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24 CFR Parts 891 and 892

Supportive Housing and Services for the Elderly and Persons With  
Disabilities: Implementing Statutory Reforms; Proposed Rule

**DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT**

**24 CFR Parts 891 and 892**

[Docket No. FR-5576-P-01]

RIN 2502-AJ10

**Supportive Housing and Services for  
the Elderly and Persons With  
Disabilities: Implementing Statutory  
Reforms**

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would implement amendments made by the Section 202 Supportive Housing for the Elderly Act of 2010 (Section 202 Act of 2010) and the Frank Melville Supportive Housing Investment Act of 2010 (Melville Act) to the authorizing statutes for HUD's supportive housing for the elderly program, known as the Section 202 program, and the supportive housing for persons with disabilities program, known as the Section 811 program. These two statutes were enacted on January 4, 2011, and made important reforms to the Section 202 and Section 811 programs, several of which have already been implemented through separate issuances, as discussed in the Supplementary Information section of this rule. In addition to proposing regulations to implement reforms of these two statutes, this proposed rule would implement several other changes to align with the amendments made by the January 4, 2011, statutes, and streamline the Section 202 and Section 811 programs to better provide supportive housing for the elderly and persons with disabilities. This proposed rule would establish the requirements and procedures for the use of new project rental assistance for supportive housing for persons with disabilities; the implementation of an enhanced project rental assistance contract; allowance of a set-aside for a number of units for elderly individuals with functional limitations or other category of elderly persons as defined in the notice of funding availability (NOFA); make significant changes for the prepayment of certain loans for supportive housing for the elderly; implement a new form of rental assistance called Senior Preservation Rental Assistance Contracts (SPRACs); modernize the capital advance for supportive housing for persons with disabilities; and provide grant assistance for applicants without sufficient capital

to prepare a site for a funding competition. This rule also proposes to establish the regulations for the Service Coordinators in Multifamily Housing program and the Assisted Living Conversion program.

**DATES:** *Comment Due Date.* December 8, 2014.

**ADDRESSES:** Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, 451 7th Street SW., Room 10276, Department of Housing and Urban Development, Washington, DC 20410-0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410-0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit comments, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the [www.regulations.gov](http://www.regulations.gov) Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

**Note:** To receive consideration as public comments, comments must be submitted through one of the two methods specified above. All submissions must refer to the docket number and title of the rule.

*No Facsimile Comments.* Facsimile (fax) comments are not acceptable.

*Public Inspection of Public Comments.* All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. eastern time, weekdays, at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number).

Individuals with speech or hearing impairments may access this number through TTY by calling the Federal Relay Service, toll free, at 800-877-8339. Copies of all comments submitted are available for inspection and downloading at [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** Alicia Anderson, Grant Policy and Management Division, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 6142, Washington, DC 20410-7000; telephone number 202-708-3000 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number through TTY by calling the Federal Relay Service, toll free, at 800-877-8339.

**SUPPLEMENTARY INFORMATION:**

**I. Executive Summary**

*A. Purpose of the Regulatory Action*

This rule proposes to implement certain reforms to HUD's Section 202 program and Section 811 program made by statutory changes to the programs, enacted in January 2011, and which require regulations for implementation. The Section 202 Act of 2010 (Pub. L. 111-372) includes provisions to strengthen the availability of long-term, affordable supportive housing for very low-income elderly persons by: Streamlining the development procedures for new affordable housing units; supporting the preservation of existing units; preventing displacement of elderly project residents in the case of refinancing or recapitalization by establishing the Senior Preservation Rental Assistance Contracts; and supporting greater access to affordable supportive services for the elderly.

The Melville Act of 2010 (Pub. L. 111-374), will offer additional methods of financing new supportive housing for persons with disabilities, as well as support the preservation of affordable rental housing for individuals with disabilities and nonelderly disabled families. The amendments will increase the production of new affordable rental supportive housing units for persons with disabilities, while promoting and facilitating community integration for persons with significant and long-term disabilities. The availability of project rental assistance funds will stimulate and support innovative state approaches that will transform the provision of housing for extremely low-income persons with disabilities, while providing voluntary access to support and services that address the individual needs of persons occupying the HUD supported housing units. This rule would implement those components of

the statute that require regulations to make the new program features operable.

### *B. Summary of the Major Provisions of the Regulatory Action*

This proposed rule, in addition to making conforming changes (those changes for which there is no exercise of discretion by HUD), would provide for grant assistance for applicants without sufficient capital to prepare a housing site in order to compete for funding under the Section 202 program or the Section 811 program; revise the development cost limits for the Section 811 program; amend the requirements for project rental assistance under the Section 811 program to allow for adjustments upon renewal and for increases in emergency situations; allow Section 811 owners to request the conversion of supportive housing units for very low-income persons with disabilities; offer voluntary services to persons with disabilities under the Section 811 program; allow Section 202 sponsors of projects to set aside a percentage of units for elderly individuals with functional limitations or other category of elderly persons, as defined in the notice of funding availability (NOFA), in order to better align the Section 202 program with Federal, state, and local health care initiatives that support very low-income elderly individuals and provide for enhanced project rental assistance contracts. These contracts would be available to a nonprofit organization submitting a new application under either the Section 811 or Section 202 program, and accessing private capital, to fund the construction or provide permanent financing for supportive housing units for the elderly or persons with disabilities.

### *C. Costs and Benefits*

The primary impact of this proposed rule will result from implementation of the new Enhanced Project Rental Assistance Contracts (ePRAC) program. This program would allow future operating subsidy to pay debt service under specific circumstances not currently allowed. As provided in the accompanying regulatory impact analysis (RIA) for this rule, assuming a \$20 million appropriations level, HUD estimates that there will be \$15 million leveraged for new construction, which, under the assumptions used in HUD's RIA, is sufficient to fund an additional 76 units. The benefits from this proposed change are primarily to tenants who are able to receive improved housing services and/or additional budgetary flexibility from the

additional units developed as a result of the increased production. While improved housing affordability is associated with greater budget flexibility, improved housing more generally is often associated with improvements in psychological and other health outcomes of tenants. However, HUD's RIA notes that no funding has been made available for the development of new units in Fiscal Years (FYs) 2012 and 2013; therefore, a significant economic impact will not result from new construction under the Section 202 and 811 programs. The ePRAC program will also be available to existing projects where the debt is used to make leveraged investments that reduce operating costs by more than the cost of the debt service.

The RIA assumes a reduction of 20 percent in owner paid utilities, which is an estimated savings of \$7 million. Under the assumption that the costs savings translate into available resources to pay debt service over time, these savings could conceivably result in \$96 million, using the same loan terms used for the estimate for new construction. However, the actual savings will depend upon the number of applications submitted for which HUD concludes the debt service would result in ongoing operating costs savings in an amount greater than the cost of the debt.

The benefit of the ePRAC program is the increased flexibility to use operating funds to pay debt service, which is intended to result in a net increase in capital funds available to construct and rehabilitate projects in the Section 202 and 811 programs. The costs of the ePRAC program are the additional debt service payments the owner must make, and the costs of additional risks inherent in any increase in leverage within a project. Though debt may increase the opportunity for up-front investment, the interest on the debt is the cost of this benefit, which increases the demands on operating funds in the future, and diminishes what is available for other operating expenses. However, underwriting seeks to ensure that the project's operations and finances remain viable even with the possibility of this additional burden.

The other changes proposed by this rule will not create any new costs or benefits. HUD is proposing to codify requirements for funded programs (service coordinators and assisted living conversion) that, to date, are found in NOFAs.

## **II. Background**

### *A. Authorizing Statutes for Supportive Housing and Services for the Elderly and Persons With Disabilities*

The Section 202 program and the Section 811 program are HUD's core programs for providing supportive housing to the elderly and persons with disabilities, respectively. The purpose of these programs is to allow elderly individuals and persons with disabilities to live as independently as possible, but in an environment that provides access to voluntary supportive services that may be needed. Section 202 of the Housing Act of 1959 (see Pub. L. 86-372, approved September 23, 1959) originally provided housing for the elderly and in the later years of the Section 202 program also provided housing for persons with disabilities. Under this public law, the Section 202 program was officially the Section 202 Direct Loan Program for Housing for the Elderly or Handicapped Families.<sup>1</sup> The Cranston-Gonzalez National Affordable Housing Act (NAHA) (Pub. L. 101-625, approved November 28, 1990) amended Section 202 to provide for separate authorization for supportive housing for persons with disabilities. NAHA also changed the Section 202 program into what is now known as the supportive housing for the elderly program the differences between the old Section 202 program and the existing program is explained below. Section 202b of the Housing Act of 1959 authorizes the conversion of elderly housing to assisted living facilities, and the Housing and Community Development Act of 1992, as originally enacted (Pub. L. 102-550, as approved October 28, 1992) and subsequently amended, authorizes funding for service coordinators in multifamily housing for the elderly and persons with disabilities.

Section 202 of the Housing Act of 1959—Supportive Housing for the Elderly

Section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) authorizes HUD's supportive housing program for the elderly (Section 202 program). The program enables elderly persons to live with dignity and independence by providing supportive housing that accommodates special needs and provides services tailored to the needs of such elderly persons. Originally, the Section 202 program began as a direct loan program, which provided low-interest construction loans to nonprofit

<sup>1</sup> The statutory name for this program uses the term "handicapped families."

developers to create moderate-income housing for the elderly.

HUD continues to administer Section 202 direct loans; however, they are no longer issued. In 1991, HUD transformed the program into one that provides capital advances instead of direct loans, where funds are given to nonprofit developers to construct and/or rehabilitate housing for very low-income elderly. Under this model, such Federal assistance requires no repayment and is interest free as long as the project is available for very low-income elderly persons, in accordance with the applicable Section 202 program requirements, for no less than 40 years. If the owner defaults on the terms and conditions of the Section 202 program, the owner is liable for the entire balance of the capital advance amount with interest and penalties. The capital advance model also began providing project rental assistance to fund the difference between the HUD-approved operating costs of the project and the tenant's contribution toward rent, to assist the owners with the operation of the project.

HUD is taking a renewed look at the Section 202 program and is making several enhancements to the program. Specifically, the current section 202 of the Housing Act of 1959 contains several important authorizations for HUD that will be implemented by this rule. First, HUD has authority under section 202(b) of the Housing Act of 1959 to provide assistance for other expenses as necessary to expand the supply of supportive housing for the elderly, which gives HUD the authority to provide technical assistance for preliminary work in the development of such housing. Second, HUD has authority under section 202(c) of the Housing Act of 1959 to provide an enhanced project rental assistance contract option, which is similar to senior preservation rental assistance contracts (in connection with the prepayment and refinancing of Section 202 projects). Section 202(c) gives HUD the broad authority to implement project rental assistance contracts in accordance with the goals of the Section 202 program. Third, section 202(f) of the Housing Act of 1959 gives HUD the broad authority to set the selection criteria for the Section 202 program, in order to make sure funds are used effectively. Such authority allows HUD to set selection criteria to give a priority for assistance to housing that will provide support to elderly individuals with functional limitations. Fourth, section 202(g)(1) of the Housing Act of 1959 states that HUD must ensure that housing assisted under the Section 202

program provides a range of services tailored to the needs of the category or categories of elderly persons occupying such housing; thereby, providing HUD the authority to make sure the needs of elderly persons with functional limitations are met. Lastly, section 202(j)(1) of the Housing Act of 1959 authorizes HUD to provide technical assistance grants for applicants with limited resources in order for the applicants to fully participate in the Section 202 program.

#### Section 202b of the Housing Act of 1959—Assisted Living Conversion

Section 202b of the Housing Act of 1959 (12 U.S.C. 1701q-2) authorizes grants for the substantial capital repair of elderly housing or the conversion of elderly housing to assisted living facilities (the Assisted Living Conversion program). Assisted living facilities are designed to accommodate the frail elderly and persons with disabilities who can live independently but need assistance with activities of daily living (e.g., assistance with eating, bathing, grooming, dressing, and home management activities.) Assisted living facilities must provide support services such as personal care, transportation, meals, housekeeping, and laundry. Generally, funding for assisted living facilities covers basic physical conversion of existing project units, common and service spaces.

#### Section 811 of the Cranston-Gonzalez National Affordable Housing Act of 1990—Supportive Housing for Persons With Disabilities

Section 811 of the Cranston-Gonzalez National Affordable Housing Act (NAHA) (42 U.S.C. 8013) authorizes HUD's supportive housing for persons with disabilities (Section 811 program) and allows persons with disabilities to live as independently as possible by providing capital advances to increase the supply of supportive housing for such persons. In addition, the Section 811 program provides project rental assistance to fund the difference between the HUD-approved operating costs of the project and the tenants' contribution toward rent. In addition, similar to section 202 of the Housing Act of 1959, section 811 of NAHA contains several important program authorizations that will be implemented by this rule and have been strengthened by the Melville Act. For example, section 811(b)(2) of NAHA authorizes HUD to provide assistance for other expenses as necessary to expand the supply of supportive housing for persons with disabilities. Section 811(d) of NAHA authorizes HUD to allow for

an enhanced project rental assistance contract option. This section gives HUD the broad authority to implement project rental assistance contracts in accordance with the goals of the Section 811 program. Under section 811(j)(1) of NAHA, HUD is authorized to provide technical assistance grants for applicants with limited resources in order to fully participate in the Section 811 program.

#### Housing and Community Development Act of 1992—Multifamily Housing Service Coordinators

The Housing and Community Development Act of 1992 (Pub. L. 102-550, approved October 28, 1992) in Sections 671 through 677, which establish on their own or amend other housing program statutes, authorizes funding for service coordinators to assist elderly individuals and persons with disabilities, living in federally-assisted multifamily housing to obtain needed supportive services from community agencies. These sections were amended by section 851 of the American Homeownership and Economic Opportunity Act of 2000 (Pub. L. 106-569, 114 Stat. 2944, approved December 27, 2000) to provide for increased flexibility in the use of service coordinators in federally-assisted multifamily housing (see 114 Stat. 3023-2025). The services authorized are intended to prevent premature and inappropriate institutionalization.

