

November 23, 1999

MEMORANDUM Hub/PCR: All Hub Directors
All Program Center Directors

FROM: Frank Malone, Director, Office of Portfolio
Management, HTO /Signed/

SUBJECT: Section 202/811 Guidebook

Attached you will find a Multifamily Management "self-help" guide for the Section 202 and 811 programs for Hub/PC staff. The Office of Portfolio Management would like to acknowledge the interest of HQ and Hub/PC staff in its creation and their input thereto. We appreciate all your thoughts, comments and suggestions.

Please ensure that all staff and project owners/management are aware that this document is on the HUDWEB under Multifamily and the HUD Internet Home Page, also under Multifamily.

While the document does not pretend to be a substitute for classroom training or distance learning, we have tried to address all the major questions about specifics within the programs of which we are aware or have been sent to us for inclusion. These Q&As provide a summary of current management policy specific to the 202 inventory and 811s, with appropriate cross references.

Please feel free to use this guidance, ask questions, and build from it as needed. If further clarifications are needed, telephone Jerry Nachison for 90 days after the date of this transmittal. After that, staff may contact their regular HQ desk officer.

Attachment

**MANAGEMENT GUIDE TO THE SECTION 202/811
PROGRAMS:**

ISSUES AND ANSWERS

SECTION 202/811 MAJOR QUESTION AND ANSWER GUIDE:

I. Rental Assistance Issues:

1Q. Do Project Rental Assistance Contract (PRAC) Budgets and utility allowances follow the old HUD Handbook (HBK) 4350.1, Chapter 7? The HBK references 202s, but not 811s.

1A. Yes !!

However, please recognize that there are some paragraphs which do not fit PRAC projects. Please do not use them !!

- 2Q. How do you calculate PRAC at the time of initial budget?
- 2A. The initial PRAC reservation is based upon 75% of the Operating Cost Standard (OCS) amount for that jurisdiction. This amount includes utilities.

The first year's planned budget is based on 100% of operating expenses calculated from OCS. The income to meet those expenses is derived from PRAC which was calculated at 75% of OCS and tenant payment estimated at 25% OCS.

Prior to initial occupancy, project managers should compare the project's estimated first year's budget with the HUD-2264 that was used to calculate the budget in the original application. Factors to be considered are:

- project size (which helps determine how many staff can be carried within expenses).
- operating costs estimates beyond staffing -- administration, maintenance, supplies, uniforms, etc.

[Either the sponsor is knowledgeable in these areas or there are projects within the jurisdiction from which to derive estimated costs.]

- A service coordinator (usually part-time, initially) may be added to a project before initial occupancy, even if it was not included in the original application.

However, the project cannot receive additional PRAC to pay for the coordinator unless it is principally serving frail elderly (HBK 4571.3, REV-1, Paragraph 1-8(C)). While a handbook requirement is normally waivable by the field office, some 202 PRAC projects were funded under a NOFA that also limited service coordinators to projects serving a majority of frail residents. In such cases,

the field office may NOT waive the handbook and approve a coordinator. Such waivers become NOFA waivers and must be approved by the Office of Business Products in Headquarters. (see the NOFA for the year in which the project was funded to ascertain applicability.)

- Estimated amount of Real Estate taxes, if tax abatement not allowable locally.
- Supportive Service costs are eligible also at the current rate of not-to-exceed \$15/per unit per month (24 CFR 891.225) for frail elderly. (Section 202/PRAC ONLY !!)

If supportive services dollars were NOT included in the initial application, Hub/PC staff may not want to consider adding them to the budget until there is evidence of operating need. This may take 6-18 months of operations before aging patterns among the residents are clearly established and understood by management.

In any case, if a Hub/PC sees a legitimate need to increase PRAC before initial occupancy, the idea may be discussed with Jerry Nachison in the Office of Portfolio Management (OPM) AND MUST be discussed with Aretha Williams in the Office of Business Products (OBP).

The PRAC first year Contract Authority may be amended by the Hub/PC (with HQ concurrence), borrowing from the reserve Budget Authority. Alternatively, HQ may consider amending the contract with new dollars, if the amount needed is significant, and the rationale is reasonable. Normally, there is no further rent increase consideration until after the first year of operations. (Also, see Question I(11)Q.)

- 3Q. What can be done to accommodate budget shortfalls during the first three years of operations?
- 3A. Remember, the first year's budget is an estimate, and the PRAC reservation is limited to 75% of the Operating Cost Standard for that locality. The degree to which people will move in - quickly, slowly or not at all is controlled by the market. A rent increase is not allowed during the first year of operation, so shortfalls must be covered by the Minimum Capital Investment (MCI) or the sponsor.

If there are budget shortfalls (for reasons other than adding a service coordinator or taxes, payments for supportive services for the frail elderly) during the first three years of operations, the project's MCI MUST be used for some or all of any operating deficits (see HBK 4571.3 REV-1, chapter 1-7(A) for 202s and HBK 4571.2 for 811s. Use of the MCI is the REQUIRED method to help with initial dollar shortfalls, particularly the first year. (Sponsor contributions beyond MCI are encouraged, also.)

When shortfalls occur -- USE MCI FIRST !!

- 4Q. How does Utility Allowance (PBE) fit into budget calculations?
- 4A. The PBE is calculated as part of the project's Total Operating Expenses (TOE).

Whether the PBE is paid by the project or credited to the tenant's account, it is NOT an addition to PRAC. TOE = other operating costs and utilities. When estimating new first year project budgets, TOE = a PRAC payment @ 75% TOE and estimated tenant payments @ 25% TOE, which = 100% OCS

(see I(2)(Q)).

