



**Request for Proposals
Owners/Developers of Rental Housing to Participate in
HUD Section 811 Project Rental Assistance Program**

INTRODUCTION

Through this Request for Proposals (“RFP”), the Rhode Island Housing and Mortgage Finance Corporation (“RIHousing”) seeks proposals from qualified owners and developers of affordable rental housing, who are interested in providing apartments for homeless and disabled persons receiving rental subsidy through the U.S. Department of Housing and Urban Development’s (“HUD’s”) Section 811 Project Rental Assistance program (the “Program”). The selected owners and developers will be required to meet all applicable fair housing, civil rights, accessibility, environmental, lead paint, and other requirements set forth in the federal regulations governing the Program and other HUD guidelines. The regulations are codified at title 24, part 891 of the Code of Federal Regulations. The Program Guidelines are attached as Attachment B.

RIHousing is seeking units that will be available for occupancy immediately and as soon as possible. Tenants will be matched with these units through an application process and waiting list to be administered by RIHousing. Please note that this RFP solicits applications for participation in a federal rental subsidy program, not for project financing.

INSTRUCTIONS

One electronic copy of the proposal should be submitted to Jessica Mowry at jmowry@rihousing.com. Proposals should be concise and include all attachments and work samples. Proposals should be presented on business letterhead.

Proposals will be accepted and reviewed on a rolling basis.

Respondents are advised that all submissions (including those not selected for engagement) may be made available to the public on request upon completion of the process and award of a contract(s).

SCOPE OF WORK

Please see the Scope of Work provided at Attachment A.

ITEMS TO BE INCLUDED WITH YOUR PROPOSAL

Please note that failure to provide any information, certification, or document requested in this RFP may cause your submission not to be scored.

Submission
Check List



A. General Firm Information

1. Provide a brief description of your firm, including but not limited to the following:
 - a. Name of the principal(s) of the firm.
 - b. Name, telephone number and email address of a representative of the firm authorized to discuss your proposal.
 - c. Address of all offices of the firm.
 - d. Number of employees of the firm.
2. Provide a detailed list of references (including a contact name and telephone number) for government agencies or social service organizations with whom your firm has collaborated to expand housing opportunity for low-income persons, homeless persons, persons with disabilities, elders, persons transitioning from institutional settings, or other vulnerable populations.

B. Experience and Resources

1. Discuss your firm's experience and capacity working with low-income, disabled, homeless individuals and families. Please describe your firm's specific experience with rental subsidy programs (state and/or federal). Please describe your firm's capacity to meet HUD leasing, reporting, and other compliance requirements.
2. Provide a schedule of all affordable multifamily rental properties owned by your firm and your firm's affiliates. Indicate the number of apartments that are currently designated for homeless and/or disabled individuals.
3. Include a breakdown of units you are proposing for participation in the Section 811 PRA program, which includes: the number of units available at each development, the number of bedrooms for each of the units, whether each unit is handicapped accessible, the total number of units in the development, and proof of rent reasonableness.
4. Provide details on the surrounding neighborhood for the units proposed for participation in the Program. In particular, please describe community amenities such as jobs, transportation, recreation, retail services, health care, and social services.
5. State the date upon which the proposed units will be available for lease.



6. To the extent applicable, indicate any current rent restrictions (e.g. HOME, Low Income Housing Tax Credit) affecting the property.
7. Discuss current partnerships that your agency may have with supportive service providers. How long has each partnership been in place? What are the roles of the partners in these efforts? What are some of the tangible benefits that have emerged from the partnerships?

C. Affirmative Action Plan and Minority Owned Business/Women Owned Business

1. RIHousing encourages the participation of persons of color, women, persons with disabilities and members of other federally and State-protected classes. Describe your firm's affirmative action program and activities. Include the number and percentage of members of federally and State-protected classes who are either principals or senior managers in your firm, the number and percentage of members of federally and State-protected classes in your firm who will work on RIHousing's engagement and, if applicable, a copy of your Minority- or Women-Owned Business Enterprise state certification.

D. Miscellaneous

1. Discuss any topics not covered in this Request for Proposals that you would like to bring to RIHousing's attention.

E. Certifications

1. RIHousing insists upon full compliance with Chapter 27 of Title 17 of the Rhode Island General Laws, Reporting of Political Contributions by State Vendors. This law requires State Vendors entering into contracts to provide services to an agency such as RIHousing, for the aggregate sum of \$5,000 or more, to file an affidavit with the State Board of Elections concerning reportable political contributions. The affidavit must state whether the State Vendor (and any related parties as defined in the law) has, within 24 months preceding the date of the contract, contributed an aggregate amount in excess of \$250 within a calendar year to any general officer, any candidate for general office, or any political party. Please acknowledge your understanding of this in your RFP response.

2. Does any Rhode Island "Major State Decision-maker," as defined below, or the spouse or dependent child of such person, hold (i) a ten percent or greater equity interest, or (ii) a Five Thousand Dollar or greater cash interest in this business?

For purposes of this question, “Major State Decision-maker” means:

- (i) All general officers; and all executive or administrative head or heads of any state executive agency enumerated in § 42-6-1 as well as the executive or administrative head or heads of state quasi-public corporations, whether appointed or serving as an employee. The phrase “executive or administrative head or heads” shall include anyone serving in the positions of director, executive director, deputy director, assistant director, executive counsel or chief of staff;
- (ii) All members of the general assembly and the executive or administrative head or heads of a state legislative agency, whether appointed or serving as an employee. The phrase “executive or administrative head or heads” shall include anyone serving in the positions of director, executive director, deputy director, assistant director, executive counsel or chief of staff;
- (iii) All members of the state judiciary and all state magistrates and the executive or administrative head or heads of a state judicial agency, whether appointed or serving as an employee. The phrase “executive or administrative head or heads” shall include anyone serving in the positions of director, executive director, deputy director, assistant director, executive counsel, chief of staff or state court administrator.

If your answer is “Yes,” please identify the Major State Decision-maker, specify the nature of their ownership interest, and provide a copy of the annual financial disclosure required to be filed with the Rhode Island Ethics Commission pursuant to R.I.G.L. §§36-14-16, 17 and 18. If your answer is “No,” please provide a statement to such effect.



3. In the course of providing goods or services to RIHousing, the selected respondent may receive certain personal information specific to RIHousing customer(s) including, without limitation, customer names and addresses, telephone numbers, email addresses, dates of birth, loan numbers, account numbers, social security numbers, driver’s license or identification card numbers, employment and income information, photographic likenesses, tax returns, or other personal or financial information (hereinafter collectively referred to as the “Personal Information”). The maintenance of the Personal Information in strict confidence and the confinement of its use to RIHousing are of vital importance to RIHousing. **Please include a letter from your president, chairman or CEO certifying that, in the event your firm is selected:**

(i) any Personal Information disclosed to your firm by RIHousing or which your firm acquires as a result of its services hereunder will be regarded by your firm as confidential, and shall not be copied or disclosed to any third party, unless RIHousing has given its prior written consent thereto; and

(ii) your firm agrees to take all reasonable measures to (a) ensure the security and confidentiality of the Personal Information, (b) protect against any anticipated threats or hazards to the security or integrity of the Personal Information, and (c) maintain reasonable security procedures and practices appropriate to your firm's size, the nature of the Personal Information, and the purpose for which the Personal Information was collected in order to protect the Personal Information from unauthorized access, use, modification, destruction or disclosure; and

(iii) when discarding the Personal Information, destroying it in a commercially reasonable manner such that no third party can view or recreate the information, electronically or otherwise.

These provisions, which implement the requirements of the Rhode Island Identity Theft Protection Act, R.I.G.L. § 11-49.2 et seq., will also be incorporated into the final contract with the selected respondent(s). In addition, if selected, your firm may be requested to provide a copy of its information security plan.



