

HAWAII ADMINISTRATIVE RULES
TITLE 17
DEPARTMENT OF HUMAN SERVICES
SUBTITLE 5
HAWAII HOUSING AUTHORITY
CHAPTER 534
STATE HOMELESS HALE KOKUA PROGRAM

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SUBCHAPTER 1

GENERAL PROVISIONS

§17-534-1 Purpose. This chapter governs the requirements for participation by eligible families and individuals and by housing owners in the state homeless hale kokua program as administered by the Hawaii housing authority. [Eff. JUN 30 1994] (Auth: SLH 1992, Act 279, §3(12); HRS §356-10) (Imp: SLH 1992, Act 279 §2)

§17-534-2 Definitions. As used in this chapter:

"Adjusted income" means income as defined by 24 C.F.R. §813.102 and set forth in Exhibit A, dated 4/1/92, located at the end of this chapter.

"Annual Income" means income as defined by 24 C.F.R. §813.106 and set forth in Exhibit A, dated 4/1/92, located at the end of this chapter.

"Applicant" means a homeless family or homeless individual who submits an application to participate as a tenant in the program.

"Assets" means the 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.

"Authority" means the Hawaii housing authority, a public body and body corporate and politic of the State of Hawaii.

"Building" means the same as constructing.

"C.F.R." means the U.S. Code of Federal Regulations.

"Chairperson" means the duly selected chair of the authority or designated representative.

"Constructing" means building a new dwelling unit to be used as a rental unit.

"Coordinator" means the state homeless programs coordinator appointed by the executive director of the authority to develop and implement the program.

"Dwelling unit" means a house, apartment or group of rooms, intended for residential occupancy as separate living quarters with each unit having direct access from either the outside of the building or through a common hall and each unit being equipped with a kitchen and bathroom facilities for the exclusive use of the occupant.

"Executive director" means the executive director of the Hawaii housing authority or the designated representative.

"Fair monthly rent" means the maximum rent which may be charged by an owner for a rental unit.

"Family" means a group of persons regularly living together consisting of two or more persons related by blood, marriage, or adoption and including foster children and hanai children with at least one dependent person under eighteen years of age.

"Hanai children" means a person or persons, under eighteen years of age, for whom an applicant or tenant has provided food, nourishment, and support for a minimum period of at least a year prior to the time of application and who is acknowledged as the applicant's or tenant's child among friends, relatives, and the community.

"Homeless" means the following:

- (1) An individual or family who lacks a fixed, regular, and adequate nighttime residence; or
- (2) An individual or family who has a primary nighttime residence that is:
 - (A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations; or
 - (B) An institution that provides temporary residence for individuals intended to be institutionalized; or
 - (C) A public or private place not designed for or ordinarily used as sleeping accommodations for human beings.

"Homeless assistance unit" means the same as rental unit.

"Improving" means the same as renovating.

"Monthly adjusted income" means income as defined by 24 C.F.R. §813.102 and set forth in Exhibit A, dated 4/1/92, and located at the end of this chapter.

"Owner" means the owner of a dwelling unit that is in existence or will be constructed or renovated and may include the agent of the owner of a dwelling unit.

"Program" means the state homeless hale kokua program administered by the Hawaii housing authority.

"Provider agency" means an organization, including the board and officers and any employees, contractor, or agents that is:

- (1) A profit organization incorporated under the laws of the State or a nonprofit organization determined by the Internal Revenue Service to be exempt from the federal income tax; or
- (2) A nonprofit organization, with a governing board whose members have no material conflict of interest and serve without compensation with bylaws or policies that describe the manner in which business is conducted and policies that relate to nepotism and management of potential conflict of interest situations.

"Renovating" means improving an existing structure so that such structure will meet the requirements of a dwelling unit and will be used as a rental unit.

"Rent" means the monthly charge to a tenant for use of a rental unit.

"Rental unit" means a dwelling unit that is available to be rented by a tenant in the program.

"Respondent" means the party against whom a petition is filed, the party against whom relief is sought or, any party who contests or controverts a proceeding.

"State" means the State of Hawaii.