The PBE may be charged to individual tenants if the project has individual metering, subject to existing procedures.

- 5Q. How do you calculate the subsidy for double occupancy bedrooms in Group Homes? Is it the same for Section 202/8 as for 811s?

5A. NO !

IN 202/8: If the contract rent for that bedroom is \$500, the contract rent for each bed SEPARATELY is \$250. Do NOT combine the two incomes and calculate an "average" for the bedroom, in which one person may pay 40% Adjusted Gross Income (AGI) and one person pays, e.g., 20% AGI if the two people are unrelated individuals. (Using the example of \$500 for the bedroom, we have \$250 for each 1/2 bedroom.)

Then, EACH tenant is certified separately. EACH tenant pays 30% AGI towards rent. If the tenant 30% AGI is greater than the 1/2 Bedroom rent of \$250, the tenant's rent is CAPPED at \$250. In such cases one or both of the tenants may end up paying less than 30% AGI.

IN 811: EACH tenant is certified separately and pays 30% AGI towards rent. Rent is NOT associated with a bed or bedroom, per se. The sum of all tenant contributions is deducted monthly from the HUD-approved budget (operating expenses). (Any individual tenant may pay more than the market rent for a bedroom if equal to 30% of the tenant's AGI.) Any difference is the amount of the PRAC payment (up to the 75% TOE limit). If there is a remainder (insufficient tenant dollars to fully offset the TOE, it is carried forward as a deficit.

NOTE: Beginning with 811 projects funded in FY 1997, double occupancy bedrooms can only be occupied by persons with disabilities who wish to share bedrooms with another resident or determine that they need to share the bedroom with another person. They CANNOT be forced to share a bedroom with another person against their will.

- 6Q. Are vacancy claims the same in both 202/8s and in PRAC Projects?

6A. NO !

Vacancy claims for a 202/8 are 80% of the daily contract rent (See 24 CFR Part 891.650, HBK 4350.3, paragraph 6-26 and Handbook (HBK) 4350.1, chapter 22, Sections 4 and 5).

Such claims for PRACs are 50% of the daily contract rent. (See 24 CFR Part 891.445).

7Q. Must a Reserve for Replacement (R4R) allowance be in the annual project budget?

7A. YES

The R4R fund is about 5-7% in most areas. The R4R account is established during the underwriting process, consistent with local practice.

8Q. Must a 202 or an 811 have a Residual Receipts (RR) account?

8A. YES !

As soon as there is excess cash at the end of an operating year, i.e., cash remaining above payment of all operating costs, debt service (202 pre-1991) and R4R, a RR account **MUST** be established. (See HBK 4350.1, Chapter 4.) The RR may not normally be used until it has accumulated to over \$500/unit (see number I(9)Q, next).

The \$500/unit minimum is derived from Congressional intent - see Section 202(j)(6) of the Housing Act of 1959 as amended in 1992. This was stated for 202/PRACs only, but was intended to cover the section 202 inventory.

Changing the minimum level of residual receipts ("...or such other level as the Secretary may decide.") has yet to be delegated to the field. Any proposed lower exception thereto must be approved by Headquarters.

Please note that there are "SH" and "EH" projects built before 1988 which do not have a regulatory provision for a RR account separate from the R4R account. These projects are NOT required to maintain an RR account separate from the R4R account. HOWEVER, if such a project requires HUD approval for an action, (e.g., use of RR funds, new service coordinator under a NOFA or rent increase (see HBK. 4385.1, Section 8(2)(b)), partial release of security, general rent increase), **the Owner must be required** (as a condition for approval of the request) to establish a RR account separate from the R4R account if it is not currently so structured.

9Q. How may a project use Residual Receipts?

9A. See HBK 4350.1, Chapters 4 and 25 and HBK 4381.5 REV-2, Chapters 8 and 9 (and prior question/answer) for general guidance.

Accumulated RR of over \$500/unit (per above) generally can be approved for use by the Hub/PC for anything that is of benefit to the tenants of the project or the project itself.

Policy since the early 1990s has allowed 202s to use such "excess" RR for a variety of purposes beyond those

stated in HBK 4350.1. Such policy covers all projects with residual receipts accounts. (There are a number of expired Notices on this matter, for which the policy emphasis as stated therein has not changed)

Headquarters (HQ) does NOT assign priority to one use over another per se. This is local option (project management/owner and Hub/PC). The most common uses are for Section 8 rent increase offsets, extra R4R dollars or partial/full funding of a service coordinator. Additionally, RR has been used for new lounge furniture, tenant programs, supportive services, purchase/operation of a vehicle, etc.

10Q. How may a project use Reserve for Replacement (R4R) funds?

10A. HUD recommends that the minimum R4R balance be at least \$1000/unit (HBK 4350.1, Paragraph 4-11).

R4R funds are generally restricted to capital repairs to the structure and things like unexpected tax and utilities increases. However, R4R may be borrowed for other uses (with approval of the field office), e.g., establishing a Neighborhood Networks center (HBK 4381.5, REV-2, CHG-2, Chapter 9), if such use is not inconsistent with the repair needs/plans for the building. Additionally, in projects where there is no RR account and clearly surplus R4R, the

Hub/PC may agree to the use of such "surplus" R4R funds for activities normally approved for residual receipts.

11Q. When can a PRAC contract be amended?

11A. PRAC amendments are generally handled the same as Section 8 amendments.

After the first year of operation, budgets can be amended as approved by the Hub/PC, borrowing from the Budget Authority (BA) held in the PRAC reserve.