4. Please include a letter from your president, chairman or CEO certifying that (i) no member of your firm has made inquiries or contacts with respect to this Request for Proposals other than in an email or written communication to jmowry@rihousing.com seeking clarification on the Scope of Work set forth in this proposal, from the date of this RFP through the date of your proposal, (ii) no member of your firm will make any such inquiry or contact during the pendency of your proposal, (iii) all information in your proposal is true and correct to the best of her/his knowledge, (iv) no member of your firm gave anything of monetary value or promise of future employment to a RIHousing employee or Commissioner, or a relative of the same, based on any understanding that such person's action or judgment will be influenced and (v) your firm is in full compliance with Chapter 27 of Title 17 of the Rhode Island General Laws, Reporting of Political Contributions by State Vendors.



EVALUATION AND SELECTION

A selection committee consisting of RIHousing employees (the “Committee”) will review all proposals and make a determination based on the following factors:

- Professional capacity to undertake the Scope of Work
- Previous experience serving low-income, disabled, homeless persons and families (or other vulnerable populations)
- Previous experience with federal or state rental subsidy programs
- Extent to which the proposed units (number, size, location, etc.) meet the anticipated demand of the Program
- Previous/current partnerships with Rhode Island Housing and/or other government agencies or social service organizations
- Recommendations by references
- Firm minority status and affirmative action program or activities
- Other pertinent information submitted.

RIHousing may invite one or more finalists to make presentations.

In its sole discretion, RIHousing may negotiate with one or more firms who have submitted qualifications to submit more detailed proposals on specific projects as they arise.

By this Request for Proposals, RIHousing has not committed itself to undertake the work set forth. RIHousing reserves the right to reject any and all proposals, to rebid the original or amended scope of services and to enter into negotiations with one or more respondents. RIHousing reserves the right to make those decisions after receipt of responses. RIHousing’s decision on these matters is final.

For additional information contact: Jessica Mowry at jmowry@rihousing.com.

Revised: June 2020



Attachment A

Scope of Work

RIHousing seeks to engage Through this Request for Proposals (“RFP”), RI Housing seeks proposals from local qualified owners and developers of affordable rental housing, who are interested in providing apartments for homeless and disabled persons receiving rental subsidy through the U.S. Department of Housing and Urban Development’s (“HUD’s”) Section 811 Project Rental Assistance program (the “Program”). The selected owners and developers will be required to meet all applicable fair housing, civil rights, accessibility, environmental, lead paint, and other requirements set forth in the federal regulations governing the Program and other HUD guidelines. The regulations are codified at title 24, part 891 of the Code of Federal Regulations (the “Program Regulations”). HUD’s Section 811 Program Guidelines are attached hereto as Attachment B. Participating owners will receive rental subsidies for units dedicated to the Program, in accordance with the Program Regulations. Subsidies will be processed and administered by RI Housing.

RI Housing is seeking units that will be available for occupancy immediately and as soon as possible. Tenants will be matched with these units through an application process and waiting list to be administered by RIHousing.

Background

The Section 811 Project Rental Assistance Program is an initiative of HUD that assists extremely low-income people with disabilities to live independently in the community by providing rental subsidies linked with voluntary supportive services. The Program is operated by state housing agencies in collaboration with state Medicaid and health and human services organizations. In Rhode Island, the Program will be operated by RIHousing in collaboration with the Rhode Island Executive Office of Health and Human Services (EOHHS) and the Rhode Island Department of Behavioral Healthcare, Developmental Disabilities, and Hospitals (BHDDH).

In March 2015, Rhode Island Housing received an award of approximately \$5.6 million, which funding is anticipated to provide project-based assistance for 150 units statewide for 5 years. Renewal funding is expected to support rental subsidies for these units for an additional 15 years. This RFP solicits applications from owners and developers of rental housing to provide the units that will be supported by these Program rental subsidies.



General Program Description

Program subsidies are project-based and remain with the housing unit at tenant turnover. Assisted individuals/families contribute 30% of their monthly household income towards rent, in accordance with the Program Regulations and other HUD rules, and the Program subsidy covers the balance.

Tenant Eligibility

- Tenants must be extremely low-income (at or below 30 percent of the median income for the area);
- At least one adult member of the household must have a disability;
- At least one person in the assisted household must be non-elderly (ages 18-61);
- Tenants must have the ability to fulfill the lease requirements with reasonable accommodation (if applicable); and
- The household member with the disability must belong to one of the following target populations:
 - Individuals living in institutional settings who
 - Have been identified by the Nursing Home Transition Program (NHTP), Money Follows the Person (MFP) Program, or Managed Care Organization (MCO) as appropriate for safe transition; or
 - Reside in a mental health or psychiatric rehabilitative residence; or
 - High users of Medicaid services who are also homeless and who have applied for and been placed on Rhode Island's Universal Waitlist.

Services to Tenants

RIHousing has entered into an agreement with BHDDH and EOHHS to provide services, such as case management, transportation, employment support, support for development independent living skills, mental health services, connection to Medicaid services, and assistance obtaining appropriate medical care. Program participants may choose to participate in these services but will not be required to do so.

Eligibility Requirements for Developments and Units

The Program provides rental assistance to affordable housing developments financed with federal Low-Income Housing Tax Credits, HOME funds, or other governmental funding sources. Section 811 rental assistance may be used in a development that already contains some project-based units or other long term operating assistance, but cannot be used for units that already receive a project-based or long-term operating subsidy (or have received any such subsidy within the previous 6 months).



The selected development owners will provide primarily one bedroom and efficiency units for leasing in connection with the Program. RI Housing will also consider studio and single room occupancy (SRO) units. It is preferable that properties offer units that are handicap accessible. The final unit mix will be approved by RI Housing based on demand. It is also preferable that properties provide access to community amenities such jobs, transportation, recreation, retail services, health care, and social services.

Requirements for Owners

- Owners must sign the following agreements with RI Housing to participate in the Program:
 - Rental Assistance Contract (RAC) providing for rental assistance payments for specified units for a period of 20 years. RI Housing has the ability to modify the number of Program-assisted units in the RAC as the needs of the Program change over time.
 - Use Agreement that restricts a specific number of units for use by extremely low-income persons with disabilities for a minimum of 30 years.
- RI Housing has the ability to terminate the RAC and/or Use Agreement if Congress does not authorize funding beyond the initial five-year period. RI Housing does not intend to enforce a RAC or Use Agreement if Congress fails to appropriate funds adequate to meet the financial needs of covered units.
- Owners must use HUD's Section 811 model lease.
- Owners must obtain access to HUD's Secure Systems. HUD requires the use of the Enterprise Income Verification (EIV) system to verify tenant household income.

Inspections

Owners must permit Program-supported units to undergo periodic physical inspections consistent with Uniform Physical Construction Standards, as required by HUD. To the extent feasible, RI Housing will align these inspections with those required for other programs.

Tenant Referral

RI Housing will perform marketing and tenant outreach for the Section 811 Program and qualify applicants for Program eligibility. RI Housing will maintain the applicant waiting list and refer applicants to property owners/managers when a vacancy is anticipated. Owners/managers are responsible for screening tenants for occupancy in accordance with their Tenant Selection Plans. Owners/managers are responsible for maintaining a Tenant Selection Plan that complies with the Program Regulations, other applicable HUD requirements, as well as local, state, and federal laws and ordinances.



Environmental Requirements

The Program does not impose additional environmental requirements for properties that are already HUD-assisted or HUD-insured (provided that there are no physical changes beyond routine maintenance and minimal repairs); however, properties that are not already HUD-assisted or HUD-insured must demonstrate that they are free of hazardous materials, contamination, toxic chemicals and gases, and radioactive substances, where a hazard could affect health and safety or conflict with the property's intended use. To satisfy this requirement, projects must submit the following prior to the execution of a rental assistance contract: Phase I environmental Site Assessment, or certify that the site (i) is not listed on an EPA Superfund National Priorities, CERCLA or equivalent list; (ii) is not located within 3,000 feet of a toxic or solid waste landfill site; (iii) does not have an underground storage tank other than a residential fuel tank; and (iv) is not known or suspected to be contaminated by toxic chemicals or radioactive materials.

