

(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 For the convenience of the user, the superseded text is set forth as follows: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.

§ 982.510

(b) *Amount of annual adjustment.* (1) The adjusted rent to owner equals the lesser of:

(i) The pre-adjustment rent to owner multiplied by the applicable Section 8 annual adjustment factor, published by HUD in the FEDERAL REGISTER, that is in effect 60 days before the HAP contract anniversary;

(ii) The reasonable rent (as most recently determined or redetermined by the HA in accordance with §982.503); or

(iii) The amount requested by the owner.

(2) In making the annual adjustment, the pre-adjustment rent to owner does not include any previously approved special adjustments.

(3) The rent to owner may be adjusted up or down in accordance with this section.

(4) Notwithstanding paragraph (b)(1) of this section, the rent to owner for a unit must not be increased at the annual anniversary date unless:

(i) The owner requests the adjustment by giving notice to the HA; and

(ii) During the year before the annual anniversary date, the owner has complied with all requirements of the HAP contract, including compliance with the HQS.

(5) The rent to owner will only be increased for housing assistance payments covering months commencing on the later of:

(i) The first day of the first month commencing on or after the contract anniversary date; or

(ii) At least sixty days after the HA receives the owner's request.

(6) To receive an increase resulting from the annual adjustment for an annual anniversary date, the owner must request the increase at least sixty days before the next annual anniversary date.

[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, §982.509 was amended by revising paragraph (b)(5)(i), effective Apr. 15, 1999. For the convenience of the user, the superseded text is set forth as follows:

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

* * * * *

(b) * * *

(5) * * *

(i) The contract anniversary date; or

* * * * *

§982.510 Regular tenancy: Special adjustment of rent to owner.

(a) *Substantial and general cost increases.* (1) At HUD's sole discretion, HUD may approve a special adjustment of the rent to owner to reflect increases in the actual and necessary costs of owning and maintaining the unit because of substantial and general increases in:

(i) Real property taxes;

(ii) Special governmental assessments;

(iii) Utility rates; or

(iv) Costs of utilities not covered by regulated rates.

(2) An HA may make a special adjustment of the rent to owner only if the adjustment has been approved by HUD. The owner does not have any right to receive a special adjustment.

(b) *Reasonable rent.* The adjusted rent may not exceed the reasonable rent. The owner may not receive a special adjustment if the adjusted rent would exceed the reasonable rent.

(c) *Term of special adjustment.* (1) The HA may withdraw or limit the term of any special adjustment.

(2) If a special adjustment is approved to cover temporary or one-time costs, the special adjustment is only a temporary or one-time increase of the rent to owner.

§982.511 Rent to owner: Effect of rent control.

In addition to the rent reasonableness limit under this subpart, the amount of rent to owner also may be subject to rent control limits under State or local law.

§982.512 Rent to owner in subsidized projects.

(a) *Subsidized rent.* (1) The rent to owner in an insured or noninsured Section 236 project, a Section 515 project of the Rural Development Administration, a Section 202 project or a Section 221(d)(3) below market interest rate project is the subsidized rent.