

## § 891.800

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.

## 24 CFR Ch. VIII (4–1–04 Edition)

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

SOURCE: 68 FR 67321, Dec. 1, 2003, 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 supportive 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 using Federal assistance, private capital and expertise, and tax credits.

#### § 891.802 Applicability of other provisions.

The provisions of 24 CFR part 891, subparts A–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 supportive housing under this subpart, means a for-profit limited partnership of which a Single-Purpose Private Nonprofit Organization (in the case of supportive housing for the elderly), or a Single-Purpose 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.

*Single-Purpose Private Nonprofit Organization* (in the case of supportive housing for the elderly) or *Single-Purpose Nonprofit Organization* (in the case of supportive housing for persons with disabilities) (for the purposes of this

subpart, both types of organization are referred to as “Nonprofit Organization”), for the purpose of this subpart, means any institution or foundation:

(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, or is a nonprofit corporation wholly owned and controlled by a Nonprofit Organization meeting those requirements. 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).

**§ 891.808 Capital advance funds.**

(a) HUD is authorized to provide capital advance funds to expand the supply of housing for the elderly and persons with disabilities in accordance with the rules and regulations of the Section 202 and 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 Nonprofit Organization, which is general partner of a for-profit limited partnership meeting the requirements of this subpart. HUD then provides the capital advance funds to the Nonprofit Organization, which makes a non-amortizing loan to the mixed-finance owner to be repaid within 40 years at the 202 or 811 interest rate in effect on the date of the closing of the capital advance. The capital advance funds may be provided as a loan in the case of a mixed-finance project using a nine percent tax credit, and as a pass-through to the limited partnership in the case of mixed-finance projects using tax-exempt bonds with four percent tax credit. The capital ad-

vance funds will be disbursed under a disbursement escrow agreement upon HUD approval of the mixed-finance draw down.

(b) Developments built with mixed-finance funds may combine assisted supportive housing units with market rate units. However, the number of Section 202 or 811 units in the development funded with the capital advance must be not less than the number of units that could have been developed with the capital advance without the use of mixed funding sources. 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 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.