"Tenant" means an eligible homeless family or homeless individual who is participating in the program. [Eff JUN 30 1994] (Auth: SLH 1992, Act 279, §3(12)) (Imp: SLH 1992, Act 279, §2)

§17-534-3 Income limits. To be eligible to participate or to continue to participate in the program, an applicant's or tenant's annual income and assets shall not exceed the lower income limits as defined by 24 C.F.R. §813.102 and set forth in Exhibit A, dated 4/1/92, located at the end of this chapter. [Eff JUN 30 1994] (Auth: SLH 1992, Act 279, §3(12)) (Imp: SLH 1992, Act 279, §2)

§17-534-4 Assets. All assets held by an

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applicant or a tenant shall be determined as defined by 24 C.F.R. §813.102 and set forth in Exhibit A, dated 4/1/92, located at the end of this chapter. [Eff JUN 30 1994] (Auth: SLH 1992, Act 279, §3(12)) (Imp: SLH 1992, Act 279, §2)

§17-534-5 Asset limits. An applicant or a tenant having assets which are valued at more than one and one-half times the income limit set forth in section 17-534-3, shall be ineligible to participate or to continue to participate in the program. [Eff JUN 30 1994] (Auth: SLH 1992, Act 279, §3(12)) (Imp: SLH 1992, Act 279, §2)

§17-534-6 Asset transfer. (a) All assets transferred or assigned to another person, within a three month period prior to submitting an application to participate, or for the purpose of continuing to qualify for participation in the program shall be included in determining an applicant's or tenant's assets.

(b) The value of the asset shall be based on its fair market value. [Eff JUN 30 1994] (Auth: SLH 1992, Act 279, §3(12)) (Imp: SLH 1992, Act 279, §2)

§17-534-7 Occupancy standards. Eligible applicants or tenants shall occupy the rental unit in accordance with the ordinances of the county in which the rental unit is located. [Eff JUN 30 1994] (Auth: SLH 1992, Act 279, §3(12)) (Imp: SLH 1992, Act 279, §2)

§17-534-8 Verification of information. (a) The authority shall require an applicant, tenant, or owner to provide documentation to verify information relating to participation in the program. This documentation may include, but not be limited to, employment, financial, housing status, and property information.

(b) An applicant or owner that fails to comply with the requirement to provide documentation shall be ineligible to participate in the program.

(c) A tenant that fails to comply with the requirement to provide documentation shall be ineligible to continue to participate in the program. [Eff JUN 30 1994] (Auth: SLH 1992, Act 279,

§3(12)) (Imp: SLH 1992, Act 279, §2)

§17-534-9 Ineligibility. (a) Any applicant, tenant or owner that has been determined to be ineligible by the authority may request an informal hearing before the executive director to reconsider the determination of the authority. Any request for hearing for reconsideration shall be made in writing and shall be filed with the executive director within ten days of the determination of the authority. The request shall state the grounds for the request for reconsideration.

(b) Upon receipt of the request, the executive director shall schedule a hearing. Notice shall be provided to all parties upon the scheduling of a hearing.

(c) The executive director shall render a decision within thirty days after the hearing. If the decision is adverse to the party requesting the hearing, then such party may request a contested case hearing pursuant to subchapter 7. The notice of a request for a contested case hearing shall be filed with the authority within ten days of the decision by the executive director. [Eff JUN 30 1994] (Auth: SLH 1992, Act 279, §3(12)) (Imp: SLH 1992, Act 279, §2)

§17-534-10 Exceptions. The executive director may for good cause grant an exception to any provision in this chapter to the extent permitted by law where:

(1) The applicant, tenant or owner has otherwise demonstrated the necessary qualifications; and

(2) Each such exception shall be in writing and shall be supported by documentation of the pertinent facts and grounds. [Eff JUN 30 1994] (Auth: SLH 1992, Act 279, §3(12)) (Imp: SLH 1992, Act 279, §2)

§17-534-11 Contract with provider agency. The authority may contract with a provider agency to perform any of its duties under this chapter. [Eff JUN 30 1994] (Auth: SLH 1992, Act 279, §2) (Imp: SLH 1992, Act 279, §2)

§§17-534-12 to 17-534-19 (Reserved)

SUBCHAPTER 2

TENANT ELIGIBILITY AND SELECTION

§17-534-20 Tenant application. (a) An applicant seeking to participate in the program shall submit an application form, as prescribed by the authority. The form shall be completed to the satisfaction of the authority and shall include, but not be limited to, the applicant's name, age, address, marital status, name of spouse, present housing status, employment status, income and asset information, citizenship status, and family composition information.

(b) An applicant shall submit documentation as required by the authority and shall execute a release of information form for any other information required by the authority to verify the applicant's eligibility or continued eligibility.

(c) An applicant shall execute a waiver of information disclosure form in order for the authority to release such information to an owner in the selection process. [Eff JUN 30 1994] (Auth: SLH 1992, Act 279, §3(2)) (Imp: SLH 1992, Act, 279, §3(2))

§17-534-21 Tenant eligibility for participation.

