

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**Office of the Secretary****24 CFR Parts 243, 760 and 889**

[Docket No. R-95-1767; FR-3336-I-01]

RIN 2502-AF86

Supportive Housing for the Elderly; Management

AGENCY: Office of the Secretary, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule establishes the requirements related to management and operation of the Supportive Housing for the Elderly Program. The purpose of the Supportive Housing for the Elderly Program is to enable elderly persons to live with dignity and independence by expanding the supply of supportive housing that is designed to accommodate the special needs of elderly persons and provides a range of services that are tailored to the needs of elderly persons occupying such housing. An interim rule similar to this interim rule is also being published in today's **Federal Register** for the Supportive Housing for Persons with Disabilities Program. This interim rule also adds both Supportive Housing programs to the list of projects covered by the pet ownership requirements. This interim rule also applies the wage and claim consent form requirements to both programs.

DATES: Effective Date: April 3, 1995.

Sunset Provisions: Sections 243.3(c)(1), 760.3(b)(10) and (11), and 889.600 through 889.655, shall expire and shall not be in effect after October 2, 1996, unless changes in this interim rule are published as a final rule, or the Department publishes a notice in the **Federal Register** to extend the effective date.

Comments due date: May 1, 1995.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours (weekdays 7:30 a.m. to 5:30 p.m.) at the above address.

FOR FURTHER INFORMATION CONTACT: Margaret Milner, Acting Director, Office of Elderly and Assisted Housing, Department of Housing and Urban

Development, 451 Seventh Street SW., Room 6130, Washington, DC 20410, telephone (202) 708-4542; (TDD) (202) 708-4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:**I. Paperwork Burden**

The information collection requirements contained in this interim rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520), and assigned OMB control number 2502-0470.

II. Justification for Interim Rulemaking

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking, 24 CFR part 10. However, part 10 provides for exceptions from that general rule when the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). The Department finds that good cause exists to publish this interim rule for effect without first soliciting public comment, in that prior public procedure is unnecessary. These management rules vary only slightly from previous management requirements for the section 202 (of the Housing Act of 1959) direct loan program. This interim rule furthers the legislative mandate of section 202 of the Housing Act of 1959, as amended, and it involves only minor interpretations of that statute. The section 202 capital advance program currently is operating under a series of interim rules. The Department intends to publish a final rule that will incorporate public comments for all aspects of the section 202 capital advance program.

The Department also finds that prior public procedure would be impracticable. The Department has awarded capital advances since 1991, and many of these projects are approaching the management phase or have become operational. Management requirements are needed immediately to assure transition from the development phase to the management phase.

III. Sunset of Interim Rule

In accordance with the Department's policy on interim rules, the amendments made by this interim rule shall expire 18 months after the effective date of this interim rule, unless extended by notice published in the **Federal Register**, or adopted by a final

rule published on or before the 18-month anniversary date of the effective date of this interim rule.

IV. Background

The Supportive Housing for the Elderly Program is authorized by section 202 of the Housing Act of 1959, as amended by section 801 of the Cranston-Gonzalez National Affordable Housing Act (the NAHA Act) and the Housing and Community Development Act of 1992 (1992 Act). Under the program, which is implemented in 24 CFR part 889, assistance is provided to private nonprofit organizations and nonprofit consumer cooperatives to expand the supply of supportive housing for the elderly. Such assistance is provided as (1) capital advances and (2) project rental assistance contracts. Capital advances may be used to finance the construction or rehabilitation of a structure, or the acquisition of a structure from the Resolution Trust Corporation (RTC), to be used as supportive housing for the elderly. This assistance may also cover the cost of real property acquisition, site improvement, conversion, demolition, relocation, and other expenses that the Secretary determines are necessary to expand the supply of supportive housing for the elderly.

On June 12, 1991, the Department published an interim rule (56 FR 27104) implementing the amendments made by section 801 of the NAHA to establish the Supportive Housing for the Elderly Program. That interim rule, which enabled the program to be funded for FY-1991, described application procedures and program requirements, selection of applications and duration of fund reservation requirements. A second interim rule was published on August 12, 1992 (57 FR 36338) to provide the development-related requirements (closing of capital advances and requirements related to project rental assistance contracts) of the program. The program was the subject of further amendments of the 1992 Act, which were implemented by a third interim rule published on May 5, 1993 (58 FR 26836). All three interim rules are codified at 24 CFR part 889.