#### Section 811 of the American Homeownership and Economic Opportunity Act of 2000—Prepayment of Certain Section 202 Loans

Section 811 of the American Homeownership and Economic Opportunity Act of 2000 (AHEO) (12 U.S.C. 1701q note) authorizes the prepayment of certain Section 202 loans. Between 1959 and 1990, HUD loaned funds to private nonprofit developers to build housing for the elderly and disabled families. Many of these projects are now in need of repair and recapitalization, which is typically accomplished through the prepayment and refinancing of the Section 202 direct loan, as authorized under section 811 of the AHEO. HUD reviews any prepayment requests to ensure the prepayment will benefit the project and its residents while preserving affordability.

*B. The Section 202 Act of 2010 and the Melville Act*

Section 202 Act of 2010—Amendments to the Section 202 Program

The Section 202 Act of 2010 (Pub. L. 111–372, approved January 4, 2011) amends the Section 202 program to include in the selection criteria for funding Section 202 supportive housing the extent to which the applicant has ensured that a service coordinator will be employed or otherwise retained for the housing. This service coordinator must have managerial capacity and responsibility for carrying out supportive services. In addition, the Section 202 Act of 2010 amends the development cost limitations for the Section 202 program to be reasonable. The Section 202 Act of 2010 also limits an owner's deposit to cover operating deficits during the first 3 years of operations, and prohibits the use of such amount to cover construction shortfalls or inadequate initial project rental assistance amounts.

The Section 202 Act of 2010 redefines “private nonprofit organization” and authorizes HUD, in the case of a nonprofit sponsoring organization of multiple housing projects assisted under such Act, to determine the criteria or conditions under which financial or administrative responsibilities exercised by a single-entity private nonprofit organization that is the owner corporation responsible for the operation of an individual housing project may be shared or transferred to the governing board of the sponsoring organization. The new definition also allows the sole general partner of a for-profit limited partnership to be a limited liability or for-profit organization company wholly owned and controlled by one or more organizations meeting the requirements of such definition.

The Section 202 Act of 2010 directs HUD to either operate a national competition for the nonmetropolitan funds under the Section 202 program, or to make allocations to regional offices of HUD.

In addition, the Section 202 Act of 2010 amends section 811 of the AHEO, making significant changes for the prepayment of certain Section 202 loans. The Section 202 Act of 2010 requires that a project owner execute an affordability use agreement that extends at least 20 years beyond the maturity date of the original Section 202 loan at the time of prepayment, authorizes new flexibility in the use of proceeds from the refinancing of a project, and creates permanent authority for the refinancing of Section 202 projects where debt

service savings is not anticipated as a result of the refinance.

The Section 202 Act also authorizes a new form of rental assistance, called Senior Preservation Rental Assistance Contracts (SPRACs), to be provided in the refinancing of certain Section 202 projects where no debt service savings is anticipated and where unassisted residents would otherwise face potential rent increases. This is one of the most significant changes made to the Section 202 Direct Loan program.

Section 202 Act of 2010—Amendments to the Assisted Living Conversion Program

The Section 202 Act of 2010 also amends section 202b of the Housing Act of 1959 to enable the conversion of units to create either an assisted living facility or service-enriched housing. Although these amendments directly affect the Assisted Living Conversion program, they also focus on enhancing the services provided in such facilities. Service coordinators are necessary to coordinate the provision of supportive services for the elderly, especially for the frail or disabled elderly, in part to help them to continue living independently in such housing. Service coordinators manage and provide access, through third parties, to necessary supportive services for the elderly living in supportive housing, assisted living facilities, or service-enriched housing, because many residents have unmet needs for services and assistance that the owner of the project cannot identify or provide effectively.

Melville Act—Amendments to the Section 811 Program

The Melville Act (Pub. L. 111–374, approved January 4, 2011) makes significant changes to the Section 811 program. The Melville Act improves the Section 811 program by establishing new features that are designed to facilitate community integration for persons with significant and long-term disabilities. These new features include: Providing stronger incentives to Section 811 program participants to leverage other sources of capital funding; transferring Section 811 program vouchers to the Housing Choice Voucher program (also known as HUD's Section 8 program), which serves to conform and streamline the administrative requirements for rental assistance; adopting the HOME Investment Partnerships (HOME) program cost limitations on funds invested on a per-unit basis to further conform and streamline requirements; providing for delegated processing of

applications for funding; and allowing for greater tenant protections. The Melville Act also amends the definition of “persons with disabilities” to mean a household composed of one or more persons who is 18 years of age or older but less than 62 years of age, and who has a disability.

Most significantly, the Melville Act implements a new project rental assistance authority (section 811(b)(3) of NAHA, as amended by the Melville Act) that is separate from the existing project rental assistance under the Section 811 program, which provides capital advances and contracts for project rental assistance. The new project rental assistance provided by the Melville Act provides funding to state housing finance agencies and other appropriate entities to assist them in providing rental assistance to extremely low-income, nonelderly adults (persons 18 years of age or older and less than 62 years of age) with disabilities. To be eligible for the project rental assistance, the state housing finance agency or other appropriate entity must have entered into an agreement with the state health and human services agency and the state agency designated to administer or supervise the administration of the state plan for medical assistance under title XIX of the Social Security Act (the state Medicaid agency). This agreement must: (1) Identify and target the populations to be served by the project, (2) set forth the methods for outreach and referral, and (3) make available appropriate services for tenants of the project. Placing this new project rental assistance funding under the control of housing finance agencies that have partnered with state health and human services and Medicaid agencies, will allow states to more carefully target resident populations that will benefit most from integrated supportive housing units, and promote and refer these target populations to this newly available housing.

As provided by the Melville Act, projects eligible for the new project rental assistance can be either new or existing multifamily housing projects. These projects' development costs are paid with resources from other public or private sources, including projects that have a commitment of Federal Low-Income Housing Tax Credits (LIHTC), HOME program funds, any other Federal Government funding, or other sources. To ensure that the goals of community integration are achieved, the Melville Act provides that in any multifamily housing project receiving the new project rental assistance, no more than 25 percent of the total

number of dwelling units in the project may be used for supportive housing for persons with disabilities and receive the project rental assistance, or have an occupancy preference for persons with disabilities associated with such units. This does not prevent owners from housing persons with disabilities in units not set aside to receive the project rental assistance under this program. Persons with disabilities are eligible to occupy nonassisted units. Denying admission on the basis of disability in nonassisted units would violate the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act.

The Melville Act also requires all dwelling units receiving the new project rental assistance to operate as supportive housing for persons with disabilities for a period of not less than 30 years and to only serve nonelderly, extremely low-income persons with disabilities and extremely low-income households that include at least one nonelderly person with a disability.

In addition, the Melville Act modernizes the capital advance portion of the Section 811 program by authorizing the use of project rental assistance for emergency situations that are outside the control of the owner, and the conversion of units; adopting the cost limitations on funds invested on a per-unit basis as provided by the HOME program, authorized by title II of NAHA, for the purpose of further conforming and streamlining requirements; providing for delegated processing of applications for funding; and allowing for greater tenant protections.

The Section 202 Act of 2010 and the Melville Act provide a much-needed foundation for practical improvements to the Section 202 program and Section 811 program, and several of these reforms, which did not require a regulatory foundation for implementation, have already been implemented.<sup>2</sup>

### III. This Proposed Rule—Overview

This section of the preamble provides an overview of the regulations to be revised, removed, and added by this

proposed rule. Although the proposed rule primarily implements the new statutory program features authorized by the Section 202 Act of 2010 and the Melville Act, these two statutes also require conforming changes to existing regulations at 24 CFR part 891, and this rule makes those conforming changes. In addition, HUD is also proposing to add a new part 892 to establish regulations for the Service Coordinator in Multifamily Housing program and the Assisted Living Conversion program, as provided by the Section 202 Act of 2010. The requirements for these programs have long been addressed only through NOFAs. The enhanced features to both programs provided by the Section 202 Act of 2010 present an optimum time to propose regulations, and solicit feedback on whether the regulatory structure for these two programs achieves the service-enriched housing that HUD is striving to achieve through this proposed rule.

#### *A. Supportive Housing for the Elderly and Persons With Disabilities (Part 891)*

##### General Program Requirements (Subpart A)

##### Purpose and Policy (§ 891.100—Revised)

The purpose and policy for the Section 202 program and Section 811 program would be revised to align with the changes to the Section 811 program made by the Melville Act amendments. The revision to this section reflects the new policy for the Section 811 program, which ensures residents are offered, but are not required to accept, any necessary supportive services that address their individual needs. In addition, it is clarified that supportive services are voluntary under the Section 202 program.

##### Definitions (§ 891.105—Revised)

Section 891.105 in subpart A, which addresses the definitions for both the Section 202 program and Section 811 program, would define certain new terms and revise existing terms to reflect the statutory changes.

A key term defined in this section pertains to ePRACs. HUD would add a definition for ePRAC, which would mean the contract entered into by the nonprofit organization and HUD setting forth the rights and duties of the parties with respect to the project and the payments under the ePRAC. An ePRAC is made available for nonprofit organizations submitting new applications under section 811 of NAHA (42 U.S.C. 8013) or section 202 of the Housing Act of 1959 (12 U.S.C. 1701q), and who are accessing private

capital, to fund the construction or provide permanent financing for supportive housing units for the elderly or persons with disabilities; as well as for owners of existing properties accessing private capital and debt service results in ongoing operating cost savings in an amount greater than the cost of debt service. Such contract would allow for the inclusion of debt service as an eligible expense for the units covered by the contract and would allow for rents to be set up to an amount determined by HUD (which may include the provision of a service coordinator).

The definition of “operating costs” would be revised to include allowances for debt service only for units covered by an ePRAC, or for existing properties when such debt service results in ongoing operating cost savings in an amount greater than the cost of debt service.

The definitions for “project rental assistance contract” and “project rental assistance payment” would be amended to clarify that they do not apply to subpart G, which authorizes the new project rental assistance as provided under the Melville Act. In addition, the definition of “project rental assistance contract” would be amended to clarify that this term does not apply to units covered by ePRAC under § 891.190 in subpart A. Lastly, the definition of “project rental assistance contract” would also be amended to include payments and the terms as provided in the ePRAC.

##### Development Cost Limits (§ 891.140—Revised)

The Melville Act revises the development cost limitations for the Section 811 program. Accordingly, the current section on development cost limits in § 891.140 would be removed because the Section 811 program and Section 202 program now have separate development cost limitations. However, since the development cost limits for the Section 202 program are not changed, the language under § 891.140 would be redesignated as § 891.208 for applicability only to the Section 202 program.

##### Owner Deposit (§ 891.145—Removed)

The Melville Act eliminates the owner deposit requirement for the Section 811 program, and, therefore, § 891.145 is removed.

##### Operating Cost Standards (§ 891.150—Revised)

Section 891.150, which addresses operating cost standards for the supportive housing programs for the

<sup>2</sup> 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](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, Pub. L. 112–55, 125 Stat. 552). See [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/administration/grants/fundsavail/nofa12/sec811PRAdemo](http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/grants/fundsavail/nofa12/sec811PRAdemo).

elderly and persons with disabilities, would be revised to provide that § 891.150 only applies to PRACs, as defined under § 891.105.

#### Other Federal Requirements (§ 891.155—Revised)

This section's introductory paragraph would be slightly amended to reference subpart G, the new project rental assistance. This section would also be changed in paragraph (b) by adding language explaining that the environmental requirements of 24 CFR part 50 and part 55 do not apply to subpart G. As described elsewhere in this preamble under Responsibilities of Participating Agencies (§ 891.882), the environmental standards for the Project Rental Assistance for Projects without Capital Advances program under subpart G would be under § 891.882(e) of this proposed rule. In addition, paragraph (b) would clarify that the environmental standards under § 891.882(e) that are applicable to prepayments (as provided under §§ 891.530 and 891.700) must consider the use of a senior preservation rental assistance contract under subpart H, regardless of whether an application for such contract has been made at the time of review.

Under paragraph (d), it would be clarified that the labor standards under this section do not apply to subpart H, which has separate labor standards under § 891.882(g) of this proposed rule. While the labor standards under this section would apply to prepayments under §§ 891.530 and 891.700, it should be noted that the labor standards may not be triggered by such prepayments, even where 12 or more units may continue to be assisted under a preexisting Section 8 contract. Paragraph (d) would also correct the statutory citations to the Davis-Bacon Act and the Contract Work Hours and Safety Standards Act.

#### Audit Requirements (§ 891.160—Revised)

This section, which applies to both the Section 202 program and Section 811 program, would be revised to state that nonprofits receiving assistance under part 891 are subject to the audit requirements in the NOFA. Currently, this section refers to 24 CFR part 45, which was removed and is no longer applicable (see 62 FR 61616 (November 18, 1997)).

#### Duration of Capital Advance (§ 891.165—Revised)

In HUD's final rule published in the **Federal Register** on June 20, 2013, at 78 FR 37106, entitled "Streamlining

Requirements Governing the Use of Funding for Supportive Housing for the Elderly and Persons with Disabilities Programs, as corrected by an amendatory rule published on August 15, 2013, at 78 FR 49680, HUD revised § 891.165(a) to provide that duration of the fund reservation for a capital advance with construction advances is 24 months from the date of issuance of the award letter to the date of initial closing. HUD, however, inadvertently omitted offering a similar amendment to § 891.165(b). Section 891.165(b), as currently codified, provides that 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, and the duration can be extended up to 36 months, as approved by HUD on a case-by-case basis. However to close-out a fund reservation, initial closing must occur. A project that elects not to receive any capital advance before construction completion does not reach initial closing until after construction completion. Therefore, the time frame must be from the date of issuance of the award letter to the initial closing. This rule would make that revision.

#### Technical Assistance (§ 891.175—Revised)

Section 891.175, which addresses technical assistance for the Section 202 program and the Section 811 program, would be amended to provide for grant assistance for applicants without sufficient capital to prepare a housing site in order to compete for funding under the Section 202 program or Section 811 program. These grants will be categorized as technical assistance because the use of this funding serves purposes for which technical assistance grants are commonly awarded. HUD shall continue to make available appropriate technical assistance for both programs, and such technical assistance must ensure that applicants having limited resources, particularly minority applicants, are able to participate more fully in the programs.

In addition, the amendments made to this section by this proposed rule provide that HUD may offer competitive grants to bolster an applicant's capacity in preliminary work required in the development of supportive housing for the elderly and persons with disabilities. This type of technical assistance is only available if the applicant meets the eligibility requirements under the NOFA for the Section 202 program or Section 811 program. The applicant must have site control, and lack access to capital to

undertake initial efforts to confirm site feasibility, pursue initial site funding, and undertake the preparatory steps necessary to compete in the NOFA for the Section 202 program or Section 811 program, as applicable. Such technical assistance may be used to cover initial costs of necessary architectural and engineering work, site control, and other activities related to the development of supportive housing for the elderly and persons with disabilities.

#### Enhanced Project Rental Assistance Contracts (§ 891.190—New)

A new § 891.190, entitled "Enhanced Project Rental Assistance Contracts" (ePRACs) would be added to contain the regulations that will govern the ePRACs under the Section 811 and Section 202 programs. HUD proposes to place the regulations for the ePRACs under subpart A of part 891, because these contracts are available to a nonprofit organization under either the Section 811 program or Section 202 program. Subpart A provides general requirements for both the Section 811 program and Section 202 program.

As provided in the discussion of this section, an ePRAC is available to a sponsor or owner under the Section 811 program or Section 202 program, accessing private capital, to fund the construction or provide permanent financing for supportive housing units for the elderly or persons with disabilities. The ePRAC would be available to sponsors that can provide evidence of a committed funding source from a lender for the construction or permanent financing of the Section 202 or Section 811 supportive housing units covered by the ePRAC. These contracts would allow, among other things, for the inclusion of debt service for units covered by the ePRAC as a project expense. With the exception of the requirements provided in this section for the ePRAC, such contracts must abide by the other requirements set forth in the regulations in 24 CFR part 891, subparts D and F.

New § 891.190 is proposed to be structured as follows:

#### In General (§ 891.190(a))

Paragraph (a) of § 891.190, entitled "In general," states that ePRACs are available to private nonprofit organizations, as defined under §§ 891.205, 891.305, and 891.805, with sponsors accessing private capital, and such organizations must abide by the requirements set out under § 891.190(b).

#### Requirements (§ 891.190(b))

Paragraph (b) of § 891.190 provides the requirements for ePRACs. These

requirements only apply to a private nonprofit organization, as defined under §§ 891.205, 891.305, and 891.805, with sponsors accessing private capital for the construction or permanent financing of the section 202 or section 811 supportive housing units covered by the ePRAC. These contracts provide for the inclusion of debt service as an under eligible expenses, the of debt service for housing units covered by an ePRAC. Debt service for non-section 202 or non-section 811 units cannot be included.

The ePRAC must set the initial rent levels, as well as the rent levels at the beginning of each 5-year term of the multiyear contract, based on the project's operating expenses that include debt service and that do not exceed market rents, subject to a rent comparability study (which may take the provision of a service coordinator into consideration). Rents during the 5-year term of the multiyear contract would be adjusted using the Operating Cost Adjustment Factor (OCAF).

For Section 202 projects, ePRACs must be for a term of 20 years. The 20-year term is linked to the availability of funding. Accordingly, the funding for the first year of the contract must be provided in accordance with current funding procedures, and funding for subsequent years is subject to available appropriations. If, however, funds appropriated are inadequate to meet the financial needs of the assisted units, HUD will not require the enforcement of the contract term. For Section 811 projects, ePRACs must also be for a term of 20 years. However, if the project is assisted with any low-income housing tax credits or with any tax-exempt housing bonds, the contract term must be for a term of 30 years. In accordance with the provisions of the Melville Act, for all Section 811 projects utilizing an ePRAC, funding for the first 5 years of the contract must be provided. Funding for subsequent years is subject to available appropriations.

Vacancy payments for units under an ePRAC will be in the amount of 80 percent of the per-unit operating expenses that include debt service for the first 60 days of vacancy if the conditions for receipt of the vacancy payments are fulfilled under § 891.445.

Section 202 Supportive Housing for the Elderly (Subpart B)

Definitions (§ 891.205—Revised)

Section 891.205, which provides the definitions for the Section 202 program, would be amended to revise the definition for “activities of daily living,” and add a new definition for “functional limitations.” The definition of

“activities of daily living,” (ADL) would be amended to remove references to “home management activities,” and to add the activity of “transferring.” The reference to “home management activities” was removed because it is no longer consistent with the standard ADL definition. “Transferring” is included as an activity of daily living, and identifies tasks such as going from a seated to a standing position, and getting in and out of bed. HUD is revising the definition of “activities of daily living,” to include this recognized category of ADL to identify tasks that are essential for maintaining independent living. The amended definition provides a comprehensive grouping of everyday activities that are an indicator of the services necessary for independent living.

HUD is also adding a definition for the term “functional limitations,” since new program requirements would allow for a set-aside for elderly individuals with functional limitations, as explained earlier in this preamble. This term relates to the restriction or loss of ability to perform or complete ADL and or Instrumental Activities of Daily Living (IADLs) tasks. An elderly person with functional limitations requires assistance with three ADLs or one ADL and some combination of IDALs and/or other thresholds as established by HUD. An assessment of ADLs and IADLs is a useful tool for tailoring services to meet the needs of elderly persons to allow for such persons to age-in-place and live independently.

HUD is adding a definition for the term Instrumental Activities of Daily Living (IADLs) since it is included in the definition of functional limitations. IADLs are activities that are more complex than those needed for the ADLs, they include but are not limited to handling personal finances, meal preparation, shopping, traveling, doing housework, using the telephone, and taking or managing medications.

Provisions of Services (§ 891.225—Revised)

Section 891.225, which applies to the provision of services for the Section 202 program, would be amended to add a new paragraph (b)(2) to provide that sponsors of projects may set aside a percentage of units for elderly individuals with functional limitations or other category of elderly persons as defined in the NOFA. HUD is allowing sponsors this set-aside in order to better align the Section 202 program with Federal, state, and local health care initiatives that support very low-income elderly individuals. The exact

percentage will be determined and announced by HUD through a NOFA.

Any units set aside under this new paragraph (b)(2) must also abide by requirements under § 891.410(c)(3), as added by this proposed rule, and discussed below.

Current paragraph (b)(2) of § 891.225 will be redesignated as paragraph (b)(3), and redesignated paragraph (b)(3) will be amended to clarify that the limit of \$15 per unit, per month, for service costs as an eligible expense pertains only to the cost of supportive services and not to the employment of a service coordinator. The limit of \$15 may also be changed, as determined by HUD, to allow for flexibility. In addition, HUD is removing the sentence that stated any cost associated with the paragraph is an eligible cost under the contract because this sentence is inconsistent with the rest of the paragraph.

Selection Preferences (§ 891.230—Removed)

Section 891.230, which outlines the selection preferences for the Section 202 program, would be removed. This section no longer applies to the Section 202 program as these Federal preferences were eliminated by statute (see HUD final rule published on March 29, 2000, 65 FR 16692).

Owner Deposit (§ 891.235—New)

The Melville Act eliminates the owner deposit requirement for the Section 811 program. Since the Section 202 program still requires an owner deposit, the Section 202 language under § 891.145 is moved to a new § 891.235 for Section 202 projects. Under § 891.145, 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 percent) of the HUD-approved capital advance, not to exceed \$25,000, and this requirement continues in § 891.235. In addition, as required by the Section 202 Act of 2010, such amount must be used only to cover operating deficits during the first 3 years of operation, and must not be used to cover construction shortfalls or inadequate initial project rental assistance amounts.

Section 811 Supportive Housing for Persons With Disabilities (Subpart C)

Definitions (§ 891.305—Revised)

The Melville Act amends the definition of “persons with disabilities” to mean a household composed of one or more persons who is 18 years of age or older and less than 62 years of age, and who has a disability. The definition of “disabled household” in § 891.305 is amended to align with the Melville Act,



and would be amended to mean a household composed of one or more persons who is 18 years of age or older and less than 62 years of age, and who has a disability. In addition, the section would be amended to clarify that a surviving member or members in a disabled household must have been living in the unit as lawful tenants.

#### Cost Limits (§ 891.308—New)

A new § 891.308 is added to subpart C to provide the cost limitations as authorized by the Melville Act. Under the Melville Act, HUD must periodically establish development cost limitations, by market area, for group homes of supportive housing for persons with disabilities by publishing a notice of such limitations in the **Federal Register**. This language is similar to the current development cost limits for the entire Section 811 program, but now only applies to group homes. HUD adopts the current regulatory language for development cost limits under § 891.140 for group homes.

For group homes, HUD must 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 of group homes, as defined under section 811(k)(1) of NAHA, as amended by the Melville Act.

Other than group homes, the provisions of section 212(e) of NAHA (42 U.S.C. 12742(e)) and the cost limits established by HUD, pursuant to this section which authorizes the HOME program, apply on a per-unit basis to supportive housing for persons with disabilities assisted with a capital advance as provided under the Melville Act. HUD may provide for the waiver of such cost limits under such cases in which the cost limits established pursuant to section 212(e) of NAHA may be waived, and to provide for the cost of special design features so that housing is made accessible to persons with disabilities, so that individual dwelling units meet the special needs of persons with disabilities, and so that housing is established in a location that is accessible to public transportation and community organizations that provide supportive services to persons with disabilities. In addition, applicants will not receive a waiver in excess of 110 percent of the applicable HOME program cost limitations.

In accordance with the Melville Act, for supportive housing for persons with disabilities assisted with a capital advance, HUD will use the cost limits under the HOME program to calculate the maximum fund reservation amount

of the capital advance to be made available to individual owners. Owners may request an amount less than the amount determined under the cost limits if such amount still allows for the project's financial feasibility. However, owners must not decline the capital advance amount made available to them.

As stated in § 891.140, owners that incur actual development costs that are less than the amount of the initial fund reservation are entitled to retain 50 percent of the savings in a Replacement Reserve Account. Such percentage will be increased to 75 percent for owners that add energy efficiency features. In addition, the Replacement Reserve Account must only be used for repairs, replacements, and capital improvements to the project.

#### Special Project Standards (§ 891.310—Revised)

In order to provide flexibility for the developers of multifamily projects as authorized under the Melville Act, § 891.310(b) would be amended to clarify that the additional accessibility requirements under paragraph (b) of § 891.310 only apply to group homes as defined under section 811(k)(1) of NAHA, and independent living facilities. In addition, HUD is amending the existing accessibility requirements under section 891.310(b). Under the Melville Act, projects can no longer limit occupancy based on a type of disability. Instead, projects must base eligibility on who will benefit from the services provided. Accordingly, § 891.310(b) is revised to state that all entrances, common areas, units to be occupied by resident staff, and amenities must be readily accessible to and usable by persons with disabilities.

As revised, § 891.310(b) would provide, in paragraph (b)(2), that all dwelling units in an independent living facility (or all bedrooms and bathrooms in a group home) involving new construction must be designed to be accessible or adaptable for persons with physical disabilities. Section 891.310(b)(3) would provide that in a project for chronically mentally ill individuals involving new construction, a minimum of 10 percent of all dwelling units in an independent living facility (or 10 percent of all bedrooms and bathrooms in a group home) must be designed to be accessible or adaptable for persons with physical disabilities. Section 891.310(b)(4) would provide that a project involving acquisition and/or rehabilitation may provide less than full accessibility if: (i) The project complies with the requirements of 24 CFR 8.23; (ii) the cost of providing full

accessibility makes the project financially infeasible; (iii) fewer than one-half of the intended occupants have mobility impairments; and (iv) the accessibility requirement will be met through existing properties that serve persons with disabilities.

#### Project Rental Assistance (§ 891.330—New)

As noted earlier in this preamble, one of the most significant changes made by the Melville Act is the establishment of a new project rental assistance authority (section 811(b)(3) of NAHA, as amended by the Melville Act) that is separate from the existing project rental assistance under the Section 811 program, and which provides capital advances and contracts for project rental assistance. Under the Melville Act, project rental assistance under the Section 811 program may be adjusted upon renewal and may be increased in emergency situations. A new § 891.330 is added to subpart C to reflect these changes.

Upon the expiration of each contract term, subject to the availability of appropriations, HUD will adjust the annual contract amount for Section 811 projects to provide for reasonable project operating costs, including adequate reserves and service coordinators. Any contract amounts not used by a project during a contract term will not be available for such adjustments upon renewal.

In addition, for emergencies that are outside the control of the owner, HUD will increase the annual contract amount, subject to HUD's review and limitations, as may be prescribed by HUD. The Melville Act gives HUD broad discretion to increase the annual contract amount in emergency situations. Increases in contract amounts will be no greater than either 10 percent above the most recently approved budget-based rent, or 110 percent of Fair Market Rents (FMR) for market-based rents. Such increases will be solely for repaying a loan or equity that was used for addressing emergency repairs to the building that are beyond normal repair and maintenance, and caused by matters outside the control of the owner for which sufficient insurance proceeds are not available.

#### Conversions (§ 891.335—New)

A new § 891.335 is added to provide, as authorized by the Melville Act, that an owner may request the conversion of supportive housing units for very low-income persons with disabilities. Under a new § 891.335, an owner may request conversion of some or all units from

supportive housing for very low-income persons with disabilities to very low-income persons, without tenancy being conditioned on such very low-income persons having disabilities. Under the Melville Act, HUD has to determine that the units are no longer needed for supportive housing for persons with disabilities. Therefore, a conversion would be approved only if the state agency responsible for administering the Medicaid program and/or the state health and human services agency indicates in writing that the need for supportive housing for very low-income persons with disabilities no longer exists or that the affordable supportive housing for very low-income persons with disabilities will be replicated in a more integrated setting. In addition, the project must have had persistent vacancy, despite a reasonable effort to lease such units, as determined by HUD; and the project must show that a demonstrated need exists for the households that would benefit from such conversion. In granting a conversion, HUD may reserve the right to request a change in management or require a conversion only for a certain period.

#### Limitation on Use of Funds (§ 891.340—New)

In accordance with section 811 of NAHA, as amended by the Melville Act, a new § 891.340 is added to subpart C that states that Section 811 funds may not be used to replace other state or local funds previously used or designated for use for persons with disabilities.

#### Multifamily Projects (§ 891.345—New)

A new § 891.345 is added to subpart C to provide the Melville Act restriction on the total number of dwelling units in a multifamily project that may be used for persons with disabilities. The restriction states that in any multifamily housing project (including any condominium or cooperative housing project) that contains any unit for which assistance is provided under the regulations in 24 CFR part 891, the total number of dwelling units within a multifamily housing project that may be used for supportive housing for persons with disabilities, or with any occupancy preference for persons with disabilities, may not exceed 25 percent of such total; the limit set by statute. This restriction applies only to assistance provided after the date of the enactment of the Melville Act, and does not apply to any project that is a group home or independent living facility.

#### Voluntary Supportive Services (§ 891.350—New)

Consistent with the Melville Act, housing funded under subpart C must make available supportive services to persons with disabilities, but these services do not have to be accepted. This requirement is added as a new § 891.350 to subpart C. Under this new section, and consistent with the Melville Act, a supportive service plan for housing for Section 811 projects must allow for voluntary participation and permit each resident to take responsibility for choosing and acquiring their own services, to receive any supportive services made available directly or indirectly by the owner of such housing, or to not receive any supportive services.

#### Project Management (Subpart D)

##### Determination of Eligibility and Selection of Tenants (§ 891.410—Revised)

HUD would amend § 891.410 to revise paragraph (c)(2) which currently only provides requirements for general project management and specific requirements for the Section 811 program, and add a new paragraph (c)(3) that will apply to the determination of eligibility and selection of tenants. Paragraph (c)(2) will be revised to clarify that the owner of the housing may, with the approval of HUD, limit occupancy within the housing to persons with disabilities who can benefit from the supportive services offered in connection with the housing. The Melville Act changed the tenant protections under the Section 811 program, and owners can no longer limit occupancy within housing to persons with disabilities who have similar disabilities and require a similar set of supportive services in a supportive housing environment. New paragraph (c)(3) will apply to the Section 202 program only. New paragraph (c)(3) states that, under the Section 202 program, in order to be eligible for admission the applicant must also meet any project occupancy requirements approved by HUD. This standard currently exists for the Section 811 program, and HUD has added it for the Section 202 program for consistency.

In addition, and as provided under the discussion of § 891.225, if a sponsor has set aside units as provided under § 891.225(b)(2), this section provides the requirements by which owners must abide. New § 891.410(c)(3) provides that owners must lease units set aside under § 891.225(b)(2) to elderly individuals who have been assessed by a qualified

professional and who can provide evidence of functional limitations. Evidence can consist of a doctor's or nurse's written evaluation or a letter from the Area Agency on Aging (AAA) or Aging and Disability Resource Center (ADRC) or other like social service agencies. Examples of service providers include, but are not limited to, Medicaid home and community-based service providers or Programs for All-Inclusive Care for the Elderly (PACE) providers (including colocation of PACE programs on site). Provider organizations must have the capacity to bill Medicaid or be affiliated with AAA. HUD has determined that such requirements are necessary for units set aside under § 891.225(b)(2), to make certain that very low-income elderly persons who are aging in place under the Section 202 program are better served. Such requirements will allow HUD to ensure that set-aside units are leased only to elderly individuals with functional limitations or other category of elderly persons as defined in the NOFA.

Additionally, owners must continue to lease units not set aside for elderly individuals to any applicant determined to be eligible for the project. Owners are not prohibited from housing other elderly individuals with functional limitations or other conditions defined in the NOFA who are on their waiting list in units not set aside by the sponsor. Owners will make selections in a nondiscriminatory manner, without regard to considerations of race, religion, color, sex, national origin, familial status, or disability. Owners must also make selections without regard to actual or perceived sexual orientation, gender identity, or marital status, in accordance with 24 CFR 5.105(a). These requirements will ensure that other units not set aside for elderly individuals with functional limitations or other category of elderly persons as defined in the NOFA can serve other eligible applicants, and that all units are leased in a nondiscriminatory manner.

Set-aside units, as proposed by this rule, would be distributed throughout the project and must not be segregated to one area of a building or the project. A specified number of units, rather than specific units (e.g., units 101, 201, etc.), may be set aside for this purpose, allowing the owner more flexibility in maintaining the number of units set aside by the sponsor for elderly individuals with functional limitations or other category of the elderly persons as defined in the NOFA.

**Denial of Admission, Termination of Tenancy, and Modification of Lease (§ 891.430—Revised)**

The Melville Act amends the termination and the modification of lease requirements for the Section 811 program. Accordingly, § 891.430 would be revised to include these changes. HUD's regulations in 24 CFR part 5, subpart I, which pertain to preventing crime in federally assisted housing and denying admission and terminating tenancy for criminal activity or alcohol abuse, would continue to apply to Section 811 capital advance projects. In addition, HUD's regulations in 24 CFR part 247, which address evictions from certain subsidized and HUD-owned projects, would continue to apply to all decisions by an owner to terminate the tenancy or modify the lease of a household residing in a unit (or residential space in a group home). However, an owner of a Section 811 project may not terminate a tenancy or refuse to renew a lease except for serious or repeated violation of the terms and conditions of the lease; for violation of applicable Federal, state, or local law; or for other good cause. In addition, the tenant must receive (in accordance with the Melville Act), no less than 30 days before the date of such termination or refusal to renew, a written notice specifying the grounds for such action.

**Loans for Housing for the Elderly and Persons With Disabilities (Subpart E) Replacing "Handicapped Person" With "Person With Disabilities"**

Through this rule, HUD also proposes to update terminology in the part 891, subpart E, regulations, which regulations still use the term "handicap" and not "disability." Not only is the term "disability" the preferred term, it is the term used in the Melville Act. Accordingly, this rule proposes to replace "handicap person" with "person with disabilities," and similar terminology changes.

**Prepayment Privileges (§ 891.530 and § 891.700—Revised)**

The existing regulatory sections pertaining to prepayment privileges, both found in subpart E of part 891, would be revised to reflect the changes made by the Section 202 Act of 2010. These sections are § 891.530, which addresses direct loan prepayment privileges for Section 202 projects for the elderly, and § 891.700, which addresses prepayment of direct loans for housing for persons with disabilities. Section 891.700 would be amended to reference § 891.530 because both

sections list the same requirements. These two sections would be amended to expressly require an extension of affordability for at least 20 years beyond the maturity date of the original loan as a condition for prepayment approval, as required by section 201 of the Section 202 Act of 2010. In addition, the revisions to these two regulatory sections recognize that the continued operation of the project following the prepayment must remain under terms at least as advantageous to current and future residents as the provisions of the Section 202 direct loan, as well as any project-based rental assistance contract that may be in place at the property (which would include SPRAC assistance if such assistance is made available as part of the prepayment transaction).

Direct loans were made under the Section 202 program to private nonprofit developers so they could build housing for elderly and disabled families. Under section 811(a) of the American Homeownership and Economic Opportunity Act (AHEO), as amended by the Section 202 Act of 2010, HUD may not grant approval for the prepayment unless the transaction will ensure the continued operation of the project, until at least 20 years following the maturity date of the original Section 202 loan, in a manner that will provide rental housing for the elderly and persons with disabilities on terms at least as advantageous to existing and future tenants as the terms required by the original Section 202 loan agreement and any project-based rental assistance payment contract related to the project. Such a prepayment may involve refinancing if the refinancing results in a lower interest rate on the principal of the project and in reductions in the debt service, as authorized under section 811(b)(2) of the AHEO, as amended by the Section 202 Act of 2010.

In addition, the prepayment may involve refinancing of certain "early 202" projects. These "early 202" projects are properties financed with a Section 202 Direct Loan carrying an interest rate of 6 percent or lower. Because of the low interest rate on the Direct Loan, the refinancing may not result in a reduction in debt service. If there is an increase in debt service, the prepayment and refinance of such a 202 project may be approved if the refinance meets certain requirements, as authorized under section 811(b)(2) and (3) of the AHEO, as amended by the Section 202 Act of 2010. These requirements are that the project owner must address the physical needs of the project, the transaction may not result in

an increase in rent for unassisted families, and the transaction must address the capital needs of the project and ensure physical viability for the term of the new financing. In addition, the increase in debt service must not increase the overall costs of providing any rental assistance for the project under section 8 of the 1937 Act, unless approved by HUD. HUD may only approve an increase in rental assistance under this scenario if contracts are marked-up-to-market pursuant to section 524(a)(3) of the Multifamily Assisted Housing Reform and Affordability Act (MAHRA) (42 U.S.C. 1437f note) for properties owned by nonprofit organizations; or marked-up-to-budget pursuant to section 524(a)(4) of MAHRA (42 U.S.C. 1437f note), for properties owned by eligible owners (as such term is defined in section 202(k) of the Housing Act of 1959 (12 U.S.C. 1701q(k))).

If the refinancing of an "early 202" project would result in a rent increase for unassisted residents, HUD may issue SPRAC assistance to these households under the Section 202 Act of 2010. As provided under the discussion of new subpart H, to be eligible for SPRAC assistance, unassisted residents must meet the Section 8 income guidelines for a low-income family, which in some cases may be lower than income limitations imposed by the Section 202 Direct Loan project where the families reside. At the time of closing of the Section 202 direct loan, SPRAC assistance will be provided for units occupied by unassisted, income-eligible families. Because HUD may provide SPRAC assistance for "early 202" refinances where the rent charged to unassisted residents would otherwise be increased, and because appropriations for SPRACs may not be available, HUD may set priorities for the consideration of prepayment approvals that require the provision of a SPRAC.

Section 811(c) of the AHEO was also amended by the Section 202 Act of 2010 to authorize, subject to HUD approval, the use of loan proceeds resulting from the refinancing of the project to ensure such proceeds are used in a manner advantageous to the tenants of the Section 202 project. Under this new statutory authority, loan proceeds in excess of those required to pay off the Section 202 Direct Loan must be expended within 5 years of the closing of the refinance, except for approved ongoing social services. Proceeds may be used for up to 15 percent of the cost of increasing the availability or provision of supportive services, which may include the financing of service coordinators and congregate services.

The use of loan proceeds may include modernization, accessibility modifications or retrofits for the project, construction of an addition or another facility in the project, rent reduction of unassisted tenants residing in the project, or the rehabilitation of the project to ensure long-term viability. Loan proceeds may also be used to pay the project owner, sponsor, or third-party developer a developer's fee in an amount not to exceed or duplicate, in the case of a project refinanced through a low-income housing tax credit (LIHTC) program, the fee permitted by the LIHTC program; or in the case of a project refinanced through any other source of refinancing, 15 percent of the acceptable development cost, which includes the cost of acquisition, rehabilitation, loan prepayment, initial reserve deposits, and transaction costs.

In addition, HUD may approve the use of proceeds from the refinancing of the Section 202 direct loan in a manner advantageous to the tenants of the project or for the provision of affordable housing and related social services for elderly persons who are tenants of other HUD-assisted senior housing. Such housing must be owned by the same private nonprofit organization that is the project owner, the project sponsor, or the private developer of the Section 202 project being refinanced. The other HUD-assisted senior housing must be designated as senior housing serving only those residents 62 years of age and older, and must have an active program in place to provide social services for elderly residents. At the time of application for the Section 202 Direct Loan prepayment, the level of affordability of the project(s) receiving proceeds from the refinance must be at least as affordable as the Section 202 Direct Loan project being refinanced. All project(s) to receive proceeds from the refinance must have or put in place a Use or Regulatory Agreement requiring operation of the project as affordable senior housing for a period at least 10 years beyond the date of closing of the Section 202 refinance, or the date of termination of the existing Use or Regulatory Agreement, whichever is later. The other HUD-assisted senior housing may include Section 202 Direct Loan and Section 202 Capital Advance properties, or may include affordable senior projects that receive HUD assistance or financing such as project-based rental assistance, Federal Housing Administration (FHA) mortgage insurance, Project-Based Vouchers, HOME Investment Partnerships (HOME), or Community Development Block Grant (CDBG) assistance. HUD

must approve the use of proceeds in other HUD-assisted senior housing, and such use will only be approved if the proposed refinancing will address all physical and financial needs of the Section 202 Direct Loan project.

#### Term of Project Assistance Contracts (§ 891.710—Removed)

All of the initial PACs terms (of 20 years) have expired, and current PACs are renewed yearly. Therefore, HUD is removing § 891.710.

#### For-Profit Limited Partnerships and Mixed-Finance Development for Supportive Housing for the Elderly or Persons With Disabilities (Subpart F)

#### Project Rental Assistance (§ 891.810—Revised)

This section would be amended to clarify that “project rental assistance contract” and “project rental assistance payment” are defined in § 891.105, rather than in this section, which is entitled “project rental assistance.” In addition, this section would be amended to clarify that “project rental assistance payment” is provided for operating costs, not covered by tenant contributions, attributable to the number of units funded by capital advances under the Section 202 program and the Section 811 program, subject to the provisions of § 891.445.

#### Drawdown (§ 891.830—Revised)

Section 891.830(c)(5), in the currently codified regulations, requires each drawdown to be consistent with the ratio of Section 202 or Section 811 supportive housing units to other units. This unnecessarily requires a proration that lacks flexibility for mixed-finance projects. Paragraph (b) of § 891.830 sufficiently protects HUD's interests by requiring approval of a drawdown schedule while allowing the needed flexibility to permit low-income housing tax credits to be used effectively while reducing the amount of waivers that must be granted.

#### Eligible Uses of Project Rental Assistance (§ 891.835—Revised)

Section 891.835(b)(1) would be amended to clarify that Section 202 or Section 811 project rental assistance may not be used to pay for debt service on construction or permanent financing for any units in development, except for units under an ePRAC under § 891.190.

#### Development Cost Limits (§ 891.853—Revised)

Section 891.853 would be amended to reflect the new development cost limit sections for mixed-finance

developments under the Section 202 and Section 811 programs.

#### Project Rental Assistance for Projects Without Capital Advances (Subpart G—New)

HUD proposes to establish a new regulatory subpart G, entitled “Project Rental Assistance for Projects without Capital Advances,” to reflect that the new project rental assistance would only apply to certain properties, and not the entire Section 811 program. This new subpart G is proposed to be structured as follows:

#### Applicability (§ 891.870)

Section 891.870, entitled “Applicability,” states that this new subpart applies only to the new project rental assistance that is made available to projects without capital advances under the Section 811 program.

#### Definitions (§ 891.872)

In addition to the definitions provided in §§ 891.105 and 891.305, § 891.872 defines certain terms applicable to the new project rental assistance.

*Admission.* “Admission” is defined as the point in time the applicant and owner execute the lease agreement, and where occupancy is imminent. Project rental assistance under this subpart may only be provided for dwelling units that are set aside for extremely low-income persons with disabilities and extremely low-income households that include at least one person with a disability. The person with disabilities must be at least 18 years of age or older and less than 62 years of age at the time of admission, as defined in this section.

*Eligible Applicant.* “Eligible applicant” is defined as any state housing agency currently allocating LIHTC, or any state housing or state community development agency allocating and overseeing assistance under the HOME program, section 8 of the 1937 Act, or other similar Federal or state program, and which has a formal partnership with the state health and human services agency and the state agency designated to administer or supervise the administration of the state plan for medical assistance under title XIX of the Social Security Act (Medicaid). Such agency must be in good standing, as determined by HUD, in its administration of assistance. An eligible applicant may also be a state, regional, or local housing agency or agencies; or a partnership or collaboration of state housing agencies and/or state and local/regional housing agencies.

*Extremely Low-Income Family.* The definition of “extremely low-income family” is the same definition as defined in 24 CFR 5.603. Therefore, an extremely low-income family is a family whose annual income does not exceed 30 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families. However, HUD may establish income ceilings higher or lower than 30 percent of the median income for the area if HUD finds that such variations are necessary because of unusually high or low family incomes.

*Housing Agency.* “Housing Agency” is defined as a state, regional, or local housing agency.

*Interagency Partnership Agreement.* “Interagency Partnership Agreement” is defined as the formalized agreement entered into between the eligible applicant and the state health and human services agency, and the applicable state Medicaid agency, if different entities. Project rental assistance under this subpart may only be provided for eligible projects that conform to this agreement.

*Nonelderly Adult.* “Nonelderly adult” is defined as a person who is 18 years of age or older and less than 62 years of age, in accordance with the definition of “persons with disabilities” under the Melville Act.

*Participating Agencies.* “Participating agencies” is defined as the eligible applicant awarded project rental assistance funds, the state agency responsible for health and human services programs, and the state agency designated to administer or supervise the administration of the state plan for medical assistance under the Medicaid program.

*Project rental assistance.* “Project rental assistance” is defined as funding that is made available by HUD to eligible applicants. This funding shall be used to provide long-term rental assistance for supportive housing for nonelderly, extremely low-income persons with disabilities and for extremely low-income households that include at least one nonelderly person with a disability.

*Rental Assistance Contract (RAC).* “Rental assistance contract (RAC)” is defined as the contract between the approved housing agency and the multifamily property owner, authorized under section 811(b)(3) of the National Affordable Housing Act (NAHA) (42 U.S.C. 8013). Section 811(b)(3) authorizes the separate project rental assistance only for projects without capital advances.

#### Allocation of Funds (§ 891.874)

This new section reflects that HUD may allocate funds made available in any fiscal year for project rental assistance under this new subpart G by competition or in accordance with the formula allocation provided under HUD’s regulations in 24 CFR part 791 (Allocations for Housing Assistance Funds). In determining the method of allocation, HUD will take into account the amount of funds available, the number and types of eligible applicants, the period of funding availability, and administrative efficiency. This flexibility will allow HUD to fund project rental assistance under this new subpart G as necessary each fiscal year.

#### Eligible Projects (§ 891.876)

Section 891.876 provides that funding of project rental assistance under this subpart may be provided to a new or existing multifamily housing project subject to several requirements. First, such project’s development costs must be paid with resources from other public and/or private sources. These other sources may be LIHTC, equity, private debt (such as a private mortgage or financing on the property), or HOME funds. Second, an eligible project must not otherwise be receiving Section 811 program funds. Lastly, a commitment of funding for project costs must be made by the LIHTC allocation agency, participating jurisdiction receiving assistance under the HOME program, or any Federal, state or local government.

For existing multifamily housing projects, these projects may only receive project rental assistance under this subpart if the assisted units have no existing contractual obligation to serve persons with disabilities, such as a recorded use agreement. In addition, existing units currently receiving any form of operating housing subsidy under section 8 of the 1937 Act cannot receive project rental assistance under this proposed rule. HUD is implementing these requirements in order to increase, rather than maintain, the number of supportive housing units for persons with disabilities.

#### Eligible Tenants (§ 891.878)

Section 891.878 addresses eligible persons that may reside in units receiving project rental assistance as provided under the new subpart G. This section provides that project rental assistance may be provided only for dwelling units that are set aside for extremely low-income persons with disabilities and extremely low-income households that include at least one person with a disability. This

requirement is statutory and ensures that the project rental assistance serves those persons with disabilities who are most in need of supportive housing.

In addition to being extremely low-income, the person with disabilities must be at least 18 years of age or older and less than 62 years of age at the time of admission, as defined under § 891.872. The Interagency Partnership Agreement must include the target population to be served that will benefit from the assisted units under this subpart and the available services.

The person with disabilities must also be eligible for community-based, long-term services and supports as provided through Medicaid waivers, Medicaid state plan options, state-funded services, or other appropriate services (provided by state, local, nonprofit, or other entities) related to the target populations identified under the Interagency Partnership Agreement. However, participation in services is voluntary and cannot be required as a condition of tenancy.

#### Terms and Conditions of Project Rental Assistance Financing (§ 891.880)

As discussed earlier in this preamble, the project rental assistance made available by the Melville Act provides state housing agencies and other eligible applicants with a method of funding supportive housing for nonelderly, extremely low-income persons with disabilities that does not require capital advances from HUD under the Section 811 program. Accordingly, § 891.880 establishes the terms and conditions for the use of this new project RAC. Approved housing agencies receiving project rental assistance under this subpart must comply with the requirements of this section, and all the terms and conditions of the rental assistance contract.

Under § 891.880(b), the housing agency administering the project rental assistance funds must enter into a RAC with the owner of the project. The RAC will provide the housing assistance payments to the owner for eligible tenants, as determined under § 891.878, residing in units that have been set aside by the owner as supportive housing for persons with disabilities, as defined in the NOFA. Section 891.880(c) provides that the initial term of the RAC between the approved housing agency administering the project rental assistance program and the owner of the multifamily housing project must be for a minimum of 20 years. In addition, § 891.880(c) states that RACs may be renewed as long as all parties approve such renewal, subject to

the availability of project rental assistance funds.

Section 891.880(d) addresses the statutory use restrictions required for this project rental assistance. The Melville Act requires all dwelling units assisted with the new project rental assistance to operate as supportive housing for extremely low-income persons with disabilities and extremely low-income households that include at least one person with a disability for a period of not less than 30 years. Section 891.880(d) reflects this statutory requirement, and any unit must be subject to a recorded 30-year minimum use agreement for nonelderly, extremely low-income persons with disabilities. In addition, § 891.880(d) provides that if a RAC is renewed in accordance with new subpart G, the corresponding use agreement must be extended for the duration of the renewal.

Section 891.880(e) provides the accessibility requirements for projects under this section. Projects must meet the accessibility requirements of section 504 of the Rehabilitation Act of 1973 and titles II and III of the Americans with Disabilities Act, as applicable. Covered multifamily dwellings must also meet the design and construction requirements of the Fair Housing Act.

Section 891.880(f), consistent with the statutory requirement, provides that in any multifamily housing project receiving the project rental assistance, no more than 25 percent of the total number of dwelling units in the project may be set aside for supportive housing for persons with disabilities, or have any occupancy preference for persons with disabilities associated with such unit. These units must be distributed throughout the project, must not be segregated to one area of a building or the project (such as on a particular floor, part of a floor in a building, or certain sections within a project), and can consist of both accessible and non-accessible units. Owners may designate unit types (e.g., accessible, 1-bedroom, etc.) rather than designating specific units (e.g., units 101, 201, etc.) to be set aside for supportive housing for persons with disabilities. This type of designation would allow flexibility in offering the next available unit to a person with a disability under this program as long as the unit type was designated as being set aside for persons with disabilities and the number of units occupied by persons with disabilities under the set-aside had not been met.

Responsibilities of Participating Agencies (§ 891.882)

Section 891.882 addresses the responsibilities of the participating agencies. New project rental assistance may only be provided for eligible projects that conform with the Interagency Partnership Agreement. To be eligible for the rental assistance funding, HUD must have reviewed and approved this Interagency Partnership Agreement to confirm that such agreement: (1) Identifies the target populations to be served by the project, (2) sets forth methods for outreach and referral, and (3) describes the services to be made available/offered to the tenants of the project.

The Interagency Partnership Agreement must include the target populations to be served that will benefit from the assisted units under this subpart and the available services. In addition to being extremely low-income, the person with disabilities as defined in § 891.305, must have a disability appropriate to the services to be provided in the community under such agreement. In the Interagency Partnership Agreement, states must identify the available state-funded services and other appropriate services (provided by state, local, nonprofit, or other entities), and describe how such services will be made available to the tenants.

To comply with this statutory requirement for state agency involvement, this section requires participating agencies to develop a formalized collaboration, herein referred to as Interagency Partnership Agreement that will result in long-term strategies to increase affordable permanent supportive housing units, new and/or existing units, with structured access to appropriate services. This Interagency Partnership Agreement must include the eligible applicant, and the state health and human services agency, and the applicable state Medicaid agency, if different entities. This formalized agreement must be evidenced by a memorandum of understanding (MOU), joint letter, or other binding document. In states where health and human service functions have been separated, both agencies' participation should be evidenced.

Section 891.882 further provides that participating agencies must provide a plan detailing the process by which the availability of units for project rental assistance and waiting lists will be managed. This plan must include the costs and authority and/or sources for paying for those costs for establishing the infrastructure and the process to

implement this plan if no such process currently exists, as well as a consideration of training. This process is essential in order to provide expeditious and efficient service to nonelderly, extremely low-income persons with disabilities and extremely low-income households that include at least one nonelderly person with a disability.

Section 891.882 also requires participating agencies to describe how the process of referring eligible persons with disabilities to the assisted multifamily housing projects will be carried out, describe how households will be tracked, and to provide a list of people who property owners can contact if there are any problems. These details will also provide for an efficient process that will serve the greatest number of needy, nonelderly, extremely low-income persons with disabilities. In addition, this section provides that the plan and process must be incorporated into the Interagency Partnership Agreement between participating agencies.

Section 891.882 further provides that a percentage, as defined by HUD in the NOFA, of the total project rental assistance award may be used for initial and administrative costs relating to the administration of the project rental assistance program under this new subpart G. This section provides that such costs may include costs of hiring ongoing staff, contract assistance, infrastructure costs, and information technology. No charges relating to the administration of the program may be charged to the tenants.

Section 891.882 also provides fair housing and equal opportunity requirements. Participating agencies must ensure that all applicable fair housing and equal opportunity requirements are met. First, participating agencies must adopt affirmative marketing procedures for their project rental assistance program funded under this subpart. Affirmative marketing procedures consist of actions to provide information and otherwise attract eligible persons to the program regardless of race, color, national origin, religion, sex, disability, or familial status, who are not likely to apply to the program without special outreach. Participating agencies must annually assess the success of their affirmative marketing activities and make any necessary changes to their affirmative marketing procedures as a result of the evaluation. Participating agencies must keep records describing actions taken to affirmatively market the program and records to assess the results of these actions. Eligible applicants must

describe their methods of outreach and referral and waiting list policies in their applications, as prescribed in the NOFA. All methods of outreach and referral and management of the waiting list must be consistent with fair housing and civil rights laws and regulations and affirmative marketing requirements.

Second, participating agencies must adopt a process for providing full disclosure to each applicant of any option available to the applicant in the selection of the development in which to reside, including basic information about available sites and an estimate of the period of time the applicant would likely have to wait to be admitted to units of different sizes and types at each site. Third, participating agencies must require projects receiving project rental assistance under this subpart to maintain records on the race, ethnicity, sex, and place of previous residency for applicants and approved eligible households. The owner must submit such reports to the housing agency to demonstrate compliance with applicable civil rights and equal opportunity requirements.

Section 891.882 also provides specific environmental requirements for the administration of this program under the new subpart G. As HUD does not approve funding for specific activities or projects of the selected housing agencies under this program, HUD will not perform environmental reviews on such activities or projects. However, to ensure that the tenets of HUD environmental policy and the requirements of applicable statutes and authorities are met, housing agencies selected for funding will be required to implement the special environmental analyses and determinations for specific program activities and projects that are detailed in this section. The approved housing agency's signature on the RAC would constitute an assurance that all environmental requirements under this section will be met. In addition, to the extent that property standards or restrictions on the use of properties stated in this section are more stringent than provisions of the authorities cited, the requirements in this section shall control.

Section 891.882 also provides for compliance with the lead-based paint requirements. Approved housing agencies must abide by 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.

#### Senior Preservation Rental Assistance (Subpart H—New)

As noted earlier in this preamble, this proposed rule would introduce the authority for senior preservation rental assistance, as authorized under title II of the Section 202 Act of 2010. HUD has decided to place the regulations applicable to such assistance in a new subpart H entitled “Senior Preservation Rental Assistance” because this type of assistance is only available for certain Section 202 projects, and does not apply to the entire Section 202 program. In addition, in certain sections, HUD has retained current regulatory requirements for SPRAC for consistency and administrative ease.

New subpart H is proposed to be structured as follows:

##### Applicability (§ 891.900)

The requirements set forth in this subpart H apply only in connection with a prepayment plan for a project approved by HUD to prevent displacement of elderly residents of a Section 202 project in the case of refinancing or recapitalization, and the project is provided project-based rental assistance under a senior preservation rental assistance contract, as defined under § 891.902.

##### Definitions (§ 891.902)

In addition to the definitions provided in §§ 891.105, 891.205, and 891.505, § 891.902 defines certain terms applicable to senior preservation rental assistance.

*Family(ies)* means an *Elderly Family* as defined by 24 CFR 891.505, and may include a “Disabled Family,” as defined in 24 CFR 891.505, pursuant to the terms and conditions of an applicant's original Section 202 Loan. As noted earlier in this preamble, HUD is replacing “handicap” terminology with “disability” terminology, in the subpart E regulations.

*Low-Income Family and Very Low-Income Family.* The definitions of “low-income family” and “very low-income family” are the same definitions as defined in 24 CFR 5.603. Therefore, a low-income family is a family whose annual income does not exceed 80 percent of the median income for the area and a very low-income family is a family whose annual income does not exceed 50 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 80 or 50 percent of the median income for the area on the basis of HUD's findings that such variations are necessary

because of unusually high or low family incomes.

*Senior Preservation Rental Assistance Contract (SPRAC).* SPRACs are project-based rental assistance made available to a private nonprofit organization owner for a term of at least 20 years, subject to annual appropriations with the ability to renew the contract upon expiration of the initial 20-year term, and governed by the regulations of this subpart. Such contract is subject to a use agreement having a term of the SPRAC or such term as is required by the prepayment of the Section 202 Direct Loan, whichever is longer. The Section 202 Direct Loan use agreement requires compliance with the SPRAC requirements, which includes the renewal of SPRAC for the life of the use agreement.

##### Contract Execution (§ 891.904)

A SPRAC sets forth the rights and duties of the owner and HUD with respect to the project and the senior preservation rental assistance payments. Upon the closing of the refinancing for the project, and following the approval of the prepayment of the Section 202 direct loan, the owner and HUD must execute a SPRAC on a form prescribed by HUD. The effective date of such SPRAC will be the date of the closing of the refinancing.

Under the SPRAC, payments may be made to assist eligible families leasing assisted units under part 891. The amount of such payment is equal to the difference between the contract rent for the unit and the tenant rent payable by the family. Payments under the SPRAC may also be made to owners for vacant assisted units. The amount of and conditions for vacancy payments are described in § 891.912(k). Vacancy payments only apply to units that were initially occupied at the time the SPRAC was executed, in the case that those units are later unoccupied during the term of the contract. In addition, SPRAC payments are made monthly by HUD upon proper requisition by the owner. If a SPRAC Unit remains vacant for more than 60 consecutive days upon tenant turnover, the owner shall not be eligible to receive further SPRAC payments for that SPRAC Unit. The unit must have been in decent, safe, and sanitary condition during the vacancy period for which payment is claimed.

Under a SPRAC, as applicable, a utility reimbursement will be paid to a family occupying an assisted unit as an additional housing assistance payment. The SPRAC will provide that the owner must make this payment on behalf of HUD, and funds will be paid to the owner in trust solely for the purpose of

making the additional payment. The owner may pay the utility reimbursement jointly to the family and the utility company, or if the family and utility company consent, directly to the utility company.

#### Contract Term (§ 891.906)

This section provides that the minimum term of the SPRAC for assisted units under this subpart shall be 20 years.

Pursuant to title II of the Section 202 Act of 2010, any projects for which a SPRAC is provided shall be subject to a use agreement to ensure continued project affordability having a term of the longer of (A) the term of the SPRAC, or (B) such term as is required by the new financing.

#### Leasing to Eligible Families (§ 891.910)

Under the regulations for the SPRAC, as proposed by this rule, eligible families that may occupy assisted units under this part must meet the income guidelines for a low-income family under section 8 of the 1937 Act. During the term of the SPRAC, an owner shall make available for occupancy by eligible families, the total number of units for which assistance is committed under the SPRAC. This means that the owner is conducting marketing in accordance with § 891.912(c); has leased or is making good-faith efforts to lease the units to eligible families, including taking all feasible actions to fill vacancies by renting to such families; and has not rejected any eligible applicant family, except for reasons acceptable to HUD.

If the owner is temporarily unable to lease all units for which assistance is committed under the SPRAC to eligible families, one or more units may, with the prior approval of HUD, be leased to otherwise eligible families that do not meet the income eligibility requirements. Those over-income families must pay 30 percent of their income towards rent, up to the contract rent level. Failure on the part of the owner to comply with the requirements under this section is a violation of the SPRAC and grounds for all available legal remedies, including an action for specific performance of the SPRAC, suspension or debarment from HUD programs, and reduction of the number of units under the SPRAC.

HUD may reduce the number of units covered by the SPRAC to the number of units available for occupancy by eligible families if the owner fails to comply with the applicable requirements. Notwithstanding any prior approval by HUD, HUD may reduce the number of units if HUD determines that the

inability to lease units to eligible families is not a temporary issue. An amendment to the SPRAC will be authorized by HUD to provide for the subsequent restoration of the reduction of units if HUD determines that the restoration is justified by demand; the owner has a record of compliance with the owner's obligations under the SPRAC; and contract and budget authority is available.

HUD may permit SPRAC units in the project to be leased to nonelderly families if the owner has made reasonable efforts to lease assisted and unassisted units to eligible families, the owner has been granted HUD approval, and the owner is temporarily unable to achieve or maintain a level of occupancy sufficient to prevent financial default and foreclosure. HUD approval for this situation would be of limited duration. If there is an FHA-insured mortgage on the project, HUD may also impose terms and conditions applicable to FHA-insured mortgages for this approval that are consistent with the program objectives, and necessary to protect its interest under the FHA-insured loan.

HUD's regulations in subpart L of 24 CFR part 5, which applies to the admission and occupancy of eligible families in cases where there is or there is claimed to be incidents of, or there is criminal activity related to, domestic violence, dating violence, or stalking, would also apply to the SPRAC.

#### Applicability of Other Part 891 Regulations (§ 891.912)

This section contains all of the requirements for subpart H that are from other sections of part 891. HUD has put these requirements under this section for consistency and ease of administration.

#### SPRAC Administration (§ 891.912(a))

Section 891.912(a) provides that HUD is responsible for the administration of the SPRAC.

#### Notice Upon SPRAC Expiration (§ 891.912(b))

Section 891.912(b) provides that the owner of any projects assisted by a SPRAC must follow the notice requirements under § 891.590 for contract expirations. Under § 891.590, the SPRAC must provide that the owner will notify each family leasing an assisted unit of any increase in the amount the family must pay as rent as a result of the expiration. The owner must notify the assisted family at least 1 year before the end of the SPRAC. Such notice must be sent by a first-class letter, be properly stamped, and be

addressed to the family at its address at the project, with a proper return address. A copy of the notice must be served on any adult person answering the door at the leased dwelling unit, or if no adult responds, by placing the notice under or through the door, if possible, or else by affixing the notice to the door. Service will be considered effective when the notice is mailed and served properly. The date on which the notice will be considered to be received by the family will be the date on which the owner mails the first-class letter, or the date on which the notice is properly served, whichever is later.

Under § 891.590, the notice must advise each affected family that, after the expiration date of the SPRAC, the family will be required to bear the entire cost of the rent and that the owner may, subject to requirements and restrictions contained in the regulatory agreement, the lease, and state or local law, change the rent. The notice must also state the actual (if known) or the estimated rent that will be charged following the expiration of the SPRAC, the difference between the new rent and the total tenant payment toward rent under the SPRAC, and the date the SPRAC will expire.

In addition, the owner must give HUD a certification that families have been notified properly and in accordance with § 891.590, and must attach to the certification an example of the text of the notice. Section 891.590 applies to all SPRACs.

#### Responsibilities of the Owner (§ 891.912(c))

Section 891.912(c), the owner is responsible for all requirements under § 891.600, except for § 891.600(a)(1) and (a)(3). Therefore, for owners, marketing must be done in accordance with the HUD-approved affirmative fair housing marketing plan and all Federal, state, or local fair housing and equal opportunity requirements. See 24 CFR 5.105(a). The purpose of the plan and requirements is to achieve a condition in which eligible families of similar income levels in the same housing market have a like range of housing choices available to them regardless of discriminatory considerations, such as their race, color, religion, familial status, disability, sex or national origin. Marketing must also be done in accordance with the communication and notice requirements of HUD's Section 504 regulations at 24 CFR 8.6 and 24 CFR 8.54.

Under § 891.600, the owner is responsible for all management functions. These functions include selection and admission of tenants, required reexaminations of incomes for



families occupying assisted units, collection of rents, termination of tenancy and eviction, and all repair and maintenance functions (including ordinary and extraordinary maintenance and replacement of capital items). All functions must be performed in compliance with fair housing and equal opportunity requirements.

With HUD approval, the owner may contract with a private or public entity for performance of the services or duties required under § 891.600. However, such an arrangement does not relieve the owner of responsibility for these services and duties. All such contracts are subject to the restrictions governing prohibited contractual relationships described in §§ 891.130 and 891.505, if applicable. (These prohibitions do not extend to management contracts entered into by the owner with the sponsor or its nonprofit affiliate).

The owner must promote awareness and participation of minority and women's business enterprises in contracting and procurement activities consistent with the objectives of Executive Order No. 11625 (36 FR 19967, 3 CFR, 1971–1975 Comp., p. 616; as amended by Executive Order No. 12007 (42 FR 42839, 3 CFR, 1977 Comp., p. 139; unless otherwise noted); Executive Order No. 12432 (48 FR 32551, 3 CFR, 1983 Comp., p. 198; unless otherwise noted); and Executive Order No. 12138 (44 FR 29637, 3 CFR, 1979 Comp., p. 393; unless otherwise noted).

The owner must submit to HUD within 60 days after the end of each fiscal year of project operations, financial statements for the project audited by an independent public accountant and in the form required by HUD; and other statements regarding project operation, financial conditions and occupancy as HUD may require to administer the SPRAC and to monitor project operations.

The owner must also maintain a separate project fund account in a depository or depositories that are members of the Federal Deposit Insurance Corporation or National Credit Union Share Insurance Fund, and must deposit all rents, charges, income, and revenues arising from project operation or ownership to this account. All project funds are to be deposited in Federally-insured accounts. All balances must be fully insured at all times, to the maximum extent possible. Project funds must be used for the operation of the project (including required insurance coverage), to make required principal and interest payments on the project mortgage, and to make required deposits to the

replacement reserve under §§ 891.605 and 891.745 (as applicable), in accordance with a HUD-approved budget. Any project funds in the project funds account (including earned interest) following the expiration of the fiscal year must be deposited in a federally insured residual receipts account within 60 days following the end of the fiscal year. Withdrawals from this account may be made only for project purposes and with the approval of HUD. If there are funds remaining in the residual receipts account when the mortgage is satisfied, such funds must be returned to HUD.

Lastly, the owner must submit such reports as HUD may prescribe to demonstrate compliance with applicable civil rights and equal opportunity requirements.

#### Replacement Reserve (§ 891.912(d))

Section 891.912(d) provides the owner must comply with all requirements under § 891.605. Therefore, the owner must establish and maintain a replacement reserve to aid in funding extraordinary maintenance, and repair and replacement of capital items. The owner must make monthly deposits to the replacement reserve in an amount determined by HUD. The reserve must be built up to and maintained at a level determined by HUD to be sufficient to meet projected requirements, and if the reserve reaches that level, the amount of the deposit to the reserve may be reduced with the approval of HUD.

Replacement reserve funds must be deposited with HUD or in a federally insured depository in an interest-bearing account(s) whose balances are fully insured at all times. All earnings including interest on the reserve must be added to the reserve. Funds may be drawn from the reserve and used only in accordance with HUD guidelines and with the approval of, or as directed by, HUD.

#### Selection and Admission of Tenants (§ 891.912(e))

Section 891.912(e) provides that the owner must comply with the requirements under § 891.610, except for § 891.610(c). However, an applicant must meet the low-income eligibility guidelines for a low-income family under section 8 of the 1937 Act in order to be eligible under this subpart.

The owner must adopt written tenant selection procedures that ensure nondiscrimination in the selection of tenants, that are consistent with the purpose of improving housing opportunities for low-income elderly families or persons with disabilities; and reasonably related to program

eligibility and an applicant's ability to perform the obligations of the lease.

Owners must promptly notify in writing any rejected applicant of the grounds for the rejection. Owners must maintain a written, chronological waiting list showing the name, race, gender, ethnicity, and the date of application for each person applying for the program. For applications, the owner must accept applications for admission to the project in the form prescribed by HUD. In addition, applicant families must sign a release of information consent for verification of information, and complete a certification of eligibility as part of the application for admission. Applicant families must meet the disclosure and verification requirements for Social Security numbers, and sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided in HUD's regulations in 24 CFR part 5, subpart B, which address the disclosure and verification of Social Security numbers and employer identification numbers and the procedures for obtaining income information. The owner and the applicant must complete and sign the application for admission. On request, the owner must furnish copies of all applications for admission to HUD.

If the owner determines that the family is eligible and units are available, the owner will assign the family a unit of appropriate size in accordance with HUD's general occupancy guidelines. If no suitable unit is available, the owner will place the family on a waiting list for the project and notify the family of when a suitable unit may become available. If the waiting list is so long that the applicant would not be admitted within the next 12 months, the owner may advise the applicant that no additional applications for admission are being considered for that reason, except that the owner may not refuse to place an applicant on the waiting list if the applicant is otherwise eligible for assistance.

If the owner determines that an applicant is ineligible for admission, or the owner is not selecting the applicant for other reasons, the owner must promptly notify the applicant in writing of the determination, the reasons for the determination, and that the applicant has a right to request a meeting with the owner or managing agent to review the rejection, in accordance with HUD requirements. If a review is requested, the review may not be conducted by a member of the owner's staff who made the initial decision to reject the applicant. The applicant may also

exercise other rights (e.g., rights granted under Federal, state, or local civil rights laws), if the applicant believes he or she is being discriminated against on a prohibited basis.

