§ 888.415 Restrictions on retroactive payments.

(a) Restrictions. Retroactive payments are subject to all regulations, procedures, or restrictions that apply to Housing Assistance Payments.

(b) Review of initial rents. Before calculating the amount of any retroactive payment, the PHA, if directed by HUD, will review whether rents were excessive when initially set.

(c) Physical condition of projects. If the most recent physical inspection report by the PHA shows significant deficiencies that have not been addressed to the satisfaction of the PHA by the date the retroactive payment is deposited into the project account, the payment will not be made available until the deficiencies are resolved or a plan for their resolution has been approved by the PHA.

§ 888.420 One-time Contract Rent determination.

(a) Determining the amount of the new Contract Rent. Project owners eligible for retroactive payments, as described in §888.401(c), may request a one-time Contract Rent determination, to be effective as described in paragraph (c) of this section. The request for a one-time rent determination must be made when submitting a request for retroactive payments, as described in §888.415. If no claim for retroactive payments is made, an owner may submit only the request for a one-time rent determination, provided the owner is eligible for retroactive payments. The new Contract Rent under this provision will be the greater of:

(1) The Contract Rent currently approved by the PHA; or

(2) An amount equal to the Contract Rent as adjusted to May 31, 1991 under §888.405(a).

(b) Currently approved rent. The Contract Rent currently approved by the PHA is the Contract Rent stated in the most recent amendment to the HAP Contract signed by both the PHA and the owner.

(c) Effective date of new Contract Rent. The new Contract Rent, determined under paragraph (a) of this section, will be effective on May 31, 1991.

(Approved by the Office of Management and Budget under control number 2502-0042)
Asst. Secy., for Housing—Fed. Housing Commissioner, HUD

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§ 891.100 Purpose and policy.

(a) Purpose. The Section 202 Program of Supportive Housing for the Elderly and the Section 811 Program of Supportive Housing for Persons with Disabilities provide Federal capital advances and project rental assistance under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) (section 202) and section 811 of the National Affordable Housing Act (42 U.S.C. 8013) (section 811), respectively, for housing projects serving elderly households and persons with disabilities. Section 202 projects shall provide a range of services that are tailored to the needs of the residents. Owners of Section 811 projects shall ensure that the residents are provided with any necessary supportive services that address their individual needs.

(b) General policy—(1) Supportive Housing for the Elderly. A capital advance and contract for project rental assistance provided under this program shall be used for the purposes described in Section 202 (12 U.S.C. 1701q(b)).

(2) Supportive Housing for Persons with Disabilities. A capital advance and contract for project rental assistance provided under this program shall be used for the purposes described in Section 811 (42 U.S.C. 8013(b)).

(c) Use of capital advance funds. No part of the funds reserved may be transferred by the Sponsor, except to the Owner caused to be formed by the Sponsor. This action must be accomplished prior to issuance of a commitment for capital advance funding.

(d) Amendments. Subject to the availability of funds, HUD may amend the amount of an approved capital advance only after initial closing has occurred.

§ 891.105 Definitions.

The following definitions apply, as appropriate, throughout this part. Other terms with definitions unique to the particular program are defined in §§ 891.205, 891.305, 891.505, and 891.805, as applicable.

Acquisition with or without repair means the purchase of existing housing and related facilities.

Adjusted income as defined in part 5, subpart F of subtitle A of this title.

Affiliated entities means entities that the field office determines to be related to each other in such a manner that it is appropriate to treat them as a single entity. Such relationship shall include any identity of interest among such entities or their principals and the use by any otherwise unaffiliated entities of a single Sponsor or of Sponsors (or of a single Borrower or of Borrowers, as applicable) that have any identity of interest themselves or their principals.

Annual income as defined in part 5, subpart F of subtitle A of this title. In the case of an individual residing in an intermediate care facility for the developmentally disabled that is assisted under title XIX of the Social Security Act and this part, the annual income of the individual shall exclude protected
§ 891.190 Emergency transfers for victims of domestic violence, dating violence, sexual assault, and stalking.

(a) Covered housing providers must develop and implement an emergency transfer plan that meets the requirements in 24 CFR 5.2005(e).

(b) In order to facilitate emergency transfers for victims of domestic violence, dating violence, sexual assault, and stalking, covered housing providers have discretion to adopt new, and modify any existing, admission preferences or transfer waitlist priorities.

(c) In addition to following requirements in 24 CFR 5.2005(e), when a safe unit is not immediately available for a victim of domestic violence, dating violence, sexual assault, or stalking who qualifies for an emergency transfer, covered housing providers must:

(1) Review the covered housing provider's existing inventory of units and determine when the next vacant unit may be available; and

(2) Provide a listing of nearby HUD subsidized rental properties, with or without preference for persons of domestic violence, dating violence, sexual assault, or stalking, and contact information for the local HUD field office.

(d) Each year, covered housing providers must submit to HUD data on all emergency transfers requested under 24 CFR 5.2005(e), including data on the outcomes of such requests.

[81 FR 80814, Nov. 16, 2016]

Subpart B—Section 202 Supportive Housing for the Elderly

§ 891.200 Applicability.

The requirements set forth in this subpart B apply to the Section 202 Program of Supportive Housing for the Elderly only, and to applicants, Sponsors, and Owners under that program.

§ 891.205 Definitions.

As used in this part in reference to the Section 202 Program, and in addition to the applicable definitions in § 891.106:

Acquisition means the purchase of (or otherwise obtaining title to) existing housing and related facilities to be used as supportive housing for the elderly.