Selection preference rules (§§ 889.611-889.615) for this program were published on July 18, 1994 at 59 FR 36616. Today's interim rule (subpart F, part 889) completes the establishment of the program by providing the requirements for management and operation of projects funded under the program. After the period of public comment is completed on this interim rule, the Department will develop a final rule based on all previous rules.

V. Summary of Interim Rule (Subpart F)

Subpart F provides the responsibilities of the Owner, requirements of the replacement reserve, selection and admission requirements for tenants, obligations of tenants, provisions regarding overcrowded and underoccupied units, lease requirements, and requirements regarding termination of tenancy, modifications of leases, security deposits and vacancy payments.

The subpart F requirements are similar to existing requirements for the section 202 Projects for Nonelderly Handicapped Families and Individuals receiving assistance under section 202(h) of the Housing Act of 1959. See 24 CFR 885.940–885.985.

Owner Responsibilities

The responsibilities of an Owner under part 889 include marketing, management and maintenance, contracting for services, submission of financial and operating statements, project fund accounting and reporting. Marketing must be conducted in accordance with the HUD-approved affirmative fair housing marketing plan and all Federal, State or local fair housing and equal opportunity requirements. The Owner is responsible for all management functions. These functions include selection and admission of tenants, required reexaminations of incomes for families occupying assisted units, collection of tenant payments, 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. The Owner must also establish and maintain a replacement reserve to aid in funding extraordinary maintenance and repair and replacement of capital items.

The Owner is required to adopt written tenant selection procedures which ensure nondiscrimination in the selection of tenants and that are (1) consistent with the purpose of improving housing opportunities for very low-income elderly persons; and (2) reasonably related to program eligibility and an applicant's ability to perform the obligations of the lease. The Owner must comply with all nondiscrimination authorities. The Secretary is to provide to an appropriate agency in each area (which may be the applicable State or Area Agency on Aging) information regarding the availability of housing assisted under

this part. The Owner must accept applications for admission to the project in the form prescribed by HUD. Applicant families applying for assisted units must complete a certification of eligibility as part of the application for admission.

The Owner is also responsible for determining whether applicants are eligible for admission and for the selection of families. To be eligible for admission, an applicant must be an elderly person (as defined in § 889.105); must meet any project occupancy requirements approved by HUD under § 889.305(a)(1); must meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 750; must sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 760; and must be a very low-income family, as defined by § 889.105. Under certain circumstances, HUD may permit the leasing of units to ineligible families under § 889.515. If the Owner determines that the family is eligible and is otherwise acceptable and units are available, the Owner will assign the family a unit. The Owner will assign the family a unit of the appropriate size in accordance with HUD's general occupancy guidelines. If no suitable unit is available, the Owner will place the family on a waiting list for the project and notify the family when a suitable unit 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 Owner may advise the applicant that no additional applications for admission are being considered for that reason.

If the Owner determines that an applicant is ineligible for admission or the Owner is not selecting the applicant for other reasons, the Owner 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.

Records on applicants and approved eligible families, which provide racial, ethnic, gender and place of previous residency data required by HUD, must be retained for three years. The Owner must reexamine the income and composition of the family at least every 12 months. Upon verification of the information, the Owner must make appropriate adjustments in the total tenant payment in accordance with part 813, as modified by § 889.105, and must determine whether the family's unit size is still appropriate. The Owner must

adjust tenant payment and the project rental assistance payment and must carry out any unit transfer in accordance with HUD standards.

Family Responsibilities

Families under the program are required to do the following: (1) Pay amounts due under the lease directly to the Owner; (2) supply such certification, release, information, or documentation as the Owner or HUD determines necessary, including information and documentation relating to the disclosure and verification of Social Security Numbers, as provided by 24 CFR part 750, and the signing and submission of consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 760; (3) allow the Owner to inspect the dwelling unit or residential space at reasonable times and after reasonable notice; (4) notify the Owner before vacating the dwelling unit; and (5) use the dwelling unit solely for residence by the family, and as the family's principal place of residence. The family may not assign the lease or transfer the unit, nor may it occupy, or receive assistance for the occupancy of a unit 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.

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 Owner 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. The Owner shall use the lease form prescribed by HUD. The Owner may not use any of the prohibited provisions specified by HUD. In addition to required provisions of the lease form, the Owner may include a provision in the lease permitting the Owner 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. The provisions of part 247 apply to all decisions by an Owner to terminate the tenancy or modify the lease of a family residing in a unit.

