

## § 891.835

with the requirements that HUD prescribes in the mixed-finance amendment to the capital advance agreement. 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 the mixed-finance amendment to the capital advance agreement and all 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 891.105 and approved by HUD, not met from project income and attributed to Section 202 or 811 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 units;

(2) Cash flow distributions to owners; or

(3) Creation of reserves for non-202 or -811 units.

(c) HUD-approved operating costs attributable to common areas or to the development as a whole, such as groundskeeping costs and general administrative costs, may be paid from project rental assistance on a pro-rata basis according to the percentage of 202 or 811 assisted units as compared to the total number of 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.

The project design and cost standards at § 891.120, with the exception of sub-

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section (c), apply to mixed-finance developments under this subpart. Sections 891.220 and 891.315 on prohibited facilities shall apply to mixed-finance developments under this subpart.

### § 891.853 Development cost limits.

The Development cost limits for development activities, as established at § 891.140, apply to Section 202 or 811 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 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 units in the mixed-finance development and in accordance with the terms of the regulatory and operating agreement. In the event of a disposition of the mixed-finance development, or the dissolution of the owner, any Section 202 or 811 funds remaining in the replacement reserve account must remain dedicated to the Section 202 or 811 units to ensure their long-term viability, or as otherwise agreed by HUD.

(c) Subject to HUD's approval, reserves may be used to reduce the number of dwelling units in the development for the purpose of retrofitting units that are obsolete or unmarketable.

### § 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 a three-month period.

(b) Project income and tax credit equity may be used to fund the operating reserve account.

### § 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 mixed-finance amendment to the capital advance agreement, 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 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 units in the development are and continue to be comparable to unassisted units in terms of location, size, appearance, and amenities.

**§ 891.865 Sanctions.**

In the event that Section 202 or 811 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.