

Form 9808

Request for Prepayment of Section 202 or 202/8 Project

U.S. Department of Housing
and Urban Development
Office of Housing
Federal Housing Commissioner

OMB Approval No. 2502-0554
(Exp. 03/31/2008)

Public reporting burden for this collection is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information. This information is required to obtain is required to obtain benefits and is voluntary. HUD may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

Section 811 of the American Homeownership and Economic Opportunity (AHEO) Act of 2000 and the regulations at 24 CFR Part 891.530 prohibits the prepayment (whether in whole or in part), assignment, or transfer of physical assets of any Section 202 project unless the Secretary of the Department of Housing and Urban Development gives prior written approval. This information collection sets forth the information that must be reviewed and approved by HUD in order to prepay a Section 202 or Section 202/8 loan. HUD review will ensure the continued operation of the project, until the original maturity date of the loan, in a manner that will provide rental housing for the elderly and handicapped on terms at least as advantageous to existing and future tenants as the terms required by the original Section 202 loan agreement. While no assurances of confidentiality are pledged to respondents, HUD generally discloses this data only in response to a Freedom of Information Act requests.

Instructions:

The owner must submit this form or similar format along with the following documents:

- (A) A copy of: (1) the mortgage or mortgage note; (2) Housing Assistance Payment Contract; (3) Regulatory Agreement; (4) all tenant comments and the Owner's written evaluation of the comments; and (5) any other use agreements/use restrictions, subordinate mortgages/loans that may be in place.
- (B) List of households currently residing in Section 8 or Rent Supplement assisted units.
- (C) List of any commercial renters/leases, vendors that may be in place.
- (D) If applicable, statement regarding application for FHA mortgage insurance or Risk Sharing Program.
- (E) Additional documents if HUD must approve the prepayment.
 - (1) A detailed narrative explaining why the proposal is advantageous to the tenants.
 - (2) A detailed narrative justifying the future use of the full rental assistance currently being provided to the project.
 - (3) Draft copy of the Use Agreement that will be recorded at the time of prepayment.

1. Project Number: [EH/SH Number]	2. Project Name:	3. Project Address: (include street address, city, state, and zip code)	4. Total Number of Units in the Project:
5. Office Telephone Number:	6. Office Contact Person:	7. Borrower's Name:	
8. Borrower's Address: (if different from project address)		9. Contact Person: (indicate if different from item 5 above)	
10. Estimated Payoff Amount: \$		11. Planned Payoff Date:	
12. The subject project has a project-based Section 8 Contract or Rent Supplement Assistance. <input type="checkbox"/> Yes <input type="checkbox"/> No	13. Section 8 HAP Contract Number:	14. Total Number of Section 8 Units:	15. Total Units of Rent Supplement Units:
16. Manager's Unit? <input type="checkbox"/> Yes <input type="checkbox"/> No	17. Annual Budget: (check one) <input type="checkbox"/> Budget-Based <input type="checkbox"/> Annual Adjustment Factor (AAF)		

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19. Amount of Residual Receipts: \$ _____ Revert to HUD? <input type="checkbox"/> Yes <input type="checkbox"/> No (Check 202 Regulatory Agreement)		20. Amount of Replacement Reserves: \$ _____	
21. Outstanding Flexible Subsidy Loan? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, enter estimated amount: \$ _____	22. Outstanding HELP Loan? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, enter estimated amount: \$ _____	23. Other Outstanding Debt? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, enter estimated amount: \$ _____	
24. Check one and answer "Yes" or "No" <input type="checkbox"/> FHA OR <input type="checkbox"/> Risk Sharing Mortgage Application to be submitted for refinancing? <input type="checkbox"/> Yes <input type="checkbox"/> No (See Section XVII of HUD Notice H 02-16.)			
25. The owner agrees to schedule a meeting to provide the prepayment information (including covenant, where applicable) in writing to the heads of household residing in the project as of the date of the meeting and afford the tenants an opportunity to comment. _____ (planned date of meeting). The owner also agrees to make the Use Agreement (where applicable) part of the application package for all potential future tenants of the project.			
26. The Mortgage note (check one): <input type="checkbox"/> allows prepayment with 30-days notice (Hub/PC approval) or <input type="checkbox"/> allows prepayment with approval of HUD. (Copy of Mortgage Note).			
<i>The remaining items only apply where the prepayment requires HUD's approval or where the Owner chooses to prepay under the requirements of Section 811 and this Notice.</i>			
27. Statement 1: Reasons for prepayment			
28. Statement 2: How will the prepayment be advantageous to the residents?			
29. Statement 3: Provide full justification for future use of total rental assistance currently being provided to the project.			
30. Statement 4: Provide full justification for future use of the project's residual receipts, consistent with the requirements of HUD Notice H 02-16.			
31. Statement 5: Provide full justification for future use of reserve for replacement funds, currently escrowed for the project, consistent with the requirements of HUD Notice H 02-16.			

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32. The owner agrees to maintain the project under the current ownership entity or by a for-profit limited partnership the sole general partner of which is the project owner or a corporation wholly owned and controlled by the current owner.