Serving Individuals with Disabilities

Owners and property managers must comply with all applicable fair housing and civil rights statutes, regulations and ordinances. Tenant referrals and screening processes must comply with RIHousing's Affirmative Fair Housing Marketing Plan. RIHousing, EOHHS, and/or BHDDH can provide coaching, information, and materials to participating property management staff in support of their efforts to improve customer service for persons with disabilities and develop cultural competency.

The Program provides a robust service platform for tenants who wish to participate. RIHousing, EOHHS and BHDDH are committed to ensuring that service providers are available to individuals and families receiving Section 811 rental assistance. While owners are not required to provide these services directly, they must cooperate with RIHousing, EOHHS, BHDDH, and their agents to support the delivery of services.

Only upon receipt of a tenant's written permission may a property manager communicate with the tenant's case manager, counselor, or other service provider about the tenant. No Section 811 tenant may be denied admission for choosing not to provide such written permission. If a property manager chooses to develop a form for this purpose, the form must indicate that it is optional.

Unit Damage

Owners may collect a security deposit in the amount of one month of the tenant's portion of the contract rent or \$50, whichever is greater. Program funds may not be used to reimburse owners for unit damages. Owners may collect any charges for unit damage that federal or state law allows. An owner may deduct amounts owed by the family from a



security deposit, consistent with local law, but any remaining balance must be refunded to the family or RIHousing, when applicable

Payment Process

Owners must submit monthly electronic requisitions through HUD's computerized Tenant Rental Assistance Certification System ("TRACS"). Owners must make their electronic submissions into TRACS using standard HUD forms, following all HUD manuals and practice guides. Requisition requests must be entered into TRACS by the 10th day of each month in order to secure payment for the following month. RIHousing will require owners to participate in direct deposit for the purpose of subsidy payments.

Special Claims

RIHousing will provide vacancy payments for covered units for owners that have signed RACs, during initial lease-up and thereafter. Special claims for vacancy payments may not exceed 80 percent of the contract rent for up to 60 days of vacancy.

Compliance with HUD Rules and Regulations

Selected owners and developers will be required to comply with the Program Regulations and all applicable HUD rules and guidance with respect to the Program. As a result, the selected owners and developers must have read and have a thorough knowledge and understanding of the Program Regulations, the Program Guidelines at [Attachment B](#), and other HUD requirements. By submitting an application responsive to this RFP, an owner or developer certifies that the units proposed to be supported with Program subsidies are eligible under the Program, and meet all applicable affordability, energy, environmental, lead-based paint, labor standards, accessibility, fair housing, and other criteria.

For additional information contact: Jessica Mowry, Assistant Director, Leased Housing and Rental Services at jmowry@rihousing.com or (401) 277-1564.

Attachment B

PROGRAM GUIDELINES

FOR THE SECTION 811 PROJECT RENTAL ASSISTANCE DEMONSTRATION (811 PRA) PROGRAM

Part A—Summary and Applicability

- § PRA.101 General
- § PRA.102 Definitions

Part B- Grantee Requirements

- § PRA.201 Cooperative Agreement
- § PRA.202 Grantee's Default under the Cooperative Agreement
- § PRA.203 Inter-Agency Partnership Agreement
- § PRA.204 Use Agreement
- § PRA.205 Rental Assistance Contract (RAC)
- § PRA.206 Administrative Costs
- § PRA.207 Approved Rent and Rent Adjustments
- § PRA.208 Executive Order 13166
- § PRA.209 Compliance with Fair Housing and Civil Rights Laws
- § PRA.210 Affirmatively Furthering Fair Housing
- § PRA.211 Effective Communication
- § PRA.212 Barrier Free/Accessibility Requirements for Units, Buildings, and Facilities, Including Public and Common Use Areas
- § PRA.213 Davis Bacon Labor Standards
- § PRA.214 Energy and Water Conservation
- § PRA.215 Environmental Requirements and Environmental Assurance
- § PRA.216 Coastal Barrier Resources Act
- § PRA.217 Lead-based paint
- § PRA.218 Program Income
- § PRA.219 Procurement of Recovered Materials
- § PRA.220 HUD's Electronic Line of Credit Control System
- § PRA.221 Tenant Rental Assistance Certification System (TRACS)
- § PRA.222 Uniform Administrative Requirements
- § PRA.223 Grantee duty to ensure Owner requirements are satisfied

Part C—Rental Assistance Contract

- § PRA.301 Rental Assistance Contract (RAC)
- § PRA.302 Term of the RAC
- § PRA.303 Leasing to Eligible Tenants
- § PRA.304 Supportive Services
- § PRA.305 Limitations on Assisted Units
- § PRA.306 Grantee Program Administration
- § PRA.307 Housing Standards for Assisted Units
- § PRA.308 Default by Owner
- § PRA.309 Default by Grantee
- § PRA.310 Notice Upon Contract Expiration
- § PRA.311 Financing

Part D—Owner Requirements

- § PRA.401 Use Agreement
- § PRA.402 Responsibilities of the Owner
- § PRA.403 Selection and Admission of Eligible Tenants
- § PRA.404 Overcrowded and Under Occupied Units
- § PRA.405 Uniform Physical Construction Standards

§ PRA.406 Reviews During Management Period

§ PRA.407 Barrier Free/Accessibility Requirement for Units, Buildings, and Facilities, Including Public and Common Use Areas

§ PRA.408 Compliance with Fair Housing and Civil Rights Laws

§ PRA.409 Tenant Organization Rights

§ PRA.410 Effective Communication

§ PRA.411 Executive Order 13166

Part A— Applicability

§ PRA.101 General.

The purpose of the Section 811 Project Rental Assistance program, as authorized under the Frank Melville Supportive Housing Investment Act of 2010, is to provide Extremely Low Income Persons with Disabilities and Extremely Low Income households with at least one Person with Disabilities with decent, safe and sanitary rental housing through the use of Rental Assistance Payments to Owners. The Section 811 Project Rental Assistance program guidelines are applicable only to the Assisted Units, as defined in below. Grantee and Owners must comply with these guidelines without modification, unless approved by HUD.

§ PRA.102 Definitions.

Refer to Exhibit 1 of the Cooperative Agreement for the definitions.

Part B- Grantee Requirements

§ PRA.201 Cooperative Agreement.

Grantee must execute a Cooperative Agreement (HUD-93205-PRA) with HUD. The terms of the Cooperative Agreement include the work to be performed and any special conditions or requirements. Grantee shall not modify the Cooperative Agreement without the written consent of HUD.

§ PRA.202 Grantee's Default under the Cooperative Agreement.

In the event of a default, as defined by the Cooperative Agreement, HUD may exercise all remedies as outlined in the Agreement including but not limited to terminating the Cooperative Agreement and/or assuming all or some of the RACs.

§ PRA.203 Inter-Agency Partnership Agreement (IPA). As defined in the Cooperative Agreement and included as Exhibit 3 to the Cooperative Agreement.

§ PRA.204 Use Agreement.

The Grantee shall be responsible ensuring the HUD-approved Use Agreement (HUD-92238-PRA) is recorded by the Owner consistent with local law. Grantee is responsible for enforcing the provisions of the Use Agreement against the Owner, subject to the exception below and any other applicable HUD administrative guidance and requirements.

If Congress fails to appropriate funds adequate to meet the future financial needs of the Cooperative Agreement and the Cooperative Agreement is terminated, HUD will not require Grantee to enforce any Use Agreements on Eligible Multifamily Properties covered under a RAC. Under such a circumstance, and in accordance with the Cooperative Agreement, HUD will allow Grantee or Grantee's designee to continue to enforce or terminate such Use Agreements at the Grantee's or Grantee's designee's discretion.

§ PRA.205 Rental Assistance Contract (RAC).