Security Deposit

At the time of the initial execution of the lease, the Owner will require each family occupying a unit to pay a

security deposit in an amount equal to one month's total tenant payment or \$50, whichever is greater. The family is expected to pay the security deposit from its own resources and other available public or private resources. The Owner may collect the security deposit on an installment basis. The Owner must place the security deposits in a segregated interest-bearing account.

Utility Allowances

The Owner must also submit an analysis of any utility allowances applicable. 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, if utility rate changes would result in a cumulative increase of 10 percent or more in the most recently approved utility allowances, the Owner must advise HUD and request approval of new utility allowances. Whenever a utility allowance for an assisted unit is adjusted, the Owner will promptly notify affected families and make a corresponding adjustment of the tenant payment and the amount of the project rental assistance payment.

Vacancy Payments

Vacancy payments under the Project Rental Assistance Contract (PRAC) will not be made unless certain conditions for receipt of these project rental assistance payments are fulfilled. For each unit that is not leased as of the effective date of the PRAC, the Owner is entitled to vacancy payments in the amount of 50 percent of the per unit operating cost for the first 60 days of vacancy, if the Owner: (1) Conducted marketing in accordance with § 889.600(a) and otherwise complied with § 889.600; (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. If an eligible family vacates a unit, the Owner is entitled to vacancy payments in the amount of 50 percent of the approved per unit operating cost for the first 60 days of vacancy if the Owner: (1) Certifies that it did not cause the vacancy by violating the lease, the PRAC, or any applicable law; (2) notified HUD of the vacancy or prospective vacancy and the reasons for the vacancy upon learning of the vacancy or prospective vacancy; (3) has fulfilled and continues to fulfill the requirements specified in § 889.600(a)(2) and (3) and § 889.650(b)(2) and (3); and (4) for any vacancy resulting from the Owner's

eviction of an eligible family, certifies that it has complied with § 889.635. If the Owner collects payments for vacancies from other sources (tenant payments, security deposits, payments under § 889.640(c), or governmental payments under other programs), the Owner shall not be entitled to collect vacancy payments to the extent these collections from other sources plus the vacancy payment exceed the approved per unit operating cost.

HUD Reviews

HUD shall conduct periodic on-site management reviews of the Owner's compliance with the requirements of part 889.

VI. Amendments to 24 CFR Parts 243 and 760

This interim rule also amends 24 CFR part 243 by including the Supportive Housing for the Elderly and Supportive Housing for Persons with Disabilities projects in the list of projects covered by the pet ownership requirements. The interim rule also amends part 760 and applies the wage and claim consent form requirements to the Supportive Housing for the Elderly and Supportive Housing for Persons with Disabilities Programs.

VII. Other Matters

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 implementing section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500.

Regulatory Flexibility Act

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this interim rule does not have a significant economic impact on a substantial number of small entities. The interim rule would provide capital advances to private nonprofit organizations and nonprofit consumer cooperatives to expand the supply of supportive housing for the elderly. Although small entities will participate in the program, the interim rule would not have a significant impact on them.

Executive Order 12606, the Family

The General Counsel, as the Designated Official for Executive Order 12606, the Family, has determined that

the provisions of this interim rule will not have a significant impact on family formation, maintenance or well being.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order No. 12611—Federalism, has determined that the interim rule does not involve the preemption of State law by Federal statute or regulation and does not have federalism impacts.

Regulatory Agenda

This interim rule was listed as sequence number 1807 in the Department's Semiannual Agenda of Regulations published on November 14, 1994 (59 FR 57632, 57657) under Executive Order 12866 and the Regulatory Flexibility Act.

Catalog of Federal Domestic Assistance

The program number is 14.157, Housing for the Elderly or Handicapped.

List of Subjects

24 CFR Part 243

Aged, Grant programs—housing and community development, Individuals with disabilities, Loans programs—housing and community development, Low and moderate income housing, Mortgage insurance, Pets, Reporting and recordkeeping requirements.

24 CFR Part 760

Grant programs—housing and community development, Income verification procedures, Indians, Intergovernmental relations, Loan programs—housing and community development, Penalties, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Wages.

24 CFR Part 889

Aged, Capital advance programs, Grant programs—housing and community development, Loan programs—housing and community development, Low and moderate income housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, title 24 of the Code of Federal Regulations is amended to read as follows:

PART 243—PET OWNERSHIP IN HOUSING FOR THE ELDERLY OR HANDICAPPED

1. The authority citation for part 243 continues to read as follows:

Authority: 12 U.S.C. 1701r-1; 42 U.S.C. 3535(d).

