

§ 883.308

24 CFR Ch. VIII (4-1-06 Edition)

revised documents are acceptable, or, if unacceptable, will request clarification or changes.

(3) The review and approval of financing documents required under 24 CFR part 811 will constitute HUD approval under this section.

(4) The Agency must retain in its files, and make available for HUD inspection, the documentation relating to its financing of Section 8 projects, including any relating to the certifications of compliance with applicable Department of Treasury or HUD regulations (24 CFR part 811) regarding tax-exempt financing.

(c) *Pledge of Contracts.* The HFA or owner may pledge, or offer as security for any loan or obligation, an Agreement, Contract, or ACC entered into pursuant this part provided that such security is in connection with a project constructed pursuant to this part. 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 HFA, other mortgagee or the trustee for bondholders, the HFA, other mortgagee or trustee may make all payments or deposits required under the mortgage or trust indenture and remit any excess to the owner.

(d) *Foreclosure and other transfers.* In the event of assignment, sale, or other disposition of the project or the contracts agreed to by the HFA and approved by HUD (which approval shall not be unreasonably delayed or withheld), foreclosure, or assignment of the mortgage or deed in lieu of foreclosure,

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

(2) Housing assistance payments will continue in accordance with the terms of the Contract, unless approval to amend or terminate the Agreement, the Contract or the ACC has been obtained from the Assistant Secretary.

(e) In the case of a newly constructed or 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 deter-

mined in accordance with § 207.33(b) of this title.

[45 FR 6889, Jan. 30, 1980, as amended at 45 FR 56327, Aug. 22, 1980; 48 FR 12709, Mar. 28, 1983; 49 FR 17449, Apr. 24, 1984; 61 FR 13592, Mar. 27, 1996]

§ 883.308 Adjustments to reflect changes in terms of financing.

(a) *Certifications of projected financing terms.* When an HFA, under this part, provides permanent financing for a project through the issuance of obligations and these are not sold until after the contract rents for a project have been set, the HFA must submit, with the Proposal, a certification of:

(1) Its projected rate of borrowing (net interest cost), based on a reasonable evaluation of market conditions, on obligations issued to provide interim and permanent financing for the project,

(2) The projected cost of borrowing to the owner on interim financing for the project,

(3) The projected loan amount for the project,

(4) The projected cost of borrowing and the term of the permanent financing to be provided to the owner for the project,

(5) The projected annual debt service for the permanent financing on which the Contract Rents are based, and

(6) The override, if any.

(b) *Revised certifications.* If, at any time prior to the execution of the Agreement, the terms and conditions of financing change, other than the HFA's projected cost of borrowing, the HFA must submit revised certifications based upon the new terms.

(c) *Certifications of actual financing terms.* After a project has been permanently financed, the HFA must submit a certification which specifies the actual financing terms. The items that must be included in this certification include:

(1) The HFA's actual cost of borrowing (net interest cost) on obligations from which funds were used to permanently finance the project,

(2) The override, if any, added to the actual cost of borrowing on obligations in setting the rate of lending to the owner,

(3) The annual debt service to the owner for the permanent financing on which contract rents are based; and,

(4) The actual loan amount and the term on which the annual debt service is based.

(d) *Reduction of Contract Rents.* If the actual debt service to the owner under the permanent financing is lower than the anticipated debt service on which the Contract Rents were based, the initial Contract Rents, or the Contract Rents currently in effect, must be reduced commensurately, and the amount of the savings credited to the project account.

(e) *Increase of Contract Rents.* This paragraph (e) applies only if the HFA is using its set-aside for the project and it is processed under subpart D. If the actual debt service to the owner under the permanent financing is higher than the anticipated debt service on which the Contract Rents are based, the initial Contract Rents or the Contract Rents currently in effect may, if sufficient contract and budget authority is available, be increased commensurately based on the certification submitted under paragraph (c) of this section. The amount of this increase may not exceed the amount of the Financing Cost Contingency (FCC) authorized but not reserved for the project at the time the proposal is approved. The adjustment must not exceed the amount necessary to reflect an increase in debt service (based on the difference between the projected and actual terms of the permanent financing) resulting from an increase over the projected interest rate of not more than:

(1) One and one-half percent if the projected override was three-fourths of one percent or less, or

(2) One percent if such projected override was more than three-fourths of one percent but not more than one percent, or

(3) One-half of one percent if such projected override was more than one percent.

(f) *Recoupment of savings in financing costs.* In the event that interim financing is continued after the first year of the term of the Contract and the debt service of the interim financing for any period of three months after such first year is less than the anticipated debt

service under the permanent financing on which the Contract Rents were based, an appropriate amount reflecting the savings in financing cost will be credited by HUD to the Project Account and withheld from housing assistance payments payable to the owner. If during the course of the same year there is any period of three months in which the debt service is greater than the anticipated debt service under the projected permanent financing, an adjustment will be made so that only the net amount of savings in debt service for the year is credited by HUD to the Project Account and withheld from housing assistance payments to the owner. No increased payments will be made to the owner on account of any net excess for the year of actual interim debt service over the anticipated debt service under the permanent financing. Nothing in this paragraph will be construed as requiring a permanent reduction in the Contract Rents or precluding adjustments of Contract Rents in accordance with paragraphs (d) or (e) of this section.

(g) *Compliance with other regulations.* The HFA must also submit a certification specifying:

(1) That the terms of financing, the amount of the obligations issued with respect to the project and the use of the funds will be in compliance with any regulation governing the issuance of the obligations, e.g., Department of the Treasury regulations regarding arbitrage or HUD regulations regarding Tax Exemption of Obligations of Public Housing Agencies (24 CFR part 811), and

(2) That the override, if any, on the permanent financing for the project will not be greater than the projected override nor greater than the override allowed for the borrowing as a whole under applicable regulations, e.g., the Department of Treasury regulations regarding arbitrage. The certifications required under 24 CFR 811.107(a)(2) will be sufficient to meet the certification requirements of this paragraph (g).

§ 883.310 Property standards.

(a) *New Construction.* Projects must comply with:

(1) [Reserved]