At the point where the Hub/PC has a clear idea of how much the PRAC contract will be short, and when the funds would be needed it should send a PRAC amendment request to the Director, Office of Business Products (OBP, Room 6138), with a copy to the Director, Office of Portfolio Management (Room 6160). Do this no more than one fiscal year in advance of the need for the funds.

EXCEPTION: Projects which may need a larger initial budget than was originally approved in the PRAC reservation may submit a justified request to the Hub/PC. The Hub/PC should review and submit a recommendation to OBP.

Considerations:

- comparison of proposed rent levels with similar sized and "equipped" projects for elderly.
- proposed rent related to OCS.
- review of market compared to OCS and initial application.

(Reminder -- see I(2)(Q), and I(3)(Q), above).

12Q. Is there a streamlined budget process?

12A. Budget streamlining simplifies the annual budget process for projects under multiyear HAPs/PRACs. A Hub/PC may approach this issue through Notice H-99-13, "Revised Asset Management Procedures." The Seattle Hub also has a similar streamlined process that some offices may want to look at or "borrow."

13Q. How are donations to the property handled? Should they be put into the Annual Financial Statement (AFS)?

13A. The estimated value of donations are aggregated and shown in the AFS.

14Q. How are rents calculated for new tenants?

14A. See HBK 4350.3, Chapter 3 and Notice H-99-11 (which extends Notice H-96-102) for full explanation of income calculation.

202/8:

Tenants generally pay 30% of Adjusted Gross Income (AGI). When 30% AGI income meets market, further rent increments are NOT charged to the tenant, i.e., the rent is capped and does not rise further; Section 8 normally pays the rest (and may provide some excess to the project). If there is a vacancy problem, however, vacancy payments do not fully cover the operating costs for the unit (see 24 CFR Part 891.445) and the project may become "troubled."

PRAC:

Tenants also generally pay 30% of AGI.

The 30% of AGI collected as tenant rent is NOT capped like Section 8 and may end up above the market rent for the locality, and may exceed the operating expenses for the unit. This can be especially true for non-elderly disabled residents whose incomes may fluctuate due to changing job circumstances. In any case, the project would not be subsidized for excess tenant rent collected over operating costs (such excess would be normally be used to reduce the PRAC needed the next month).

Conversely, actual tenant rents collected may be below the planned 25% of TOE (due to tenants with minimal or no income), leaving the project in a deficit position. In this situation, the project may request a rent increase the following year. For vacancies, see the paragraph on section 202/8, above.

15Q. Is Long-Term Care Insurance an eligible medical expense?

15A. YES

See Notice H-99-23.

16Q. Management will not accept one-time medical expenses under \$200 for any reason. Is this acceptable?

16A. NO!

Since incomes vary, management discriminates by income in setting a floor under which otherwise acceptable medical expenses are refused for interim/annual recertification. See HBK 4350.3, CHG 27, paragraph 3-28.

17Q. May Section 8 assistance payments be used to cover a construction deficit or to undertake needed project rehabilitation?

17A. NO!!

See limits of Section 8 contract rents and contract rent adjustments at 24 CFR Part 891.570/640. Hub/PCs do NOT have delegated authority to use rent increases for the purposes stated in the question, which are above and beyond the regulation's limits.

18Q. One of my 202/8 budget-based HAP projects needs a rent increase. Its Section 8 contract does NOT expire until FY 2002. The current budget is approximately 152% of the Fair Market Rent (FMR). May an increase be granted?

18A. YES !!

Rules for expiring contracts do NOT apply to ANY project with a multi-year contract NOT expiring in the current fiscal year.

This is true for 202/8s OR 202/811s with PRAC !! (The first PRAC expirations are expected in FY 2001.)

19Q. Can a computer system qualify as a handicapped/disability expense?

19A. Maybe.

Please note that the guidance in HBK 4350.3 at Paragraphs 3-27(b)(d) and page 3-55 is only EXAMPLES; it is NOT intended to be all inclusive.

What is YOUR Hub/PC's local practice?

Generally, Hub/PCs should use the guidance at HBK 4350.3, Paragraph 30-25(g)(1-3). To the extent that computer equipment is considered a handicapped/auxiliary apparatus expense item for a specific person, it would be only the portion that is above and beyond the part of a computer system used by a person without a disability (i.e., the special equipment). Each Hub/PC may make such determinations, upon project request, subject to the regulations at 24 CFR part 813.102.

II. OCCUPANCY:

- 1Q. What is basic occupancy/income limits for an "SH" 202, approved between 1961 and 1972?

- 1A. Projects approved between 1961-63 may be elderly families.

Projects approved between 1964-72 are generally 90% elderly families and 10% of the units for adults 18 and over with mobility impairments.

Income limits for "SH" projects are those generally used for Below Market Interest Rate projects (BMIR - up to 95% of the local median), except for any units covered by Section 8 or Rent Supplement.

- 2Q. What is basic occupancy/income limits for a 202/8?

- 2A. Section 202/8 projects for the elderly are generally 90% elderly families and 10% accessible units for adults 18+ with mobility impairments (See HBK 4350.3, CHG-24, Paragraph 2-9).

Section 202/8 projects for people with disabilities are usually group homes and independent living complexes (ILCs), occupied by families with one or more members of the household meeting the definition of disability (see 24 CFR Part 891.505). The Head of Household must be 18+ and handicapped. The project may be limited to one or more categories of disability: Persons with physical disabilities, persons with developmental disabilities, and persons with chronic mental illness.

