

income families that may be assisted in each assisted housing program, and shall prohibit project owners from selecting families for residence in an order different from the order on the waiting list for the purpose of selecting relatively higher income families for residence. A final rule implementing the 1987 amendment was published on September 6, 1988 (53 FR 34412).

Section 16(b) of the United States Housing Act of 1937 was amended by the Cranston-Gonzalez National Affordable Housing Act (CGNAHA) by striking 5% and inserting 15% and adding the following new paragraph: "Not more than 25 percent of the dwelling units in any project of any agency shall be available for occupancy by low-income families other than very low-income families. The limitation shall not apply in the case of any project in which, before the enactment of the CGNAHA, such low-income families occupy more than 25 percent of the dwelling units." The Department is pursuing rulemaking to implement these changes.

*Notice upon HAP contract expiration (§ 885.530).* Proposed § 885.530 implements section 8(c)(8) of the United States Housing Act of 1937 which governs the Borrower's notification of tenants upon the expiration of the HAP contract. A commenter recommended that the final rule also include a requirement that HUD notify the Borrower one year before the expiration of the contract term. Section 262 of the Housing and Community Development Act of 1987 added a new section 8(c)(9) to the United States Housing Act of 1937. This new provision imposed a requirement on the owner to give one year's notice prior to the termination. This new provision was self-implementing and HUD issued instructions on this provision to all Section 8 owners (including section 202/8 owners) in a memorandum dated July 6, 1988.

*Responsibilities of Borrower (§ 885.600).* Paragraph (d)(1) of § 885.600 (responsibilities of Borrower) provided that financial statements must be provided to HUD 60 days after the end of each fiscal year of operations. A commenter suggested that Borrowers be given an option in the HAP contract (with provisions for adjustment) to determine the dates to be used for the fiscal year. The HAP contract permits fiscal years ending on March 31, June 30, September 30, or December 31. While Borrowers may request a fiscal year ending on any of these dates, such requests are subject to approval by HUD.

Under § 885.600(d)(2), the Borrower must provide such other statements

regarding project operation, financial condition, and occupancy as HUD may require to administer the HAP contract and to monitor project operations. A commenter requested HUD to explain or provide examples of such "other statements". Other statements will include: monthly accounting statements; tenant assistance payments requests and special claims requests (claims for unpaid rent, tenant damages and other charges and claims for vacancy loss); and quarterly and annual occupancy reports.

Proposed paragraph (e) required the maintenance of a project fund account. All funds remaining in the project fund account following the expiration of the project's fiscal year (i.e., the excess of project income over project operating expenses, required principal and interest payment and deposits to the replacement reserve) were required to be deposited in the replacement reserve account following the expiration of the fiscal year. The final rule has been revised to conform to the practices currently applied in the section 8 program. These practices provide that the remaining funds are deposited in a residual receipts account. Amounts in this account may be used to reduce housing assistance payments and for other project purposes with the approval of HUD. Upon termination of the contract any excess funds must be remitted to HUD.

*Replacement reserve (§ 885.605).* One commenter thought that proposed § 885.605, which governs the amount of the replacement reserve, required a contribution of .6 percent for the first year and .4 percent for the second year of operations. After the first two years, the commenter recommended the use of a sliding scale (based on the age of the building) to maintain an adequate reserve.

This commenter has misread the proposed rule. The proposed rule provided that the annual amount of the deposit is .6 percent of the cost of the total structure (for new construction projects) or .4 percent of the cost of the initial mortgage (for all other projects). This amount would have been required for deposit and adjusted yearly by the amount of the annual adjustment factor and may be reduced if HUD determines that the reserve has reached a level sufficient to meet project requirements (see § 885.605(b) and (c)). To provide flexibility, HUD has decided not to specify a percentage of cost amount in the final rule, instead HUD will determine the amount whenever appropriate.

Another commenter suggested that HUD permit Borrowers to use the

replacement reserve for preventive and maintenance efforts, and for physical adjustments necessary to accommodate the needs of residents aging in place. The proposed change has not been made. The purpose of the replacement reserve is to ensure that sufficient funds will be available to provide for extraordinary maintenance, and repair and replacement of capital items (e.g., replacement of structural elements and mechanical equipment in the project.) Operating expenses such as day-to-day maintenance requirements and preventive maintenance expenses are to be paid from operating revenues. Currently, Borrowers may request HUD to approve the use of the replacement reserve for payments for some items to accommodate aging residents. If such requests are approved, however, HUD requires the Borrower to replenish the reserve.

*Selection and admission of tenants (§ 885.610).* Proposed § 885.610 stated that the Borrower is responsible for deciding whether an applicant is eligible for admission to the project. Applicants for admission must meet the eligibility requirements applicable to them under the section 202/8 program concerning age or handicap, and income. The preamble noted that in addition to these admission requirements, Borrowers would be permitted to develop and implement additional tenant selection criteria.

A commenter representing a disability group argued that the rule would give Borrowers too much discretion in the selection of tenants and would require Borrowers to make determinations beyond their areas of expertise. The commenter objected to the example cited in the preamble that stated that a Borrower could refuse to admit an otherwise eligible applicant, if the applicant is unable to *live independently* in the project without support services that he or she needs, but which are not available. The commenter predicted that such Borrower determinations could be arbitrary and constitute discrimination against the handicapped. The commenter suggested that these determinations should be left to the tenant-applicant.

Section 8 allows owners the discretion to establish which of the eligible applicants they want to admit as tenants. This allows an owner to establish "suitability" requirements, such as that tenants be able to live independently, and, concomitantly, to make decisions on whether a particular applicant meets those criteria. HUD, through this regulation, is creating a procedure to appeal an owner's initial