

Sunshine Act Meetings

Federal Register

Vol. 53, No. 212

Wednesday, November 2, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

NATIONAL LABOR RELATIONS BOARD

TIME AND DATE: Wednesday, November 2, 1988, immediately following a 9:30 a.m., Board adjudicatory meeting.

PLACE: Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue, NW.

STATUS: Closed to public observation pursuant to 5 U.S.C. 552b(c)(2) (Internal personnel rules and practices and (c)(6) (personal information where disclosure would constitute a clearly unwarranted invasion of personal privacy).

MATTERS CONSIDERED: Personnel matters.

CONTACT PERSON FOR MORE

INFORMATION: John C. Truesdale, Executive Secretary, Washington, DC 20570, Telephone: (202) 254-9430.

Dated, Washington, DC, October 31, 1988.

By direction of the Board.

John C. Truesdale,

Executive Secretary, National Labor Relations Board.

[FR Doc. 88-25470 Filed 10-31-88; 3:46 pm]

BILLING CODE 7445-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Thursday, November 10, 1988.

PLACE: The Board Room, Eighth Floor, 800 Independence Avenue SW., Washington, DC 20594.

STATUS: The first three items will be open to the public. The last two items will be closed under Exemption 10 of the Government in Sunshine Act.

MATTERS TO BE CONSIDERED:

1. Marine Accident Report: Ramming of the Maltese Bulk Carrier MONT FORT by the British Tank Vessel MAERSK NEPTUNE, Upper New York Bay, February 15, 1988.

2. Railroad Accident Report: Rear-end Collision of Amtrak/Massachusetts Bay Transportation Authority Commuter Trains 8110 and 8114, Boston, Massachusetts, November 12, 1987.

3. Recommendation to AMTRAK re Emergency Response to In-Tunnel Incidents. (Calendared by Member Nall.)

4. Opinion and Order: Administrator v. Heisner and Diaz, Dockets SE-7862 and -7874; disposition of appeals of both the Administrator and respondents. (Calendared by Member Burnett.)

5. Opinion and Order: Administrator v. Hughes, Docket SE-7875; disposition of respondent's appeal. (Calendared by Member Burnett.)

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382-6525.

Bea Hardesty,

Federal Register Liaison Officer.

October 28, 1988.

[FR Doc. 88-25401 Filed 10-28-88; 5:10 pm]

BILLING CODE 7533-01-M

Register Federal

Wednesday
November 2, 1988

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for
Housing—Federal Housing Commissioner

24 CFR Parts 813 and 885

Loans for Housing for the Elderly or
Handicapped, Section 202, Projects for
Nonelderly Handicapped Families;
Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 313 and 885

[Docket No. R-88-1418; FR-2476]

Loans for Housing for the Elderly or Handicapped; Section 202, Projects for Nonelderly Handicapped Families

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: Section 202 of the Housing Act of 1959 authorizes HUD to provide direct loans for the development of projects to serve elderly or handicapped families and individuals. Section 202 was amended by section 162 of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988) to ensure that the Section 202 program will meet the special housing and related needs of nonelderly handicapped families and individuals. The revised program authorizes a new type of project assistance payment to replace assistance payments made under section 8 of the United States Housing Act of 1937. This proposed rule would implement the new program.

DATE: Comments must be submitted on or before January 3, 1989.

ADDRESSES: Comments on proposal: Interested persons are invited to submit comments to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Comments should refer to the above docket number and title. A copy of each comment received will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Margaret Milner, Office of Policy, Financial Management and Administration, Room 9106, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 755-6490 (voice or TDD). (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. No person may be subjected to a penalty for failure to comply with these information

collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the Federal Register. Public reporting burden for this collection of information is estimated to include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading *Other Matters*. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., Room 10276, Washington DC 20410 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Background

Section 202 of the Housing Act of 1959 authorizes HUD to provide direct loans for the development of projects to serve elderly or handicapped families and individuals. Projects selected for section 202 loans also receive commitments for rental assistance payments under section 8 of the United States Housing Act of 1937. To improve the direct loan program and to better serve the special housing and related needs of nonelderly handicapped families and individuals, section 162 of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988) (1987 Act) amended section 202. Section 162 includes a new type of assistance payment to replace section 8 assistance payments made in connection with section 202 projects for handicapped families and individuals. This proposed rule would implement the new program.

Procedural Matters

I. Issuance of Final Rules

Section 162(e) of the 1987 Act directed HUD to publish a notice of fund availability in the Federal Register implementing the provisions of section 162 to the extent that funds are approved in an appropriations act for use for section 202 housing for handicapped families and individuals. This notice was to be published not later than 120 days following the date of the enactment of the 1987 Act (February 5, 1988). This section also directed HUD to issue such rules as may be necessary to

carry out these provisions and amendments for fiscal year 1989 and thereafter.

Since no appropriation for the new program was contained in HUD's regular appropriation for Fiscal Year 1988, HUD did not issue the described notice of fund availability. Final rules based on the proposed rule published today, however, should be effective for projects to be funded with Fiscal Year 1989 appropriations.

II. Compliance With the Federal Advisory Committee Act

Section 202(h)(3)(A), as amended by section 162, provides that in adopting standards and procedures for allocating funds and processing loans and assistance payments, HUD shall ensure adequate participation by representatives of the disability community through the provisions available under the Federal Advisory Committee Act.

Notwithstanding this statutory mandate for the participation of the disability community through the formation of an advisory committee in accordance with FACA, HUD does not believe that it is necessary to form the advisory committee prior to the issuance of this proposed rule. As noted above, HUD is also required to issue such rules as may be necessary to carry out section 162 for the 1989 fiscal year program. In order to issue such final rules in compliance with legislative review requirements under section 7(o) of the Department of Housing and Urban Development Act, HUD was required to complete the development of this proposed rule by September 1988, and will be required to issue a final rule in early 1989. In light of these deadlines, HUD did not believe that there was a sufficient amount of time to charter a committee, notify the public of the committee's meetings, and afford the members of the committee an opportunity to address the new section 202 requirements. Accordingly, this proposed rule was developed without the benefit of an advisory committee under FACA. (HUD has, however, initiated informal consultations with the members of the disability community in the preparation of this proposed rule.) HUD intends to establish and consult with an advisory committee in accordance with FACA requirements in the development of the final rule.

III. Prototype Demonstration

Section 202(h)(3)(B) of the Act provides that the Secretary may, on a demonstration basis, determine the feasibility and desirability of reducing

processing time and costs for housing for handicapped families by limiting project design to a small number of prototype designs. HUD is currently examining the feasibility of developing such a prototype program but has not, as yet, determined whether the prototype demonstration will be implemented. If HUD decides to pursue the prototype demonstration, the requirements of the program will be set forth in a separate notice. HUD encourages interested parties to address the desirability of such a prototype demonstration in their comments on this proposed rule.

Section 202 Program—Housing for Handicapped Families

I. Overview

Prior to the 1987 Act, housing for nonelderly handicapped families was assisted under section 202 of the Housing Act of 1959 and section 8 of the United States Housing Act of 1937. Because the section 202/8 housing program was designed and implemented primarily to assist in the development and operation of multifamily rental projects for elderly families, Congress found that the program was often inappropriate for dealing with the specialized needs of physically impaired, developmentally disabled, and chronically mentally ill people, and was often more expensive than necessary, thereby reducing the number of families that could be assisted with available funds.

To make the section 202 program more efficient and less costly, section 162 of the Act provides for the adoption of standards and procedures applicable only to housing for handicapped families. Such standards and procedures are intended to: (1) Eliminate cost containment procedures that do not adequately reflect the necessity for building designs to meet the needs of the residents, and do not recognize State and local standards for the operation of the homes; (2) eliminate procedures and requirements that are time consuming and unnecessarily costly and that prevent the development of section 202 housing for handicapped families in some areas; (3) substitute a more appropriate subsidy method for the section 8 housing assistance payment; (4) increase the emphasis on supportive services and greater use of State and local funds; (5) provide an improved program of section 202 housing for handicapped families that will assist in providing shelter and supportive services for mentally ill persons that would otherwise be homeless. (See section 162(a)(1).)

While the proposed rule adopts many of the same standards and procedures currently employed in the section 202/8 program, the rule includes several major changes to these procedures designed to serve the cited purposes. These include:

- Allocation procedures that provide greater flexibility with regard to the selection of allocation areas and that eliminate requirements that a specified percentage of funds be available for use in nonmetropolitan areas.
- Provisions that eliminate the time consuming, costly and potentially unnecessary requirement that each Sponsor form a Borrower corporation before the application for fund reservation is submitted.
- Elimination of the limit on the number of units for which a Sponsor may apply.
- Revised requirements that provide for the timely development of projects by encouraging Sponsors and Borrowers to submit site information expeditiously.
- Requirements that increase the emphasis of the program on supportive services and the greater use of State and local funds.
- Cost containment procedures that rely on a limited number of cost containment and modest design requirements, and eliminate the need for detailed cost containment reviews.
- Minimum design standards that increase project design flexibility.
- Maximum loan amounts that are based on total development costs and on unit cost limits developed separately for group homes and independent living complexes.
- Operating cost budgets that are based on the reasonable and necessary cost of operating the project rather than the amount supportable within the Fair Market Rent limits.
- Provisions that encourage acquisition as a development method for group homes by allowing the same funding levels for acquisition as for new construction or substantial rehabilitation.
- Construction contracting provisions that eliminate competitive bid requirements.

II. Applicability

The proposed rule would revise § 885.1 ("Purposes and policy") to add a new paragraph (c) addressing the applicability of the various subparts of Part 885. Paragraph (c)(1) would provide that existing Subparts B through D would apply to projects for the elderly or handicapped that receive loans under section 202 of the Housing Act of 1959

and housing assistance payments under section 8 of the United States Housing Act. This paragraph would also implement the requirements of section 162(d) of the 1987 Act ("Termination of Section 8 Assistance") which provides that "on and after the first date that amounts approved in an appropriations Act for any fiscal year become available for contracts under section 202(h)(4)(A) * * * no project for handicapped (primarily nonelderly) families approved for such fiscal year pursuant to section 202 * * * shall be provided assistance payments under section 8 of the United States Housing Act of 1937, except pursuant to a reservation for a contract to make such assistance payments that was made before that date."

Section 885.1(c)(2) would state that Subpart G applies to projects for handicapped families receiving loans under section 202 and project assistance under section 202(h) of the Housing Act of 1959. In accordance with section 162(f) of the 1987 Act, this proposed paragraph would also provide that Subpart G may apply to a project that received a reservation of loan authority under section 202 of the Housing Act of 1959 and a reservation of contract authority under section 8 of the United States Housing Act of 1937 under Subparts B through D, under the circumstances described in § 885.775. Under § 885.775, a Sponsor or Borrower of such a project may, at any time before initial loan closing, request HUD to substitute project assistance payments under Subpart G for the section 8 housing assistance payments. After HUD completes its selections for funding in a fiscal year and to the extent that funds are available for the substitution, HUD may approve such a request if: (1) The project is eligible for assistance under Subpart G; and (2) the project is financially infeasible with contract rents limited by the section 8 Fair Market Rents, or the substitution would otherwise facilitate the development of the project in a timely manner.

III. Application Procedures

A. Allocation of Authority

1. *Allocation of funds.* Section 213(d) of the Housing and Community Development Act of 1974 sets forth the requirements for the allocation of funds under various HUD programs, including the Section 202 program. Under this statute, section 202 funds are currently allocated in the following manner. Up to 15 percent of the total available funds are retained in the Headquarters Reserve for subsequent allocation to

specific areas meeting stated statutory requirements. The remaining funds, less an estimated amount for amendments, are allocated to each field office on the basis of a "fair share" distribution. The fair share distribution is based on a formula which considers the following elements: Number of total elderly renter households; number of elderly renter households with incomes at or below the very low-income limits and with specified housing deficiencies; and number of handicapped individuals as determined from census data on the disabled. From 20 to 25 percent of the available funds are allocated to nonmetropolitan areas to meet rural housing needs. Amounts allocated to a State cannot be reallocated for use in another State unless the Secretary determines that other areas in the State cannot utilize the amounts within the same fiscal year. See Section 202 Loans for Housing for the Elderly or Handicapped—Announcement of Fund Availability Fiscal Year 1988, published April 13, 1988 (53 FR 12270) and Notice H 88-11—Fiscal Year 1988 Policy for Loan Authority Assignments for the Section 202 Direct Loan Program.

Section 202(h)(3)(A) (added by section 162 of the 1987 Act) provides that in allocating funds for loans and assistance payments for the program of housing for handicapped families, "the Secretary shall adopt such distinct standards and procedures as the Secretary deems appropriate due to the differences between housing for handicapped families and other housing assisted under this section." HUD believes that this section provides the Secretary with discretion to establish procedures for housing for handicapped families that vary from the allocation requirements otherwise required for the section 202 program under section 213 of the Housing and Community Development Act of 1974. Accordingly, HUD intends to use allocation procedures for the section 202 program for handicapped families that differ in two significant respects from the allocation procedures used in the current section 202 program.

First, HUD believes that field office allocations for the section 202 program for handicapped families may not always be practicable and may result in such small dollar allocations in many field offices that feasible projects could not be developed. Accordingly, the proposed rule permits HUD, based on the amount of loan authority available during a fiscal year and the number of feasible projects that the loan authority will support, to allocate to various sized allocation areas. (Given the anticipated funding levels, HUD currently plans to

make allocations on a regional basis for fiscal year 1989.)

Second, HUD does *not* intend to allocate from 20 to 25 percent of the available funds for section 202 housing for handicapped families for use in nonmetropolitan areas. The emphasis of the new program primarily is on the range of services provided to the handicapped families, the opportunities for independent living and participation in normal activities, and access by handicapped families to the community at large and to employment opportunities. HUD believes that it is in the best interest of the program to fund the highest ranked applications serving these goals, regardless of whether the location of the project is in a nonmetropolitan or metropolitan area. Accordingly, the proposed rule would not include a nonmetropolitan allocation requirement. Funds available for housing for the elderly under the section 202/8 program, however, would continue to be subject to the nonmetropolitan allocation. In computing the amount of the nonmetropolitan allocation for elderly housing, the 20 to 25 percent factor will be applied against the amount of section 202 funds available for housing for the elderly rather than the total amount of section 202 funds available.

In accordance with this discussion on allocations:

- Section 885.700(a) of the proposed rule states that up to 15 percent of the section 202 loan authority made available for the development costs of housing for handicapped families may be retained by the Assistant Secretary for subsequent allocation to specific areas and communities under the Headquarters Reserve.
- Paragraph (b) would provide that the Assistant Secretary will allocate the amounts available for development costs of housing for handicapped families (less any amounts made available for amendments and for the Headquarters Reserve) to the allocation areas. The size of the allocation area will depend on the amount of loan authority available for allocation and the number of feasible applications that the authority will support. The allocation of loan authority to the allocation areas would be based on a formula that weighs the relative needs of the areas as reflected in available data on the number of handicapped persons in the area from Census data. This data will be adjusted to take into consideration the relative differences between the areas in the costs of providing housing. Funds allocated to one area

would be reallocated to another area if the amount of loan authority allocated to the area exceeds the amount necessary to fund all approvable applications for housing for handicapped families in that area.

2. *Availability of loan authority for housing for the elderly.* Section 202(h)(1) of the Act provides that if the amount required for any fiscal year for approvable applications for loans for housing for handicapped families is less than the amount available, the balance shall be made available for loans under other provisions of section 202. In accordance with this statutory requirement, § 885.700(c) would provide that unneeded funds made available for the development costs of housing for handicapped families under subpart G may be made available for housing for the elderly to the extent that housing assistance under section 8 of the United States Housing Act of 1937 is available in connection with such loan authority.

B. Announcement of Fund Availability and Invitations for Applications

Section 885.705 would require HUD to publish an announcement of fund availability in the *Federal Register* for this program in addition to the announcement published for the section 202/8 program for housing for the elderly, and would require each field office to publish an invitation for applications for section 202 fund reservations in newspapers of general circulation serving the field office jurisdiction. The notice will also announce the schedule for workshops where applicants may receive further instruction on preparing applications.

C. Application Contents

Applications for section 202 loan reservations for housing for handicapped families are addressed in § 885.710. The proposed rule would generally reflect the related requirements used in the section 202/8 program (see § 885.210), with adjustments to reflect the needs of handicapped families. The major changes are summarized below.

1. *Borrower formation.* The related regulations for the section 202/8 program require the Borrower to be in existence when the application for the section 202 fund reservation is submitted and the application to include specific information concerning the Borrower. Because the formation of a Borrower may be time consuming, costly, and unnecessary if the application is not selected for funding, the proposed rule for section 202 housing for handicapped families would

allow the Sponsor to delay the formation of the Borrower until after HUD's issuance of a fund reservation. A similar procedure was followed in Fiscal Years 1986 and 1988 for the section 202/8 program. (Section 202 Loans for Housing for the Elderly or Handicapped; Announcements of Fund Availability—Fiscal Year 1986, published June 20, 1986 (51 FR 22568), and Fiscal Year 1988, published April 13, 1988 (53 FR 12270)).

To incorporate these changes, the proposed rule would impose all application submission requirements on the Sponsor, and would require the Sponsor to provide satisfactory evidence in the application that it will form a Borrower, cause the Borrower to file a request for determination of eligibility and request for direct loan processing under § 885.800, and provide sufficient resources to the Borrower to ensure the establishment and long-term operation of the project. (See § 885.710(b)(12)(iii)). The proposed rule at § 885.750 (review of applications for fund reservation) would provide that HUD will review and rate applications based on the experience and financial ability of the Sponsor, rather than the Borrower.

The proposed rule would require the submission of all information concerning the eligibility of the Borrower with the request for determination of Borrower eligibility under § 885.800. Section 885.800(b) would require the Borrower to submit evidence concerning its identity; organization; corporate purposes; legal authority; financial capacity; and tax exempt status; and the identity of the Borrower's officers and directors, their past participation in HUD programs, and their certifications as to the absence of conflicts of interest. The Borrower would also be required to demonstrate that the Sponsor has fulfilled its commitment to provide certain resources (see proposed § 885.710(b)(12)(iii)). Additionally, if housing consultant services have been used by the Sponsor, the Borrower would be required to execute the consultant contract, and to submit the contract to HUD with the request for determination of Borrower eligibility.

2. Site information. Under the related section 202/8 program, applications involving projects for handicapped families are required to identify the locality in which the proposed project will be developed. Such projects are reviewed, rated and ranked without the site information.

HUD has revised these procedures slightly for section 202 housing for handicapped families in order to expedite development of such projects. For example, HUD would encourage

applicants to submit site information at the application for fund reservation stage by permitting the assignment of additional rating points in the selection process to applications that include satisfactory evidence of an approvable site (see § 885.750(c)(2)). (Such applicants, however, would not be penalized in the selection process if HUD finds that the site is not approvable.) Further, if an application is selected and the Sponsor has not submitted site information by the date of issuance of the notice of fund reservation, the notice would specify a deadline (generally not more than 60 days from the date of issuance of the notice of fund reservation) for the submission of the site information (see § 885.755(a)(5)).

Section 885.780 (discussed at section VI.A. below) describes the site specific information that must be submitted before the request for conditional commitment and describes HUD's review of proposed sites. Section 885.800 (discussed at section VI.B., below) describes the site information that must be submitted with the request for conditional commitment.

3. Other application requirements. Other application requirements for section 202 housing for handicapped families that do not reflect the related section 202/8 program requirements include the following:

a. Anticipated occupancy. Section 885.710(b)(5) provides that the Sponsor must submit a narrative description that includes proposed project requirements that limit occupancy to chronically mentally ill, developmentally disabled or physically handicapped residents and must demonstrate a capacity to serve the proposed occupancy group or groups. The Sponsor must also demonstrate that the proposal does not conflict with State or local plans and policies governing the development and operation of facilities to serve handicapped persons meeting the proposed project occupancy requirements, including policies and plans involving State funding for and support of supportive services and facilities for handicapped individuals.

b. Supportive service plan description. Section 162(c) of the 1987 Act amended section 202(f) to add requirements for the submission of a supportive service plan description. Section 885.710(b)(6) of the proposed rule implements these requirements. It provides that the supportive service plan must include:

—A description of the category or categories, by disability type, of families the housing and facilities are intended to serve.

—A description of the range of necessary services to be provided to the families occupying the housing, including: the names of the agency or agencies that will be responsible for providing the supportive services and, if an agency is not the Sponsor, a letter of intent from the agency including its willingness and ability to provide the services; the manner in which the services will be provided to the families; the services that will be provided on- and off-site; and a staffing plan indicating the residential supervision, if any, and other staff necessary to provide the proposed supportive services.

—Identification of all funding sources for supportive services that will be provided for compensation, including State and local funds available to assist in the provision of services; and evidence of commitment to provide supportive services from those agencies that will provide supportive services without compensation.

HUD believes that its implementation of the supportive service plan requirements for section 202 housing for handicapped families will serve the statutory goals of increasing the emphasis of the program on supportive services and making greater use of State and local funds.

c. Unmet needs. At proposed § 885.710(b)(7), HUD has included a requirement for the submission of evidence demonstrating that there is effective demand for the proposed housing in the areas to be served by the project and that the need is likely to continue for the term of the project.

d. Conflict of interest certification. Related section 202/8 program requirements (§ 885.210(b)(12)) call for a certification from each officer and director of the Borrower and Sponsor indicating that he or she will not receive compensation from the Borrower for services, and does not have any financial interest in any contract with the Borrower or in any firm or corporation that has a contract with the Borrower. This certification is required as part of the application. Notice H87-9 (extended by Notice H 88-9) permitted the Sponsor to defer the submission of these certifications. In lieu of certification, the application must include a resolution adopted by the Sponsor's board of directors agreeing that the Sponsor will require all officers and directors of the Sponsor and Borrower to execute conflict of interest certifications. The proposed rule would codify that procedure at § 885.710(b)(11).

Board member and officer certifications would be submitted with

the Borrower's request for direct loan financing, and at initial and final loan closing for any new officers and directors of the Borrower or Sponsor not included in a previous certification. The contents of the certification would be the same as those required under the related section 202/8 program regulations. A provision reflecting the fact that management contracts between the Borrower and the Sponsor (or the Sponsor's nonprofit affiliate) are not prohibited would be included at § 885.800(b). This provision is included in the definition of "Sponsor" in the current program regulation.

e. *Evidence of nonprofit status.* In order to determine whether the Borrower and Sponsor are eligible for participation in the section 202 program, the proposed regulation would require the Borrower and Sponsor to provide evidence of their nonprofit status. Section § 885.710(b)(12)(ii) would require a Sponsor to demonstrate that (1) It has an effective tax exemption from the Internal Revenue Service; (2) is a nonprofit organization organized in the Commonwealth of Puerto Rico; or (3) is a nonprofit consumer cooperative that is exempt from taxation under State law, has never been liable for the payment of Federal income taxes, and does not pay patronage dividends.

