

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 891

[Docket No. FR-4725-I-01]

RIN 2502-AH83

Mixed-Finance Development for Supportive Housing for the Elderly or Persons With Disabilities and Other Changes to 24 CFR Part 891

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule implements statutory changes that enable the use of mixed-finance and for-profit participation in the Section 202 supportive housing programs for the elderly and the Section 811 supportive housing program for persons with disabilities, as well as makes other changes to those programs. The rule uses the mixed-finance development model to leverage the capital and expertise of the private developer community to create attractive and affordable supportive housing developments for the elderly or persons with disabilities. In addition, the rule is structured so that tax credits can be used to provide additional units as well as supplement capital advance funds for the Section 202 or 811 project. The rule sets standards for the participation of limited partner investors (who may be for-profit entities) in partnership with a sole-purpose nonprofit general partner; development proposals and supporting documents; eligible fees and expenses; the use of capital advances in the mixed-finance context; and other matters relevant to mixed-finance development of these types of projects.

The public should note that the effective date of the information collection requirements in this rule is delayed, as stated in the "Effective Date" section below, pending approval of the information collections required by this rule under the Paperwork Reduction Act. HUD will publish a notice when paperwork approval for this rule is obtained.

DATES: *Comment Due Date:* January 30, 2004.

Effective Date: December 31, 2003. The portions of this rule requiring information collection are not effective until OMB approval of the information collection requirements of this rule. The sections requiring information collection are: §§ 891.820(a), 891.820(b), 891.820(c), 891.820(d), 891.820(e), 891.820(g), 891.820(h) 891.820(i),

891.820(j), 891.820(k), 891.820(l), 891.820(m), 891.820(n), and 891.825. HUD will publish a document in the **Federal Register** announcing the effective date of these sections.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. Facsimile (FAX) comments are not acceptable.

FOR FURTHER INFORMATION CONTACT: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-8000; telephone (202) 708-3000 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Legislative Background

The American Homeownership and Economic Opportunity Act of 2000, Pub. L. 106-569 (AHEO Act), amended both the Section 202 supportive housing program for the elderly and the Section 811 supportive housing program for persons with disabilities. These amendments allow the participation of for-profit limited partnerships and the use of mixed-finance development methods. Section 831 of the AHEO Act, 114 Stat. 3021, further amended section 202(k)(4) of the Housing Act of 1959, 12 U.S.C 1701q(k)(4), to add to the existing statutory definition of "private nonprofit organization" a for-profit limited partnership the sole general partner of which is a nonprofit organization meeting the requirements under 12 U.S.C. 1701q(k)(4)(A)-(C), or a nonprofit corporation wholly owned and controlled by a nonprofit organization meeting those requirements. Section 841 of the AHEO Act, 114 Stat. 3022, amended section 811(k)(6) of the National Affordable Housing Act, 42 U.S.C. 8013(k)(6), to add to the definition of "nonprofit organization" a for-profit limited partnership, the sole general partner of which is a nonprofit organization meeting the requirements of 42 U.S.C. 8013(k)(6)(A)-(D), or a nonprofit

corporation wholly owned and controlled by a nonprofit organization meeting those requirements. In both cases, the statutory requirements for the nonprofit organization include a nonprofit organizational structure, a governing board that includes the representation of the views of the community and is responsible for operating the development, and approval as to financial responsibility by HUD. (See 12 U.S.C. 1701q(k)(4) and 42 U.S.C. 8013(k)(6), as amended.) For purposes of subpart F of this rule, both types of organizations are referred to as Nonprofit Organizations.

Sections 832 and 842 of the AHEO Act, 114 Stat. 3021 and 3022, broadened the funding sources that may be used for amenities and design and construction suitable for supportive housing for the elderly or persons with disabilities. Excess amenities may not be funded with the capital advance under either program, and, if other funds are used, the cost of such amenities is not taken into account in determining the amount of Federal assistance or the rent contribution of tenants. Under the statute as amended, an owner may now treat funds from other Federal and non-federal sources as amounts not derived from a Federal grant. Sections 834 and 844 of the AHEO Act, 114 Stat. 3021-22 and 3023, respectively, amended 12 U.S.C. 1701q(j) and 42 U.S.C. 8013(j) to add a new paragraph to each statute relating to the use of project reserve accounts under the existing supportive housing for the elderly and persons with disabilities programs. Under these new sections, project reserves may be used to reduce the number of units by combining and retrofitting units that are obsolete or unmarketable. HUD approval is required to ensure that reduction of units is for appropriate purposes.

Sections 835 and 845 of the AHEO Act amended section 202(h)(1) of the Housing Act of 1959, 12 U.S.C. 1701q(h)(1), and section 811(h)(1) of the National Affordable Housing Act, 42 U.S.C. 8031(h)(1), respectively, to clarify that commercial facilities for the benefit of residents of the project and the community in which the project is located, may be located and operated in a supportive housing project for the elderly or persons with disabilities. Such commercial facilities cannot be subsidized with 202 or 811 funds.

Section 833 of the AHEO Act amended sections 202(b) and 202(h)(2) of the Housing Act of 1959, 12 U.S.C. 1701q(b) and 1701q(h)(2), to remove the limitation in the Section 202 program that existing housing be acquired only from the Resolution Trust Corporation