

## PARTS 800–810 [RESERVED]

### PART 811—TAX EXEMPTION OF OBLIGATIONS OF PUBLIC HOUSING AGENCIES AND RELATED AMENDMENTS

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AUTHORITY: Sec. 7(d), Dept. of HUD Act (42 U.S.C. 3535(d)); secs. 3(6), 5(b), 8, 11(b) of the U.S. Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f, and 1437).

SOURCE: 44 FR 12360, Mar. 6, 1979, unless otherwise noted.

#### § 811.101 Purpose and scope.

(a) The purpose of this part is to provide a basis for determining tax exemption of obligations issued by public housing agencies pursuant to Section 11(b) of the United States Housing Act of 1937 (42 U.S.C. 1437i) to refund bonds for Section 8 new construction or substantial rehabilitation projects.

(b) This part does not apply to tax exemption pursuant to Section 11(b) for low-income housing projects developed pursuant to 24 CFR parts 950 and 941.

[61 FR 14460, Apr. 1, 1996]

#### § 811.102 Definitions.

The terms *HUD* and *Public Housing Agency (PHA)* are defined in 24 CFR part 5.

*Act.* The United States Housing Act of 1937 (42 U.S.C. 1437, *et seq.*).

*Agency or Instrumentality PHA.* A not-for-profit private or public organization that is authorized to engage in or assist in the development or operation of low-income housing and that has the relationship to a parent entity PHA required by this subpart.

*Agreement.* An Agreement to Enter Into Housing Assistance Payments

Contract as defined in the applicable Section 8 regulations. The form of agreement for projects financed with tax-exempt obligations shall be amended in accordance with this subpart.

*Annual Contributions Contract (ACC).* An Annual Contributions Contract as defined in the applicable Section 8 regulations. The form of ACC for projects financed with tax-exempt obligations shall be amended in accordance with this subpart.

*Applicable Section 8 Regulations.* The provisions of 24 CFR parts 880, 881, or 883 that apply to the project.

*Contract.* A Housing Assistance Payments Contract as defined in the applicable Section 8 regulations. The form of contract for projects financed with tax-exempt obligations shall be amended in accordance with this subpart.

*Cost of issuance.* Ordinary, necessary, and reasonable costs in connection with the issuance of obligations. These costs shall include attorney fees, rating agency fees, trustee fees, printing costs, bond counsel fees, feasibility studies (for non-FHA-insured projects only), consultant fees and other fees or expenses approved by HUD.

*Debt service reserve.* A fund maintained by the trustee as a supplemental source of money for the payment of debt service on the obligations.

*Financing Agency.* The PHA (parent entity PHA or agency or instrumentality PHA) that issues the tax-exempt obligations for financing of the project.

*Low-income Housing Project.* Housing for families and persons of low-income developed, acquired or assisted by a PHA under Section 8 of the Act and the improvement of any such housing.

*Obligations.* Bonds or other evidence of indebtedness that are issued to provide permanent financing of a low-income housing project. Pursuant to Section 319(b) of the Housing and Community Development Act of 1974, the term obligation shall not include any obligation secured by a mortgage insured under Section 221(d)(3) of the National Housing Act (12 U.S.C. 1715l) and issued by a public agency as mortgagor in connection with the financing of a project assisted under Section 8 of the Act. This exclusion does not apply to a public agency as mortgagee.

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*Owner.* An owner as defined in the applicable Section 8 regulations.

*Parent Entity PHA.* Any state, county, municipality or other governmental entity or public body that is authorized to engage in or assist in the development or operation of low-income housing and that has the relationship to an agency or instrumentality PHA required by this subpart.

*Servicing fees.* The annual costs of servicing the obligations (including any debt service reserve), including trustee fees, mortgage servicing fees, PHA expenses in connection with annual reviews, maintenance of books and accounts, audit expenses, agent fees and other costs of servicing the obligations.

*Trust indenture.* A contract setting forth the rights and obligations of the issuer, bondholders, owner and trustee in connection with the tax-exempt obligations. The trust indenture may also include provisions regarding the loan to the owner or these may be set forth in a separate mortgage.

*Trustee.* The entity that has legal responsibility under the trust indenture for disposition of the proceeds of a bond issuance and servicing of the debt represented by the obligations. The trustee must be a bank or other financial institution that is legally qualified and experienced in performing fiduciary responsibilities with respect to the care and investment of funds of a magnitude comparable to those involved in the financing.

*Yield.* That percentage rate at which the present worth of all payments of principal and interest to be paid on the obligations is equal to the purchase price.

[44 FR 12360, Mar. 6, 1979, as amended at 61 FR 5212, Feb. 9, 1996; 61 FR 14460, Apr. 1, 1996]

### § 811.103 General.

(a) In order for obligations to be tax-exempt under this subpart the obligations must be issued by a PHA in connection with a low-income housing project approved by HUD under the Act and the applicable Section 8 regulations.

