

Title 24: Housing and Urban Development

PART 891—SUPPORTIVE HOUSING FOR THE ELDERLY AND PERSONS WITH DISABILITIES

§ 891.100 Purpose and policy.

(a) *Purpose.* The Section 202 Program of Supportive Housing for the Elderly and the Section 811 Program of Supportive Housing for Persons with Disabilities provide Federal capital advances and project rental assistance under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) (section 202) and section 811 of the National Affordable Housing Act (42 U.S.C. 8013) (section 811), respectively, for housing projects serving elderly households and persons with disabilities. Section 202 projects shall provide a range of services that are tailored to the needs of the residents. Owners of Section 811 projects shall ensure that the residents are provided with any necessary supportive services that address their individual needs.

(b) *General policy* —(1) *Supportive Housing for the Elderly.* A capital advance and contract for project rental assistance provided under this program shall be used for the purposes described in Section 202 (12 U.S.C. 1701q(b)).

(2) *Supportive Housing for Persons with Disabilities.* A capital advance and contract for project rental assistance provided under this program shall be used for the purposes described in Section 811 (42 U.S.C. 8013(b)).

(c) *Use of capital advance funds.* No part of the funds reserved may be transferred by the Sponsor, except to the Owner caused to be formed by the Sponsor. This action must be accomplished prior to issuance of a commitment for capital advance funding.

(d) *Amendments.* Subject to the availability of funds, HUD may amend the amount of an approved capital advance only after initial closing has occurred.

§ 891.105 Definitions.

The following definitions apply, as appropriate, throughout this part. Other terms with definitions unique to the particular program are defined in §§891.205, 891.305, and 891.505, as applicable.

Adjusted income as defined in part 5, subpart F of subtitle A of this title.

Affiliated entities means entities that the field office determines to be related to each other in such a manner that it is appropriate to treat them as a single entity. Such relationship shall include any identity of interest among such entities or their principals and the use by any otherwise unaffiliated entities of a single Sponsor or of Sponsors (or of a single Borrower or of Borrowers, as applicable) that have any identity of interest themselves or their principals.

Annual income as defined in part 5, subpart F of subtitle A of this title. In the case of an individual residing in an intermediate care facility for the developmentally disabled that is assisted under title XIX of the Social Security Act and this part, the annual income of the individual shall exclude protected personal income as provided under that Act. For purposes of determining the total tenant payment, the income of such individuals shall be imputed to be the amount that the household would receive if assisted under title XVI of the Social Security Act.

Household (eligible household) means an elderly or disabled household (as defined in §§891.205 or 891.305, respectively), as applicable, that meets the project occupancy requirements approved by HUD and, if the household occupies an assisted unit, meets the very low-income requirements described in §813.102 of this chapter, as modified by the definition of annual income in this section.

Housing and related facilities means rental housing structures constructed, rehabilitated, or acquired as permanent residences for use by elderly or disabled households, as applicable. The term includes necessary community space. Except for intermediate care facilities for individuals with developmental disabilities, this term does not include nursing homes, hospitals, intermediate care facilities, or transitional care facilities. For the Loans for the Elderly and Persons with Disabilities Program, see §891.505.

Low-income families shall have the same meaning provided in section 3(b)(2) of the United States Housing Act of 1937 (42 U.S.C. 1437a).

National Sponsor means a Sponsor that has one or more Section 202 or one or more Section 811 project(s) under reservation, construction, or management in two or more different HUD geographical regions.

Operating costs means HUD-approved expenses related to the provision of housing and includes:

- (1) Administrative expenses, including salary and management expenses related to the provision of shelter and, in the case of the Section 202 Program, the coordination of services;
- (2) Maintenance expenses, including routine and minor repairs and groundskeeping;
- (3) Security expenses;
- (4) Utilities expenses, including gas, oil, electricity, water, sewer, trash removal, and extermination services. The term “*operating costs*” excludes telephone services for households;
- (5) Taxes and insurance;
- (6) Allowances for reserves; and
- (7) Allowances for services (in the Section 202 Program only).

