

## § 891.130

## 24 CFR Ch. VIII (4-1-06 Edition)

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; and

(iii) Developer (consultant) contracts.

(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.

(c) *Mixed-finance projects.* Section 891.832 of this part applies to mixed-finance projects for the elderly and for persons with disabilities.

[61 FR 11956, Mar. 22, 1996, as amended at 70 FR 54209, Sept. 13, 2005]

### § 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 Price Index. The operating cost standards shall be developed based on the number of units. However, under the Section 811 Program and for projects funded under §§ 891.655 through 891.790, the operating cost standard for group homes shall be based on the number of residents. HUD may adjust the operating cost standard applicable to an approved project to reflect such factors as differences in costs based on location within the field office jurisdiction. The operating cost standard will be used to determine the amount of the project assistance initially reserved for a project.

**§ 891.155 Other Federal requirements.**

In addition to the requirements set forth in 24 CFR part 5, the following requirements in this § 891.155 apply to the Section 202 and Section 811 Programs, as well as projects funded under §§ 891.655 through 891.790. Other requirements unique to a particular program are described in subparts B and C of this part, as applicable.

(a) *Affirmative fair housing marketing.* (1) The affirmative fair housing marketing requirements of 24 CFR part 200,

subpart M and the implementing regulations at 24 CFR part 108; and

(2) The fair housing advertising and poster guidelines at 24 CFR parts 109 and 110.

(b) *Environmental.* The National Environmental Policy Act of 1969, HUD's implementing regulations at 24 CFR part 50, including the related authorities described in 24 CFR 50.4. For the purposes of Executive Order No. 11988, Floodplain Management (42 FR 26951, 3 CFR, 1977 Comp., p. 117); as amended by Executive Order 12148 (44 FR 43239, 3 CFR, 1979 Comp., p. 412)), and implementing regulations in 24 CFR part 55, all applications for intermediate care facilities for persons with developmental disabilities shall be treated as critical actions requiring consideration of the 500-year floodplain.

(c) *Flood insurance.* The Flood Disaster Protection Act of 1973 (42 U.S.C. 4001).

(d) *Labor standards.* (1) All laborers and mechanics (other than volunteers under the conditions set out in 24 CFR part 70) employed by contractors and subcontractors in the construction (including rehabilitation) of housing with 12 or more units assisted under this part shall be paid wages at rates not less than those prevailing in the locality, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. 276a-276a-5). A group home for persons with disabilities is not covered by the labor standards.

(2) Contracts involving employment of laborers and mechanics shall be subject to the provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333).

(3) Sponsors, Owners, contractors, and subcontractors must comply with all related rules, regulations, and requirements.

(e) *Displacement, relocation, and real property acquisition—*(1) *Minimizing displacement.* Consistent with the other goals and objectives of this part, Sponsors and Owners (or Borrowers, if applicable) shall assure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.