

(1) A project account shall be established and maintained, in an amount as determined by HUD consistent with section 8(c)(6) of the Act, out of amounts by which the maximum annual contract commitment per year exceeds amounts paid under the contract for any fiscal year. This account shall be established and maintained by HUD as a specifically identified and segregated account, and payment shall be made therefrom only for the purposes of:

- (i) Housing assistance payments, and
- (ii) Other costs specifically authorized or approved by HUD.

(2) Whenever a HUD-approved estimate of required housing assistance payments for a fiscal year exceeds the maximum annual contract commitment, causing the amount in the project account to be less than an amount equal to 40 percent of the maximum annual contract commitment, HUD, within a reasonable period of time, shall take such additional steps authorized by Section 8(c)(6) of the Act as may be necessary to carry out this assurance, including (as provided in that section of the Act) "the reservation of annual contributions authority for the purpose of amending housing assistance contracts or the allocation of a portion of new authorizations for the purpose of amending housing assistance contracts."

§ 886.309 Housing assistance payment to owners.

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

(b) *No assistance for owners.* No Section 8 assistance may be provided for any unit occupied by an owner. However, cooperatives are considered rental housing rather than owner-occupied housing under this subpart.

(c) *Payments for vacancies from execution of contract to initial occupancy.* If a Contract unit which is decent, safe and sanitary and has been accepted by HUD as available as of the effective date of the Contract is not leased within 15 days of the effective date of the Contract, the Owner will be entitled to housing assistance payments in the amount of 80 percent of the Contract Rent for the unit for a vacancy period not exceeding 60 days from the effective date of the Contract provided that the Owner (1) has submitted a list of units leased as of the effective date and a list of the units not so leased; (2) 60 days prior to the completion of the rehabilitation or the date the agreement was executed, whichever is later, had notified the PHA of any units which the owner anticipated would be vacant on the anticipated effective date of the contract; (3) has taken and continues to take all feasible actions to fill the vacancy including, but not limited to: contracting applicants on the Owner's waiting list, if any, requesting the PHA and other appropriate sources to refer eligible applicants, and advertising the availability of the units in a manner specifically designed to reach low-income families; and (4) has not rejected any eligible applicant except for good cause acceptable to HUD.

(d) *Payments for vacancies after initial occupancy.* If an eligible family vacates its unit (other than as a result of action by the Owner which is in violation of the Lease or the Contract or any applicable law), the owner may receive housing assistance payments for so much of the month in which the Family vacates the unit as the unit remains vacant. Should the unit remain vacant, the Owner may receive from HUD a housing assistance payment in the amount of 80 percent of Contract Rent for a vacancy period not exceeding an additional month. However, if the owner collects any of the family's share of the rent for this period, the payment must be reduced to an

amount which, when added to the family's payments, does not exceed 80 percent of the Contract Rent. Any such excess shall be reimbursed by the Owner to HUD or as HUD may direct. (See also § 886.315.) The owner shall not be entitled to any payment under this paragraph unless he or she: (1) Immediately upon learning of the vacancy, has notified HUD of the vacancy or prospective vacancy and the reasons for the vacancy, and (2) has made and continues to make a good faith effort to fill the vacancy, including but not limited to, contacting applicants on the waiting list, if any, requesting the PHA and other appropriate sources to refer eligible applicants, and advertising the availability of the unit, and (3) has not rejected any eligible applicant, except for good cause acceptable to HUD.

(e) *Payments for units where family is evicted.* If the owner evicts a family, the owner shall not be entitled to any payments pursuant to paragraph (d) of this section unless the request for such payment is supported by a certification that the provisions of § 886.327 and part 247 of this title have been followed.

(f) *Prohibition for double compensation for vacancies.* The owner shall not be entitled to housing assistance payments with respect to vacant units under this section to the extent he or she is entitled to payments from other sources (for example, payments for losses of rental income incurred for holding units vacant for relocatees pursuant to Title I of the HCD Act or payments under § 886.315).

(g) *Debt service payments.* (1) If a contract unit continues to be vacant after the 60-day period specified in paragraph (c) or (d) of this section, the Owner may submit a claim and receive additional housing assistance payments on a semiannual basis with respect to such a vacant unit in an amount equal to the principal and interest payments required to amortize the portion of the debt attributable to that unit for the period of the vacancy, whether such vacancy commenced during rent-up or after rent-up.

(2) Additional payments under this paragraph (g) for any unit shall not be for more than 12 months for any vacancy period, and shall be made only if:

(i) The unit is not in a project insured under the National Housing Act except pursuant to section 244 of that Act.

(ii) The unit was in decent, safe, and sanitary condition during the vacancy period for which payments are claimed.

(iii) The owner has taken and is continuing to take the actions specified in paragraphs (c)(1), (2) and (3) or paragraphs (d)(1) and (2) of this section, as appropriate.

(iv) The Owner has demonstrated in connection with the semiannual claim on a form and in accordance with the standards prescribed by HUD with respect to the period of the vacancy, that the project is not providing the Owner with revenues at least equal to the project costs incurred by the Owner, and that the amount of the payments requested is not in excess of that portion of the deficiency which is attributable to the vacant units for the period of the vacancies.

(v) The Owner has submitted, in connection with the semiannual claim, a statement with relevant supporting evidence that there is a reasonable prospect that the project can achieve financial soundness within a reasonable time. The statement shall indicate the causes of the deficiency; the corrective steps that have been and will be taken; and the time by which it is expected that the project revenues will at least equal project costs without the additional payments provided under this paragraph.

(3) HUD may deny any claim for additional payments or suspend or terminate payments if it determines that based on the Owner's statement and other evidence, there is not a reasonable prospect that the project can achieve financial soundness within a reasonable time.

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§ 886.310 Initial contract rents.

HUD will establish contract rents at levels that, together with other resources available to the purchasers, provide sufficient amounts for the necessary costs of rehabilitating and operating the multifamily housing project and do not exceed 120 percent of the