(1) Except as needed for a resident manager or similar requirement, all dwelling units in a low-income housing project that is to be financed with obli-

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gations issued pursuant to this subpart must be Section 8 contract units.

(2) A low-income housing project that is to be financed with obligations issued pursuant to this subpart may include necessary appurtenances. Such appurtenances may include commercial space not to exceed 10% of the total net rentable area.

(b) Where the parent entity PHA is not the owner of the project, the parent entity PHA or other PHA approvable under § 811.104 must agree to administer the contract pursuant to an ACC with HUD, and such a PHA must agree that in the event there is a default under the contract it will pursue all available remedies to achieve correction of the default, including operation and possession of the project, if called upon by HUD to do so. If the field office finds that the PHA does not have the capacity to perform these functions, the Assistant Secretary may approve alternative contractual arrangements for performing these functions.

### § 811.104 Approval of Public Housing Agencies (other than agency or instrumentality PHAS).

(a)(1) An application to the field office for approval as a Public Housing Agency, other than an agency or instrumentality PHA, for purposes of this subpart shall be supported by evidence satisfactory to HUD to establish that:

(i) The applicant is a PHA as defined in this subpart, and has the legal authority to meet the requirements of this subpart and applicable Section 8 regulations, as described in its application. This evidence shall be supported by the opinion of counsel for the applicant.

(ii) The applicant has or will have the administrative capability to carry out the responsibilities described in its application.

(2) The evidence shall include any facts or documents relevant to the determinations required by paragraph (a)(1) of this section, including identification of any pending application the applicant has submitted under the Act. In the absence of evidence indicating the applicant may not be qualified, the

field office may accept as satisfactory evidence:

(i) Identification of any previous HUD approval of the applicant as a PHA pursuant to this section;

(ii) Identification of any prior ACC with the applicant under the Act; or

(iii) A statement, where applicable, that the applicant is an approved participating agency under 24 CFR Part 883 (State Housing Finance and Development Agencies).

(b) The applicant shall receive no compensation in connection with the financing of a project, except for its expenses. Such expenses shall be subject to approval by HUD in determining the development cost, cost of issuance and servicing fee, as appropriate. Should the applicant receive any compensation in excess of such expenses, the excess is to be placed in the debt service reserve.

(c) Where the applicant acts as the financing agency, the applicant shall be required to furnish to HUD an audit by an independent public accountant of its books and records in connection with the financing of the project within 90 days after the execution of the contract or final endorsement and at least biennially thereafter.

(d) Any subsequent amendments to the documents submitted to HUD pursuant to this section must be approved by HUD.

#### **§ 811.105 Approval of agency or instrumentality PHA.**

(a) An application to the field office for approval as an agency or instrumentality PHA for purposes of this subpart shall:

(1) Identify the parent entity PHA.

(2) Establish by evidence satisfactory to HUD that:

(i) The parent entity PHA meets the requirements of § 811.104.

(ii) The applicant was properly created pursuant to state law as a not-for-profit entity; is an agency or instrumentality PHA, as defined in this subpart; has the legal authority to meet the requirements of this subpart and applicable Section 8 regulations, as described in its application; and the actions required to establish the legal relationship with the parent entity PHA prescribed by paragraph (c) of this sec-

tion have been taken and are not prohibited by State law. This evidence shall be supported by the opinion of counsel for the applicant and counsel for the parent entity PHA.

(iii) The applicant has, or will have, the administrative capability to carry out the responsibilities described in its application.

(b) The charter or other organic document establishing the applicant shall limit the activities to be performed by the applicant, and funds and assets connected therewith, to carrying out or assisting in carrying out Section 8 projects and other low-income housing projects approved by the Secretary. Such organic documents shall provide that the applicant shall receive no compensation in connection with the financing of a project, except for its expenses. Such expenses shall be subject to approval by HUD in determining the development cost, cost of issuance and servicing fee, as appropriate. Should the applicant receive any compensation in excess of such expenses, the excess is to be placed in the debt service reserve.

(c) The documents submitted by the applicant shall include the following with respect to the relationship between the parent entity PHA and the agency or instrumentality PHA:

(1) Provisions requiring approval by the parent entity PHA of the charter or other organic instrument and of the bylaws of the applicant, which organic instrument and bylaws shall specify that any amendments are subject to approval by the parent entity PHA and by HUD.

(2) Provisions requiring approval by the parent entity PHA of each project and of the program and expenditures of the applicant.

(3) Provisions requiring approval by the parent entity PHA of each issue of obligations by the applicant not more than 60 days prior to the date of issue and approval of any substantive changes to the terms and conditions of the issuance prior to date of issue.