(a) To be eligible to participate or to continue to participate in the program, the applicant or tenant shall:

- (1) Submit a completed application;
- (2) Qualify as a homeless family or homeless individual;
- (3) Have family or individual income and assets which do not exceed the income limits and asset limits established by section 17-534-3 and section 17-534-5 respectively;
- (4) Have earning capabilities or have a financial situation which gives reasonable assurance of meeting the rental payments on time as they become due;
- (5) Not have an outstanding debt owed to the authority or to a county public housing agency;
- (6) Be employed at least nineteen hours per week;

- (7) Not have had a record of conduct or behavior for two years prior to the date of the application or reexamination that is harmful, destructive, or unlawful which may cause a threat to owners; and
- (8) Agree to actively comply with the social services agreement established by section 17-534-61.

(b) A tenant shall be immediately ineligible to continue participation in the program upon termination of the social services agreement for such tenant.
[Eff JUN 30 1994] (Auth: SLH 1992, Act 279, §3(2))
(Imp: SLH 1992, Act 279, §3(2))

§17-534-22 Tenant preference. (a) Eligible applicants shall be given preference for participation in the program in the following order:

- (1) Homeless family residing in a transitional shelter subject to chapter 358D, Hawaii Revised Statutes;
- (2) Homeless individuals residing in a transitional shelter subject to chapter 358D, Hawaii Revised Statutes;
- (3) Homeless family whose nighttime residence is in a public area;
- (4) Homeless individual whose nighttime residence is in a public area;
- (5) Homeless family whose nighttime residence is other than a public area; and
- (6) Homeless individual whose nighttime residence is other than a public area.

(b) In any one of the above categories, priority shall be given to eligible applicants in such category according to the length of time prior to the date of the application that such applicant was homeless in the state. [Eff JUN 30 1994] (Auth: SLH 1992, Act 279, §3(2)) (Imp: SLH 1992, Act 279, §3(2))

§17-534-23 Notification of ineligibility. An applicant or tenant determined to be ineligible for participating or continuing to participate in the program shall be notified in writing of the determination, the reasons thereof and the right to a hearing by the authority. [Eff JUN 30 1994] (Auth: SLH 1992, Act 279, §3(2)) (Imp: SLH 1992, Act 279, §3(2))

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§17-534-24 Reexamination. (a) The authority shall annually reexamine a tenant's annual income, assets, family composition, financial and employment record, conduct and behavior record, and any other matter necessary to determine a tenant's eligibility. The tenant shall be responsible for continuing to meet the eligibility requirements of section 17-534-21.

(b) The tenant shall be notified in writing by the authority of the reexamination results. [Eff JUN 30 1994] (Auth: SLH 1992, Act 279, §3(2)) (Imp: SLH 1992, Act 279, §3(2))

§§17-534-25 to 17-534-29 (Reserved)

SUBCHAPTER 3

OWNER ELIGIBILITY AND SELECTION

§17-534-30 Owner application. (a) An owner seeking to participate in the program shall submit an application form, as prescribed by the authority. The form shall include, but not be limited to, the owner's name, address, agent's name, ownership information, property information, unit information, and rent information.

(b) An owner shall submit documentation as required by the authority and shall execute a release of information form in order for the authority to verify the owner's eligibility.

(c) An owner shall execute an agreement that any tenant information disclosed to the owner shall be held in confidence and shall not be released to anyone in any form.

(d) In the event an owner does not have a dwelling unit that meets the requirements of section 17-534-31, then such owner may apply for a construction grant pursuant to subchapter 4. [Eff JUN 30 1994] (Auth: SLH 1992, Act 279, §3(3)) (Imp: SLH 1992, Act 279, §3(3))

§17-534-31 Rental unit requirements. A dwelling unit approved by the authority for use as a rental unit shall meet the following requirements:

- (1) Have 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) Have suitable equipment to prepare, serve, and store foods in a sanitary manner;
 - (3) Provide adequate space and security;
 - (4) Be structurally sound so as not to pose any threat to the health and safety of the occupants;
 - (5) Be usable and capable of being maintained without unauthorized use of other private properties, and the unit shall provide an alternate means of egress in case of fire;
 - (6) Be in a sanitary condition and free of vermin and rodent infestation; and
 - (7) Comply with all laws, ordinances, codes, rules and regulations of the federal, state, and county governments. [Eff JUN 30 1994]
(Auth: SLH 1992, Act 279, §3(3)) (Imp: SLH 1992, Act 279, §3(3))

§17-534-32 Qualified owners. To qualify to participate in the program, an owner shall:

- (1) Submit a completed application;
- (2) Have an existing rental unit or intend to renovate or construct a rental unit;
- (3) Have the rental unit located in a census tract that has less than five other rental units in such census tract;
- (4) Not have an outstanding debt owed to the authority or to a county public housing agency; and
- (5) Not have had a record of conduct or behavior for two years prior to the date of the application that is harmful, destructive, or unlawful which may cause a threat to tenants. [Eff JUN 30 1994] (Auth: SLH 1992, Act 279, §§1, 3(3), 5) (Imp: SLH 1992, Act 279, §§1, 3(3), 5)

§17-534-33 Owner preference. Qualified owners shall be given preference for participation in the program in the following order:

- (1) Owners who are not applying for construction grant funds provided by the authority;
- (2) Owners who are in a census tract with the least number of rental units in such census tract; and

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- (3) Owners whose rental units have the largest floor area. [Eff JUN 30 1994] (Auth: SLH 1992, Act 279, §§1, 3(3), 5) (Imp: SLH 1992, Act 279, §§1, 3(3), 5)

§17-534-34 Notification of ineligibility. An owner determined to be ineligible to participate in the program shall be notified in writing of the determination, the reasons thereof and the right to a hearing by the authority. [Eff JUN 30 1994] (Auth: SLH 1992, Act 279, §3(3)) (Imp: SLH 1992, Act 279, §3(3))

§§17-534-35 to 17-534-39 (Reserved)

SUBCHAPTER 4

CONSTRUCTION GRANTS

§17-534-40 Construction application. (a) An owner seeking to receive a construction grant for constructing or renovating a dwelling unit to be used as a rental unit shall submit an application form, as prescribed by the authority. The form shall include, but not be limited to, the owner's name, address, ownership information, property information, contractor information, financial cost information, county regulatory information, and dwelling information.

(b) The owner shall submit documentation as required by the authority in order to verify the owner's eligibility to receive a construction grant. [Eff JUN 30 1994] (Auth: SLH 1992, Act 279, §§3(5), 5) (Imp: SLH 1992, Act 279, §§3(5), 5)

§17-534-41 Grant amount. (a) The authority shall pay to the owner, or authorized agent, up to the amounts defined by and set forth in Exhibit B, dated 2/1/94, located at the end of this chapter, for the applicable rental unit size and extent of construction, who has:

- (1) Submitted a completed application;
 - (2) Become a qualified owner; and
 - (3) Executed a construction grant agreement.
- (b) The owner shall submit documentation that is

satisfactory to the authority that the owner has expended amounts at least equal to the construction grant amount for constructing or renovating a dwelling unit.

(c) Any construction grant funds received by the owner which are in excess of the amount expended by the owner for constructing or renovating a dwelling unit shall be reimbursed to the authority. [Eff JUN 30 1994] (Auth: SLH 1992, Act 279, §§3(5), 5) (Imp: SLH 1992, Act 279, §§3(5), 5)

§17-534-42 Restriction on use of dwelling units.

(a) A dwelling unit that has been constructed or renovated using construction grant funds shall be used or available for use as a rental unit for applicants or tenants at all times during the five year period commencing on the date such unit is ready for occupancy after the construction or renovation is completed.

(b) The owner or owners of the real property on which a dwelling unit has been constructed or renovated using construction grant funds shall record in the bureau of conveyances of the State of Hawaii, or if the real property is subject to land court registration under chapter 501, Hawaii Revised Statutes, shall record in the land court, a covenant that the owner or owners, or the heirs, successors or assigns of the owner or owners shall use the dwelling unit for applicants or tenants as provided by this section. The covenant shall be recorded on a form approved by the authority and may contain such terms as the authority deems necessary to ensure its enforceability.

(c) At the end of the five year period of restriction on use of the dwelling unit, the authority shall execute a release of covenant and shall record such release with the bureau of conveyances or the land court. [Eff JUN 30 1994] (Auth: SLH 1992, Act 279, §§3(5), 5) (Imp: SLH 1992, Act 279, §§3(5), 5)

§17-534-43 Construction liability exception. (a)

An owner who receives a construction grant from the authority for constructing or renovating a dwelling unit shall not hold the authority liable for any civil damages resulting from the authority's acts or omissions relating to the grant.

(b) The owner shall defend, indemnify, and execute a waiver of liability holding the authority harmless from all claims made by third parties against

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the authority resulting from constructing or renovating the dwelling unit. [Eff JUN 30 1994] (Auth: SLH 1992, Act 279, §§3(4)) (Imp: SLH 1992, Act 279, §3(4))

§17-534-44 Termination of participation. (a) An owner who receives a construction grant from the authority for constructing or renovating a dwelling unit and terminates participation in the program prior to the end of the five year period provided in section 17-534-42(a) shall reimburse the authority for all amounts received by the owner as a construction grant within ninety days after the date of termination. Upon reimbursement of the construction grant, the authority shall release the covenant on restriction of use pursuant to section 17-534-42(c).

