

balance is not the only resource available to a Borrower to recover sums owed. Under the final rule (§ 885.635(c)), if the family's security deposit is insufficient to reimburse the Borrower for any unpaid rent, or other amount which the family owes under the lease for an assisted unit, the Borrower may claim reimbursement from HUD in an amount not to exceed the lesser of the amount owed to the Borrower or one month's contract rent, minus the amount of the family's security deposit.) The \$50 minimum has been retained in the final rule.

Adjustment of Rents (§ 885.640). Section 885.640 governs the adjustment of contract rents. Adjustments are made by one of two methods. Generally, HAP contracts that were entered into prior to 1981 provide for adjustments using an automatic annual adjustment factor and special additional adjustments. Contracts executed or amended after 1981 provided for adjustment based on a HUD-approved budget.

One commenter encouraged HUD to allow, within the rent adjustment, an annual adjustment for utility costs based on the projected costs established by utility companies, rather than the past years' actual expenditures. Contrary to the commenter's assumption, rent adjustments based on the HUD-approved budget may not necessarily be performed as frequently as annually. However, when such adjustments are performed HUD does consider the actual utility rates that are in effect and approved utility rate increases that will be implemented during the year. HUD does not believe it is necessary to revise the rule to accommodate the commenter's suggestion.

Where the HAP contract provides that rent adjustments will be based on the application of an annual adjustment factor the procedures are different. The Department considers the average annual cost of utilities for the prior year in determining the section 8 annual adjustment factor. If the annual adjustment factor is insufficient to cover the cost of an approved increase, the Borrower may request HUD to approve a special adjustment under § 885.640(a)(2)(ii).

Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General

Counsel, Rules Docket Clerk, Room 10276, 451 Seventh Street, S.W., Washington, D.C. 20410-0500.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned certifies that this rule does not have a significant economic impact on a substantial number of small entities. The contract and management provisions incorporated in this rulemaking generally reflect existing HUD policies already guiding operators of section 202/8 projects. This proceeding does not change the goals toward which program activities are directed. The rule's effect both on small and large entities should be minor.

The General Counsel, as the Designated Official under section 6(a) of Executive Order No. 12611—Federalism, has determined that the final rule does not involve the preemption of State law by Federal statute or regulation and does not have Federalism implications. The rule reflects existing HUD policies guiding non-profit organizations operating section 202/8 projects. The rule, to the maximum extent possible, defers to State and local policies (see e.g., §§ 885.635(b)(1), (3) and (5)).

This rule was listed as sequence number 1805 in the Department's Semiannual Agenda of Regulations published November 14, 1994 (59 FR 57632, 57657) under Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 813

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements, Utilities.

24 CFR Part 885

Aged, Individuals with disabilities, Loan programs—housing and community development, Low and moderate income housing, Reporting and recordkeeping requirements.

Accordingly, in title 24 of the Code of Federal Regulations, parts 813 and 885, are amended as follows:

PART 813—DEFINITION OF INCOME, INCOME LIMITS, RENT AND REEXAMINATION OF FAMILY INCOME FOR THE SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS AND RELATED PROGRAMS

1. The authority citation for 24 CFR part 813 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 1437n and 3535(d).

2. In § 813.109, the section heading and paragraph (a), is revised to read as follows:

§ 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 reexamination of Family income and composition at least annually, as provided in pertinent program regulations and handbooks (see, e.g., 24 CFR part 880, subpart F; 24 CFR part 881, subpart F; 24 CFR part 882, subparts B and E; 24 CFR part 883, subpart G; 24 CFR part 884, subpart B; 24 CFR part 885, subparts B and C; 24 CFR part 886, subparts A and C; 24 CFR part 887, subpart H; and 24 CFR parts 889 and 890.). As used in this part, the "effective date" of an examination or reexamination refers to:

(1) In the case of an examination for admission, the effective date of initial occupancy; and

(2) In the case of a reexamination of an existing tenant, the effective date of the redetermined housing assistance payment with respect to the Housing Voucher program (part 887 of this chapter) and the effective date of the redetermined Total Tenant Payment in all other cases.

* * * * *

PART 885—LOANS FOR HOUSING FOR THE ELDERLY OR HANDICAPPED

3. The authority citation for 24 CFR part 885 continues to read as follows:

Authority: 12 U.S.C. 1701q; 42 U.S.C. 1437f and 3535(d).

4. In § 885.5, the definition of "Section 8 Program", is revised to read as follows:

§ 885.5 Definitions.

* * * * *

Section 8 Program means the housing assistance payments program which implements section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f note).

* * * * *

5. In subpart B, § 885.200 is redesignated as § 885.203, and a new § 885.200 is added, to read as follows:

§ 885.200 Definitions applicable to Subpart B.

As used in this subpart B: *Agreement to enter into housing assistance payments contract* means the agreement between the Borrower and