

Nonprofit Organization, which will deposit the funds in a disbursement escrow account to be loaned to the mixed-finance owner only upon HUD approval of the drawdown. The loan will be non-amortizing and at the interest rate for the 202 or 811 program in effect at the time of the closing of the capital advance, and is not repayable if the project remains available for very low income elderly or disabled persons for 40 years. Finally, paragraphs (b) and (c) of § 891.808 ensure that the proper number of units are built with the capital advance funds, and that the capital advance funds are not used improperly in the mixed-finance context (for example, to support the development of non-202 or -811 units).

Project rental assistance is covered in section 891.810 and is essentially the same as for the 202 and 811 programs generally, and is defined in section 891.105. Project rental assistance can only be paid for 202 and 811 units. Any necessary funds for the non-202 or -811 units must be obtained from another source.

Section 891.813 deals with the eligible uses of assistance under this proposed subpart. Paragraph (a) reiterates the statutory standards. Paragraph (b) deals with excess amenities. Such amenities may not be funded with capital advance funds. The main concern here is that amenities be provided in a manner that makes them available to all residents, assisted and unassisted alike. To that end, the amenities cannot be made mandatory for the assisted residents, although they are permitted to participate in or use the amenities voluntarily. Any fee charged for the amenities must be reasonable, so that assisted residents who want to do so can use the amenities.

Section 891.815 includes material on developer's fees. This section sets limitations on the total developer's fee and the amount of the capital advance that may be paid toward the developer's fee. In addition, the section provides that the developer's fee may be used for the general partner's contribution to the partnership assets, as well as listing other eligible and ineligible uses for the developer's fee.

Section 891.818 states the contents of the firm commitment application for 202 or 811 units in mixed-finance projects. The application requirements in this interim rule closely follow the guidelines on firm commitment applications (*see* Notice H 96–102, as extended by Notice H 03–08). In the mixed-finance context, the partnership structure involves additional parties in the application process, such as the

general partner and the for-profit limited partners.

Additionally, in the mixed-finance program, there will be a mixed-finance proposal addressing the total mixed-finance project, including non-202 or -811 units and any commercial space, submitted at the time of the application for the firm commitment of capital advance funds under § 891.820. The mixed-finance proposal must include a description of the proposed project; financing documents, including any firm commitments; a statement of sources and uses of funds; site information; construction cost estimates; a systems life cycle analysis; any relocation plan, if the development will cause displacement; the relationship among participating parties; a demonstration of the operating feasibility of the project for the entire 40-year period of the very-low income restriction on the assisted units; a market analysis; a summary of the proposed management and occupancy policies; a statement regarding existing facilities; any additional environmental information HUD deems necessary in completing its environmental review; and required certifications and assurances.

HUD will review the firm commitment application and mixed-finance proposal under the standards provided in § 891.823. This section requires an initial review for technical deficiencies with an opportunity to supply any missing materials by a date certain, followed by firm commitment and proposal technical processing. The purpose of technical processing is to determine that the project is financially feasible, that the supportive housing funds provided are used in an appropriate manner, that the mixed-finance owner has the legal capacity and experience to develop and operate the project, that the proper zoning is in place, that there are restrictive covenants running with the land guaranteeing that the assisted units will remain available to very-low income elderly persons or very-low income persons with disabilities for a 40-year period, and that other legal and regulatory requirements pertaining to the program are in fact met by the project as proposed in the firm commitment application/mixed-finance proposal.

Once the firm commitment application/mixed-finance proposal is approved, but prior to HUD approval of the release of capital advance funds, § 891.825 requires the sponsor to submit for HUD approval evidentiary materials consisting of the actual documents to support the statements and

certifications in the firm commitment application/mixed-finance proposal and other required documents. For example, all the organizational documents of the mixed-finance owner and the general partner, the actual covenants running with the land or deed restriction guaranteeing the availability of the supportive housing units to very-low income eligible persons for 40 years, any zoning documents, any updates to financing documents submitted as part of the proposal, the management contract, evidence of site control, and various required certifications. This section also makes clear that no third-party beneficiary, principal-agent, or other legal relationship (beyond the duty to fulfill the explicit contractual and regulatory requirements) is created with HUD by any of the agreements entered into by the parties to the mixed-finance transaction.

Section 891.830 regulates the drawdown of capital advance funds after all HUD approvals are obtained. Capital advance funds may only be drawn down pursuant to a HUD-approved drawdown schedule, and only in the appropriate amount pro-rated according to the development costs of only the supportive housing units. Each drawdown of funds constitutes a certification by the mixed-finance owner and Nonprofit Organization that all representations and warranties they have made are true, valid and in full force and effect, and all conditions precedent to the drawdown have been satisfied. Such funds may only be used for eligible costs.

Section 891.833 requires HUD to monitor and review all phases of construction and operation to ensure continued compliance with the mixed-finance amendment to the capital advance agreement and all other contractual, legal, and regulatory requirements. Notwithstanding HUD's monitoring role, compliance ultimately is the responsibility of the mixed-finance owner and sponsor.

Section 891.835 states the eligible and ineligible uses of the project rental assistance provided once the project is operating. Importantly for the mixed-finance context, eligible operating costs attributable to the project as a whole, such as for common areas, may be paid from project rental assistance on a pro rata basis, based on the ratio of 202 or 811 units to the total units in the project.

Sections 891.840–891.853 of this interim rule make, respectively, site and neighborhood standards, environmental review, Uniform Relocation Act requirements, design and cost standards (except for the paragraph on amenities,