Grantee or Grantee's designee must execute a Rental Assistance Contract (HUD-92235-PRA and HUD-92237-PRA), in the form prescribed by HUD with Owners pursuant to the requirements set forth in the Cooperative Agreement.

If Congress fails to appropriate funds adequate to meet the future financial needs of the Cooperative Agreement, or the Cooperative Agreement is terminated, then HUD will permit Grantee or Grantee's designee to continue or terminate the RAC, at the Grantee or Grantee's designee's discretion.

§ PRA.206 Administrative Costs.

Administrative costs are allowable at a rate of no more than eight (8) percent of the rental assistance Grant amount awarded, unless modified with HUD consent in accordance with the Cooperative Agreement. These funds may be used for planning and other costs associated with developing and operating the Section 811 PRA Demo program, including infrastructure and technology needed to operate the program and costs incurred after applicant's receipt of an Award Letter from HUD and before the execution of the Cooperative Agreement. The costs can include both direct and indirect costs. If a Grantee includes administrative costs in their budget as a

direct cost, they cannot charge these costs as part of their indirect cost rate as well, and should instruct their auditor or the government auditor setting the rate of the availability and use of the administrative costs as described in the NOFA.

§ PRA.207 Approved Rent and Rent Adjustments.

The initial RAC rent level may not exceed the applicable or Fair Market Rent (FMR) level as determined by HUD, unless such rent level is substantiated by a market study that has been prepared in accordance with the requirements of a state housing agency or of Chapter 9 of HUD’s Section 8 Renewal Guide, or as approved by HUD. Rents can only be adjusted annually based upon: (1) HUD’s Operating Cost Adjustment Factor (OCAF), (2) other operating cost index approved by HUD as has been adopted by the Grantee for purposes of subsidizing affordable housing, or (3) approval by HUD.

§ PRA.208 Executive Order 13166.

Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency (LEP)”, seeks to improve access to federally assisted programs and activities for individuals who, as a result of national origin, are limited in their English proficiency. Grantee obtaining federal financial assistance from HUD shall take reasonable steps to ensure meaningful access to their programs and activities to LEP individuals.

§ PRA.209 Compliance with Fair Housing and Civil Rights Laws.

Grantee must comply with all applicable fair housing and civil rights requirements in 24 CFR 5.105(a), including, but not limited to, the Fair Housing Act; Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; Title II of the Americans with Disabilities Act; and Section 109 of the Housing and Community Development Act of 1974. Grantee must also comply with HUD’s Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity requirements. See HUD’s Equal Access rules at 24 C.F.R. §§ 5.100, 5.105(a)(2), 5.403 and HUD’s final rule published in the *Federal Register* at 77 Fed. Reg. 5662, “Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity.”

If the Grantee is in a state or jurisdiction that has also passed a law or laws proscribing discrimination in housing based upon sexual orientation or gender identity, or a law or laws proscribing discrimination in housing based on lawful source of income, the Grantee and its subrecipients must comply with those laws of the states or localities in which the programs or activities are conducted;

In addition, in executing this Cooperative Agreement, Grantee certifies that they will comply with the requirements of the Fair Housing Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and Title II of the Americans with Disabilities Act.

Grantee shall refer to Handbook 4350.3 REV-1, chapter 2 for further guidance.

§ PRA.210 Affirmatively Furthering Fair Housing.

Under Section 808(e)(5) of the Fair Housing Act, HUD has a statutory duty to affirmatively further fair housing. HUD requires the same of its funding recipients. Grantees will be required to certify that they will affirmatively further fair housing, and each grantee must establish an affirmative fair housing marketing plan for its state PRA program, and require other participating agencies and owners to follow its plan when marketing PRA-Assisted Units. Grantees must adopt affirmative marketing procedures for their Section 811 PRA program. Affirmative marketing procedures consist of actions to provide information and otherwise attract eligible persons to the program regardless of race, color, national origin, religion, sex, disability, or familial status, who are not likely to apply to the program without special outreach. Grantees must affirmatively further fair housing by selecting projects for participation that offer access to appropriate services, accessible transportation, and commercial facilities to ensure greater integration of persons with disabilities in

the broader community. Grantees must require owners of Eligible Multifamily Properties to adopt actions and procedures to ensure that the Assisted Units are dispersed and integrated within the property. Grantees must keep records describing actions taken to affirmatively market the program, annually assess the success of their affirmative marketing activities, and make any necessary changes to their affirmative marketing procedures as a result of the evaluation. Grantees must follow the methods of outreach and referral and program waiting list policies, as described in Grantee's application and as approved by HUD. All methods of outreach and referral and management of the program waiting list must be consistent with fair housing and civil rights laws and regulations, and affirmative marketing requirements.

§ PRA.211 Effective Communications.

Grantee must ensure that all communications are provided in a manner that is effective for persons with hearing, visual, and other communications-related disabilities consistent with Section 504 of the Rehabilitation Act of 1973 (see 24 CFR § 8.6) and the Americans with Disabilities Act.

§ PRA.212 Barrier Free/Accessibility Requirements for Units, Buildings, and Facilities, Including Public and Common Use Areas.

Grantee is subject to Section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR part 8 and Title II of the Americans with Disabilities Act and implementing regulations at 28 CFR part 35. Covered multifamily dwellings as defined in 24 CFR part 100 must also meet the design and construction requirements of the Fair Housing Act and 24 CFR part 100. However, Assisted Units can consist of a mix of accessible units for those persons with physical disabilities and non-accessible units for those persons without physical disabilities.

§ PRA.213 Davis Bacon Labor Standards.

All laborers and mechanics (other than volunteers under the conditions set out in 24 CFR part 70) employed by contractors and subcontractors in the construction (including rehabilitation) of housing with 12 or more units assisted under this NOFA, Exhibit 2 shall be paid wages at rates not less than those prevailing in the locality, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. 3141 *et seq.*). Contracts involving employment of laborers and mechanics shall be subject to the provisions of the Contract Work Hours and Safety Standards Act (CWHSSA)(40 U.S.C 3701 *et seq.*). Owners of Eligible Multifamily Properties, contractors and subcontractors must comply with all related rules, regulations, and requirements. Grantee shall be responsible for ensuring inclusion of appropriate contract provisions, monitoring to ensure compliance, and correction of violations in accordance with HUD guidance. Projects where construction is fully complete before an application is submitted to the Grantee to receive assistance under the 811 PRA program are not subject to Davis-Bacon or CWHSSA requirements. In accordance with U.S. Department of Labor regulations at 29 CFR 1.6(g), if a project is approved by Grantee to receive 811 PRA funds after a contract for construction of the project has been awarded (or after the beginning of construction where there is no contract award) but before completion of construction, the state housing agency shall require that the wage determination effective on the date of award (or beginning of construction) be incorporated into the construction contract retroactively to the date of award or beginning of construction. Grantee may, however, request the HUD Office of Labor Relations to seek approval from the U.S. Department of Labor for the incorporation of a wage determination to be effective on the date of the state housing agency's approval of 811 PRA funds for the project. Such approval may be granted only where there is no evidence of intent to apply for the federal assistance for the project prior to contract award or start of construction.

§ PRA.214 Energy and Water Conservation

Grantees are required to build to a higher standard by incorporating components of sustainable building in PRA Demo developments. At a minimum, energy efficiency strategies and water conservation appliances and fixtures must be incorporated in the design, construction, and operation of all new construction and substantial (gut) rehabilitation projects when such projects apply for PRA funding.

(a) Energy Efficiency. Owners of new construction and substantial rehabilitation low-rise (up to 3 stories) Eligible Multifamily Properties must meet the requirements of EPA's ENERGY STAR Qualified Homes. Mid-Rise & High Rise developments (4 or more stories) must meet the requirements of the ENERGY STAR Qualified Multifamily High Rise Buildings. Any state energy code requirements will take precedence over ENERGY STAR specifications when the state code approximates or exceeds that standard.

