

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, the following definitions apply to this subpart:

Mixed-finance owner, for the purpose of the mixed-finance development of housing under this subpart, means a single-purpose, for-profit limited partnership of which a Private Nonprofit Organization with a 501(c)(3) or 501(c)(4) tax exemption (in the case of supportive housing for the elderly), or a Nonprofit Organization with a 501(c)(3) tax exemption (in the case of supportive housing for the disabled) 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 (in the case of supportive housing for the elderly) or *Nonprofit Organization* (in the case of supportive housing for persons with disabilities) (for the purposes of

this subpart, both types of organizations are referred to as “Nonprofit Organization”), for the purpose of this subpart, means any institution or foundation (and includes a corporation wholly owned and controlled by an organization meeting the requirements of this section):

(1) In the case of supportive housing for the elderly, that meets the requirements of the definition of “private nonprofit organization” found in § 891.205 of this title; or

(2) In the case of supportive housing for persons with disabilities, that meets the requirements of the definition of “nonprofit organization” in § 891.305 of this title; and that

(3) Is the general partner of a for-profit limited partnership, if the Nonprofit Organization meets the requirements of this definition and owns at least one-hundredth of one percent of the partnership assets. 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 limited partnership must meet the requirements of section 42 of the IRS code, including the requirements of section 42(h)(5). The general partner may also be the sponsor so long as it meets the requirements of this rule 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 891.105;

(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 891.105; or

(d) Units in Section 202 direct loan projects previously refinanced under the provisions of section 811 of the American Homeownership and Economic Opportunity Act of 2000, 12 U.S.C. 1701q note.

§ 891.810 Project rental assistance.

Project Rental Assistance is defined in § 891.105. Project Rental Assistance is 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 24 CFR 891.120(c). Such amenities may be included in a mixed-finance development only if:

(1) The amenities are not financed with funds provided under the Section 202 or Section 811 program;

(2) The amenities are not maintained and operated with Section 202 or 811 funds;

(3) The amenities are designed with appropriate safeguards for the residents' health and safety; and

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

(c) Notwithstanding any other provision of this section, §§ 891.220 and 891.315 on "prohibited facilities" apply to mixed-finance projects containing units assisted under section 202 or 811.

§ 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.* No 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.