

processing, HUD will evaluate the proposal to determine:

(1) Whether the mixed-finance owner has the legal capacity to enter into all necessary contracts and agreements to complete the development;

(2) Whether the proposed sources and uses of funds are eligible and reasonable, and show an appropriate proration of supportive housing funds and funds from other sources, and whether the project, including the market-rate units, is financially feasible and is projected to remain feasible for the 40-year term of the very low-income use restrictions, given the available financing structure, firm financing commitments, and market for the project;

(3) Whether the mixed-finance owner has the resources and capacity to develop and operate the project for the required time period;

(4) Whether the HUD-assisted units are comparable in size, location, appearance, and design to any units without HUD assistance;

(5) Whether the mixed-finance owner will develop and operate the Section 202 or 811 assisted units in accordance with all HUD program requirements, including program regulations governing those units;

(6) Whether the documents include the required covenants and use restrictions, which must be recorded prior to release of HUD funds;

(7) Whether the mixed-finance owner has obtained all necessary State, local, and Federal approvals, zoning changes, or variances;

(8) Whether the design of the development meets applicable accessibility requirements;

(9) Whether the supportive services to be provided for the Section 202 or 811 units are at least equal to the services the sponsor proposed to provide in its 202 or 811 application for funding;

(10) Whether the assistance to be provided under this part, taking into account all assistance to be received by the project, is no more than necessary to provide affordable housing, as required by section 102(d) of the Department of Housing and Urban Development Reform Act of 1989, 42 U.S.C. 3545(d);

(11) Whether any other processing criteria that HUD may prescribe from time to time are satisfied;

(12) Whether the mixed-finance owner has certified to compliance:

(i) With all applicable Federal, State, or local civil rights laws and regulations;

(ii) With all environmental regulations;

(iii) With applicable wage rates determined in accordance with the

Davis-Bacon Act and with related labor standards.

§ 891.825 Evidentiary materials.

Any updates or amendments to materials submitted at the firm commitment/mixed-finance proposal stage must be submitted as part of the evidentiary materials, even if not specifically requested.

(a) *General.* Except as otherwise expressly provided, a mixed-finance owner is required to submit for HUD review and approval prior to HUD's approval of the release or drawdown of capital advance funds all evidentiary materials required by HUD. Upon HUD approval of evidentiary materials, the evidentiary materials will be executed and recorded in the order required by HUD, along with other required documents. All the executed documents for the mixed-finance project will be made available for HUD's final review before drawdown of funds. The evidentiary materials must include:

(1) *Organizational documents.* Updated organizational documents of the mixed-finance owner, nonprofit organization, and all participating parties in the partnership showing that:

(i) One of the purposes of the mixed-finance owner is the promotion of the welfare of elderly persons or persons with disabilities;

(ii) There is no prohibited conflict of interest or prohibited identity of interest involving the sponsor, the nonprofit organization, or the mixed-finance owner, and the mixed-finance owner is not controlled by or under the direction of persons or firms seeking to derive profit or gain from the mixed-finance owner. Individual conflict of interest and identity of interest and disclosure certifications must be submitted by all directors, officers, shareholders, trustees, and agents of the mixed-finance owner and the nonprofit organization and all development team members; and

(iii) A partnership agreement has been entered into between the mixed-finance owner, its general partner, and any other participating entities that establishes the relationship of the partners with respect to implementation of the proposal.

(2) *Amendment to capital advance.* A mixed-finance amendment to the capital advance agreement.

(3) *Deed; declaration of covenants or deed restriction.* A deed or ground lease to the mixed-finance owner with a declaration of covenants or deed restriction, and a pro forma title policy. The first recorded document must be a covenant running with the land, deed restriction, Use Agreement, or other document of public record in the form

prescribed by HUD that will assure to HUD's satisfaction that the HUD-assisted units will be available for use by eligible very low-income elderly or disabled families in accordance with all applicable requirements for no less than 40 years, and that any party that subsequently acquires the mixed-finance development will be fully bound under these covenants and deed restrictions;

(4) *Zoning.* Evidence that the zoning of the site permits construction of the mixed-finance development;

(5) *Site control.* Evidence that the sponsor, nonprofit organization, or mixed-finance owner has control of the site for such period of time as may be required by HUD, and a title policy or report evidencing that the site is free of any encumbrances, restrictions, or reverts that could adversely affect use of the site for the proposed project;

(6) *Development agreement.* Any development agreement or agreements, or other document showing the proposed development schedule; the respective responsibilities of each party for each development phase; the expected costs and financing for those costs; the allocation of risk of loss as between or among the parties; and guarantees of completion, insurance, and bonding requirements as applicable to regular 202 and 811 projects;

(7) *Regulatory agreement.* A regulatory or operating agreement that provides binding assurance that operation of the 202 or 811 units will be in accordance with the applicable Section 202 or 811 requirements;

(8) *Management agreement.* Any agreement relating to management of the Section 202 or 811 development by an entity other than the mixed-finance owner or the nonprofit organization, requiring that the management of the project will be in accordance with Section 202 or 811 requirements;

(9) *Financing documents.* Any updates to the financing and firm commitment documents required under the mixed-Finance Proposal;

(10) *Federal subsidies.* A description of the amount and source of any housing assistance that the project will receive from a state, unit of local government, or the Federal government, as required by section 102(d) of the HUD Reform Act of 1989, 42 U.S.C. 3545(d);

(11) *Certification of compliance with approved proposal.* The mixed-finance owner's certification that it will develop and operate the number of 202 or 811 units approved by HUD, in the configuration and with the bedroom sizes approved by HUD, within the approved cost limits; and comply with