(b) Water Conservation Fixtures. Installation of water-conserving fixtures is required in all new and substantially rehabilitated developments (i.e. resource efficient plumbing and appliances such as low flow showerheads and faucet and high efficiency toilets). The materials used should be the most current WaterSense or a greater water efficiency product. More information is available at www.epa.gov/owm/water-efficiency.

§ PRA.215 Environmental Requirements and Environmental Assurance.

(a) As HUD does not approve program funding for specific activities or projects of the Grantees, it will not perform environmental reviews on such activities or projects. However, to ensure that the tenets of HUD environmental policy and the requirements of applicable statutes and authorities are met, Grantees will be required to implement the following analyses and determinations for specific program activities and projects.

The environmental tenets apply to both existing and new projects per the requirements below. Existing properties that are currently HUD-assisted or HUD-insured and that will not engage in activities with physical impacts or changes beyond routine maintenance activities or minimal repairs are not required to comply with the environmental tenets. If, at the time that a project applies for PRAD assistance, the project is under construction or being rehabilitated, the project shall be subject to the environmental review requirements applicable to new construction or rehab if the work has **not** progressed beyond a stage of construction where modifications can be undertaken to avoid the adverse environmental impacts addressed by the requirement.

Citations to authorities in the following paragraphs are for reference only; to the extent that property standards or restrictions on the use of properties stated in the following paragraphs are more stringent than provisions of the authorities cited, the requirements stated in the following paragraphs shall control:

- (1) Site Contamination (24 CFR 50.3(i)). It is HUD policy that all properties for use in HUD assisted housing be free of hazardous materials, contamination, toxic chemicals and gases, and radioactive substances, where a hazard could affect the health and safety of occupants or conflict with the intended utilization of the property (24 CFR 50.3(i)(1)). Therefore, projects applying for assistance shall:
 - (a) Assess whether the site (i) is listed on an EPA Superfund National Priorities or CERCLA list or equivalent State list; (ii) is located within 3,000 feet of a toxic or solid waste landfill site; (iii) has an underground storage tank other than a residential fuel tank; or (iv) is known or suspected to be contaminated by toxic chemicals or radioactive materials. If none of these conditions exist, a letter of finding certifying these findings must be submitted and maintained in the site's environmental record. If any of these conditions exist, the grantee must provide an ASTM Phase I Environmental Site Assessment (ESA) in accordance with ASTM E 1527-05 (or the most recent edition); OR
 - (b) Provide a Phase I ESA in accordance with ASTM E 1527-05 (or the most recent edition).

Note: A Phase I ESA, which complies with these standards, and was prepared within the Phase I ESA continuing viability timeframe for the acquisition of the property or a real estate transaction (construction, rehabilitation, or refinancing) for the property, will be deemed acceptable.

If a Phase I ESA is conducted and the Phase I ESA identifies RECs, a Phase II ESA in accordance with ASTM E 1903-11 (or the most recent edition) shall be performed. Any hazardous substances and/or petroleum products that are identified at levels that would require clean-up under State policy shall be so cleaned up in accordance with the State's clean-up policy. Risk-Based Corrective Actions are permitted if allowed for under a State's clean-up policy.

- (2) Historic Preservation (16 U.S.C. 470 et seq.)
 - (a) As the various States, Territories, Tribes and municipalities have established historic preservation programs to protect historic properties within their jurisdiction, all work on properties identified as historic by the State, Territory, Tribe, or Municipality, as applicable, must comply with all applicable State, territorial, and tribal historic preservation laws and requirements and, for projects affecting locally designated historic landmarks or districts, local historic preservation ordinance and permit conditions.
 - (b) In addition, all work on properties listed on the National Register of Historic Places, or which the Grantee knows are eligible for such listing, must comply with "The Secretary of the Interior's Standards for Rehabilitation." Complete demolition of such properties would not meet the Standards and is prohibited.
 - (c) On site discoveries. If archaeological resources and/or human remains are discovered on the project site during construction, the recipient must comply with applicable State, tribal, or territory law, and/or local ordinance (e.g., State unmarked burial law).
- (3) Noise (24 CFR Part 51, Subpart B - Noise Abatement and Control). All activities and projects involving new construction shall be developed to ensure an interior noise level of 45 decibels (dB) or less. In this regard, and using the day-night average sound level (Ldn), sites not exceeding 65 dB of environmental noise are deemed to be acceptable; sites above 65 dB require sound attenuation in the building shell to 45 dB; and sites above 75 dB shall not have noise sensitive outdoor uses (e.g. picnic areas, tot lots, balconies or patios) situated in areas exposed to such noise levels.
- (4) Airport Clear Zones (24 CFR Part 51, Subpart D - Siting of HUD Assisted Projects in Runway Clear Zones at Civil Airports and Clear Zones and Accident Potential Zones at Military Airfields). No activities or projects shall be permitted within the "clear zones" or the "accident potential zones" of military airfields or the "runway protection zones" of civilian airports.
- (5) Coastal Zone Management Act (16 U.S.C. 1451 et seq.). Activities and projects shall be consistent with the appropriate state coastal zone management plan. Plans are available from the local coastal zone management agency.
- (6) Floodplains (Executive Order 11988; Flood Disaster Protection Act (42 U.S.C. 4001-4128)). No new construction activities or projects shall be located in the mapped 500-year floodplain or in the 100-year floodplain according to FEMA's Flood Insurance Rate Maps (FIRM). Existing structures may be assisted in these areas, except for sites located in coastal high hazard areas (V Zones) or regulatory floodways, but must meet the following requirements:
 - (a) The existing structures must be flood-proofed or must have the lowest habitable floor and utilities elevated above both the 500-year floodplain and the 100-year floodplain.
 - (b) The project must have an early warning system and evacuation plan that includes evacuation routing to areas outside of the applicable floodplains.
 - (c) Project structures in the 100-year floodplain must obtain flood insurance under the National Flood Insurance Program. No activities or projects located within the 100-year floodplain may

be assisted in a community that is not participating in or has been suspended from the National Flood Insurance Program.

- (7) Wetlands (Executive Order 11990). No new construction shall be performed in wetlands. No rehabilitation of existing properties shall be allowed that expands the footprint such that additional wetlands are destroyed. New construction includes draining, dredging, channelizing, filling, diking, impounding, and related grading activities. The term wetlands is intended to be consistent with the definition used by the U.S. Fish and Wildlife Service in Classification of Wetlands and Deep Water Habitats of the United States (Cowardin, et al., 1977). This definition includes those wetland areas separated from their natural supply of water as a result of activities such as the construction of structural flood protection methods or solid-fill road beds and activities such as mineral extraction and navigation improvements.
- (8) Siting of Projects Activities Near Hazardous Operations Handling Conventional Fuels or Chemicals of an Explosive or Flammable Nature (24 CFR Part 51, Subpart C). Unshielded or unprotected new construction sites shall be allowed only if they meet the standards of blast overpressure (0.5psi – buildings and outdoor unprotected facilities) and thermal radiation (450 BTU/ft² -hr – people, 10,000 BTU/ft²-hr – buildings) from facilities that store, handle, or process substances of explosive or fire prone nature in stationary, above ground tanks/containers.
- (9) Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.). New construction shall not be permitted that would result in a taking of endangered plant or animal species as listed under the Endangered Species Act of 1973. Taking includes not only direct harm and killing but also modification of habitat. Maps for listed species and geographic habitat by state can be found at:
http://ecos.fws.gov/tess_public/StateListing.do?state=all.
- (10) Farmland Protection (7 USC 4201 et seq.). New construction shall not result in the conversion of unique, prime, or otherwise productive agricultural properties to urban uses.
- (11) Sole Source Aquifers (Section 1424(e) of the Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300 et seq., and 21 U.S.C. 349)). Any new construction activities and projects located in federally designated sole source aquifer areas (SSAs) shall require consultation and review with the U.S. Environmental Protection Agency (USEPA). Information regarding location and geographic coverage of the 73 federally designated SSAs can be found at:
<http://water.epa.gov/infrastructure/drinkingwater/sourcewater/protection/solesourceaquifer.cfm>.

