

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]

## 24 CFR Ch. VIII (4-1-06 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.