Consistent with the new provisions permitting deferral of formation of the Borrower, the proposed rule would require a Borrower to submit evidence of its nonprofit status when it submits the request for determination of Borrower eligibility. (See proposed § 885.800(b).) The proposed rule would permit the Borrower to demonstrate that it has *applied* for (rather than received) an income tax exemption under section 501(c) (3) or (4) before the request for determination of Borrower eligibility is filed. The tax exemption ruling, however, must be submitted before initial closing as required under § 885.815(c).

f. *Experience of the Sponsor, including experience with minority business enterprises.* Consistent with the Department's commitment to encourage participation by minority business enterprises in HUD programs, under proposed § 885.710(b)(15) a Sponsor would be required to include a description of its involvement in programs or in the provision of services that demonstrate the Sponsor's management experience, including a description of the Sponsor's experience, in contracting with minority business enterprises or minority groups.

g. *Financial data.* To assist the Department in determining the financial capabilities of applicants for section 202

fund reservations, proposed § 885.710(b)(19) would require the submission of evidence of the Sponsor's financial ability and willingness to ensure the establishment and long-term operation of the project and to fund the minimum capital investment described at § 885.810(i), including balance sheets and statements of income and expenses for the past three years the Sponsor has operated.

h. *Intergovernmental review.* The proposed rule would also modify HUD's procedures for compliance with Executive Order No. 12372, Intergovernmental Review of Federal Programs. The related section 202/8 regulations state that HUD will submit, or require the applicant to submit, the application to the State's single point of contact (SPOC) for review under 24 CFR Part 52. The proposed rule for section 202 housing for handicapped families would require the Sponsor, rather than HUD, to submit the application to the SPOC. HUD believes that this change will expedite the intergovernmental review process. These changes are incorporated in proposed § 885.710(b)(21).

i. *Intermediate care facilities serving the mentally retarded or developmentally disabled.* To ensure that intermediate care facilities are eligible for assistance and will be feasible, the proposed rule at § 885.710(b)(4) would require Sponsors of such projects to demonstrate that the proposed project will primarily provide housing rather than medical facilities, is or will be licensed by appropriate State agencies, and will receive funding for a rent contribution and the cost of intermediate care from sources other than HUD.

IV. Program Requirements

A. Minimum Design Standards

One of the major problems preventing the development of housing for handicapped families under the section 202/8 program was the requirement that HUD conduct a detailed cost containment review of all projects. This cost containment review was conducted even where a project fell within applicable limitations on loan amounts. These detailed reviews often delayed the construction of housing for handicapped families and, in many cases, unduly limited the flexibility of the project design.

To remedy this problem, the proposed program would eliminate HUD's detailed cost containment reviews. Cost containment would be achieved through the establishment of development cost limits for projects and the application of

certain cost containment and modest design standards applicable to all projects. These standards identify specific items that HUD will not ordinarily fund with direct loan proceeds. HUD's cost containment review under the proposed rule would be limited to determining whether the project falls within the development cost limits and meets the specified cost containment and modest design standards.

At the same time, to assure that projects provide an acceptable environment for handicapped residents, minimum standards for all projects would be established. These include minimum property standards, accessibility requirements, project size limitations, facility prohibitions, etc. These minimum standards would give Borrowers the flexibility to design projects appropriate to their location and occupancy group within broadly defined parameters.

The applicable minimum design standards and cost containment and modest design standards are discussed below. The maximum development cost limits are discussed at section VI.D., below.

1. *Project standards.* Section 885.717 addresses project standards. The rule would require all projects to comply with HUD's minimum property standards; would prescribe accessibility requirements for all projects; and would announce minimum design requirements applicable to group homes. The group home design requirements address such matters as the minimum amount of prorated space for each resident, minimum space per resident in shared bedrooms and single occupancy rooms, and bathroom requirements. These standards are based upon HUD's experience with the development of group homes under the section 202/8 program, a review of available publications and a survey of group home standards established by 22 States and submitted to the Department of Health and Human Services in connection with their implementation of the Keyes Amendment to the Social Security Act of 1976.

2. *Project size limitations.* The proposed rule would include limitations on project size at § 885.720. With the exception of the limitation on the number of residents in independent living complexes for developmentally disabled or physically handicapped individuals—which has been reduced from 40 to 24 units, the proposed limitations have regularly been incorporated in past years' announcements of fund availability for

the section 202/8 program (see 1987 NOFA). The limitations reflect HUD's policy of encouraging housing that provides for the integration of the nonelderly handicapped in the community among the nonhandicapped of all ages.

The proposed rule would impose the following limitations: (1) Group homes may not serve more than 15 persons on one site; (2) independent living complexes for chronically mentally ill individuals may not serve more than 20 persons on one site; and (3) independent living complexes for handicapped families in developmentally disabled or physically handicapped occupancy categories may not have more than 24 units on one site. As a related matter, the proposed rule would also add definitions of group home (*i.e.*, a single family residential structure designed or adapted for occupancy by nonelderly handicapped individuals) and for independent living complex (*i.e.*, a project designed for occupancy by nonelderly handicapped families in separate dwelling units where each dwelling unit includes a kitchen and a bath).

Additionally, under the proposed rule HUD may establish a smaller number of units or residents as a maximum that may be proposed under an application. The limitation would vary from year to year and would be based on the amount of loan fund authority appropriated for the fiscal year. The purpose of this requirement is to permit HUD to provide an equitable distribution of the limited number of units that may be funded each year. The annual announcement of fund availability issued under § 885.705 would announce this limitation.

3. *Cost containment and modest design standards.* The proposed rule would address cost containment and modest design standards at § 885.725. In general, this provision codifies basic requirements that have been imposed upon section 202/8 applicants in past years. Some of the requirements reflect statutory provisions that were added by the Housing and Urban Rural Recovery Act of 1983 (1983 Act). The requirements are discussed below.

a. *Restrictions on amenities.* Proposed § 885.725(a) contains the general requirement that housing assisted under Subpart G must be modest in design and that amenities must be limited to those amenities, as determined by HUD, that are generally provided in unassisted decent, safe, and sanitary housing for lower income families in the market area. The proposed section lists specific prohibited amenities. (The list is based on HUD Handbook 4571.1 REV-2, Paragraph 1-5h.)

b. *Unit sizes.* Proposed § 885.725(b) states that HUD will establish limitations on the size of units (*i.e.*, floor space) and the number of bathrooms that may be included in various sizes of units in independent living complexes. HUD intends to continue applying the standards currently in effect (*e.g.*, 415 square feet of rentable space and one bathroom in a 0-bedroom unit; 1,150 square feet and two bathrooms in a 4-bedroom unit). (These standards are published in Handbook 4571-1 Rev. 2.)

c. *Special spaces and accommodations.* Section 885.725(c) would limit the costs of construction of special spaces and accommodations to ten percent of the total cost of construction. This section would also list the spaces and accommodations that are subject to this limitation. These limitations are based on requirements that have been imposed in recent announcements of fund availability and in the section 202 handbook.

d. *Exceptions.* Section 202(m), as added by the 1983 Act, provides:

Nothing in this section authorizes the Secretary to prohibit any Sponsor from voluntarily providing funds from other sources for amenities and other features of appropriate design and construction suitable for inclusion in such project if the cost of such amenities is (1) not financed by the loan and (2) not taken into account in determining the amount of Federal subsidy or of the rent contribution of tenants.

Proposed § 885.725(d)(1) would implement section 202(m). Under this section, HUD would approve projects with amenities and features that do not comply with HUD's cost containment and modest design standards. Such projects will be approved if the Sponsor demonstrates that it is willing and able to contribute the incremental development cost and operating costs associated with the nonconforming items. To ensure that the additional costs are not included in the loan amount or taken into account when determining the amount of the Federal subsidy or the rent contribution of the tenants, a mortgage amount limitation would be added at § 885.810(b). The limitation would restrict the amount of loan financing to the total development cost, less the incremental development cost and capitalized incremental operating costs associated with additional amenities and design features approved by HUD under § 885.725(d)(1).

Proposed § 885.725(d)(2) would provide an additional exception to the cost containment and modest design standards if: The proposed project involves substantial rehabilitation or acquisition with or without moderate rehabilitation; the additional amenities

or design features were incorporated into the existing structure before the submission of the application; and the total development cost of the project with the additional amenities or design features does not exceed the cost limits described in § 885.810.

4. *Prohibited facilities.* Section 885.727 would list the facilities that are prohibited in all projects in order to assure that the residential nature of the housing is maintained. These include commercial spaces, infirmaries, nursing stations, spaces dedicated to the delivery of medical treatment or physical therapy, padded rooms, or space for respite care or sheltered workshops. The project facilities may not include office space, except for that to be used exclusively for project administration.

B. Other Program Requirements

1. *Site and neighborhood standards.* The proposed rule at § 885.730(a) would state that site and neighborhood standards contained in § 885.206 (a)-(h) and (j) (new construction projects) or § 881.206 (a)-(g) and (i) (rehabilitation projects) apply to projects under Subpart G. These site and neighborhood standards are currently applied to section 202 housing developed under Subparts B through D.

The proposed rule would also require that all projects must be located in neighborhoods where other family housing is located. Projects may not be located adjacent to certain facilities (schools or day care centers for handicapped persons, workshops, medical facilities or other housing primarily serving handicapped individuals) or in areas where such facilities are concentrated. Projects would, however, be permitted to be located adjacent to other housing primarily serving handicapped persons if the projects together do not exceed the project size limitations of § 885.720(a).

2. *Prohibited relationships.* The existing regulations under Subparts B through D contain several provisions addressing conflicts of interest and other impermissible relationships. The proposed rule would consolidate, in § 885.735, prohibitions currently contained in the definitions of Borrower and Sponsor in § 885.5 that state that no officer, director, trustee, member, shareholder or authorized representative of the Borrower or officer or director of the Sponsor is permitted to have a financial interest in described contracts; state that no part of the net earnings of the Sponsor or Borrower may inure to the benefit of any private shareholder, contributor, or individual;

and state that the Borrower and the Sponsor may not be under the direction or control of persons or entities seeking to derive profit or gain from the Borrower or Sponsor.

Proposed § 885.735(d) would contain new prohibition stating that a person or an entity (including an affiliated entity) may not provide services to a project in more than one of the following capacities: Attorney, architect, contractor, housing consultant, management agent or seller of the site for the project. The provision, however, would permit a person or an entity to serve as both the management agent and the housing consultant.

3. *Other Federal requirements.* Section 885.740 of the proposed rule would consolidate references to nondiscrimination and equal opportunity requirements, environmental requirements, requirements regarding flood areas and flood insurance, labor standards, relocation assistance requirements, lead-based paint, and requirements for intergovernmental review. As required under section 162(b)(3) of the Act, the applicability of the Davis-Bacon provisions has been limited to projects designed for dwelling use by 12 or more families.

The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-48) (LBPPP Act) does not apply to housing for handicapped families *except* for any dwelling (other than a zero-bedroom dwelling unit) in such housing which was constructed or substantially rehabilitated before 1978 and in which any child who is less than seven years of age resides or is expected to reside. Since handicapped families with children may reside in projects assisted under Subpart G, and since projects other than new construction may involve housing constructed or substantially rehabilitated before 1978, the proposed rule provides that the requirements of the LBPPP Act and HUD's implementing regulations at 24 CFR Part 35 apply to covered dwellings.

In accordance with 24 CFR 35.24(b)(4), the proposed rule imposes procedures for the elimination of lead-based paint hazards that supersede the requirements of 24 CFR Part 35, Subpart C. These requirements reflect the Section 8 Existing Housing regulations (24 CFR 882.109) published in the Federal Register on January 15, 1987, (52 FR 1876, 1893-94), as amended on June 8, 1988 (53 FR 20790). The rule includes: Requirements for initial inspections of buildings constructed before 1978; abatement of defective paint on applicable surfaces; testing for lead-based paint on chewable surfaces where

the structure is occupied by a child under the age of seven who has an elevated blood level; tenant protection during abatement; and recordkeeping requirements.

V. Selection of Applications

A. Review of Applications for Fund Reservation

Section 885.750 would describe the process for the review and selection of applications for fund reservation. Under the proposed process there would no longer be an initial screening of applications. Each of the steps of the process are discussed below.

1. *Preliminary evaluation.* The provisions governing the preliminary evaluation of applications are set forth in proposed § 885.750(a). Initially, HUD would determine if the application was received at the appropriate address and within the time period specified in the invitation, and is complete. Under the section 202/8 regulations (§ 885.220(b)), applicants submitting incomplete applications are given 10 days to provide additional information. While HUD will continue a policy of requesting clarifications from Sponsors when needed to evaluate the application, the Department believes that it is inappropriate to provide Sponsors with an opportunity following the submission of the application to add missing documents to the application or otherwise to overcome defects in the original submission.

Under the preliminary review, HUD would also screen each application to determine if it meets the following minimum eligibility requirements:

—The Sponsor must be eligible to participate in the program.

—The proposed facilities and proposed occupancy requirements must be eligible under the program.

—The application must include a supportive services plan meeting the requirements set forth in § 885.710(b)(6).

HUD would notify Sponsors of unapprovable applications following the preliminary evaluation of all applications.

2. *Technical review processing.* Following preliminary review, HUD would perform a technical review of each application that is found to be acceptable under the preliminary review. HUD would review each application to determine whether:

—The Sponsor demonstrated financial and management capability to carry the project through to completion.

—The Sponsor has previous experience in the development or operation of housing, medical, or other facilities, or experience in the provision

of services to handicapped individuals meeting the project occupancy requirements.

—The Sponsor has made a commitment and will be able to provide preliminary development costs and the minimum capital investment.

—The application demonstrates that the proposed housing is appropriate for handicapped individuals meeting the project occupancy requirements, and indicates that the project is likely to comply with applicable project standards, project size limitations, modest design and cost containment requirements, and facility prohibitions.

—The locality (or the site, if the Sponsor submitted site specific evidence) is likely to meet the site and neighborhood standards. If the Sponsor submits site specific information with its application, HUD would determine if the site is acceptable under § 885.780 (see discussion below). If HUD determines the site is unacceptable, however, the application would be processed as if no site specific information was submitted.

—The Sponsor has submitted a service plan description that is directed to the needs of handicapped individuals meeting the project occupancy requirements, and that demonstrates the Sponsor's ability to provide or assure the provision of supportive services to such individuals. In reviewing the service plan description, HUD will invite comments from State agencies serving the proposed occupancy group.

—The proposed project does not conflict with State or local plans and policies governing the development and operation of facilities to serve handicapped individuals.

—There is evidence of effective demand for the proposed project.

—The Sponsor is in compliance with nondiscrimination and equal opportunity requirements.

—The application is otherwise responsive to the invitation for applications and the requirements of Part 885.

During technical review processing, HUD would also review any comments received from the State single point of contact and determine if the proposed project is located in a locality that is acceptable under flood hazard and flood insurance requirements.

3. *Ranking.* Section 885.750(c) of the proposed rule provides that HUD will assign a rating to each application that is found to be approvable following technical review and would rank all applications in order of their assigned ratings within each allocation area.

In assigning rating points, HUD would assess the extent to which the Sponsor

has demonstrated, relative to other proposals:

- Its capacity and commitment to assist the Borrower to carry the project through to long-term operation.

- Its ability and commitment to provide the financial resources to the Borrower to establish and ensure the long-term operation of the proposed project.

- The need in the locality for a project serving handicapped individuals meeting the proposed project occupancy requirements.

- Support for the proposed project from the local community, including State and local organizations familiar with the needs of handicapped individuals meeting the proposed project occupancy requirements.

- The Sponsor's ability to provide or facilitate the provision of proposed supportive services to handicapped individuals meeting the proposed project occupancy requirements.

HUD would also assess the degree to which the application supports minority enterprise, involves a small research or demonstration project, or provides an innovative housing program or alternative method of meeting lower income housing need.

In order to encourage applicants to obtain site control and to present site specific evidence at the earliest possible time, the proposed rule would permit HUD to assign additional rating points to applications that include satisfactory evidence of an approvable site. If HUD assigns these additional rating points, the announcement of fund availability will include the maximum number of points that will be awarded under this factor.

4. *Selection.* Following ranking, HUD would select applications in the descending order of funding priority that approximates the loan authority provided to the allocation area. If the amount of loan authority allocated to an area exceeds the amount necessary to fund all approvable applications, the Department would transfer the unused loan authority from the area to another area or area in which there is insufficient loan authority for all approvable applications.

After the selection of applications that can be funded with the allocated loan authority, HUD may select unfunded, but otherwise approvable, applications for funding from available amounts in the Headquarters Reserve. Since the special needs factors used in making selections from the Headquarters Reserve under section 213(d)(4) of the Housing and Community Development Act of 1974 include support for the needs of the handicapped, all approvable

applications would be eligible for funding from the Reserve.

Following completion of the selection process, HUD would notify the Sponsors of applications that are not approvable as a result of technical review processing and the Sponsors of applications that were approvable but were not selected for funding. The notification would be in writing and would explain the reasons for HUD's action.

B. Approval of Applications

Under § 885.755, a Sponsor whose application is approved would be issued a notice of section 202 fund reservation that states the amount of the loan reservation and the amount of project assistance reserved for the project. Under the proposed rule, the amount of the loan reservation would be based on the development cost limit computed under § 885.810(c) (see section VI.D.1., below). The amount of project assistance reserved for the project would be an amount equal to the sum of the operating cost standard applicable to the project (see section VI.B.1., below) plus the annual debt service on the amount of the section 202 loan reservation. The debt service on the amount of the loan reservation would be computed using the annual rate of interest (described under § 885.810(g)(1)) in effect on the date that the notice was issued.

The notice would also include the number and mix of units approved for an independent living complex (or number of residential spaces approved for a group home); the approved project occupancy requirements; the deadlines for Sponsor acceptance of the reservation, the submission of site information, the submission of a request for direct loan processing; and other guidance. If the Sponsor did not submit site information with the application, generally the date for submission of site information will be 60 days from the issuance of the notice of fund reservation.

Proposed § 885.755 would also address the withdrawal of the approval of the application if the Sponsor does not accept the notification by the specified date; the transfer of the fund reservation upon the formation of the Borrower; the restriction of use of the fund reservation to the approved project; and amendments of the fund reservation.

C. Duration of Section 202 Fund Reservation

1. *Extension and cancellation of fund reservation.* The duration of the initial

fund reservation under the proposed rule would be 18 months.

Under related regulations for the section 202/8 program (see § 885.230), the field office, subject to the approval of the Assistant Secretary, is permitted to cancel a fund reservation at any time if it can be established that the Borrower is not making satisfactory progress toward the start of construction, rehabilitation, or acquisition. The field office is required to cancel a fund reservation if construction is not begun within 18 months after the issuance of the fund reservation, but may extend this time period for up to six additional months.

The proposed rule for the section 202 program for housing for handicapped families adopts these cancellation provisions with one revision. HUD has found that many Borrowers are not able to start construction, rehabilitation or acquisition within the 24-month period permitted under the related regulations for reasons beyond the Department's or the Borrower's control. (For example, such activities are often delayed by litigation involving the Borrower or the Department, by local opposition to a project or by a lack of cooperation from local governments.) To ensure that such projects are not prematurely terminated, the proposed rule adds a provision permitting HUD to extend the 24 month period to up to 36 months.

2. *Notification procedures.* Section 202(n) of the Housing Act of 1959 (as added by section 161(e) of the 1987 Act) provides that the Secretary shall notify the project sponsor not less than 30 days prior to cancelling any loan authority provided under section 202. During the 30-day period following the receipt of the notice, the Sponsor is permitted to appeal the proposed cancellation of loan authority. The appeal, including review by the Secretary, must be completed not later than 45 days after the appeal is filed.

The proposed rule would add procedures for the appeal of the cancellation of loan authority at § 885.770(b). The rule would provide that if HUD determines that a fund reservation must be cancelled, the field office must mail a notice of loan cancellation to the Borrower by certified mail, return receipt requested. The notice of cancellation would describe the reasons for the cancellation of the loan authority, would advise the Borrower that it may file an appeal within 30 days of the receipt of the notice, and would state that failure to file an appeal will result in the cancellation of the fund reservation upon the expiration of the 30-day period.

If the Borrower files a timely appeal, HUD headquarters would review the appeal and would issue a decision within 45 days of the receipt of the appeal. The standard for approval of the appeal under this proposed section is the same as that prescribed for the extension of the fund reservation (*i.e.*, the Borrower must demonstrate that it is making satisfactory progress under an established timetable toward the start of construction, rehabilitation or acquisition with or without substantial rehabilitation). The rule states that HUD would provide a written notification to the Borrower of its determination on the appeal. If the appeal is granted, the notification would include the duration of the extended fund reservation.

VI. Direct Loan Processing Procedures

A. Site Approval

As discussed above, the application would identify the locality in which the proposed project will be developed. While Sponsors would be encouraged to provide site information as soon as possible and HUD may offer incentives to Sponsors that expeditiously provide such information, specific site information would not be required until after the issuance of the notice of fund reservation. Site approval must be obtained before the Borrower applies for the conditional commitment under § 885.800(c).

Section 885.780(a) prescribes the information that must be submitted for site approval, including: A map showing the location of the site and the racial composition of the neighborhood; evidence of compliance with local zoning ordinances and regulations; information concerning the displacement of site occupants; and evidence of HAP compliance. HUD would review this information to determine whether the site meets the site and neighborhood standards of § 885.730; the development of the site is permissible under applicable zoning ordinances and regulations (or will be permissible before the receipt of the commitment for direct loan financing); and the proposed relocation is feasible and necessary relocation payments will be funded from sources other than section 202 loan proceeds. In addition, HUD would forward a notification to the chief executive officer of the unit of general government for the purpose of determining whether the proposed site is approvable under section 213 of the Housing and Community Development Act of 1974, would conduct an environmental review of the site in accordance with the National Environmental Policy Act of 1969, the

related authorities cited in 24 CFR Part 50 and the Coastal Barriers Resources Act of 1982 (16 U.S.C. 3601), and would review the site to ensure that flood hazard and flood insurance requirements are met.

Following HUD's review of the site, HUD would issue a notice approving or disapproving the proposed site. If HUD determines that a site is not approvable, HUD would notify the Sponsor of the reasons for the disapproval. The Sponsor may, consistent with its application file under § 885.710, obtain a new site and resubmit a request for site approval.

B. Request for Direct Loan Processing

Following site approval, a Borrower established by the Sponsor must submit a request for direct loan processing (including the request for determination of Borrower eligibility discussed at section III.C.1., above). There are two stages to direct loan processing, the conditional commitment and the firm commitment.

1. *Conditional commitment processing.* During the conditional commitment stage, HUD would evaluate the request for determination of Borrower's eligibility, would determine the amount of the initial contract rents and any initial utility allowances to be provided in independent living complexes; would review the site and project design; would evaluate the overall financial feasibility of the project; and would review the Borrower's affirmative fair housing marketing plan.

(a) *Initial contract rents and initial utility allowances.* Under § 885.800(c)(2), the amount of the initial contract rents plus any utility allowances may not exceed the reasonable costs of operating a project plus the debt service on the amount of the section 202 loan (see section 202(h)(4)(B) of the Act).

To estimate the reasonable costs of operating a section 202 project for handicapped families, the proposed rule at § 885.807 provides for the establishment of operating cost standards. These operating cost standards would be based on the average annual operating cost of comparable housing for handicapped families in each field office jurisdiction. The operating cost standards would be developed for group homes based on the number of residents, and for independent living complexes based on the number of units. HUD would adjust the operating cost standard applicable to an approved project to reflect the additional operating costs necessary to serve handicapped individuals meeting the project occupancy requirements, and

to reflect differences in costs based upon project location within the field office jurisdiction. Operating costs included in the standard would be administrative expenses (including salary and management expenses related to the provision of shelter); maintenance expenses (including routine and minor repairs and groundskeeping); security expenses; utility expenses (excluding telephone service for families); and allowances for reserves. As required by statute, operating costs do not include the costs of providing or obtaining the provision of the assured range of services described in the supportive service description, such as expenses for administering or managing the provision of such services.