For example, in an 811, a Sponsor may request approval to restrict occupancy to persons with HIV/AIDS, which is a sub-category under "physical disability." (In a 202/8 the owner would be targeting people with HIV/AIDS.) Even if approved as an HIV/AIDS project, the owner/manager may NOT deny occupancy to any otherwise qualified person with a physical disability who applies for occupancy.

The income limit between 1976 and 1983 was 80% of local median. It has been 50% of local median since 1983. In cases of vacancy, Hub/PCs may waive the limit to 80% local median, as one tool to improve occupancy rates.

3Q. What is basic occupancy/income limits for a 202/PRAC?

3A. 202 PRACS are for elderly families, at least one member of which is 62 years of age. This is statutory. Family members may be minor children.

Income eligibility is 50% of local median, except for those projects approved in FY 1995 (which have an 80% of local median limit). Requests for waivers of income limits MUST be submitted to Headquarters with appropriate good cause justification.

4Q. What is occupancy/income limits for living in an 811?

4A. 811s are for individuals or families with one or more members of the household meeting the definition of disability (see 24 CFR Part 891.305). At least one person in the household with a disability must be 18+. (Thus, a family of parents without disabilities and minor children (under 18) with disabilities are NOT eligible for residency in an 811).

The project may be limited to one or more of the three categories of disability: Persons with physical disabilities, persons with developmental disabilities or persons with chronic mental illness.

Income eligibility is 50% of local median, except for those projects approved in FY 1995 (which have an 80% local median limit). Requests for a waiver of income limits MUST be submitted to Headquarters with good cause justification.

5Q. What is "restricted occupancy" under 811?

5A. Section 811(I)(2) of the Cranston-Gonzales National Housing Act of 1990 provides that an owner may, with the approval of the Secretary, limit occupancy to persons with disabilities who have similar disabilities and require a similar set of supportive services in a supportive housing environment.

A sponsor, usually at the "Application for a Fund Reservation" stage, may request approval to restrict occupancy to one sub-category of persons with disabilities that falls under one of the three general categories (physically disabled, developmentally disabled, or chronically mentally ill), but cannot deny occupancy to persons in the general occupancy category.

6Q. Who can give Income and Age Waivers? Under what circumstances?

6A. Age/Income Waivers for 202s - 202/8s - PRACs - are generally granted to help the project remain viable when beset with market problems (i.e., continual vacancies). Age and income

waivers for 202/8 projects do not present statutory difficulties, as do PRAC age and income waivers. See the following chart:

<u>Project Type</u>	<u>Income Waiver</u>	<u>Age Waiver</u>
1. 202	Hub/PC	HQ
2. 202/8 - elderly	Hub/PC	HQ
202/8 age waivers are usually limited to the near elderly (52 or 55-61) and are of limited duration (usually 6 months or one year).		
3. 202/8 - non-elderly	Hub/PC	N/A
4. 202/PRAC	HQ	HQ

PRAC Projects have statutory limitations in both Age and Income, although limited waivers are legally available.

Age Waivers in 202 PRACs are generally issued for no more than a year and usually require ineligible tenant(s) to be relocated at management/sponsor's expense at the end of the first year's lease.

NOTE: The number of age waiver requests which have been processed in HQ suggest that more Hub/PC guidance is needed for project owners and management at pre-occupancy, rent-up and whenever management changes.

There appear to be too many agents NOT fully aware of the different occupancy rules between section 202/8 and 202/PRAC.

Rectifying such errors is paper intensive and time consuming for the project, the ineligible resident(s), Headquarters (HQ), Hub/PC and Kansas City Financial Management Center staff. It can also be problematic for an ineligible household and costly for a project.

Thus, HQ encourages each HUB/PC to target more time and effort on program guidance to boards and agents of new projects coming into occupancy, and of new agents taking over a project.

5. 811 HQ N/A
- 7Q. Which PRAC projects can accept Low Income tenants (those with incomes up to 80% local median) without an HQ waivers?
- 7A. PRAC Projects selected under the FY 1995 NOFA can be

marketed to people up to 80% of median (LI) WITHOUT a HQ regulations waiver (both 202 and 811).

8Q. Did the Title VI Amendments of 1992 change occupancy requirements for 202s and 202/8s?

8A. Generally, no.

However, there are some 202s built prior to 1972 as "elderly only" and a group of projects with Section 8 built between 1976-1980 which might have been affected. Generally, such projects are entitled under Section 658 of the HCD Amendments of 1992 to limit occupancy of all units to "elderly only" upon showing that they adopted HUD-approved occupancy criteria limited to "elderly only." See original project documents for further explication. This is a complex and somewhat problematic area in which HQ staff can provide further guidance, as needed.

9Q. Can an owner ask questions regarding a person's disability in order to ensure eligibility?

9A. NO !!

Self-certification by the disabled person is normally sufficient. Third party verification may be required if necessary to establish eligibility (See HBK 4350.3, Appendix 6.) An applicant's refusal to permit verification, if requested, is grounds for rejection.

10Q. Is pet ownership allowed in all 202 and 811 Projects?

10A. YES, except rules are different for group homes.

Common Household pets are allowed in all 202 projects designated for the elderly and independent living complexes for non-elderly disabled under both 202 and 811 (see 24 CFR Part 5, subpart C). Pet rules do not apply to animals used assist persons with disabilities either residing in or visiting a project (see 24 CFR Part 5.303). In the case of group homes, the owner's pet rules may place reasonable limitations on the number of common household pets that may be allowed in each home; such may belong to the home - not the tenant. Again, pet rules do **NOT** apply to animals used to assists people with disabilities, even in group homes.

11Q. Can a spouse be counted as a live-in aide?