(4) Provisions requiring the applicant to furnish an audit of all its books and records by an independent public accountant to the parent entity PHA within 90 days after execution of the contract or final endorsement and at

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least biennially thereafter; and provisions requiring the parent entity PHA to perform an annual review of the applicant's performance and to provide HUD with a copy of such review together with any audits performed during the reporting period.

(5) Provisions giving the parent entity PHA right of access at any time to all books and records of the applicant.

(6) Provisions that upon dissolution of the applicant, title to or other interest in any real or personal property that is owned by such applicant at the time of dissolution shall be transferred to the parent entity PHA or to another PHA or to another not-for-profit entity as determined by the parent entity PHA and approved by HUD, to be used only for purposes approved by HUD.

(7) Evidence of agreement by the parent entity PHA, or other entity as may be provided for in alternative contractual arrangements pursuant to § 811.103(b), to accept title to any real or personal property pursuant to paragraph (c)(6) of this section.

(d) Any subsequent amendments to the documents submitted to HUD pursuant to this section must be approved by HUD.

(e) Members, officers, or employees of the parent entity PHA may be directors or officers of the applicant unless this is contrary to state law.

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

## § 811.106 Default under the contract.

If HUD finds there is a default under the Contract, the field office shall so notify the trustee and give the trustee a specified reasonable time to take action to require the owner to correct such default prior to any suspension or termination of payments under the contract. In the event of a default under the contract, HUD may terminate or suspend payments under the contract, may seek specific performance of the contract and may pursue other remedies.

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

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## § 811.107 Financing documents and data.

(a) The financing agency shall assure that any official statement or prospectus or other disclosure statement prepared in connection with the financing shall state on the first page that:

(1) In addition to any security cited in the statement, the bonds may be secured by a pledge of an Annual Contributions Contract and a Housing Assistance Payments Contract, executed by HUD;

(2) The faith of the United States is solemnly pledged to the payment of annual contributions pursuant to the Annual Contributions Contract or to the payment of housing assistance payments pursuant to the Housing Assistance Payments Contract, and funds have been obligated by HUD for such payments;

(3) Except as provided in any contract of mortgage insurance, the bonds are not insured by HUD;

(4) The bonds are not to be construed as a debt or indebtedness of HUD or the United States, and payment of the bonds is not guaranteed by the United States;

(5) Nothing in the text of a disclosure statement is to be interpreted to conflict with the above; and

(6) HUD has not reviewed or approved and bears no responsibility for the content of disclosure statements.

(b) The financing agency shall retain in its files the documentation relating to the financing. A copy of this documentation shall be furnished to HUD upon request.

[61 FR 14461, Apr. 1, 1996]

## § 811.108 Debt service reserve.

(a) *FHA-Insured projects.* (1) The debt service reserve shall be invested and the income used to pay principal and interest on that portion of the obligations which is attributable to the funding of the debt service reserve. Any excess investment income shall be added to the debt service reserve. In the event such investment income is insufficient, surplus cash or residual receipts, to the extent approved by the field office, may be used to pay such principal and interest costs.

(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 to refund outstanding 11(b) 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

pay transaction costs as approved by HUD according to a sliding scale ceiling based on par amount of refunding bond principal. Exceptions may be approved by HUD, if consistent with applicable statutes, in the event that an additional issue amount is required for project purposes.

(2) The stated maturity of the refunding bonds may not exceed by more than one year the remaining term of the project mortgage, or in the case of an uninsured loan, the later of expiration date of the Housing Assistance Payments Contract (the ‘HAPC’) or final maturity of the refunded bonds.

(3) The bond yield may not exceed by more than 75 basis points the 20 Bond General Obligation Index published by the Daily Bond Buyer for the week immediately preceding the sale of the bonds, except as otherwise approved by HUD. An amount not to exceed one-fourth of one percent annually of the bonds’ outstanding principal balance may be allowed for servicing and trustee fees.

(e) For projects for which the Agreement to enter into the HAPC was executed between January 1, 1979, and December 31, 1984 (otherwise known as ‘McKinney Act Projects’), for which a State or local agency initiates a refunding, the Secretary shall make available to an eligible issuing agency 50 percent of the Section 8 savings of a refunding, as determined by HUD on a project-by-project basis, to be used by the agency in accordance with the terms of a Refunding Agreement executed by the Agency and HUD which incorporates the Agency’s Housing Plan for use of savings to provide decent, safe, and sanitary housing for very low-income households. In determining the amount of savings recaptured on a project-by-project basis, as authorized by section 1012(b) of the McKinney Act, HUD will take into account the physical condition of the projects participating in the refunding which generate the McKinney Act savings and, if necessary, HUD will finance in refunding bond debt service correction of existing deficiencies which cannot be funded completely by existing project replacement reserves or by a portion of reserves released from the refunded bond’s indenture.