The operating cost standards are used as guidelines to evaluate the reasonableness of the proposed operating costs of the project. Operating costs for a project in excess of the operating cost standard (as adjusted) may be approved if HUD determines that the Borrower has demonstrated that the costs are reasonable and necessary costs of operating the project.

Under the proposed rule, HUD would establish utility allowances for independent living complexes if the cost of utilities (excluding telephones) and other housing services are not included in the initial contract rent. The utility allowance would be based upon the monthly cost of a reasonable consumption of 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.

The amount of the debt service would be based on the amount of the section 202 loan reservation (as computed in accordance with the development cost limits described in § 885.810(c)). The rate of interest would be the optional interest rate (if requested by the Borrower) or the annual interest rate computed under § 885.810(f).

(b) *Site and design information.* At the conditional commitment stage, HUD would establish land value, review the site to determine whether the Borrower has site control, and review the project design to determine whether it will comply with the project standards, the project size limitations, the modest design and cost containment standards, and facility prohibitions applicable to the program. To enable HUD to make these determinations, the proposed rule would require the Borrower to submit described information with the request for conditional commitment processing.

2. *Firm commitment processing.* At the firm commitment stage, HUD would review final plans and specifications, cost estimates, and HUD's findings under the conditional commitment stage. Generally, Borrowers would be required to submit a request for conditional commitment followed by a request for firm commitment. However, HUD may permit the Borrower to submit a request for firm commitment without previous conditional commitment processing (e.g., a project involving acquisition with or without rehabilitation or a construction project utilizing a design that has been previously submitted to, and approved by, HUD).

C. Approval of Requests for Direct Loan Processing

Proposed § 885.805 states that HUD would review the request for direct loan financing (including the request for Borrower eligibility) and notify the Borrower of approval or disapproval. Paragraph (a) describes the contents of the conditional commitment notification. Paragraph (b) describes the contents of the firm commitment notification.

D. Amount of Financing

Proposed § 885.810 would govern the amount of section 202 loan for housing for handicapped families. Under paragraph (a) of this section, the amount of financing approved for section 202 housing for handicapped families is limited to the lesser of the estimated development cost and the development cost limit.

1. *Development cost limitations.* Section 202(i)(1) of the Housing Act of 1959 requires HUD, in establishing per unit cost limits for the section 202 program, to take into account design features necessary to meet the needs of elderly or handicapped residents, and requires the limits to reflect the cost of providing those features. The provision also requires HUD to adjust the unit cost limits to reflect changes in the general level of construction cost.

Section 426 of the 1987 Act increased the per unit mortgage limits for HUD's multifamily mortgage insurance programs, including the limits under section 221(d)(3) of the National Housing Act. The Conference Report on the 1987 Act (H. Rep. No. 426, 100th Cong., 1st Sess. 218 (1987)) expressed the Conferees' intent that HUD "raise the mortgage limits for Section 202 projects to levels commensurate with the new limits established in [section 426(d)] for Section 221(d)(3)". On March 18, 1988 (53 FR 8874) HUD published a final rule revising the per unit loan limitations for the section 202/8 program. In making this revision the Department found that

the section 221(d)(3) per unit mortgage limits met the requirements of section 202(i)(1) of the Act.

Today's proposed rule would also establish development cost limitations for section 202 independent living complexes for handicapped families based upon the section 221(d)(3) limits. This development cost limitation would apply to the total development cost of the property or project attributable to dwelling use (less the costs associated with excess amenities and design features).

The section 221(d)(3) per unit mortgage limits upon which the development cost limits for independent living complexes are based were created to reflect the costs of multifamily projects. Group homes, on the other hand, are basically single family residential structures designed or adapted for occupancy by nonelderly handicapped individuals. Accordingly, HUD does not believe that development cost limits for such projects should be based on the multifamily project cost limits. Instead, the proposed rule provides that HUD would periodically establish cost limits for group homes by publishing a notice of the cost limits in the Federal Register. The cost limits would reflect those reasonable and necessary costs of developing a project of the size that will accommodate the specified number of residents and that would comply with HUD minimum property standards, the minimum square footage requirements, the bathroom and recreational area requirements for group homes, cost containment and modest design standards, and other design requirements applicable to group homes under Subpart G. To develop the cost limits for group homes, HUD would use commercially available cost indices and construction cost data for recently completed group homes.

The proposed rule would permit HUD to adjust the base development cost limit for independent living complexes and group homes. Adjustments include:

—The application of high cost percentages that are reviewed annually to assure that the development cost limit will reflect changes in construction costs. The high cost area adjustment is limited to an increase of 110 percent of the base unit cost in a geographic area, and an increase of 140 percent on a project-by-project basis.

—The application of additional adjustments of up to 50 percent over the high cost area adjustment in Alaska, Guam and Hawaii to reflect high construction cost in these areas.

2. *Maximum loan limit.* In addition to the development cost limits discussed above, the proposed rule would limit the

amount of the section 202 loan to the total estimated development cost of the project as determined by HUD. If the Borrower will provide excess amenities or design features under § 885.725(d)(1), the incremental development cost and capitalized operating costs associated with the excess amenities and design features would be subtracted from the total development cost.

HUD is concerned that the two limitations on the loan amount would offer Borrowers no incentive to control costs. *I.e.*, without additional requirements, Borrowers would be encouraged to incur total development costs up to the maximum development cost limit described above. Therefore the Department invites comment on ways to encourage Borrowers to contain total development costs to the maximum extent possible. For example, Sponsors might be offered bonus points on future applications when a project is developed for less than the applicable development cost limit. Another alternative might be to permit Borrowers to retain in a development contingency account some portion of the savings when the total development cost is less than the development cost limit. Such funds could be used only for eligible development purposes as determined by HUD. (These purposes could include such items as the cost of movables necessary to the basic operation of the project.)

3. *Rehabilitation projects and leaseholds.* The proposed rule would also include limitations on the loan amount for rehabilitation projects and loans secured by a leasehold estate that reflect requirements contained in the related section 202/8 program.

E. Terms of the Loan

1. *Loan interest rate.* In addition to provisions addressing housing for handicapped families, the 1987 Act revised the formula for the calculation of the section 202 loan interest rate, set a ceiling of 9.25 percent on all section 202 loans, and provided the Borrower with an option to have loan interest rate calculations based on the date that the request for conditional or firm commitment is submitted, rather than on the date that the loan is made. (See section 161 of the 1987 Act.) On June 1, 1988 (53 FR 19899) HUD published an interim rule in FR-2477 which amended the section 202/8 program to incorporate the interest rate provisions. These same provisions are incorporated in the proposed rule at § 885.810(f) and (g). (Miscellaneous loan interest rate provisions are also contained in § 885.800 and 885.805.)

2. *Miscellaneous.* The proposed rule at § 885.810 (h) and (i) would adopt the provisions for security for loans and minimum capital investment currently contained in the related section 202/8 program at § 885.410 (i) and (j).

F. Other Direct Loan Processing Procedures

Subpart G would contain provisions governing: Prepayment of loans and the assignment or transfer of physical or financial assets (§ 885.812), requirements prior to initial loan closing (§ 885.815), requirements for awarding construction contracts (§ 885.816), loan disbursement procedures (§ 885.820) and completion of project certification (§ 885.825). These provisions would reflect similar provisions governing the related section 202/8 program with the modifications discussed below:

1. *Requirements for initial loan closing.* Proposed § 885.815 would prescribe the same requirements for initial loan closing as required under the section 202/8 program (see § 885.415), except that the contractor and subcontractor certifications concerning labor standards (paragraph (p)) have been deleted since these forms, formerly used in initial closing, have been eliminated.

2. *Requirements for the award of construction contracts.* Under the section 202/8 program, Borrowers are required to use competitive bidding (formal advertising) in selecting a construction contractor unless the development cost of the project is less than \$2,000,000, the project rents fall within certain limits, or the Sponsor is a labor organization.

Based on its experience under the section 202/8 program, HUD has found that the development of smaller projects, including group homes and independent living complexes, is more economical and expeditious if negotiated, noncompetitive contracts are allowed for the selection of the contractor. Such contractors are more likely to be involved in the development of the project in its early stages and, thus, are more likely to develop an efficient working relationship with all members of the development team and to have a greater knowledge of project design, which enables them to make accurate construction cost estimates. Based on HUD's experience, proposed § 885.816 would permit negotiated, noncompetitive construction contracts for all section 202 projects for handicapped families.

3. *Completion of cost certification.* Section 885.825 contains the requirements for final disbursement of the loan. This proposed section

substantially reflects the related section 202/8 program requirements contained in § 885.415, except for simplified cost certification provisions. Under the proposed rule, HUD would not offer the simplified cost certification procedure for projects with mortgages of \$500,000 or less. However, HUD would not require the Borrower's certification of actual cost to be verified by an independent public accountant for projects with mortgages of \$750,000 or less. HUD believes that this procedure will expedite the processing of final requisitions for disbursement of loan proceeds by using uniform procedures on all loans, and at the same time would save Borrowers the cost of obtaining a verification by an independent public accountant.

VII. Project Assistant Contract and Project Management

Section 162 of the 1987 Act substituted new subsidy payments for the section 8 housing assistance payments that were provided in connection with housing for handicapped families under the section 202 program. HUD is proposing regulations governing the project assistance contract and management requirements that are based, to the maximum extent possible, on the section 8 requirements currently applicable to section 202/8 projects. HUD believes that this approach is appropriate because: (1) The statute requires the continued use of income eligibility and tenant rent calculations that are in effect in the section 8 program; (2) many Sponsors and Borrowers are familiar with section 8 requirements; and (3) HUD would like to maintain uniformity in assisted housing programs as much as possible, allowing programmatic differences only based on statutory requirements and on the needs of the handicapped populations served. HUD believes that issues of tenant and management rights and responsibilities and similar cross-cutting aspects should be based on consistent rules in all programs that provide rental assistance.

Existing Part 885 does not contain regulations governing project management or the HAP contract. However, regulations codifying existing contract and management requirements imposed on section 202/8 projects were proposed in FR-1761 on December 9, 1987 (52 FR 46614). Those proposed rules were based upon the contract and management regulations for section 8 projects involving new construction (24 CFR Part 880) and substantial rehabilitation (24 CFR Part 881). A final rule is pending in FR-1761. To the maximum extent possible, HUD has used the proposed regulations in FR-

1761 as the basis for the regulations for housing for handicapped families. The section-by-section discussion below addresses the major provisions of the proposal.

A. Project Assistance Contract (PAC) (Sections 885.900 through 885.930)

1. *PAC (Section 885.900).* Section 885.900 would provide a general description of the PAC including provisions governing contract execution, effective date, project assistance payments, and utility allowance payments.

2. *Term of PAC (Section 885.905).* Section 202(h)(4)(A) provides that the term of the contract for assistance shall be 240 months. Accordingly, § 885.905 would limit the term of the PAC to 20 years. If the project is completed in stages, the term of the PAC for all stages of a project may not exceed 22 years.

3. *Maximum annual commitment and project account (Section 885.910).* Section 885.910 would govern the maximum annual commitment under the PAC, and the establishment and maintenance of a project account. In accordance with section 202(h)(4)(A), this proposed rule would provide that the annual contract amount for any project shall not exceed the total of the initial contract rents and utility allowances for all assisted units in the project.

To ensure that any contract amounts not used by a project in any year shall remain available to the project until the expiration of the contract, as required under the statute, § 885.910(b)(1) would require HUD to maintain a project account established out of the amounts by which the maximum annual commitment exceeds the amount actually paid out under the PAC each year. The statute permits the Secretary to adjust the annual contract amount if the sum of the project income and the amount of assistance payments are inadequate to provide for reasonable project costs. In accordance with these provisions, § 885.910(b)(2) provides "if the HUD-approved estimate of required annual payments under the contract for a fiscal year exceeds the maximum annual commitment for that fiscal year plus the current balance in the project account, HUD will within a reasonable time, take such steps authorized by section 202(h)(4)(A) as may be necessary to assure that payments under the PAC will be adequate to cover increases in contract rents and decreases in tenant income."

4. *Leasing to eligible families (Section 885.915).* Section 202(h)(4)(C) provides that the Secretary shall require that,

during the term of each PAC, all units in a project must be made available for occupancy by lower income families, as such term is defined in section 3(b)(2) of the United States Housing Act of 1937.

Section 885.915 would implement this requirement. This section would require the Borrower to make available for occupancy by eligible families the total number of units (or residential spaces in group homes) for which assistance is provided under the PAC. If the Borrower is temporarily unable to lease all assisted units (or residential spaces in a group home) to families that are eligible to occupy them, one or more units (or residential spaces) may, with the prior approval of HUD, be leased to "ineligible" families (e.g., to handicapped families that cannot meet the income eligibility requirements under section 3(b)(2) of the United States Housing Act of 1937). In addition to other sanctions that may be imposed on the Borrower for failure to lease to eligible families, the proposed rule would authorize HUD to reduce the number of assisted units (or residential spaces) if the Borrower fails to comply with these requirements or if HUD determines that the inability to lease to eligible families is not a temporary problem. The proposed rule would permit the restoration of any reduction, under stated circumstances.

In addition to the income eligibility requirements applicable to section 202 housing for handicapped families, families occupying assisted or unassisted units (or residential spaces in group homes) in projects must meet the definition of handicapped family (see § 885.5). In recognition of situations where there may be an insufficient number of handicapped families requesting admission to the project to ensure the maintenance of solvent operations, the proposed regulation would permit HUD to relieve the Borrower of the requirement that all units in the project (or residential spaces in the group home) must be leased to handicapped families if: (1) The Borrower has made reasonable efforts to lease assisted and unassisted units (or residential spaces) to eligible families; (2) the Borrower has been granted HUD approval under paragraph (a) of this section for all unoccupied, assisted units (or residential spaces); and (3) the Borrower is temporarily unable to achieve or maintain a level of occupancy sufficient to prevent financial default and foreclosure under the section 202 loan documents. HUD approval under this paragraph would be of limited duration. HUD may impose terms and conditions on this approval

that are consistent with the program's objectives or necessary to protect HUD's interest in the section 202 loan. Such terms and conditions may include limiting the terms of leases to nonhandicapped families to one year or less and requiring the Borrower to replace these families at the end of their lease term with eligible handicapped applicants for admission to the project. HUD believes that permitting a suspension of the eligibility requirement might be essential to preserving the project for the benefit of the present eligible tenants, as well as for occupancy by future eligible families.

To prevent abuses in the determination of eligibility of families and to ensure necessary supervision, HUD will handle each suspension on an individual basis, rather than by built-in exceptions to the project occupancy criteria stated in the regulations. Similarly, HUD will limit the duration and scope of each suspension to the narrowest extent possible to achieve needed occupancy and will impose other terms and conditions that are consistent with the program objectives and are necessary to protect HUD's interest in the loan.

5. *PAC administration* (Section 885.920). Section 885.920 would provide that HUD is responsible for the administration of the PAC.

6. *Default* (Section 885.925). Section 885.925(a) would provide that if the Borrower is in default under the PAC, HUD will notify the Borrower of the actions necessary to cure the default and of the remedies to be applied by HUD. If the Borrower fails to cure the default, HUD would have the right to terminate the PAC or take other corrective action. In addition, paragraph (b) of § 885.925 would notify Borrowers that additional provisions governing default under the section 202 loan, rather than the PAC, are included in the regulatory agreement and other loan documents (e.g., the note and first mortgage or deed of trust).

7. *Notice upon PAC expiration* (Section 885.930). While Section 202 does not require the Borrower to notify the families of rent increases that may occur as a result of the contract's expiration (compare section 8(c)(8) of the United States Housing Act of 1937), the proposed rule would administratively impose this same requirement on Borrowers. The proposed rule would require that the PAC provide that the Borrower will, at least 90 days before the end of the PAC contract term, notify each family occupying an assisted unit (or residential space in a group home) of

any increase in the amount that the family would be required to pay as a result of the expiration. The notice of expiration would contain such information and would be served in such a manner as HUD may prescribe.

B. Management provisions (Sections 885.940 through 985)

1. *Responsibilities of borrower* (Section 885.940). Section 885.940 would describe the Borrower's marketing, management, maintenance, and fiscal responsibilities regarding the project. Under paragraph (a), the Borrower's marketing activities would include: (1) The commencement of diligent marketing activities for 90 days before the date of availability for occupancy of the group home or the first unit in an independent living complex; (2) marketing in accordance with the HUD-approved affirmative fair housing marketing plan and all fair housing and equal opportunity requirements; and (3) the submission to HUD of a list of leased and unleased assisted units (or, in the case of a group home, leased and unleased residential spaces) on the date of PAC execution.

Paragraph (b) would provide that the Borrower is responsible for all management functions including tenant selection and the admission of tenants, reexamination of incomes of families occupying assisted units or residential spaces, collection of rents, termination of tenancy, eviction, and repair and maintenance functions.

Paragraph (c)(1) would permit the Borrower to contract with a public or private entity for the performance of marketing, management and maintenance duties. The proposed rule would subject all such contracts to the provisions governing prohibited contractual relationships that were added in the interim rule amending § 885.5, published April 10, 1986 (51 FR 12308). These prohibitions do not extend to management contracts entered into by the Borrower with the Sponsor or its nonprofit affiliate. Paragraph (c)(2) would require the Borrower to promote awareness and participation of minority and women's business enterprises in contracting and procurement activities, consistent with objectives of Executive Orders 11625, 12432 and 12138.

Section 885.940(d) would provide for the submission of audited financial and operating statements by the Borrower 60 days after the end of each fiscal year of project operations and other financial statements as HUD may require. These financial statements must be audited by an independent public accountant.

Under paragraph (e), the Borrower would be required to maintain a project fund account in HUD-approved depository and to deposit all rents, charges, income and revenue arising from project operation or ownership to this account. Project funds would be used for the operation of the project, to make required principal and interest payments on the Section 202 loan, and to make required deposits on the replacement reserve account in accordance with a HUD-approved budget. All funds remaining in the account after the end of fiscal year would be deposited in the replacement reserve account under § 885.945.

Paragraph (f) would require the Borrower to submit such reports as HUD may prescribe to demonstrate conformance with applicable civil rights and equal opportunity requirements.

2. *Replacement reserve (Section 885.945).* Section 885.945 would require the Borrower to establish and maintain a replacement reserve to aid in funding extraordinary repair and replacement of capital items. The Borrower would be required to make monthly deposits in the reserve. The amount of the deposits for the initial year of operations would be 0.6 percent of the cost of total structures (for new construction projects), 0.4 percent of the initial mortgage amount (for other projects), or such higher rates as may be required by HUD. This section proposes to adjust the amount of the deposit each year by the appropriate annual adjustment factor under Part 888; the Department invites comment on application of this factor or recommendations for more suitable methods of adjusting the amount of the reserve. All earnings on the account would be added to the balance of the account. Under existing HUD policies, the replacement reserve must be held in a HUD-approved depository in an interest-bearing account. The proposed rule would amend this practice to permit the Borrower to deposit the funds with HUD or in a HUD-approved depository. Consistent with existing practice, replacement reserve funds would be used only with the approval of HUD and in accordance with HUD guidelines. The proposed rule would provide that HUD may reduce the rate of deposit to the account if it finds that the reserve is sufficient to meet projected extraordinary maintenance and capital replacement needs.

3. *Selection and admission of tenants (Section 885.950 (a) and (b)).* Requirements governing the selection and admission of tenants are described in the proposed rule at § 885.950(a) and

(b). To initiate the tenant selection process, an applicant for admission would be required to complete and sign an application for admission. Applicants for an assisted unit or residential space would be required, as part of the application, to complete a certification of eligibility (*i.e.*, Owner's Certification of Compliance with HUD's Tenant Eligibility and Rent Procedures—HUD-50059).

Housing for handicapped families means housing and related facilities to be occupied by handicapped families who are primarily nonelderly handicapped families. Accordingly, in order to be eligible for admission to housing assisted under Subpart G, the applicant-family must meet the definition of handicapped family currently included in the regulations at § 885.5. The fact that an applicant meets this definition, however, does not mean that the applicant is eligible for occupancy in each section 202 housing project for handicapped families. As noted above, section 202 housing for handicapped families may limit project occupancy to one or more specific eligible populations. These eligible populations include the chronically mentally ill, the developmentally disabled, or the physically handicapped or combination of such populations. Accordingly, § 885.950(b) of the proposed rule would provide that to be eligible for admission the applicant-family must be a handicapped family as described under § 885.5 and must meet the HUD-approved project occupancy requirements submitted at the time of application for loan reservation. (As a related matter, the definition of handicapped person would be amended to reflect a revised definition of developmentally disabled individual as defined under section 102(a)(7) of the Developmental Disabilities Services and Facilities Construction Amendments of 1970—as required under section 170(g) of the 1987 Act, and to add a new definition of "chronically mentally ill".)

In addition to these requirements, section 202(h)(4)(C) provides that during the term of each PAC, all units in the project must be made available for occupancy by lower income families, as that term is defined in section 3(b)(2) of the United States Housing Act of 1937. In accordance with this provision, § 885.950(b) would require that the applicant-family must be eligible for admission under the income eligibility standards of § 813.103. Related definitions for "annual income", "contract rent", "gross rent", "rent", "tenant rent", "total tenant payment", "utility allowance", and "utility

reimbursement" would be added to § 885.5. With the exception of "annual income", all of these definitions would incorporate the definitions contained in Part 813. The definition of annual income would incorporate the Part 813 definition with the additional language implementing section 202(h)(4)(C). This section provides that the gross income of a family occupying an intermediate care facility assisted under title XIX of the Social Security Act shall be the same amount as if the family were being assisted under title XVI of the Social Security Act. HUD invites comment on other issues related to income determination that may apply exclusively to the occupancy groups in housing under this subpart, *e.g.*, issues involving State supplementary allowances or special practices in disbursement of payments under the Social Security Act.

In addition to the admission requirements governing handicap and income, Borrowers under the section 202 program for handicapped families would be permitted to develop and implement additional family selection criteria. For example, an owner could find an otherwise eligible applicant to be "unsuitable" if the applicant is unable to live independently in the project without support services that he or she needed but which are not available. Accordingly, § 885.950(b) also provides that the Borrower is responsible for the selection of families.

The proposed rule also addresses (1) local residency requirements and preferences, (2) procedures for assignment of available units or residential spaces and provisions for waiting lists, (3) procedures for rejecting applicants and for informal review of rejections, and (4) records maintenance.

4. *Reexamination of family income and composition (Section 885.950(c)).* Provisions governing the reexamination of family income and composition are included at § 885.950(c). Under the proposed rule, if the Borrower receives project assistance payments for a family, the Borrower would be required to examine and verify income and family composition at least once every 12 months; make appropriate adjustments to total tenant payment, tenant rent and the project assistance payments; and make appropriate unit transfers. This provision also would require assisted families to comply with lease provisions governing interim reporting of income changes. When a Borrower receives information between regularly scheduled reexaminations, the proposed rule requires the Borrower to consult with the family, verify certain

information and make appropriate adjustments, as discussed above.

The proposed rule also provides that a family's eligibility for project assistance payments continues until the total tenant payment equals or exceeds gross rent (or pro rata share of the gross rent in a group home). The termination of project assistance payments, however, would not affect the family's rights under the lease or preclude the resumption of payments if, as a result of later changes, the family again were to meet the income eligibility requirements, and if project assistance for the family's unit or residential space was available under the PAC. To be eligible for resumed payments, a family would not be required to reestablish its eligibility for occupancy under other tenant selection criteria. Termination of assistance in accordance with other HUD requirements such as failure to submit requested verification information is treated at proposed § 885.950(c)(3)(ii).

