

§811.106

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]

24 CFR Ch. VIII (4-1-05 Edition)

§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