

be located adjacent to the following facilities, or in areas where such facilities are concentrated: schools or day-care centers for persons with disabilities, workshops, medical facilities, or other housing primarily serving persons with disabilities. Not more than one group home may be located on any one site and no such home may be located on a site contiguous to another site containing such a home.

§ 891.325 Lead-based paint requirements.

The requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at part 35, subparts A, B, H, J, and R of this title apply to the section 811 program and to projects funded under §§ 891.655 through 891.790.

[69 FR 34276, June 21, 2004]

Subpart D—Project Management

§ 891.400 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 or occupancy of the group home. 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 a 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 households of similar income levels in the same housing market area 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

(or in the case of a group home, leased and unleased residential spaces) with a justification for the unleased units or residential spaces, in order to qualify for vacancy payments for the unleased units or residential spaces.

(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 households occupying assisted units or residential spaces, 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 relationships described in § 891.130. (These prohibitions do not extend to management contracts entered into by the Owner with the Sponsor or its nonprofit affiliate.)

(2) Consistent with the objectives of Executive Order No. 11625 (36 FR 19967, 3 CFR, 1971-1975 Comp., p. 616; as amended by Executive Order No. 12007 (42 FR 42839, 3 CFR, 1977 Comp., p. 139)); Executive Order No. 12432 (48 FR 32551, 3 CFR, 1983 Comp., p. 198); and Executive Order No. 12138 (44 FR 29637, 3 CFR, 1979 Comp., p. 393; as amended by Executive Order No. 12608 (52 FR 34617, 3 CFR, 1987 Comp., p. 245)), the Owner will promote awareness and participation of minority and women's 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,

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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 interest bearing 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 § 891.405, 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 § 891.410(a).

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

§ 891.405 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 re-

placement 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(s) 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. With HUD approval, reserves may be used to reduce the number of dwelling units, provided that the purpose for the reduction is the retrofitting of obsolete or unmarketable units.

[61 FR 11956, Mar. 22, 1996, as amended at 68 FR 67321, Dec. 1, 2003]

§ 891.410 Selection and admission of tenants.

(a) *Written procedures.* The Owner shall adopt written tenant selection procedures that 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 persons with disabilities (as applicable); and reasonably related to program eligibility and an applicant's ability to perform the obligations of the lease. Owners shall promptly inform 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) *Application for admission.* The Owner must accept applications for admission to the project in the form prescribed by HUD, and (under the Section 202 Program only) is obligated to confirm all information provided by applicant families on the application. Applicant households applying for assisted