

tenant-based programs, the FMR/exception rent limit is used to determine the maximum subsidy for a family.

(2) For a regular tenancy under the certificate program, the FMR/exception rent limit is the maximum initial gross rent under the assisted lease.

(3) For the voucher program, the FMR/exception rent limit is the maximum "payment standard" (maximum subsidy) for a family.

(4) For an over-FMR tenancy under the certificate program, the FMR/exception rent limit is the "payment standard" (maximum subsidy) for a family.

(b) *Determining exception rent*—(1) *Area exception rent: HUD approval.* (i) At HUD's sole discretion, HUD may approve an area exception rent for all units, or all units of a given size (number of bedrooms), leased by program families in a part of the fair market rent area that is designated as an "exception rent area." A HUD-approved area exception rent applies to all HAs with jurisdiction of the exception rent area.

(ii) An area exception rent may not exceed 120 percent of the FMR.

(iii) HUD will determine the area exception rent by either of the two following methods:

(A) *Median rent method.* In the median rent method, HUD determines the area exception rent by multiplying the FMR times a fraction of which the numerator is the median gross rent of the exception rent area and the denominator is the median gross rent of the entire FMR area. In this method, HUD uses median gross rent data from the most recent decennial United States census, and the exception rent area may be any geographic entity within the FMR area (or any combination of such entities) for which median gross rent data is provided in decennial census data products.

(B) *40th percentile rent method.* In this method, HUD determines that the area exception rent equals the 40th percentile of rents to lease standard quality rental housing in the exception rent area. HUD determines the 40th percentile rent in accordance with the methodology described in 24 CFR 888.113 for determining fair market rents. An HA that asks HUD to approve

an area exception rent determined by the 40th percentile rent method must present statistically representative rental housing survey data that justify exception rent approval by HUD.

(iv) An area exception rent will not be approved unless HUD determines that an exception rent is needed either:

(A) To help families find housing outside areas of high poverty; or

(B) Because certificate or voucher holders have trouble finding housing for lease under the program within the term of the certificate or voucher.

(v) The total populations of exception rent areas in an FMR area may not include more than 50 percent of the population of the fair market rent area.

(vi) At any time, HUD may withdraw or modify any approved area exception rent.

(2) *Regular certificate tenancy: Exception rent as reasonable accommodation for person with disabilities: HA approval.* For a regular tenancy in the certificate program, on request from a family that includes a person with disabilities, the HA must approve an exception rent of up to 120 percent of the fair market rent if the exception rent is needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities in accordance with 24 CFR part 8.

**§ 982.505 Voucher tenancy or over-FMR tenancy: How to calculate housing assistance payment.**

(a) *Use of payment standard.* For a voucher tenancy or for an over-FMR tenancy under the certificate program, a "payment standard" is used to calculate the monthly housing assistance payment for a family. The "payment standard" is the maximum monthly subsidy payment for a family.

(b) *Voucher program: Amount of assistance*—(1) *Voucher payment standard: Maximum and minimum.* (i) The HA must adopt a payment standard schedule that establishes payment standards for the HA voucher program. For each FMR area and for each exception rent area, the HA must establish voucher payment standard amounts by unit size (zero-bedroom, one-bedroom, and so on).

(ii) For a voucher tenancy, the payment standard for each unit size may not be:

(A) More than the current FMR/exception rent limit; or

(B) Less than 80 percent of the current FMR/exception rent limit, unless a lower percent is approved by HUD.

(2) *Voucher assistance formula.* (i) For a voucher tenancy, the housing assistance payment for a family equals the lesser of:

(A) The applicable payment standard minus 30 percent of monthly adjusted income; or

(B) The monthly gross rent minus the minimum rent.

(ii) The minimum rent is the higher of:

(A) 10 percent of monthly income (gross income); or

(B) A higher minimum rent as required by law.

(3) *Voucher payment standard schedule.*

(i) A voucher payment standard schedule is a list of the payment standard amounts used to calculate the voucher housing assistance payment for each unit size in an FMR area. The payment standard schedule for an FMR area includes payment standard amounts for any HUD-approved exception rent area in the FMR area.

(ii) The voucher payment standard schedule establishes a single payment standard for each unit size in an FMR area and, if applicable, in a HUD-approved exception rent area within an FMR area.

(iii) Payment standard amounts on the payment standard schedule must be within the maximum and minimum limits stated in paragraph (b)(1)(ii) of this section. Within these limits, payment standard amounts on the schedule may be adjusted annually, at the discretion of the HA, if necessary to assure continued affordability of units in the HA jurisdiction.

(iv) To calculate the housing assistance payment for a family, the HA must use the applicable payment standard from the HA payment standard schedule for the fair market rent area (including the applicable payment standard for any HUD-approved exception rent area) where the unit rented by the family is located.