33. The owner has attached a draft Use Agreement, as set forth in Attachment 4, for review and agrees to provide evidence of the approved Use Agreement's recordation at or before final payoff of the Section 202 or 202/8 Direct Loan.

Owner Name:

By:

By:

President:

Secretary:

Date:

Date:

The Law

“(4) PAYMENT OF PENALTIES.—No payment of a penalty assessed under this section may be made from funds provided under this title or from funds of a project which serve as security for a loan made or guaranteed under this title.

“(5) REMEDIES FOR NONCOMPLIANCE.—

“(A) JUDICIAL INTERVENTION.—If a person or entity fails to comply with a final determination by the Secretary imposing a civil monetary penalty under this subsection, the Secretary may request the Attorney General of the United States to bring an action in an appropriate United States district court to obtain a monetary judgment against such individual or entity and such other relief as may be available. The monetary judgment may, in the court’s discretion, include the attorney’s fees and other expenses incurred by the United States in connection with the action.

“(B) REVIEWABILITY OF DETERMINATION.—In an action under this paragraph, the validity and appropriateness of a determination by the Secretary imposing the penalty shall not be subject to review.”

(b) CONFORMING AMENDMENT.—Section 514 of the Housing Act of 1949 (42 U.S.C. 1484) is amended by striking subsection (j).

SEC. 709. AMENDMENTS TO TITLE 18 OF UNITED STATES CODE.

(a) MONEY LAUNDERING.—Section 1956(c)(7)(D) of title 18, United States Code, is amended by inserting “any violation of section 543(a)(1) of the Housing Act of 1949 (relating to equity skimming),” after “coupons having a value of not less than \$5,000.”

(b) OBSTRUCTION OF FEDERAL AUDITS.—Section 1516(a) of title 18, United States Code, is amended by inserting “or relating to any property that is security for a loan that is made or guaranteed under title V of the Housing Act of 1949,” before “shall be fined under this title”.

TITLE VIII—HOUSING FOR ELDERLY AND DISABLED FAMILIES

Affordable
Housing for
Seniors and
Families Act.

12 USC 1701
note.

SEC. 801. SHORT TITLE.

This title may be cited as the “Affordable Housing for Seniors and Families Act”.

12 USC 1701
note.

SEC. 802. REGULATIONS.

The Secretary of Housing and Urban Development (referred to in this title as the “Secretary”) shall issue any regulations to carry out this title and the amendments made by this title that the Secretary determines may or will affect tenants of federally assisted housing only after notice and opportunity for public comment in accordance with the procedure under section 553 of title 5, United States Code, applicable to substantive rules (notwithstanding subsections (a)(2), (b)(B), and (d)(3) of such section). Notice of such proposed rulemaking shall be provided by publication in the Federal Register. In issuing such regulations, the Secretary shall take such actions as may be necessary to ensure that such tenants are notified of, and provided an opportunity to participate in, the rulemaking, as required by such section 553.

Federal Register,
publication.

SEC. 803. EFFECTIVE DATE.12 USC 1701q
note.

(a) **IN GENERAL.**—The provisions of this title and the amendments made by this title are effective as of the date of the enactment of this Act, unless such provisions or amendments specifically provide for effectiveness or applicability upon another date certain.

(b) **EFFECT OF REGULATORY AUTHORITY.**—Any authority in this title or the amendments made by this title to issue regulations, and any specific requirement to issue regulations by a date certain, may not be construed to affect the effectiveness or applicability of the provisions of this title or the amendments made by this title under such provisions and amendments and subsection (a) of this section.

Subtitle A—Refinancing for Section 202 Supportive Housing for the Elderly

SEC. 811. PREPAYMENT AND REFINANCING.12 USC 1701q
note.

(a) **APPROVAL OF PREPAYMENT OF DEBT.**—Upon request of the project sponsor of a project assisted with a loan under section 202 of the Housing Act of 1959 (as in effect before the enactment of the Cranston-Gonzalez National Affordable Housing Act), the Secretary shall approve the prepayment of any indebtedness to the Secretary relating to any remaining principal and interest under the loan as part of a prepayment plan under which—

(1) the project sponsor agrees to operate the project until the maturity date of the original loan under terms at least as advantageous to existing and future tenants as the terms required by the original loan agreement or any rental assistance payments contract under section 8 of the United States Housing Act of 1937 (or any other rental housing assistance programs of the Department of Housing and Urban Development, including the rent supplement program under section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s)) relating to the project; and

(2) the prepayment may involve refinancing of the loan if such refinancing results in a lower interest rate on the principal of the loan for the project and in reductions in debt service related to such loan.

(b) **SOURCES OF REFINANCING.**—In the case of prepayment under this section involving refinancing, the project sponsor may refinance the project through any third party source, including financing by State and local housing finance agencies, use of tax-exempt bonds, multi-family mortgage insurance under the National Housing Act, reinsurance, or other credit enhancements, including risk sharing as provided under section 542 of the Housing and Community Development Act of 1992 (12 U.S.C. 1707 note). For purposes of underwriting a loan insured under the National Housing Act, the Secretary may assume that any section 8 rental assistance contract relating to a project will be renewed for the term of such loan.