(b) An owner who does not reimburse the authority pursuant to this section shall pay for any attorney's fees and costs, as determined by a court of competent jurisdiction to be reasonable, that are incurred by the authority in collecting the amounts owed to the authority. The authority may file a lien upon the property where the rental unit is located, in the amount of the construction grant that has not been reimbursed to the authority.

(c) An owner shall give the authority at least forty-five days written notice prior to the date that the owner will withdraw from the program. [Eff JUN 30 1994] (Auth: SLH 1992, Act 279, §6) (Imp: SLH 1992, Act 279, §6)

§17-534-45 Construction grant agreement. A construction grant agreement shall be executed between the authority and the owner who receives a construction grant for constructing or renovating a dwelling unit to be used as a rental unit for tenants in the program. The agreement shall include, but not be limited to, the owner's name, address, ownership information, dwelling unit information, financial cost information, construction grant amounts, restriction on use of the dwelling unit, indemnification of the authority during construction, liability insurance, and the owner's and the authority's responsibilities. [Eff JUN 30 1994] (Auth: SLH 1992, Act 279, §§3(5), 5) (Imp: SLH 1992, Act 279, §§3(5), 5)

§§17-534-46 to 17-534-49 (Reserved)

SUBCHAPTER 5

RENT ASSISTANCE

§17-534-50 Rent assistance application. (a) An owner seeking to receive rent assistance for a rental unit shall submit an application form, as prescribed by the authority. The form shall include, but not be limited to, the owner's name, address, ownership information, property information, dwelling unit information, and rent information.

(b) The owners shall submit documentation as required by the authority in order to verify the owner's eligibility to receive rent assistance. [Eff JUN 30 1994] (Auth: SLH 1992, Act 279, §§ 3(5), 5) (Imp: SLH 1992, Act 279, §§3(5),5)

§17-534-51 Fair monthly rent. The fair monthly rent for the rental unit shall not be greater than ninety percent of the fair market rent for the same unit size as defined by 24 C.F.R. §888.113 and set forth in Exhibit A, dated 4/1/92, located at the end of this chapter. [Eff JUN 30 1994] (Auth: SLH 1992, Act 279, §3(3)) (Imp: SLH 1992, Act 279, §3(3))

§17-534-52 Rent adjustment. The fair monthly rent for the rental unit may be adjusted by the owner as defined by 24 C.F.R. §882.108 and set forth in Exhibit A, dated 4/1/92, located at the end of this chapter. [Eff JUN 30 1994] (Auth: SLH 1992, Act 279, §3(3)) (Imp: SLH 1992, Act 279, §3(3))

§17-534-53 Rent assistance payments. (a) The authority shall pay directly to the owner, or authorized agent, on behalf of a tenant, a monthly rent assistance amount that is subject to subsection (d) and is the difference between the fair monthly rent for the rental unit and the tenant's allowable share of rent as defined by 24 C.F.R. §813.107 and set forth in Exhibit A, dated 4/1/92, located at the end of this chapter.

(b) Rent assistance payments shall be made on behalf of a tenant for the period that the rental unit is occupied.

(c) Vacated rental units will receive rent assistance payments under the following conditions:

- (1) If the tenant vacates the rental unit without proper notice, rent assistance payments shall be continued to the time that the tenancy could legally be terminated or to the date that the rental unit is re-rented, or to the last day of the month that the tenant vacated the rental unit and rent assistance payment was already made, whichever comes first; or
- (2) If the tenant has had his social services agreement terminated by the authority and is ineligible to participate in the program, rent assistance payments shall be continued for ninety days from the effective date of termination of the social services agreement or to the date the rental unit is re-rented, whichever comes first.

(d) The rent assistance shall be limited up to the amounts as defined by and set forth in Exhibit B, dated 2/1/94, located at the end of this chapter. [Eff

JUN 30 1994] (Auth: SLH 1992, Act 279, §§3(5), 5)
(Imp: SLH 1992, Act 279, §§3(5), 5)

§17-534-54 Security deposits. No portion of the rent assistance payments by the authority shall be applied or allocated to any security deposit demanded by an owner. The authority shall not be responsible for nor be required to pay an owner for the security deposit. [Eff JUN 30 1994] (Auth: SLH 1992, Act 279, §§3(5), 5) (Imp: SLH 1992, Act 279, §§3(5), 5)

§17-534-55 Rent assistance agreement - owner.

