section 8 assistance being contributed toward more than 1-bedroom for the housing costs of the Resident Assistant(s). In all of these examples the Fair Market Rent for the Independent Group Residence would be that of a 4-bedroom unit.

(3) In determining the reasonableness of the rents consideration shall be given to the presence or absence of common (rather than private) cooking, dining and sanitary facilities, and to the provision of special amenities or of maintenance or management services.

(e) Single Room Occupancy Units. (1) The Fair Market Rent for each SRO unit shall be equal to 75 percent of the 0-bedroom Fair Market Rent. (2) In areas where HUD has approved the use of exception rents for 0-bedroom units under paragraph (a)(3) or (a)(4) of this section, the SRO exception rent will be 75 percent of the exception rent which applies to the Existing Housing 0-bedroom unit. Further, a SRO unit may be granted an exception rent for its own specified unit size. In no case may the authorized rent for the SRO unit exceed 75 percent of 120 percent of the 0-bedroom unit FMR.

(3) In determining the reasonableness of the rents, consideration will be given to the presence or absence of sanitary or kitchen facilities.

(1) Shared Housing. See § 882.320.

(2) Other services—exclusion from Contract Rent. The Contract Rent may not include the cost of providing supplies—cleaning, housekeeping,

laundry services, furniture, food, or the cost of serving food.

(43 FR 61346, Dec. 29, 1978, as amended at 49 FR 12337, Mar. 29, 1984; 50 FR 35719, Sept. 26, 1985; 51 FR 21309, June 11, 1986; 53 FR 4388, Feb. 16, 1988; 53 FR 7734, Mar. 10, 1988; 54 FR 237, Jan. 4, 1989; 55 FR 9257, Mar. 12, 1990)

§ 882.107 Term of ACC. The initial term of the ACC shall be for five years. The term may be extended.

§ 882.108 Rent adjustments. (a) Contract Rents shall be adjusted as provided in paragraphs (a) (1) and (2) of this section upon request to the PHA by the owner. However, the unit must be in Decent, Safe and Sanitary condition and the owner must otherwise be in compliance with the terms of the lease and the Contract. Subject to the foregoing and § 882.106(b) (the rent reasonableness limitations) adjustments to Contract Rents shall be as follows:

(1) Annual adjustments. (1) Annual adjustments as of any anniversary date shall be determined by using the applicable Section 8 Annual Adjustment Factor (24 CFR part 888) most recently published by HUD in the Federal Register. (ii) Contract Rents may be adjusted upward or downward, as may be appropriate. However, in no case shall the adjusted rent be less than the Contract Rent on the effective date of the Contract.

(2) Special adjustments. A special adjustment, subject to HUD approval, to reflect increases in the actual and necessary expenses of owning and maintaining the unit which have resulted from substantial general increases in real property taxes, utility rates or similar costs (i.e., assessments, and utilities not covered by regulated rates), but only if and to the extent that the Owner clearly demonstrates that such general increases have caused increases in the Owner's operating costs which are not adequately compensated for in paragraph (a)(1) of this section. The Owner shall

submit financial statements to the PHA which clearly support the increase.

(b) Overall Limitation. Notwithstanding any other provisions of this part, adjustments as provided in this section shall not result in material differences between the rents charged for assisted and comparable (as defined in § 882.106(b)) unassisted units, as determined by the PHA (and approved by HUD in the case of adjustments under paragraph (a)(2) of this section).

(43 FR 61346, Dec. 29, 1978, as amended at 44 FR 43903, July 26, 1979; 47 FR 4282, Jan. 29, 1982; 47 FR 33500, Aug. 3, 1982; 49 FR 12337, Mar. 29, 1984)

Section 8 Housing Quality Standards. Housing used in this program shall meet the Performance Requirements set forth in this section. In addition, the housing shall meet the Acceptability Criteria set forth in this section except for such variations as are provided by the PHA and approved by HUD. Local climatic or geological conditions or local codes are examples which may justify such variations.

(a) Sanitary facilities—(1) Performance requirement. The dwelling unit shall include its own sanitary facilities which are in proper operating condition, can be used in privacy, and are adequate for personal cleanliness and the disposal of human waste.

(2) Acceptability criteria. A flush toilet in a separate, private room, a fixed basin with hot and cold running water, and a shower or tub with hot and cold running water shall be present in the dwelling unit, all in proper operating condition. These facilities shall utilize an approved public or private disposal system.