Activities of daily living (ADL) means eating, dressing, bathing, grooming, and household management activities, as further described below:

(1) Eating—May need assistance with cooking, preparing, or serving food, but must be able to feed self;

(2) Bathing—May need assistance in getting in and out of the shower or tub, but must be able to wash self;

(3) Grooming—May need assistance in washing hair, but must be able to take care of personal appearance;

(4) Dressing—Must be able to dress self, but may need occasional assistance; and

(5) Home management activities—May need assistance in doing housework, grocery shopping, laundry, or getting to and from activities such as going to the doctor and shopping, but must be mobile. The mobility requirement does not exclude persons in wheelchairs or those requiring mobility devices.

Congregate space (hereinafter referred to as community space) shall have the meaning provided in section 202 (12 U.S.C. 1701q(h)(1)). The term “community spaces” excludes offices, halls, mechanical rooms, laundry rooms, parking areas, dwelling units, and lobbies. Community space does not include commercial areas.

Elderly person means a household composed of one or more persons at least one of whom is 62 years of age or more at the time of initial occupancy.

Frail elderly means an elderly person who is unable to perform at least three activities of daily living as defined in this section. Owners may establish additional eligibility requirements acceptable to HUD based on the standards in local supportive services programs.

Owner means a single-asset private nonprofit organization that may be established by the Sponsor that will receive a capital advance and project
rental assistance payments to develop and operate supportive housing for the elderly as its legal owner. Owner includes an instrumentality of a public body. The purposes of the Owner must include the promotion of the welfare of the elderly. The Owner may not be controlled by or be under the direction of persons or firms seeking to derive profit or gain therefrom.

Private nonprofit organization means any incorporated private institution or foundation:

(1) No part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual;

(2) That has a governing board:

(i) The membership of which is selected in a manner to assure that there is significant representation of the views of the community in which such housing is located; and

(ii) Which is responsible for the operation of the housing assisted under this section, except that, in the case of a nonprofit organization that is the sponsoring organization of multiple housing projects assisted under this section, HUD may determine the criteria or conditions under which financial, compliance, and other administrative responsibilities exercised by a single-entity private nonprofit organization that is the owner corporation of an individual housing project may be shared or transferred to the governing board of such sponsoring organization; and

(3) Which is approved by HUD as to financial responsibility.

Services expenses means those costs needed to provide the necessary services for the elderly tenants, which may include, but are not limited to: health related activities, continuing education, welfare, informational, recreational, homemaking, meal and nutritional services, counseling, and referral services as well as transportation as necessary to facilitate access to these services.

Sponsor means any private nonprofit entity, including a consumer cooperative:

(1) No part of the net earnings of which inures to the benefit of any private shareholder, member, founder, contributor, or individual;

(2) That is not controlled by, or under the direction of, persons or firms seeking to derive profit or gain therefrom; and

(3) That is approved by the Secretary as to administrative and financial capacity and responsibility. The term Sponsor includes an instrumentality of a public body.

§ 891.210 Special project standards.

(a) In general. In addition to the applicable project standards in §891.120, resident units in Section 202 projects are limited to efficiencies or one-bedroom units, except as specified under paragraph (b) of this section. If a resident manager is proposed for a project, up to two bedrooms could be provided for the resident manager unit.

(b) Exception. Resident units in Section 202 projects may be two-bedroom units if a portion of the units are financed by other sources. Resident units may be two-bedroom units provided that the square footage in excess of the one-bedroom size limits are treated as excess amenities as specified in §891.120.

§ 891.215 Limits on number of units.

(a) HUD may establish, through publication of a notice in the FEDERAL REGISTER, limits on the number of units that can be applied for by a Sponsor or Co-sponsor in a single geographical region and/or nationwide.

(b) Affiliated entities that submit separate applications shall be deemed to be a single entity for purposes of these limits.

(c) HUD may also establish, through publication of a notice in the FEDERAL REGISTER, the minimum size of a single project.

§ 891.220 Prohibited facilities.

Projects may not include facilities for infirmaries, nursing stations, or spaces for overnight care.
§ 891.225 Provision of services.

(a) In carrying out the provisions of this part, HUD shall ensure that housing assisted under this part provides services as described in section 202 (12 U.S.C. 1701q(g)(1)).

(b)(1) HUD shall ensure that Owners have the managerial capacity to perform the coordination of services described in 12 U.S.C. 1701q(g)(2).

(2) Any cost associated with this paragraph shall be an eligible cost under the contract for project rental assistance. Any cost associated with the employment of a service coordinator shall also be an eligible cost, except if the project is receiving congregate housing services assistance under section 802 of the National Affordable Housing Act. The HUD-approved service costs will be an eligible expense to be paid from project rental assistance, not to exceed $15 per unit per month. The balance of service costs shall be provided from other sources, which may include co-payment by the tenant receiving the service. Such co-payment shall not be included in the Total Tenant Payment.

§ 891.230 Selection preferences.

For purposes of the Section 202 Program, the selection preferences in 24 CFR part 5, Subpart D apply.

Subpart C—Section 811 Supportive Housing for Persons With Disabilities

§ 891.300 Applicability.

The requirements set forth in this subpart C apply to the Section 811 Program of Supportive Housing for Persons with Disabilities only, and to applicants, Sponsors, and Owners under that program.

§ 891.305 Definitions.

As used in this part in reference to the Section 811 Program, and in addition to the applicable definitions in § 891.105:

Acquisition means the purchase of (or otherwise obtaining title to) existing housing and related facilities to be used as supportive housing for persons with disabilities.

