

upon HUD approval of the mixed-finance draw down.

(b) Developments built with mixed-finance funds may combine assisted supportive housing units with market rate units. However, the number of Section 202 or 811 units in the development funded with the capital advance must be not less than the number of units that could have been developed with the capital advance without the use of mixed funding sources. In the case of a Section 811 mixed-finance project, the additional units cannot cause the project to exceed the applicable Section 811 project size limit if they will also house persons with disabilities.

§ 891.809 Limitations on capital advance funds.

Capital advances are not available in connection with:

(a) Acquisition of facilities currently owned and operated by the sponsor as housing for the elderly, except with rehabilitation as defined in 24 CFR 891.105;

(b) The financing or refinancing of federally assisted or insured projects;

(c) Facilities currently owned and operated by the sponsor as housing for persons with disabilities, except with rehabilitation as defined in 24 CFR 891.105; or

(d) Units in Section 202 direct loan projects previously refinanced under the provisions of Section 811 of the American Homeownership and Economic Opportunity Act of 2000, 12 U.S.C. 1701q *note*.

§ 891.810 Project rental assistance.

Project Rental Assistance is defined in § 891.105. Project Rental Assistance is provided for operating costs, not covered by tenant contributions, attributable to the number of units funded by capital advances under the Section 202 and 811 supportive housing programs, subject to the provisions of 24 CFR 891.445. The sponsor of a mixed-finance development must obtain the necessary funds from a source other than project rental assistance funds for operating costs related to non-202 or -811 units.

§ 891.813 Eligible uses for assistance provided under this subpart.

(a) Assistance under this subpart may be used to finance the construction, reconstruction, or rehabilitation of a structure or a portion of a structure; or the acquisition of a structure to be used as supportive housing for the elderly; or the acquisition of housing to be used as supportive housing for persons with disabilities. Such assistance may also

cover the cost of real property acquisition, site improvement, conversion, demolition, relocation, and other expenses that the Secretary determines are necessary to expand the supply of supportive housing for the elderly and persons with disabilities.

(b) Assistance under this subpart may not be used for excess amenities, as stated in 24 CFR 891.120(c). Such amenities may be included in a mixed-finance development only if:

(1) The amenities are not financed with funds provided under the section 202 or 811 program;

(2) The amenities are not maintained and operated with section 202 or 811 funds;

(3) The amenities are designed with appropriate safeguards for the residents' health and safety; and

(4) The assisted residents are not required to use, participate in, or pay a fee for the use or maintenance of the amenities, although they are permitted to do so voluntarily. Any fee charged for the use, maintenance, or access to amenities by residents must be reasonable and affordable for all residents of the development.

(c) Notwithstanding any other provision of this section, §§ 891.220 and 891.315 on "prohibited facilities" apply to mixed-finance projects containing units assisted under section 202 or 811.

§ 891.815 Developer's fee.

(a) *Developer's fee cap.* No developer's fee shall be paid in excess of nine percent of the total project replacement costs.

(b) *Use of capital advance towards developer's fee.* A maximum of eight percent of the capital advance may be used towards payment of the developer's fee.

(c) *Eligible and ineligible uses of developer's fee.* (1) a developer's fee may be used to pay costs associated with developing the mixed-finance project, including, but not limited to:

(A) Reasonable profit and overhead of up to six percent of the total construction cost;

(B) The costs of necessary change orders approved by HUD prior to final project completion;

(C) Housing consultant services;

(D) Organizational expenses;

(E) The owner's cash requirement prior to initial closing, except as stated in paragraph (c)(2) of this section;

(F) Increased taxes and insurance caused by unavoidable delays in construction;

(G) Increases in otherwise eligible non-construction line items;

(H) Environmental studies;

(I) Appraisal costs;

(J) Capital expenditures, such as major moveable furnishings and equipment, including, but not limited to, office and maintenance equipment and furnishings for the public areas;

(K) Costs directly related to the rent-up of the project, such as advertisement;

(L) Accruals for taxes and insurance after completion of construction if current income from the project is insufficient to meet such accruals;

(M) Project contingency items for which two percent of the developer's fee is withheld at HUD approval of the capital advance; and

(N) Cost of obtaining a project cost estimate.

(2) A developer's fee may not be used for the following:

(A) Excess amenities;

(B) Fees to the architect and attorney above those contractually agreed to;

(C) Non-major equipment and furnishings;

(D) Items with short life cycles, such as office and maintenance supplies;

(E) Furnishings within the residential units; and

(F) Motor vehicles.

(d) *Unused developer's fee.* Amounts set aside from the 202 or 811 capital advance funds for the developer's fee that remain unused after the completion of construction are deposited in the project's replacement reserve account at project completion.

§ 891.818 Firm commitment application.

(a) *New construction.* The mixed-finance owner and the Nonprofit Organization shall submit an application for a firm commitment for capital advance funding. The application shall consist of the required application form HUD 92013 and additional materials, including:

(1) Form HUD 92013-Supp, and any other supplementary forms or attachments to the application form that HUD requires;

(2) Organizational documents of the mixed-finance owner, including the partnership documents and organizational documents of the Nonprofit Organization that will receive the capital advance, together with an incumbency certificate listing all duly qualified and sitting officers and directors by title and the beginning and ending dates of each person's term;

(3) The name and address of the mixed-finance owner and the Nonprofit Organization, and the name, title, address, and telephone number of the respective officers to whom communications should be addressed;

(4) A balance sheet showing that the mixed-finance owner is adequately capitalized;