§ PRA.216 Coastal Barrier Resources Act.

The Grantee must adhere to the Coastal Barrier Resources Act which prohibits activities or projects in Coastal Barrier Resource System (CBRS) units. CBRS units are mapped and available from the Fish and Wildlife Service at: <http://www.fws.gov/CBRA/>.

§ PRA.217 Lead Based Paint.

The Lead Safe Housing Rule (specifically 24 CFR 35, subparts B, H and R) applies to project based rental assistance of pre-1978 housing for persons with disabilities when a child of less than 6 years of age resides or is expected to reside in such housing. For Eligible Multifamily Properties in which such units will receive an annual average of more than \$5,000 of rental assistance in any year, a lead risk assessment, followed by interim controls of any lead-based paint hazards identified must be conducted, and a reevaluation must be conducted every two (2) years during the assistance period. For properties in which such assistance is less than or equal to

\$5,000, a visual assessment for deteriorated paint must be conducted during the initial and periodic inspections, followed by paint stabilization of any deteriorated paint identified. The Environmental Protection Agency's Renovation, Repair and Painting (RRP) Rule also applies to such target housing when renovation, repair or painting work is conducted; among other requirements, the work, using lead-safe work practices, must be a conducted or supervised by certified lead renovator working for a certified lead renovation firm when the amount of work exceeds the RRP Rule's minor repair and maintenance area threshold. See 40 CFR 745.

§ PRA.218 Program Income.

Grantee must have sufficient knowledge and experience to identify and account for program income as defined in 24 CFR part 85. All program income including interest earned on any award supported activity (if it generates program income it has to be accounted for whether it is paid to a Grantee or is used for a program purpose without passing back to the Grantee) is subject to the terms and conditions of the Cooperative Agreement and such U.S. Treasury rules as may apply. More specifically, Grantee must document receipt of program income and how the funds were used.

§ PRA.219 Procurement of Recovered Materials.

State agencies and agencies of a political subdivision of a state that are using assistance under a HUD program NOFA for procurement, and any person contracting with such an agency with respect to work performed under an assisted contract, must comply with the requirements of Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

In accordance with Section 6002, these agencies and persons must procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired in the preceding fiscal year exceeded \$10,000; must procure solid waste management services in a manner that maximizes energy and resource recovery; and must have established an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

§ PRA.220 HUD's Electronic Line of Credit Control System.

Grantee must be eligible to acquire rights and access under HUD's Electronic Line of Credit Control System and/ or other database system approved by HUD.

§ PRA.221 Tenant Rental Assistance Certification System (TRACS).

Grantee must use software that has the capability to receive tenant's certification and recertification data (form HUD 50059) and voucher data (form HUD 52670) electronically from owners. The Grantee must have the capability to transmit HUD 50059 data to HUD TRACS Tenant System and HUD 52670 data to HUD TRACS Voucher/Payment System, and to receive return messages transmitted from TRACS.

§ PRA.222 Uniform Administrative Requirements.

All States, Territories, Urban Counties, and Metropolitan cities receiving funds under this NOFA shall be subject to the requirements of 24 CFR part 85. Non-profit subgrantee shall be subject to the requirements of 24 CFR part 84. Administrative requirements covered by Parts 84 and 85 include, but are not limited to: financial management system standards, payment standards, allowable costs, non-Federal audit, supplies and procurement.

§ PRA.223 Grantee duty to ensure Owner requirements are satisfied

Grantee is responsible for ensuring all Owner requirements as may be stated in the 811 PRA statutory authority, the NOFA, the Cooperative Agreement, including specific Owner requirements under the Program Guidelines,

Rental Assistance Contract and Use Agreement are met at all times. Grantee agrees to monitor Owners in accordance with all applicable contractual and HUD statutory requirements and pursue corrective action or pursue legal remedies against the Owner where appropriate.

Part C—Rental Assistance Contract

§ PRA.301 The Rental Assistance Contract (RAC).

- (a) *Rental Assistance Contract (RAC)*. The RAC (HUD-92235-PRA and HUD-92237-PRA, in the form prescribed by HUD, sets forth rights and duties of the Owner and the Grantee with respect to the Eligible Multifamily Property and the Assisted Units. In the event another entity is designated by the Grantee to administer the RAC, the Grantee remains responsible for enforcing all provisions of the RAC.
- (b) *Rental assistance payments to Owners under the RAC*. The Rental Assistance Payments are made monthly by the Grantee upon proper requisition by the Owner. The rental assistance payments made under the RAC are:
- (1) Payments to the Owner to assist Eligible Tenant residing in Eligible Multifamily Properties and
 - (2) Payments to the Owner for vacant Assisted Units (“vacancy payments”) if the conditions specified in HUD administrative guidance are satisfied.
- (c) *Amount of Rental Assistance Payments to Owner*.
- (1) The amount of the Rental Assistance Payment made to the Owner of an Assisted Unit being leased by the Eligible Tenant is the difference between the contract rent for the unit and the tenant rent owed by the Eligible Tenant as determined in accordance with applicable administrative and regulatory requirements.
 - (2) If the Grantee program includes vacancy payments, a Rental Assistance Payment may be made to the Owner for a vacant Assisted Unit that may not exceed 80 percent of the contract rent for up to 60 days of vacancy, subject to the conditions as may be imposed by HUD administrative guidance. If the Owner collects any tenant rent or other amount for this period which, when added to this vacancy payment, exceeds the contract rent, the excess must be repaid as HUD directs.
- (d) *Payment of utility reimbursement*. Where applicable, the Owner will pay a utility reimbursement in accordance with 24 CFR § 5.632.

§ PRA.302 Term of the RAC.

The term of the RAC shall be for no less than twenty (20) years and subject to appropriations. The RAC may be renewed based upon the applicable requirements as established by HUD and appropriations.

§ PRA.303 Leasing to Eligible Tenants.

(a) Availability of Assisted Units for Eligible Tenant in the Target Population.

During the term of the RAC, Owner shall make available for occupancy by Eligible Tenants in the Target Population the total number of Assisted Units committed under the RAC. For purposes of this section, making units available for occupancy by Eligible Families means that the owner:

- (1) Has leased or is making good faith efforts to lease the units to Eligible Tenants, in the Target Population including informing the Grantee or their designee of a vacancy and holding the unit open for a reasonable period of time; and
- (2) Has not rejected any such applicant family except for reasons permitted under the RAC, the Project Rental Assistance Program Guidelines or the Grantee-approved tenant selection plan for the PRA units.. Failure on the part of the Owner to comply with this requirement is a violation of the RAC and grounds for all available legal remedies, including specific performance of the RAC, suspension or debarment from HUD programs, and reduction of the number of Assisted Units under the RAC.

(b) *Reduction of number of Assisted Units covered by RAC.* The Grantee may reduce the number of Assisted Units covered by the RAC if:

- (1) The Owner fails to comply with the requirements of paragraph (a) of this section; or
- (2) Grantee determines that the inability to lease Assisted Units to Eligible Families is not a temporary problem.

(c) *Increase in number of Assisted Units covered by RAC.* The Grantee may increase the number of the Assisted Units covered by the RAC if:

- (1) The program funding amount with the increased number of assisted units does not exceed the maximum amount of grant funds awarded in Exhibit 4 of the Cooperative Agreement; and
- (2) The owner complies with § PRA.305.

(d) *Protections for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking.* Subpart L of 24 CFR part 5 shall apply to the Assisted Units in Eligible Multifamily Properties.

§ PRA.304 Supportive Services.

Eligible Tenant's participation in supportive services is voluntary and cannot be required as a condition of admission or occupancy.

§ PRA.305 Limitations on Assisted Units.