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Congregate space (hereinafter referred to as community space) means space for multipurpose rooms, common areas, and other space necessary for the provision of supportive services. Community space does not include commercial areas.

Disabled household means a household composed of:

(1) One or more persons at least one of whom is an adult (18 years or older) who has a disability;

(2) Two or more persons with disabilities living together, or one or more such persons living with another person who is determined by HUD, based upon a certification from an appropriate professional (e.g., a rehabilitation counselor, social worker, or licensed physician) to be important to their care or well being; or

(3) The surviving member or members of any household described in paragraph (1) of this definition who were living in a unit assisted under this part, with the deceased member of the household at the time of his or her death.

Owner means a single asset private nonprofit organization established by the Sponsor that will receive a capital advance and project rental assistance payments to develop and operate, as its legal owner, supportive housing for persons with disabilities under this part. The purposes of the Owner must include the promotion of the welfare of persons with disabilities. The Owner may not be controlled by or under the direction of persons or firms seeking to derive profit or gain therefrom.

Person with disabilities shall have the meaning provided in Section 811 (42 U.S.C. 8013(k)(2)). The term "person with disabilities" shall also include the following:

(1) A person who has a developmental disability, as defined in section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(5)), i.e., if he or she has a severe chronic disability which:

(i) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(ii) Is manifested before the person attains age twenty-two;

(iii) Is likely to continue indefinitely;

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§ 891.445 Conditions for receipt of vacancy payments for assisted units.

(a) General. Vacancy payments under the PRAC will not be made unless the conditions for receipt of these project rental assistance payments set forth in this section are fulfilled.

(b) Vacancies during rent-up. For each unit (or residential space in a group home) that is not leased as of the effective date of the PRAC, the Owner is entitled to vacancy payments in the amount of 50 percent of the approved per unit operating cost (or pro rata share of the group home operating cost) for the first 60 days of vacancy, if the Owner:

(1) Conducted marketing in accordance with §891.400(a) and otherwise complied with §891.400;

(2) Has taken and continues to take all feasible actions to fill the vacancy; and

(3) Has not rejected any eligible applicant except for good cause acceptable to HUD.

(c) Vacancies after rent-up. If an eligible household vacates an assisted unit (or residential space in a group home) the Owner is entitled to vacancy payments in the amount of 50 percent of the approved per unit operating cost (or pro rata share of the group home operating cost) for the first 60 days of vacancy if the Owner:

(1) Certifies that it did not cause the vacancy by violating the lease, the PRAC, or any applicable law;

(2) Notified HUD of the vacancy or prospective vacancy and the reasons for the vacancy upon learning of the vacancy or prospective vacancy;

(3) Has fulfilled and continues to fulfill the requirements specified in §891.400(a)(2) and (3) and §891.445(b)(2) and (3); and

(4) For any vacancy resulting from the Owner’s eviction of an eligible household, certifies that it has complied with §891.430.

(d) Prohibition of double compensation for vacancies. If the Owner collects payments for vacancies from other sources (tenant payment, security deposits, payments under §891.435(c), or governmental payments under other programs), the Owner shall not be entitled to collect vacancy payments to the extent these collections from other sources plus the vacancy payment exceed the approved per unit operating cost.

§ 891.450 HUD review.

HUD shall conduct periodic on-site management reviews of the Owner’s compliance with the requirements of this part.

Subpart E—Loans for Housing for the Elderly and Persons with Disabilities

§ 891.500 Purpose and policy.

(a) Purpose. The program under subpart E of this part provides direct Federal loans under section 202 of the Housing Act of 1959 (42 U.S.C. 1701q) for housing projects serving elderly or handicapped families and individuals. The housing projects shall provide the necessary services for the occupants which may include, but are not limited to: Health, continuing education, welfare, informational, recreational, homemaking, meal and nutritional services, counseling, and referral services, as well as transportation where necessary to facilitate access to these services.

(b) General policy. A loan made under subpart E of this part shall be used to finance the construction or the substantial rehabilitation of projects for elderly or handicapped families, or for the acquisition with or without moderate rehabilitation of existing housing and related facilities for group homes for nonelderly handicapped individuals.

(c) Applicability. Subpart E of this part applies to all fund reservations made before October 1, 1990, except for loans not initially closed that were converted to capital advances. Specifically, §891.520 through 891.530 of subpart E apply to projects for elderly or handicapped families that received reservations under section 202 of the Housing Act of 1968 (12 U.S.C. 1701q) and housing assistance under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437 et seq). Sections 891.555 through 891.790 of subpart E apply to projects for nonelderly handicapped families receiving reservations under section 202 and project assistance payments under section 202(h) of the Housing Act of 1959.
§ 891.505 Definitions.

For the purposes of this subpart E:


Borrower means a private nonprofit corporation or a nonprofit consumer cooperative that may be established by the Sponsor, which will obtain a Section 202 loan and execute a mortgage in connection therewith as the legal owner of the project. “Borrower” does not mean a public body or the instrumentality of any public body. The purposes of the Borrower must include the promotion of the welfare of elderly and/or handicapped families. No part of the net earnings of the Borrower may inure to the benefit of any private shareholder, director, or individual, and the Borrower may not be controlled by or under the direction of persons or firms seeking to derive profit or gain therefrom. Because of the nonprofit nature of the Section 202 program, no officer or director, or trustor, member, stockholder or authorized representative of the Borrower is permitted to have any financial interest in any contract in connection with the rendition of services, the provision of goods or supplies, project management, procurement of furnishings and equipment, construction of the project, procurement of the site or other matters whatsoever.