(a) A rent assistance agreement shall be executed between the authority and owner who receives rent assistance and rents to tenants in the program. The form shall include but not be limited to, an acknowledgement of the tenancy between the owner and the eligible applicant or tenant, the amount of the fair monthly rent and the rent assistance, date that the rent assistance payment is due, to whom payment is to be made, and the owner's and authority's responsibilities.

(b) Amendments to the rent assistance agreement shall be made in writing, by the owner or agent, and

approved by the authority. [Eff JUN 30 1994]
(Auth: SLH 1992, Act 279, §§3(5), 5) (Imp: SLH 1992,
Act 279, §§3(5), 5)

§17-534-56 Rent assistance agreement - tenant.

(a) The eligible applicant shall execute a rent assistance agreement with the authority prior to participating in the program. The agreement shall include, but not be limited to, an acknowledgement of the tenancy between the owner and the eligible applicant, the amount of the fair monthly rent and the rent assistance, and the eligible applicant's and authority's responsibilities.

(b) The rent assistance agreement between the authority and eligible applicant shall set forth the conditions of participation in the program. [Eff JUN 30 1994]
(Auth: SLH 1992, Act 279, §§3(5), 5)
(Imp: SLH 1992, Act 279, §§3(5), 5)

§17-534-57 Authority not responsible. Other than the agreed to rent assistance for the fair monthly rent, the authority shall not be held responsible to the owner for any portion of the tenant's allocable share of the rent, or be held responsible to the owner or tenant for any damages, breakage or losses to the rental unit or any portion thereof, or to the furnishings, fixtures, and appliances where the same may have been caused by the tenant, owner or other causes. [Eff JUN 30 1994] (Auth: SLH 1992, Act 279, §§3(5), 5) (Imp: SLH 1992, Act 279, §§3(5), 5)

§17-534-58 Rent assistance agreement termination.

(a) A tenant shall give the authority at least thirty days written notice prior to the date that the tenant will withdraw from participation in the program.

(b) The authority may terminate a tenant's participation in the program when a tenant has:

- (1) Submitted false or misleading information or willfully withheld important information from the authority; or
- (2) Violated any provision of these rules or SLH 1992, Act 279, as related to this program; or
- (3) Had the tenancy terminated by the owner; or
- (4) Had the social services agreement terminated by the authority.

(c) A tenant found to be ineligible for continued

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participation in the program shall be so notified in writing pursuant to section 17-534-23.

(d) The owner may continue to rent to the tenant notwithstanding the termination of the rent assistance agreement and the ineligibility of the tenant for continued participation in the program. [Eff JUN 30 1994] (Auth: SLH 1992, Act 279, §§3(5), 5) (Imp: SLH 1992, Act 279, §§3(5), 5)

§17-534-59 (Reserved)

SUBCHAPTER 6

OPERATIONS

§17-534-60 Selection of tenant. (a) The authority shall provide a qualified owner with a list of up to five eligible applicants. The list of eligible applicants shall be taken in the order of preference as provided in section 17-534-22.

(b) The owner shall interview the eligible applicants from the list of applicants provided by the authority and may select an eligible applicant from such list to be the tenant for the rental unit. If the eligible applicants are unsatisfactory to the owner, then the owner may request a new list from the authority. The owner shall be provided a maximum of three lists by the authority and shall choose an eligible applicant from such lists. [Eff JUN 30 1994] (Auth: SLH 1992, Act 279, §3(4)) (Imp: SLH 1992, Act 279, §3(4))

§17-534-61 Social services agreement. (a) The eligible applicant that has been selected by an owner to be a tenant for a rental unit shall enter into a social services agreement with the authority. The agreement shall include, but not be limited to, the following:

- (1) An individualized assessment of the financial, health, housing, vocational, educational, and social needs of the tenant and tenant's family members, if applicable;
- (2) Identification of goals and objectives to address the tenant's assessed needs;
- (3) Identification of timeline, activities, and

tasks to accomplish the tenant's goals and objectives.

(b) The authority shall monitor the tenant in order to evaluate the progress of the tenant in accomplishing the social services agreement.

(c) The authority may terminate the social services agreement of the tenant if the tenant does not comply with or meet the goals and objectives of the social services agreement as determined by the authority. [Eff JUN 30 1994] (Auth: SLH 1992, Act 279, §§3(2), 3(7)) (Imp: SLH 1992, Act 279, §§3(2), 3(7)).

§17-534-62 Eviction. The owner may evict a tenant provided the requirements of chapter 521, Hawaii Revised Statutes, have been complied with. The owner must notify the authority, in writing, of the commencement of procedures for termination of the tenancy at the same time that the owner gives notice to the tenant under chapter 521, Hawaii Revised Statutes. [Eff JUN 30 1994 (Auth: SLH 1992, Act 279, §3(3)) (Imp: SLH 1992, Act 279, §3(3)).