Project rental assistance contract (PRAC) means the contract entered into by the Owner and HUD setting forth the rights and duties of the parties with respect to the project and the payments under the PRAC.

Project rental assistance payment means the payment made by HUD to the Owner for assisted units as provided in the PRAC. The payment is the difference between the total tenant payment and the HUD-approved per unit operating expenses except for expenses related to items not eligible under design and cost provisions. An additional payment is made to a household occupying an assisted unit when the utility allowance is greater than the total tenant payment. A project rental assistance payment, known as a “vacancy payment,” may be made to the Owner when an assisted unit is vacant, in accordance with the terms of the PRAC.

Rehabilitation means the improvement of the condition of a property from deteriorated or substandard to good condition. Rehabilitation may vary in degree from the gutting and extensive reconstruction to the cure of substantial accumulation of deferred maintenance. Cosmetic improvements alone do not qualify as rehabilitation under this definition. Rehabilitation may also include renovation, alteration, or remodeling for the conversion or adaptation of structurally sound property to the design and condition required for use under this part, or the repair or replacement of major building systems or components in danger of failure. Improvement of an existing structure must require 15 percent or more of the estimated development cost to rehabilitate the project to a useful life of 55 years.

Replacement reserve account means a project account into which funds are deposited, which may be used only with the approval of the Secretary for repairs, replacement, capital improvements to the section 202 or section 811 units, and retrofitting to reduce the number of units as provided by 24 CFR 891.405(d).

Section 202 means section 202 of the Housing Act of 1959 (12 U.S.C. 1701q), as amended, or the Supportive Housing for the Elderly Program authorized by that section.

Section 811 means section 811 of the National Affordable Housing Act (42 U.S.C. 8013), as amended, or the Supportive Housing for Persons with Disabilities Program authorized by that section.

Start-up expenses mean necessary costs (to plan a Section 202 or Section 811 project, as applicable) incurred by the Sponsor or Owner prior to initial closing.

Tenant payment to Owner equals total tenant payment less utility allowance, if any.

Total tenant payment means the monthly amount defined in, and determined in accordance with part 5, subpart F of subtitle A of this title.

Utility allowance is defined in part 5, subpart F of this subtitle A of this title and is determined or approved by HUD.

Very low-income families shall have the same meaning provided in section 3(b)(2) of the United States Housing Act of 1937 (42 U.S.C. 1437a).

[61 FR 11956, Mar. 22, 1996, as amended at 66 FR 6225, Jan. 19, 2001; 66 FR 8175, Jan. 30, 2001; 68 FR 67320, Dec. 1, 2003; 70 FR 54209, Sept. 13, 2005]

§ 891.110 Allocation of authority.

In accordance with 24 CFR part 791, the Assistant Secretary will separately allocate the amounts available for capital advances for the development of housing for elderly households and for disabled households, less amounts set aside by Congress for specific types of projects, and for amendments of fund reservations made in prior years, for technical assistance, and for other contracted services.

§ 891.115 Notice of funding availability.

Following an allocation of authority under §891.110, HUD shall publish a separate Notice of Funding Availability (NOFA) for the Section 202 Program of Supportive Housing for the Elderly and for the Section 811 Program of Supportive Housing for Persons with Disabilities in the Federal Register. The NOFAs will contain specific information on how and when to apply for the available capital advance authority, the contents of the application, and the selection process.

§ 891.120 Project design and cost standards.

In addition to the special project standards described in §§891.210 and 891.310, as applicable, the following standards apply:

(a) *Property standards.* Projects under this part must comply with HUD Minimum Property Standards, unless otherwise indicated in this part.

(b) *Accessibility requirements.* Projects under this part must comply with the Uniform Federal Accessibility Standards (See 24 CFR 40.7 for availability), section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations (24 CFR part 8), and for new construction multifamily housing projects, the design and construction requirements of the Fair Housing Act and HUD's implementing regulations at 24 CFR part 100. For the Section 811 Program of Supportive Housing for Persons with Disabilities, see additional accessibility requirements in §891.310(b).