5. *Obligations of the family (Section 885.955).* To ensure that the major obligations of the families occupying projects for handicapped families are addressed, the proposed rule would add § 885.955. This section would require the family to (1) pay amounts due under the lease directly to the Borrower; (2) provide necessary certifications, releases, information or documentation as HUD or the Borrower determine to be necessary; (3) permit the Borrower to conduct reasonable inspections; and (4) notify the Borrower before vacating the dwelling unit or residential space. The section would also contain restrictions on the use of the unit or residential space and on transfer of the unit or residential space and the assignment of the lease, and would prohibit the family from receiving assistance under any other Federal housing assistance program while occupying, or receiving assistance for the occupancy of, a unit or residential space governed by Part 885.

6. *Overcrowded and underoccupied units (Section 885.960).* Section 885.960 would provide that the Borrower is responsible for determining whether an assisted unit is overcrowded or underoccupied. If the Borrower makes such a determination, the project assistance payments would not be reduced or terminated until the family is relocated. (Vacancy payments for the vacated unit would be governed by § 885.985.)

7. *Lease requirements (Section 885.965).* Section 885.965 of the proposed rule provides that the initial term of the lease must be for at least one year. Occupancy limited by transitional

programs is not permitted. Unless the lease has been terminated by appropriate action by the Borrower or family, upon expiration of the lease term the family and the Borrower may execute a new lease for a term of at least one year, or may take no action. If no action is taken, the lease would automatically be renewed for successive terms of one month. Under this proposed section, all leases may contain (and in the case of a lease term for more than one year must contain) a provision permitting the family to terminate on 30 days' notice. The form of the lease would be prescribed in a HUD handbook. In addition to the required provisions in the handbook, this section would permit the Borrower to include a lease provision permitting the Borrower to enter the leased premises at any time without advance notice where there is reasonable ground to believe that an emergency exists or that the health or safety of a family member is endangered.

8. *Termination of tenancy and modification of lease (Section 885.970).* Subpart A of 24 CFR Part 247—Evictions from Certain Subsidized and HUD-owned Projects, applies to all decisions by a landlord to terminate the occupancy of tenants in a subsidized project and prescribes procedures for modification of leases. As defined in § 247.2(e), "subsidized project" includes a multifamily housing project which receives the benefit of a subsidy in the form of direct loans under section 202. Proposed § 885.970 would apply the Part 247 provisions to section 202 projects for handicapped families.

9. *Security deposits (Section 885.972).* Provisions governing security deposits would be covered at § 885.972. Under the proposed rule, the Borrower: (1) Must require each family occupying an assisted unit or residential space to pay a security deposit equal to the greater of \$50 or one month's total tenant payment, and (2) may require each family occupying an unassisted unit or residential space to pay a security deposit equal to one month's rent payable by the family. The family would be expected to pay the security deposit from its own resources and other available public or private resources.

The Borrower would be required to place all security deposits in a segregated interest-bearing account and would be required to maintain a record of the amount in this account that is attributable to each family in residence in the project. Interest accrued would be allocated to each family's balance annually and at the time the family vacates the unit or residential space. Unless prohibited under State or local

law, the Borrower would be permitted to deduct the administrative cost of computing each family's allocation up to the amount of the family's annual accrued interest. The amount in the segregated interest-bearing account must at all times be equal to the total amount collected from families in occupancy, plus accrued interest, less allowable administrative cost adjustments. The Borrower would also be required to comply with applicable State and local law concerning interest payments on security deposits.

The Borrower would be permitted to use the security deposit as reimbursement for any unpaid family contribution and other amounts that the family owes under the lease. If the family owes no amounts under the lease, the proposed rule would require the Borrower to refund the security deposit balance to the family. If the family owes amounts under the lease and the amount is less than the security deposit balance, the excess balance would be remitted to the family. If the security deposit balance is not sufficient to reimburse the Borrower for the amount owed under the lease of an assisted unit or residential space, § 885.972 would permit the Borrower to claim reimbursement from HUD for the lesser of the amount owed, or one month's contract rent less the amount of the family's security deposit balance.

The proposed rule would require the Borrower to provide itemized statements of security deposit disbursement and other documents; would require the family to provide forwarding addresses or to arrange for refund pick up; and would provide for informal meetings to resolve security deposit disagreements between the parties. Additionally, the proposed rule would provide that upon the death of a member of a family, the decedent's interest, if any, in the security deposit would be governed by State or local law.

As noted above, the security deposit provision would contain numerous references to State or local law. For example, the Borrower would be required to comply with applicable State and local law governing the payment of interest on security deposits (§ 885.972(b)(1)). The intent of these provisions is to ensure that the law which is most protective of the family's interest will be applied.

10. *Adjustment of rents (Section 885.975).* To ensure that the contract rents continue to reflect the total actual necessary and reasonable costs of developing and operating the project (see section 202(h)(4)(B)), § 885.975(a) provides for the adjustment of contract

rents. The proposed rule provides that HUD would compute the contract rent adjustment based on the sum of the budgeted project operating costs and debt service with adjustments for vacancies, for the project's non-rental income and for other factors HUD determines to be appropriate.

(It should be noted that one of the items used in the computation of the HUD-approved budget will be affected by the annual adjustment factor for the section 8 program. As provided in § 885.945, the amount of the annual deposit for the replacement reserve for all projects is adjusted based on the automatic adjustment factor.)

Paragraph (b) of this section would provide that during the term of the PAC the rent payable by families occupying units or residential spaces that are not assisted under the contract will be equal to the contract rent computed under paragraph (a). This paragraph reflects HUD's existing policy with regard to such rents and is necessary to prevent the subsidization of unassisted units by assisted units and *vice versa*.

11. *Adjustment of utility allowances (Section 885.980).* Section 885.980 addresses the adjustment of utility allowances for assisted units in independent living complexes. This provision would state that, in connection with contract rent adjustments under § 885.975(a), the Borrower must submit an analysis of the project's utility rate. If a change would result in a cumulative increase of 10 percent or more in the most recently approved utility allowance, the Borrower would be required to advise HUD and request approval of new utility allowances for assisted units. The Borrower would also be required to notify families of the adjustment and to make a corresponding adjustment of tenant rent and the project assistance payment for the assisted unit.

12. *Vacancy payments (Section 885.985).* Section 885.985 would prescribe the conditions for the receipt

of vacancy payments under the PAC. This section generally would provide for vacancy payments in the amount of 80 percent of contract rents for the first 60 days of vacancy during or after rent-up. For vacancies longer than 60 days, the Borrower could receive additional vacancy payments in an amount equal to the principal and interest payments required to amortize the portion of the debt service attributable to the vacant unit or residential space for up to 12 months. Conditions governing the receipt of vacancy payments would vary depending on whether the vacancy began during or after rent-up and whether it continues for longer than 60 days.

VIII. Other Matters

In addition to the provisions discussed above, the proposed rule would revise Part 813 to reflect the addition of the project assistance payments provisions, and would add various new definitions to Part 885 to reflect the requirements of the section 202 program for handicapped families.

IX. Findings and Certifications

A finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410-0500.

This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of \$100 million or more; (2) cause a major

increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule does not affect the amount of funds available under the section 202 program. Rather, the rule modifies and updates the program requirements to implement recent statutory revisions designed to ensure that the program will meet the special housing and related needs of nonelderly handicapped families. While the rule will modify the subsidy mechanism and the development procedures for the section 202 program, HUD does not believe that the economic impact on small entities will be substantial.

This rule was listed as item 920 in the Department's Semiannual Agenda of Regulations published on April 25, 1988 (53 FR 13854, 13872) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program number is 14.157, Housing for the Elderly or Handicapped.

The collection of information requirements contained in this rule have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980. The sections of the proposed rule identified in the matrix below have been determined by the Department to contain collection of information requirements. Information on these requirements is provided as follows:

TABULATION OF ANNUAL REPORTING BURDEN,¹ PROPOSED RULE—SECTION 202 PROJECTS FOR NONELDERLY HANDICAPPED FAMILIES

Description of information collection	Section of 24 CFR affected	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours
Application submission requirements, initial loan closing requirements (2502-0267).....	885.710, 885.815	450	1	450	26.7	12,015.0
Affirmative Fair Housing marketing requirements (2502-0267).....	885.740(a)(6)	450	1	450	(1)	(1)
Fair Housing advertising and poster guidelines (2502-0267).....	(a)(7)	450	1	450	(1)	(1)
Davis-Bacon Labor Standards (2502-0267).....	(d)	450	1	450	(1)	(1)
Relocation assistance (2502-0267).....	(e)	450	1	450	(1)	(1)
Inspection for lead-based paint hazards.....	(f)	10	1	10	2	20.0
Borrower's appeal of loan cancellation (2502-0267).....	885.770(b)(2)	10	1	10	(1)	(1)

TABULATION OF ANNUAL REPORTING BURDEN, ¹ PROPOSED RULE—SECTION 202 PROJECTS FOR NONELDERLY HANDICAPPED FAMILIES—Continued

Description of information collection	Section of 24 CFR affected	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours
Request to substitute Subpt. G project assistance payments for Sec. 8 assistance payments	885.775	10	1	10	1	1
Site information (2502-0267)	885.780	200	1	200	(1)	(1)
Request for direct loan processing (2502-0267)	885.800	200	1	200	11.2	2,240.0
Request for loan disbursement (2502-0187)	885.820	200	12	2,400	.5	1,200.0
Cost certification (2502-0044)	885.825	200	1	200	56	11,200.0
Project Assistance Contract	885.900	200	1	200	5	1,000.0
Leasing to eligible families (2502-0371)	885.915	200	1	200	.1	20.0
Notice upon PAC expiration	885.930	0	2	0	0	0
FHEO marketing plan and requirements (2502-0371)	885.940(a)(2)	200	1	200	.75	150.0
List of leased and unleased units; justification for latter (2502-0371)	(a)(3)	200	12	2,400	.25	600.0
HUD approval of contracting for services (2502-0371)	(c)(1)	50	1	50	1	50.0
Borrower's promotion of minority and women's business enterprises (2502-0371)	(c)(2)	200	1	200	1	200.0
Audited financial statements (2502-0371)	(d)	200	1	200	2	400.0
Maintenance of records of racial, ethnic, gender and place of previous residency data (2502-0371)	(f)	200	1	200	.25	50.0
Administration of reserve (2502-0371)	885.945(d)	200	1	200	.5	100.0
Application for admission (2502-0371)	885.950(a)	200	1	3,600	.25	900.0
Waiting list (2502-0371)	885.950(b)(2)	200	12	2,400	.25	600.0
Notification of rejection due to ineligibility; review if appealed (2502-0371)	(b)(3)	50	1	50	.25	12.5
Re-examination of family income and composition (2502-0371)	(c)	200	1	3,600	.25	900.0
Obligation of family (2502-0371)	885.955	200	1	3,600	.1	360.0
Lease requirements (2502-0371)	885.965	200	1	3,600	.1	360.0
Security deposits (2502-0371)	885.972	200	1	3,600	.1	360.0
Justification for rent Adjustments (2502-0371)	885.975	20	1	20	2	40.0
Analysis of utility cost increases (2502-0371)	885.980	200	1	200	2	400.0
Conditions for receipt of vacancy payments (2502-0371)	885.985	10	1	10	.5	5.0
Total Annual Burden						33,182.5

¹ The annual reporting burden itemized for OMB clearance numbers 2502-0267, 2502-0187, 2502-0044 and 2502-0371 on this table was included in the calculation of annual burden at the most recent approval of each, and therefore does not represent an increase in the Office of Housing information collection inventory.

² Not necessary until end of 20-year contract.

(1) The burden hours for these items are included under application submission requirements.

List of Subjects

24 CFR Part 813

Low- and moderate-income housing.

24 CFR Part 885

Aged, Grant programs, Housing and community development, Handicapped, Loan programs: housing and community development, Low- and moderate-income housing.

For the reasons set forth in the preamble, Title 24 of the Code of Federal Regulations Parts 813 and 885 would be amended to read 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 Part 813 would continue to read as follows:

Authority: Secs. 3, 5(b), 8 and 16, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f and 1437n); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Section 813.101 would be revised to read as follows:

§ 813.101 Purpose and applicability.

This 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 Gross Rent, 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, Subparts B through D) or project assistance payments under section 202(h) of the Housing Act of 1959 (see 24 CFR Part 885, Subpart G). (See 24 CFR Part 913 for the analogous rule applicable to the Public Housing and Indian Housing Programs.)

3. In § 813.102, the definitions of owner and utility allowance would be revised to read as follows:

§ 813.102 Definitions.

* * * * *

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.

* * * * *

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 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.

4. Section 813.109(a) would be 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 of 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., Part 880, Subpart F and Part 881, Subpart F, which, for the purposes of this part shall also apply, as appropriate, to projects developed under Part 885, Subparts B through D; Part 882, Subparts B and E; Part 883, Subpart G; Part 884, Subpart B; Part 885, Subpart G; Part 886, Subparts A and C; and Part 887, Subpart H). As used in this part, the "effective date" of an examination or reexamination refers:

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

(2) In the case of a reexamination of an existing tenant, to the effective date of the redetermined housing assistance payment with respect to the Housing Voucher Program (Part 887) and the effective date of the redetermined Total Tenant Payment for all programs.

PART 885—LOANS FOR HOUSING FOR THE ELDERLY OR HANDICAPPED

5. The authority citation for Part 885 would be revised to read as follows:

Authority: Sec. 202, Housing Act of 1959 (12 U.S.C. 1701q); sec. 8, United States Housing Act of 1937 (42 U.S.C. 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

6. Section 885.1 would be revised to read as follows:

§ 885.1 Purpose and policy.

(a) *Purpose.* The program under this part provides direct Federal loans under section 202 of the Housing Act of 1959

(42 U.S.C. 1701g) for housing projects serving elderly or handicapped families and project assistance payments for projects serving nonelderly handicapped families. The housing projects shall provide the necessary services for the occupants, which may include, but are not limited to: Health, continuing education, welfare, informational, recreational, homemaking, counseling, and referral services, as well as transportation where necessary to facilitate access to these services.

(b) *General policy.* A loan made under this part shall be used to finance the construction or the substantial rehabilitation of projects for elderly or handicapped families, or for the acquisition, with or without moderate rehabilitation, of existing housing and related facilities for group homes for nonelderly handicapped individuals.

(c) *Applicability.* (1) Subparts B through D of this part apply to projects for elderly or handicapped families that receive loans under section 202 of the Housing Act of 1959 and housing assistance payments under section 8 of the United States Housing Act of 1937. No project for handicapped (primarily nonelderly) families is eligible for loans or housing assistance payments under Parts B through D, except under a reservation of loan and contract authority made before (insert effective date of final rule).

(2) Subpart G of this part applies to projects for nonelderly handicapped families receiving loans under section 202 and project assistance payments under section 202(h) of the Housing Act of 1959. Subpart G may also apply to projects for handicapped families that received a reservation of loan authority under Subparts B through D under the circumstances described in § 885.775.

7. In § 885.5, the definition of "Elderly or Handicapped Families" would be removed, the definitions of "Application" and "Handicapped Person" would be revised and definitions for "Agreement to Enter into Project Assistance Contract", "Annual Income", "Assisted Unit", "Contract Rent", "Elderly Family", "Family", "Gross Rent", "Group Home", "Handicapped Family", "Housing for Handicapped Families", "Independent Living Complex", "Independent Public Accountant", "Nonelderly Handicapped Families", "Project Account", "PAC", "Project Assistance Payment", "Rent", "Tenant Rent", "Total Tenant Payment", "Utility Allowance", "Utility Reimbursement", and "Vacancy Payment" would be added, in

alphabetical order, to read as follows:
§ 885.5 Definitions.

Agreement to enter into project assistance contract means the agreement between the Borrower and HUD which provides that, upon satisfactory completion of the project, HUD will enter into the PAC with the Borrower.

Annual income is defined in Part 813 of this chapter. In the case of an individual residing in an intermediate care facility for the mentally retarded that is assisted under Title XIX of the Social Security Act and this part, the annual income of the individual shall exclude protected personal income as provided under that Act. For the purposes of determining the total tenant payment, the income of such individuals shall be imputed to be the amount that the family would receive if assisted under Title XVI of the Social Security Act.

Application means the application for a section 202 fund reservation, including all required forms and exhibits submitted in response to an invitation for such applications, or a request for admission to a project made by a family on a form prescribed by HUD.

Assisted unit means a dwelling unit that is eligible for assistance under a PAC.

Contract rent means the total amount of rent specified in the PAC as payable by HUD and the family to the Borrower for an assisted unit or residential space.

Elderly family means:

(a) Families of two or more persons the head of which (or his or her spouse) is sixty-two years of age or older;

(b) The surviving member or members of any family described in paragraph (a) living in a unit assisted under this part with the deceased member of the family at the time of his or her death;

(c) A single person who is sixty-two years of age or older; or

(d) Two or more elderly persons living together, or one or more such persons living with another person who is determined by HUD, based upon a licensed physician's certificate provided by the family, to be essential to their care or well being.

Family (eligible family) means an elderly family or a handicapped family (as defined in this section) that meets the project occupancy requirements approved by HUD and, if the family occupies an assisted unit, meets the lower-income requirements described in

§ 813.102 of this chapter, as modified by the definition of annual income in this section above.

Gross rent is defined in Part 813 of this chapter.

Group home means a single family residential structure designed or adapted for occupancy by nonelderly handicapped individuals.

Handicapped family means:

(a) Families of two or more persons the head of which (or his or her spouse) is handicapped;

(b) The surviving member or members or any family described in paragraph (a) of this definition living in a unit assisted under this part with the deceased member of the family at the time of his or her death;

(c) A single handicapped person between the ages of 18 and 62; or

(d) Two or more handicapped persons living together, or one or more such persons living with another person who is determined by HUD, based upon a licensed physician's certificate provided by the family, to be essential to their care or well being.

Handicapped person or individual means any adult having an impairment which is expected to be of long-continued and indefinite duration, is a substantial impediment to his or her ability to live independently, and is of a nature that such ability could be improved by more suitable housing conditions. A person shall also be considered handicapped if he or she is developmentally disabled, i.e., if he or she has a severe chronic disability that:

(a) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(b) Is manifested before the person attains age twenty-two;

(c) Is likely to continue indefinitely;

(d) Results in substantial functional limitations in three or more of the following areas of major life activity:

(1) Self-care,

(2) Receptive and responsive language,

(3) Learning,

(4) Mobility,

(5) Self-direction,

(6) Capacity for independent living, and

(7) Economic self-sufficiency; and

(e) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

A person shall also be considered to be handicapped if he or she is chronically mentally ill, i.e., if he or she has a severe

and persistent mental or emotional impairment that seriously limits his or her ability to live independently (e.g., by limiting functional capacities relative to primary aspects of daily living such as personal relations, living arrangements, work, recreational, etc.), and whose impairment could be improved by more suitable housing conditions. Alcoholism and drug addiction are not included within the definition of chronically mentally ill.

Housing for handicapped families means housing and related facilities occupied by handicapped families that are primarily nonelderly handicapped families.

Independent living complex means a project designed for occupancy by nonelderly handicapped families in separate dwelling units where each dwelling unit includes a kitchen and a bath.

Independent public accountant means a certified public accountant or a licensed or registered public accountant, having no business relationship with the Borrower or Sponsor except for the performance of audit, systems work and tax preparation. If not certified, the independent public accountant must have been licensed or registered by a regulatory authority of a State or other political subdivision of the United States on or before December 31, 1970. In States that do not regulate the use of the title "public accountant", only certified public accountants may be used.

Nonelderly handicapped family means a handicapped family where the head of the family (and spouse, if any) are less than 62 years of age at the time of the family's initial occupancy of a project.

Project account means a specifically identified and segregated account for each project which is established in accordance with § 885.910(b) out of the amounts by which the maximum annual commitments exceeds the amount actually paid out under the PAC each year.

PAC (project assistance contract) means the contract entered into by the Borrower and HUD setting forth the rights and duties of the parties with respect to the project and the payments under the PAC.

Project assistance payment means the payment made by HUD to the Borrower for assisted units as provided in the PAC. The payment is the difference between the contract rent and the tenant rent. An additional payment is made to a family occupying an assisted unit in an independent living complex when the utility allowance is greater than the total

tenant payment. A project assistance payment, known as a "vacancy payment", may be made to the Borrower when an assisted unit (or residential space in a group home) is vacant, in accordance with the terms of the PAC.

Rent, in the case of a unit in a cooperative project, means the carrying charges payable to the cooperative with respect to occupancy of the unit.

Tenant rent means the monthly amount defined in, and determined in accordance with Part 813 of this chapter.

Total tenant payment means the monthly amount defined in, and determined in accordance with Part 813 of this chapter.

Utility allowance is defined in Part 813 of this chapter and is determined or approved by HUD.

Utility reimbursement is defined in Part 813 of this chapter.

Vacancy payment means the project assistance payment made to the Borrower by HUD for a vacant assisted unit (or residential space in a group home) if certain conditions are fulfilled, as provided in the PAC. The amount of the vacancy payment varies with the length of the vacancy period and is less after the first 60 days of any vacancy.

Subparts E and F—[Reserved]

8. Subparts E and F would be reserved.

9. Subpart G would be added to read as follows:

Subpart G—Projects for Nonelderly Handicapped Families

Application Procedures and Program Requirements

Sec.	
885.700	Allocation of authority.
885.705	Announcement of fund availability and invitation for applications.
885.710	Application contents.
885.717	Project standards.
885.720	Project size limitations.
885.725	Cost containment and modest design standards.
885.727	Prohibited facilities.
885.730	Site and neighborhood standards.
885.735	Prohibited relationships.
885.740	Other Federal requirements.

Selection of Applications and Duration of Fund Reservation

885.750	Review of applications for fund reservation.
885.755	Approval of applications.
885.770	Duration of Section 202 fund reservations.
885.775	Transition.

Direct Loan Financing Procedures

885.780	Submission of site information.
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Sec.

- 885.800 Request for direct loan financing.
- 885.805 Approval of requests for direct loan financing.
- 885.807 Operating cost standard.
- 885.810 Amount and terms of financing.
- 885.812 Prepayment of loans.
- 885.815 Requirements prior to initial loan closing.
- 885.816 Requirements for awarding construction contracts.
- 885.820 Loan disbursement procedures.
- 885.825 Completion of cost certification.

Project Assistance Contract

- 885.900 Project assistance contract.
- 885.905 Term of PAC.
- 885.910 Maximum annual commitment and project account.
- 885.915 Leasing to eligible families.
- 885.920 PAC administration.
- 885.925 Default by Borrower.
- 885.930 Notice upon PAC expiration.

Project Management

- 885.940 Responsibilities of Borrower.
- 885.945 Replacement reserve.
- 885.950 Selection and admission of tenants.
- 885.955 Obligations of the family.
- 885.960 Overcrowded and underoccupied units.
- 885.965 Lease requirements.
- 885.970 Termination of tenancy and modification of lease.
- 885.972 Security deposits.
- 885.975 Adjustment of rents.
- 885.980 Adjustment of utility allowances.
- 885.985 Conditions for receipt of vacancy payments for assisted units.

Subpart G—Projects for Nonelderly Handicapped Families**Application Procedures and Program Requirements****§ 885.700 Allocation of authority.**

(a) *Headquarters reserve.* Up to 15 percent of the section 202 loan authority made available for the development costs of housing for handicapped families under this section may be retained by the Assistant Secretary for subsequent allocation to specific areas and communities under section 213(d)(4) of the Housing and Community Development Act of 1974.