2. In § 243.3, paragraph (c) introductory text and paragraph (c)(1) are revised to read as follows:

§ 243.3 Definitions.

* * * * *

(c) *Project for the elderly or persons with disabilities* means a specific rental or cooperative multifamily property that, unless currently owned by HUD, is subject to a first mortgage, and:

(1) That is assisted under section 202 of the Housing Act of 1959, and as amended (Housing for the Elderly or Disabled or Supportive Housing for the Elderly) or is assisted under section 811 of the National Affordable Housing Act (Supportive Housing for Persons with Disabilities);

* * * * *

3. Section 243.4 is revised to read as follows:

§ 243.4 Effective date.

This part shall be effective on March 2, 1987. However, project owners shall have until May 1, 1987 to implement the provisions of this part. Section 243.3(c)(1) shall expire and shall not be in effect after October 2, 1996, unless changes in this interim rule are published as a final rule, or the Department publishes a notice in the **Federal Register** to extend the effective date.

PART 760—PROCEDURES FOR OBTAINING WAGE AND CLAIM INFORMATION ABOUT APPLICANTS AND PARTICIPANTS IN HUD'S SECTION 8 AND PUBLIC HOUSING PROGRAMS FROM STATE WAGE INFORMATION COLLECTION AGENCIES (SWICAs)

4. The authority citation for part 760 is revised to read as follows:

Authority: 12 U.S.C. 1701q; 42 U.S.C. 1437a, 1437d, 1437e, 1437f, 3535(d), and 3544.

5. In § 760.3, paragraph (b) is amended by redesignating paragraphs (b)(10) through (b)(13) as paragraphs (b)(12) through (b)(15), and by adding new paragraphs (b)(10) and (b)(11), to read as follows:

§ 760.3 Applicability.

* * * * *

(b) * * *

(10) Part 889, Supportive Housing for the Elderly.

(11) Part 890, Supportive Housing for Persons with Disabilities.

* * * * *

6. Section 760.40 is amended by adding paragraph (c) to read as follows:

§ 760.40 Effective date of rule.

* * * * *

(c) *Expiration date.* Sections 760.3(b)(10) and (11) shall expire and shall not be in effect after October 2, 1996, unless changes in this interim rule are published as a final rule, or the Department publishes a notice in the **Federal Register** to extend the effective date.

PART 889—SUPPORTIVE HOUSING FOR THE ELDERLY

7. The authority citation for part 889 continues to read as follows:

Authority: 12 U.S.C. 1701q, 42 U.S.C. 3535(d).

8. Section 889.100 is amended by adding paragraph (d) to read as follows:

§ 889.100 Purpose and policy.

* * * * *

(d) *Expiration date.* Sections 889.600 through 889.655 shall expire and shall not be in effect after October 2, 1996, unless changes in this interim rule are published as a final rule, or the Department publishes a notice in the **Federal Register** to extend the effective date.

9. Subpart F is amended by adding §§ 889.600, 889.605, 889.610, 889.620, 889.625, 889.630, 889.635, 889.640, 889.645, and 889.650, to read as follows:

Subpart F—Project Management

Sec.

889.600 Responsibilities of owner.
889.605 Replacement reserve.
889.610 Selection and admission of tenants.
889.611 Selection preferences.

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889.620 Obligations of the family.
889.625 Overcrowded and underoccupied units.

889.630 Lease requirements.

889.635 Termination of tenancy and modification of lease.

889.640 Security deposits.

889.645 Adjustment of utility allowances.

889.650 Conditions for receipt of vacancy payments for assisted units.

889.655 HUD review.

Subpart F—Project Management

§ 889.600 Responsibilities of owner.

(a) *Marketing.* (1) The Owner must commence and continue diligent marketing activities not later than 90 days before the anticipated date of availability of the first unit. Market activities shall include the provision of notices of the availability of housing under the program to operators of temporary housing for the homeless in the same housing market.

(2) Marketing must be done in accordance with the HUD-approved affirmative fair housing marketing plan and all Federal, State or local 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 discriminatory considerations such as their race, color, creed, religion, familial status, disability, sex or national origin.

(3) At the time of PRAC execution, the Owner must submit to HUD a list of leased and unleased assisted units, with a justification for the unleased units, in order to qualify for vacancy payments for the unleased units.