For McKinney Act refundings of projects which did not receive a Financing Adjustment Factor (‘FAF’), HUD will allow up to 50 percent of debt service savings to be allocated to the project account; in which case, the remainder will be shared equally by the Agency and the U.S. Treasury.

(f) For refundings of Section 8 projects other than McKinney Act Projects, and for all transactions which substitute collateral for, but do not redeem, outstanding obligations, and for which a HUD approval is needed (such as assignment of a HAPC or insured mortgage note), the Office of Multifamily Housing in consultation with HUD Field Office Counsel will review the HAPC, the Trust Indenture for the outstanding obligations, applicable HUD regulations, and reasonableness of proposed financing terms. In particular, HUD review should be obtained for the release of reserves from the trust indenture of the outstanding 11(b) bonds that are being refunded, defeased, or pre-paid. A proposal to distribute to a non-Federal entity the benefits of a refinancing, such as debt service savings and/or balances in reserves held under the original Trust Indenture, should be referred to the Office of Multifamily Housing for further review. In proposals submitted for HUD approval, HUD will consent to release reserves, as provided by the Trust Indenture, in an amount remaining after correction of project physical deficiencies and/or replenishment of replacement reserves, where needed. In the case of a refunding of 11(b) bonds by a public agency issuer which is the owner of the project and is entitled to reserves held under the Trust Indenture, HUD requires execution by the project owner of a use agreement, and amendment of a regulatory agreement, if applicable, to extend low-income tenant occupancy for ten years after expiration of the original HAPC term. In the case of HAP contracts with renewable 5-year terms, the Use Agreement shall extend for 10 years after the project owners first opt-out date. The Use Agreement may also be required of private entity owners, unless the refunding is incidental to a transfer of project ownership or a transaction which provides a substantial public

benefit, as determined by the Office of Multifamily Housing. Proposed use of benefits shall be consistent with applicable appropriations law, the HAPC, and other requirements applicable to the original project financing, and the proposed financing terms must be reasonable in relation to bond market yields and transaction fees, as approved by the HUD Office of Multifamily Housing.

(g) Agencies shall have wide latitude in the design of specific delivery vehicles for use of McKinney Act savings, subject to HUD audit of each Agency's performance in serving the targeted income eligible population. Savings may be used for shelter costs of providing housing, rental, or owner-occupied, to very low-income households through new construction, rehabilitation, repairs, and acquisition with or without rehab, including assistance to very low-income units in mixed-income developments. These include programs designed to assist in obtaining shelter, such as rent or homeownership subsidies. Self-sufficiency services in support of very low-income housing are also eligible, and may include, but are not limited to, homeownership counseling, additional security measures in high-crime areas, construction job training for residents' repair of housing units occupied by very low-income families, and empowerment activities designed to support formation and growth of resident entities. Except for the cost of providing third-party program audit reports to HUD, eligible costs exclude consultant fees or reimbursement of Agency staff expenses, but may include fees for professional services required in the Agency's McKinney Act programs of assistance to very low-income families. Unless otherwise specified by HUD in a McKinney Agreement, savings shall be subject to the above use requirements for 10 years from the date of receipt of the savings.

(h) Refunding bonds, including interest thereon, approved under this Section shall be exempt from all taxation now or hereafter imposed by the United States, and the notification of approval of tax exemption shall not be subject to revocation by HUD. Whether refunding bonds approved under this section

meet the requirements of Section 103 or any other provisions of the Internal Revenue Code is not within the responsibilities of HUD to determine. Such bonds shall be prepaid during the HAPC term only under such conditions as HUD shall require.

[61 FR 14461, Apr. 1, 1996]

## PART 850—HOUSING DEVELOPMENT GRANTS

### Subpart A—General Provisions

Sec.

850.1 Applicability and savings clause.

### Subparts B–E [Reserved]

### Subpart F—Project Management

850.151 Project restrictions.

850.153 Rent control.

850.155 Securing owner's responsibilities.

AUTHORITY: 42 U.S.C. 1437o, 3535(d).

SOURCE: 49 FR 24641, June 14, 1984, unless otherwise noted.

### Subpart A—General Provisions

#### § 850.1 Applicability and savings clause.

(a) *Applicability.* This part implements the Housing Development Grant Program contained in section 17 of the United States Housing Act of 1937 (42 U.S.C. 1437o). The Program authorized the Secretary to make housing development grants to support the new construction or substantial rehabilitation of real property to be used primarily for residential rental purposes. Section 289(b)(1) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12839) repealed section 17 effective October 1, 1991. Section 289(a) prohibited new grants under the Housing Development Grant Program except for projects for which binding commitments had been entered into prior to October 1, 1991.

(b) *Savings clause.* Any grant made pursuant to a binding commitment entered into before October 1, 1991 will continue to be governed by subparts A