Elderly family means:

(1) Families of two or more persons the head of which (or his or her spouse) is 62 years of age or older;

(2) The surviving member or members of any family described in paragraph (1) of this definition living in a unit assisted under subpart E of this part with the deceased member of the family at the time of his or her death;

(3) A single person who is 62 years of age or older; or

(4) Two or more elderly persons living together, or one or more such persons living with another person who is determined by HUD, based upon a licensed physician’s certificate provided by the family, to be essential to care or well being.

Handicapped person or individual means:

(1) Any adult having a physical, mental, or emotional impairment that is expected to last long-term and indefinitely, substantially impeding his or her ability to live independently, and is of a nature that such ability could be improved by more suitable housing conditions.

(2) A person with a developmental disability, as defined in section 108(7) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 60015), i.e., a person with a severe chronic disability that:

(i) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(ii) Is manifested before the person attains age twenty-two;

(iii) Is likely to continue indefinitely;

(iv) Results in substantial functional limitation in three or more of the following areas of major life activity:

(A) Self-care;

(B) Receptive and expressive language;

(C) Learning;

(D) Mobility;

(E) Self-direction;

(F) Capacity for independent living;

(G) Economic self-sufficiency; and

(v) Reflects the person’s need for a combination and sequence of special, interdisciplinary, or general care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated.

(3) A person with a chronic mental illness, i.e., if he or she has a severe and persistent mental or emotional impairment that seriously limits his or
her ability to live independently, and whose impairment could be improved by more suitable housing conditions.

(4) Persons infected with the human acquired immunodeficiency virus (HIV) who are disabled as a result of infection with the HIV are eligible for occupancy in section 202 projects designed for the physically disabled, developmentally disabled, or chronically mentally ill depending upon the nature of the person's disability. A person whose sole impairment is alcoholism or drug addiction (i.e., who does not have a developmental disability, chronic mental illness, or physical disability that is the disabling condition required for eligibility in a particular project) will not be considered to be disabled for the purposes of the section 202 program.

Housing and related facilities means rental or cooperative housing structures constructed or substantially rehabilitated as permanent residences for use by elderly or handicapped families, or acquired with or without moderate rehabilitation for use by nonelderly handicapped families as group homes. The term includes structures suitable for use by families residing in the project or in the area, such as cafeterias or dining halls, community rooms, or buildings, or other essential service facilities. In the case of acquisition with or without moderate rehabilitation, at least three years must have elapsed from the later of the date of completion of the project or the beginning of occupancy to the date of the application for a Section 202 fund reservation. Except for intermediate care facilities for the mentally retarded and individuals with related conditions, this term does not include nursing homes, hospitals, intermediate care facilities, or transitional care facilities.

Nonelderly handicapped family means a handicapped family in which the head of the family (and spouse, if any) is less than 62 years of age at the time of the family's initial occupancy of a project.

Section 8 Program means the housing assistance payments program that implements section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f note).
obligation to comply with these provisions. The Sponsor/Borrower shall maintain records in sufficient detail to demonstrate compliance with the provisions of this section. The Sponsor/Borrower shall maintain data on the race, ethnic, gender, and handicap status of displaced persons.

(f) Definition of a displaced person. (1) For purposes of this section, the term displaced person means a person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this part. This includes any permanent, involuntary move for an assisted project including any permanent move from the real property that is made:

(i) After notice by the Sponsor/Borrower to move permanently from the property if the move occurs on or after:

(A) The date of the submission of an application to HUD that is later approved, if the Sponsor has control of an appropriate site; or

(B) The date that the Sponsor obtains control of an approvable site, if such control is obtained after the submission of an application to HUD;

(ii) Before the date described in paragraph (f)(1)(i) of this section, if the Sponsor, Borrower or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the project;

(iii) By a tenant-occupant of a dwelling unit, if any one of the following three situations occurs:

(A) The tenant moves after execution of the Agreement between the Sponsor/Borrower and HUD, and the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex, upon completion of the project under reasonable terms and conditions. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the greater of:

(1) The tenant’s monthly rent and estimated average monthly utility costs before the Agreement; or

(2) The total tenant payment, as determined under 24 CFR 813.107, if the tenant is low-income, or 30 percent of gross household income, if the tenant is not low-income; or

(B) The tenant is required to relocate temporarily, does not return to the building/complex, and either:

(I) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation; or

(2) Other conditions of the temporary relocation are not reasonable; or

(C) The tenant is required to move to another dwelling in the same building/complex but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.

(2) Notwithstanding the provisions of paragraph (f)(1) of this section, however, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance at URA levels), if:

(i) The person has been evicted for cause based upon a serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State, or local law, or other good cause, and HUD determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance.

(ii) The person moved into the property after the submission of the application and, before signing a lease and commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., displacement, temporary relocation or a rent increase) and the fact that he or she will not qualify as a displaced person as a result of the project;

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project;

(3) The Sponsor/Borrower may request, at any time, a HUD determination of whether a displacement is or would be covered by this section.
§ 891.515 Audit requirements.

Nonprofits receiving assistance under this part are subject to the audit requirements in 2 CFR part 200, subpart F.


§ 891.520 PROJECTS FOR THE ELDERLY OR HANDICAPPED—SECTION 8 ASSISTANCE

§ 891.520 Definitions applicable to 202/8 projects.

