Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d). Subpart H is also issued under 42 U.S.C. 11361 and 11401.

2. Section 882.410 is revised to read as follows:

## §882.410 Rent adjustments.

(a) Annual adjustments. (1) Contract Rents will be adjusted annually as provided in paragraph (a) of this section upon submittal to the PHA by the Owner of a revised schedule of Contract Rents, provided that the unit is in decent, safe, and sanitary condition and that the Owner is otherwise in compliance with the terms of the Lease and Contract. The Annual Adjustment Factors (AAFs) which are published annually by HUD (see Schedule C, 24 CFR part 888) will be utilized.

(2) On or after each annual anniversary date of the Contract, the Contract Rents may be adjusted in accordance with this paragraph and other established HUD procedures. Contract Rents will only be adjusted for housing assistance payments for the months commencing 60 days after the PHA receives the Owner's revised schedule of Contract Rents. Contract Rents will not be adjusted retroactively or cumulatively. The annual adjustment with respect to any anniversary date must be requested prior to the next annual anniversary date.

(3) The adjusted Contract Rents cannot exceed the amount established by multiplying the applicable AAF by the base rents then adding the monthly rehabilitation debt service.

(4) Rents to be adjusted by the AAF must then be examined in accordance with paragraphs (b) and (c) of this section and may be adjusted accordingly.

(b) Overall limitation. (1) Notwithstanding any other provisions of this part, adjustments as provided in this section must not result in material differences between the rents charged for assisted and unassisted units of similar age, quality, and type in the same market area, as determined by the PHA (and approved by HUD in the case of adjustments under paragraph (d) of this section). A material difference between the assisted and comparable unassisted rent is determined to exist if the adjusted Contract rent is greater than the maximum allowable Contract rent plus any difference which may have existed initially. The maximum allowable base rent is a dollar amount equal to 105 percent of the comparable rent.

(2) In determining whether a material difference exists, the PHA must allow for any difference which may have existed with respect to the initial Contract Rent. If the PHA did not establish an initial difference at the time the HAP contract was executed, ten percent of the initial Contract Rent shall be used as a substitute, unless an owner can document that the initial difference was greater.

(c) Comparability Studies. (1) A comparability study will be conducted for the purpose of determining whether a material difference, as described in paragraph (b) of this section, will result from application of the AAF. The PHA will notify the Owner in writing of its intention to conduct a comparability study.

(2) If the Contract rent, as adjusted by the AAF, plus the utility allowance, is less than 110 percent of the current Existing Housing FMR or exception rent (if granted for a geographical area in accordance with § 882.408(b)), the adjusted Contract Rent for the project shall be approved by the PHA in accordance with HUD prescribed procedures and the PHA shall not conduct a comparability study.

(3) If the Contract rent, adjusted by the AAF, plus the utility allowance, is 110 percent or more of the current Existing Housing FMR or if an exception rent limit (if granted for a geographical area in accordance with § 882.408(b)), the PHA will conduct a comparability study to determine and approve an adjusted base rent that is not materially different from rents charged for comparable unassisted units.

(4)(i) In conducting a comparability study, the project's Contract rents, as adjusted by the AAFs, will be compared to rents charged for unassisted units of similar quality, type and age in the same market area.

(ii) Comparability studies will be conducted by PHA staff. PHA staff conducting the comparability studies will make adjustments necessary to accommodate any difference between the comparables and the assisted project that significantly affect the amount of rent charged (including, without limitation, adjustments for utility charges).

(5) If it is determined by the comparability study that a material difference would result (as provided in paragraph (b) of this section) from application of the full AAF, a notice showing the results of the study will be provided to the Owner within 30 business days of receipt of the Owner's request for a rent increase. The Contract Rent will be set at the maximum allowable Contract rent (as defined in paragraph (b) of the section). However, the Contract Rent will never be reduced as a result of a comparability study.

- (6) Where the results of a comparability study show that a material difference would not result from application of the full AAF, the base rent will be adjusted by the full AAF to determine the new Contract Rent.
- (7)(i) Appeals of the decision to disapprove a full adjustment under the AAF must be made to the appropriate PHA within 30 business days from the date of the notice as required in paragraph (c)(5) of this section. Sufficient documentation must be provided of any objections to the decision.
- (ii) The PHA will review the appeal within 30 business days from receipt of the documentation.
- (8) Final appeals of the PHA decision may be made to the appropriate HUD Field Office.
- (d) Special adjustments. (1) A special adjustment, to the extent determined by HUD to reflect increases in the actual and necessary expenses of owning and maintaining the unit which are not adequately compensated for by annual adjustments under this part, and which have resulted from substantial general increases in real property taxes, assessments, utility rates, utilities not covered by regulated rates, or increases in insurance costs, may be recommended by the PHA for approval by HUD.
- (2) Subject to the availability of appropriations for the purpose specified in paragraph (d)(2) of this section, a special adjustment may be recommended by the PHA for approval by HUD when HUD determines, based upon a clear demonstration by the Owner, that a project is located in a community where drug-related criminal activity is generally prevalent, and not specific to a particular project, and the project's operating, maintenance, and capital repair expenses have substantially increased primarily as a result of the prevalence of such drugrelated activity.
- (i) HUD may, on a project-by-project basis, provide adjustments to the maximum monthly rents to a level no greater than 120 percent of the current gross rents for each unit size under a Housing Assistance Payments Contract to cover the costs of maintenance, security, capital repairs and reserves required for the Owner to carry out a strategy acceptable to HUD for addressing the problem of drug-related criminal activity.
- (ii) Where the strategy involves physical improvements, HUD will perform an environmental review to the extent required under HUD's environmental regulations at 24 CFR