11A. NO !!

A live-in aide is a person who lives with an elderly or disabled individual and is essential to their care and well-being but not their financial support, and would not be living in the unit EXCEPT to provide the needed support services (see HBK 4350.3, CHG-2, Exhibit 2-1). A spouse

does not meet this definition. A spouse's income must be counted and a spouse has the right to remain on the lease as a surviving family member.

12Q. Why may minor children be admitted to Section 202/PRAC projects? Children are noisy and may be problematic. We moved to a senior project to live with others like us..

12A. The definition of elderly family at Section 202(k) of the Cranston Gonzales National Affordable Housing Act of 1990 does not preclude them from admission, thus neither do HUD regulations at 24 CFR 891.205.

It is the position of the Department that children are part of an eligible household, consistent with the principles of Fair Housing.

13Q. To expand on the above, please explain the adult/child relationship as stated in Notice H-97-74, extended by Notice H-99-3.

13A. The basic concepts are:

- Any senior may move into a 202 project with an adult child or minor as part of the household if there has been a history of that child living with the senior. The child (adult or otherwise) is part of the household, on the lease, with the child's income included in the eligibility calculation, consistent with HBK 4350.3, Chapter 3. Additionally, after s/he moves in, the resident may become the legal guardian of a minor child (who would go on the lease).
- When an elderly parent dies and there is no spouse, an adult child on the lease is entitled to survivor rights. A minor child may be relocated to an outside family member.
- An adult child CANNOT move into a parent's apartment after initial occupancy. S/he was not part of the household which signed the lease and, does not fit the definition of eligibility.

There are two exceptions to these overall guidelines:

- An adult child moves in to serve as a caretaker for the resident senior(s). In such cases the person's income is NOT counted towards eligibility AND the adult child must sign an agreement to leave when the parent no longer needs care, dies or moves out.
- A senior becomes guardian of a minor child (e.g.,

grandniece, grandchild). The child moves in and is entered on the lease.

14Q. In my project for the elderly, I have a couple in which the the Head of Household (HH) is 64 and the spouse is 55. The HH is moving out, as the couple is divorcing. May the spouse retain the apartment?

14A. The spouse is not eligible to remain in the project. However, s/he may be allowed to stay if s/he pays market rent.

Remember the situation in this question is different from that of the death of the HH. In the situation of Q14. the HH is leaving the unit and takes eligibility with him/her (to another unit/project or wherever). In the case of the HH's death, the spouse is a surviving family member, and may retain the unit with subsidy.

15Q. May a local preference be built into the tenant selection plan for people with a documented history of volunteerism on behalf of the project?

15A. NO!!

16Q. Have the Section 202/8 model leases been updated for PRAC projects?

16A. Yes. See HBK 4350.3, Appendices 19D and 19E.

Please note that there is an error in the leases. The item from the Section 202/8 lease for interim re-certification was inadvertently omitted.

Remind owners to make sure that this stipulation is in all their leases.

17Q. Does the definition of "mobility impairments" only include wheelchair users?

17A. NO !!

Such an impairment covers use of walkers, canes or other devices to increase mobility or those with other impediments to mobility whose living situation can be improved by a unit's accessibility features.

18Q. May a non-elderly disabled person who does not need a unit with accessibility features be admitted to a regular 202 (non-accessible) unit in an old 202 or a 202/8 project?

18A. NO.

The eligibility of non-elderly persons with mobility impairments in old 202 or 202/8 project for the elderly is limited to residing in an accessible unit by persons with mobility impairments whose living condition can be improved by residing in such a unit.

(Reasonable accommodation is NOT an occupancy criterion for gaining admission to ANY old 202 or 202/8 project.)

19Q. Handbook 4350.3, Chapter 2, Section 6 describes the tenant application process. Is there an alternative to a first-come first-served application list for a new project?

19A. YES.

There are a number of cases in which Headquarters and the Hub/PC (these situations/discussions involved both Housing and FH&EO) have sanctioned a lottery process for initial rent-up.

Considerations:

- Expectations of people possibly lining up for applications when the project begins to offer them.
- Fears by the sponsor that they may face discrimination charges if first-come first-served produces occupancy and a waiting list that is not too diverse.
- Local "discussions" that intimate the application process is fixed against people who are not associated with the sponsoring organization.
- Arising allegations that outreach and marketing has not been sufficient and/or widespread.

Considerations for Implementing a Lottery:

- Extensive local outreach and marketing in local media of all kinds, as approved/augmented by the Affirmative Fair Housing Marketing Plan.
- Use of local preferences (if in tenant selection plan).
- Defined and open application period, e.g., January 15, 2000 to February 4, 2000.
- Clearly delineated place(s) to drop off completed applications, e.g., 15 ABC St., NW, City, Suite 102.
- Clearly defined time for when the drop-off site(s) will accept applications, e.g., Monday-Saturday between 9:30 AM and 6 PM.
- Clearly defined end of application period, e.g.,

Applications for admission will not be accepted after 5:00 PM on Friday, February 4, 2000.

- Lottery should be conducted by an independent third party and overseen by HUD.

20Q. Section 6-4B of HBK 4350.3 discusses how to bill for deceased tenants. What process should a project use in dealing with the relatives of the deceased resident?

19A. HBK 4350.3, prorates the assistance for deceased tenants to the earlier of 14 days after the tenant died or the day the unit was vacated.

Otherwise, the situation is normally handled like a regular move-out for the purpose of HUD payments or failure to re-certify. Project management usually can store the decedent's effects for some agreed-upon time period, charge the full HUD-approved fair market rent for the unit, or make other arrangements with the family.