(c) *Restrictions on amenities .* Projects must be modest in design. In individual units in supportive housing for the elderly and in independent living facilities for persons with disabilities, amenities not eligible for HUD funding include individual unit balconies and decks, atriums, bowling alleys, swimming pools, saunas, Jacuzzis, trash compactors, washers and dryers. However, HUD funding is eligible to pay for washers and dryers in group homes for persons with disabilities. Sponsors may include certain excess amenities, but must pay for them from sources other than the section 202 or 811 capital advance. They must also pay for the continuing operating costs associated with any excess amenities from sources other than the section 202 or 811 project rental assistance contract.

(d) *Smoke detectors.* After October 30, 1992, each dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit.

(e) Projects under this part may have on their sites commercial facilities for the benefit of residents of the project and of the community in which the project is located, so long as the commercial facilities are not subsidized with funding under the supportive housing programs for the elderly or persons with disabilities. 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.

[61 FR 11956, Mar. 22, 1996, as amended at 68 FR 67320, Dec. 1, 2003; 73 FR 29985, May 23, 2008]

§ 891.125 Site and neighborhood standards.

All sites must meet the following site and neighborhood requirements:

(a) The site must be adequate in size, exposure, and contour to accommodate the number and type of units proposed, and adequate utilities (water, sewer, gas, and electricity) and streets must be available to service the site.

(b) The site and neighborhood must be suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964, the Fair Housing Act, Executive Order 11063 (27 FR 11527, 3 CFR, 1958–1963 Comp., p. 652); as amended by Executive Order 12259, (46 FR 1253, 3 CFR, 1980 Comp., p. 307)); section 504 of the Rehabilitation Act of 1973, and implementing HUD regulations.

(c) New construction sites must meet the following site and neighborhood requirements:

(1) The site must not be located in an area of minority concentration (or minority elderly concentration under the Section 202 Program) except as permitted under paragraph (c)(2) of this section, and must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to nonminority residents (or minority elderly to nonminority elderly residents, under the Section 202 Program) in the area.

(2) A project may be located in an area of minority concentration (or minority elderly concentration, under the Section 202 Program) only if:

(i) Sufficient, comparable opportunities exist for housing for minority elderly households or minority disabled households, as applicable (or minority families, for projects funded under §§891.655 through 891.790), in the income range to be served by the proposed project, outside areas of minority concentration (see paragraph (c)(3) of this section for further guidance on this criterion); or

(ii) The project is necessary to meet overriding housing needs that cannot be met in that housing market area (see paragraph (c)(4) of this section for further guidance on this criterion).

(3)(i) *Sufficient* does not require that in every locality there be an equal number of assisted units within and outside of areas of minority concentration. Rather, application of this standard should produce a reasonable distribution of assisted units each year which over a period of several years will approach an appropriate balance of housing opportunities within and outside areas of minority concentration. An appropriate balance in any jurisdiction must be determined in light of local conditions affecting the range of housing choices available for very low-income minority elderly or disabled households, as applicable (or low-income minority families, for projects funded under §§891.655 through 891.790), and in relation to the racial mix of the locality's population.

(ii) Units may be considered to be *comparable opportunities* if they have the same household type (elderly or disabled, as applicable) and tenure type (owner/renter); require approximately the same total tenant payment; serve the same income group; are located in the same housing market; and are in standard condition.

(iii) Application of this sufficient, comparable opportunities standard involves assessing the overall impact of HUD-assisted housing on the availability of housing choices for very low-income minority elderly or disabled households, as applicable (or low-income minority families, for projects funded under §§891.655 through 891.790), in and outside areas of minority concentration, and must take into account the extent to which the following factors are present, along with any other factor relevant to housing choice:

(A) A significant number of assisted housing units are available outside areas of minority concentration.

(B) There is significant integration of assisted housing projects constructed or rehabilitated in the past ten years, relative to the racial mix of the eligible population.

(C) There are racially integrated neighborhoods in the locality.

(D) Programs are operated by the locality to assist minority elderly or disabled households, as applicable (or minority families, for projects funded under §§891.655 through 891.790), that wish to find housing outside areas of minority concentration.