(b) *Allocations.* The Assistant Secretary will allocate the amounts available for development costs of housing for handicapped families, less any amounts made available for the Headquarters Reserve under paragraph (a) of this section and amendments under § 885.755(e), to allocation areas. The size of the allocation area will depend on the amount of loan authority available for allocation and the number of feasible projects the loan authority will support. The amount of the allocations will be based on the relative needs of the allocation areas as reflected in available census data on the number of handicapped individuals in

the areas and will be adjusted to take into consideration the relative differences between the areas in the costs of providing housing. Funds allocated to an allocation area may be reallocated to another area under the circumstances described at § 885.750(d)(2).

(c) *Availability of loan authority for housing for the elderly.* If the approvable applications under this subpart require less than the loan authority that is made available for development costs of housing under this subpart, the remaining loan authority shall be made available for housing for the elderly under Subparts B through D of this part, to the extent that housing assistance under section 8 of the United States Housing Act of 1937 is available in connection with such loan authority.

§ 885.705 Announcement of fund availability and invitation for applications.

(a) *Announcement of fund availability.* Following an allocation of authority under § 885.700 above, HUD will publish an announcement of fund availability in the Federal Register. The announcement will indicate:

- (1) The amount of loan authority (and approximate number of units) made available for housing for handicapped families within each allocation area;
- (2) The deadline for receipt of applications; and
- (3) Other appropriate guidance to prospective Sponsors.

(b) *Invitation for applications.* Each field office shall publish an invitation for applications for section 202 fund reservation in newspapers of general circulation serving the field office jurisdiction. The field office shall also notify minority media, minority organizations involved in housing and community development, and groups with special interest in housing for handicapped families. Copies of the invitation will be available in the field office.

§ 885.710 Application contents.

(a) *Application.* Each application must include all of the information, materials, forms, and exhibits listed in paragraph (b) of this section. In addition, the application may include site information specified under § 885.780. HUD will review applications and make selections under § 885.750 based on information provided in the application.

(b) *Application contents.* Each application must include:

- (1) The name, address, and telephone number of the Sponsor.
- (2) The name, title, address, and telephone number of the officer or member of the board of directors of the

Sponsor to whom communications should be addressed.

(3) The dollar amount of the section 202 direct loan requested.

(4) A narrative description of the proposed housing, consistent with requirements of §§ 885.717 through 885.727, including:

- (i) The name of the locality in which the proposed project is to be developed;
- (ii) The development method proposed to be used (New construction, substantial rehabilitation, or, if a group home, acquisition with or without moderate rehabilitation);
- (iii) Numbers and types of structures;
- (iv) Number of stories;
- (v) Number of units by size (number of bedrooms) for an independent living complex, or the number of bedrooms and the number of residents housed in each group home;

(vi) Special amenities or features. If the narrative description indicates that the housing would not comply with the cost containment and modest design standards of § 885.725 (a) through (c), the Sponsor must submit evidence demonstrating that the proposed housing is eligible for an exception from these standards under § 885.725(d).

(vii) For Intermediate Care Facilities serving the mentally retarded, evidence demonstrating that the proposed project will primarily provide housing rather than medical facilities, is or will be licensed by appropriate State agencies, and will receive funding from sources other than HUD for a rent contribution and for the costs of the intermediate care, and such other information as HUD may require to determine the feasibility of the intermediate care facility.

(5) A narrative description of the anticipated occupancy.

(i) The Sponsor must propose project occupancy requirements that limit occupancy to one or more of the following groups: the chronically mentally ill, the developmentally disabled, or the physically handicapped, and must demonstrate a capacity to serve the proposed occupancy group or groups.

(ii) The Sponsor must demonstrate that the proposal does not conflict with State or local plans and policies governing the development and operation of facilities to serve handicapped individuals meeting the proposed project occupancy requirements, including policies and plans involving State funding for and support of supportive services or facilities for handicapped individuals.

(6) A service plan description that includes:

(i) A description of the category or categories of families the housing and facilities are intended to serve;

(ii) A description of the range of supportive services to be provided to the families including:

(A) The name(s) of the agency(s) that will be responsible for providing supportive services and, if an agency is not the Sponsor, a letter of intent from the agency indicating its willingness and ability to provide the services;

(B) The manner in which such services will be provided to the families;

(C) The services that will be provided on- and off-site; and

(D) The staffing plan including residential supervision (if any) and other staff necessary to provide the proposed supportive services.

(iii) Evidence of funding sources for the supportive services that will be provided for compensation, including State and local funds available to assist in the provision of such services, or evidence of commitment to provide the supportive services from agencies that will not be compensated.

(7) Evidence demonstrating that there is an unmet need for the proposed housing in the areas to be served by the project and demonstrating that this need is likely to continue through the term of the project.

(8) A statement whether the Sponsor or any affiliated entity has submitted or is planning to submit other applications as a Sponsor or CoSponsor under this part during the current fiscal year. The Sponsor must also indicate the city and State where any other proposed project will be located, the number of units requested, and the field office where the proposal was or will be submitted.

(9) A request for preliminary determination of eligibility as a nonprofit Sponsor, on a form prescribed by HUD.

(10) A statement describing the Sponsor's ties to the community including any statements of support for the project by members of the community in which the project is to be located and State and local organizations familiar with the needs of handicapped individuals meeting the proposed occupancy requirements.

(11) The names and addresses of the officers and directors of the Sponsor, and such other information as required by HUD, together with a resolution, on a form prescribed by HUD, adopted by the Sponsor's board of directors, agreeing that all officers and directors of the Sponsor and the Borrower will be required to submit conflict of interest certifications.

(12) Satisfactory evidence that the Sponsor:

(i) Has the necessary legal authority to sponsor the project and to assist the Borrower to finance, acquire (with or without moderate rehabilitation), construct or substantially rehabilitate and maintain the project, and to apply for and receive the proposed loan;

(ii) Has an effective tax exemption ruling from the Internal Revenue Service, is a nonprofit corporation organized in the Commonwealth of Puerto Rico that is exempt from income taxation under Puerto Rican law, or is a nonprofit consumer cooperative that is exempt from income taxation under State law; has never been liable for the payment of Federal income taxes; and does not pay patronage dividends; and

(iii) Will form a Borrower (as defined in § 885.5) after the issuance of the section 202 fund reservation, will cause the Borrower to file a request for determination of eligibility and a request for direct loan financing under § 885.800, and will provide sufficient resources to the Borrower to ensure the development and long-term operation of the project.

(13) Evidence of previous participation in HUD programs, if any, by the Sponsor, its officers or directors, on such form as may be prescribed by HUD, and identification of all section 202 fund reservations issued to the Sponsor or any entity affiliated with the Sponsor since May 1, 1976.

(14) A description of any other rental housing projects or any medical facilities sponsored, owned or operated by the Sponsor.

(15) A description of the Sponsor's past or current involvement in any programs or of its provision of services, other than housing, that demonstrates the Sponsor's management capabilities and experience, including a description of the Sponsor's experience in contracting for services with minority business enterprises or minority groups.

(16) A description of any financial default, modification of terms and conditions of financing, or legal action taken or pending against the Sponsor or its officers, directors, or trustees in their corporate capacity.

(17) A description of the Sponsor's ability and willingness to sponsor and to assist the Borrower to develop, own, manage, and provide appropriate services in connection with housing for the nonelderly handicapped.

(18) An estimate of start-up expenses and the source of funds to meet these expenses. If the Sponsor plans to use section 106(b) seed money loans, an application for such loan must be submitted, with required attachments.

(19) Evidence of the Sponsor's financial ability and willingness to fund the minimum capital investment under

§ 885.810(i) and to ensure the development and long-term operation of the project, including copies of balance sheets and statements of income and expenses for each of the past three years that the Sponsor has operated.

(20) A housing consultant's certificate and contract (if consultant services have been used by the Sponsor).

(21) Evidence that the Sponsor has submitted copies of the application to the State single point of contact for review and comment under 24 CFR Part 52 and Executive Order No. 12372—Intergovernmental Review of Federal Programs.

(22) A signed certification of the Sponsor's intention to comply with the nondiscrimination and equal opportunity requirements of § 885.740(a).

(23) A demonstration that the Sponsor meets all other requirements imposed by HUD. Notice of such requirements will be made available to Sponsors before submission of their applications.

§ 885.717 Project standards.

(a) *Property standards.* Projects under this subpart must comply with HUD Minimum Property Standards.

(b) *Minimum group home standards.* Each group home must provide a minimum of 290 square feet of pro rated space for each resident, including a minimum area of 80 square feet for each resident in a shared bedroom (with no more than two residents occupying a shared bedroom) and a minimum area of 100 square feet for a single occupant bedroom; at least one full bathroom for every four residents; space for recreation at indoor and outdoor locations on the project site; and sufficient storage for each resident in the bedroom and other storage space necessary for the operation of the home.

(c) *Accessibility requirements.* (1) Projects under this subpart must comply with the Uniform Federal Accessibility Standards and 24 CFR Part 8.

(2) All entrances, common areas, units to be occupied by a residential supervisor, and amenities must be readily accessible to and usable by persons with physical handicaps.

(3) In projects for chronically mentally ill individuals, a minimum of 10 percent of all dwelling units in an independent living complex (or 10 percent of all bedrooms and bathrooms in a group home), but at least one of each such space, must be designed to be accessible or adaptable for persons with physical handicaps.

(4) In projects for developmentally disabled or physically handicapped individuals, all dwelling units in an independent living complex (or all

bedrooms and bathrooms in a group home) must be designed to be accessible or adaptable for persons with physical handicaps. A project involving substantial rehabilitation or an acquisition with or without moderate rehabilitation may provide a lesser number if:

- (i) The cost of providing full accessibility makes the project financially infeasible;
- (ii) Less than one-half of the intended occupants have mobility impairments; and
- (iii) The project complies with the requirements of 24 CFR 8.23.

§ 885.720 Project size limitations.

(a) *Maximum project size.* Projects under this subpart are subject to the following project size limitations:

- (1) Group homes may not be designed to serve more than 15 persons on one site;
- (2) Independent living complexes for chronically mentally ill individuals may not be designed to serve more than 20 persons on one site; and
- (3) Independent living complexes for handicapped families in developmental disability or physically handicapped occupancy categories may not have more than 24 units on one site.

(b) *Additional limitations.* Based on the amount of loan authority appropriated for a fiscal year, HUD may impose additional limitations on the number of units or residents that may be proposed under an application for section 202 loan fund reservation. This unit limitation will be published in the annual announcement of fund availability or the invitation for section 202 fund reservation under § 885.705.

§ 885.725 Cost containment and modest design standards.

(a) *Restrictions on amenities.* Projects must be modest in design. Except as provided in paragraph (d) of this section, amenities must be limited to those amenities, as determined by HUD, that are generally provided in unassisted decent, safe and sanitary housing for lower income families in the market area. Amenities not eligible for HUD funding include balconies, atriums, decks, bowling alleys, swimming pools, saunas and jacuzzis. Dishwashers, trash compactors, and space or mechanical hook-ups for washers and dryers in individual units will not be funded in independent living complexes. The use of durable materials to control or reduce maintenance, repair and replacement costs is not an excess amenity.

(b) *Unit sizes.* For independent living complexes, HUD will establish limitations on the size of units and

number of bathrooms, based on the number of bedrooms that are in the unit.

(c) *Special spaces and accommodations.* The costs of construction of special spaces and accommodations may not exceed 10 percent of the total cost of construction, except as provided in paragraph (d) of this section. Special spaces and accommodations include multipurpose rooms, game rooms, libraries, lounges and, in independent living complexes, central kitchens and dining rooms. Special spaces and accommodations exclude offices, halls, mechanical rooms, laundry rooms, and parking areas, and dwelling units and lobbies in independent living complexes; and bedrooms, living rooms, dining and kitchen areas, shared bathrooms, and resident staff dwelling units in group homes.

(d) *Exceptions.* HUD may approve a project that does not comply with the cost containment and modest design standards of paragraphs (a) through (c) of this section if:

- (1) The Sponsor demonstrates a willingness and ability to contribute the incremental development cost and continuing operating costs associated with the additional amenities or design features; or
- (2) The proposed project involves substantial rehabilitation or acquisition with or without moderate rehabilitation, the additional amenities or design features were incorporated into the existing structure before the submission of the application, and the total development cost of the project with the additional amenities or design features does not exceed the cost limits described in § 885.810.

§ 885.727 Prohibited facilities.

Project facilities may not include commercial spaces, infirmaries, nursing stations, spaces dedicated to the delivery of medical treatment or physical therapy, padded rooms, or space for respite care or sheltered workshops. Except for office space used by the Borrower exclusively for the administration of the project, project facilities may not include office space.

§ 885.730 Site and neighborhood standards.

(a) The site and neighborhood standards of § 880.206 (a) through (h), and (j) of this chapter apply to new construction projects. The site and neighborhood standards of § 881.206 (a) through (g), and (i) of this chapter apply to substantial rehabilitation projects and projects involving acquisition with or without moderate rehabilitation.

(b) Projects must be located in neighborhoods where other family housing is located. Except as provided below, projects may not be located adjacent to the following facilities, or in areas where such facilities are concentrated: schools or day-care centers for handicapped persons, workshops, medical facilities, or other housing primarily serving handicapped persons. Projects may be located adjacent to other housing primarily serving handicapped persons if the projects together do not exceed the project size limitations under § 885.720(a).

§ 885.735 Prohibited relationships.

(a) *Conflicts of interest.* Officers, directors, trustees, members, stockholders and authorized representatives of the Borrower, and officers and directors of the Sponsor may not have any financial interest in any contract in connection with the rendition of services, the provision of goods or supplies, project management, procurement of furnishings or equipment, construction of the project, procurement of the site or other matters related to the development and operation of the project. Management contracts (including associated management fees) entered into by the Borrower with the Sponsor or the Sponsor's nonprofit affiliate will not constitute a conflict of interest if no more than one person salaried by the Sponsor or management affiliate serves on the Borrower's board of directors.

(b) *Interest in earnings.* No part of the net earnings of the Borrower or Sponsor may inure to the benefit of any private shareholder, contributor, or individual.

(c) *Control of Borrower or Sponsor.* Neither the Borrower nor the Sponsor may be controlled by, or under the direction of, persons or entities seeking to derive profit or gain as a result of activities undertaken by the Borrower or Sponsor.

(d) *Provision of services.* A person or an entity (including an affiliated entity) may not provide services to a project in more than one of the following capacities: Attorney, architect, contractor, housing consultant, management agent, or seller of the site for the project, except that the same person or entity may serve a project as management agent and housing consultant.

§ 885.740 Other Federal requirements.

(a) *Nondiscrimination and equal opportunity.* Participation in this program requires compliance with:

(1) The requirements of Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601-19) (Fair Housing Act) and its implementing regulations; Executive Order No. 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR Part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations at 24 CFR Part 1;

(2) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and implementing regulations at 24 CFR Part 146, and the prohibitions against discrimination against otherwise qualified individuals with handicaps under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8;

(3) The requirements of Executive Order No. 11246 (Equal Employment Opportunity) and the regulations issued under the Order at 41 CFR Chapter 60;

(4) The requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects) and the implementing regulations at 24 CFR Part 135;

(5) The requirements of Executive Order Nos. 11625, 12432, and 12138 (Minority and Women's Business Enterprises);

(6) The affirmative fair housing marketing requirements of 24 CFR Part 200, Subpart M and the implementing regulations at 24 CFR Part 108;

(7) The fair housing advertising and poster guidelines, 24 CFR Parts 109 and 110.

(b) *Environmental.* The National Environmental Policy Act of 1969, HUD's implementing regulations at 24 CFR Part 50, including the related authorities described in 24 CFR 50.4, and the Coastal Barrier Resources Act of 1982 (16 U.S.C. 3601) apply to this program. For the purposes of Executive Order No. 11988, Floodplain Management, all applications under this program shall be treated as critical actions requiring consideration of the 500-year flood plain.

(c) *Flood insurance.* The Flood Disaster Protection Act of 1973 (42 U.S.C. 4001) applies to this program.

(d) *Labor standards.* For projects that are designed for dwelling use by 12 or more handicapped families (other than projects acquired without rehabilitation), participation in this program is subject to the following requirements.

(1) Not less than the wages prevailing in the locality, as determined by the

Secretary of Labor under the Davis-Bacon Act (40 U.S.C. 276a-276a-5), must be paid to all laborers and mechanics employed in the construction or rehabilitation of the project. HUD may waive the Davis-Bacon requirements if laborers or mechanics voluntarily donate their services without full compensation for the purposes of lowering the costs of construction or rehabilitation; the laborers or mechanics are not otherwise employed in the construction or rehabilitation of projects that are assisted under this part and designed for dwelling use by 12 or more families; and HUD determines that any amounts saved are fully credited to the Borrower undertaking the construction or rehabilitation.

(2) Except where the Davis-Bacon requirements have been waived under paragraph (c)(1) of this section, contracts involving employment of laborers and mechanics shall be subject to the provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333).

(3) Sponsors, Borrowers, contractors and subcontractors must comply with all related rules, regulations, and requirements.

(e) *Relocation assistance.* The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601) and governmentwide implementing regulations at 49 CFR Part 24 apply to this program.

(f) *Lead-based paint.* (1) The requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846) and implementing regulations at 24 CFR Part 35 (except as superseded in paragraph (f)(2) of this section) apply to the dwellings (except zero-bedroom dwelling units) in housing assisted under this Subpart which was constructed or substantially rehabilitated before 1978 and in which any child under seven years of age resides or is expected to reside.

(2)(i) This paragraph implements the provisions of section 302 of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4822, by establishing procedures to eliminate, as far as practicable, the hazards of lead-based paint poisoning with respect to covered structures for which assistance is provided under this program. This paragraph is promulgated under 24 CFR 35.24(b)(4) and supersedes, with respect to the program, the requirements prescribed in Subpart C of 24 CFR Part 35.

(ii) The following definitions apply to this paragraph (f):

Applicable surface means all intact and nonintact painted interior and

exterior surfaces of a residential structure.

Chewable surface means all chewable protruding painted surfaces up to five feet from the floor or ground, which are readily accessible to children under seven years of age, e.g., protruding corners, windowsills and frames, doors and frames, and other protruding woodworks.

Defective paint surfaces means paint on applicable surfaces that is cracking, scaling, chipping, peeling, or loose.

Elevated blood lead level or EBL means excessive absorption of lead: that is, a confirmed concentration of lead in whole blood of 25 ug/dl (micrograms of lead per deciliter of whole blood) or greater.

Lead-based paint means a paint surface, whether or not defective, identified as having a lead content greater than or equal to 1 mg/cm².

(iii) In the case of a structure constructed before 1978 or substantially rehabilitated prior to 1978, the Sponsor must inspect the structure for defective paint surfaces before it submits site information under § 885.780. If defective paint surfaces are found, treatment in accordance with 24 CFR 35.24(b)(2)(ii) is required. Correction of defective surfaces found during the initial inspection must be completed before initial occupancy of the project.

(iv) In the case of a structure constructed before 1978 or substantially rehabilitated prior to 1978, if the Borrower is presented with test results that indicate that a child under the age of seven years occupies the structure and has an elevated blood lead level (EBL), the Borrower must cause the unit to be tested for lead-based paint on chewable surfaces. Testing must be conducted by a State or local health or housing agency, by an inspector certified or regulated by a State or local health or housing agency, or an organization recognized by HUD. Lead content shall be tested by using an X-ray fluorescence analysis (XRF) or other method approved by HUD. Test readings of 1 mg/cm² or higher using an XRF shall be considered positive for presence of lead-based paint. Where lead-based paint on chewable surfaces is identified, covering or removal of the paint surface in accordance with 24 CFR 35.24(b)(2)(ii) is required.

(v) Where abatement will result from rehabilitation activities planned (i.e., where all applicable surfaces will be replaced, covered or otherwise abated as described in this part), these surfaces need not be tested.

(vi) In lieu of the procedures set forth in the preceding clause, the Borrower

may, at its discretion, abate all interior and exterior chewable surfaces in accordance with the methods set out at 24 CFR 35.24(b)(2)(ii).

(vii) The Borrower must take appropriate action to protect tenants from hazards associated with abatement procedures.

(viii) The Borrower must keep a copy of each inspection report for at least three years. If a unit requires testing, or treatment of chewable surfaces based on the testing, the Borrower must keep the test results, and, if applicable, the certification of treatment indefinitely. The records must indicate which chewable surfaces in the units have been tested or treated. If records establish that certain chewable surfaces were tested, or tested and treated, in accordance with the standards prescribed in this section, these surfaces do not have to be tested or treated at any subsequent time.

(g) *Intergovernmental review.* The requirements for intergovernmental review in Executive Order No. 12372 and the implementing regulations at 24 CFR Part 52 are applicable to this program.

Selection of Applications and Duration of Fund Reservation

§ 885.750 Review of applications for fund reservation.

(a) *Preliminary evaluation.* (1) HUD will perform a preliminary review of every application. To be eligible for technical review, the application must meet each of the criteria described below.

(i) The application must be received by HUD at the appropriate address within the time period specified in the invitation, and must be complete.

(ii) The Sponsor must be eligible to participate in the program.

(iii) The proposed facilities and proposed occupancy requirements must be eligible under the program.

(iv) The application must include a supportive services plan meeting the requirements of § 885.710(b)(6).

(2) Following the completion of the preliminary evaluation of all applications, HUD will notify Sponsors of applications that are found to be unapprovable. The notification will be in writing and will explain the reasons for HUD's action.

(b) *Technical review processing.* (1) HUD will perform a technical review of each application that is found to be acceptable under the preliminary evaluation. Technical review processing will consist of the following:

(i) HUD will review the application to determine if:

(A) The Sponsor has demonstrated financial and management capability to carry the project through to completion.

(B) The Sponsor has previous experience in developing or operating housing, medical, or other facilities, or experience in providing supportive services to individuals of the disability group(s) proposed to be housed.

(C) The Sponsor has made a commitment and will be able to provide the preliminary development costs and the minimum capital investment.

(D) The narrative description submitted under § 885.710(b)(4) is appropriate for handicapped individuals meeting the proposed project occupancy requirements, and indicates that the proposed project is likely to comply with the project standards described in § 885.717, the project size limitations of § 885.720, the modest design and cost containment standards of § 885.725, and the facility prohibitions of § 885.727.

(E) The locality (or the site, if the Sponsor has submitted evidence under § 885.780) is likely to meet the site and neighborhood standards of § 885.730. If the Sponsor has submitted site information with the application, HUD will also determine if the site is acceptable under § 885.780, including environmental review and flood hazard requirements. If a Sponsor has provided site evidence and HUD determines that the site is unacceptable, HUD will process the application as if no site evidence has been submitted.

(F) The service plan description under § 885.710(b)(6) is directed to the needs of individuals with the type of disability the project proposes to serve, and demonstrates the Sponsor's ability to provide or assure the provision of the proposed supportive services to such individuals.

(G) The proposed project does not conflict with State or local plans and policies governing the development and operation of facilities to serve individuals with the type of disability the project proposes to serve.

(H) There is evidence of effective demand for the proposed project.

(I) The Sponsor is in compliance with nondiscrimination and equal opportunity requirements.

(J) The application is otherwise responsive to the invitation for applications and the requirements of this part.

(ii) During technical review processing, HUD will also review the comments (if any) received from the State single point of contact, and will determine if the proposed project is located in a locality that is acceptable under § 885.780(c)(3)(i).