(a) Eligible Multifamily Properties may only receive Rental Assistance Payments if the housing assisted does not currently have an existing use restriction for persons with disabilities. Units receiving any form of federal or state project-based rental assistance for a period of 6 months or longer are ineligible to receive Rental Assistance Payments, unless such payments are being used to support other units in the building without such restrictions. Existing units receiving any form of long-term operating housing subsidy within a six-month period prior to receiving Rental Assistance Payments, such as assistance under Section 8, are ineligible to receive this assistance.

(b) Units with use agreements requiring housing for persons 62 or older are not be eligible to receive Project Rental Assistance Payments.

(c) No more than twenty five percent of the total units in Eligible Multifamily Properties can: (1) be provided Rental Assistance Payments; (2) be restricted to supportive housing for persons with disabilities; or (3) have any occupancy preference for Persons with Disabilities.

(d) These units must be dispersed throughout the property and must not be segregated to one area of a building (such as on a particular floor or part of a floor in a building or in certain sections within a project). Owners will designate the number of units to be set-aside as Assisted Units but the types (*e.g.*, accessible) and the specific units numbers (*e.g.*, units 101, 201, etc.) will be flexible depending on the needs of the program and the availability of the units in the property.

§ PRA.306 Grantee Program Administration.

The Grantee is responsible for the overall management of the award and administration of the Section 811 PRA Demo funds awarded by HUD. Grantees may contract with third party entities to manage all or a portion of the rent administration requirements as outlined in Section XIV to a Grantee with the approval from HUD. Grantee however remains responsible and liable for enforcing all provisions of the RAC and the Cooperative Agreement.

§ PRA.307 Housing Standards for Assisted Units.

Eligible Multifamily Properties with Assisted Units must comply with:

(a) Applicable State and local laws, codes, ordinances and regulations.

(b) *Smoke detectors* —

(1) *Performance requirement.* After October 30, 1992, each dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit. If the unit is occupied by hearing-impaired persons, smoke detectors must have an alarm system, designed for hearing-impaired persons, in each bedroom occupied by a hearing-impaired person.

(2) *Acceptability criteria.* The smoke detector must be located, to the extent practicable, in a hallway adjacent to a bedroom, unless the unit is occupied by a hearing-impaired person, in which case each bedroom occupied by a hearing-impaired person must have an alarm system connected to the smoke detector installed in the hallway.

(c) Assisted Units must meet minimum Uniform Physical Condition Standards as more fully described in 24 CFR 5.703.

(d) Accessibility requirements in accordance with the Fair Housing Act and implementing regulations at 24 CFR part 100, Section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR part 8 and as applicable, Titles II and III of the Americans with Disabilities Act and implementing regulations at 28 CFR parts 35 and 36, respectively.

§ PRA.308 Default by Owner.

The RAC will provide:

(a) That if the Grantee determines that the Owner is in default, the Grantee will notify the Owner of the actions required to be taken to cure the default and of the remedies to be applied by the Grantee, including specific performance under the RAC, reduction or suspension of rental assistance payments and recovery of overpayments, where appropriate; and

(b) That if the owner fails to cure the default, the Grantee has the right to terminate the RAC or take other corrective action.

§ PRA.309 Default by Grantee.

Rights of HUD if the Grantee defaults under RAC. The RAC will provide that, in the event of failure of the Grantee to comply with the RAC, the Owner will have the right, if he is not in default, to demand that HUD investigate. HUD will give the Grantee a reasonable opportunity to take corrective action. If HUD determines that a substantial default exists and the Grantee is unwilling or unable to cure, HUD may, at its discretion, take all appropriate remedies under the Cooperative Agreement, including but not limited to assuming the Grantee's rights and obligations under the RAC.

§ PRA.310 Notice Upon Rental Assistance Contract Expiration.

(a) The Owner will notify each Eligible Family in the Assisted Units, at least 90 days before the end of the RAC term, of any increase in the amount the family will be required to pay as rent which may occur as a result of its expiration. If the Contract is to be renewed but with a reduction in the number of units covered by it, this notice shall be given to each Eligible Family who will no longer be assisted under the Contract.

(b) The notice provided for in paragraph (a) of this section shall be accomplished by:

(1) Sending a letter by first class mail, properly stamped and addressed, to the Eligible Family at its address at the project, with a proper return address; and

(2) Serving a copy of the notice on any adult person answering the door at the leased dwelling unit, placing the notice under or through the door, if possible, or else by affixing the notice to the door. Service shall not be considered to be effective until both required notices have been accomplished. The date on which the notice shall be considered to be received by the Eligible Family shall be the date on which the owner mails the first class letter provided for in this paragraph, or the date on which the notice provided for in this paragraph is properly given, whichever is later.

(c) The notice shall advise each affected Eligible Family that, after the expiration date of the Contract, the Eligible Family will be required to bear the entire cost of the rent and that the owner will be free (to the extent the project is not otherwise regulated by HUD) to alter the rent without HUD or Grantee approval, but subject to any applicable requirements or restrictions under the lease (HUD-92236-PRA) or under State or local law. The notice shall also state:

- (1) The actual (if known) or the estimated rent which will be charged following the expiration of the Contract;
- (2) The difference between the rent and the Total Tenant Payment toward rent under the Contract; and
- (3) The date the Contract will expire.

(d) The owner shall give HUD a certification that families have been notified in accordance with this section with an example of the text of the notice attached.

§ PRA.311 Financing.

(a) *Pledge of RAC.* An Owner may pledge, or offer as security for any loan or obligation the RAC, *provided* that such financing is in connection with an Eligible Multifamily Property with Assisted Units subject to these Program Guidelines and approved by Grantee. Any pledge of the RAC or payments there under, will be limited to the amounts payable under the RAC in accordance with its terms.

(b) *Foreclosure and other transfers.* In the event of foreclosure, assignment or sale in lieu of foreclosure, or other assignment or sale of the Eligible Multifamily Property, as may be approved by the Grantee:

- (1) The RAC shall be transferred to the new Owner, and
- (2) Rental Assistance Payments will continue uninterrupted in accordance with the terms of the RAC.

Part D—Owner Requirements

§ PRA.401 Use Agreement.

(a) Owners must agree to record a Use Agreement (HUD-92238-PRA) for not less than thirty (30) years, in the form prescribed by HUD.

(b) During the Use Agreement period, Owners shall make the Grantee's approved number of Assisted Units available for occupancy to Eligible Families referred pursuant to the Inter-Agency Partnership Agreement.

§ PRA.402 Responsibilities of Owner.

(a) *Marketing, Outreach and Referral* Marketing by the Owner, where applicable (as may be outlined in Grantee's Cooperative Agreement or Inter-Agency Partnership Agreement), must be done in accordance with the Grantee's Affirmative Fair Housing Marketing Plan (HUD-92243-PRA) and all HUD Fair Housing and Equal Opportunity requirements. The purpose of the Plan and requirements is to assure that Eligible Families in the same housing market area have an equal opportunity to apply and be selected for an Assisted Unit regardless of their race, color, national origin, religion, sex, disability or familial status.

(b) *Management and maintenance.* The Owner is responsible for all management functions, including screening of Eligible Applicants in accordance with the Grantee approved tenant selection plan, reexamination and verification of family income and composition, determination of family rent (total tenant payment, tenant rent and utility reimbursement), collection of rent, termination of tenancy and eviction, and performance of all repair and maintenance functions (including ordinary and extraordinary maintenance), and replacement of capital items. All functions must be performed in accordance with applicable nondiscrimination and equal opportunity requirements. Owner has tenant selection responsibilities apart from screening only as provided in the Inter-Agency Agreement.

(c) *Contracting for services.* The Owner may contract with a private or public entity (except the Grantee) for performance of the services or duties required in paragraphs (a) and (b) of this section. However, such an arrangement does not relieve the Owner of responsibility for these services and duties.

(d) *Submission of financial and operating statements.* The Grantee shall establish control measures with the Owner to meet the Grantee's financial requirements of submitting audited annual financial statements that comply with the requirements of OMB Circular A-133.