The following definitions apply to projects for eligible families receiving assistance under section 8 of the United States Housing Act of 1937 in addition to reservations under section 202 of the Housing Act of 1959 (202/8 projects):

Adjusted income as defined in part 5, subpart F of subtitle A of this title.
Assisted unit means a dwelling unit eligible for assistance under a HAP contract.
Contract rent means the total amount of rent specified in the HAP contract as payable by HUD and the tenant to the Borrower for an assisted unit.
Family (eligible family) means an elderly or handicapped family that meets the project occupancy requirements approved by HUD and, if the family occupies an assisted unit, meets the requirements described in part 813 of this chapter.
Gross rent is defined in part 5, subpart F of subtitle A of this title.
HAP contract (housing assistance payments contract) means the contract entered into by the Borrower and HUD setting forth the rights and duties of the parties with respect to the project and the payments under the HAP contract.
Housing assistance payment means the payment made by HUD to the Borrower for assisted units as provided in the HAP contract. The payment is the difference between the contract rent and the tenant rent. An additional payment is made to a family occupying an assisted unit when the utility allowance is greater than the total tenant payment. A housing assistance payment, known as a "vacancy payment," may be made to the Borrower when an assisted unit is vacant, in accordance with the terms of the HAP contract.

Project account means a specifically identified and segregated account for each project that is established in accordance with §891.570(b) out of the amounts by which the maximum annual commitment exceeds the amount actually paid out under the HAP contract each year.

Project occupancy requirements means that eligible populations to be served under the Section 202 program are qualified individuals or families whose head of household or spouse is elderly, physically handicapped, developmentally disabled, or chronically mentally ill. Projects are designed to meet the special needs of the particular tenant population that the Borrower was selected to serve. Individuals from one eligible group may not be accepted for occupancy in a project designed for a different tenant group. However, a Sponsor can propose to house eligible tenant groups other than the one it was selected to serve, but must apply to the HUD field office for permission to do so, based on a plan that demonstrates that it can adequately serve the proposed tenant group. Upon review and recommendation by the field office, HUD Headquarters will approve or disapprove the request.
Rent, in the case of a unit in a cooperative project, means the carrying charges payable to the cooperative with respect to occupancy of the unit.
Tenant rent means the monthly amount defined in, and determined in accordance with part 5, subpart F of subtitle A of this title.
Total tenant payment means the monthly amount defined in, and determined in accordance with part 5, subpart F of subtitle A of this title.
Utility allowance is defined in part 5, subpart F of subtitle A of this title and is determined or approved by HUD.
Utility reimbursement is defined in part 5, subpart F of subtitle A of this title.
Vacancy payment means the housing assistance payment made to the Borrower by HUD for a vacant assisted unit if certain conditions are fulfilled, as provided in the HAP contract. The amount of the vacancy payment varies with the length of the vacancy period.

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and is less after the first 60 days of any vacancy.


§ 891.525 Amount and terms of financing.

(a) The amount of financing approved shall be the amount stated in the Notice of Section 202 Fund Reservation, including any increase approved by the field office prior to the final closing of a loan; provided, however, that the amount of financing provided shall not exceed the lesser of:

(1) The dollar amounts stated in paragraphs (b) through (f) of this section; or

(2) The total development cost of the project as determined by the field office.

(b) For such part of the property or project attributable to dwelling use (excluding exterior land improvements, as defined by the Assistant Secretary) the maximum loan amount, depending on the number of bedrooms, may not exceed:

(1) $28,032 per family unit without a bedroom.

(2) $32,321 per family unit with one bedroom.

(3) $38,979 per family unit with two bedrooms.

(c) In order to compensate for the higher costs incident to construction of elevator type structures of sound standards of construction and design, the field office may increase the dollar limitations per family unit, as provided in paragraph (b) of this section, to not to exceed:

(1) $29,500 per family unit without a bedroom.

(2) $33,618 per family unit with one bedroom.

(3) $41,120 per family unit with two bedrooms.

(d) Reduced loan amount—leaseholds. In the event the loan is secured by a leasehold estate rather than a fee simple estate, the allowable cost of the property upon which the loan amount is based shall be reduced by the value of the leased fee.

(e) Adjusted loan amount—rehabilitation projects. A loan amount that involves a project to be rehabilitated shall be subject to the following additional limitations:

(1) Property held in fee. If the Borrower is the fee simple owner of the project not encumbered by a mortgage, the maximum loan amount shall not exceed 100 percent of the cost of the proposed rehabilitation.

(2) Property subject to existing mortgage. If the Borrower owns the project subject to an outstanding indebtedness, which is to be refinanced with part of the Section 202 loan, the maximum loan amount shall not exceed the cost of rehabilitation plus such portion of the outstanding indebtedness as does not exceed the fair market value of such land and improvements prior to the rehabilitation, as determined by the field office.

(3) Property to be acquired. If the project is to be acquired by the Borrower and the purchase price is to be financed with a part of the Section 202 loan, the maximum loan amount shall not exceed the cost of the rehabilitation plus such portion of the purchase price as does not exceed the fair market value of such land and improvements prior to the rehabilitation, as determined by the field office.

(f) Increased Mortgage Limits—High Cost Areas. (1)(i) The Assistant Secretary may increase the dollar amount limitations in paragraphs (b) and (c) of this section:

(A) By not to exceed 110 percent in any geographical area in which the Assistant Secretary finds that cost levels so require; and

(B) By not to exceed 140 percent where the Assistant Secretary determines it necessary on a project-by-project basis.

