



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

Special Attention of:

All Multifamily Hub Directors
All Multifamily Program Center Directors
All Supervisory Housing Project Managers

NOTICE 06-06

Issued: June 8, 2006

Expires: June 30, 2007

Cross Reference:

Notice H 96-102,
Handbooks 4571.4, 4571.5

SUBJECT: Reinstatement of Policy Permitting Increases of Project Rental Assistance Contract (PRAC) Reservations Prior to Occupancy Under the Section 202 Supportive Housing for the Elderly and the Section 811 Supportive Housing for Persons with Disabilities Programs.

BACKGROUND:

Notice H 96-102 (as amended), Redesigned Section 202 Supportive Housing for the Elderly and Section 811 Supportive Housing for Persons with Disabilities Programs -Firm Commitment Processing to Final Closing, revised Section 811 Handbook 4571.4 and Section 202 Handbook 4571.5 to prohibit increases to Project Rental Assistance Contract reservations until after one full year of project operation. To implement this Handbook revision, Notice H 96-102 also eliminated the requirement for the HUD appraiser to make an operating expense estimate of Section 202 and Section 811 Firm Commitment Applications and placed that responsibility fully on the Sponsor/Owners. Furthermore, Notice H 96-102 eliminated the use of Forms HUD-92274, Operating Expenses Analysis Worksheet and HUD-92013-E, Supplemental Application and Processing Form-Housing for the Elderly/Disabled.

Based on feedback from our clients, program stakeholders and HUD Field Office staff, the policy prohibiting PRAC increases until after one full year of project operation has created serious financial hardships for Section 202 and Section 811 project sponsor/owners during the first year of project operation. Because it was not the intent of the Department to place Section 202 and Section 811 projects in financial harm, the Department is rescinding the instructions in Section 1.L.,

Section 5.D., and Section 7.B.2 of Notice H 96-102 that provides the instructions to carry out the prohibition of increases in PRAC reservations before the first full year of project operation and is hereby reinstating the previous policy for considering and approving PRAC increases prior to execution of the PRAC.

PURPOSE:

This Notice revises the instructions in Notice H 96-102 to the extent necessary to provide for HUD's consideration and approval of PRAC increases prior to execution of the PRAC contract. This Notice reinstates the processing instructions pertaining to the procedures for estimating project expenses and income as contained in paragraphs 1-31.B.3, 1-34 through 1-42, 1-72.B.2, and 4-9 of Section 811 Handbook 4571.4 and Section 202 Handbook 4571.5. Accordingly, this Notice sets forth the following processing instructions. All paragraph references below relate to Section 811 Handbook 4571.4 and Section 202 Handbook 4571.5.

1. Firm Commitment Processing:

- A. Valuation processing will include an estimate of operating expenses as stated in paragraph 1-31.B.3.
- B. Follow the instructions in paragraph 1-34 for determining the annual operating expense estimate.
 - (1) Form HUD-92274, Operating Expense Analysis Worksheet is hereby reinstated for use in determining the operating expense estimate.
 - (2) Form HUD-92013-E, Supplemental Application and Processing Form-Housing for the Elderly/Disabled is not being reinstated, as that form is no longer used in the Section 202 and Section 811 programs. Sponsors/Owners will continue to show their proposed services and the funding for such services in the "remarks" section of Form HUD-92013, Application for Multifamily Housing Project.
- C. The instructions in paragraph 1-35 for estimating project income and reporting such information on Form HUD-92264 apply. This Notice revises the instructions in subparagraph 1-35.F. pertaining to the estimate of commercial income to require HUD staff to estimate income from any commercial spaces that may be proposed for the project since the Department now permits commercial spaces in Section 202 and Section 811 projects.
- D. The instructions in paragraphs 1-36 - Income Computations; 1-37 - Maximum Permissible Rental Analysis; 1-38 - Estimate of Operating Deficit; 1-39 - Income Approach to Value; 1-40 - Comparison Approach to Value; and 1-41 - Calculation of Budgeted Construction Cost have not changed.

- E. Follow the instructions regarding tenant paid utility allowances (PBE) as stated in paragraph 1-42.
- F. If, based upon completion of Firm Commitment processing, it is determined that an increase in the PRAC reservation is needed, follow the instructions for requesting and obtaining approval to increase PRAC reservations in paragraph 1-72.B, as modified herein.
 - (1) Increases in the PRAC reservation based on HUD's estimate of operating expenses must be submitted to the Multifamily Hub Office for sub-assignment of the funds if sufficient amendment funds are available in the Multifamily Hub Office. If not available at the Multifamily Hub Office level, the request must be submitted to Headquarters.
 - (2) If approved and after assignment of the funds to the local HUD Office, the Housing Project Manager will prepare a revised Form HUD-52540, Project Accounting Data, to reserve the funds for the project.
 - (3) Please note that the policy prohibiting decreases to the PRAC reservations prior to initial closing still applies.

2. Actions Prior to Occupancy and Execution of PRAC Contracts:

In accordance with paragraph 4-9, prior to initial occupancy, Owners are required to submit a current estimate of operating expenses to establish the proposed operating budget for the project. The proposed operating budget must be approved by the local HUD Office prior to initial occupancy and PRAC execution. The local HUD Office may consider PRAC increases based on the Owner's current operating budget expenses as submitted prior to occupancy and execution of the PRAC.

3. Preparation of PRAC Contracts (Form HUD-90173-A-CA):

- A. In paragraph 1.2(a), Term of Contract, the initial term of the PRAC contract has a preprinted date of 20 years and a preprinted date of 22 years for projects that are to be completed in stages. As the Department is no longer committing PRAC funds for an initial term of 20 years, the Local HUD Office must ensure that these preprinted dates are deleted and replaced with the actual initial term of the PRAC as indicated in the executed Agreement Letters entered into between HUD and the Sponsor/Owners. Currently, the initial term of PRAC funds is 3 years and if the project is being developed in stages, the initial term may not exceed 5 years. The Department is revising the PRAC contract to leave blank spaces to insert manually the term of the contract.

- B. In view of the statutory requirement that precludes the Department from disbursing PRAC funds after a specified time (the time period is subject to change each fiscal year), local HUD Offices must include the following “Note” to Exhibit 2 of the PRAC contract to alert Sponsor/Owners regarding the expiration of the PRAC funds. This “Note” also should be included in the draft PRAC contract that is attached as Exhibit A to the Agreement to Enter into a PRAC contract (Form HUD-90172-A-CA).

“NOTE: Pursuant to 31 U.S.C. Section 1551, any PRAC funds not fully disbursed by _____ (insert the expiration date from the executed Agreement Letter for the project) will be recaptured.”

- C. During the period in which the Department prohibited PRAC increases until after the first year of project operation, the Department advised local HUD Offices to revise the PRAC contracts to include certain language as “Notes” to the contracts for those projects where the PRAC reservations were insufficient to cover the Sponsor/Owner’s estimate of expenses. The “Notes” represented HUD’s acknowledgement of the estimated shortfall in PRAC funds. In view of the reinstated policy to permit PRAC increases prior to initial occupancy, there is no longer a need to include this “Note” language in the PRAC contracts.

APPLICABILITY:

These instructions apply to all Section 202 and Section 811 projects in which the Sponsor/Owner has not executed a PRAC contract with HUD.

Questions regarding this Notice may be directed to the Grant Policy and Management Division at (202) 708-3000.

Brian D. Montgomery
Assistant Secretary for Housing -
Federal Housing Commissioner