§§17-534-63 to 17-534-69 (Reserved)

SUBCHAPTER 7

CONTESTED CASES

§17-534-70 Contested cases; applicability. The right to a contested case hearing shall exist where provided for by this chapter or where required by law. The right to hearing shall only be afforded to the person affected by the action or decision of the authority, unless otherwise provided by law. [Eff JUN 30 1994] (Auth: SLH 1992, Act 279, §2) (Imp: HRS §§91-14; SLH 1992, Act 279, §2)

§17-534-71 Commencement of case. A contested case shall commence by the filing of a petition for a permitted relief with the authority. Unless otherwise provided by law, the petition shall be filed within thirty days of the action or decision for which contested case hearing is sought. Upon the filing of a

§17-534-71

petition, the authority shall docket the petition and assign a docket number to the petition. [Eff
JUN 30 1994] (Auth: HRS §§91-9; SLH 1992, Act 279, §2) (Imp: SLH 1992, Act 279, §2)

§17-534-72 Contents of petition. (a) The petition shall state the following:

- (1) Name, address, telephone number of the petitioner and the petitioner's legal counsel, if any, which shall be updated by the petitioner at all times;
- (2) A brief and concise factual statement of the petitioner's claim;
- (3) The law or rule involved;
- (4) The names of all respondents or identities against whom the petition is brought; and
- (5) A brief statement of the relief sought by the petitioner.

(b) If the petitioner is not in substantial compliance with part (a), the authority may refuse to file the petition and may request the petitioner to submit an amended petition in compliance thereto. [Eff
JUN 30 1994] (Auth: SLH 1992, Act 279, §2) (Imp: HRS §91-2; SLH 1992, Act 279, §2)

§17-534-73 Action by authority. Upon the filing of the petition, the chairperson of the authority shall:

- (1) Assign the petition for further proceedings before the authority or assign the matter to a hearings officer; and
- (2) Afford all parties in the matter an opportunity for hearing after reasonable notice. [Eff JUN 30 1994] (Auth: SLH 1992, Act 279, §2) (Imp: HRS §91-9; SLH 1992, Act 279, §2)

§17-534-74 Response. Each respondent may file with the authority or hearings officer if the case has been assigned to one, a written response to the petition which shall state briefly a counter-statement of the facts, circumstances, law, rules, or reasons in defense thereof, and which shall specifically admit or deny the allegations of the petition. The response shall be filed at least five working days prior to the

hearing. [Eff JUN 30 1994] (Auth: SLH 1992, Act 279, §2) (Imp: SLH 1992, Act 279, §2)

§17-534-75 Notice. The authority or hearings officer shall, as soon as possible, provide notice to all parties of the scheduled hearing in such form and manner as provided by law. [Eff JUN 30 1994] (Auth: SLH 1992, Act 279, §2) (Imp: HRS §§91-9, 91-9.5; SLH 1992, Act 279, §2)

§17-534-76 Burden of proof; evidence. Except as otherwise provided by law, the party initiating the proceeding shall have the burden of proof, including the burden of producing evidence as well as the burden of persuasion. [Eff JUN 30 1994] (Auth: SLH 1992, Act 279, §2) (Imp: HRS §91-10(5); SLH 1992, Act 279, §2)

§17-534-77 Procedure at hearing. Unless otherwise stipulated by the parties, which stipulation is approved by the authority or the hearings officer, all hearings shall proceed as follows:

- (1) The parties shall have the opportunity to make opening statements before any evidence is presented, unless they waive the opportunity. The opening statement shall be heard in the following order:
 - (A) Petitioner's opening statement; and
 - (B) Respondent's opening statement, unless respondent chooses to reserve same until after presentation of petitioner's evidence;
- (2) The petitioner's evidence shall be presented first and shall be followed by the presentation of evidence by respondent;
- (3) After presentation of the evidence in support of their respective cases, the parties shall have the opportunity to introduce rebuttal evidence. Rebuttal evidence shall be introduced in the same order as was followed with respect to the introduction of evidence in support of their respective cases;
- (4) Each witness shall first be sworn under oath and shall be examined first by the party calling the witness before cross-examination by the opposing party;

- (5) After all evidence, including rebuttal evidence, has been presented, the parties shall have the opportunity to make final argument. Final argument shall proceed as follows:
- (A) Petitioner's final argument;
 - (B) Respondent's final argument; and
 - (C) Petitioner's final argument in rebuttal which shall be limited to countering matters raised in respondent's final argument; and
- (6) The hearing shall be deemed closed after completion of all final arguments or upon filing of all permitted memoranda and other post-hearing submissions or upon the expiration of the time allowed for filing submissions, unless the time is extended, or upon the completion of taking further evidence, whichever is later. [Eff JUN 30 1994] (Auth: SLH 1992, Act 279, §2) (Imp: HRS §§91-9, 91-10; SLH 1992, Act 279, §2)