(c) **USE OF UNEXPENDED AMOUNTS.**—Upon execution of the refinancing for a project pursuant to this section, the Secretary shall make available at least 50 percent of the annual savings resulting from reduced section 8 or other rental housing assistance

contracts in a manner that is advantageous to the tenants, including—

(1) not more than 15 percent of the cost of increasing the availability or provision of supportive services, which may include the financing of service coordinators and congregate services;

(2) rehabilitation, modernization, or retrofitting of structures, common areas, or individual dwelling units;

(3) construction of an addition or other facility in the project, including assisted living facilities (or, upon the approval of the Secretary, facilities located in the community where the project sponsor refinances a project under this section, or pools shared resources from more than one such project); or

(4) rent reduction of unassisted tenants residing in the project according to a pro rata allocation of shared savings resulting from the refinancing.

(d) **USE OF CERTAIN PROJECT FUNDS.**—The Secretary shall allow a project sponsor that is prepaying and refinancing a project under this section—

(1) to use any residual receipts held for that project in excess of \$500 per individual dwelling unit for not more than 15 percent of the cost of activities designed to increase the availability or provision of supportive services; and

(2) to use any reserves for replacement in excess of \$1,000 per individual dwelling unit for activities described in paragraphs (2) and (3) of subsection (c).

(e) **BUDGET ACT COMPLIANCE.**—This section shall be effective only to extent or in such amounts that are provided in advance in appropriation Acts.

Subtitle B—Authorization of Appropriations for Supportive Housing for the Elderly and Persons With Disabilities

SEC. 821. SUPPORTIVE HOUSING FOR ELDERLY PERSONS.

Section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) is amended by adding at the end the following:

“(m) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated for providing assistance under this section such sums as may be necessary for each of fiscal years 2001, 2002, and 2003.”.

SEC. 822. SUPPORTIVE HOUSING FOR PERSONS WITH DISABILITIES.

Section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013) is amended by striking subsection (m) and inserting the following:

“(m) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated for providing assistance under this section such sums as may be necessary for each of fiscal years 2001, 2002, and 2003.”.

The Reg

loan will bear interest at the rate determined under paragraph (g)(1) of this section.

(3) *Allowance for administrative costs and probable losses.* For the purpose of computing the loan interest rate under paragraphs (g) (1) and (2) of this section, the allowance to cover administrative costs and probable losses under the program is one-fourth of one percent (.25%) per annum for both the construction and permanent loan periods.

(h) *Announcement of interest rates.* (1) HUD will annually announce the loan interest rate determination under paragraph (g)(1) of this section by publishing notice of the rate in the FEDERAL REGISTER. The FEDERAL REGISTER notice will include a statement explaining the basis for the interest rate determination.

(2) Upon the Borrower's request, HUD will provide available current information concerning the determination of the interest rate under paragraph (g)(2) of this section.

(i) The loan shall be secured by a first mortgage on real estate in fee simple or long term leasehold. The mortgage shall be repayable during a term not to exceed 40 years and shall be subject to such terms and conditions as shall be determined by the Assistant Secretary.

(j) In order to assure HUD of the Borrower's continued commitment to the development, management, and operation of the project, a minimum capital investment is required of Section 202 Borrowers of one-half of one percent (0.5%) of the mortgage amount committed to be disbursed, not to exceed the amount of \$10,000. Section 106(b) loans made pursuant to section 106 of the Housing Act of 1968 may not be utilized to meet the minimum capital investment requirement. Such minimum capital investment shall be placed in escrow at the initial closing of the Section 202 loan and shall be held by HUD or other escrow agent acceptable to the field office for not less than a 3-year period from the date of initial occupancy and may be used for operating expenses or deficits as may be directed by the field office. Any unexpended balance remaining in the minimum capital investment account

at the end of the escrow period shall be returned to the Borrower.

§ 891.530 Prepayment privileges.

(a) The prepayment (whether in whole or in part) or the assignment or transfer of physical and financial assets of any Section 202 project is prohibited, unless the Secretary gives prior written approval.

(b) The Secretary may not grant approval unless he or she has determined that the prepayment or transfer of the loan is part of a transaction that will ensure the continued operation of the project, until the original maturity date of the loan, in a manner that will provide rental housing for the elderly and handicapped on terms at least as advantageous to existing and future tenants as the terms required by the original Section 202 loan agreement and any other loan agreements entered into under other provisions of law.

§ 891.535 Requirements for awarding construction contracts.

(a) Awards shall be made only to responsible contractors that possess the potential ability to perform successfully under the terms and conditions of a proposed construction contract. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(b) Each Borrower is permitted to use either competitive bidding (formal advertising) in selecting a construction contractor or the negotiated non-competitive method of contract award under paragraph (c) of this section. In competitive bidding, sealed bids are publicly solicited and a firm, fixed-price contract is awarded (in accordance with the requirements of this paragraph (b)) to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest in price. Regardless of which method a Borrower uses, there should be an opportunity for minority owned and women owned businesses to be awarded a contract.

(1) Bids shall be solicited from an adequate number of known contractors a reasonable time prior to the date set forth for opening of bids. In addition,