(2) Based on the factors set forth in this paragraph (b), HUD will determine which applications are approvable. Selections will be made in accordance with paragraphs (c) and (d) of this section.

(c) *Ranking.* (1) HUD will assign a rating to each application found to be approvable under technical review processing, based upon HUD's assessment of:

(i) The degree to which the Sponsor has demonstrated, relative to other proposals:

(A) Its capacity and commitment to assist the Borrower to carry the project through to long-term operation;

(B) The Sponsor's ability and commitment to provide the Borrower with the financial resources to establish and ensure the long-term operation of the proposed project;

(C) The need in the locality for a project serving handicapped individuals meeting the proposed project occupancy requirements;

(D) Support for the proposed project from the local community, including State and local organizations familiar with the needs of handicapped individuals meeting the proposed project occupancy requirements; and

(E) The Sponsor's ability to provide or facilitate the provision of the proposed supportive services to handicapped individuals meeting the proposed project occupancy requirements.

(ii) The degree to which the application supports minority enterprise; involves a small research or demonstration project; or provides an innovative housing program or alternative method of meeting lower income housing needs.

(2) HUD may also assign additional rating points to applications that include satisfactory evidence of approvable site (see § 885.780) or, for group homes, that propose to use acquisition with or without moderate rehabilitation as the development method. If additional points for these factors will be awarded, the announcement of funds availability under § 885.705 will include the maximum number of points that may be awarded under each factor.

(3) Within each allocation area, HUD shall rank all approvable applications in order of their rating scores.

(d) *Selection.* (1) Based on the ranking under paragraph (c) of this section, HUD shall select applications in the descending order of funding priority that most closely approximates the loan authority provided to the allocation area.

(2) If the amount of loan authority allocated to an area exceeds the amount

necessary to fund all approvable applications in the area, the Department shall transfer the unused loan authority from the area to another area or areas in which there is insufficient loan authority for all approvable applications.

(3) After selection of applications that can be funded with the loan authority allocated to the allocation areas, HUD may select unfunded but otherwise approvable applications for funding from available amounts in the Headquarters Reserve.

(4) Following the selection of applications, HUD will notify the Sponsors of applications that are not approvable after technical review processing under paragraph (b) of this section, and the Sponsors of applications that are not selected for funding under this paragraph (d). The notification will be in writing and will explain the reasons for HUD's action.

§ 885.755 Approval of applications.

(a) *Notice of fund reservation.* A Sponsor whose application is approved will be issued a notice of section 202 fund reservation in a format prescribed by HUD. The notice of fund reservation will specify:

(1) The number and mix of units for an independent living complex or the number of residents approved for a group home, the locality of the proposed project, and the project occupancy requirements approved by HUD;

(2) The amount of the section 202 fund reservation equal to the development cost limit computed under § 885.810(c);

(3) The amount of annual project assistance reserved for the project equal to the sum of the operating cost standard developed under § 885.807 plus the annual debt service on the amount of the section 202 fund reservation (computed at an annual interest rate equal to the loan interest rate under § 885.810(f)(1) in effect on the date the notice is issued);

(4) The deadline for the Sponsor to return a copy of the notification to HUD with an indication of its acceptance;

(5) If the Sponsor did not submit the site information required under § 885.780 with the application, the deadline for the Sponsor to submit such information;

(6) The deadline for the Borrower to submit a request for direct loan financing and a request for determination of Borrower eligibility under § 885.800; and

(7) Other guidance to Sponsors and Borrowers (including any additional evidence required under § 885.800(b)(2)(vii)).

(b) *Withdrawal of approval.* If the Sponsor does not accept the notification by the date specified in the notice of

fund reservation, HUD may notify the Sponsor that approval of the application is withdrawn.

(c) *Transfer of reservation.* Except for a transfer of loan fund reservation from the Sponsor to the HUD-approved Borrower established by the Sponsor, no part of the loan fund reservation may be transferred.

(d) *Use of loan funds.* A section 202 fund reservation may be used only for the project that has been approved under the application.

(e) *Amendments.* Subject to the availability of funds, HUD may amend the amount of a fund reservation approved under paragraph (a)(1) of this section at any time before the final closing of a loan.

§ 885.770 Duration of Section 202 fund reservations.

(a) *Extension and cancellation of fund reservation.* The duration of the initial fund reservation is 18 months from the date of issuance of the notice under § 885.755. Subject to the approval of the Assistant Secretary:

(1) The field office may, at any time, issue a notice of loan cancellation if the field office determines that the Borrower is not making satisfactory progress toward the start of construction, rehabilitation, or acquisition.

(2) The field office shall issue a notice of loan cancellation if the construction, substantial rehabilitation, or acquisition with or without moderate rehabilitation of a project is not begun within 18 months after the notice of section 202 fund reservation under § 885.755(a) is issued. This 18-month time period may be extended if HUD determines that the Borrower is making satisfactory progress toward the start of construction, rehabilitation or acquisition with or without rehabilitation. The field office may extend this time period up to 24 months after the notice of section 202 fund reservation is issued. HUD may grant additional extensions of up to 36 months after the notice of section 202 fund reservation is issued.

(b) *Notification procedures.* (1) If HUD determines that a fund reservation must be cancelled under paragraph (a) of this section, the field office shall mail a notice of loan cancellation to the Borrower by certified mail, return receipt requested. The notice of loan cancellation must:

(i) Describe the reasons for the cancellation of the loan authority; and

(ii) Advise the Borrower that it may file an appeal of the cancellation with the field office within 30 days of the receipt of the cancellation notice, and that the failure to file an appeal will

result in the cancellation of the fund reservation upon the expiration of the 30-day period.

(2) If the Borrower fails to file an appeal of the loan cancellation within 30 days of the receipt of the cancellation notice, the field office shall cancel the fund reservation and provide a written notice of the cancellation to the Borrower.

(3) If the Borrower files an appeal within 30 days of the receipt of the cancellation notice, HUD Headquarters will review the appeal and will issue a decision on the appeal within 45 days of the receipt of the appeal. HUD will approve the appeal if the Borrower demonstrates that it is making satisfactory progress toward the start of construction, rehabilitation, or acquisition with or without moderate rehabilitation.

(i) If HUD approves the appeal, it shall provide a written notification of the approval to the Borrower. The notification shall indicate the duration of the extended fund reservation.

(ii) If HUD disapproves the appeal, it shall notify the Borrower in writing of the determination, and cancel the fund reservation.

§ 885.775 Transition.

At any time before initial loan closing, a Sponsor or Borrower that received a reservation of loan authority under section 202 of the Housing Act of 1959 and a reservation of contract authority for housing assistance payments under section 8 of the United States Housing Act of 1937 for a project for nonelderly handicapped families under Subparts B through D of this Part, may submit a request to HUD to substitute project assistance payments under this Subpart G for the Section 8 housing assistance payments. After HUD completes its selections for funding in a fiscal year and to the extent that funds are available for the substitution of project assistance, HUD may approve a request if: (a) The project is eligible for assistance under the requirements of this Subpart G; and (b) the project is financially infeasible with contract rents limited by the Section 8 Fair Market Rents or the substitution would otherwise facilitate the development of the project in a timely manner.

Direct Loan Financing Procedures

§ 885.780 Submission of site information.

(a) *Required information.* The following information with respect to the proposed project is not required with the application, but must be provided within the time period specified in § 885.755(a)(5).

(1) A map showing the location of the site and the racial composition of the neighborhood, with any area of racial concentration delineated.

(2) Evidence that the proposed acquisition, construction or rehabilitation is permissible under applicable zoning ordinances or regulations, or a description of the actions required to make the acquisition, construction or rehabilitation permissible under such laws and ordinances and the basis for the Sponsor's belief that proposed actions will be completed successfully before the receipt of commitment for direct loan financing (e.g., a summary of the results of any recent requests for rezoning classifications and the time required for such rezoning, preliminary indications of acceptability from zoning bodies, etc.).

(3) A statement whether the proposed project will displace site occupants. If so, the proposal must state the number of families, individuals, and business concerns to be displaced (identified by race or minority group, and status as owners or renters), must demonstrate that relocation is feasible, and must explain how necessary relocation payments, if any, will be funded. Relocation payments may not be funded from loan proceeds.

(4) A showing that the proposal meets any special requirements or restrictions necessary for compliance with the local HAP.

(b) *HUD review of site information.* HUD will review the Sponsor's submission under paragraph (a) of this section. A site may be approved if:

(1) The site meets the site and neighborhood standards of § 885.730.

(2) The Sponsor has demonstrated that the development of the site is permissible under applicable local zoning ordinances or regulations or will be permissible under such ordinances and regulations before the receipt of the commitment for direct loan financing; and

(3) Any proposed relocation is feasible and necessary relocation payments will be funded from sources other than section 202 loan proceeds.

(c) *Additional site requirements—(1) Notification to local government.* When site specific information is received, HUD will forward (if not previously submitted by the Sponsor) a notification, in the form prescribed by HUD, to the chief executive officer (or such persons as that office may designate) of the unit of general local government in which the proposed housing is to be located, and shall invite a response within 30 calendar days from the date of the notification letter. HUD will review the

comments, if any, received during the response period from the appropriate unit of general local government to determine if the proposed site for the project is approvable under section 213 of the Housing and Community Development Act of 1974.

(2) *Environmental review.* HUD will complete an environmental review in compliance with the National Environmental Policy Act of 1969 and the related authorities in 24 CFR Part 50.

(3) *Flood insurance.* Assistance will not be provided for the acquisition, construction, reconstruction, repair, or improvement of a building located in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards unless (i)(A) the community in which the area is situated is participating in the National Flood Insurance Program in accordance with 44 CFR Parts 59 through 79, or (B) less than a year has passed since FEMA notification to the community regarding such hazards; and (ii) flood insurance on the structure is obtained in accordance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001).

(4) *Coastal barriers.* Assistance will not be provided for projects in an undeveloped coastal barrier designated under the Coastal Barrier Resources Act of 1982 (16 U.S.C. 3601).

(d) *HUD approval.* (1) If HUD determines that a site is approvable under this section, HUD will notify the Sponsor of the approval, including a statement of any specific environmental conditions that must be met as a condition of HUD approval. The Sponsor must obtain site approval under this section before it applies for conditional commitment under § 885.800(c).

(2) If HUD determines that a site is not approvable under this section, HUD will notify the Sponsor of the Disapproval and the reasons for disapproval. If a site is disapproved, the Sponsor may, consistent with its application under § 885.710, obtain a new site and resubmit a request for site approval under this section.

§ 885.800 Request for direct loan financing.

(a) *Request for direct loan financing.* A Borrower established by a Sponsor receiving a fund reservation must submit a request for direct loan financing within the time limit specified in the notice of section 202 fund reservation to the field office serving the area in which the proposed project will be located.

(b) *Request for determination of Borrower eligibility.* Simultaneously with the request for direct loan

financing, the Borrower must submit a request for determination of eligibility, on a form or forms prescribed by HUD.

(1) The Borrower will be required to submit the information required of Sponsors under § 885.710(b)(1), (2), (11), (12)(ii) and (iii), (13) and (16), as modified by this paragraph:

(i) Borrowers may omit the board of director's resolution required under § 885.710(b)(11), but will be required to submit certifications signed by all officers and directors of the Sponsor and the Borrower certifying that they have not had and will not have any financial interest in any contract, or in any firm or corporation that has a contract, with the Borrower in connection with the rendition of services, the provision of goods or supplies, procurement of furnishings and equipment, construction of the project, procurement of the site, or other matters, whatsoever. In the case of officers and directors of the Sponsor, this certification does not apply to management contracts (including management fees associated with such contracts) entered into by the Borrower with the Sponsor or its nonprofit affiliate. However, more than one person salaried by the Sponsor or management affiliate may serve on the Borrower's board of directors.

(ii) A Borrower will meet the requirements for a tax exemption ruling under § 885.710(b)(12)(ii) if it demonstrates that it applied for a tax exemption ruling under section 501(c)(3) or (4) before filing the request for determination of Borrower eligibility.

(2) Borrowers will be required to submit sufficient evidence to demonstrate:

(i) The Borrower is a nonprofit corporation incorporated separately from the Sponsor;

(ii) The Borrower has the necessary legal authority to finance, acquire (with or without moderate rehabilitation), construct, or substantially rehabilitate and maintain the project, and to apply for and receive the section 202 loan.

(iii) The Borrower meets all corporate organization requirements that HUD may impose, including requirements that: (A) The purposes of the Borrower include the promotion of the welfare of handicapped families; (B) the articles of incorporation and by-laws do not include any references to religion or religious purposes; (C) the articles of incorporation must provide that upon the dissolution of the Borrower, its assets remaining after payment of all debts and liabilities will be conveyed or distributed only to an organization created and operated for nonprofit purposes similar to the Borrower, other

than one created for a religious purpose; (D) the articles of incorporation must permit the Sponsor to appoint and remove a majority of the voting members of the Borrower's board of directors; and (E) the articles of incorporation must provide that the board of directors will be composed of a minimum of seven individuals.

(iv) The Borrower is not authorized to engage in any other business or activity (including the operation of another rental property) or incur any liability or obligation not related to the project.

(v) The Sponsor has fulfilled its commitment to provide resources to the Borrower, as described in the Sponsor's application under § 885.710(b) (12)(iii) and (19).

(vi) The Borrower has submitted a request for preliminary determination of eligibility as a mortgagor, on a form prescribed by HUD.

(vii) The Borrower has submitted such additional evidence as HUD may require in the notice of section 202 fund reservation under § 885.755.

(3) If housing consultant services have been used by the Sponsor, the Borrower must execute the housing consultant contract and submit it to HUD with the request for determination of Borrower eligibility.

(c) *Conditional commitment processing.* The request for conditional commitment processing must be on a form or forms prescribed by HUD and must include all required exhibits. During conditional commitment, HUD will:

(1) Determine whether the Borrower has established its eligibility under paragraph (b) of this section.

(2) Establish the amount of the initial contract rents and any initial utility allowances to be provided in independent living complexes.

(i) The amount of the initial contract rent plus any utility allowances shall not exceed the annual reasonable and necessary operating costs of the project plus the debt service on the amount of the section 202 loan.

(ii) Operating cost standards developed under § 885.807 are used to evaluate the reasonableness of the operating costs of the proposed project. HUD may approve operating costs that exceed the applicable operating cost standard (including adjustments under § 885.807(a)).

(iii) If the cost of utilities (except telephone) and other housing services are not included in the initial contract rent for an independent living complex, HUD will establish initial utility allowances for the project based on the monthly cost of a reasonable consumption of 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. The cost of utilities and other housing services for group homes will be included in the initial contract rent.

(3) Review the site and project design to determine if the Borrower has presented adequate evidence of site control, and the proposed project complies with the project standards described in § 885.717, the project size limitations of § 885.720, the modest design and cost containment standards of § 885.725, and the facility prohibitions of § 885.727. To assist in this review, Borrowers will be required to submit the following information with their request for conditional commitment:

(i) Documentary evidence that the Sponsor has control of the site.

(ii) A sketch of the site plan showing the general development of the site including the location of the proposed buildings, streets, parking areas and drives, service areas, and unusual site features, and architectural sketches of typical unit plans (including the square feet per unit), floor plans for typical units, floor plans showing special spaces, accommodations and common areas, and the main elevation of each building.

(iii) If the proposed housing does not comply with the cost containment and modest design standards of § 885.725(a) through (c), evidence demonstrating that the proposed housing is eligible for an exception from these standards under § 885.725(d).

(iv) A statement describing any proposed methods to be used in the construction and rehabilitation of the project that will promote construction efficiencies.

(4) Establish land value.

(5) Evaluate the overall financial feasibility of the project.

(6) Evaluate the adequacy of the Borrower's affirmative fair housing marketing plan.

(d) *Firm commitment processing.* The request for firm commitment processing must be on a form or forms prescribed by HUD and must include all required exhibits. Processing of a request for a firm commitment will include review of the final plans and specifications, review of environmental conditions to site approval, review of the contractor/Borrower's cost estimate, and a review of the conclusions reached during conditional commitment processing. HUD may permit the Borrower to submit a request for firm commitment without previous conditional commitment processing under certain circumstances

(e.g., the project involves acquisition with or without moderate rehabilitation or construction projects utilizing designs that have been previously submitted to, and approved by, HUD). Under such circumstances, HUD will perform the steps set forth in paragraph (c) of this section, during firm commitment processing.

(e) *Loan interest rate.* When the request for conditional or firm commitment for direct loan financing is submitted, the Borrower may request that the loan interest rate be computed at the optional interest rate as provided under § 885.810(f)(2). If the Borrower makes such a request, the loan interest rate used for the processing of the request for conditional or firm commitment under paragraph (c) or (d) of this section shall be the optional loan interest rate. If the Borrower does not make a request for the optional rate, the interest rate used for processing the request shall be the interest rate computed under § 885.810(f)(1).

(f) *Modification of contract rents.* Contract rents proposed by a Borrower may be modified by HUD at any time before execution of the agreement to enter into a project assistance contract.

§ 885.805 Approval of requests for direct loan financing.

HUD will review the request for direct loan financing (including the request for determination of Borrower eligibility) and all required exhibits and will notify the Borrower of its approval by issuance of a conditional or firm commitment, as appropriate, or of its disapproval of the request.

(a) *Issuance of conditional commitment.* A conditional commitment will include the following:

- (1) The estimated cost of the project;
- (2) The land value fully improved (with offsite improvements installed) and, if the proposal involves the rehabilitation of a project, the "as-is" value of the site;
- (3) The detailed estimates of operating expenses;
- (4) The financial requirements;
- (5) The loan amount;
- (6) The interest rate used in processing the request;
- (7) The approved contract rents and utility allowances; and
- (8) The deadline for the submission of the Borrower's request for a firm commitment for direct loan financing.

(b) *Issuance of firm commitment.* A firm commitment will include the following:

- (1) Approval of the final plans and specifications;

(2) A statement that the contractor/Borrower's cost estimates have been reviewed;

(3) Reaffirmation of the conclusions reached during conditional commitment processing or a statement describing the approved changes to earlier conclusions;

(4) The interest rate used in the processing of the request.

If the Borrower was permitted to apply for a firm commitment without going through conditional commitment processing, the items listed in paragraph (a) of this section shall be included in the issuance of the firm commitment for direct loan financing. Issuance of a firm commitment evidences HUD's approval of the request for direct loan financing, and sets forth the terms and conditions upon which the loan shall be made and the loan proceeds disbursed.

(c) *Cancellation.* If a request for Borrower eligibility or a request for conditional or firm commitment for direct loan financing is not submitted within the time periods specified in the notice of section 202 fund reservation or in the conditional commitment (as appropriate), HUD may cancel the fund reservation under § 885.770.

§ 885.807 Operating cost standard.

(a) *General.* At least annually, HUD shall establish operating cost standards based on the average annual operating cost of comparable housing for handicapped families in each field office. The operating cost standards shall be developed for group homes based on the number of residents, and for independent living complexes based on the number of units. HUD may adjust the operating cost standard applicable to an approved project to reflect additional operating costs necessary to serve handicapped individuals meeting the project occupancy requirements, and to reflect differences in costs based on location within the field office jurisdiction. The operating cost standard will be used to determine the amount of the project assistance reserved for a project under § 885.755(a)(3) and to review the reasonableness of operating costs for the establishment of initial contract rents at the time of issuance of the conditional commitment under under § 885.800(a).

(b) *Operating cost.* Costs included in the computation of the operating cost standard are:

(1) Administrative expenses, including salary and management expenses related to the provision of shelter. Operating costs exclude expenses related to administering, or managing the provision of, supportive services.

(2) Maintenance expenses, including routine and minor repairs and groundskeeping.

(3) Security expenses.

(4) Utilities expenses, including gas, oil, electricity, water, sewer, trash removal, and extermination services. Operating costs exclude telephone services for families.

(5) Taxes and insurance.

(6) Allowances for reserves.

§ 885.810 Amount and terms of financing.

(a) *Amount of financing.* The amount of financing approved shall be the amount stated in the notice of fund reservation, including any increase approved by HUD before the final closing of a loan. The amount of financing may not exceed the lesser of the amounts provided in paragraphs (b) through (e) of this section.

(b) *Estimated development cost.* The amount of the loan may not exceed the total estimated development cost of the project (as determined by HUD), less the incremental development cost and capitalized operating costs associated with excess amenities and design features to be paid for by the Sponsor under § 885.725(d)(1).

(c) *Development cost limit.* (1) For independent living complexes, the total development cost of the property or project attributable to dwelling use (less the incremental development cost and capitalized operating costs described in paragraph (b) of this section) may not exceed:

(i) For independent living complexes without elevators:

(A) \$28,032 per family unit without a bedroom;

(B) \$32,321 per family unit with one bedroom;

(C) \$38,979 per family unit with two bedrooms;

(D) \$49,893 per family unit with three bedrooms;

(E) \$55,583 per family unit with four or more bedrooms.

(ii) For independent living complexes with elevators:

(A) \$29,500 per family unit without a bedroom;

(B) \$33,816 per family unit with one bedroom;

(C) \$41,120 per family unit with two bedrooms;

(D) \$53,195 per family unit with three bedrooms;

(E) \$58,392 per family unit with four or more bedrooms.

(2) For group homes, the total development cost of the project may not exceed the cost limit for the project. HUD will periodically establish cost limits for various sizes of group homes by publishing a notice of the cost limits

in the Federal Register. The cost limits will reflect those costs reasonable and necessary to develop a project of a size that will accommodate the specified number of residents and comply with HUD minimum property standards; the minimum square footage requirements, bathroom and recreational area requirements of § 885.717; cost containment and modest design standards of § 885.725 and other design requirements applicable to group homes under this part. To develop the cost limit for group homes, HUD will use commercially available construction cost indices and construction cost data for recently completed comparable group homes.

(3) *Increased mortgage limits.*

(i) The Assistant Secretary may increase the cost limits set forth in paragraphs (c) (1) and (2) of this section by up to 110 percent in any geographic area where the cost levels require, and may increase the cost limits by up to 140 percent on a project-by-project basis.

(ii) If the Assistant Secretary finds that high construction costs in Alaska, Guam or Hawaii make it infeasible to construct dwellings, without the sacrifice of sound standards of construction, design, and livability, within the cost limits provided in this paragraph (c), the principal amount of mortgages may be increased to compensate for such costs. The increase may not exceed the limitations established under this section (including any high cost area adjustment) by more than 50 percent.

(d) *Rehabilitation projects—additional limits.* A loan that involves a project to be rehabilitated is subject to the following additional limitations:

(1) *Property held in fee.* If the Sponsor is the fee simple owner of a property unencumbered by a mortgage, the maximum loan amount may not exceed 100 percent of the cost of the proposed rehabilitation.

(2) *Property subject to existing mortgage.* If the Sponsor owns the property subject to an outstanding indebtedness that is to be refinanced with part of the section 202 loan, the maximum loan amount may not exceed the cost of rehabilitation plus the portion of the outstanding indebtedness that does not exceed the fair market value of the land and improvements before the rehabilitation, as determined by HUD.

(3) *Property to be acquired.* If the property is to be acquired by the Borrower from an entity other than the Sponsor, and the purchase price is to be financed with a part of the section 202 loan, the maximum loan amount may

not exceed the cost of the rehabilitation plus the portion of the purchase price that does not exceed the fair market value of such land and improvements before the rehabilitation, as determined by HUD.