§17-534-78 Proposed findings of fact and conclusions of law. Proposed findings of fact, conclusions of law, decisions, and orders shall be filed with the authority no later than seven business days after the day the proceedings were concluded, or such other time as may be established by the authority or hearings officer. [Eff JUN 30 1994] (Auth: SLH 1992, Act 279, §2) (Imp: SLH 1992, Act 279, §2)

§17-534-79 Authority's final decisions, orders, findings of fact, and conclusions of law. (a) The authority shall issue its final decision and order together with findings of fact and conclusions of law. The findings of fact, conclusions of law, final decisions, and orders shall be based upon the whole record and shall be supported by reliable, probative, and substantial evidence, including facts on which the authority properly took judicial notice.

(b) If the proceedings were held before a hearings officer and exceptions were filed to the recommended decision, the authority shall afford the parties oral argument as to the exceptions, prior to the authority adoption of a decision and order and findings of fact and conclusions of law.

(c) If any party has timely filed proposed findings of fact, the authority shall incorporate in its decision a ruling upon each proposed finding so presented, provided that a separate ruling on each proposed finding shall not be required.

(d) The authority shall cause to have a certified copy of the decision and order and accompanying findings and conclusions, delivered or mailed within a reasonable time after their adoption by the authority, to each party or the party's authorized representative.

(e) Appeal of the authority's final decision, order, ruling, or action may be made to the circuit court as provided by law. [Eff JUN 30 1994]
(Auth: SLH 1992, Act 279, §2) (Imp: HRS §§91-11, 91-12; SLH 1992, Act 279, §2)

§17-534-80 Procedure before a hearings officer; transmittal to authority. The following procedures shall apply before a hearings officer:

(a) Upon conclusion of the proceedings before the hearings officer and following the timely submittal of proposed findings of fact, conclusions of law, and decision and order, the hearings officer shall prepare a recommended decision in the matter before the authority.

(b) If the recommended decision is adverse to any party to the proceeding other than the authority, the recommended decision shall contain a statement of the reasons therefor and shall include a determination of each issue of fact or law necessary to the recommended decision, and it shall be served upon all parties. Any party adversely affected by the recommended decision may file exceptions thereto and may submit written argument in support of the exceptions to the authority, provided that the exceptions and argument shall be filed within ten days of the service of the recommended decision, or within such other time as may be designated by the hearings officer.

(c) Following the expiration of the time specified in (b) above, or if not applicable, following preparation of the recommended decision, the hearings officer shall transmit the entire record to the authority for action together with the recommended decision, any timely filed exceptions thereto, and any timely submitted written arguments in support of the exceptions. [Eff JUN 30 1994] (Auth: SLH 1992, Act 279, §2) (Imp: HRS §91-11; SLH 1992, Act 279, §2)

§17-534-81

SUBCHAPTER 8

MISCELLANEOUS PROVISIONS

§17-534-81 Severability. If any part, section, sentence, clause, or phrase of this chapter, or its application to any person or transaction or other circumstances is for any reason held to be unconstitutional or invalid, the remaining parts, sections, sentences, clauses, and phrases of this chapter, or the application of this chapter to other persons or transactions or circumstances shall not be affected. [Eff JUN 30 1994] (Auth: SLH 1992, Act 279, §3(12); HRS §356-10) (Imp: SLH 1992, Act 279, §3(12); HRS §356-10)

§17-534-82 Number. The use of all words used in the singular shall extend to and include the plural. [Eff JUN 30 1994] (Auth: SLH 1992, Act 279, §3(12); HRS §356-10) (Imp: SLH 1992, Act 279, §3(12); HRS §356-10)

~~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

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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 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 21508, 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~~

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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.

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

(143 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 (b) (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.

(11) 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

(e) *Single Room Occupancy Units.* 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 ~~supervisory services, housekeeping,~~

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).

(143 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)

~~Resident 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

to proper operating—
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 unit 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)

EXHIBIT B

OWNER ASSISTANCE AMOUNTS

CONSTRUCTION GRANTS

	<u>Constructing and Building</u>	<u>Improving and Renovating</u>
0 Bedroom	\$6,000.00	\$4,500.00
1 or more Bedroom(s)	\$7,500.00	\$6,000.00

RENT ASSISTANCE LIMITS

0 Bedroom	\$200.00
1 or more Bedrooms	\$300.00