

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.

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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

through E of this part in effect immediately before April 1, 1996, and by subpart F of this part as currently in effect.

[61 FR 7944, Feb. 29, 1996]

Subparts B–E [Reserved]

Subpart F—Project Management

§ 850.151 Project restrictions.

(a) *Owner-grantee agreement.* The grantee and the owner must enter into an agreement that requires the owner (including its successors in interest) to carry out the requirements of this section and of the grant agreement, as appropriate. The grantee-owner agreement must require the grantee to monitor (where required) and to take appropriate legal action to enforce compliance with the owner's responsibilities thereunder. The owner's compliance with its obligations under this section must be secured by a mortgage or other security instrument meeting the requirements of § 850.155. Nothing in this section shall preclude enforcement by the Federal government of grant agreement provisions, civil rights statutes, or other provisions of law that apply to the Housing Development Grant Program.

(b) *Restriction on conversion.* The owner shall not convert the units in the project to condominium ownership or to a form of cooperative ownership that is not eligible to receive a housing development grant, during the 20-year period from the date on which the units in the project are available for occupancy.

(c) *Tenant selection.* The owner shall determine the eligibility of applicants for lower income units in accordance with the requirements of 24 CFR parts 812 and 813, including the provisions of these parts concerning citizenship or eligible immigration status and income limits, and certain assistance to mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status.). The owner shall not, during the 20-year period from the date on which the units in the project are available for occupancy, discriminate against prospective tenants on the

basis of their receipt of, or eligibility for, housing assistance under any Federal, State, or local housing assistance program or, except for an elderly housing project, on the basis that they have a minor child or children who will be living with them.

(d) *Restriction on leasing assisted units.* The owner shall assure that the percentage of low-income units specified in the grant agreement is occupied, or is available for occupancy, by low-income households during the period beginning on the date on which the units in the project are available for occupancy through 20 years from the date on which 50 percent of the units are occupied. The owner may lease a low-income unit only to a tenant that is a low-income household at the time of its initial occupancy. An owner may continue to lease a low-income unit to a tenant that ceases to qualify as a low-income household only as provided in paragraph (f) of this section.

(e) *Low-income unit rent.* (1) Section 17(d)(8)(A) of the U.S. Housing Act of 1937 prohibits the rents for low-income units from exceeding “30 per centum of the adjusted income of a family whose income equals 50 per centum of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families.” This paragraph describes how these maximum rent determinations are made.

(2) The maximum rents that may be charged for low-income units are based on the size of the unit by number of bedrooms, and are calculated in accordance with the following procedure. For each unit size, HUD will provide the Section 8 very low-income limits. HUD will also provide income adjustments for each unit size, consistent with 24 CFR part 813. An adjusted income amount for each unit size is calculated by the owner or grantee by subtracting the income adjustment from the Section 8 limit. The adjusted income amount is multiplied by 30 percent and divided by 12 to obtain the maximum monthly gross rent for each low-income unit. A monthly allowance for the utilities and services (excluding telephone) to be paid by the tenant is subtracted from the maximum monthly gross rent to obtain the maximum

monthly rent that may be charged for low-income units. Information to be provided by HUD will be available from the responsible HUD Field Office.

(3) The initial monthly allowance for utilities and services to be paid by the tenant must be approved by HUD. Subsequent calculations of this allowance must be approved by the grantee in connection with its review and approval of rent schedules under paragraph (e)(4) of this section. The maximum monthly rent must be recalculated annually, and may change as changes in the Section 8 very low-income limit, the income adjustments, or the monthly allowance for utilities and services warrant.

(4) The grantee must review and approve any schedule of rents proposed by the owner for low-income units. Any schedule submitted by an owner within the permissible maximum will be deemed approved, unless the grantee informs the owner, within 60 days after receiving the schedule, that it is disapproved.

(5) Any increase in rents for low-income units is subject to the provisions of outstanding leases, in any event, the owner must provide tenants of those units not less than 30 days prior written notice before implementing any increase in rents.

(f) *Reexamination of tenant income and composition.* (1) The owner shall reexamine the income of each tenant household living in low-income units at least once a year. At the first regular reexamination after June 19, 1995 the owner shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner shall follow the requirements of 24 CFR part 812 concerning verification of the immigration status of any new family member.

(2) If this reexamination indicates that the tenant no longer qualifies as a low-income household, the owner must take one of the following actions, as appropriate: (i) If the unit occupied by the tenant must be leased to a low-income household to maintain the percentage of low-income units specified in the grant agreement, the owner

must notify the tenant that it must move when the current lease expires or six months after the date of the notification, whichever is later; (ii) If the owner can meet this percentage without the unit occupied by the tenant (for example, by designating another comparable unit as a low-income unit), the owner may continue to lease to that tenant, but is free to renegotiate the rent at the expiration of the current lease.

(3) For provisions related to termination of assistance for failure to establish citizenship or eligible immigration status, see 24 CFR 812.9, and also 24 CFR 812.10 for provisions related to certain assistance to mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions related to deferral of termination of assistance.

(g) *Affirmative fair housing marketing.* Marketing must be done in accordance with the HUD-approved Affirmative Fair Housing Marketing Plan, Form HUD-935.2, and all fair housing and equal opportunity requirements. The purpose of the Plan and the requirements is to provide for affirmative marketing through the provision of information regarding the availability of units in projects assisted. Affirmative marketing steps consist of good faith efforts to provide information and otherwise attract eligible persons from all racial, ethnic and gender groups in the housing market area to the available housing.

(h) *Management and maintenance functions.* The owner must perform all management and maintenance functions in compliance with equal opportunity requirements. These functions include selection of tenants, reexamination of family income, evictions and other terminations of tenancy, and all ordinary and extraordinary maintenance and repairs, including replacement of capital items.

(i) *Residency preferences.* 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-

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approved AFHM Plan. 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.

[49 FR 24641, June 14, 1984, as amended at 60 FR 14841, Mar. 20, 1995]

§ 850.153 Rent control.

A project constructed or substantially rehabilitated with a housing development grant is not subject to State or local rent control unless the rent control requirements or agreements (a) (1) were entered into under a State law or local ordinance of general applicability that was enacted and in effect in the jurisdiction before November 30, 1983 and (2) apply generally to rental housing projects not assisted under the Housing Development Grant Program, or (b) are imposed under this subpart. State and local rent controls expressly preempted by this section include, but are not limited to, rent laws or ordinances, rent regulating agreements, rent regulations, occupancy agreements, or financial penalties for failure to achieve certain occupancy or rent projections.

§ 850.155 Securing owner's responsibilities.

Assistance provided under this part shall constitute a debt of the owner (including its successors in interest) to the grantee, and shall be secured by a mortgage or other security instrument. The debt shall be repayable in the event of a substantive, uncorrected violation by an owner of the obligations contained in paragraphs (b), (c), (d) and (e) of § 850.151. The instruments securing this debt shall provide for repayment to the grantee in an amount equal to the total amount of housing development grant assistance outstanding, plus interest which is determined by the Secretary by adding two percent to the average yield on outstanding marketable long-term obligations of the United States during the month preceding the date on which assistance was made available. The amount to be repaid shall be reduced by 10 percent for each full year in excess of 10 years that intervened between the beginning of the term of the

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owner-grantee agreement and the violation.

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

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- 880.611 Conditions for receipt of vacancy payments.
- 880.612 Reviews during management period.
- 880.612a Preference for occupancy by elderly families.

AUTHORITY: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611–13619.