(e) *Leaseholds.* If a loan is secured by a leasehold estate rather than by a fee simple estate, the amount of the loan attributable to the cost of the property may not exceed the value of the leasehold estate.

(f) *Loan interest rate.* The loan is made on the date of the initial loan closing under § 885.815. Loans shall bear interest at a rate determined by HUD in accordance with this section.

(1) *Annual interest rate.* Except as provided under paragraph (f)(2), loans shall bear interest at the rate in effect at the time the loan is made. The loan interest rate shall not exceed:

(i) The average yield on the most recently issued 30-year marketable obligations of the United States during the three-month period immediately preceding the fiscal year in which the loan is made (adjusted to the nearest one-eighth of one percent), plus an allowance to cover administrative costs and probable losses under the program; and

(ii) Any applicable statutory ceiling on the loan interest rate including the allowance to cover administrative costs and probable losses.

(2) *Optional interest rate.* The Borrower may elect an optional loan interest rate. To elect the optional rate, the Borrower must request that HUD determine the loan interest rate at the time of the Borrower's request for conditional or firm commitment for direct loan financing under § 885.800.

(i) If the Borrower elects the optional loan interest rate, the loan interest rate shall not exceed:

(A) The average yield on the most recently issued 30-year marketable obligations of the United States during the three-month period immediately preceding the fiscal year in which the request for commitment is submitted (adjusted to the nearest one-eighth of one percent), plus an allowance to cover administrative costs and probable losses under the program;

(B) The average yield on the most recently issued 30-year marketable obligations of the United States during the one-month period immediately preceding the month in which the request for commitment is submitted (adjusted to the nearest one-eighth of one percent), plus an allowance to cover the administrative costs and probable losses under the program; and

(C) Any applicable statutory ceiling on the loan interest rate including an

allowance to cover administrative costs and probable losses under the program.

(ii) The date of submission of a request for conditional or firm commitment is the date that the Borrower submits the complete and acceptable request to HUD under § 885.800. The date of the submission of a request for commitment will not be affected by any subsequent resubmission of the request by the Borrower or by any reprocessing of the request by HUD.

(iii) The Borrower may withdraw its election of the optional interest rate at any time before initial loan closing. If the Borrower elected the optional interest rate with its request for conditional commitment and withdraws its election, the loan will bear interest at the rate determined under paragraph (f)(1), of this section, unless the Borrower elects an optional interest rate with its request for firm commitment. If the Borrower withdraws its election after the date of submission of its request for firm commitment, the loan will bear interest at the rate determined under paragraph (f)(1) of this section.

(iv) If initial loan closing has not occurred within 18 months after the Notice of Section 202 Fund Reservation is issued, the Borrower's election of the optional rate will be cancelled and the loan will bear interest at the rate determined under paragraph (f)(1) of this section.

(3) *Allowance for administrative costs and probable losses.* For the purpose of computing the loan interest rate under paragraphs (f)(1) and (2) of this section, the allowance to cover administrative costs and probable losses under the program is one-fourth of one percent (.25%) per annum for both the construction and permanent loan periods.

(g) *Announcement of interest rates.* (1) HUD will annually announce the loan interest rate determination under paragraph (f)(1) of this section by publishing notice of the rate in the *Federal Register*. The *Federal Register* notice will include a statement explaining the basis for the interest rate determination.

(2) Upon the Borrower's request, HUD will provide available current information concerning the determination of the interest rate under paragraph (f)(2) of this section.

(h) *Security for loan.* The loan will be secured by a first mortgage on real estate in fee simple or a long-term leasehold. The mortgage will be repayable during a term not to exceed 40 years and will be subject to such terms and conditions as HUD may prescribe.

(i) *Minimum capital investment.* Borrowers must provide a minimum capital investment of one-half of one percent (0.5%) of the mortgage amount committed to be disbursed, not to exceed \$10,000. Loans made under section 106 of the Housing Act of 1968 may not be used to meet the minimum capital investment requirement. The minimum capital investment will be placed in escrow at the initial closing of the section 202 loan and will be held by HUD or by a HUD-approved escrow agent for not less than three years following the date of initial occupancy. The escrow account may be used for operating expenses or deficits as may be directed by HUD. Any unexpended balance remaining in the minimum capital investment account at the end of the escrow period will be returned to the Borrower.

§ 885.812 Prepayment of loans.

(a) *Prepayment prohibition.* The prepayment (whether in whole or in part) or the assignment or transfer of physical and financial assets of any section 202 project is prohibited, unless the Assistant Secretary gives prior written approval.

(b) *HUD-approved prepayment.* Approval for prepayment or transfer will not be granted unless HUD determines that the prepayment or transfer of the loan is a part of a transaction that will ensure the continued operation of the project until the original maturity date of the loan in a manner that will provide rental housing for the handicapped families on terms at least as advantageous to existing and future tenants as the terms required by the original section 202 loan agreement and any other loan agreements entered into under other provisions of law.

§ 885.815 Requirements prior to initial loan closing.

Before the initial loan closing, the Borrower must furnish such executed documents in such form as HUD may require, including the following:

(a) Agreement to enter into a project assistance contract.

(b) Certificate of incorporation of the Borrower as required by applicable State or local law.

(c) Internal Revenue Service Section 501(c)(3) or (4) tax exemption ruling.

(d) Certification of relationships and nonprofit motives of the Borrower.

(e) Attorney's opinion as to the legal status of the Borrower, building permit, and compliance with zoning laws and requirements.

(f) Regulatory agreement for nonprofit section 202 Borrowers.

(g) Borrower's oath that the project will not be used for hotel or transient purposes.

(h) Agreement and certification to certify actual costs and as to any financial and family relationships between the Borrower, the architect, general contractor and subcontractors.

(i) Assurance of compliance with HUD regulations under Title VI of the Civil Rights Act of 1964.

(j) Note and first mortgage or deed of trust.

(k) A title policy insuring that the mortgage constitutes a first lien on the project.

(l) Building loan agreement setting forth the conditions for loan disbursement.

(m) Construction, moderate rehabilitation or substantial rehabilitation contract between the Borrower and the general contractor (see § 885.816 for contract award requirements).

(n) Assurance of completion of construction, moderate rehabilitation or substantial rehabilitation contract in the form of corporate surety bonds for payment and performance, each in the amount of 100 percent of the amount of the HUD-estimated construction or rehabilitation cost, or a cash escrow in the amount of 25 percent of the HUD-estimated construction or rehabilitation cost. The corporate surety bond must be issued by a surety company that is satisfactory to HUD.

(o) Escrow agreement in the amount of the cost of any off-site facilities funded by a cash deposit or letter of credit to assure completion of the facilities.

§ 885.816 Requirements for awarding construction contracts.

(a) *Construction contract award.* Awards shall be made only to responsible contractors that possess the potential ability to perform successfully under the terms and conditions of a proposed construction contract. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(b) *Negotiated noncompetitive construction contracts.* Competitively bid contracts are not required. Negotiated noncompetitive contracts must be cost-reimbursement contracts with a ceiling price, and may provide an incentive payment to the contractor for early completion.

§ 885.820 Loan disbursement procedures.

(a) *General.* Disbursements of loan proceeds shall be made directly by HUD to or for the account of the Borrower and may be made through an approved lender, mortgage servicer, title insurance company, or other agent satisfactory to the Borrower and HUD.

(b) *Timing and amount of disbursement.* Disbursements to the Borrower will be made on a periodic basis, and in amounts not to exceed the HUD-approved cost of the portions of construction or rehabilitation work complete and in place (except as modified in paragraph (d) of this section), minus the appropriate holdback, as determined by HUD.

(c) *Content of disbursement requisition.* Requisitions for loan disbursements must be submitted by the Borrower on forms prescribed by HUD and must be accompanied by such additional information as HUD may require in order to approve loan disbursements under this part, including but not limited to evidence of compliance with the labor standards described at § 885.740(d), Department of Labor regulations, all zoning, building and other governmental requirements, and such evidence of continued priority of the Borrower's mortgage as HUD may prescribe.

(d) *Disbursements for building components stored off-site.* In loan disbursements for building components stored off-site, the term "building component" will mean any manufactured or pre-assembled part of a structure as defined by HUD and which HUD has designated for off-site storage because it is of such size or weight that storage of the components required for timely construction progress at the construction site is impracticable, or because weather damage or other adverse conditions prevailing at the construction site would make storage at the site impracticable or unduly costly. Each building component must be specifically identified for incorporation into the property as provided under paragraph (d)(1)(ii) of this section.

(1) *Storage.* (i) A loan disbursement may be made for up to 90 percent of the invoice value (to exclude cost of transportation and storage) of the building components stored off-site if the components are stored at a location approved by HUD.

(ii) Each building component shall be adequately marked to be readily identifiable in the inventory of the off-site location. It shall be kept together with all other building components of the same manufacturer intended for use in the same project for which loan disbursements have been made and

separate and apart from similar units not for use in the project.

(iii) Storage costs, if any, shall be borne by the general contractor.

(2) *Responsibility for transportation, storage and insurance of off-site building components.* The general contractor of the project shall have the responsibility for insuring the components in the name of the Borrower while in transit and storage and for delivering or contracting for the delivery of the components to the storage area and to the construction site, including the payment of freight.

(3) *Loan disbursements.* (i) Before a loan disbursement for a building component stored off-site is made, the Borrower shall:

(A) Obtain a bill of sale for the component;

(B) Provide HUD with a security agreement pledged by a first lien on the building components with the exception of such other liens or encumbrances as may be approved by HUD;

(C) File a financing statement in accordance with the Uniform Commercial Code.

(ii) Before each loan disbursement for building components stored off-site is made, the manufacturer and the general contractor shall certify to HUD that the components, in their intended use, comply with HUD-approved contract plan and specifications.

(iii) Loan disbursements may be made only for components stored off-site in a quantity required to permit the uninterrupted installation on the site.

(iv) The outstanding amount of advances for building components stored off-site may not exceed 50 percent of the total estimated construction cost for the project as specified in the construction contract.

(v) Payments for building components stored off-site will not be approved unless the contractor has a corporate surety bond for payment and performance each in the amount of 100 percent of the amount of the construction contract.

(vi) No single loan disbursement shall be made in an amount less than \$10,000.

§ 885.825 Completion of cost certification.

(a) *Requisition for final disbursement.* The Borrower must satisfy the requirements for completion of construction, substantial rehabilitation, or acquisition with or without moderate rehabilitation and receive all required approvals from HUD before submitting a final requisition for disbursement of loan proceeds.

(b) *Cost certification.* The Borrower shall submit to the field office all

documentation required for final disbursement of the loan including:

(1) A certification of actual cost to the Borrower of the construction contract, architectural, legal, organizational, off-site costs, and all other items of eligible expense. The certificate shall not include as actual costs any kickbacks, rebates, trade discounts, or other similar payments to the Borrower or to any of its officers, directors, or members.

(2) For projects with a mortgage of \$750,000 or more, a verification of the certificate of actual cost by an independent public accountant acceptable to the field office.

(3) A certification of the general contractor (and of such subcontractors, material suppliers, and equipment lessors as HUD may require) on a form prescribed by HUD, as to all actual costs paid for labor, materials, and subcontract work under the general contract exclusive of the builder's fee and kickbacks, rebates, trade discounts, or other similar payments to the general contractor, the Borrower and any of its officers, directors, stockholders, partners or members.

(c) *Reduction of loan amount and contract rents.* If the certified costs provided under paragraph (b) of this section and approved by HUD are less than the loan amount established under § 885.805, the loan amount and the contract rents will be reduced accordingly.

(d) *Recovery of overpayment.* If the contract rents are reduced under paragraph (c) of this section, the maximum annual commitment under the PAC will be reduced. If contract rents are reduced based on cost certifications made after PAC execution, any overpayment after the effective date of the contract will be recovered from the Borrower by HUD.

Project Assistance Contract

§ 885.900 Project assistance contract.

(a) *Project assistance contract (PAC).* The PAC sets forth rights and duties of the Borrower and HUD with respect to the project and the project assistance payments.

(b) *PAC execution.* (1) Upon satisfactory completion of the project, the Borrower and HUD shall execute the PAC on the form prescribed by HUD.

(2) The effective date of the PAC may be earlier than the date of execution, but no earlier than the date of HUD's issuance of the permission to occupy.

(3) If the project is completed in stages, the procedures of this paragraph (b) shall apply to each stage.

(c) *Project assistance payments to owners under the PAC.* The project

assistance payments made under the PAC are:

(1) Payments to the Borrower to assist eligible families leasing assisted units. The amount of the project assistance payment made to the Borrower for an assisted unit (or residential space in a group home) that is leased to an eligible family is equal to the difference between the contract rent for the unit (or pro rata share of the contract rent in a group home) and the tenant rent payable by the family.

(2) Payments to the Borrower for vacant assisted units ("vacancy payments"). The amount of and conditions for vacancy payments are described in § 885.985.

The project assistance payments are made monthly by HUD upon proper requisition by the Borrower, except payments for vacancies of more than 60 days, which are made semiannually by HUD upon requisition by the Borrower.

(d) *Payment of utility reimbursement.* Where applicable, a utility reimbursement will be paid to a family occupying an assisted unit in an independent living complex as an additional project assistance payment. The PAC will provide that the Borrower will make this payment on behalf of HUD. Funds will be paid to the Borrower in trust solely for the purpose of making the additional payment. The Borrower may pay the utility reimbursement jointly to the family and the utility company, or, if the family and utility company consent, directly to the utility company.

§ 885.905 Term of PAC.

The term of the PAC shall be 20 years. If the project is completed in stages, the term of the PAC for each stage shall be 20 years. The term of the PAC for stages of a project shall not exceed 22 years.

§ 885.910 Maximum annual commitment and project account.

(a) *Maximum annual commitment.* The maximum annual amount that may be committed under the PAC is the total of the initial contract rents and utility allowances for all assisted units in the project.

(b) *Project account.* (1) HUD will establish and maintain a specifically identified and segregated project account for each project. The project account will be established out of the amounts by which the maximum annual commitment exceeds the amount actually paid out under the PAC each year. HUD will make payments from this account for project assistance payments as needed to cover increases in contract rents or decrease in tenant

income and other payments for cost specifically approved by the Secretary.

(2) If the HUD-approved estimate of required annual payments under the PAC for a fiscal year exceeds the maximum annual commitment for that fiscal year plus the current balance in the project account, HUD will, within a reasonable time, take such steps authorized by section 202(h)(4)(A) of the Housing Act of 1959, as may be necessary, to assure that payments under the PAC will be adequate to cover increases in contract rents and decreases in tenant income.

§ 885.915 Leasing to eligible families.

(a) *Availability of assisted units for occupancy by eligible families.* During the term of the PAC, a Borrower shall make all units (or residential spaces in a group home) available for eligible families. For purposes of this section, making units or residential spaces available for occupancy by eligible families means that the Borrower:

(1) Is conducting marketing in accordance with § 885.940(a);

(2) Has leased or is making good faith efforts to lease the units or residential spaces to eligible and otherwise acceptable families, including taking all feasible actions to fill vacancies by renting to such families; and

(3) Has not rejected any such applicant family except for reasons acceptable to HUD.

If the Borrower is temporarily unable to lease all units or residential spaces to eligible families, one or more units or residential spaces may, with the prior approval of HUD, be leased to otherwise eligible families that do not meet the income requirements of Part 813, as modified by § 885.5. Failure on the part of the Borrower to comply with these requirements is a violation of the PAC and grounds for all available legal remedies, including an action for specific performance of the PAC, suspension or debarment from HUD programs, and reduction of the number of units (or in the case of group homes, reduction of the number of residential spaces) under the PAC as set forth in paragraph (b) of this section.

(b) *Reduction of number of units covered by the PAC.* HUD may reduce the number of units (or in the case of group homes, the number of residential spaces) covered by the PAC to the number of units or residential spaces available for occupancy by eligible families if:

(1) The Borrower fails to comply with the requirements of paragraph (a) of this section; or

(2) Notwithstanding any prior approval by HUD, HUD determines that the inability to lease units or residential spaces to eligible families is not a temporary problem.

(c) *Restoration.* HUD will agree to an amendment of the PAC to provide for subsequent restoration of any reduction made under paragraph (b) of this section if:

(1) HUD determines that the restoration is justified by demand;

(2) The Borrower otherwise has a record of compliance with the Borrower's obligations under the PAC; and

(3) Contract and budget authority is available.

(d) *Occupancy by families that are not handicapped.* HUD may relieve the Borrower of the requirement that all units in the project (or residential spaces in a group home) must be leased to handicapped families if:

(1) The Borrower has made reasonable efforts to lease to eligible families;

(2) The Borrower has been granted HUD approval under paragraph (a) of this section; and

(3) The Borrower is temporarily unable to achieve or maintain a level of occupancy sufficient to prevent financial default and foreclosure under the section 202 loan documents.

HUD approval under this paragraph will be of limited duration. HUD may impose terms and conditions to this approval that are consistent with program objectives and necessary to protect its interest in the section 202 loan.

§ 885.920 PAC Administration.

HUD is responsible for the administration of the PAC.

§ 885.925 Default by Borrower.

(a) *PAC provisions.* The PAC will provide:

(1) That if HUD determines that the Borrower is in default under the PAC, HUD will notify the Borrower of the actions required to be taken to cure the default and of the remedies to be applied by HUD including an action for specific performance under the PAC, reduction or suspension of project assistance payment and recovery of overpayments, where appropriate; and

(2) That if the Borrower fails to cure the default, HUD has the right to terminate the PAC or to take other corrective action.

(b) *Loan provisions.* Additional provisions governing default under the section 202 loan are included in the regulatory agreement and other loan documents described in § 885.815.

§ 885.930 Notice upon PAC expiration.

The PAC will provide that the Borrower will, at least 90 days before the end of the PAC contract term, notify each family occupying an assisted unit (or residential space in a group home) of any increase in the amount the family will be required to pay as rent as a result of the expiration. The notice of expiration will contain such information and will be served in such manner as HUD may prescribe.

Project Management

§ 885.940 Responsibilities of Borrower.

(a) *Marketing.* (1) The Borrower must commence and continue diligent marketing activities not later than 90 days before the anticipated date of availability for occupancy of the group home or the anticipated date of availability of the first unit in an independent living complex.

(2) Marketing must be done in accordance with HUD-approved affirmative fair housing marketing plan and all fair housing and equal opportunity requirements. The purpose of the plan and requirements is to achieve a condition in which eligible families of similar income levels in the same housing market have a like range of housing choices available to them regardless of their race, color, creed, religion, sex or national origin.

(3) At the time of PAC execution, the Borrower must submit to HUD a list of leased and unleased assisted units (or in the case of a group home, leased and unleased residential spaces) with a justification for the unleased units or residential spaces, in order to qualify for vacancy payments for the unleased units or residential spaces.

(b) *Management and maintenance.* The Borrower is responsible for all management functions. These functions include selection and admission of tenants, required reexaminations of incomes for families occupying assisted units or residential spaces, collection of rents, termination of tenancy and eviction, and all repair and maintenance functions (including ordinary and extraordinary maintenance and replacement of capital items). All functions must be performed in compliance with equal opportunity requirements.

(c) *Contracting for services.* (1) With HUD approval, the Borrower may contract with a private or public entity for performance of the services or duties required in paragraphs (a) and (b) of this section. However, such an arrangement does not relieve the Borrower of responsibility for these services and duties. All such contracts are subject to

the restrictions governing prohibited contractual relationships described in § 885.735. (These prohibitions do not extend to management contracts entered into by the Borrower with the Sponsor or its non-profit affiliate.)

(2) Consistent with the objectives of Executive Orders 11625, 12432 and 12138, the Borrower will promote awareness and participation of minority and women's business enterprises in contracting and procurement activities.

(d) *Submission of financial and operating statements.* The Borrower must submit to HUD:

(1) Within 60 days after the end of each fiscal year of project operations, financial statements for the project audited by an independent public accountant and in the form required by HUD, and

(2) Other statements regarding project operation, financial conditions and occupancy as HUD may require to administer the PAC and to monitor project operations.

(e) *Use of project funds.* The Borrower shall maintain a project fund account in a HUD-approved depository and shall deposit all rents, charges, income and revenues arising from project operation or ownership to this account. Project funds must be used for the operation of the project, to make required principal and interest payments on the section 202 loan, and to make required deposits to the replacement reserve under § 885.945, in accordance with a HUD-approved budget. Any funds remaining in the project funds account following the expiration of the fiscal year shall be deposited in the replacement reserve account under § 885.945.

(f) *Reports.* The Borrower shall submit such reports as HUD may prescribe to demonstrate compliance with applicable civil rights and equal opportunity requirements.

§ 885.945 Replacement reserve.

(a) *Establishment of reserve.* The Borrower shall establish and maintain a replacement reserve to aid in funding extraordinary maintenance, and repair and replacement of capital items.

(b) *Deposits to reserve.* The Borrower shall make monthly deposits to the replacement reserve. The amount of the deposit for the initial year of operation shall be an amount equal to 0.6 percent of the cost of the total structures (for new construction projects), 0.4 percent of the cost of the initial mortgage amount (for all other projects), or such higher rate as required by HUD. For the purposes of this section, total structures include main buildings, accessory buildings, garages and other buildings.

The amount of the deposits will be adjusted each year by the amount of the annual adjustment factor as described in Part 888.

(c) *Level of reserve.* The reserve must be built up to and maintained at a level determined by HUD to be sufficient to meet projected requirements. Should the reserve reach that level, the amount of the deposit to the reserve may be reduced with the approval of HUD.

(d) *Administration of reserve.* Replacement reserve funds must be deposited with HUD or in a HUD-approved depository in an interest-bearing account. All earnings including interest on the reserve must be added to the reserve. The Borrower shall maintain separate records indicating the amount of funds deposited to the replacement reserve under §§ 885.940(e) and 885.950(b). Funds may be drawn from the reserve and used only in accordance with HUD guidelines and with the approval of, or as directed by, HUD.

§ 885.950 Selection and admission of tenants.

(a) *Application for admission.* The Borrower must accept applications for admission to the project in the form prescribed by HUD. Applicant families applying for assisted units (or residential spaces in a group home) must complete a certification of eligibility as part of the application for admission. Both the Borrower and the applicant family must complete and sign the application for admission. On request, the Borrower must furnish copies of all applications for admission to HUD.

(b) *Determination of eligibility and selection of tenants.* The Borrower is responsible for determining whether applicants are eligible for admission and for the selection of families. To be eligible for admission, an applicant family must be a handicapped family as defined in § 885.5, must meet any project occupancy requirements approved by HUD under § 885.755(a)(1), and must be a lower income family as defined in § 813.102 of this chapter, as modified under § 885.5. Under certain circumstances, HUD may permit the leasing of units (or residential space in a group home) to ineligible families under § 885.915.

(1) Local residency requirements are prohibited. Local residency preferences may be applied in selecting tenants only to the extent that they are not inconsistent with affirmative fair housing marketing objectives and the Borrower's HUD-approved affirmative fair housing marketing plan. Preferences may not be based on the length of time the applicant has resided in the

jurisdiction. With respect to any residency preference, persons expected to reside in the community as a result of current or planned employment will be treated as residents.

(2) If the Borrower determines that the family is eligible and is otherwise acceptable and units (or residential spaces in a group home) are available, the Borrower will assign the family a unit or residential space in a group home. If the family will occupy an assisted unit the Borrower will assign the family a unit of the appropriate size in accordance with HUD standards. If no suitable unit (or residential space in a group home) is available, the Borrower will place the family on a waiting list for the project and notify the family when a suitable unit or residential space may become available. If the waiting list is so long that the applicant would not be likely to be admitted for the next 12 months, the Borrower may advise the applicant that no additional applications for admission are being considered for that reason.