(ii) In no case, however, may any such increase exceed 80 percent, where the Assistant Secretary determines that there is involved a mortgage purchased or to be purchased by the Government National Mortgage Association (GNMA) in implementing its Special Assistance Functions under section 305 of the National Housing Act (as section 305 existed immediately before its repeal on November 30, 1983).

(ii) If the Assistant Secretary finds that because of high costs in Alaska, Guam, or Hawaii it is not feasible to
residential space in a group home) the Borrower is entitled to vacancy payments in the amount of 80 percent of the contract rent (or pro rata share of the contract rent in a group home) for the first 60 days of vacancy if the Borrower:

(1) Certifies that it did not cause the vacancy by violating the lease, the PAC, or any applicable law;

(2) Notified HUD of the vacancy or prospective vacancy and the reasons for the vacancy immediately upon learning of the vacancy or prospective vacancy;

(3) Has fulfilled and continues to fulfill the requirements specified in §891.740(a)(2) and (3), and in paragraphs (b)(2) and (3) of this section; and

(4) For any vacancy resulting from the Borrower's eviction of an eligible family, certifies that it has complied with §891.770.

(d) Vacancies for longer than 60 days. If an assisted unit (or residential space in a group home) continues to be vacant after the 60-day period specified in paragraph (b) or (c) of this section, HUD may approve additional vacancy payments for 60-day periods up to a total of 12 months in an amount equal to the principal and interest payments required to amortize that portion of the debt service attributable to the vacant unit (or, in the case of group homes, the residential space). Such payments may be approved if:

(1) The unit was in decent, safe, and sanitary condition during the vacancy period for which payment is claimed;

(2) The Borrower has fulfilled and continues to fulfill the requirements specified in paragraph (b) or (c) of this section, as appropriate; and

(3) The Borrower has demonstrated to the satisfaction of HUD that:

(i) For the period of vacancy, the project is not providing the Borrower with revenues at least equal to project expenses (exclusive of depreciation) and the amount of payments requested is not more than the portion of the deficiency attributable to the vacant unit (or residential space in a group home); and

(ii) The project can achieve financial soundness within a reasonable time.

(e) Prohibition of double compensation for vacancies. If the Borrower collects payments for vacancies from other sources (tenant rent, security deposits, payments under §891.435(c), or governmental payments under other programs), the Borrower shall not be entitled to collect vacancy payments to the extent these collections from other sources plus the vacancy payment exceed contract rent.

Subpart F—For-Profit Limited Partnerships and Mixed-Finance Development for Supportive Housing for the Elderly or Persons with Disabilities

SOURCE: 70 FR 54210, Sept. 13, 2005, unless otherwise noted.

§891.800 Purpose.

The purpose of this subpart is to establish rules allowing for, and regulating the participation of, for-profit limited partnerships, of which the sole general partner is a Nonprofit Organization meeting the requirements of 12 U.S.C. 1701q(k)(4) or 42 U.S.C. 8032(k)(6), in the development of housing for the elderly and persons with disabilities using mixed-finance development methods. These rules are intended to develop more supportive housing for the elderly and persons with disabilities by allowing the use of federal assistance, private capital and expertise, and low-income housing tax credits.

§891.802 Applicability of other provisions.

The provisions of 24 CFR part 891, subparts A through D, apply to this subpart F unless otherwise stated.

§891.805 Definitions.

In addition to the definitions at §§891.105, 891.205, and 891.305, the following definitions apply to this subpart:

Mixed-finance owner, for the purpose of the mixed-finance development of housing under this part, means a single-asset, for-profit limited partnership of which a private nonprofit organization is the sole general partner. The purpose of the mixed-finance owner must include the promotion of the welfare of the elderly or persons with disabilities, as appropriate.
Private nonprofit organization, for the purpose of this subpart, means:

(1) In the case of supportive housing for the elderly:

(a) An organization that meets the requirements of the definition of "private nonprofit organization" in §891.205; and

(b) A for-profit limited partnership, the sole general partner of which owns at least one-hundredth of one percent of the partnership assets, whereby the sole general partner is either: an organization meeting the requirements of §891.205 or a for-profit corporation wholly owned and controlled by one or more organizations meeting the requirements of §891.205 or a limited liability company wholly owned and controlled by one or more organizations meeting the requirements of §891.205. If the project will include units financed with the use of federal Low-Income Housing Tax Credits and the organization is a limited partnership, the requirements of section 42 of the IRS code, including the requirements of section 42(h)(5), apply. The general partner may also be the sponsor, so long as it meets the requirements of this part for sponsors and general partners.

(2) In the case of supportive housing for persons with disabilities:

(a) An organization that meets the requirements of the definition of "private nonprofit organization" in §891.305; and

(b) A for-profit limited partnership, the sole general partner of which owns at least one-hundredth of one percent of the partnership assets, whereby the sole general partner is either: an organization meeting the requirements of §891.305 or a corporation owned and controlled by an organization meeting the requirements of §891.305. If the project will include units financed with the use of federal Low-Income Housing Tax Credits and the organization is a limited partnership, the requirements of section 42 of the IRS code, including the requirements of section 42(h)(5), apply. The general partner may also be the sponsor, so long as it meets the requirements of this part for sponsors and general partners.

§891.808 Capital advance funds.

(a) HUD is authorized to provide capital advance funds to expand the supply of supportive housing for the elderly and persons with disabilities in accordance with the rules and regulations of the Section 202 and Section 811 supportive housing programs. For mixed-finance projects, HUD provides a capital advance funds reservation to the sponsor, which transfers the fund reservation to the mixed-finance owner meeting the requirements of this subpart. The sponsor may transfer the fund reservation directly to the owner or to the general partner of the owner, or the sponsor may be the general partner of the mixed-finance owner if the sponsor meets the applicable statutory and regulatory requirements.