(e) *Use of project funds.* Rental Assistance Payments must be used for the benefit of the Assisted Units.

§ PRA.403 Selection and Admission of Eligible Tenants.

(a) *Application.* The Owner must accept referrals of Eligible Applicants from the Grantee or their designee for determining eligibility with the Owner's Grantee-approved tenant selection plan. Upon request of the Grantee or HUD, the Owner must furnish copies of all applications to HUD and/or the Grantee.

(b) *Determination of eligibility and selection of Eligible Tenants.* The Owner is responsible for:

- (1) obtaining and verifying information related to Social Security Numbers of Eligible Family members in accordance with 24 CFR part 5, subpart B. Owner shall refer to Handbook 4350.3 REV-1, chapters 3-3, B. and C., 3-9, and 3-11, and 3-31 for further guidance;

- (2) obtaining and verifying income through the use of Enterprise Income Verification (EIV), pursuant to 24 C.F.R. 5.233(a)(2). Owner shall refer to Handbook 4350.3 REV-1, chapter 3-30 for further guidance;
- (3) obtaining and verifying information related to income eligibility of Eligible Families in Assisted Units in accordance with 24 CFR part 5, subpart F. Owner shall refer to Handbook 4350.3 REV-1, chapter 3-30 for further guidance;
- (4) preventing crime in the Assisted Units, including the denial of admission to persons engaged in criminal activity or has certain criminal histories, in accordance with 24 CFR part 5, subpart H. Owner shall refer to Handbook 4350.3 REV-1, chapter 4-27, E. for further guidance.
- (5) complying with protections for victims of domestic violence, dating violence, sexual assault, or stalking, pursuant to 24 CFR part 5, subpart L; and
- (6) complying with all other applicable requirements, including but not limited to the RAC, Project Rental Assistance Program Guidelines, and any other HUD administrative requirements.

(c) If the Owner determines that an applicant is ineligible on the basis of income or family composition, or because of failure to meet the disclosure and verification requirements for Social Security Numbers (as provided by 24 CFR part 5), or because of failure by an applicant to sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies (as provided by 24 CFR parts 5), or that the Owner is not selecting the applicant for other reasons, the Owner will promptly notify the applicant in writing of the determination and its reasons, and that the applicant has the right to meet with the Owner (or Owner's designee) and has the right to request a reasonable accommodation. The applicant may also exercise other rights if the applicant believes that he or she is being discriminated against on the basis of race, color, national origin, religion, sex, disability or familial status. Records on applicants and approved Eligible Families, which provide racial, ethnic, gender and place of previous residency data required by HUD, must be maintained and retained for three (3) years. Owner shall refer to Handbook 4350.3 REV-1, chapter 4-9 for further guidance on rejecting applicants and denial of rental assistance.

§ PRA.404 Overcrowded and Under Occupied Units.

If the Owner determines that because of change in family size an Assisted Unit is smaller than appropriate for the eligible family to which it is leased, or that the unit is larger than appropriate, the Owner shall refer to the Grantee's written policies regarding family size, unit transfers and waitlist management. Rental Assistance Payments with respect to the assisted unit will not be reduced or terminated until the eligible family has been transferred to an appropriate size assisted unit. The Grantee should be notified of any changes in family size.

§ PRA.405 Uniform Physical Conditions Standards.

Owners of Eligible Multifamily Properties with regard to the Assisted Units and related facilities shall comply with the Physical Condition Standards and Inspection Requirements of 24 CFR part 5, Subpart G, including any changes in the regulation and related Directives. In addition, the Owner shall comply with HUD's Physical Condition Standards of Multifamily Properties of 24 CFR part 200, Subpart P, including any changes in the regulation and related Directives.

§ PRA.406 Reviews During Management Period.

(a) Prior to occupancy of any Assisted Unit by an Eligible Family, the Eligible Family must be given the opportunity to be present for the move-in unit inspection. The inspection of the Assisted Unit would be completed by both the Owner and the Eligible Family and both shall certify, on a form prescribed or approved by the Grantee that they have inspected the Assisted Unit and have determined it to be Decent, Safe, and Sanitary condition in accordance with the criteria provided in the form. The Owner shall keep a copy of this inspection and make part of the lease as an attachment to the lease. If the Eligible Family waives the right to this inspection, a form prescribed or approved by the Grantee would be signed by the Eligible Family indicating they have waived this right.

(b) The Owner shall perform unit inspections of the Assisted Units on at least an annual basis to determine whether the appliances and equipment in the unit are functioning properly and to assess whether a component needs to be repaired or replaced. This will ensure that the Owner is meeting its obligation to maintain the Assisted Units in Decent, Safe, and Sanitary condition.

(c) In addition to annual Owner inspections described in paragraph b above, after the effective date of the RAC, a physical inspection pursuant to Uniform Physical Condition Standards (UPCS) must also be performed of the Assisted Units and related facilities at a frequency that conforms to the property's other existing federal or state housing programs, but at least every three (3) years, and at such other times as may be necessary. If multiple federal or state housing programs are layered at the property, the frequency of the physical inspection shall be determined by the most stringent UPCS standard, with a minimum of every three (3) years.

(d) In addition:

- (1) HUD may review the Grantee's records as related to the RAC at least annually to determine whether the Grantee is in compliance with the RAC;
- (2) HUD may independently inspect project operations and Assisted Units at any time with reasonable notice prior to inspection; and
- (3) Equal Opportunity reviews may be conducted by HUD at any time.

§ PRA.407 Barrier Free/Accessibility Requirements for Units, Buildings, and Facilities, Including Public and Common Use Areas.

Owners must meet accessibility requirements of Section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR part 8 and as applicable, Title III of the Americans with Disabilities Act and implementing regulations at 28 CFR part 36. Covered multifamily dwellings as defined in 24 CFR part 100 must also meet the design and construction requirements of the Fair Housing Act. 24 CFR part 100. However, Assisted Units can consist of a mix of accessible units for those persons with physical disabilities and non-accessible units for those persons without physical disabilities.

§ PRA.408 Compliance with Fair Housing and Civil Rights Laws

Owners must comply with all applicable fair housing and civil rights requirements in 24 CFR 5.105(a), including, but not limited to, the Fair Housing Act; Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; Title III of the Americans with Disabilities Act; and Section 109 of the Housing and Community Development Act of 1974. Owners must also comply with HUD's Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity requirements. See HUD's Equal Access rules at 24 C.F.R. §§ 5.100, 5.105(a)(2), 5.403 and HUD's final rule published in the *Federal Register* at 77 Fed. Reg. 5662, "Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity."

If the Owner is in a state or jurisdiction that has also passed a law or laws proscribing discrimination in housing based upon sexual orientation or gender identity, or a law or laws proscribing discrimination in housing based on lawful source of income, the Owner must comply with those laws of the states or localities in which the programs or activities are conducted.

§ PRA.409 Tenant Organization Rights

Owner shall not impede the reasonable efforts of tenants of the Assisted Units to organize pursuant to 24 CFR part 245, or any successor regulations of 24 CFR part 245, or unreasonably withhold the use of any community room or other available space appropriate for meetings which is part of the mortgaged property when requested by: (i) a resident tenant organization in connection with the representational purposes of the organization; or (ii) tenants

seeking to organize or to consider collectively any matter pertaining to the operation of the mortgaged property.

§ PRA.410 Effective Communications

Owners must ensure that all communications are provided in a manner that is effective for persons with hearing, visual, and other communications-related disabilities consistent with Section 504 of the Rehabilitation Act of 1973 (see 24 CFR § 8.6) and, as applicable, the Americans with Disabilities Act.

§ PRA.411 Executive Order 13166

Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency (LEP),” seeks to improve access to federally assisted programs and activities for individuals who, as a result of national origin, are limited in their English proficiency. Owners shall take reasonable steps to ensure meaningful access to their programs and activities to LEP individuals.