

(RTC). Section 202 owners may now acquire property without the need for rehabilitation for use in supportive housing from other sources. In the case of section 811, the statute does not limit acquisition to RTC properties (*see* 42 U.S.C. 8013(b)(2)).

II. This Interim Rule

This rulemaking amends 24 CFR part 891, which regulates HUD-assisted supportive housing for the elderly and persons with disabilities. Most importantly, this rule establishes a mixed-finance program under which partnerships with for-profit limited partners could participate as mixed-finance owners in the development and management of supportive housing under part 891, if they partner with a nonprofit general partner meeting the requirements of the statute and this rule. Such general partner must have been created by a sponsor that has received a Section 202 or Section 811 fund reservation. In addition, this rule makes changes to other portions of part 891 to conform to recent changes in law, and to include additional provisions applicable to the existing Section 202 and 811 programs.

This rule revises 24 CFR 891.120 and 891.405, two cross-cutting sections that govern both supportive housing for elderly persons and persons with disabilities. As to 891.120, the rule adds a new paragraph (e) to permit commercial facilities for the benefit of residents in supportive housing developments under part 891, as long as the commercial facilities are not funded with the supportive housing program funds. 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. Section 891.405 of this interim rule adds a new paragraph (d) permitting project reserves to be used to reduce the number of units for the purpose of retrofitting obsolete or unmarketable units; for example, two efficiencies (0 bedroom) could be combined to form a one-bedroom unit. Retrofitting must be consistent with the applicable accessibility requirements of Section 504 of the Rehabilitation Act of 1973. HUD approval would be required for any such change. The definition of "replacement reserve account" in 891.105 is revised to be consistent with the new paragraph.

This rule adds material regarding the developer's fee in the context of this program in § 891.815. This section establishes the appropriate amount of the developer's fee and the eligible and ineligible uses of the fee. Previously,

this material was found in handbook publications (*see* Notice H 96–102, as extended by Notice H 03–08). Eligible uses of the developer's fee are both to fund eligible costs and to contribute to the general partner's share of the partnership assets. The total fee is capped at the amount stated in § 891.815(a), and the amount that may be taken out of the capital advance to pay the developer's fee is capped in § 891.815(b).

The rule also revises the definition of "acquisition" in 24 CFR 891.205 and 891.305. Since the RTC is no longer in existence, the rule removes the regulatory requirement that acquisition of properties for the supportive housing program under part 891 be purchased from the RTC. The rule also makes § 891.205 parallel to § 891.305 by restricting capital advances for developments owned and operated by the sponsor, except in connection with rehabilitation. Capital advance funds may not be provided to refinance a federally assisted or insured project.

The rule creates a new subpart F to 24 CFR part 891, to state the rules governing the mixed-finance program for supportive housing for the elderly and persons with disabilities. The new subpart states the basic rules for participation in the program. Except where specifically stated otherwise, this subpart includes by cross-reference the basic regulations of the Section 202 and 811 supportive housing programs and adds additional requirements related to mixed-finance developments.

Sections 891.800, 891.802, and 891.805 state the purpose, applicability of other provisions, and definitions, respectively. The overall purpose of the legislation and rule is to create more supportive housing for elderly persons and persons with disabilities. The means of doing so is to bring in for-profit entities, in partnership with nonprofit general partners, thus leveraging private capital for developing additional units. In turn, limited partnerships can apply for and utilize Federal low-income housing tax credits, assuming that their developments meet all the requirements of IRS rules for tax credits. The Department has determined that all mixed-finance developments must meet the civil rights nondiscrimination statutes and all of the implementing regulations and Section 504 requirements and that these requirements apply to all of the development's units regardless of funding source. The Civil Rights Restoration Act of 1991 amended the nondiscrimination requirements of Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of

1973 to state that their nondiscrimination provisions applied to "all of the operations of an entire corporation, partnership, or other private organization or entire sole proprietorship if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or which is principally engaged in the business of providing housing."

This interim rule, in section 891.805, creates additional definitions pertinent to the mixed-finance supportive housing program only. These include a definition of a "mixed-finance owner," which must include a single-purpose Nonprofit Organization (in the case of supportive housing for the elderly, a private Nonprofit Organization, and, in the case of housing for the disabled, a Nonprofit Organization with a section 501(c)(3) IRS tax exemption), which must be the sole general partner. For-profit limited partners may be included where the Nonprofit Organization is the sole general partner. The "Single-Purpose Nonprofit Organization" (for 811 projects) or "Single-Purpose Private Nonprofit Organization" (for 202 projects) also must meet the requirements of the definition, which includes the statutory requirements that the organization have the appropriate tax-exempt status; that its net earnings do not go to profit any particular individual; that the governing board includes representation of the views of the community and is responsible for the operation of the part 891 supportive housing; and that it is approved as to financial responsibility by HUD. In addition, the Nonprofit Organization meeting these requirements can be the general partner of a partnership with for-profit limited partners, as long as it owns at least one-hundredth of one percent of the partnership assets, or is a nonprofit corporation wholly owned by an organization meeting those requirements. The Nonprofit Organization must be formed by a sponsor receiving a Section 202 or 811 fund reservation.

Sections 891.808 and 891.810 address capital advance funds and project rental assistance in the mixed-finance context. Capital advance funds are provided as in accordance with the regular Section 202 and 811 programs, except that the mechanism for providing the funding is somewhat more complex in a mixed-finance arrangement. HUD will initially provide the fund reservation to the project sponsor (the term is defined in sections 891.205 and 891.305), which will then transfer the fund reservation to the single-purpose Nonprofit Organization. HUD then will provide the capital advance funds to the