20Q. Can a group home for the chronically mentally ill be converted to a transitional treatment facility?

20A. NO!!

- The need for transitional treatment is not an eligible occupancy criterion for a group home.
- The minimum length of a 202 or 811 lease must be consistent with 24 CFR 891.425 (one year).

III. General Program Accessibility:

- 1Q. What kinds of items must a project pay for under "reasonable accommodation?"
- 1A. This is complex. Typical items are ramps and free access to all facilities and common areas of the project and close-in parking for those with disabilities. All projects built since March 1991 must conform to Section 504, which uses the "Uniform Federal Accessibility Standards" (UFAS).

For a full discussion and lists of examples which relate to Fair Housing, and Section 504, see HBK 4350.3, Chapter 2, Section 7, Figure 2.3 and exhibit 2-3.

- 2Q. Must all 202 entrances have push-button operation/control?
- 2A. NO!!

However, this may depend on the needs of the residents and when the project was built, as rules changed many times in the 1970s/80s and early 1990s. See UFAS or predecessor statute(s)/rules and/or State or local code in place the year of project approval.

- 3Q. Can a manager require all persons who use wheelchairs to live on the first floor of an elevator building? If not, how do they handle evacuation?
- 3A. If the accessible units are located only on the first floor, generally, yes.

If accessible units are scattered within the building, wheelchair users would go where the units are, when they are

available. Evacuations would need to be more carefully planned, with buddy systems/backups.

- 4Q. If a person with mobility impairments is on the waiting list for an accessible unit and s/he is now at the top of the list, and the next unit available is non-accessible, must management offer s/he a regular unit and convert it?

4A. NO!!

The owner may offer the applicant with mobility impairments a non-accessible unit (with the tenant, at tenant's expense, having the right to convert and reconfigure to its original state when leaving).

The owner is NOT obligated to reconfigure the unit for this applicant (see HBK 4350.3, Chapter 2, Subsections 4 and 5).

IV. Supportive Services Questions:

- 1Q. What is Congregate Housing?

- 1A. Congregate Housing is normally defined as a multifamily project in which there is a central kitchen and dining facility where meals can be served to residents in a common setting. See the 1970 amendments to the HA of 1937.

Congregate meals may be provided in any multifamily insured or assisted facility.

- 2Q. Can supportive services be part of a project's operating budget or part of the resident's lease?

- 2A. Normally no, however see IV(12)(Q) on the special case of 202/FRAC.

- 3Q. Is the purchase of a bus equipped with a wheelchair lift an eligible project operating expense?

3A. NO !!

However, a vehicle's purchase price/operating cost is a legitimate use of residual receipts or excess Reserve for Replacement funds (R4R) - (with field office approval).

- 4Q. How can Notice H-98-12/99-10 be most effectively used for 202s?

- 4A. Notices H-98-12/99-10 and H-99-12 are primarily teaching tool/guides for owners, management and Hub/PC staff. They educate on assisted living possibilities for low income projects, while making it clear that doing such is OK.

For successful assisted living in a project, the mix of needed ingredients will be some or all of the following:

- Strong project administrator/Board;
- Cooperative and creative Hub/PC staff;
- Cooperative and interested State/local government and other possible third parties for services side funding;
- Possible use of resident fee structure for services;
- Possible involvement of local lenders;
- Possible involvement of a local foundation/NPE, or the setting up of such; and,
- Others...

5Q. What is a Social Services Coordinator; how is one funded?

5A. It has been Housing policy since the mid-1990's that a service coordinator is a necessity in any multifamily project (elderly or family) and should be available (when possible) to any owner/agent who wants one. (See Handbook 4381.5, REV-2, Chapter 8 (and 9) for further information and full information on service coordination.

A social services coordinator is a member of the management staff whose primary function is to ensure that frail and at-risk residents (or families with at-risk members) of a project are linked with the supportive and other services they need or want in the greater community.

New Coordinators may be funded by a grant through the annual NOFA process (elderly and disabled only), Section 8 operating budget (consistent with Section 8 renewal rules for that year, if an expiring contract [elderly or family]), or PRAC operating budgets.

Coordinator training is REQUIRED (see Section 672 of the HCD Amendments of 1992). All projects with Coordinators (REGARDLESS OF HOW FUNDED) must ensure that their training and continuing education needs are addressed (see HBK 4381.5, REV-2, Section 8-9).

Statutory training requirements may NOT be waived by Hub/FO Staff

6Q. What projects can have a mandatory meals program?

6A. All projects for the elderly with a mandatory meals program were approved by HUD PRIOR TO April 1, 1987. (These may be in Sections 202, 202/8, 221(d), 236, Section 8 new

construction/substantial rehabilitation project-based or others.)

These projects continue with their programs. They may range from one meal a day, five days a week to three meals a day, seven days a week (in some buildings built w/o kitchens).

Projects for the elderly approved April 1, 1987 or thereafter may not have a mandatory meals program.

BUT -- ALL group homes for people with disabilities funded under Section 202/8 and 811 PRAC MAY have such a program.

7Q. What are the key components of a mandatory meals program?

7A. ** The meals program is a condition of occupancy **

- Each meal should provide at least 1/3 of the minimum RDA and meet State/local nutritional standards.
- Meals must be provided to residents at project cost.
- There are five categories of mandatory exemptions to a meals program (see HBK 4350.1, Section 31-6).
- Increases in tenant charges for the meals program must be approved by HUD.

(See HBK 4350.1, REV-1, Chapter 32 for a full explanation of the mandatory meals program's administrative requirements).

Other considerations:

- Dietary and ethnic preferences where/when appropriate.
- Resident input into meals planning.
- Operating surpluses must be "recycled" into the program to reduce past deficits and/or future costs/charges.
- The meals program is usually available at least once daily up to seven days a week.
- A thirty day menu should be posted and available to residents.

8Q. How are the costs of a meals program calculated/kept by the project?

8A. The meals program must be nonprofit. Direct costs of food,

supplies and staffing must be counted. Purchase and replacement of kitchen equipment, maintenance of facility (kitchen and dining room and project expenses) may NOT be in the costs of a mandatory meal.

Meals program records are SEPARATE from other project accounting records. Reporting is on Form HUD 9410.

9Q. How are resident fees calculated for a mandatory meal(s)?

9A. Fees cover the direct cost of the food, serving supplies, food preparation and basic clean-up. These amounts are aggregated and then divided by the number of people expected to participate in that meal. Programs with an operational history know pretty closely how many people will come to any particular meal.

Participants may pay part or all of the cost of a meal with food stamps.

10Q. May a mandatory meals program be a profit center for the project?

10A. NO !!

11Q. How does a project address the onset of infeasibility in a mandatory meals program?

11A. This is a difficult issue. Indicators of such a problem may be:

- Loss of a caterer and inability to replace one at an affordable rate; not willing to convert to self-provision or lack of commercially approved kitchen to so do.
- Costs rising faster than the general inflation rate and social security raises.
- More and more requests for exemption and more and more complaints about food quality and quantity from residents.
- Difficulty in hiring qualified meals staff.
- Inability to replace self-preparation of meals with a reasonably priced caterer.

Ending a mandatory meals program is a Board decision in consultation with management (and HUD). Project management must consider the number of people who are at risk and/or frail living in the project who depend on the meals program and need some support (e.g., escorts,

volunteer food preparers, hired aides, etc.) as part of a transition in shut-down, and make appropriate recommendations to the board for their deliberations on the matter.

If alternatives are lacking (e.g., other facilities with enriched housing, home delivered meals programs, availability of personal aides to cook and shop, low-cost assisted living, placement with family members), institutionalization may be the only option for some residents within a short time.

12Q. What kinds of social services or supportive services are allowed from project expenses and/or income?

12A. Normally, NONE.

However, in Section 202 and 202/8 projects it is not uncommon for a project to have a budgeted "Activities Director" for things like consumer education, recreational planning and trips. Such a staff person usually does not function as the project's service coordinator, which is a separate line item.

Additionally, 202/PRAC projects, by statute, may fund a portion of a social/supportive services plan from PRAC funds. The current limit (see 24 CFR 891.225(b)(2)) is \$15/unit/month. This would provide a project with some dollars for direct expenses, or funds to use to leverage other third party dollars into the project.

13Q. May any supportive or social service provided by a project for the residents be mandatory?

13A. NO !!

(Except mandatory meals; see IV(6)(Q), this section).

Residents may not be required to accept social or supportive services offered by the project as a condition of occupancy, or otherwise.

14Q. May projects charge for supportive or social services as part of the lease?

14A. NO (Except for mandatory meals)!!

15Q. May a project charge fees for any social or supportive service provided?

15A. YES !!

However (other than a mandatory meals program), the resident can refuse to take any service offered.

Project-level fees are usually on a donation basis, flat fee or sliding scale based on need.

V. Troubled 202/811s/Prepayments:

1Q. What are some indicators of a troubled or potentially troubled 202/811?

1A. **** Delinquent Mortgage ****

- lack of R4R funds saved for basic repairs, and/or not covered in the operating budget.
- high or rising turnover among tenants (for building related matters, not deaths or health-related move-outs).
- a rising vacancy rate over time; and/or
- deterioration of the physical structure.

2Q. What tools are available to help a Hub/PC resolve troubled cases?

2A. Some possible tools are:

- postponement of principal and/or interest for "x" period;
- secondary refinancing for repair/renovation; prepayment, if to the benefit of the tenants;
- use of flexible subsidy (while still available), if project is eligible (see V(5) (A), following;
- balloon/residual receipts notes;
- restructuring of 40 year notes to 50 years; and,
- combinations of two or more of the above.

3Q. How does a Hub/PC get 202 delinquency information?

3A. Contacts for report A21 delinquency are

- Cynthia Bianco, all "SH" Loans and Philadelphia Region. Call Federal relay at 800-877-8339 and then ask for 817-978-9427.
- Sue Clark, New York, Ft. Worth and Seattle regions at 817-978-9234 x3975.
- Eva Heggie, Chicago, Denver and San Francisco regions at 817-978-9234 x3974; or
- Erin Wisnoski, Boston, Atlanta and Kansas City regions at

The next enhancement of the Multifamily Delinquency Design Report (MDDR) (planned for 3/00) will include delinquency data on 202s.

HQ staff expect Hub/PC staff to vigorously work to eliminate the present backlog of 202 and 202/8 delinquencies. All projects with unpaid delinquencies or not on an appropriate workout or other debt elimination plan must be so encumbered as soon as possible. Projects for which there is no reasonable hope of bringing a delinquency current should be considered for foreclosure or other appropriate action (such as turn-over to the Enforcement Center, changed use).

Some projects may document lack of a delinquency through their invoices, billings and financial statements. If this is coupled with lack of documentation on HUD's part to verify the accuracy of any delinquency, HUD can accept the project's records and determine that a delinquency does not exist. Otherwise, HUD's records are controlling.

4Q. Can a project convert continually vacant efficiencies into 1-BR units?

4A. YES.

However, sources of funds to do such work are not easily obtainable at the current time. Conversion is not considered an eligible use of flexible subsidy funds.

Consider secondary financing using Notice H-95-38 in combination with a restructured first loan (or prepayment through Notice H-99-6) to make such a program workable.

Also, the HAP contract would need to be amended for the new unit configuration.

5Q. How does Flexible Subsidy Work?

5A. Section 202 projects with their approved date of occupancy at least 15 years ago may apply on a first-come first served basis for emergency needs, health and safety items.

As of November 15, 1999, approximately \$13.5 million remains available. See HBK 4355.1 for guidance and application format.

The use of flexible subsidy funds is limited to emergency health and safety needs of the project. That is, those major items needing repair/replacement that are NOT easily paid for through normal maintenance or the R4R planning process (e.g., examples of such **non-covered** items are kitchen appliances, replacement carpet, interior lighting, sinks/tub/bathroom plumbing fixtures, bathroom and kitchen cabinets).

Request must offer assurances that underlying issues which led to the emergency, i.e. lack of rent increases, inadequate reserve deposits, have been corrected

Applications must go to the Hub/PC. Hub/PC must review these proposals, edit/cut them, where appropriate (in consultation with their Desk Officer) and submit a recommendation for approval to the Office of Portfolio Management, consistent with long-standing procedures.

6Q. How do 202 Prepayments Work?

6A. See Notice H-99-6, "Prepayment of Section 202 and 202/8 Direct Loans."

This Notice allows a borrower to prepay a Section 202 loan as long as the prepayment is consistent with 24 CFR Part 891.530 and provides a clear benefit to the tenants.

Most 202 prepayments must be approved by HQ.

There are some 202/8s which have a Mortgage Note which gives them an automatic right to prepay with 30 days notice. The phraseology for such a note is on a FHA-3432-EH. The field office may approve such prepayments, consistent with Notice H-99-6.

Prepayment needing HQ approval **MUST** "provide a clear benefit to the tenants" of the project.

Hub/PC Staff may not waive provisions of Notice H-99-6 !!

VI. General Questions:

1Q. How are construction deficiencies corrected if a project is fully occupied but not finally closed, and all inspections have been completed?

1A. If the project's construction is complete, owners must legally go after the architect and/or contractor(s) for a remedy to the problem.

If the problem is a health and safety issue, and the owner does not think they will be able to recover funds sufficient to make satisfactory repairs they have two options:

(i.) If the project is finally closed, management should contact staff of the Office of Portfolio Management (regular desk officer), who will consult with staff of the Office of Business Products (OBP).

(ii.) If the project has NOT finally closed, management should contact staff of OBP (Aretha Williams (202) and/or Gail Williamson (811)).

2Q. Under what circumstances may a Hub/PC address a partial release of security?

2A. See HBK 4350.1, Chapter 16. Partial release of security for 202s may involve matters similar to that for other projects.

Examples are: Taking by local/state government for eminent domain purposes; splitting off a piece of land for commercial development; splitting off a piece of land for another 202 or related non-202 use.

All Section 202 partial releases MUST be approved by HQ. Authority has NOT been delegated to the field offices. Housing hopes to change this in the near future.

3Q. How can owner/borrowers address current high interest rates?

3A. HUD does not refinance 202/8 loans.

The only way projects may address high loan rates is through an overall prepayment plan, consistent with Notice H-99-6.

4Q. What are the Accounting Requirements for old 202s ("SH") projects?

4A. Follow general EMIR project rules.

5Q. When a project needs to send HUD a payment check (e.g., under payment on the mortgage), where does the payment go ??

5A. Payments for the old "SH" loans go to the following lockbox in Pennsylvania:

DHUD
Section 202 Loan Number
(your SH number)
PO Box 640720
Pittsburgh, PA 15264-0720

The rest of the 202 loans (202/8s are EH, 202/PACs are HH), are remitted to a lockbox in Georgia:

DHUD
Section 202 Loan Number

(your EH or HH number)
P.O. Box 277303
Atlanta, GA 30384-7303

202 Flexible subsidy payments (where applicable) are
remitted to:

DHUD
Flex Loan Number
P.O. Box 277303
Atlanta, GA 30384-7303

7Q. Where do closing documents on new projects get sent?

7A. Closing documents are sent to:

DHUD
Office of Management Business
Development Review
Room B-269
ATTN: Mr. Clyde White
451 7th. St., SW
Washington, DC 20410

November 23, 1999

MEMORANDUM Hub/PCR: All Hub Directors
All Program Center Directors

FROM: Frank Malone, Director, Office of Portfolio
Management, HTO /Signed/

SUBJECT: Section 202/811 Guidebook

Attached you will find a Multifamily Management "self-help" guide for the Section 202 and 811 programs for Hub/PC staff. The Office of Portfolio Management would like to acknowledge the interest of HQ and Hub/PC staff in its

creation and their input thereto. We appreciate all your thoughts, comments and suggestions. .

Please ensure that all staff and project owners/management are aware that this document is on the HUDWEB under Multifamily and the HUD Internet Home Page, also under Multifamily.

While the document does not pretend to be a substitute for classroom training or distance learning, we have tried to address all the major questions about specifics within the programs of which we are aware or have been sent to us for inclusion. These Q&As provide a summary of current management policy specific to the 202 inventory and 811s, with appropriate cross references.

Please feel free to use this guidance, ask questions, and build from it as needed. If further clarifications are needed, telephone Jerry Nachison for 90 days after the date of this transmittal. After that, staff may contact their regular HQ desk officer.

Attachment