

pay for the continuing operating costs associated with any excess amenities from sources other than the Section 202 or 811 project rental assistance contract.

(d) *Smoke detectors.* Smoke detectors and alarm devices must be installed in accordance with standards and criteria acceptable to HUD for the protection of occupants in any dwelling or facility bedroom or other primary sleeping area.

(e) Projects under this part may have on their sites commercial facilities for the benefit of residents of the project and of the community in which the project is located, so long as the commercial facilities are not subsidized with funding under the supportive housing programs for the elderly or persons with disabilities. Such commercial facilities are considered public accommodations under Title III of the Americans with Disabilities Act and must be accessible under the requirements of that Act.

(f) *Broadband infrastructure.* Any new construction or substantial rehabilitation, as substantial rehabilitation is defined by 24 CFR 5.100, of a building with more than 4 rental units and funded by a grant awarded after January 19, 2017 must include installation of broadband infrastructure, as this term is also defined in 24 CFR 5.100, except where the owner determines and documents the determination that:

(1) The location of the new construction or substantial rehabilitation makes installation of broadband infrastructure infeasible;

(2) The cost of installing broadband infrastructure would result in a fundamental alteration in the nature of its program or activity or in an undue financial burden; or

(3) The structure of the housing to be substantially rehabilitated makes installation of broadband infrastructure infeasible.

[61 FR 11956, Mar. 22, 1996, as amended at 68 FR 67320, Dec. 1, 2003; 73 FR 29985, May 23, 2008; 78 FR 37112, June 20, 2013; 81 FR 92638, Dec. 20, 2016; 82 FR 3623, Jan. 12, 2017]

§ 891.125 Site and neighborhood standards.

All sites must meet the following site and neighborhood requirements:

(a) The site must be adequate in size, exposure, and contour to accommodate the number and type of units proposed, and adequate utilities (water, sewer, gas, and electricity) and streets must be available to service the site.

(b) The site and neighborhood must be suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964, the Fair Housing Act, Executive Order 11063 (27 FR 11527, 3 CFR, 1958–1963 Comp., p. 652); as amended by Executive Order 12259, (46 FR 1253, 3 CFR, 1980 Comp., p. 307)); section 504 of the Rehabilitation Act of 1973, and implementing HUD regulations.

(c) New construction sites must meet the following site and neighborhood requirements:

(1) The site must not be located in an area of minority concentration (or minority elderly concentration under the Section 202 Program) except as permitted under paragraph (c)(2) of this section, and must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to nonminority residents (or minority elderly to nonminority elderly residents, under the Section 202 Program) in the area.

(2) A project may be located in an area of minority concentration (or minority elderly concentration, under the Section 202 Program) only if:

(i) Sufficient, comparable opportunities exist for housing for minority elderly households or minority disabled households, as applicable (or minority families, for projects funded under §§ 891.655 through 891.790), in the income range to be served by the proposed project, outside areas of minority concentration (see paragraph (c)(3) of this section for further guidance on this criterion); or

(ii) The project is necessary to meet overriding housing needs that cannot be met in that housing market area (see paragraph (c)(4) of this section for further guidance on this criterion).

(3)(i) *Sufficient* does not require that in every locality there be an equal number of assisted units within and

outside of areas of minority concentration. Rather, application of this standard should produce a reasonable distribution of assisted units each year which over a period of several years will approach an appropriate balance of housing opportunities within and outside areas of minority concentration. An appropriate balance in any jurisdiction must be determined in light of local conditions affecting the range of housing choices available for very low-income minority elderly or disabled households, as applicable (or low-income minority families, for projects funded under §§ 891.655 through 891.790), and in relation to the racial mix of the locality's population.

(ii) Units may be considered to be *comparable opportunities* if they have the same household type (elderly or disabled, as applicable) and tenure type (owner/renter); require approximately the same total tenant payment; serve the same income group; are located in the same housing market; and are in standard condition.

(iii) Application of this sufficient, comparable opportunities standard involves assessing the overall impact of HUD-assisted housing on the availability of housing choices for very low-income minority elderly or disabled households, as applicable (or low-income minority families, for projects funded under §§ 891.655 through 891.790), in and outside areas of minority concentration, and must take into account the extent to which the following factors are present, along with any other factor relevant to housing choice:

(A) A significant number of assisted housing units are available outside areas of minority concentration.

(B) There is significant integration of assisted housing projects constructed or rehabilitated in the past ten years, relative to the racial mix of the eligible population.

(C) There are racially integrated neighborhoods in the locality.

(D) Programs are operated by the locality to assist minority elderly or disabled households, as applicable (or minority families, for projects funded under §§ 891.655 through 891.790), that wish to find housing outside areas of minority concentration.

