

authorized by a waiver of the regulations, will be deducted from the Contract Rent before applying the AAF.

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

(g) *Debt service.* (1) For purposes of this section, debt service includes principal, interest, and the mortgage insurance premium, if any.

(2) The monthly debt service set forth in the original mortgage documents for a project will be used to compute the debt service portion of the contract rent. The debt service will be compared to the spread of unit sizes included in the original HAP contract, and the amount used in the calculation will be based on the percentage of total rent potential of the various unit types.

(3) If, in some cases, HUD or the Contract Administrator cannot determine the debt service for a project, the project owner will be asked to provide documentation of the debt service. The project owner will be notified by the HUD Field Office or the Contract Administrator of the need for documentation of the debt service, and allowed 30 days to respond, or for such longer period as approved by HUD or the Contract Administrator on a case-by-case basis. Where the debt service is not available to HUD or the Contract Administrator and the owner is unable to provide the necessary information, retroactive payments cannot be made.

(h) *Applicable AAF.* The applicable AAF is the factor in effect on the anniversary date of the contract and appropriate for the area, for the size of the unit, and for the treatment of utilities; except where, for any year when AAFs were published after November 8 and made retroactive to November 8, a project owner was given the option to choose the factor in effect on the anniversary date or the retroactive factor, the applicable AAF is the factor chosen by the project owner in that year.

(Approved by the Office of Management and Budget under control number 2502-0042)

**§ 888.310 Notice of eligibility requirements for retroactive payments.**

(a) *Notice of eligibility requirements.* HUD (or the Contract Administrator) will give written notice to all current owners of projects of the eligibility requirements for retroactive payments. Eligible project owners must make a request for payment and a request for a one-time contract determination within 60 days from the date of the notice.

(b) *Request for payment.* (1) Owners eligible for retroactive payments under § 888.301(c) must submit a request for a calculation of the total rent adjustments and the establishment of the amount of the retroactive payment, as described in § 888.301 (a) and (b), and documentation of the occupancy rate for the period from October 1, 1979, to May 31, 1991, if available.

(2) Owners whose HAP contract requires a request to be made for annual rent adjustments must certify that a request was not made because of an anticipated reduction in the Contract Rents as a result of a comparability study. The certification must contain the year or years upon which the request for payment is based and a statement of the basis for the belief that rents would have been reduced.

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

(c) *Request for one-time contract rent determination.* When making a request for payment, eligible owners may also request a one-time contract rent determination, as described in § 888.320. Eligible owners may request a one-time contract rent determination even if they choose not to request retroactive payments, provided they are eligible for retroactive payments.

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

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proportionate share of the payment for which each is eligible.

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**§ 888.315 Restrictions on retroactive payments.**

(a) *Restrictions on distribution of surplus cash.* Retroactive payments for HUD-insured projects and other projects subject to limitations on the distribution of surplus cash will be deposited, in the manner of Housing Assistance Payments, into the appropriate project account. The payments will be subject to HUD rules and procedures (or rules and procedures of other agencies, as appropriate), described in the applicable regulations and the HAP contracts, for distribution of surplus cash to project owners.

(b) *Replacement reserve.* Projects required by HUD regulations to maintain a reserve for replacement account and to adjust the annual payment to the account each year by the amount of the annual rent adjustment must deposit into the account the proportionate share of any retroactive payment received, in accordance with HUD regulations and the HAP contract.

(c) *Physical condition of HUD-insured or State-financed projects.* If the most recent physical inspection report of a HUD-insured project, completed by the mortgagee, or by HUD or the Contract Administrator if a mortgagee inspection is not present, shows significant deficiencies that have not been addressed to the satisfaction of HUD by the date the retroactive payment is deposited into the project account, the payment will not be made available for surplus cash distribution until the deficiencies are resolved or a plan for their resolution has been approved by HUD.

**§ 888.320 One-time Contract Rent determination.**

(a) *Determining the amount of the new Contract Rent.* Project owners eligible for retroactive payments, as described in § 888.301(c), may request a one-time Contract Rent determination, to be effective as described in paragraph (c) of this section. The request for a one-time rent determination must be made when submitting a request for retroactive payments, as described in § 888.315. If no

claim for retroactive payments is made, an owner may submit only the request for a one-time rent determination, provided the owner is eligible for retroactive payments. The new Contract Rent under this provision will be the greater of:

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

(2) An amount equal to the applicable AAF multiplied by the Contract Rent minus debt service, calculated for each year from October 1, 1979, to May 31, 1991.

(b) *Currently approved rent.* The Contract Rent currently approved by HUD (or the Contract Administrator) is the Contract Rent stated in the most recent amendment to the HAP Contract signed by both HUD (or the Contract Administrator) and the owner, or as shown on HUD Form 92458 (Rental Schedule) if the most recent amendment to the HAP Contract cannot be located.

(c) *Effective date of new Contract Rent.* The new Contract Rent, determined under paragraph (a) of this section, will be effective on May 31, 1991.

(Approved by the Office of Management and Budget under control number 2505-0042)

**Subpart D—Retroactive Housing Assistance Payments for Moderate Rehabilitation Projects**

SOURCE: 56 FR 20085, May 1, 1991, unless otherwise noted.

**§ 888.401 Purpose and scope.**

(a) *Purpose.* This subpart describes the basic policies and procedures for the retroactive payment of Housing Assistance Payments to eligible project owners for the period from October 1, 1979 to May 31, 1991 and a one-time Contract Rent determination for such eligible project owners.

(b) *Applicability.* This subpart applies to all Moderate Rehabilitation projects under 24 CFR part 882, subparts D, E, and H.

(c) *Eligible project owners.* Project owners may be eligible for retroactive payments if, during the period from October 1, 1979 to May 31, 1991: