States. Except for editorial changes, this rulemaking is the same as published in the SNPRM.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, Environmental Impacts: Policies and Procedures, paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p.389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the FAA Order 7400.9W, Airspace Designations and Reporting Points, signed August 8, 2012, and effective September 15, 2012, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways

* * * * *

V–537 [Amended]

From Palm Beach, FL; INT Palm Beach 356° and Treasure, FL, 143° radials; Treasure; INT Treasure 318° and Orlando. FL, 140° radials; INT Orlando 140° and Melbourne, FL 298° radials; INT Melbourne 298° and Ocala, FL 145° radials; Ocala; Gators, FL; to Greenville, FL.

Issued in Washington, DC, on June 13, 2013.

Gary A. Norek,

Manager, Airspace Policy and ATC Procedures Group.

[FR Doc. 2013–14660 Filed 6–19–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 891

[Docket No. FR–5167–F–02]

RIN 2502–AI67

Streamlining Requirements Governing the Use of Funding for Supportive Housing for the Elderly and Persons With Disabilities Programs

AGENCY: Office of the Assistant Secretary of Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends HUD's regulations governing the Section 202 Supportive Housing for the Elderly Program (Section 202) and the Section 811 Supportive Housing for Persons with Disabilities Program (Section 811) to streamline the requirements applicable to Section 202 and Section 811 mixed-finance developments. This rule removes restrictions on the portions of developments not funded through capital advances, lifts barriers on participation in the development of the projects, and eliminates burdensome funding requirements. These changes are anticipated to attract private capital and the expertise of the private developer community to create attractive and affordable supportive housing developments for the elderly and for persons with disabilities. Through this rule, HUD also brings up-to-date certain regulations governing all Section 202 and Section 811 developments, not solely mixed-finance developments. Overall, the changes made by this rule permit greater flexibility in the design of Section 202/811 units, and extend the duration of the availability of capital advance funds.

This final rule is part of a larger effort to reform the Section 202 and Section 811 programs, which will include implementation of the changes made to these programs by the Frank Melville Supportive Housing Investment Act of 2010 and the Section 202 Supportive Housing for the Elderly Act of 2010. A subsequent rule, which will focus on the statutory changes that require rulemaking for implementation, is expected to be published in 2013.

DATES: *Effective Date:* July 22, 2013.

FOR FURTHER INFORMATION CONTACT: Aretha Williams, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 6136, Washington, DC 20410–8000; telephone number 202–708–3000 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose of the Regulatory Action

The regulatory amendments made by this rule are designed to provide greater flexibility in the design, construction, and management of Section 202/811 mixed-finance developments, to increase such development. The Section 202/811 mixed-finance program, established by interim and final rules issued in 2003 and 2005,[1] allows for the participation of the private developer community, leveraging their capital and expertise, to create attractive and affordable supportive housing developments for the elderly or persons with disabilities. In light of the current housing market, with limited private financing for the development of supportive housing, this rule streamlines requirements pertaining to mixed-finance developments to attract private capital for the development of mixed-finance housing. This rule allows for more flexibility in such areas as the drawdown of capital advance funds and noncapital advance funds and removes certain restrictions relating to noncapital advance funds. In addition, this rule would update certain regulations governing all Section 202 and Section 811 developments, which have not been updated since 2005, to conform to changes in law, policy, and practices that affect these developments.

B. Summary of the Major Provisions of the Regulatory Action

This final rule updates the regulations governing mixed-finance developments for the Section 202 and Section 811 programs. This rule amends several definitions used in the mixed-finance development program, based on changes to these terms made by the Frank Melville Supportive Housing Investment Act of 2010 and the Section 202 Supportive Housing for the Elderly Act of 2010. These changes lessen restrictions with respect to who can be an owner. In addition, this rule removes the restriction on using HUD funds for certain amenities, exempts contracts for sale of land between owner and sponsor from conflict of interest provisions, clarifies what constitutes substantial rehabilitation, requires smoke detectors

[1] See HUD rules published on December 1, 2003, at 68 FR 67316, and on September 13, 2005, at 70 FR 54200.

and alarm devices be installed in any dwelling or facility bedroom or other primary sleeping area, extends the duration of fund reservations for capital advances, provides that HUD's requirements applicable to capital advance units are not applicable to non-202/811 supported units in the project, permits mixed-finance developers to use low-income housing tax credits (LIHTCs) more effectively, permits noncapital advance funds to be disbursed before the drawdown of capital advance funds, and permits the use of funds for paying off bridge or construction financing or repaying or collateralizing bonds.

C. Costs and Benefits

The regulations established by this final rule are limited in applicability to those Section 202 or Section 811 projects that apply as mixed-finance (Section 202/811 mixed finance projects). Section 202/811 mixed-finance projects are those with private funding to supplement Federal funding. The only new requirement established by this final rule is a requirement that owners provide a smoke detector and alarm in every bedroom or primary sleeping area. Though this requirement is new to the program regulations, the requirement is supportive of the R2–R4 multifamily standards in the International Building Code, the International Residential Code, the International Existing Building Code, and the International Property Maintenance Code, which apply in the vast majority of jurisdictions in the country through state or local adoption. Requiring smoke detectors is a requirement in most local code, and fire detectors are generally required for property insurance. Given the widespread requirement for smoke detectors, whether as a matter of state or local codes or for property insurance, the inclusion of such requirement in this regulation places no additional burden on any developer or owner complying with state or local codes. Additionally, the rule does not dictate a specific technology or product.

The fact that smoke and fire detection equipment generally save lives and protect property in a cost effective way is well supported in the literatures.[2] There may be some benefits to tenants and communities with existing projects if the improved clarity from HUD enables a dispute over smoke detector installation or maintenance to be resolved more quickly.

The primary focus of this rule is to expand flexibility in the program by removing previous prohibitions on amenities within Section 202 and Section 811 developments, but not requiring owners to provide such amenities. The amenities are those that are fairly standard in today's apartments and will benefit the residents of program units and make HUD units more attractive and capable of attracting and retaining tenants.

The final rule also removes the previous prohibition on healthcare facilities in mixed-finance Section 202 developments, but not within Section 811 developments, for the reasons discussed later in this preamble. Under the final rule, HUD now permits healthcare facilities in mixed-finance Section 202 developments so long as HUD does not finance the facilities, and the use of the facilities must be voluntary for the residents of the projects.

The removal of the previous prohibitions on amenities and healthcare facilities makes it difficult to predict their impact on future Section 202 and 811 units, as the programs together produce only a few hundred developments a year (193 in 2008, 170 in 2009, and 143 in 2010), the overall economic impact from these potentially small changes in development and unit configuration is expected to be small.

A more detailed discussion of the costs and benefits of this rule is provided in section VI of this preamble.

II. Background

A. HUD's Section 202/811 Mixed-Finance Development Program

The Section 202 and Section 811 programs were established to allow very low-income elderly persons and persons with disabilities the opportunity to live with dignity by providing affordable rental housing offering a range of supportive services to meet the needs of these populations. The American Homeownership and Economic Opportunity Act of 2000 (Pub. L. 106–569, 114 Stat. 2944, approved December 27, 2000) (AHEO Act) amended the authorizing statutes for the Section 202 program (Section 202 of the Housing Act of 1959 (12 U.S.C. 1701q)) and the Section 811 program (Section 811 of the Cranston-Gonzalez National Affordable Housing Act of 1990 (42 U.S.C. 8013)) to allow for the participation of for-profit limited partnerships in the ownership of Section 202 and Section 811 supportive housing, which helped facilitate the use of low-income housing tax credits and mixed-finance methods to infuse private capital into Section 202 and Section 811 developments. HUD's regulations governing Section 202/811 mixed-finance development are found in 24 CFR part 891, subpart F. The Section 202 Supportive Housing for the Elderly Act of 2010 (Pub. L. 111–372) (Section 202 Act of 2010) and the Frank Melville Supportive Housing Investment Act of 2010 (Pub. L. 111–374) (Melville Act) were both signed into law on January 4, 2011 (collectively, the Acts), and amended the authorizing statutes for Section 202 and Section 811, respectively.

III. The March 2012 Proposed Rule

On March 28, 2012 (77 FR 18723), HUD published a proposed rule primarily to streamline the requirements for mixed-finance Section 202 and Section 811 developments, and provide more flexibility for program participants. Current economic conditions have reduced the availability of private financing for the development of supportive housing. To attract needed private capital, HUD determined that amendments to the Section 202 and Section 811 program regulations were necessary to further streamline the mixed-finance development process for Section 202 and 811 housing. While the existing regulations applicable to mixed-finance developments have facilitated the creation of approximately 1,017 mixed-finance units, they also, in certain circumstances, limit project sponsors from accessing private sector capital and expertise. The changes proposed in March 2012, as summarized below, and made final by this rule, provide mixed-finance owners with more options, better facilitate the use of low-income housing tax credits, and attract other private funding, and, thereby, promote the construction of supportive housing developments that include additional, non-Section 202/811 supported units for the elderly and persons with disabilities.

The Section 202 Act of 2010 and the Melville Act amended the authorizing statutes for Section 202 and Section 811, respectively, and made important reforms to the Section 202 and Section 811 programs. While the majority of the reforms made by these Acts do not directly affect the Section 202/811 mixed-finance development program, HUD is taking the opportunity to update the definitions of ''private nonprofit organizations'' to conform to the Acts, as these definitions directly impact the mixed-finance program. The Section 202 Act of 2010 and the Melville Act provide a much-needed foundation for practical improvements to the Section

[2] For example Liu Y, Mack KA, Diekman ST (2012) Smoke alarm giveaway and installation programs: an economic evaluation. American Journal of Preventive Medicine (4):385–91.

202 and Section 811 programs.[3] The regulatory amendments in this rule build upon the Acts from the 111th Congress to further modernize the operation of Section 202 and Section 811 in the mixed-finance context.

The March 28, 2012, rule proposed to amend both the general section of regulations governing the Section 202 and Section 811 programs, and the sections in part 891 specifically governing the mixed-finance program. Key changes to the program regulations proposed by the March 28, 2012, rule included the following:

- Establishing, in the case of a nonprofit organization sponsoring multiple developments, the criteria for transferring the responsibilities of a single-entity nonprofit owner of an individual development to the governing board of the sponsor that is the sponsoring organization of multiple developments;
- Revising, consistent with the Section 202 Act of 2010, the definition of ''private nonprofit organization'' to 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;
- Requiring that a corporation be ''owned and controlled'' by a nonprofit organization in the definition of ''private nonprofit organization,'' consistent with the Melville Act's removal of the term ''wholly owned'' from the definition;
- Allowing an owner or sponsor of a Section 202 development to be an ''instrumentality of a public body'';
- Including, as a qualification, an owner be a single-asset entity, and replacing the term ''single-purpose'' with ''single-asset,'' defined as an entity in which the mortgaged property is the only asset of the owner and has no more than one owner;
- Defining ''substantial rehabilitation'' as improvements to a property that is in a deteriorated or substandard condition that endangers the health, safety, or well-being of the residents, but would not include cosmetic improvements and must meet certain criteria;
- Requiring smoke detectors and alarm devices be installed in any dwelling or facility bedroom or other primary sleeping area;
- Providing that restrictions on prohibited facilities in Section 202 mixed-finance developments only apply to the capital advance-funded portion, and not to the entire development;
- Exempting, from the conflict of interest provisions, contracts for the sale of land between an owner and the sponsor or the sponsor's nonprofit affiliate;
- Providing that the requirements of paragraph (b) of § 891.130 regarding identity of interest do not apply in the mixed-finance context, while maintaining the applicability of the conflict of interest provisions in paragraph (a) of § 891.130;
- Extending the duration of availability of fund reservations for capital advances to 24 months in all cases, with the option of extending this period to 36 months;
- Providing that requirements applicable to capital advance units are not applicable to non-202/811 supported units in the project, and clarifying that the transfer of physical or financial assets of a Section 202 or Section 811 development is not permitted unless HUD determines that the transfer is part of a transaction that will ensure ''the continued operation of the capital advance units'' for at least 40 years in a manner that will provide low-income housing for the elderly or persons with disabilities;
- Permitting noncapital advance funds to be disbursed before the drawdown of capital advance funds to increase the developer's flexibility in financing the project; and
- Permitting the use of funds for paying off bridge or construction financing or repaying or collateralizing bonds.

IV. Summary of Significant Changes in this Final Rule

The following changes were made to the proposed rule at this final rule stage:

- Removal of the definitions of ''substantial rehabilitation'' and ''repairs, renovations, and improvements'', which also means the removal of the $6500 threshold and the minimum useful life of 55 years;
- Re-adding the definition of ''rehabilitation'' that was originally in part 891, and adding that an improvement of an existing structure requires 15 percent or more of the estimated development cost to rehabilitate the project for a useful life of 40 years. The useful life period commences upon execution of the capital advance agreement.
- Allowing as eligible units two-bedroom resident units, so long as a portion of the units are financed by other sources. Resident units may be two-bedroom units if the square footage in excess of the one-bedroom size limits is treated as excess amenities.

V. Discussion of Public Comments Received on the March 28, 2012, Proposed Rule

This final rule follows publication of the March 28, 2012, proposed rule and takes into consideration public comments received on that proposed rule. The public comment period closed on May 29, 2012. HUD received five public comments (one comment submitted on behalf of multiple organizations) in response to the proposed rule. Comments were submitted by a housing corporation, a housing finance agency, nonprofit organizations, and an association of aging services organization, an affordable housing management organization, a community development support organization, and private individuals. None of the commenters opposed the rule. Overall the commenters were supportive of the changes proposed by the March 28, 2012, rule.

One commenter welcomed HUD to make any other changes that would make easier the process of creating low-income housing for seniors and persons with disabilities, as the need for such housing grows rapidly. Another commenter stated that the rule brought the requirements of the Section 202 and 811 programs into greater conformance with other programs, which would facilitate coordination among programs.

Another commenter stated that the most significant of the changes from the proposed rule were the revisions relating to the drawdown of capital grant funds in mixed-finance situations. The commenter said that greater flexibility in the scheduling of drawdown of noncapital advance funds would be very helpful. The commenter also stated that the ability to apply Section 202 capital advance funds to repay bridge financing would solve a serious problem with the existing regulations, which the commenter stated conflicted with requirements of the Internal Revenue Service. The commenter stated that the existing regulations 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

[3] HUD issued a notice (H 2012–8) entitled ''Updated Requirements for Prepayment and Refinance of Section 202 Direct Loans'' on May 4, 2012. See *http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/notices/hsg.* HUD also issued a Notice of Funding Availability on May 15, 2012, for the Section 811 Project Rental Assistance Demonstration program authorized by the Melville Act (funding provided under the Consolidated and Further Continuing Appropriations Act, 2012, Public Law 112–55, 125 Stat. 552). See *http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/grants/fundsavail/nofa12/sec811PRAdemo.*

by the Internal Revenue Code. The commenter stated that the proposed change would save substantial time and expense, and reduce uncertainty in the development process.

Another commenter supported the proposed change to the funding reservation deadline, stating that HUD recognized the complexity of assembling all the resources needed to construct a Section 202 or Section 811 project, which makes it very difficult to meet the current 18-month funding reservation deadline, and thus resulted in a very high frequency of requests to HUD for time extensions. The commenter explained that 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.

Another commenter praised the removal of the ban on individual unit balconies and decks, trash compactors, washers, and dryers in units that are funded with a HUD capital grant. This commenter stated that HUD recognized that 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.

However, the commenters, although supportive of the changes, did raise a few issues about specific amendments offered by the March 2012 rule, and these issues and HUD's responses follow.

Comment: Conflict of interest. Two comments addressed the conflict of interest changes under 24 CFR 891.130. One commenter stated that if a sponsoring organization of multiple developments is now able to assume responsibilities for financial compliance and administrative responsibilities for the single-entity, nonprofit owner, the sponsor should also be able to serve as property manager for the project. This commenter said that this kind of situation should not be considered a conflict of interest under § 891.130, and should not be subject to the limitation that no more than two persons salaried by the sponsor or management affiliate thereof serve as nonvoting directors. The commenter explained that effective property management is the key to a compliant project, and a sponsor with multiple projects needs the ability to serve in this capacity without restriction in order to manage its portfolio. This commenter stated that since HUD approves property management fees, there should be no concerns of undue financial benefit to the sponsor. This commenter asked how a sponsor can exercise the role envisioned by the Melville Act if the sponsor cannot have more than two nonvoting members on the owner board when it elects to manage its own Section 202 portfolio of properties.

Another commenter applauded HUD for the proposed amendment to § 891.130 to establish that the sale of land between related parties is not necessarily deemed to constitute a conflict of interest, stating that 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.

HUD Response. The change to 24 CFR 891.205 allows HUD to determine the criteria for transferring the responsibilities of a single-entity, nonprofit owner of an individual development to the governing board of the sponsoring organization. The act of transferring responsibilities to the governing board of the sponsor does not require those board members to also replace or become board members of the owner entity. Therefore, property management responsibilities may be performed by the sponsor without adding more than two nonvoting members to the owner board of directors and causing a conflict of interest. As stated, the criteria for transferring responsibilities of an owner will be determined by HUD through subsequent guidance. HUD will consider allowing more than two persons salaried by the sponsor or management affiliate to serve as nonvoting directors on the owner's board of directors.

Comment: Definition of private nonprofit organization. Two commenters expressed concerns with the changes to the definition of ''private nonprofit organization''. One commenter explained that according to the proposed rule, the Section 202 Act of 2010 changed the definition to allow for ownership of projects by 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. This commenter further explained that the proposed rule states that the Melville Act did not extend the definition to include limited liability companies and, therefore, does not appear to provide for a limited liability company to be the general partner. This commenter stated that while the Melville Act did not explicitly extend this definition, neither did it prohibit liability companies from acting as the general partner of a limited partnership owner. This commenter pointed out that the intent of the Melville Act as well as these regulations is to facilitate use of LIHTCs, and no obvious purpose is served by distinguishing between the allowable ownership structures for Section 811 and Section 202 projects.

In addition, this commenter stated that by allowing use of a limited liability corporation (LLC), HUD would facilitate nonprofit corporations with experience in developing housing and providing supportive services to persons with disabilities to join with other nonprofit developers with experience in LIHTCs to cosponsor and develop such projects, without incorporating new nonprofit corporations to act as the general partner. The commenter stated that, in California, this would save significant time and cost that would otherwise be spent in securing tax exempt status for the new nonprofit corporation and recognition by the state of the eligibility of the new nonprofit sponsor to receive real estate tax exemptions for the proposed project. This commenter explained that eliminating this step would therefore assist such sponsors in meeting the stringent deadlines imposed by the California Tax Credit Allocation Committee for start of construction of projects that are allocated 9 percent tax credits. This commenter requested that HUD adopt the same language for Section 811 projects as for Section 202 projects in these regulations, to allow for use of a limited liability company or LLC that is wholly owned and controlled by one or more nonprofit organizations as the general partner in a mixed-finance development.

Another commenter stated that the preamble to the proposed rule creates potential ambiguity regarding the definition of ''private nonprofit organization''. This commenter explained that the preamble stated: ''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.'' The commenter found that 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. This commenter explained that while the regulation itself is clear on this point, it would be helpful if the preamble to the final rule eliminates the possible ambiguity.

HUD Response. The proposed rule incorporates the latest statutory changes to the Section 811 program. The

Melville Act of 2010 did not add for-profit limited liability companies as an eligible general partner. A technical correction to the Melville Act is under HUD consideration.

With respect to the comment about the potential ambiguity of the definition of ''nonprofit organization,'' HUD agrees that additional clarity would be helpful. HUD clarifies that the additional change made by the Section 202 Act of 2010 means that the definition of ''nonprofit organization'' will now include for-profit limited partnerships, of which the sole general partner is a for-profit corporation or a limited liability company, and that are both wholly owned and controlled by one or more nonprofit organizations.

Comment: Definitions of repairs and substantial rehabilitation. One commenter stated that under HUD's rule, when funding both ''repairs, replacements, and improvements'' and ''substantial rehabilitation,'' the property is required to achieve a 55-year useful life, and that an exception to this standard is allowed when rehabilitation is limited to substantially replacing two or more major building components. The commenter stated that it did not understand the programmatic significance of designating rehabilitation as either ''repairs, replacements and improvements'' or ''substantial rehabilitation.'' The commenter stated that if there is no significance in terms of eligibility, financing terms and conditions, or useful life, the definition section could be simplified by eliminating these two definitions. The commenter suggested that the two definitions could be replaced by simply imposing a useful life requirement when rehabilitation of any amount is performed, with the proposed exception of the limited replacement of two or more major building components.

Another commenter found the definition of ''substantial rehabilitation'' to be very long, somewhat confusing, and inconsistent with the widely used and more streamlined definition contained in section 5.12 of the Multifamily Accelerated Processing (MAP) Guide. This commenter stated that in the Section 202 context, HUD has recently used the MAP Guide definition of substantial rehabilitation in Notice H2012–8[4], relating to the refinancing of Section 202 direct loans. This commenter offered that another definition was not needed 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. The commenter stated if a definition of ''substantial rehabilitation'' is needed for current Section 202/811 construction, then HUD should use the definition currently contained in the MAP Guide and apply the definition consistently throughout all of HUD's programs.

HUD Response. HUD has revised the final rule by eliminating the definitions of ''substantial rehabilitation'' and ''repairs, renovations, and improvements.'' Therefore, a $6500 threshold no longer applies. The definition of ''rehabilitation'' will remain in part 891 and will mirror the previous language, except that an improvement of an existing structure requires 15 percent or more of the estimated development cost to rehabilitate the project for a useful life of 40 years. HUD agrees with the commenters that 55 years was an over investment. HUD concluded that it was reasonable to tie the useful life to the term of the capital advance. See § 891.170, entitled ''Repayment of capital advance.''

Comment: Minimum investment and useful life requirements. HUD specifically solicited public comment on the minimum investment of $6500 and the minimum useful life of 55 years under the definitions of ''repairs, replacements and improvements'' and ''substantial rehabilitation'' (77 FR 18725). Two commenters had concerns about these specific requirements. One commenter recommended reducing the 55-year useful life requirement to 40 years for both ''repairs, replacements and improvements'' and ''substantial rehabilitation.'' The commenter stated that while a 55-year useful life is a laudable goal, it does not conform to other common standards of useful life of residential rental property, such as the income tax code. The commenter also stated that a 55-year useful life standard creates incentives to over-invest in properties to drive up per-unit development costs to achieve the longer useful life.

Another commenter stated that if the MAP Guide definition is not adopted in the final rule, then the concept of rehabilitating ''to a useful life of 55 years'' is disproportionately high for a $6500 threshold. The commenter stated that any required useful life should not exceed the term of the capital advance. The commenter suggested that HUD should clarify the date at which the useful life period begins and state whether the ''useful life'' requirement pertains only to the $6500 per-dwelling-unit standard, or also applies to the 15 percent-of-estimated-replacement cost standard. Lastly, the commenter agreed that as suggested by the **Federal Register** notice, the long-standing $6500/unit minimum for ''substantial rehabilitation'' needed to be updated periodically for inflation.

HUD Response. For the reasons provided in the response to the preceding comment, HUD has removed the $6500 threshold and the useful life minimum of 55 years from the final rule.

Comment: Definition of single asset entity. One commenter suggested that HUD revise the definition of ''single asset entity'' 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.''

HUD Response. HUD accepts this comment and has revised the definition accordingly under § 891.105.

Comment: Health-related facilities. One commenter approved of the proposed change to § 891.813, stating that the change would allow, for mixed-finance project, non-202 funds to be used for health-related facilities, such as infirmaries and nursing stations. This commenter stated that this change is a helpful step, and furthers HUD's goal of assuring that Section 202 projects can serve frail seniors. This commenter requested that HUD recognize the needs of the market and of the clientele, as well as be in line with HUD's evolving policies, and urged HUD to be more open and allow Section 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. In addition, the commenter stated that HUD should 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.

HUD Response. The most current Section 202 guidelines encourage the use of universal design and consider it as an eligible cost. Universal design is the design of the living environment to be usable by all people regardless of ability, without the need for adaptation or specialized design. Universal design recognizes the need for living spaces to be barrier-free and provide easy mobility and independence for people with a broad variety of physical needs. Universal design is distinct from Federal accessibility requirements under the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, and

[4] See *http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/notices/hsg.*

titles II and III of the Americans with Disabilities Act, as applicable. All applicable Federal accessibility requirements must be met in projects promoting universal design.

HUD will not allow two-bedroom units to be financed by the Section 202 program. However, as part of this final rule, HUD will allow two-bedroom resident units, so long as a portion of the units are financed by other sources. Under § 891.210, 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.

VI. Costs and Benefits of the New Program Regulations

The changes made to the program regulations governing Section 202/Section 811 mixed-finance developments are largely directed to expanding flexibility in the program. The only change in the final rule that represents a new requirement for program participants is that owners must provide a smoke detector and alarm in every bedroom or primary sleeping area. Though this constitutes a new requirement added to the program regulations, it is not a new requirement for the majority of owners because smoke detectors placed in every bedroom or primary sleeping area is already required by most local codes.[5]

Apart from establishing this requirement, the changes made by this final rule are directed to removing prohibitions and providing more flexibility to owners and investors. The rule removes some previous prohibitions on providing certain amenities within Section 202 and Section 811 developments. The final rule allows the program to fund units that contain dishwashers, trash compactors, washers and dryers, and units that have patios or balconies attached. The final rule also removes the previous prohibition on having healthcare facilities in mixed-finance Section 202 developments, but not in Section 811 developments. With respect to Section 811 developments, as stated in the proposed rule, ''HUD recognizes the importance of maintaining the restrictions on prohibited facilities for Section 811 developments for both capital advance and non-capital advance portions of the project. HUD is committed to preventing the isolation of persons with disabilities that might occur should medical facilities be contained in Section 811 developments.'' (See 77 FR 18725, third column.)

HUD's previous regulations had a blanket prohibition against medical facilities, as a safeguard against the institutionalization of the elderly and disabled populations. While, through this final rule, HUD removes the prohibition on certain amenities and having healthcare facilities in Section 202 developments, HUD does put in place of these prohibitions a requirement to include these amenities or healthcare facilities. Where healthcare facilities are located in Section 202 developments, use of the facilities must be voluntary for the residents of the projects. Consequently, removing the prohibition on these amenities and facilities is unlikely to increase costs to the program, especially since there is no requirement to provide these amenities or facilities. With respect to amenities, the amenities are those that are fairly standard in today's apartments and will benefit the residents of program units and make HUD units more capable of retaining tenants, thereby reducing vacancies.

While providing the amenities is not expected to increase program cost, HUD submits that one benefit may be that the wider range of allowable amenities may combat any discrimination against subsidized housing by reducing the potential for program-participating units and their occupants to be singled out as subsidized units within a mixed-finance development. The voluntary nature of these changes made by this final rule makes it difficult to predict their impact on future Section 202/811 mixed-finance units, as the programs together produce only a few hundred developments a year (193 in 2008, 170 in 2009, and 143 in 2010). The overall economic impact from these potentially only small changes in development and unit configuration is expected to be small.

The final rule also provides benefits from improving government processes. For example, extending the time of availability of capital advance funds from 18 to 24 months should limit the number of waivers HUD needs to process as developers regularly exceed the 18-month timeline. In 2010, HUD processed 49 such waivers in what is described as a time consuming, case specific process, which was 33 percent of the waivers the program office processed that year.

The remaining changes in the final rule are definitional and offer participants greater flexibility and clarity within the program at no obvious cost to the program or participants.

VII. Findings and Certifications

Regulatory Review—Executive Order 13563

Executive Order 13563 directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. This rule, consistent with Executive Order 13563, lessens restrictions in the Section 202 and Section 811 programs, including the removal of some previous prohibitions on amenities and healthcare facilities, broadens participation through the expansion of the definition of ''private nonprofit organization,'' and streamlines and improves program operations to attract additional private capital and expertise from the private developer community. As provided in the discussion in section VI of this preamble, the regulatory changes provide significantly more flexibility to participants in the development of Sections 202/811 mixed-finance developments.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. In the mixed-finance context, this final rule amends HUD's Section 202 and 811 program regulations governing capital advances, for-profit limited partnerships, and mixed-finance development methods to facilitate the development and availability of housing for the elderly and persons with disabilities. These regulatory amendments do not impose any additional regulatory burdens on entities participating in these programs. As has been discussed in the preamble to this final rule, these amendments reduce regulatory burden and increase flexibility in mixed-financed developments in order to attract private capital and expertise to the construction of supportive housing for the elderly and persons with disabilities. These regulatory changes would also streamline the use of low-income tax credits, as well as the obtaining of funding from other sources. National, regional, and local developers utilize the mixed-finance program and will save time and gain efficiency from no longer having to request regulatory waivers.

[5] See *http://www.usfa.fema.gov/downloads/pdf/campaigns/smokealarms/smoke_alarm_requirements.pdf.*

Accordingly, the undersigned certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made at the proposed rule stage, in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). That finding remains applicable to this final rule and is available for public inspection between the hours of 8 a.m. and 5 p.m., weekdays, in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the finding by calling the Regulations Division at 202–708–3055 (this is not a toll-free number).

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either: (1) Imposes substantial direct compliance costs on state and local governments and is not required by statute, or (2) the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule will not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This rule does not impose any Federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of UMRA.

Catalogue of Federal Domestic Assistance

The Catalogue of Federal Domestic Assistance Number for the principal Federal Housing Administration single-family mortgage insurance program is 14.117.

List of Subjects in 24 CFR Part 891

Aged, Grant programs—housing and community development, Individuals with disabilities, Loan programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons discussed in the preamble, HUD amends 24 CFR part 891 as follows:

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

■ 1. The authority citation for part 891 continues to read as follows:

Authority: 12 U.S.C. 1701q; 42 U.S.C. 1437f, 3535(d), and 8013.

■ 2. In § 891.105, revise the introductory text and the definition of ''rehabilitation,'' and add the definitions of ''Acquisition with or without repair,'' and ''Single-asset entity,'' in alphabetical order to read as follows:

§ 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, 891.505, and 891.805, as applicable.

Acquisition with or without repair means the purchase of existing housing and related facilities.

* * * * *

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 requires 15 percent or more of the estimated development cost to rehabilitate the project for a useful life of 40 years. The useful life period commences upon execution of a capital advance agreement.

* * * * *

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.

* * * * *

■ 3. In § 891.120, revise paragraphs (a), (c), and (d) to read as follows:

§ 891.120 Project design and cost standards.

* * * * *

(a) *Property standards.* Projects under this part must comply with HUD Minimum Property Standards as set forth in 24 CFR part 200, subpart S.

* * * * *

(c) *Restrictions on amenities.* Projects must be modest in design. Amenities not eligible for HUD funding include atriums, bowling alleys, swimming pools, saunas, and jacuzzis. Sponsors may include certain excess amenities, but they 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.* Smoke detectors and alarm devices must be installed in accordance with standards and criteria acceptable to HUD for the protection of occupants in any dwelling or facility bedroom or other primary sleeping area.

* * * * *

■ 4. In § 891.130:

■ a. Amend paragraph (a)(2)(ii) by removing the word ''and'' that follows the semicolon;

■ b. Amend paragraph (a)(2)(iii) by removing the period at the end and adding in its place '';and'';

■ c. Add a new paragraph (a)(2)(iv); and

■ d. Remove paragraph (c) to read as follows:

§ 891.130 Prohibited relationships.

* * * * *

(a) * * *

(2) * * *

(iv) Contracts for the sale of land.

* * * * *

■ 5. Revise § 891.160 to read as follows:

§ 891.160 Audit requirements.

Nonprofit organizations receiving assistance under this part are subject to the audit requirements of 24 CFR 5.107.

■ 6. Revise § 891.165 to read as follows:

§ 891.165 Duration of capital advance.

(a) The duration of the fund reservation for a capital advance with construction advances is 24 months from the date of initial closing. This duration can be up to 36 months, as approved by HUD on a case-by-case basis.

(b) The duration of the fund reservation for projects that elect not to

receive any capital advance before construction completion is 24 months from the date of issuance of the award letter to the start of construction. This duration can be up to 36 months, as approved by HUD on a case-by-case basis.

■ 7. In § 891.170, revise paragraph (b) to read as follows:

§ 891.170 Repayment of capital advance.

* * * * *

(b) *Transfer of assets.* 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 private nonprofit organization (under the Section 811 Program), or an organization meeting the definition of ''mixed-finance owner'' in § 891.805, is part of a transaction that will ensure the continued operation of the capital advance units 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.

■ 8. In § 891.205, revise the definitions of ''*Owner,*'' ''*Private nonprofit organization,*'' and paragraph (3) of the definition of ''*Sponsor*'' to read as follows:

§ 891.205 Definitions.

* * * * *

Owner means a single-asset 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 be 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) No part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual;

(2) 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) Which is responsible for the operation of the housing assisted under this section, except that, in the case of a nonprofit organization that is the sponsoring organization of multiple housing projects assisted under this section, HUD may determine the criteria or conditions under which financial, compliance, and other administrative responsibilities exercised by a single-entity private nonprofit organization that is the owner corporation of an individual housing project may be shared or transferred to the governing board of such sponsoring organization; and

(3) Which is approved by HUD as to financial responsibility.

* * * * *

Sponsor * * *

(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.

* * * * *

■ 9. Section 891.210 is revised to read as follows:

§ 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.

■ 10. In § 891.305, revise the heading of the definition of ''*Nonprofit organization*'' to read ''*Private nonprofit organization*'' and redesignate the definition in correct alphabetical order, and revise the first sentence of the definition of ''*Owner*'' to read as follows:

§ 891.305 Definitions.

* * * * *

Owner means a single-asset private nonprofit organization established by the Sponsor that will receive a capital advance and project rental assistance payments to develop and operate, as its legal owner, supportive housing for persons with disabilities under this part.

* * *

* * * * *

■ 11. Revise § 891.805 to read as follows:

§ 891.805 Definitions.

In addition to the definitions at §§ 891.105, 891.205, and 891.305, the following definitions apply to this subpart:

Mixed-finance owner, for the purpose of the mixed-finance development of housing under this part, means a single-asset, for-profit limited partnership of which a private nonprofit organization is the sole general partner. The purpose of the mixed-finance owner must include the promotion of the welfare of the elderly or persons with disabilities, as appropriate.

Private nonprofit organization, for the purpose of this subpart, means:

(1) In the case of supportive housing for the elderly:

(i) An organization that meets the requirements of the definition of ''private nonprofit organization'' in § 891.205; and

(ii) A for-profit limited partnership, the sole general partner of which owns at least one-hundredth of one percent of the partnership assets, whereby the sole general partner is either: an organization meeting the requirements of § 891.205 or a for-profit corporation wholly owned and controlled by one or more organizations meeting the requirements of § 891.205 or a limited liability company wholly owned and controlled by one or more organizations meeting the requirements of § 891.205. If the project will include units financed with the use of federal Low-Income Housing Tax Credits and the organization is a limited partnership, the requirements of section 42 of the IRS code, including the requirements of section 42(h)(5), apply. The general partner may also be the sponsor, so long as it meets the requirements of this part for sponsors and general partners.

(2) In the case of supportive housing for persons with disabilities:

(i) An organization that meets the requirements of the definition of ''private nonprofit organization'' in § 891.305; and

(ii) A for-profit limited partnership, the sole general partner of which owns at least one-hundredth of one percent of the partnership assets, whereby the sole general partner is either: an organization meeting the requirements of § 891.305 or a corporation owned and controlled by an organization meeting the requirements of § 891.305. If the project will include units financed with the use of federal Low-Income Housing Tax

Credits and the organization is a limited partnership, the requirements of section 42 of the IRS code, including the requirements of section 42(h)(5), apply. The general partner may also be the sponsor, so long as it meets the requirements of this part for sponsors and general partners.

■ 12. In § 891.813, revise paragraphs (b) and (c) to read as follows:

§ 891.813 Eligible uses for assistance provided under this subpart.

* * * * *

(b) Assistance under this subpart may not be used for excess amenities, as stated in § 891.120(c), or for Section 202 ''prohibited facilities,'' as stated in § 891.220. Such amenities or Section 202 prohibited facilities may be included in a mixed-finance development only if:

(1) The amenities or prohibited facilities are not financed, maintained, or operated with funds provided under the Section 202 or Section 811 program;

(2) The amenities or prohibited facilities are designed with appropriate safeguards for the residents' health and safety; and

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

(c) Notwithstanding any other provision of this section, § 891.315 on ''prohibited facilities'' shall apply to mixed-finance developments containing units assisted under Section 811.

■ 13. In § 891.830, revise paragraphs (b) and (c)(4) to read as follows:

§ 891.830 Drawdown.

* * * * *

(b) Non-capital advance funds may be disbursed before capital advance proceeds or the capital advance funds may be drawn down in an approved ratio to other funds, in accordance with a drawdown schedule approved by HUD.

(c) * * *

(4) The capital advance funds drawn down will be used only for eligible costs actually incurred in accordance with the provisions of this subpart and the approved mixed-finance project, which include costs stated in 12 U.S.C. 1701q(h) and 42 U.S.C. 8013(h). Capital advance funds may be used for paying off bridge or construction financing, or repaying or collateralizing bonds, but only for the portion of such financing or bonds that was used for capital advance units; and

* * * * *

■ 14. Revise § 891.832 to read as follows:

§ 891.832 Prohibited relationships.

(a) Paragraph (a) of § 891.130, describing conflicts of interest, applies to mixed finance developments.

(b) Paragraph (b) of § 891.130, describing identity of interest, does not apply to mixed-finance developments.

■ 15. Revise § 891.848 to read as follows:

§ 891.848 Project design and cost standards.

(a) The project design and cost standards at § 891.120 apply to mixed-finance developments under this subpart, with the exception of § 891.120(c), subject to the provisions of § 891.813(b).

(b) For Section 202 mixed-finance developments, the prohibited facilities requirements described at § 891.220 shall apply to only the capital advance-funded portion of the Section 202 mixed-finance developments under this subpart, subject to the provisions of § 891.813(b).

(c) For Section 811 mixed-finance developments, the prohibited facilities requirements described at § 891.315 shall apply to the entire mixed-finance development.

Dated: June 17, 2013.

Carol J. Galante,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2013–14721 Filed 6–19–13; 8:45 am]

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DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Part 518

RIN 3141–AA44

Self-Regulation of Class II Gaming

AGENCY: National Indian Gaming Commission, Department of the Interior.

ACTION: Final rule; technical and correcting amendments.

SUMMARY: The National Indian Gaming Commission (NIGC or Commission) is revising its rules concerning the issuance of certificates for tribal self-regulation of Class II gaming: To correct a section heading in the table of contents; to correct a conflict in the deadlines contained in one of the sections which, if left uncorrected, would at times require the Commission to issue certain preliminary findings on the same day that it receives a tribe's response to the Office of Self Regulation's recommendation and report; and to correct referencing errors in two of its rules.

DATES: The effective date of these regulations is September 1, 2013.

FOR FURTHER INFORMATION CONTACT: John Hay, Senior Attorney, National Indian Gaming Commission, 1441 L Street NW., Suite 9100, Washington, DC 20005. Telephone: 202–632–7003.

SUPPLEMENTARY INFORMATION:

I. Background

The Indian Gaming Regulatory Act (IGRA or the Act), Public Law 100–497, 25 U.S.C. 2701 *et seq.,* was signed into law on October 17, 1988. The Act established the Commission and set out a comprehensive framework for the regulation of gaming on Indian lands. While the Act requires the Commission to ''monitor class II gaming conducted on Indian lands on a continuing basis,'' 25 U.S.C. 2706(b)(1), any Indian tribe which operates a Class II gaming facility and meets certain other conditions may petition the Commission for a certificate of self-regulation. 25 U.S.C. 2710(c). The Act authorizes the Commission to ''promulgate such regulations and guidelines as it deems appropriate to implement'' IGRA. 25 U.S.C. 2706(b)(10).

II. Development of the Rule

On April 4, 2013, the Commission published a final rule amending its regulations for the review and approval of petitions seeking the issuance of a certificate for tribal self-regulation of Class II gaming. 78 FR 20236, April 4, 2013. After publication, the Commission discovered that the deadline contained in 25 CFR 518.7(c)(5) for tribes to respond to the Office of Self Regulation's recommendation and report, and the deadline contained in 25 CFR 518.7(d) for the Commission to issue preliminary findings to said recommendation and report, could potentially fall on the same day, thus preventing the Commission from fully considering the tribal response before it has to issue its preliminary findings. Therefore, the Commission is revising its regulations to provide that its preliminary findings will be issued 45 days after receipt of the recommendation and report, so that the Commission has sufficient time to review and consider adequately a tribe's response to said recommendation and report. This revision is consistent with how the Commission envisioned tribes