(b) *Management and maintenance.* The Owner is responsible for all management functions. These functions include selection and admission of tenants, required reexaminations of incomes for families occupying assisted units, collection of tenant payments, 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 Owner 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 Owner of responsibility for these services and duties. All such contracts are subject to the restrictions governing prohibited contractual relationship described in § 889.105 (definition of Owner). (These prohibitions do not extend to management contracts entered into by the Owner with the Sponsor or its non-profit affiliate.)

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

(d) *Submission of financial and operating statements.* The Owner 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 PRAC and to monitor project operations.

(e) *Use of project funds.* The Owner shall maintain a separate project fund account in a depository or depositories which are members of the Federal Deposit Insurance Corporation or National Credit Union Share Insurance Fund and shall deposit all tenant payments, charges, income, and revenues arising from project operation or ownership to this account. All project funds are to be deposited in Federally-insured accounts. All balances shall be fully insured at all times, to the maximum extent possible. Project funds must be used for the operation of the project (including required insurance coverage), and to make required deposits to the replacement reserve under § 889.605, in accordance with HUD-approved budget. Any remaining project funds in the project funds account (including earned interest) following the expiration of the fiscal year shall be deposited in a Federally-insured residual receipts account within 60 days following the end of the fiscal year. Withdrawals from this account may be made only for project purposes and with the approval of HUD. If there are funds remaining in the residual receipts account when the mortgage is satisfied, such funds shall be returned to HUD.

(f) *Reports.* The Owner shall submit such reports as HUD may prescribe to demonstrate compliance with applicable civil rights and equal opportunity requirements. See § 889.610(a). (Approved by the Office of Management and Budget under control number 2502-0470).

§ 889.605 Replacement reserve.

(a) *Establishment of reserve.* The Owner 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 Owner shall make monthly deposits to the replacement reserve in an amount determined by HUD.

(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 Federally-insured depository in an interest-bearing account(s) whose balances are fully insured at all times. All earnings including interest on the reserve must be added to the reserve. 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.

§ 889.610 Selection and admission of tenants.

(a) *Written tenant selection procedures.* The Owner shall adopt written tenant selection procedures which ensure nondiscrimination in the selection of tenants and that are consistent with the purpose of improving housing opportunities for very low-income elderly persons; and reasonably related to program eligibility and an applicant's ability to perform the obligations of the lease. The Owner must comply with the following nondiscrimination authorities: section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations at 24 CFR Part 8; the Fair Housing Act (42 U.S.C. 3600-3619) and the implementing regulations at 24 CFR Part 100, 108, 109, and 110; Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the implementing regulations at 24 CFR Part 1; section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the implementing regulations at 24 CFR Part 135; the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107) and the implementing regulations at 24 CFR part 146; Executive Order 11246 (as amended), 3 CFR, 1964-1965 Comp., p. 339 and the implementing regulations at 41 CFR Chapter 60; the regulations implementing Executive Order 11063 (Equal Opportunity in Housing), 3 CFR, 1959-1963 Comp., p. 652, at 24 CFR part 107; the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*) to the extent applicable; and other applicable Federal, State and local laws prohibiting discrimination and promoting equal opportunity. While 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 Owner'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. Owners shall promptly notify in writing any rejected applicant of the grounds for any rejection. Additionally, owners shall maintain a written, chronological waiting list showing the name, race, gender, ethnicity and date of each person applying for the program.

(b) *Information on availability of assisted housing.* The Secretary shall provide to an appropriate agency in each area (which may be the applicable State or Area Agency on Aging) information regarding the availability of housing assisted under this part.

(c) *Application for admission.* The Owner must accept applications for admission to the project in the form prescribed by HUD and is obligated to confirm all information provided by the applicant families on the application. Applicant families must be requested to complete a release of information consent for verification of information. Applicant families applying for assisted units must complete a certification of eligibility as part of the application for admission. Applicant families must meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 750. Applicant families must sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 760. Both the Owner and the applicant family must complete and sign the application for admission. On request, the Owner must furnish copies of all applications for admission to HUD.

(d) *Determination of eligibility and selection of tenants.* The Owner is responsible for determining whether applicants are eligible for admission and for the selection of families. To be eligible for admission, an applicant must be an elderly person (as defined in § 889.105); must meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 750; must sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 760; and must be a very low-income family, as defined by § 889.105. Under certain circumstances, HUD may permit the leasing of units to ineligible families under § 889.515.

(e) *Unit assignment.* If the Owner determines that the family is eligible and is otherwise acceptable and units are available, the Owner will assign the family a unit. The Owner will assign the family a unit of the appropriate size in accordance with HUD's general occupancy guidelines. If no suitable unit is available, the Owner will place the family on a waiting list for the project and notify the family when a suitable unit 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 Owner may advise the applicant that no

additional applications for admission are being considered for that reason.

(f) *Ineligibility determination.* If the Owner determines that an applicant is ineligible for admission or the Owner is not selecting the applicant for other reasons, the Owner will promptly notify the applicant in writing of the determination, the reasons for the determination, and the applicant's 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 Owner's staff who made the initial decision to reject the applicant. The applicant may also exercise other rights (e.g., rights granted under Federal, State, or local civil rights laws) if the applicant believes he or she is being discriminated against on a prohibited basis.

(g) *Records.* Records on applicants and approved eligible families, which provide racial, ethnic, gender and place of previous residency data required by HUD, must be retained for three years. See § 889.610(a).

(h) *Reexamination of family income and composition.* (1) *Regular reexaminations.* The Owner must reexamine the income and composition of the family at least every 12 months. Upon verification of the information, the Owner must make appropriate adjustments in the total tenant payment in accordance with part 813, as modified by § 889.105, and must determine whether the family's unit size is still appropriate. The Owner must adjust tenant payment and the project rental assistance payment, and must carry out any unit transfer in accordance with HUD standards. At the time of reexamination under paragraph (h)(1) of this section, the Owner must require the family to meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 750. For requirements regarding the signing and submitting of consent forms by families for obtaining of wage and claim information from State Wage Information Collection Agencies, see 24 CFR part 760.

(2) *Interim reexaminations.* The family must comply with the provisions in its lease regarding interim reporting of changes in income. If the Owner receives information concerning a change in the family's income or other circumstances between regularly scheduled reexaminations, the Owner must consult with the family and make any adjustments determined to be appropriate. See 24 CFR 750.10(d)(2)(i) for the requirements for the disclosure and verification of Social Security Number at interim reexaminations involving new family members. For

requirements regarding the signing and submitting of consent forms by families for the obtaining of wage and claim information from State Wage Information Collection Agencies, see 24 CFR part 760. Any change in the family's income or other circumstances that result in an adjustment in the total tenant payment, tenant payment, and project rental assistance payment must be verified.

(3) *Continuation of project rental assistance payment.* (i) A family shall remain eligible for project rental assistance payment until the total tenant payment equals or exceeds the gross rent. The termination of subsidy eligibility will not affect the family's other rights under its lease. Project rental assistance payment may be resumed if, as a result of changes in income, rent or other relevant circumstances during the term of the PRAC, the family meets the income eligibility requirements of part 813 of this chapter (as modified in § 889.105) and project rental assistance is available for the unit under the terms of the PRAC. The family will not be required to establish its eligibility for admission to the project under the remaining requirements of paragraph (d) of this section.

(ii) A family's eligibility for project rental assistance payment may be terminated in accordance with HUD requirements for such reasons as failure to submit requested verification information, including information related to disclosure and verification of Social Security Numbers (as provided by 24 CFR part 750) or failure to sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies (as provided by 24 CFR part 760).

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§ 889.620 Obligations of the family.

(a) Requirements. The family shall:

(1) Pay amounts due under the lease directly to the Owner;

(2) Supply such certification, release of information, consent, completed forms or documentation as the Owner or HUD determines necessary, including information and documentation relating to the disclosure and verification of Social Security Numbers, as provided by 24 CFR part 750, and the signing and submission of consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 760;

(3) Allow the Owner to inspect the dwelling unit or residential space at

reasonable times and after reasonable notice;

(4) Notify the Owner before vacating the dwelling unit; and

(5) Use the dwelling unit 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

(2) Occupy, or receive assistance for the occupancy of, a unit 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.

(Approved by the Office of Management and Budget under control number 2502-0470)

§ 889.625 Overcrowded and underoccupied units.

If the Owner determines that because of change in family size, a unit is smaller than appropriate for the eligible family to which it is leased, or that the unit is larger than appropriate, project rental 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 Owner will, as promptly as possible, offer the family an appropriate alternate unit. The Owner may receive vacancy payments for the vacated unit if the Owner complies with the requirements of § 889.650.

