

unless the owner justifies a higher equity contribution by cost certification documentation in accordance with HUD mortgage insurance procedures.

(d) Any short-fall in return may be made up from surplus project funds in future years.

(e) If HUD determines at any time that project funds are more than the amount needed for project operations, reserve requirements and permitted distribution, HUD may require the excess to be placed in an account to be used to reduce housing assistance payments or for other project purposes. Upon termination of the Contract, any excess funds must be remitted to HUD.

(f) Owners of small projects or partially-assisted projects are exempt from the limitation on distributions contained in paragraphs (b) through (d) of this section.

(g) In the case of HUD-insured projects, the provisions of this section will apply instead of the otherwise applicable mortgage insurance program provisions.

§ 881.207 Property standards.

Projects must comply with:

(a) [Reserved]

(b) In the case of congregate or single room occupant housing, the appropriate HUD guidelines and standards;

(c) HUD requirements pursuant to section 209 of the Housing and Community Development Act of 1974 for projects for the elderly or handicapped;

(d) HUD requirements pertaining to noise abatement and control;

(e) The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), 24 CFR part 35 and 24 CFR part 200, subpart O; and

(f) Applicable State and local laws, codes, ordinances and regulations.

(g) *Smoke detectors.* (1) *Performance requirement.* After October 30, 1992, each dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit. If the unit is occupied by hearing-impaired persons, smoke detectors must have an alarm system, designed for hearing-impaired persons, in each bedroom occupied by a hearing-impaired person.

(2) *Acceptability criteria.* The smoke detector must be located, to the extent

practicable, in a hallway adjacent to a bedroom, unless the unit is occupied by a hearing-impaired person, in which case each bedroom occupied by a hearing-impaired person must have an alarm system connected to the smoke detector installed in the hallway.

[45 FR 7085, Jan. 31, 1980, as amended at 52 FR 1893, Jan. 15, 1987; 57 FR 33851, July 30, 1992; 63 FR 46578, Sept. 1, 1998]

§ 881.208 Financing.

(a) *Types of financing.* Any type of construction financing and long-term financing may be used, including:

(1) Conventional loans from commercial banks, savings banks, savings and loan associations, pension funds, insurance companies or other financial institutions;

(2) Mortgage insurance programs under the National Housing Act; and

(3) Financing by tax-exempt bonds or other obligations.

(b) *HUD approval.* HUD must approve the terms and conditions of the financing to determine consistency with these regulations and to assure they do not purport to pledge or give greater rights or funds to any party than are provided under the Agreement, Contract, and/or ACC. Where the project is financed with tax-exempt obligations, the terms and conditions will be approved in accordance with the following:

(1) An issuer of obligations that are tax-exempt under any provision of Federal law or regulation, the proceeds of the sale of which are to be used to purchase GNMA mortgage-backed securities issued by the mortgagee of the Section 8 project, will be subject to 24 CFR part 811, subpart B.

(2) Issuers of obligations that are tax-exempt under Section 11(b) of the U.S. Housing Act of 1937 will be subject to 24 CFR part 811, subpart A if paragraph (b)(1) of this section is not applicable.

(3) Issuers of obligations that are tax-exempt under any provision of Federal law or regulation other than Section 11(b) of the U.S. Housing Act of 1937 will be subject to 24 CFR 811, subpart A if paragraph (b)(1) of this section is not applicable, except that such issuers that are State Agencies qualified under 24 CFR part 883 are not subject to 24 CFR part 811, subpart A and are subject

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solely to the requirements of 24 CFR part 883 with regard to the approval of tax-exempt financing.

(c) *Pledge of contracts.* An owner may pledge, or offer as security for any loan or obligation, an Agreement, Contract or ACC entered into pursuant to this part: *Provided, however,* That such financing is in connection with a project constructed pursuant to this part and approved by HUD. Any pledge of the Agreement, Contract, or ACC, or payments thereunder, will be limited to the amounts payable under the Contract or ACC in accordance with its terms. If the pledge or other document provides that all payments will be paid directly to the mortgagee or the trustee for bondholders, the mortgagee or trustee will make all payments or deposits required under the mortgage, trust indenture of HUD regulations and remit any excess to the owner.

(d) *Foreclosure and other transfers.* In the event of foreclosure, assignment or sale approved by HUD in lieu of foreclosure, or other assignment or sale approved by HUD:

(1) The Agreement, the Contract and the ACC, if applicable, will continue in effect, and

(2) Housing assistance payments will continue in accordance with the terms of the Contract.

(e) *Financing of manufactured home parks.* In the case of a substantially rehabilitated manufactured home park, the principal amount of any mortgage attributable to the rental spaces in the park may not exceed an amount per space determined in accordance with §207.33(b) of this Title.

[45 FR 7085, Jan. 31, 1980, as amended at 45 FR 62797, Sept. 22, 1980; 48 FR 12706, Mar. 28, 1983; 49 FR 17449, Apr. 24, 1984]

§ 881.211 Audit.

(a) Where a State or local government is the eligible owner of a project or a contract administrator under §881.505 receiving financial assistance under this part, the audit requirements in 24 CFR part 44 shall apply.

(b) Where a nonprofit organization is the eligible owner of a project, receiving financial assistance under this

part, the audit requirements in 24 CFR part 45 shall apply.

[50 FR 39091, Sept. 27, 1985; 51 FR 30480, Aug. 27, 1986, as amended at 57 FR 33257, July 27, 1992; 59 FR 2738, Jan. 19, 1994]

Subparts C-D [Reserved]

Subpart E—Housing Assistance Payments Contract

§ 881.501 The contract.

(a) *Contract.* The Housing Assistance Payments Contract sets forth rights and duties of the owner and the contract administrator with respect to the project and the housing assistance payments. The owner and contract administrator execute the Contract in the form prescribed by HUD upon satisfactory completion of the project.

(b) [Reserved]

(c) *Housing assistance payments to owners under the contract.* The housing assistance payments made under the Contract are:

(1) Payments to the owner to assist eligible families leasing assisted units, and

(2) Payments to the owner for vacant assisted units (“vacancy payments”) if the conditions specified in §881.611 are satisfied.

The housing assistance payments are made monthly by the contract administrator upon proper requisition by the owner, except payments for vacancies of more than 60 days, which are made semi-annually by the contract administrator upon requisition by the owner.

(d) *Amount of housing assistance payments to owner.* (1) The amount of the housing assistance payment made to the owner of a unit being leased by an eligible family is the difference between the contract rent for the unit and the tenant rent payable by the family.

(2) A housing assistance payment will be made to the owner for a vacant assisted unit in an amount equal to 80 percent of the contract rent for the first 60 days of vacancy, subject to the conditions in §881.611. If the owner collects any tenant rent or other amount for this period which, when added to