(4) *Payment standard for certain subsidized projects.* For a voucher tenancy in an insured or noninsured Section 236 project, a Section 515 project of the Rural Development Administration, or a Section 221(d)(3) below market interest rate project, the payment standard may not exceed the basic rental charge (as defined in 12 U.S.C. 1715z-1(f)(1)), including the cost for tenant-paid utilities.

(c) *Over-FMR tenancy: Determining amount of assistance—(1) Payment standard.* For an over-FMR tenancy, the payment standard for the unit size is the FMR/exception rent limit.

(2) *Over-FMR tenancy assistance formula.* For an over-FMR tenancy, the housing assistance payment for a family equals the lesser of:

(i) The applicable payment standard minus the total tenant payment; or

(ii) The monthly gross rent minus the minimum rent as required by law.

(d) *Payment standard for family.* (1) This paragraph (d) applies to both a voucher tenancy and an over-FMR tenancy.

(2) The payment standard for a family is the lower of:

(i) The payment standard for the family unit size; or

(ii) The payment standard for the unit size rented by the family.

(3) If the unit rented by a family is located in an exception rent area, the HA must use the appropriate payment standard for the exception rent area.

(4) During the HAP contract term for a unit, the amount of the payment standard for a family is the higher of:

(i) The initial payment standard (at the beginning of the lease term) minus any amount by which the initial rent to owner exceeds the current rent to owner; or

(ii) The payment standard as determined at the most recent regular reexamination of family income and composition effective after the beginning of the HAP contract term.

(5) At the next regular reexamination following a change in family size or composition during the HAP contract term, and for any examination thereafter during the term:

(i) Paragraph (d)(4)(i) does not apply, and

(ii) If there is a change in family unit size resulting from such change in family size or composition, the new family unit size must be used to compute the payment standard.

[63 FR 23861, Apr. 30, 1998, as amended at 64 FR 13057, Mar. 16, 1999]

EFFECTIVE DATE NOTE: At 64 FR 13057, Mar. 16, 1999, §982.505 was amended by revising paragraph (d)(5), effective Apr. 15, 1999. For the convenience of the user, the superseded text is set forth as follows:

**§ 982.505 Voucher tenancy or over-FMR tenancy: How to calculate housing assistance payment.**

\* \* \* \* \*

(d) \* \* \*

(5) If there is a change in family size or composition during the HAP contract term, paragraph (d)(4)(i) of this section does not apply at the next regular reexamination following such change, or thereafter during the term.

**§ 982.506 Over-FMR tenancy: HA approval.**

(a) *HA discretion to approve.* (1) At the request of the family, the HA may approve an over-FMR tenancy in accordance with this section.

(2) Generally, the HA is not required to approve any over-FMR tenancy. However, the HA must approve an over-FMR tenancy in accordance with this section, if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities in accordance with 24 CFR part 8.

(b) *Requirements—(1) Ten percent limit.* The HA may not approve additional over-FMR tenancies if the number of such tenancies currently is ten percent or more of the number of incremental certificate units under the HUD-approved budget for the HA certificate program. "Incremental units" means the number of budgeted certificate units minus any units for which HUD provided tenant-based program funding designated for families previously residing in housing with Section 8 project-based assistance.

(2) *Affordability of family share.* The HA may not approve an over-FMR tenancy unless the HA determines that the initial family share is reasonable. In making this determination, the HA

must take into account other family expenses, such as child care, unreimbursed medical expenses, and other appropriate family expenses as determined by the HA.

(c) *Amount of assistance.* During an over-FMR tenancy, the amount of the housing assistance payment is determined in accordance with §982.505(c).

(d) *HA administrative plan.* (1) The administrative plan must cover HA policies on approval and administration of over-FMR tenancies.

(2) The plan must state how the HA decides whether to approve an over-FMR tenancy at the family's request (within the program limit stated in paragraph (b)(1) of this section). Such policy may be based on first-come, first-served; on an HA determined system of preferences; or on discretionary case-by-case consideration of individual requests.

**§ 982.507 Regular tenancy: How to calculate housing assistance payment.**

The monthly housing assistance payment equals the gross rent, minus the higher of:

- (a) The total tenant payment; or
- (b) The minimum rent as required by law.

**§ 982.508 Regular tenancy: Limit on initial rent to owner.**

(a) *FMR/exception rent limit.* (1) The initial gross rent for any unit may not exceed the FMR/exception rent limit on the date the HA approves the lease.

(2) The FMR/exception rent limit for a family is the lower of:

- (i) The FMR/exception rent limit for the family unit size; or
- (ii) The FMR/exception rent limit for the unit size rented by the family.

(b) *Reasonable rent.* The initial rent to owner may not exceed a reasonable rent as determined in accordance with §982.503.

**§ 982.509 Regular tenancy: Annual adjustment of rent to owner.**

(a) *When rent is adjusted.* At each annual anniversary date of the HAP contract, the HA must adjust the rent to owner at the request of the owner in accordance with this section.