

purposes of this rule. Because the definitions section of part 885 governs both the section 202 handicapped housing program and the section 202/8 program, the text of the final rule adopted today does not include a definition.

*Term of HAP contract (§ 885.505).*

The proposed rule at § 885.505 provided that the term of the HAP contract for assisted units in section 202/8 projects is 20 years. If the project is completed in stages, the term of the HAP contract for all assisted units in all stages of a project may not exceed 22 years. One commenter recommended that HUD should provide short extensions of the HAP contract if the facility or the tenants would suffer an undue hardship without the extension. Section 885.535 already provides that HUD and the Borrower may agree to extend the term of the HAP contract or to renew the HAP contract upon the expiration of the term of the contract. This section has been clarified to state that any extension or renewal is subject to the availability of funding.

*Fair Market rents.* One commenter recommended that the Department develop additional language in part 885 specifying how fair market rents (FMRs) will be calculated for section 202/8 facilities. This commenter claimed that the Department's method of calculating FMRs was not economically feasible for many section 202 facilities. Under the section 202/8 program, the applicable published FMRs were used in development processing to determine the amount reserved for the section 8 funding and served as a limit on the amount of the section 202 loan that could be made. They served as the initial contract rents (although they could be adjusted based on the amount of the loan). Thereafter, the contract rents are adjusted based on the project's approved budget or by the annual (and special) adjustment factor as specified in the contract. HUD believes that the regulations are sufficiently specific. No additional provisions have been included in this rule, particularly since no new reservations are subject to section 8 FMRs.

*Leasing to eligible families (§ 885.515).* Proposed § 885.515 implemented section 325(1) of the Housing and Community Development Act of 1981 which requires that HAP contracts for new construction and substantial rehabilitation must provide that during the term of the HAP contract, the owner shall make available for occupancy by eligible families the number of units for which assistance is committed under the HAP contract. Under the proposed rule making units

available for occupancy by eligible families required the Borrower: (1) to conduct marketing in accordance with § 885.600(a) (i.e., the Borrower must commence and continue diligent marketing activities not later than 90 days before the anticipated date of availability for occupancy of the first unit and marketing must be performed in accordance with a HUD-approved affirmative marketing plan and all fair housing and equal opportunity requirements); (2) lease or make good faith efforts to lease the units to eligible and otherwise acceptable families, including taking all feasible actions to fill vacancies by renting to such families; and (3) not reject any such applicant family except for reasons acceptable to HUD. The proposed rule stated that if the Borrower is temporarily unable to lease all assisted units to families that are eligible to occupy them, one or more units may, with the prior approval of HUD, be leased to "ineligible families" (i.e., families that meet the section 202 handicapped or elderly eligibility requirements, but cannot meet the income eligibility requirements).

A commenter argued that the proposed rules do not adequately ensure that effective outreach techniques will be used. The commenter argued that once the Borrower complies with HUD's general fair housing and equal opportunity requirements and continues this outreach strategy for 90 days, its marketing obligations would be fulfilled and the Borrower would be free to rent to ineligible tenants. The commenter argued that the final rule should require Borrowers to specifically target the elderly and handicapped populations in their outreach strategies. Further, the commenter suggested that HUD provide for the use of a centralized computer system for matching Borrowers and tenant applicants.

HUD believes that the regulations are adequate to ensure that the Borrower will market to eligible handicapped and elderly families. HUD notes that, in addition to the marketing requirements cited by the commenter, making units available to eligible families requires the Borrower to demonstrate that it has leased or *is making good faith efforts* to lease units to eligible and otherwise acceptable families. Without such a showing, HUD will not approve a Borrower's request for permission to lease to ineligible families. Moreover, the Affirmative Fair Housing Marketing Plan is in effect for the duration of the Federal financial assistance. While affirmative marketing efforts must commence at least 90 days prior to the initial rent-up, they also must continue

throughout the life of the Federal financial assistance. In light of the expense involved in the establishment of a centralized computer system and questions concerning the necessity of a system, HUD has rejected the commenter suggestion regarding the provision of a computerized system for matching Borrowers and tenant-applicants.

One commenter argued that the provision permitting the Borrower to lease to ineligible families is unnecessary since sufficient numbers of income-eligible families can be located if Borrowers make an effort. The commenter feared that this exception would lead to other practices or exceptions that would undermine efforts to serve the poor and the homeless.

The proposed provision has been retained in the final rule. The failure to achieve necessary occupancy could impair project operations to the detriment of tenants and would ultimately create a danger of a default on the section 202 loan. Such a default and foreclosure could result in the project being entirely disassociated from its original purpose, if purchased by an outside bidder. Accordingly, HUD has concluded that the proposed provision may be essential in order to preserve certain projects for the benefit of present and future eligible tenants. HUD believes that the requirement for prior approval will ensure adequate supervision of the project and will prevent the abuses predicted by the commenter.

A commenter suggested that the final rule should be revised to permit Borrowers, without prior HUD authorization, to rent up to five percent of the units to low-income families where very low-income families are not available to fill a vacancy. Section 16 of the United States Housing Act of 1937 establishes limitations on the admission to the Section 8 and public housing programs of low-income families, but not very low income. HUD has implemented this national limitation by prohibiting the admission of families in this category, unless the owner has received prior HUD approval (see §§ 813.105 and 913.105). Section 103 of the Housing and Community Development Act of 1987 and section 1001 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 amended the United States Housing Act of 1937 to state that HUD may not totally prohibit admission of lower income families other than very low-income families, shall establish an appropriate specific percentage of lower income families other than very low-