(b) Developments built with mixed-finance funds may combine Section 202 or Section 811 units with other units, which may or may not benefit from federal assistance. The number of Section 202 or Section 811 supportive housing units must not be less than the number specified in the agreement letter for a capital advance. In the case of a Section 811 mixed-finance project, the additional units cannot cause the project to exceed the applicable Section 811 project size limit if they will also house persons with disabilities.

§891.809 Limitations on capital advance funds.

Capital advances are not available in connection with:

(a) Acquisition of facilities currently owned and operated by the sponsor as housing for the elderly, except with rehabilitation as defined in 24 CFR 991.105;

(b) The financing or refinancing of federally assisted or insured projects;

(c) Facilities currently owned and operated by the sponsor as housing for persons with disabilities, except with rehabilitation as defined in 24 CFR 991.105; or

$891.810 Project rental assistance.

Project Rental Assistance is defined in §891.105. Project Rental Assistance provided for operating costs, not covered by tenant contributions, attributable to the number of units funded by capital advances under the Section 202 and Section 811 supportive housing programs, subject to the provisions of 24 CFR 891.445. The sponsor of a mixed-finance development must obtain the necessary funds from a source other than project rental assistance funds for operating costs related to non-202 or 811 units.

$891.813 Eligible uses for assistance provided under this subpart.

(a) Assistance under this subpart may be used to finance the construction, reconstruction, or rehabilitation of a structure or a portion of a structure; or the acquisition of a structure to be used as supportive housing for the elderly; or the acquisition of housing to be used as supportive housing for persons with disabilities. Such assistance may also cover the cost of real property acquisition, site improvement, conversion, demolition, relocation, and other expenses that the Secretary determines are necessary to expand the supply of supportive housing for the elderly and persons with disabilities.

(b) Assistance under this subpart may not be used for excess amenities, as stated in §891.120(c), or for Section 202 "prohibited facilities," as stated in §891.220. Such amenities or Section 202 prohibited facilities may be included in a mixed-finance development only if:

(1) The amenities or prohibited facilities are not financed, maintained, or operated with funds provided under the Section 202 or Section 811 program;

(2) The amenities or prohibited facilities are designed with appropriate safeguards for the residents' health and safety; and

(3) The assisted residents are not required to use, participate in, or pay a fee for the use or maintenance of the amenities or prohibited facilities, although they are permitted to do so voluntarily. Any fee charged for the use, maintenance, or access to amenities or prohibited facilities by residents must be reasonable and affordable for all residents of the development.

(c) Notwithstanding any other provision of this section, §891.315 on "prohibited facilities" shall apply to mixed-finance developments containing units assisted under Section 811.

[70 FR 54210, Sept. 13, 2005, as amended at 78 FR 37114, June 20, 2013]

$891.815 Mixed-finance developer's fee.

(a) Mixed-finance developer's fee. A mixed-finance developer may include, on an up-front or deferral basis, or a combination of both, a fee to cover reasonable profit and overhead costs.

(b) Mixed-finance developer's fee cap. The mixed-finance developer's fee may be a greater percentage of the total project replacement costs than the percentage allowed by the state housing finance agency or other tax credit allocating agency in the state in which the mixed-finance development is sited. In no event may the mixed-finance developer's fee exceed 15 percent of the total project replacement cost.

(c) Sources of mixed-finance developer's fee. The mixed-finance developer's fee may be paid from project income or project sources of funding other than Section 202 or 811 capital advances, project rental assistance, or tenant rents.

$891.818 Firm commitment application.

The sponsor will submit the firm commitment application including the mixed-finance proposal in a form described by HUD.

$891.820 Civil rights requirements.

The mixed-finance development must comply with the following: all fair housing and accessibility requirements, including the design and construction requirements of the Fair Housing Act; the requirements of section 504 of the Rehabilitation Act of 1973; accessibility requirements, project standards, and site and neighborhood standards under 24 CFR 891.120, 891.125, 891.210, 891.310, and 891.330, as applicable; and 24 CFR 8.4(b)(5), which prohibits the selection of a site or location which has the purpose or effect of excluding persons with
disabilities from federally assisted programs or activities.

§891.823 HUD review and approval.

HUD will review and may approve or disapprove the firm commitment application and mixed finance proposal.

§891.825 Mixed-finance closing documents.

The mixed-finance owner must submit the mixed-finance closing documents in the form prescribed by HUD. The materials shall be submitted after the firm commitment has been issued and prior to capital advance closing.

§891.830 Drawdown.

(a) Upon its approval of the executed mixed-finance closing documents and other documents submitted and upon determining that such documents are satisfactory, and after the capital advance closing, HUD may approve the drawdown of capital advance funds in accordance with the HUD-approved drawdown schedule.

(b) Non-capital advance funds may be disbursed before capital advance proceeds or the capital advance funds may be drawn down in an approved ratio to other funds, in accordance with a drawdown schedule approved by HUD.

(c) Each drawdown of funds constitutes a certification by the mixed-finance owner that:

(1) All the representations and warranties submitted in accordance with this subpart continue to be valid, true, and in full force and effect;

(2) All parties are in compliance with their obligations pursuant to this subpart, which, by their terms, are applicable at the time of the drawdown of funds;

(3) All conditions precedent to the drawdown of the funds by the mixed-finance owner have been satisfied;

(4) The capital advance funds drawn down will be used only for eligible costs actually incurred in accordance with the provisions of this subpart and the approved mixed-finance project, which include costs stated in 12 U.S.C. 170l(q)(h) and 42 U.S.C. 8013(h). Capital advance funds may be used for paying off bridge or construction financing, or repaying or collateralizing bonds, but only for the portion of such financing or bonds that was used for capital advance units; and

(5) The amount of the drawdown is consistent with the ratio of 202 or 811 supportive housing units to other units.

