

admission determination, if an applicant thinks it is wrong. Therefore, an applicant will have an opportunity to correct an owner's suitability decision to the extent it leads to an unlawful admission determination (such as one in violation of the civil rights laws, including section 504).

While the owner of section 202 "elderly" project may only consider applicants "suitable" if they can live independently—an applicant for a section 202 "handicapped" project must "have an impairment which * * * substantially impedes his ability to live independently" and that "could be improved by more suitable housing conditions." See section 202(d)(4).

The example in the preamble to the section 202 rule regarding ability to live independently reflected the proposed rule implementing section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). The proposed section 504 rule defined qualified handicapped person, in part, with regard to the person's capacity for independent living. In the final section 504 rule published June 2, 1988 (53 FR 20216), HUD dropped references to the ability to live independently from the definition of qualified individual with handicaps. Instead, the definition was revised to focus on the handicapped individual's capacity to comply with all obligations of occupancy whether without supportive services or with supportive services provided by persons other than the recipient. Thus, Borrowers must make a determination whether an applicant can fulfill all obligations of occupancy. In a project that does not provide supportive services, it is irrelevant whether the obligations of tenancy are met by the individual alone or with assistance that the individual with handicaps arranges. Further, in making eligibility determinations, a presumption in favor of the individual's own assessment of his or her capabilities is warranted in absence of evidence to the contrary.

Under the proposed rule, a tenant-applicant may request a review of the Borrower's determination of ineligibility. The review would be made by a member of the Borrower's staff who did not make the initial decision to reject. A commenter noted that many projects would be unable to comply with this requirement because their staffs are too small. As an alternative, the commenter suggested that HUD permit such Borrowers to convene a panel to review determinations.

The final rule has been revised to permit the Borrower (with prior HUD approval) to appoint a panel of individuals to review eligibility

determinations, if the size of the Borrower's staff will not permit a review by a member of the staff that did not make the original decision. Under these circumstances, HUD will approve the panel if the Borrower demonstrates that the members of the panel are qualified to make eligibility determinations (e.g., members of the staff of a comparable section 8 project in the area).

Based on the broad discretion provided to Borrowers in the development and implementation of tenant selection procedures, one commenter suggested that HUD should provide a review of Borrower's selections through the provision of administrative hearings to applicants that are rejected for tenancy. HUD is mindful of its duty to assure that the policies implemented by Borrowers are enforced in a non-arbitrary and non-discriminatory manner. However, rather than establishing a burdensome administrative review process, HUD believes that its role should be limited to the provision of tenant selection guidance by regulations and through other issuances, and to the review of the Borrower's tenant selection plan and procedures during the management review of the project. HUD has limited authority in this area, i.e., to reject an owner's criteria for selecting among statutorily eligible applicants *only* when the criteria the owner uses to determine whether applicants would be suitable tenants would violate the civil rights laws, such as section 504 of the Rehabilitation Act.

(In addition to the regulatory guidance found in the final rule, HUD notes that Occupancy Requirements of Subsidized Multifamily Housing Programs (HUD handbook-4350.3 Chg-1, ¶ 2-15, ¶ 2-16 and ¶ 2-17) require Borrowers to develop a written tenant selection plan covering such matters as procedures for accepting applications and screening tenants, fair housing and equal opportunity requirements, preferences and priorities required by HUD or established by the Borrower, etc., and provide additional administrative guidance on permitted and prohibited screening criteria.)

Federal selection preferences. A final rule revising tenant selection preferences including preferences requirements for this program was published on July 18, 1994 at 59 FR 36616. Section 885.427 was revised to incorporate the preference provisions of §§ 880.613-880.617.

Overcrowded and underoccupied units (§ 885.620). Proposed § 885.620 governs unit transfers where the Borrower has determined that an

assisted unit is overcrowded or underoccupied. A commenter was concerned that the proposed regulations would permit a Borrower to force a tenant to change apartments in order to comply with the unit size requirements. The commenter argued that this requirement may conflict with State and local laws that prohibit a landlord from moving an unwilling tenant. The commenter recommended that the final rule permit flexibility in complying with HUD requirements.

The Department is charged with the responsibility for assuring that housing assistance payments are used efficiently, including the appropriate assignment and reassignment of families to units of a proper size. Accordingly, the final rule provides that the Borrower will, as promptly as possible, offer the family an appropriate alternate unit. Contrary to the commenter's fears, the rule would not permit the Borrower to force an unwilling tenant to move. The existing HUD procedures permit the tenant to remain in the unit and pay the market rent, or move within 30 days of the notification that a unit of the required size is available within the project.

Lease requirements (§ 885.625). Under § 885.625, the lease must contain all required provisions and none of the prohibited provisions specified by HUD. One commenter argued that HUD should prepare a new model lease for section 202/8 projects. This commenter attached a copy of a proposed lease and encouraged HUD to adopt it in the Section 202 handbook. HUD has prepared a new model lease and it is available from HUD Field Offices and is contained in the 4350.3 Handbook Chg. 22, Appendix 19C, dated June 1992.

Security Deposits (§ 885.635). Under proposed § 885.635, the Borrower must require each family occupying an assisted unit to pay a security deposit in an amount equal to one month's total tenant payment or \$50, whichever is greater. A commenter argued that the minimum security deposit should be increased to \$100. The commenter argued that this amount represents a reasonable minimum tenant contribution, would safeguard the Borrower, and would reduce the cost of unpaid charge claims and tenant damage reimbursement requests.

The \$50 limit is the minimum deposit that is currently required under the section 202/8 and related section 8 programs. It balances the ability of the targeted tenant population (i.e., low and very low income persons) to pay a security deposit with the Borrower's need for an adequate resource to offset damages caused to the unit. (HUD notes that the family's security deposit