In addition, records on applicants and approved eligible families, which provide racial, ethnic, sex, disability status, and place of previous residency data required by HUD, must be retained for 3 years.

Also, the owner must reexamine the income and composition of the family at least every 12 months. Upon the verification of the information, the owner must make appropriate adjustments in the total tenant payment in accordance with 24 CFR 5.628 and determine whether the family's unit size is still appropriate. The owner must adjust tenant rent and the housing assistance payment, and must carry out any unit transfer in accordance with the administrative instructions issued by HUD. At the time of the reexamination, the owner must require the family to meet the disclosure and verification requirements for Social Security numbers, as provided under 24 CFR part 5, subpart B.

In addition, the family must comply with the provisions in their lease regarding interim reporting of changes in income. If the owner receives information concerning a change in the family's income or other circumstances between regularly scheduled reexaminations, the owner must consult with the family and make any adjustments determined to be appropriate. Any change in the family's income or other circumstances that results in an adjustment in the total tenant payment, tenant rent, and housing assistance payment must be verified. A family must remain eligible for senior preservation rental assistance payments until the total tenant payment equals or exceeds the gross rent. The termination of subsidy eligibility will not affect the family's other rights under its lease.

SPRAC payments may be resumed if, as a result of changes in income, rent, or other relevant circumstances during the term of the SPRAC, the family meets the income eligibility requirements and housing assistance is available for the unit under the terms of the contract.

A family's eligibility for senior preservation rental assistance payments may be terminated in accordance with HUD requirements, for such reasons as failure to submit requested verification information, including information related to disclosure and verification of Social Security numbers, or failure to sign and submit consent forms for the obtaining of wage and claim information

from State Wage Information Collection Agencies, as provided by 24 CFR part 5, subpart B.

#### Obligations of the Family (§ 891.912(f))

The obligations of the family are applicable to both the Section 202 and Section 811 programs, as provided under § 891.415. Under § 891.415, the assisted household or family must pay amounts due under the lease directly to the owner. The assisted household or family must supply such certification, release of information, consent, completed forms or documentation as the owner or HUD determines necessary. In addition, the assisted household or family must allow the owner to inspect the dwelling unit or residential space at reasonable times and after reasonable notice. The assisted household family must notify the owner before vacating the dwelling unit or residential space, and use the dwelling unit or residential space solely for residency by the household or family and as the principal place of residence.

The assisted household or family must not assign the lease or transfer the unit or residential space; or occupy, or receive assistance for the occupancy of, a unit or residential space governed under this part while occupying, or receiving assistance for the occupancy of, another unit assisted under any Federal housing assistance program, including any Section 8 programs.

#### Overcrowded and Under Occupied Units (§ 891.912(g))

Under this proposed rule, the owner must comply with the requirements under § 891.620. Therefore, if the owner determines that because of a change in family size, an assisted unit is smaller or larger than appropriate for the eligible family to which it is leased; SPRAC payments with respect to the unit will not be reduced or terminated until the eligible family has been relocated to an appropriate alternate unit. If possible, the owner will, as promptly as possible, offer the family an appropriate alternate unit. The owner may receive vacancy payments for the vacated unit if the owner complies with the requirements of § 891.650, except § 891.650(b) does not apply.

#### Lease Requirements (§ 891.912(h))

The lease requirements are provided in § 891.425. Section 891.425 applies to capital advances under the Section 202 program and the Section 811 program, as well as loans financed under subpart E of part 891. Under § 891.425, the term of the lease may not be less than one year. Unless the lease has been terminated by appropriate action, upon

expiration of the lease term, the household and owner may execute a new lease for a term not less than 1 year, or may take no action. If no action is taken, the lease will automatically be renewed for successive terms of 1 month.

In addition, all leases may contain a provision that permits the household to terminate the lease upon 30-day advance notice. A lease for a term that exceeds 1 year must contain such provision.

Section 891.425 requires the owner to use the lease form as prescribed by HUD. In addition to required provisions of the lease form, the owner may include a provision in the lease permitting the owner to enter the leased premises at any time without advance notice when there is reasonable cause to believe that an emergency exists or that health or safety of a family member is endangered.

#### Adjustment of Rents (§ 891.912(i))

The initial project rents shall not exceed the lesser of either comparable market rents for the market area as specified under the recipient's rent comparability study (RCS), and approved by HUD.

After initial rent setting, rents shall be adjusted by an OCAF on the anniversary of each executed SPRAC. Section 514(e)(2) of MAHRA (42 U.S.C. 1437f note) requires HUD to establish guidelines for rent adjustments based on an OCAF. HUD has therefore developed a single factor to be applied uniformly to all projects utilizing OCAFs as the method by which renewal rents are established or adjusted. Under this subpart, the contract administrator shall conduct annual project rent adjustments according to the OCAF methodology prescribed under this notice.

At the expiration of each 5-year period of the SPRAC, the contract administrator shall compare existing contract rents with comparable market rents for the market area. At such contract anniversary, the contract administrator will make any adjustment necessary in the monthly contract rents necessary to set the contract rents for all unit sizes at comparable market rents. Such adjustments may result in a negative adjustment (decrease) or positive adjustment (increase) of the contract rents for one or more unit sizes.

To assist in the redetermination of contract rents, the contract administrator may require that the owner submit to the contract administrator a rent comparability study prepared at the owner's expense.

The rent payable by families occupying units that are not assisted

under the SPRAC will be equal to the contract rent.

#### Adjustment of Utility Allowances (§ 891.912(j))

In connection with adjustments of contract rents, as provided in § 891.905(b), the requirements for the adjustment of utility allowances, provided in § 891.440, apply.

#### Conditions for Receipt of Vacancy Payments for Assisted Units (§ 891.912(k))

Section 891.912(k) provides that the owner must comply with the requirements under § 891.650, except § 891.650(b) does not apply. Therefore, vacancy payments under the SPRAC will not be made unless the conditions for receipt of these senior preservation rental assistance payments set forth in this section are fulfilled.

If an eligible family vacates a unit, the owner is entitled to vacancy payments in the amount of 80 percent of the contract rent for the first 60 days of vacancy if the owner certifies that it did not cause the vacancy by violating the lease, the SPRAC, or any applicable law; and the owner notified HUD of the vacancy or prospective vacancy and the reasons for the vacancy immediately upon learning of the vacancy or prospective vacancy. The owner must have fulfilled and continued to fulfill the requirements specified in § 891.600(a)(2) and (3), and in this section; and for any vacancy resulting from the owner's eviction of an eligible family, certify that it has complied with § 891.630.

If a SPRAC unit remains vacant for more than 60 consecutive days upon tenant turnover, the owner shall not be eligible to receive further SPRAC payments for that SPRAC unit.

The unit must have been in decent, safe, and sanitary condition during the vacancy period for which payment is claimed. The owner must have fulfilled and continues to fulfill the requirements specified in this section, as appropriate. The owner must demonstrate to the satisfaction of HUD that, for the period of vacancy, the project is not providing the owner with revenues at least equal to project expenses (exclusive of depreciation) and the amount of payments requested is not more than the portion of the deficiency attributable to the vacant unit; and that the project can achieve financial soundness within a reasonable time.

If the owner collects payments for vacancies from other sources (tenant rent, security deposits, payments under § 891.435(c), or governmental payments under other programs), the owner is not

entitled to collect vacancy payments to the extent these collections from other sources plus the vacancy payment exceed contract rent.

#### Default by Owner (§ 891.914)

If HUD determines that the owner is in default under the SPRAC, this section provides that HUD will notify the owner in writing of the actions required to cure the default and of the remedies that must be satisfied, including specific performance under the SPRAC, and a reduction or suspension of senior preservation rental assistance payments and recovery of overpayments or inappropriate payments, where appropriate.

If HUD determines that the owner is in default of any of the terms and requirements of the SPRAC, HUD will notify the owner in writing of the nature of the default, the actions required to cure the default, and the time within which the default must be cured. The notice will also identify the remedies that HUD may impose if the default is not cured within the applicable time. These may include termination of the SPRAC, reduction or suspension of payments under the SPRAC, and recovery of overpayments or inappropriate payments, where appropriate.

#### SPRAC Extension or Renewal (§ 891.916)

A Section 202 owner shall agree in writing that upon expiration of each annual increment of a given SPRAC, the owner shall accept each offer of annual increment renewal during the period of the use agreement. Each such offer of a renewal and the renewals themselves are subject to the availability of appropriations and further subject to the requirements of this part. The number of assisted units under the renewed SPRAC must equal the number of assisted units under the original SPRAC, subject to the availability of appropriations, except that HUD and the owner may agree to reduce the number of assisted units by the number of assisted units that are not occupied by eligible families at the time of the renewal.

With respect to Section 202 Direct Loan prepayments with approved SPRAC units, each owner shall agree to enter into a Section 202 Direct Loan use agreement, which will expire at either 20 years beyond the maturity date of the original Section 202 Direct Loan, or the term of new financing, whichever is longer. Upon expiration of the term of the SPRAC and at HUD's sole discretion, the term of the SPRAC may be renewed or extended (subject to

available funds) pursuant to the terms and conditions of the SPRAC and the use agreement.

Each owner shall agree in writing to operate the assisted Section 202 project for the full term specified under the executed SPRAC and for each renewal term in accordance with all statutory, regulatory, and administrative requirements of the SPRAC program.

The number of assisted units under the extended or renewed SPRAC must equal the number of assisted units under the original SPRAC, subject to the availability of appropriations, except that HUD and the owner may agree to reduce the number of assisted units by the number of assisted units that are not occupied by eligible families at the time of the extension or renewal.

#### Denial of Admission, Termination of Tenancy, and Modification of the Lease (§ 891.918)

The regulations of 24 CFR part 5, subpart I, apply to projects previously financed with Section 202 direct loans under this subpart. The provisions of 24 CFR part 247 apply to all decisions by an owner to terminate the tenancy or modify the lease of a family residing in a unit.

In actions or potential actions to terminate tenancy, the owner must follow 24 CFR part 5, subpart L, in all cases where domestic violence, dating violence, stalking, or criminal activity directly related to domestic violence, dating violence, or stalking is involved or claimed to be involved.

#### Security Deposits (§ 891.920)

The general requirements for security deposits on assisted units are provided under § 891.435, with additional requirements under § 891.635 applying to properties with direct loans. The owner must maintain a record of the amount in the segregated interest-bearing account that is attributable to each family in residence in the project. Annually for all families, and when computing the amount available for disbursement under § 891.435(b)(3), the owner must allocate to the family's balance the interest accrued on the balance during the year.

Unless prohibited by state or local law, the owner may deduct for the family, from the accrued interest for the year, the administrative cost of computing the allocation to the family's balance. The amount of the administrative cost adjustment must not exceed the accrued interest allocated to the family's balance for the year.

### Labor Standards (§ 891.922)

Section 891.922 consists of the labor standards applicable to assisted units under this subpart. All laborers and mechanics employed by contractors and subcontractors in the construction, rehabilitation, or repair performed in connection with the provision of assistance under this subpart to nine or more units of housing in a project, where the total cost of such repair, replacement, or capital improvement is in excess of \$500,000, 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. 3141 et seq.). These standards are consistent with other labor standards under this part, adjusted for this program.

In addition, 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. 3701 et seq.). Sponsors, owners, contractors, and subcontractors must comply with related rules, regulations, and requirements as directed by HUD.

### B. Service Coordinator in Multifamily Housing and Assisted Living Conversion Programs (Part 892—New)

#### General Program Requirements (Subpart A)

##### Applicability and Scope (§ 892.100)

The requirements set forth in this subpart A apply to the Service Coordinator in Multifamily Housing program, as authorized under sections 671, 672, 674, 676, and 677 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992), as amended by section 851 of the AHEO (Pub. L. 106–569, approved January 24, 2000); and to the Assisted Living Conversion program, as authorized under section 202b of the Housing Act of 1959 (12 U.S.C. 1701q–2).

##### Definitions (§ 892.105)

This section defines certain terms applicable to part 892. Certain terms with definitions unique to the Service Coordinator in Multifamily Housing and Assisted Living Conversion programs are defined in §§ 892.205 and 892.305, as applicable.

*Activities of daily living (ADLs).* Under this part, the definition of “activities of daily living” will have the same meaning as § 891.205. HUD has determined that the definition under § 891.205, which is applicable to the Section 202 program, is also applicable to the Service Coordinator in

Multifamily Housing and Assisted Living Conversion programs. These programs serve the same populations.

*Elderly person.* Under this part, an “elderly person” means a person who is at least 62 years of age. This definition is consistent with the definition of an “elderly person” under section 202 of the Housing Act of 1959.

*Eligible housing project.* In order to receive assistance under this part, a project must be an “eligible housing project,” which can fall under one of seven categories as defined under section 202b(b) of the Housing Act of 1959 (12 U.S.C. 1701q–2). An eligible housing project can be housing that:

- Receives project-based assistance under section 8 of the 1937 Act (42 U.S.C. 1437f);
- Is assisted under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q);
- Is assisted under section 202 of the Housing Act of 1959, as such section existed before the enactment of the NAHA;
- Is financed by a loan or mortgage insured under section 221(d)(3) of the National Housing Act (12 U.S.C. 1715) that bears interest at a rate determined under section 221(d)(5) of such Act;
- Is assisted under section 515 of the Housing Act of 1949 (42 U.S.C. 1485), which authorizes assistance for rural housing projects and such projects are also receiving rental assistance under the 1937 Act;
- Is insured, assisted, or held by the Secretary, a state, or a state agency under section 236 of the National Housing Act (12 U.S.C. 1715z–1);
- Is constructed or substantially rehabilitated pursuant to assistance provided under section 8(b)(2) of the 1937 Act (42 U.S.C. 1437f), as in effect before October 1, 1983, and that is assisted under a contract for assistance under such section.