(E) Minority elderly or disabled households, as applicable (or minority families, for projects funded under §§891.655 through 891.790), have benefitted from local activities (e.g., acquisition and write-down of sites, tax relief programs for homeowners, acquisitions of units for use as assisted housing units) undertaken to expand choice for minority households (or families) outside of areas of minority concentration.

(F) A significant proportion of minority elderly or disabled households, as applicable (or minority households, for projects funded under §§891.655 through 891.790), have been successful in finding units in nonminority areas under the Section 8 Certificate and Housing Voucher programs.

(G) Comparable housing opportunities have been made available outside areas of minority concentration through other programs.

(4) Application of the *overriding housing needs* criterion, for example, permits approval of sites that are an integral part of an overall local strategy for the preservation or restoration of the immediate neighborhood and of sites in a neighborhood experiencing significant private investment that is demonstrably changing the economic character of the area (a "revitalizing area"). An *overriding housing need*, however, may not serve as the basis for determining that a site is acceptable if the only reason the need cannot otherwise be feasibly met is that discrimination on the basis of race, color, creed, sex, or national origin renders sites outside areas of minority concentration unavailable, or if the use of this standard in recent years has had the effect of circumventing the obligation to provide housing choice.

(d) The neighborhood must not be one that is seriously detrimental to family life or in which substandard dwellings or other undesirable conditions predominate, unless there is actively in progress a concerted program to remedy the undesirable conditions.

(e) The housing must be accessible to social, recreational, educational, commercial, and health facilities and services, and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unassisted, standard housing of similar market rents.

(f) For the Section 811 Program of Supportive Housing for Persons with Disabilities, the additional site and neighborhood requirements in §891.320 apply.

§ 891.130 Prohibited relationships.

This section shall apply to capital advances under the Section 202 Program and the Section 811 Program, as well as to loans financed under §§891.655 through 891.790.

(a) *Conflicts of interest.* (1) Officers and Board members of either the Sponsor or the Owner (or Borrower, as applicable) may not have any financial interest in any contract with the Owner or in any firm which has a contract with the Owner. This restriction applies so long as the individual is serving on the Board and for a period of three years following resignation or final closing, whichever occurs later.

(2) The following contracts between the Owner (or Borrower, as applicable) and the Sponsor or the Sponsor's nonprofit affiliate will not constitute a conflict of interest if no more than two persons salaried by the Sponsor or management affiliate serve as nonvoting directors on the Owner's board of directors:

(i) Management contracts (including associated management fees);

(ii) Supportive services contracts (including service fees) under the Supportive Housing for the Elderly Program; and

(iii) Developer (consultant) contracts.

(b) *Identity of interest.* An identity of interest between the Sponsor or Owner (or Borrower, as applicable) and any development team member or between development team members is prohibited until two years after final closing.

(c) *Mixed-finance projects.* Section 891.832 of this part applies to mixed-finance projects for the elderly and for persons with disabilities.

[61 FR 11956, Mar. 22, 1996, as amended at 70 FR 54209, Sept. 13, 2005]

§ 891.135 Amount and terms of capital advances.

(a) *Amount of capital advances.* The amount of capital advances approved shall be the amount stated in the notification of fund reservation, including any adjustment required by HUD before the final closing. The amount of the capital advance may not exceed the appropriate development cost limit.

(b) *Estimated development cost.* The amount of the capital advance may not exceed the total estimated development cost of the project (as determined by HUD), less the incremental development cost associated with excess amenities and design features to be paid for by the Sponsor under §891.120.

§ 891.140 Development cost limits.

(a) HUD shall use the development cost limits, established by Notice in the Federal Register and adjusted by locality, to calculate the fund reservation amount of the capital advance to be made available to individual Owners. Owners that incur actual development costs that are less than the amount of the initial fund reservation shall be entitled to retain 50 percent of the savings in a Replacement Reserve Account. Such percentage shall be increased to 75 percent for Owners that add energy efficiency features.

(b) The Replacement Reserve Account established under paragraph (a) of this section may only be used for repairs, replacements, and capital improvements to the project.

§ 891.145 Owner deposit (Minimum Capital Investment).