(3) If the Borrower determines that an applicant is ineligible for admission or the Borrower is not selecting the applicant for other reasons, the Borrower will promptly notify the applicant in writing of the determination, the reasons for the determination, and that the applicant has a right to request a meeting to review the rejection, in accordance with HUD requirements. The review, if requested, may not be conducted by a member of the Borrower's staff who made the initial decision to reject the applicant. The applicant may also exercise other rights if the applicant believes the applicant is being discriminated against on the basis of race, color, creed, religion, sex, handicap or national origin.

(4) Records on applicants and approved eligible families, which provide racial, ethnic, gender and place of previous residency data required by HUD, must be maintained and retained for three years.

(c) *Reexamination of family income and composition—(1) Regular reexaminations.* If the family occupies an assisted unit (or residential space in a group home), the Borrower must reexamine the income and composition of the family at least every 12 months. Upon verification of the information, the Borrower shall make appropriate adjustments in the total tenant payment in accordance with Part 813, as modified by § 885.5, and determine whether the family's unit size is still appropriate. The Borrower must adjust tenant rent and the project assistance payment and must

carry out any unit transfer in accordance with HUD standards.

(2) *Interim reexaminations.* If the family occupies an assisted unit (or residential space in a group home) the family must comply with provisions in the lease regarding interim reporting of changes in income. If the Borrower receives information concerning a change in the family's income or other circumstances between regularly scheduled reexaminations, the Borrower must consult with the family and make any adjustments determined to be appropriate. Any change in the family's income or other circumstances that results in an adjustment in the total tenant payment, tenant rent and project assistance payment must be verified.

(3) *Continuation of project assistance payment.* (i) A family occupying an assisted unit (or residential space in a group home) shall remain eligible for project assistance payment until the total tenant payment equals or exceeds the gross rent (or a pro rata share of the gross rent in a group home). The termination of subsidy eligibility will not affect the family's other rights under its lease. Project assistance payment may be resumed if, as a result of changes in income, rent or other relevant circumstances during the term of the PAC, the family meets the income eligibility requirements of Part 813 (as modified in § 885.5) and project assistance is available for the unit or residential space under the terms of the PAC. The family will not be required to establish its eligibility for admission to the project under the remaining requirements of paragraph (b) of this section.

(ii) A family's eligibility for project assistance payment also may be terminated in accordance with HUD requirements for such reasons as failure to submit requested verification information.

§ 885.955 Obligations of the family.

(a) *Requirements.* The family shall:

(1) Pay amounts due under the lease directly to the Borrower.

(2) Supply such certification, release, information or documentation as the Borrower or HUD determines to be necessary. (For families occupying assisted units (or residential spaces in a group home), this will include submissions required for an annual or interim reexamination of family income and composition.)

(3) Allow the Borrower to inspect the dwelling unit or residential space at reasonable times and after reasonable notice.

(4) Notify the Borrower before vacating the dwelling unit or residential space.

(5) Use the dwelling unit or residential unit space solely for residence by the family, and as the family's principal place of residence.

(b) *Prohibitions.* The family shall not:

(1) Assign the lease or transfer the unit or residential space.

(2) Occupy, or receive assistance for the occupancy of, a unit or residential space governed under this part while occupying, or receiving assistance for occupancy of, another unit assisted under any Federal housing assistance program, including any section 8 program.

§ 885.960 Overcrowded and underoccupied units.

If the Borrower determines that because of change in family size, an assisted unit is larger or smaller than appropriate for the eligible family to which it is leased, project assistance payment with respect to the unit will not be reduced or terminated until the eligible family has been relocated to an appropriate alternate unit. If possible, the Borrower will, as promptly as possible, offer the family an appropriate alternate unit. The Borrower may receive vacancy payments for the vacated unit if the Borrower complies with the requirements of § 885.985.

§ 885.965 Lease requirements.

(a) *Term of lease.* The term of the lease may not be less than one year. Unless the lease has been terminated by appropriate action, upon expiration of the lease term, the family and Borrower may execute a new lease for a term not less than one year, or may take no action. If no action is taken, the lease will automatically be renewed for successive terms of one month.

(b) *Termination by the family.* All leases may contain a provision that permits the family to terminate the lease upon 30 days' advance notice. A lease for a term, that exceeds one year must contain such provision.

(c) *Form.* The form of lease must contain all required provisions, and none of the prohibited provisions specified in HUD handbooks. In addition to required provisions in the handbook governing the Borrower's entry onto the leased premises during tenancy, the Borrower may include a provision in the lease permitting the Borrower to enter the leased premises, at any time, without advance notice, where there is reasonable cause to believe that an emergency exists or that health or safety of a family member is endangered.

§ 885.970 Termination of tenancy and modification of lease.

The provisions of Part 247 of this title apply to all decisions by a Borrower to terminate the tenancy or modify the lease of a family residing in a unit (or residential space in a group home).

§ 885.972 Security deposits.

(a) *Collection of security deposit.* At the time of the initial execution of the lease, the Borrower: (1) Will require each family occupying an assisted unit (or residential space in a group home) to pay a security deposit in an amount equal to one month's total tenant payment or \$50, whichever is greater; and (2) may require each family occupying an unassisted unit (or residential space in a group home) to pay a security deposit equal to one month's rent payable by the family. The family is expected to pay the security deposit from its own resources and other available public or private resources. The Borrower may collect the security deposit on an installment basis.

(b) *Security deposit provisions applicable to assisted and unassisted units—(1) Administration of security deposit.* The Borrower must place the security deposits in a segregated interest-bearing account. The Borrower shall maintain a record of the amount in this account that is attributable to each family in residence in the project. Annually for all families, and when computing the amount available for disbursement under paragraph (b)(3) of this section, the Borrower shall allocate to the family's balance the interest accrued on the balance during the year. Unless prohibited by State or local law, the Borrower may deduct for the family, from the accrued interest for the year, the administrative cost of computing the allocation to the family's balance. The amount of the administrative cost adjustment shall not exceed the accrued interest allocated to the family's balance for the year. The amount of the segregated, interest-bearing account maintained by the Borrower must at all times equal the total amount collected from the families then in occupancy, plus any accrued interest and less allowable administrative cost adjustments. The Borrower must comply with any applicable State and local laws concerning interest payments on security deposits.

(2) *Family notification requirement.* In order to be considered for the refund of the security deposit, a family must provide the Borrower with a forwarding address or arrange to pick up the refund.

(3) *Use of security deposit.* The Borrower, subject to State and local law and the requirements of this paragraph,

may use the family's security deposit balance as reimbursement for any unpaid family contribution or other amount which the family owes under the lease. Within 30 days (or shorter time if required by State or local law) after receiving notification under paragraph (b)(2) of this section the Borrower must:

(i) Refund to a family owing no rent or other amount under the lease the full amount of the family's security deposit balance;

(ii) Provide to a family owing rent or other amount under the lease a list itemizing any unpaid rent, damages to the unit, and estimated costs for repair, along with a statement of the family's rights under State and local law. If the amount which the Borrower claims is owed by the family is less than the amount of the family's security deposit balance, the Borrower must refund the excess balance to the family. If the Borrower fails to provide the list, the family will be entitled to the refund of the full amount of the family's security deposit balance.

(4) *Disagreements.* If a disagreement arises concerning reimbursement of the security deposit, the family will have the right to present objections to the Borrower in an informal meeting. The Borrower must keep a record of any disagreements and meetings in a tenant file for inspection by HUD. The procedures of this paragraph do not preclude the family from exercising its rights under State or local law.

(5) *Decedent's interest in security deposit.* Upon the death of a member of a family, the decedent's interest, if any, in the security deposit will be governed by State or local law.

(c) *Reimbursement by HUD for assisted units.* If the family's security deposit balance is insufficient to reimburse the Borrower for any unpaid tenant rent or other amount which the family owes under the lease for an assisted unit or residential space and the Borrower has provided the family with the list required by paragraph (b)(3)(ii) of this section, the Borrower may claim reimbursement from HUD for an amount not to exceed the lesser of:

(1) The amount owed the Borrower, or

(2) One month's contract rent, minus the amount of the family's security deposit balance. Any reimbursement under this section will be applied first toward any unpaid tenant rent due under the lease. No reimbursement may be claimed for unpaid rent for the period after termination of the tenancy. The Borrower may be eligible for vacancy payments following a vacancy in accordance with the requirements of § 885.985.

§ 885.975 Adjustment of rents.

(a) *Contract rents.* HUD will calculate contract rent adjustments based on the sum of the project's operating costs and debt service (as calculated by HUD), with adjustments for vacancies, the project's non-rental income, and other factors that HUD deems appropriate. The calculation will be made on the basis of information provided by the Borrower on a form prescribed by HUD.

(b) *Rent for unassisted units.* The rent payable by families occupying units or residential spaces that are not assisted under the PAC shall be equal to the contract rent computed under paragraph (a) of this section.

§ 885.980 Adjustment of utility allowances.

In connection with adjustments of contract rents as provided in § 885.975(a), the Borrower must submit an analysis of any utility allowances applicable in an independent living complex. Such data as changes in utility rates and other facts affecting utility consumption should be provided as part of this analysis to permit appropriate adjustments in the utility allowances for assisted units. In addition, when approval of a utility rate change would result in a cumulative increase of 10 percent or more in the most recently approved utility allowances, the Borrower must advise HUD and request approval of new utility allowances. Whenever a utility allowance for an assisted unit is adjusted, the Borrower will promptly notify affected families and make a corresponding adjustment of the tenant rent and the amount of the project assistance payment.

§ 885.985 Conditions for receipt of vacancy payments for assisted units.

(a) *General.* Vacancy payments under the PAC will not be made unless the conditions for receipt of these project

assistance payments set forth in this section are fulfilled.

(b) *Vacancies during rent-up.* For each unit (or residential space in a group home) that is not leased as of the effective date of the PAC, the Borrower is entitled to vacancy payments in the amount of 80 percent of the contract rent (or pro rata share of the contract rent for a group home) for the first 60 days of vacancy, if the Borrower:

- (1) Conducted marketing in accordance with § 885.940(a) and otherwise complied with § 885.940;
- (2) Has taken and continues to take all feasible actions to fill the vacancy; and
- (3) Has not rejected any eligible applicant except for good cause acceptable to HUD.

(c) *Vacancies after rent-up.* If an eligible family vacates an assisted unit (or residential space in a group home) the Borrower is entitled to vacancy payments in the amount of 80 percent of the contract rent (or pro rata share of the contract rent in a group home) for the first 60 days of vacancy if the Borrower:

- (1) Certifies that it did not cause the vacancy by violating the lease, the PAC, or any applicable law;
- (2) Notified HUD of the vacancy or prospective vacancy and the reasons for the vacancy immediately upon learning of the vacancy or prospective vacancy;
- (3) Has fulfilled and continues to fulfill the requirements specified in § 885.940(a) (2) and (3) and § 885.985(b) (2) and (3); and
- (4) For any vacancy resulting from the Borrower's eviction of an eligible family, certifies that it has complied with § 885.970.

(d) *Vacancies for longer than 60 days.* If an assisted unit (or residential space in a group home) continues to be vacant after the 60-day period specified in

paragraph (b) or (c) of this section, HUD may approve additional vacancy payments for 60-day periods up to a total of twelve months in an amount equal to the principal and interest payments required to amortize that portion of the debt service attributable to the vacant unit (or, in the case of group homes, the residential space). Such payments may be approved if:

- (1) The unit was in decent, safe and sanitary condition during the vacancy period for which payment is claimed;
- (2) The Borrower has fulfilled and continues to fulfill the requirements specified in paragraph (b) or (c) of this section, as appropriate; and
- (3) The Borrower has demonstrated to the satisfaction of HUD that:

(i) For the period of vacancy, the project is not providing the Borrower with revenues at least equal to project expenses (exclusive of depreciation) and the amount of payments requested is not more than the portion of the deficiency attributable to the vacant unit (or residential space in a group home) and

(ii) The project can achieve financial soundness within a reasonable time.

(e) *Prohibition of double compensation for vacancies.* If the Borrower collects payments for vacancies from other sources (tenant rent, security deposits, payments under § 885.972(c), or governmental payments under other programs), the Borrower shall not be entitled to collect vacancy payments to the extent these collections from other sources plus the vacancy payment exceed contract rent.

Dated: September 21, 1988.

James E. Schoenberger,
General Deputy Assistant Secretary for
Housing, Federal Housing Commissioner.
[FR Doc. 88-24884 Filed 11-1-88; 8:45 am]
BILLING CODE 4210-27-M

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Register

Federal

Wednesday
November 2, 1988

Part III

Federal Reserve System

12 CFR Part 229

**Availability of Funds and Collection of
Checks; Final and Proposed Rules and
Interpretations**

FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Regulation CC; Docket No. R-0643]

Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is adopting as a final rule, with minor technical changes, the interim amendment to Regulation CC it adopted in August. The Board adopted the interim rule to conform the definition of "paying bank" in Regulation CC to the Expedited Funds Availability Act as interpreted by a court decision. The court found that in defining a payable through bank as the paying bank where a check is written on one bank but payable through another, Regulation CC was inconsistent with the language of the Act.

EFFECTIVE DATE: October 25, 1988.

FOR FURTHER INFORMATION CONTACT:

Joseph R. Alexander, Senior Attorney (202/452-2489), Stephanie Martin, Attorney (202/452-3198), Legal Division; Louise L. Roseman, Assistant Director, Division of Federal Reserve Bank Operations (202/452-3874); Kathleen Brueger, Staff Attorney, Division of Community and Consumer Affairs (202/452-2412). For the hearing impaired only: Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION: On May 13, 1988, the Board issued its Regulation CC—Availability of Funds and Collection of Checks (12 CFR Part 229) to implement the Expedited Funds Availability Act (the "Act") (Title VI of Pub. L. 100-86). 53 FR 19373 (May 27, 1988). In keeping with the Board's view that the Act established a clear link between the time it normally takes a check to be cleared and returned, and the time within which the depository bank¹ must make the funds available to the depositor, the regulations provided that where a check is payable by one bank but payable through² another and

sent to the payable through bank for payment or collection, the location of the payable through bank would determine whether a check is local or nonlocal vis-a-vis the depository bank for the purposes of the funds availability schedules in the regulation.

Shortly after the Board issued Regulation CC, a trade association of credit unions and one credit union whose checks are payable through a nonlocal bank filed suit against the Board seeking to overturn the definition of paying bank to the extent that the definition included a payable through bank where the check was drawn on a credit union. The court granted the plaintiffs' motion for a summary judgment and invalidated Regulation CC's definition of paying bank to the extent that it includes a payable through bank where the check is drawn on a credit union. *Credit Union National Association v. Board of Governors*, No. 88-1295 OG (D.D.C. July 28, 1988). The court found that the Board's regulation was inconsistent with the Act to the extent that it defined the payable through bank as the paying bank for purposes of the Act's funds availability requirements.

The Act and Regulation CC took effect five weeks after the court rendered its decision. In order to clarify the duties of banks and others in light of the court's order, the Board issued temporary conforming amendments to Regulation CC. The Board also requested comment on the interim rules pending the Board's consideration of a final rule. 53 FR 31290 (August 18, 1988).

The interim rule primarily affected the definitions and the disclosure rules. Where a check is payable by one bank but payable through another bank, the interim rule provided that the check would be considered local or nonlocal by reference to the location of the payor bank, not by reference to the payable through bank. The interim rule did not affect payable through checks payable by nonbank payors. Further, as payable through checks bear the routing number of the payable through bank, not the payor, provisions in Regulation CC that allowed a depository bank to rely on the routing number to determine whether a check is local or nonlocal were amended. The interim rule also permitted banks whose initial disclosures were affected by the court's decision to comply with the Act by sending to their customers simple

payable through bank is not named as the payor, but is designated as a "collecting bank to make presentment." U.C.C. § 3-120. Under the Board's Regulation J, a payable through bank is the "paying bank." 12 CFR 210.2(j).

clarifying notices in regularly scheduled meetings.

Approximately 93 percent of the 155 comments the Board received on the interim rule objected to the treatment of bank payable through checks as local or nonlocal based on the location of the payor bank, because the rule creates operational difficulties and increases risks for depository banks. Many of the commenters suggested means of addressing these operational problems and risks. In a related action today, the Board has requested comment on several proposals to alleviate these operational problems and risks. (See Docket No. R-0648.)

After consideration of the comments, the Board has determined to adopt in final form the interim rule with two technical changes:

(1) To insert the word "or" after the fourth element in the definition of "paying bank," and

(2) Clarify in the disclosure rules and the Commentary that a bank that makes funds available within the time periods required for local checks is not required to make the special disclosure.

List of Subjects in 12 CFR Part 229

Banks, Banking, Federal Reserve System.

Accordingly, the interim rule amending Regulation CC, 12 CFR Part 229, which was published at 53 FR 31290-31296 on August 18, 1988, is adopted as a final rule with the following changes:

PART 229—AVAILABILITY OF FUNDS AND COLLECTION OF CHECKS

1. The authority citation for Part 229 continues to read as follows:

Authority: Title VI of Pub. L. 100-86, 101 Stat. 552, 635; 12 U.S.C. 4001 *et seq.*

2. Section 229.2(z)(4) is revised to read as follows:

§ 229.2 Definitions.

* * * * *

(z) * * *

(4) The bank through which a check is payable and to which it is sent for payment or collection, if the check is not payable by a bank; or

* * * * *

§ 229.16 [Amended]

3. Section 229.16(b)(2) is amended by adding after the first sentence of the footnote the following new sentence to read as follows:

1 * * * A bank that makes funds from nonlocal checks available for withdrawal within the time periods required for local checks under §§ 229.11, 229.12, and 229.13 is

¹ The Act uses the term "receiving depository institution" to mean "the branch of a depository institution or the proprietary ATM in which a check is first deposited." 12 U.S.C. 4001(20). Because the term "receiving depository institution" is unique to the Act, the Board used the term "depository bank," which, because it is used in the Uniform Commercial Code ("U.C.C.") and the Board's Regulation J (12 CFR Part 210), is familiar to the banking industry.

² When a check states on its face that it is "payable through" a bank, that bank is referred to as the "payable through bank." Under the U.C.C., a

not required to provide this disclosure on payable through checks to its customers. * * *

4. Appendix E—Commentary to Part 229, is amended by adding following the fourth paragraph of the Commentary to § 229.16(b) a new paragraph to read as follows:

Appendix E—Commentary

* * * * *

Section 229.16 Specific Availability Policy Disclosures

(b) * * *

Generally, a bank that distinguishes in its disclosure between local and nonlocal checks based on the routing number on the check must disclose to its customers that certain checks, such as some credit union payable through drafts, will be treated as local or nonlocal based on the location of the bank by which they are payable (e.g., the credit union), and not on the basis of the location of the bank whose routing number appears on the check. A bank is not required to provide this disclosure, however, if it makes the proceeds of both local and nonlocal checks available for withdrawal within the time periods required for local checks in §§ 229.11, 229.12, and 229.13.

* * * * *

By order of the Board of Governors of the Federal Reserve System, October 25, 1988.

William S. Wiles,
Secretary of the Board.

[FR Doc. 88-25038 Filed 11-1-88; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Regulation CC; Docket Nos. R-0640 and R-0644]

Availability of Funds and Collection of Checks; Preemption Determinations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final interpretations.

SUMMARY: The Board is publishing final official Board interpretations concerning preemption determinations under its Regulation CC, Availability of Funds and Collection of Checks, for the laws of California, Connecticut, Maine, Massachusetts, New Mexico, New York, and Rhode Island. The Expedited Funds Availability Act provides standards for determining whether State law governing funds availability supersedes, or is preempted by Federal law. Under Regulation CC, the Board will issue preemption determinations with respect to State law upon request.

EFFECTIVE DATE: October 25, 1988.

FOR FURTHER INFORMATION CONTACT:

Oliver Ireland, Associate General Counsel (202/452-3625), Joseph R. Alexander, Senior Attorney (202/452-2489), or Stephanie Martin, Attorney (202/452-3198), Legal Division; or Louise L. Roseman, Assistant Director (202/452-3874), Division of Federal Reserve Bank Operations; for the hearing impaired only: Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION:

Background

On May 13, 1988, the Board adopted Regulation CC to carry out the provisions of the Expedited Funds Availability Act (the "Act") (12 U.S.C. 4001-4010). The regulation requires banks to make funds available to their customers within specified time frames and to disclose their funds availability policies to their customers. A number of states have also enacted rules governing funds availability. The Act (Section 608) and Regulation CC (§ 229.20) provide that any provision of state law in effect on or before September 1, 1989, that provides for a shorter hold for a category of checks than is provided under federal law will supersede the federal provision.

Provisions of state law governing funds availability that permit a bank to make funds available for withdrawal in a longer period than permitted under Regulation CC are considered inconsistent and are preempted by Regulation CC. In addition, state disclosure and notice requirements concerning funds availability related to accounts covered by Regulation CC are preempted by the federal disclosure scheme.

Regulation CC provides for Board determinations of whether state law related to the availability of funds is preempted by federal law upon the request of a state, bank, or other interested party.

Discussion

The Board issued for public comment proposed preemption determinations with respect to the laws of Illinois, Maine, and New York on June 22, 1988. 53 FR 24315 (June 28, 1988). At that time, the Board also requested comment on the preemption of proposed amendments to the New York law. The Board issued a final determination with respect to Illinois and New York law on August 18, 1988. 53 FR 32354 (August 24, 1988). The Board deferred final action with respect to Maine law, at the request of the Maine Attorney General's Office, pending the adoption of a revised state regulation. Maine and New York

subsequently adopted amendments to their funds availability regulations to conform the state laws more closely to the federal Regulation CC requirements. The revised regulations of both states became effective on September 1, 1988. The Board is now publishing final preemption determinations with respect to the recently adopted laws of Maine and recently amended New York rules.

On August 18, 1988, the Board issued for public comment proposed preemption determinations with respect to the laws of California, Connecticut, Massachusetts, New Mexico, and Rhode Island. 53 FR 32359 (August 24, 1988). The Board received 14 comments on the proposals, which are summarized below. The Board is now publishing final preemption determinations with respect to the laws of these states.

The Board set out principles, at the time it adopted several final state preemption determinations in August, as guides for future preemption determinations. 53 FR 32354 (August 24, 1988). Those principles have been followed in these determinations as well.

Notice of exception hold. The Board adopted in August a preemption principle stating that the state exceptions continue to apply only in those cases where the state schedule is shorter than or equal to the federal schedule, and then only up to the limit permitted by the Regulation CC schedule. The hold can then be further extended by the federal exception in accordance with Regulation CC. Only one exception notice is required where a bank applies a state exception to extend a shorter state schedule to the federal limit, and also a federal exception to further extend the hold. This notice, which must be provided in accordance with § 229.13(g), need only include as the reason the exception was invoked the applicable federal exception.

Disclosures. Section 229.20(c) of Regulation CC provides that state law may be inconsistent with Regulation CC, and therefore may be preempted, where it provides for disclosures or notices concerning funds availability relating to accounts. This rule avoids redundant disclosures and variations in disclosures between states that may confuse bank customers. Some states, however, such as Maine and Massachusetts, require by state law that depository institutions in those states disclose their funds availability policies in accordance with the federal law. Such laws permit the state to enforce disclosure requirements, but do not result in redundancy or variations in disclosure requirements. Because such disclosures are not