(b) Food preparation and refuse disposal—(1) Performance requirement. The dwelling unit shall contain suitable space and equipment to store, prepare, and serve foods in a sanitary manner. There shall be adequate facilities and services for the sanitary disposal of food wastes and refuse, including facilities for temporary storage where necessary (e.g., garbage cans).

(2) Acceptability criteria. The unit shall contain the following equipment:

(a) Heat-cooking. Heat-cooking stove or range and a 1 appropriate size for the unit, supplied by either the Owner or the Family, and a kitchen sink with hot and cold running water. The sink shall drain into an approved public or private system. Adequate space for the storage, preparation and serving of food shall be provided.

(c) Space and security—(1) Performance Requirement. The dwelling unit shall afford the Family adequate space and security:

(2) Acceptability criteria. The dwelling unit shall contain a living room, kitchen area, and bathroom. The bedroom or living/sleeping room of appropriate size for each two persons of opposite sex, other than husband and wife or very young children, shall not be required to occupy the same bedroom or living/sleeping room. Exterior doors and windows accessible from outside the unit shall be lockable.

(d) Thermal environment—(1) Performance requirement. The dwelling unit shall have and be capable of maintaining a thermal environment healthy for the human body.

(2) Acceptability criteria. The dwelling unit shall contain safe heating and/or cooling facilities which are in proper operating condition and can provide adequate heat and/or cooling to each room in the dwelling unit appropriate for the climate to assure a healthy living environment. Unvented room heaters which burn gas, oil or kerosene are unacceptable.

(e) llumination and electrical Performance requirement. Each shall have adequate natural or artificial illumination to permit normal indoor activities and to support the health and safety of occupants. Sufficient electrical sources shall be provided to permit use of essential electrical appliances while assuring safety from fire.

(2) Acceptability criteria. Living and sleeping rooms shall include at least one window. A ceiling or wall type light fixture shall be present and working in the bathroom and kitchen area. At least two electric outlets are of which may be an overhead light.

cluding space rentals by owners of manufactured homes under the Section 8 Certificate Program (part 882, subpart F), the Section 8 Moderate Rehabilitation Program (part 882, subparts D and E), Section 8 existing housing project-based assistance (part 882, subpart G), and Section 8 existing housing assisted under part 886, subparts A and C (Section 8 loan management and property disposition programs).

(64 FR 244, Jan. 4, 1999)

**§ 888.113 Fair market rents for existing housing and moderate rehabilitation: Methodology.**

(a) *General.* The criteria used to determine the Existing Housing FMRs are as follows: (1) The 45th percentile rent of standard quality rental housing units (i.e., the rent below which 45 percent of the standard quality rental housing units within each market area is distributed); (2) rents for units occupied by recent movers (households who moved in the two years preceding the date of the survey data used in the calculations); and (3) exclusion from the data base of all public housing units and recently completed housing (units built in the two years preceding the survey date). The criterion used to calculate FMRs for manufactured home spaces is based on the 45th percentile rent for manufactured home spaces.

(b) *Geographic area.* (1) The Fair Market Rents for existing housing are established for all Metropolitan Statistical Areas (MSAs) Primary Metropolitan Statistical Areas (PMSAs), nonmetropolitan counties, and county equivalents in the United States, the District of Columbia, Puerto Rico, the Virgin Islands, and Guam. FMRs also are established for nonmetropolitan parts of counties in the New England States.

(2) FMRs for manufactured home spaces are established for all MSAs, PMSAs, selected nonmetropolitan counties, and the residual nonmetropolitan portion of each State.

(c) *Categories.* Existing housing FMRs are established by unit size (i.e., number of bedrooms). Base rents are established for two-bedroom units, and percentage relationships developed

from Census or American Housing Survey (AHS) data are used to establish 45th percentile rents for efficiencies and one-bedroom units. Higher percentage relationships are provided for units that contain three or more bedrooms. Manufactured home space FMRs are established for single-wide and double-wide spaces.

(d) *Data base.* HUD uses the most recent Census and American Housing Survey (AHS) data to develop base rents that correspond to the designated 45th percentile, standard quality, recent-mover FMR standard for each market area. These base rents are updated to the most recent possible date through use of available Consumer Price Index (CPI) data for rents, and for fuel and utilities. The updated rent estimates then are trended forward to a designated "as of" date by using rent inflation factors based on the CPI data for the most recent available 12-month period. In establishing FMRs each year, HUD will use the most accurate data available, which may include such things as new census data or additional data developed in response to sudden changes in market conditions. Any additional data used will be described in the FEDERAL REGISTER publication of the proposed FMRs for comment.