As a Minimum Capital Investment, the Owner must deposit in a special escrow account one-half of one percent (0.5%) of the HUD-approved capital advance, not to exceed \$10,000, to assure the Owner's commitment to the housing. Under the Section 202 Program, if an Owner has a National Sponsor or a National Co-Sponsor, the Minimum Capital Investment shall be one-half of one percent (0.5%) of the HUD-approved capital advance, not to exceed \$25,000.

§ 891.150 Operating cost standards.

HUD shall establish operating cost standards based on the average annual operating cost of comparable housing for the elderly or for persons with disabilities in each field office, and shall adjust the standard annually based on appropriate indices of increases in housing costs such as the Consumer Price Index. The operating cost standards shall be developed based on the number of units. However, under the Section 811 Program and for projects funded under §§891.655 through 891.790, the operating cost standard for group homes shall be based on the number of residents. HUD may adjust the operating cost standard applicable to an approved project to reflect such factors as differences in costs based on location within the field office jurisdiction. The operating cost standard will be used to determine the amount of the project assistance initially reserved for a project.

§ 891.155 Other Federal requirements.

In addition to the requirements set forth in 24 CFR part 5, the following requirements in this §891.155 apply to the Section 202 and Section 811 Programs, as well as projects funded under §§891.655 through 891.790. Other requirements unique to a particular program are described in subparts B and C of this part, as applicable.

(a) *Affirmative fair housing marketing.* (1) The affirmative fair housing marketing requirements of 24 CFR part 200, subpart M and the implementing regulations at 24 CFR part 108; and

(2) The fair housing advertising and poster guidelines at 24 CFR parts 109 and 110.

(b) *Environmental*. The National Environmental Policy Act of 1969, HUD's implementing regulations at 24 CFR part 50, including the related authorities described in 24 CFR 50.4. For the purposes of Executive Order No. 11988, Floodplain Management (42 FR 26951, 3 CFR, 1977 Comp., p. 117); as amended by Executive Order 12148 (44 FR 43239, 3 CFR, 1979 Comp., p. 412)), and implementing regulations in 24 CFR part 55, all applications for intermediate care facilities for persons with developmental disabilities shall be treated as critical actions requiring consideration of the 500-year floodplain.

(c) *Flood insurance*. The Flood Disaster Protection Act of 1973 (42 U.S.C. 4001).

(d) *Labor standards*. (1) All laborers and mechanics (other than volunteers under the conditions set out in 24 CFR part 70) employed by contractors and subcontractors in the construction (including rehabilitation) of housing with 12 or more units assisted under this part shall be paid wages at rates not less than those prevailing in the locality, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. 276a–276a–5). A group home for persons with disabilities is not covered by the labor standards.

(2) Contracts involving employment of laborers and mechanics shall be subject to the provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333).

(3) Sponsors, Owners, contractors, and subcontractors must comply with all related rules, regulations, and requirements.

(e) *Displacement, relocation, and real property acquisition* —(1) *Minimizing displacement*. Consistent with the other goals and objectives of this part, Sponsors and Owners (or Borrowers, if applicable) shall assure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.

(2) *Relocation assistance for displaced persons*. A displaced person must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4201–4655), as implemented by 49 CFR part 24.

(3) *Real property acquisition requirements*. The acquisition of real property for a project is subject to the URA and the requirements described in 49 CFR part 24, subpart B.

(f) *Intergovernmental review*. The requirements for intergovernmental review in Executive Order No. 12372 (47 FR 30959, 3 CFR, 1982 Comp., p. 197; as amended by Executive Order No. 12416 (48 FR 15587, 3 CFR, 1983 Comp., p. 186)) and the implementing regulations at 24 CFR part 52 are applicable to this program.

(g) *Lead-based paint*. The requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, H, J, and R of this title apply to these programs.

[61 FR 11956, Mar. 22, 1996, as amended at 64 FR 50227, Sept. 15, 1999; 69 FR 34275, June 21, 2004]

§ 891.160 Audit requirements.

Nonprofits receiving assistance under this part are subject to the audit requirements in 24 CFR part 45.

§ 891.165 Duration of capital advance.

The duration of the fund reservation for the capital advance is 24 months from the date of issuance with limited exceptions up to 36 months, as approved by HUD on a case-by-case basis.

§ 891.170 Repayment of capital advance.

(a) *Interest prohibition and repayment.* A capital advance provided under this part shall bear no interest and its repayment shall not be required so long as the housing project remains available for very low-income elderly families or persons with disabilities, as applicable, in accordance with this part. The capital advance may not be repaid to extinguish the requirements of this part. To ensure its interest in the capital advance, HUD shall require a note and mortgage, use agreement, capital advance agreement and regulatory agreement from the Owner in a form to be prescribed by HUD.

(b) The transfer of physical and financial assets of any project under this part is prohibited, unless HUD gives prior written approval. Approval for transfer will not be granted unless HUD determines that the transfer to a private nonprofit corporation, consumer cooperative (under the Section 202 Program), a nonprofit organization (under the Section 811 Program), or an organization meeting the definition of "mixed-finance owner" in §891.805 of this part, is part of a transaction that will ensure the continued operation of the project for not less than 40 years (from the date of original closing) in a manner that will provide rental housing for very low-income elderly persons or persons with disabilities, as applicable, on terms at least as advantageous to existing and future tenants as the terms required by the original capital advance.

[61 FR 11956, Mar. 22, 1996, as amended at 70 FR 54209, Sept. 13, 2005]

§ 891.175 Technical assistance.

For purposes of the Section 202 Program and the Section 811 Program, the Secretary shall make available appropriate technical assistance to assure that applicants having limited resources, particularly minority applicants, are able to participate more fully in the programs.

§ 891.180 Physical condition standards; physical inspection requirements.

Housing assisted under this part must be maintained and inspected in accordance with the requirements in 24 CFR part 5, subpart G.

[63 FR 46580, Sept. 1, 1998]

§ 891.185 Preemption of rent control laws.

The Department finds that it is necessary and desirable to assist project owners to preserve the continued viability of each project assisted under this part (except subpart E) as a housing resource for very low-income elderly persons or persons with disabilities. The Department also finds that it is necessary to protect the substantial economic interest of the Federal Government in those projects. Therefore, the Department concludes that it is in the national interest to preempt, and it does hereby preempt, the entire field of rent regulation by local rent control boards or other authority acting pursuant to state or local law as it affects those projects. Part 246 of this title applies to projects covered by subpart E of this part.

[63 FR 64803, Nov. 23, 1998]

Title 24: Housing and Urban Development

PART 891—SUPPORTIVE HOUSING FOR THE ELDERLY AND PERSONS WITH DISABILITIES

Subpart B—Section 202 Supportive Housing for the Elderly

§ 891.200 Applicability.

The requirements set forth in this subpart B apply to the Section 202 Program of Supportive Housing for the Elderly only, and to applicants, Sponsors, and Owners under that program.

§ 891.205 Definitions.

As used in this part in reference to the Section 202 Program, and in addition to the applicable definitions in §891.105:

Acquisition means the purchase of (or otherwise obtaining title to) existing housing and related facilities to be used as supportive housing for the elderly.

Activities of daily living (ADL) means eating, dressing, bathing, grooming, and household management activities, as further described below:

- (1) *Eating* —May need assistance with cooking, preparing, or serving food, but must be able to feed self;
- (2) *Bathing* —May need assistance in getting in and out of the shower or tub, but must be able to wash self;
- (3) *Grooming* —May need assistance in washing hair, but must be able to take care of personal appearance;
- (4) *Dressing* —Must be able to dress self, but may need occasional assistance; and
- (5) *Home management activities* —May need assistance in doing housework, grocery shopping, laundry, or getting to and from activities such as going to the doctor and shopping, but must be mobile. The mobility requirement does not exclude persons in wheelchairs or those requiring mobility devices.

Congregate space (hereinafter referred to as community space) shall have the meaning provided in section 202 (12 U.S.C. 1701q(h)(1)). The term “ *community spaces* ” excludes offices, halls, mechanical rooms, laundry rooms, parking areas, dwelling units, and lobbies. Community space does not include commercial areas.

Elderly person means a household composed of one or more persons at least one of whom is 62 years of age or more at the time of initial occupancy.

Frail elderly means an elderly person who is unable to perform at least three activities of daily living as defined in this section. Owners may establish additional eligibility requirements acceptable to HUD based on the standards in local supportive services programs.

Owner means a single-purpose private nonprofit organization that may be established by the Sponsor that will receive a capital advance and project rental assistance payments to develop and operate supportive housing for the elderly as its legal owner. Owner includes an instrumentality of a public body. The purposes of the Owner must include the promotion of the welfare of the elderly. The Owner may not be controlled by or under the direction of persons or firms seeking to derive profit or gain therefrom.

Private nonprofit organization means any incorporated private institution or foundation:

- (1) That has tax-exempt status under section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*);
- (2) No part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual;

(3) That has a governing board:

(i) The membership of which is selected in a manner to assure that there is significant representation of the views of the community in which such housing is located; and

(ii) That is responsible for the operation of the housing assisted under this part; and

(4) That is approved by HUD as to administrative and financial responsibility.

Services expenses means those costs needed to provide the necessary services for the elderly tenants, which may include, but are not limited to: health related activities, continuing education, welfare, informational, recreational, homemaking, meal and nutritional services, counseling, and referral services as well as transportation as necessary to facilitate access to these services.

Sponsor means any private nonprofit entity, including a consumer cooperative:

(1) No part of the net earnings of which inures to the benefit of any private shareholder, member, founder, contributor, or individual;

(2) That is not controlled by, or under the direction of, persons or firms seeking to derive profit or gain therefrom; and

(3) That is approved by the Secretary as to administrative and financial capacity and responsibility. The term Sponsor includes an instrumentality of a public body. [61 FR 11956, Mar. 22, 1996, as amended at 68 FR 67321, Dec. 1, 2003; 70 FR 54209, Sept. 13, 2005; 78 FR 37113, June 20, 2013]

§ 891.210 Special project standards.

(a) ***In general.*** In addition to the applicable project standards in [§ 891.120](#), resident units in Section 202 projects are limited to efficiencies or one-bedroom units, except as specified under [paragraph \(b\)](#) of this section. If a resident manager is proposed for a project, up to two bedrooms could be provided for the resident manager unit.

(b) ***Exception.*** Resident units in Section 202 projects may be two-bedroom units if a portion of the units are financed by other sources. Resident units may be two-bedroom units provided that the square footage in excess of the one-bedroom size limits are treated as excess amenities as specified in [§ 891.120](#).

§ 891.215 Limits on number of units.

(a) HUD may establish, through publication of a notice in the Federal Register, limits on the number of units that can be applied for by a Sponsor or Co-sponsor in a single geographical region and/or nationwide.

(b) Affiliated entities that submit separate applications shall be deemed to be a single entity for purposes of these limits.

(c) HUD may also establish, through publication of a notice in the Federal Register, the minimum size of a single project.

§ 891.220 Prohibited facilities.

Projects may not include facilities for infirmaries, nursing stations, or spaces for overnight care.

§ 891.225 Provision of services.

(a) In carrying out the provisions of this part, HUD shall ensure that housing assisted under this part provides services as described in section 202 (12 U.S.C. 1701q(g)(1)).

(b)(1) HUD shall ensure that Owners have the managerial capacity to perform the coordination of services described in 12 U.S.C. 1701q(g)(2).

(2) Any cost associated with this paragraph shall be an eligible cost under the contract for project rental assistance. Any cost associated with the employment of a service coordinator shall also be an eligible cost, except if the project is receiving congregate housing services assistance under section 802 of the National Affordable Housing Act. The HUD-approved service costs will be an eligible expense to be paid from project rental assistance, not to exceed \$15 per unit per month. The balance of service costs shall be provided from other sources, which may include co-payment by the tenant receiving the service. Such co-payment shall not be included in the Total Tenant Payment.

§ 891.230 Selection preferences.

For purposes of the Section 202 Program, the selection preferences in 24 CFR part 5, subpart D apply.