§ 889.630 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 Owner 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 Owner shall use the lease form prescribed by HUD. In addition to required provisions of the lease form, the Owner may include a provision in the lease permitting the Owner 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.

§ 889.635 Termination of tenancy and modification of lease.

The provisions of part 247 of this title apply to all decisions by an Owner to terminate the tenancy or modify the lease of a family residing in a unit.

§ 889.640 Security deposits.

(a) *Collection of security deposit.* At the time of the initial execution of the lease, the Owner will require each family occupying a unit to pay a security deposit in an amount equal to one month's total tenant payment or \$50, whichever is greater. The family is expected to pay the security deposit from its own resources and other available public or private resources. The Owner may collect the security deposit on an installment basis.

(b) *Security deposit provisions applicable to units.* (1) *Administration of security deposit.* The Owner must place the security deposits in a segregated interest-bearing account. The amount of the segregated, interest-bearing account maintained by the Owner 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 Owner 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 Owner with a forwarding address or arrange to pick up the refund.

(3) *Use of security deposit.* The Owner, subject to State and local law and the requirements of paragraph (b)(3) of this section, 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 Owner must:

(i) Refund to a family which does not owe any amount under the lease the full amount of the family's security deposit balance;

(ii) Provide to a family owing amounts under the lease a list itemizing each amount, along with a statement of the family's rights under State and local law. If the amount which the Owner claims is owed by the family is less than the amount of the family's security deposit balance, the Owner must refund the excess balance to the family. If the Owner 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 Owner in an informal meeting. The Owner must keep a record of any disagreements and meetings in a tenant file for inspection by HUD. The procedures of paragraph (b)(4) of this section 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 Owner for any amount which the family owes under the lease for a unit and the Owner has provided the family with the list required by paragraph (b)(3)(ii) of this section, the Owner may claim reimbursement from HUD for an amount not to exceed the lesser of:

- (1) The amount owed the Owner; or
- (2) One month's per unit operating cost, minus the amount of the family's security deposit balance. Any reimbursement under this section will be applied first toward any unpaid tenant payment due under the lease. No reimbursement may be claimed for unpaid tenant payment for the period after termination of the tenancy. The Owner may be eligible for vacancy payments following a vacancy in accordance with the requirements of § 889.650.

§ 889.645 Adjustment of utility allowances.

The Owner must submit an analysis of any utility allowances applicable. 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 utility rate changes would result in a cumulative increase of 10 percent or more in the most recently approved utility allowances, the Owner must advise HUD and request approval of new utility allowances. Whenever a utility allowance for an assisted unit is adjusted, the Owner will promptly notify affected families and make a corresponding adjustment of the tenant payment and the amount of the project rental assistance payment.

(Approved by the Office of Management and Budget under control number 2502-0470)

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

(a) *General.* Vacancy payments under the PRAC will not be made unless the conditions for receipt of these project rental assistance payments set forth in this section are fulfilled.

(b) *Vacancies during rent-up.* For each unit that is not leased as of the effective date of the PRAC, the Owner is entitled to vacancy payments in the amount of 50 percent of the per unit operating cost for the first 60 days of vacancy, if the Owner:

- (1) Conducted marketing in accordance with § 889.600(a) and otherwise complied with § 889.600;
- (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 a unit, the Owner is entitled to vacancy payments in the amount of 50 percent of the approved per unit operating cost for the first 60 days of vacancy if the Owner:

- (1) Certifies that it did not cause the vacancy by violating the lease, the PRAC, or any applicable law;
- (2) Notified HUD of the vacancy or prospective vacancy and the reasons for the vacancy upon learning of the vacancy or prospective vacancy;
- (3) Has fulfilled and continues to fulfill the requirements specified in § 889.600(a)(2) and (3) and § 889.650(b)(2) and (3); and
- (4) For any vacancy resulting from the Owner's eviction of an eligible family, certifies that it has complied with § 889.635.

(d) *Prohibition of double compensation for vacancies.* If the Owner collects payments for vacancies from other sources (tenant payments, security deposits, payments under § 889.640(c), or governmental payments under other programs), the Owner shall not be entitled to collect vacancy payments to the extent these collections from other sources plus the vacancy payment exceed the approved per unit operating cost.

§ 889.655 HUD review.

HUD shall conduct periodic on-site management inspections and reviews of the Owner's compliance with the requirements of this part.

Henry G. Cisneros,
Secretary.

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