

(2) The debt service reserve and its investment income shall be available only for the purpose of paying principal or interest on the obligations. The use of the debt service reserve for this purpose shall not be a cure for any failure by the owner to make required payments.

(3) Upon full payment of the principal and interest on the obligations (including that portion of the obligations attributable to the funding of the debt service reserve), any funds remaining in the debt service reserve shall be remitted to HUD.

(b) *Non-FHA-insured projects.* (1) Investment income from the debt service reserve, up to the amount required for debt service on the bonds attributable to the debt service reserve, shall be credited toward the owner's debt service payment. Any excess investment income shall be added to and become part of the debt service reserve.

(2) The debt service reserve and investment income thereon shall be available only for the purpose of paying principal or interest on the obligations. The use of the debt service reserve for this purpose shall not be a cure for any failure by the owner to make required payments.

(3) Upon full payment of the principal and interest on the obligations (including that portion of the obligations attributable to the funding of the debt service reserve), any funds remaining in the debt service reserve shall be remitted to HUD.

[61 FR 14461, Apr. 1, 1996]

§ 811.109 Trust indenture provisions.

Obligations shall be prepaid only under such conditions as HUD shall require, including reduction of contract rents and continued operation of the project for the housing of low-income families.

[44 FR 12360, Mar. 6, 1979. Redesignated at 61 FR 14461, Apr. 1, 1996]

§ 811.110 Refunding of obligations issued to finance Section 8 projects.

(a) This section states the terms and conditions under which HUD will approve refunding or defeasance of certain outstanding debt obligations which financed new construction or

substantial rehabilitation of Section 8 projects, including fully and partially assisted projects.

(b) In the case of bonds issued by State Agencies qualified under 24 CFR part 883 to refund bonds which financed projects assisted pursuant to 24 CFR part 883, HUD requires compliance with the prohibition on duplicative fees contained in 24 CFR part 883 and with paragraphs (f) and (h) of this section, as applicable to the projects to be refunded.

(c) No agency shall issue obligations until the Office of the Assistant Secretary for Housing sends the financing agency a Notification of Tax Exemption based on approval of the proposed refunding's terms and conditions as conforming to this part's requirements, including continued operation of the project as housing for low-income families, and where possible, reduction of Section 8 assistance payments through lower contract rents or an equivalent cash rebate to the U.S. Treasury (i.e. Trustee Sweep). The agency shall submit such documentation as HUD determines is necessary for review and approval of the refunding transaction. Upon conclusion of the closing of refunding bonds, written confirmation must be sent to the Office of Multifamily Housing by bond counsel, or other acceptable closing participant, including a schedule of the specific amount of savings in Section 8 assistance where applicable, CUSIP number information, and a final statement of Sources and Uses.

(d)(1) HUD approval of the terms and conditions of a Section 8 refunding proposal requires evaluation by HUD's Office of Multifamily Housing of the reasonableness of the terms of the Agency's proposed financing plan, including projected reductions in project debt service where warranted by market conditions and bond yields. This evaluation shall determine that the proposed amount of refunding obligations is the amount needed to: pay off outstanding bonds; fund a debt service reserve to the extent required by credit enhancers or bond rating agencies, or bond underwriters in the case of unrated refunding bonds; pay credit enhancement fees acceptable to HUD; and