[70 FR 54210, Sept. 13, 2005, as amended at 78 FR 37114, June 20, 2013]

§891.832 Prohibited relationships.

(a) Paragraph (a) of §891.130, describing conflicts of interest, applies to mixed-finance developments.

(b) Paragraph (b) of §891.130, describing identity of interest, does not apply to mixed-finance developments.

[78 FR 37114, June 20, 2013]

§891.833 Monitoring and review.

HUD shall monitor and review the development during the construction and operational phases in accordance with the requirements that HUD prescribes. In order for units assisted under the 202 and 811 programs to continue to receive project rental assistance, they must be operated in accordance with all contractual agreements among the parties and other HUD regulations and requirements. It is the responsibility of the mixed-finance owner and Nonprofit Organization to ensure compliance with the preceding sentence.

§891.835 Eligible uses of project rental assistance.

(a) Section 202 or 811 project rental assistance may be used to pay the necessary and reasonable operating costs, as defined in 24 CFR 891.106 and approved by HUD, not met from project income and attributed to Section 202 or 811 supportive housing units. Operating cost standards under 24 CFR 891.150 apply to developments under this part.

(b) Section 202 or 811 project rental assistance may not be used to pay for:

(1) Debt service on construction or permanent financing, or any refinancing thereof, for any units in the development, including the 202 or 811 supportive housing units;

(2) Cash flow distributions to owners; or

(3) Creation of reserves for non-202 or 811 units.
§ 891.840 Site and neighborhood standards.

For section 202 or 811 mixed-finance developments, the site and neighborhood standards described at §891.125 and §891.320 apply to the entire mixed-finance development.

§ 891.848 Project design and cost standards.

(a) The project design and cost standards at §891.120 apply to mixed-finance developments under this subpart, with the exception of §891.120(c), subject to the provisions of §891.813(b).

(b) For Section 202 mixed-finance developments, the prohibited facilities requirements described at §891.220 shall apply to only the capital advance-funded portion of the Section 202 mixed-finance developments under this subpart, subject to the provisions of §891.813(b).

(c) For Section 811 mixed-finance developments, the prohibited facilities requirements described at §891.315 shall apply to the entire mixed-finance development.

(76 FR 37114, June 20, 2011)

§ 891.853 Development cost limits.

The Development Cost Limits for development activities, as established at §891.140, apply to Section 202 or 811 supportive housing units in mixed-finance developments under this subpart.

§ 891.855 Replacement reserves.

(a) The mixed-finance owner shall establish and maintain a replacement reserve account for Section 202 or 811 supportive housing units. This account must meet all the requirements of 24 CFR 891.405.

(b) The mixed-finance owner may obtain a disbursement from the reserve only if the funds will be used to pay for capital replacement costs for the Section 202 or 811 supportive housing units in the mixed-finance development and in accordance with the terms of the regulatory and operating agreement. In the case of repairs to common elements, the Section 202 or 811 replacement reserve can be used on a pro rata basis according to the percentage of 202 or 811 supportive housing units as compared to the total number of units.

§ 891.860 Operating reserves.

(a) The mixed-finance owner shall maintain an operating reserve account in an amount sufficient to cover the operating expenses of the development for at least a three-month period.

(b) Project income, project rental assistance, tenant rents, and tax credit equity may be used to fund the operating reserve account.

(c) Amounts derived from Section 202 or 811 (e.g., project income, project rental assistance, and tenant rents) in operating reserve accounts may only be used for the operating expenses of the 202 or 811 units.

§ 891.863 Maintenance as supportive housing units for elderly persons and persons with disabilities.

(a) The mixed-finance owner must develop and continue to operate the same number of supportive housing units for elderly persons or persons with disabilities, as stated in the use agreement or other document establishing the number of assisted units, for a 40-year period.

(b) If a mixed-finance development proposal provides that the Section 202 or 811 supportive housing units will be floating units, the mixed-finance owner must operate the HUD-approved percentage of Section 202 or 811 supportive units as supportive housing units.
housing units, and maintain the percentage distribution of bedroom sizes of Section 202 or 811 supportive housing units for the entire term of the very low-income use restrictions on the development. Any foreclosure, sale, or other transfer of the development must be subject to a covenant running with the land requiring the continued adherence to the very low-income use restrictions for the Section 202 or 811 supportive housing units.

(c) The owner must ensure that Section 202 or 811 supportive housing units in the development are and continue to be comparable to unassisted units in terms of location, size, appearance, and amenities. If due to a change in the partnership structure it becomes necessary to establish a new owner partnership or to transfer the supportive housing project, the new or revised owner must be a single-purpose entity and the use restrictions must remain in effect as provided above.

§ 891.865 Sanctions.

In the event that Section 202 or 811 supportive housing units are not developed and operated in accordance with all applicable federal requirements, HUD may impose sanctions on the participating parties and seek legal or equitable relief in enforcing all requirements under Section 202, the Housing Act of 1959, or Section 811 of the National Affordable Housing Act, all implementing regulations and requirements and contractual obligations under the mixed-finance documents.

PARTS 892–899 [RESERVED]