



May 29, 2012

Regulations Division  
Office of General Counsel  
Department of Housing and Urban Development  
451 7<sup>th</sup> Street, SW  
Washington, DC 20410

Re: Docket No. FR-5167-P-01  
Streamlining Requirements Governing the Use of Funding for Supportive Housing for the  
Elderly and Persons with Disabilities Programs

Ladies and Gentlemen:

The five undersigned organizations, which are all, directly or through their members, deeply involved in providing affordable housing for the elderly, appreciate the opportunity to comment on the proposed rule published in the *Federal Register* on March 28, 2012. HUD has requested comments on its proposed changes in 24 CFR Part 891, relating to federal funding of capital projects for the elderly and persons with disabilities under the Section 202 and 811 programs.

First, we applaud HUD for proposing several much-needed improvements in the Part 891 Regulations. Perhaps the most significant of these are the revisions of 24CFR§ 891.830, relating to drawdown of capital grant funds in mixed finance situations. The greater flexibility in the scheduling of drawdown of non-capital advance funds will be very helpful. Even more important, the new ability to apply Section 202 Capital Advance funds to repay bridge financing solves a very serious problem with the existing regulations, which conflict with Internal Revenue Service requirements, and have required virtually every mixed-finance project utilizing LIHTC equity to apply for and obtain a HUD waiver in order to utilize tax-exempt bond proceeds in the manner required by the Internal Revenue Code. The proposed change will save substantial time and expense, and reduce uncertainty, in the development process.

In another welcome change, HUD has recognized that the complexity of assembling all the resources needed to construct a Section 202 or 811 project makes it very difficult to meet the current 18-month funding reservation deadlines contained in §891.165; this situation has resulted in a very high frequency of requests to HUD for time extensions. Creating and processing extension requests is not a good use of time for either developer staff or HUD staff, and the

extension of the basic term to 24 months (with the possibility of extensions to 36 months) is much more realistic.

We also applaud the proposed amendment to 24 CFR §891.130 to establish that the sale of land between related parties is not necessarily deemed to constitute a conflict of interest. This change will be particularly helpful because very often the land for a new project is most efficiently obtained by purchasing excess real estate from an affiliated nonprofit entity.

Another helpful change is the proposed modification in 24 CFR 891.120(c) to remove the ban on individual unit balconies and decks, trash compactors, washers and dryers in units funded with a HUD capital grant. As HUD has recognized, in today's market these amenities cannot reasonably be regarded as excessive, and instead are essential to assure long-term marketability and economic viability of these properties.

The clarification in revised 24 CFR §891.813 that, in mixed finance projects, non-§202 funds can be used for health-related facilities such as infirmaries and nursing stations is also a helpful step, and furthers HUD's goal of assuring that Section 202 projects can serve frail seniors. As next steps in recognizing the needs of the market and of the clientele, and in line with HUD's evolving policies, we urge HUD to become more open to allowing §202 costs of construction to cover designs in accordance with "universal design" guidelines, to assure that seniors can continue to function comfortably in their homes as they age. HUD should also be more open to allowing two-bedroom units to be financed by the Section 202 program, to accommodate low-income frail residents who require live-in caretakers.

With respect to definitions:

- The proposed definition of "substantial rehabilitation" to be incorporated into 24 CFR §891.105 is very long, somewhat confusing, and is inconsistent with the widely used and more streamlined definition contained in Section 5.12 of the Multifamily Accelerated Processing (MAP) Guide. In the Section 202 context, HUD has recently used the MAP Guide definition of substantial rehabilitation in Notice H2012-8, relating to the refinancing of Section 202 direct loans. It is not clear that a definition is actually needed in 24 CFR Part 891, given that the term "substantial rehabilitation" is used only in the Subparts of Part 891, relating to the old Direct Loan program, which is no longer being funded. However, if a definition of "substantial rehabilitation" is needed for current Section 202/811 construction, we would encourage a consistent use throughout all HUD programs of the definition currently contained in the MAP Guide.
- As suggested by the Federal Register notice, we agree that the long-standing \$6500/unit minimum for "substantial rehabilitation" needs to be updated periodically for inflation.
- If the MAP Guide definition is not adopted for this regulation, we would also suggest that the concept of rehabilitating "to a useful life of 55 years" is disproportionately high for a \$6500 threshold. We strongly believe that any required useful life should not exceed the term of the capital advance. HUD should also clarify the date at which the useful life period begins. Likewise, HUD should state whether the "useful life" requirement

pertains only to the \$6500 per dwelling unit standard, or also applies to the 15% of estimated replacement cost standard.

- We suggest that the definition of "single asset entity" be revised to read: "*Single-asset entity*, for the purpose of this subpart, means an entity in which the mortgaged property is the only asset of the owner, and the entity is the only owner of the property."
- The preamble to the proposed rule creates an area of potential ambiguity regarding another definition, stating: "An additional change made by the Section 202 Act of 2010 is that the definition will now include for-profit limited partnerships of which the sole general partner is a for-profit corporation or a limited liability company that is wholly owned and controlled by one or more nonprofit organizations." It is possible to interpret this sentence as saying that any for-profit corporation (and not just a corporation controlled by nonprofit entities) can be the general partner of a mixed-finance owner. While the regulation itself is clear on this point, it would be helpful if the preamble to the final rule eliminates the possible ambiguity.

In summary, we commend HUD for making several important improvements in the Part 891 rules, and we thank you for the opportunity to comment on these important issues.

Sincerely,

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