(e) *Specific categories—computation.* (1) The FMRs for the Moderate Rehabilitation Program are 120 percent of the FMRs published for the regular Existing Housing Program.

(2) Fair Market Rents for manufactured home spaces are derived from the use of a single rent inflation factor developed from the CPI in a manner similar to that used for the regular Existing Housing Program, but excluding data pertaining to fuel and utilities.

(3) The Fair Market Rent for each Single Room Occupancy unit is 75 percent of the zero-bedroom Fair Market Rent.

(4) The Fair Market Rent for each Congregate Housing unit is the same as for zero-bedroom units, except that if the unit consists of two or more private rooms, the Fair Market Rent is the same as for a one-bedroom unit.

(5) The Fair Market Rent for an Independent Group Residence is the

Fair Market Rent applicable to the unit size being leased, for example, a four-bedroom unit if the residence contains four bedrooms.

**§ 888.115 Fair market rents for existing housing and moderate rehabilitation: Manner of publication.**

Fair market rents will be published at least annually in the FEDERAL REGISTER. The Department will propose FMRs and provide a comment period of at least 30 days. Once the comments are considered, the Department will publish a final notice announcing FMRs. These FMRs will be effective on publication in the FEDERAL REGISTER.

**Subpart B—Contract Rent Automatic Annual Adjustment Factors**

**§ 888.201 Purpose.**

Automatic Annual Adjustment Factors are used to adjust rents under the Section 8 Housing Assistance Payments Program.

(44 FR 75383, Dec. 20, 1979)

**§ 888.202 Manner of publication.**

Adjustment Factors will be published in the FEDERAL REGISTER at least annually by Notice. Interim revisions may be published as market conditions indicate. In the case of revised factors applicable only to specific areas, the HUD Field Office will publish a notice appropriate to the limited scope of the revised factors (see § 888.204).

(42 FR 60508, Nov. 25, 1977, as amended at 44 FR 75383, Dec. 20, 1979; 47 FR 4252, Jan. 29, 1982)

**§ 888.203 Use of contract rent automatic annual adjustment factors.**

(a) To compute an adjustment to a Contract Rent, find the schedule of Automatic Annual Adjustment Factors for the appropriate Census Region or Standard Metropolitan Statistical Area—

(1) If the Contract Rent includes all utilities, use the factor shown on the basic schedule for the rent bracket within which the particular Contract Rent falls and for the applicable size of unit (by number of bedrooms).

(2) If the Contract Rent does not include all utilities but does include the highest cost utility, use the appropriate factor shown on the basic schedule.

(3) If the Contract Rent does not include any utilities or includes some utilities but not the highest cost utility, use the Annual Adjustment Factor for Contract Rent (Excluding Utilities).

(b) The adjusted monthly amount of the Contract Rent of a dwelling unit shall be determined by multiplying the Contract Rent in Effect on the anniversary date of the contract by the applicable Automatic Annual Adjustment Factor (see paragraph (a) of this section) and rounding the result to the next higher whole dollar amount.

(42 FR 60508, Nov. 25, 1977, as amended at 44 FR 21769, Apr. 12, 1979; 47 FR 4252, Jan. 29, 1982)

**§ 888.204 Revision to the automatic annual adjustment factors.**

If the application of the Annual Adjustment Factors results in rents that are substantially lower than rents charged for comparable units not receiving assistance under the U.S. Housing Act of 1937, in the area for which the factor was published or a portion thereof, and it is shown to HUD that the costs of operating comparable rental housing have increased at a substantially greater rate than the Adjustment Factors, the HUD Field Office will consider establishing separate or revised Automatic Annual Adjustment Factors for that particular area. Any request for revision of the factors must be accompanied by an identification of the area, its boundaries and evidence that the area constitutes the largest contiguous area in which substantially the same rent levels prevail. The HUD Field Office will publish appropriate notice of the establishment of any such revised Automatic Annual Adjustment Factors. These factors will remain in effect until superseded by the subsequent publication of Automatic Annual Adjustment Factors pursuant to § 888.202.

(44 FR 21769, Apr. 12, 1979)