(E) Minority elderly or disabled households, as applicable (or minority families, for projects funded under §§ 891.655 through 891.790), have benefitted from local activities (e.g., acquisition and write-down of sites, tax relief programs for homeowners, acquisitions of units for use as assisted housing units) undertaken to expand choice for minority households (or families) outside of areas of minority concentration.

(F) A significant proportion of minority elderly or disabled households, as applicable (or minority households, for projects funded under §§ 891.655 through 891.790), have been successful in finding units in nonminority areas under the Section 8 Certificate and Housing Voucher programs.

(G) Comparable housing opportunities have been made available outside areas of minority concentration through other programs.

(4) Application of the *overriding housing needs* criterion, for example, permits approval of sites that are an integral part of an overall local strategy for the preservation or restoration of the immediate neighborhood and of sites in a neighborhood experiencing significant private investment that is demonstrably changing the economic character of the area (a "revitalizing area"). An *overriding housing need*, however, may not serve as the basis for determining that a site is acceptable if the only reason the need cannot otherwise be feasibly met is that discrimination on the basis of race, color, creed, sex, or national origin renders sites outside areas of minority concentration unavailable, or if the use of this standard in recent years has had the effect of circumventing the obligation to provide housing choice.

(d) The neighborhood must not be one that is seriously detrimental to family life or in which substandard dwellings or other undesirable conditions predominate, unless there is actively in progress a concerted program to remedy the undesirable conditions.

(e) The housing must be accessible to social, recreational, educational, commercial, and health facilities and services, and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods

consisting largely of unassisted, standard housing of similar market rents.

(f) For the Section 811 Program of Supportive Housing for Persons with Disabilities, the additional site and neighborhood requirements in § 891.320 apply.

§ 891.130 Prohibited relationships.

This section shall apply to capital advances under the Section 202 Program and the Section 811 Program, as well as to loans financed under §§ 891.655 through 891.790.

(a) *Conflicts of interest.* (1) Officers and Board members of either the Sponsor or the Owner (or Borrower, as applicable) may not have any financial interest in any contract with the Owner or in any firm which has a contract with the Owner. This restriction applies so long as the individual is serving on the Board and for a period of three years following resignation or final closing, whichever occurs later.

(2) The following contracts between the Owner (or Borrower, as applicable) and the Sponsor or the Sponsor's non-profit affiliate will not constitute a conflict of interest if no more than two persons salaried by the Sponsor or management affiliate serve as non-voting directors on the Owner's board of directors:

(i) Management contracts (including associated management fees);

(ii) Supportive services contracts (including service fees) under the Supportive Housing for the Elderly Program;

(iii) Developer (consultant) contracts; and

(iv) Contracts for the sale of land.

(b) *Identity of interest.* An identity of interest between the Sponsor or Owner (or Borrower, as applicable) and any development team member or between development team members is prohibited until two years after final closing.

[61 FR 11956, Mar. 22, 1996, as amended at 70 FR 54209, Sept. 13, 2005; 78 FR 37112, June 20, 2013]

§ 891.135 Amount and terms of capital advances.

(a) *Amount of capital advances.* The amount of capital advances approved shall be the amount stated in the notification of fund reservation, including

any adjustment required by HUD before the final closing. The amount of the capital advance may not exceed the appropriate development cost limit.

(b) *Estimated development cost.* The amount of the capital advance may not exceed the total estimated development cost of the project (as determined by HUD), less the incremental development cost associated with excess amenities and design features to be paid for by the Sponsor under § 891.120.

§ 891.140 Development cost limits.

(a) HUD shall use the development cost limits, established by Notice in the FEDERAL REGISTER and adjusted by locality, to calculate the fund reservation amount of the capital advance to be made available to individual Owners. Owners that incur actual development costs that are less than the amount of the initial fund reservation shall be entitled to retain 50 percent of the savings in a Replacement Reserve Account. Such percentage shall be increased to 75 percent for Owners that add energy efficiency features.

(b) The Replacement Reserve Account established under paragraph (a) of this section may only be used for repairs, replacements, and capital improvements to the project.

§ 891.145 Owner deposit (Minimum Capital Investment).

As a Minimum Capital Investment, the Owner must deposit in a special escrow account one-half of one percent (0.5%) of the HUD-approved capital advance, not to exceed \$10,000, to assure the Owner's commitment to the housing. Under the Section 202 Program, if an Owner has a National Sponsor or a National Co-Sponsor, the Minimum Capital Investment shall be one-half of one percent (0.5%) of the HUD-approved capital advance, not to exceed \$25,000.

§ 891.150 Operating cost standards.

HUD shall establish operating cost standards based on the average annual operating cost of comparable housing for the elderly or for persons with disabilities in each field office, and shall adjust the standard annually based on appropriate indices of increases in housing costs such as the Consumer