Each of these categories may provide for assisted living facilities or service-enriched housing, as authorized under this part.

*Frail elderly person.* A “frail elderly person” is an elderly person who is unable to perform at least three of the activities of daily living. This definition is similar to § 891.205. HUD has determined that the definition under § 891.205, which is applicable to the Section 202 program, is also applicable to the Service Coordinator in Multifamily Housing and Assisted Living Conversion programs. These programs serve the same populations.

*Functional limitations.* The definition of “functional limitations” will be the same as § 891.205.

*Housing assistance.* The definition of “housing assistance” will apply only to federally assisted housing as provided under this part. “Housing assistance” is defined to mean the grant, contribution, capital advance, loan, mortgage insurance, or other assistance provided for an eligible housing project, as defined under this section. This term also includes any assistance provided for the housing by HUD, including any rental assistance for low-income occupants.

*Instrumental activities of daily living (IADLs).* Under this part, the definition of instrumental activities of daily living has the same meaning as in § 891.205

*Low-income and very low-income family.* Under this part, the definitions for “low-income family” and “very low-income family” will have the same meanings as provided under section 3(b)(2) of the 1937 Act.

*Owner.* The definition of “owner” will have the same meaning as provided under § 891.205. HUD has determined that the definition under § 891.205, which is applicable to the Section 202 program, is also applicable to the Service Coordinator in Multifamily Housing and Assisted Living Conversion programs. These programs serve the same populations.

*Person with disabilities.* Under this part, a “person with disabilities” will have the same meaning as provided under § 891.305. HUD has determined that the definition under § 891.305, which is applicable to the Section 811 program, is also applicable to the Service Coordinator in Multifamily Housing and Assisted Living Conversion programs. These programs serve the same populations.

*Private nonprofit organization.* The definition of “private nonprofit organization” will have the same meaning as provided under § 891.205. HUD has determined that the definition under § 891.205, which is applicable to the Section 202 program, is also applicable to the Service Coordinator in Multifamily Housing and Assisted Living Conversion programs. These programs serve the same populations.

*Retain.* The definition of “retain” means service coordination performed by a partnering agency that results in a reduction to the project’s cost to hire or contract a service coordinator.

*Service coordinator.* The definition of “service coordinator” means a social service person hired, contracted, or retained by the assisted housing owner or its management company, who assists residents in identifying, locating, and acquiring supportive services necessary for elderly persons and

nonelderly persons with disabilities to live independently and age in place.

**Supportive services.** Under this part, “supportive services” mean health-related services, mental health services, services for nonmedical counseling, meals, transportation, personal care, bathing, toileting, housekeeping, chore assistance, safety, group and socialization activities, assistance with medications (in accordance with any applicable state laws), case management, personal emergency response, and other appropriate services that are designed to prevent hospitalization or institutionalization and permit elderly residents to age in place and live independently in a residential setting. The services may be provided through any agency of the Federal, state, or local government or other public or private department, agency, or organization.

**Service expenses.** Under this part, the definition of “service expenses” means those costs of providing supportive services necessary to permit residents to live independently, age in place, and prevent hospitalization or institutionalization.

**Vicinity of the housing project.** The definition of “vicinity of the housing project” means the area close enough to the eligible housing project to allow for easy access by individuals to the service coordinator’s office space, and by service coordinators to individuals’ residences.

#### Eligible Funding Recipients (§ 892.110)

This section provides that recipients who receive assistance under the Service Coordinator in Multifamily Housing and Assisted Living programs must own an eligible housing project, as defined in § 892.105, and comply with any regulatory agreement, housing assistance payment (HAP) contract, or any other HUD grant or contract, where applicable. In addition, recipients must be current in mortgage payments for any FHA-insured loan or Section 202 direct loan, unless the entity has signed a work-out agreement for the delinquent loan, and is current on and in compliance with the workout agreement, as applicable. Recipient must also meet the Physical Condition Standards in 24 CFR part 5, subpart G, as evidenced by a satisfactory score in the most recent final physical inspection report or by an approved work-out plan for housing projects that received a failing score.

#### Nondiscrimination and Equal Opportunity Requirements (§ 892.115)

This section provides the nondiscrimination and equal

opportunity requirements for recipients who receive assistance under the Service Coordinator in Multifamily Housing and Assisted Living programs. Recipients must comply with all applicable nondiscrimination and equal opportunity requirements, including HUD’s generally applicable nondiscrimination and equal opportunity requirements at 24 CFR 5.105(a). This includes, but is not limited to, the Fair Housing Act and its implementing regulations at 24 CFR part 100; title VI of the Civil Rights Act of 1964 and its implementing regulations at 24 CFR part 1; section 504 of the Rehabilitation Act of 1973 and its implementing regulations at 24 CFR part 8; and titles II and III of the Americans with Disabilities Act and their implementing regulations at 28 CFR parts 35 and 36.

In addition, recipients must affirmatively further fair housing in their use of funds for the programs under this part. Specific activities will be detailed in the individual program NOFAs.

Lastly, recipients must ensure that programs or activities are administered in the most integrated setting appropriate to the needs of qualified individuals with disabilities. The “most integrated setting” is defined as a setting that enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible.<sup>3</sup>

#### Environmental Requirements (§ 892.120)

This section provides the environmental requirements that apply to the Service Coordinator in Multifamily Housing and Assisted Living programs. The National Environmental Policy Act of 1969, and HUD’s implementing regulations at 24 CFR part 50, including the related authorities described in 24 CFR 50.4, apply to this part. In addition, if funding under subpart B will be used to cover the cost of any activities that are not exempt from environmental review requirements, such as acquisition, leasing, construction, or building rehabilitation, HUD must perform an

<sup>3</sup>This direction is consistent with HUD’s guidance on the U.S. Supreme Court landmark decision in *Olmstead v. L.C.*, 527 U.S. 581 (1999), affirming that unjustified segregation of individuals with disabilities is a form of discrimination prohibited by title II of the Americans with Disabilities Act (ADA). See <http://portal.hud.gov/hudportal/documents/huddoc?id=OlmsteadGuidnc060413.pdf>. This guidance is consistent with efforts across Federal agencies and in many states to provide health care and related support and services for individuals with disabilities in the most integrated setting appropriate to their needs.

environmental review to the extent required by 24 CFR part 50. Such environmental review must be performed before the grant award.

#### Service Coordinator in Multifamily Housing Program (Subpart B)

##### Purpose and Applicability (§ 892.200)

As explained in this section, the Service Coordinator in Multifamily Housing program allows owners of eligible projects to assist elderly persons and nonelderly persons with disabilities living in HUD-assisted housing and in the vicinity of the housing project to obtain needed supportive services from the community that enable independent living and aging in place. HUD makes funds available to employ and support a service coordinator by awarding grants and by approving owners’ requests to use certain classes of project funds. Thus, the requirements set forth in this subpart B apply only to the Service Coordinator in Multifamily Housing program, as authorized under sections 671, 672, 674, 676, and 677 of the Housing and Community Development Act of 1992.

##### Definitions (§ 892.205)

This section defines certain terms applicable to the Service Coordinator in Multifamily Housing program (subpart B). The definitions under § 892.105 also apply.

**At-risk elderly person.** The definition of “at-risk elderly person” means an elderly person who is unable to perform one or two of the ADLs, as defined under § 892.105. Defining this category of elderly will help to determine the various levels of ADL needed, as well as ensure that the services provided by service coordinators are not limited to only those residents defined as “frail elderly.” The definition will also serve as a means for owners to identify those residents who may have higher ADL needs in the future. Estimating future supportive service needs supports HUD’s efforts to ensure elderly residents age in place.

**Available funds.** Under this subpart, “available funds” means funds for supportive services, as approved by HUD, and must not be used to address critical property needs.

**Eligible project.** Under this subpart, an “eligible project” is defined to include an eligible housing project as defined in § 892.105. “Eligible project” also includes a project that has no “project funds,” as defined under § 892.105, available to pay for a service coordinator, and that is designed or designated for the elderly or persons with disabilities and continues to

operate as such. This latter project includes any building within a mixed-use development that was designed for occupancy by elderly persons or persons with disabilities at its inception and continues to operate as such, or consistent with title VI, subtitle D, of the Housing and Community Development Act of 1992 (Pub. L. 102-550). If a project was not designed at its inception for occupancy by elderly persons or persons with disabilities, an eligible project includes a property in which the owner gives preferences in tenant selection (with HUD approval) to eligible elderly persons or nonelderly persons with disabilities for all units in that property.

#### Sources of Funding (§ 892.210)

This section provides that owners of eligible housing projects may request the use of or apply for different types of funding to cover Service Coordinator in Multifamily Housing program expenses. Service coordinator expenses will be considered an eligible project expense, in accordance with § 891.250(b). Amounts available for such costs include funding provided through section 8 of the 1937 Act (42 U.S.C. 1437f), and PRACs, pursuant to section 802 of NAHA (42 U.S.C. 8011); income generated from these programs or from tenant rental payments that exceed operating expenses and that may be used only upon approval from HUD; and multifamily service coordinator grants, subject to and consistent with the availability of appropriations.

#### Application and Selection (§ 892.215)

HUD will provide through a NOFA the form and manner of applications for grants under this subpart and for selection of applicants to receive such grants.

#### Duties (§ 892.220)

This section outlines the duties of service coordinators, as required under section 671 of the Housing and Community Development Act of 1992 (42 U.S.C. 13631). Service coordinators must perform an initial-needs screening, and subsequent annual reviews, to identify service needs. If a comprehensive assessment is required, the service coordinator must refer the tenant to a qualified professional. For residents identified through such screening, service coordinators must refer and link residents to an agency in the community that provides supportive service; monitor the ongoing provision of services from community agencies; and manage the provision of supportive services where appropriate. Service coordinators may provide case

management when such service is not available through the general community.

Service coordinators must also educate residents on matters such as service availability, application procedures, and client rights, and provide advocacy as appropriate; maintain detailed case files on each resident served; help the residents build informal support networks with other residents, family and friends; establish linkages with agencies such as, but not limited to, local Area Agencies on Aging (AAA)/Aging and Disability Resource Centers (ADRC), and home and community-based service providers, to enhance service provision; and create a directory of providers for use by both housing staff and residents. Service coordinators must affirmatively market the service coordinator's services to residents of the property and surrounding community who are least likely to inquire, and find counselors to help tenants with counseling for mobility and fair housing choice. Service coordinators may work and consult with tenant organizations and resident management corporations; provide training to residents of the project in the obligations of tenancy or coordinate such training; and may carry out other appropriate activities for residents of the eligible housing project or for low-income elderly and persons with disabilities living in the vicinity of the eligible housing project.

However, there are also activities that service coordinators must not perform. Service coordinators must not act as a recreational or activities director, or provide supportive services directly.

#### Qualifications (§ 892.225)

This section provides the qualification requirements that individuals must meet to participate in the Service Coordinator in Multifamily Housing program as service coordinators. As set forth in this section, service coordinators must possess a bachelor's degree and have experience in social service delivery for the elderly and persons with disabilities. In addition, service coordinators must demonstrate a working knowledge of supportive services and other resources available for the elderly and persons with disabilities in the area served by the eligible housing project, and the ability to advocate, organize, problem-solve, and provide results for the elderly and persons with disabilities. However, this section provides for HUD to substitute a bachelor's degree based on the extent of qualifications, as set forth in paragraphs (b) through (d) of this section, and/or other qualifications that

the service coordinator may present. The extent of qualifications will be determined by HUD through a NOFA.

#### Form of Employment or Retention (§ 892.230)

This section states that an owner may directly employ a service coordinator or may procure by contract the services of a service coordinator. Owners may also utilize a service coordinator whose expenses are supported by external sources of funding.

#### Training (§ 892.235)

As required under section 672 of the Housing and Community Development Act of 1992 (42 U.S.C. 8011(d)(4)), this section provides that service coordinators must receive and document training, at minimum, in the following subject areas: The aging process; elderly and disability services; eligibility for and procedures of Federal and applicable state entitlement programs; legal liability issues relating to providing service coordination; drug and alcohol use and abuse by the elderly; and mental health issues.

#### Administrative Requirements (§ 892.240)

This section describes the administrative requirements for the Service Coordinator in the Multifamily Housing program. Owners must provide on-site private office space for the service coordinator to allow for confidential meetings with residents. Such office space must be accessible to persons with disabilities and meet all Federal accessibility standards, including section 504 of the Rehabilitation Act of 1973, 24 CFR part 8, and titles II and III of the Americans with Disabilities Act of 1990, as applicable. In addition, resident files must be kept in a secured location and only be accessible to the service coordinator as required under § 892.245, unless the residents provide signed consent otherwise. Resident files must include documentation that demonstrates the resident's supportive service needs, referrals for needed supportive services (both short- and long-term) and follow-up from the service coordinator on the types and amounts of services residents receive, and any aging-in-place statistics or information. As directed, performance reports completed by the service coordinator and financial reports detailing program expenses must be submitted by the owner to HUD.

#### Confidentiality (§ 892.245)

Under the Service Coordinator in Multifamily Housing program, service

coordinators must store, in a secure manner, all files containing information related to the provision of supportive services for residents. Files must be accessible only to the service coordinator. A service coordinator may not disclose to any person any individually identifiable information that relates to the provision of supportive services to a resident, unless the resident has knowingly consented. Any such consent must be in writing and be signed by the resident, and must clearly identify the parties to whom the information may be disclosed, as well as the scope and purpose of the disclosure. If there is no applicable consent to disclosure, service coordinators may disclose individually identifiable information that relates to the provision of supportive services to a resident, to the extent necessary to protect the safety or security of a resident, housing project staff, or the housing project. However, confidentiality policies must be consistent with maintaining confidentiality of information related to any individual as required by the Privacy Act of 1974 (5 U.S.C. 552a).

#### Program Costs (§ 892.250)

This section provides the eligible and ineligible program costs for the Service Coordinator in Multifamily Housing program. Funds may be used to cover the costs of employing or otherwise retaining the services of one or more service coordinators. Eligible program expenses include salary and fringe benefits; training; creating private office space; purchase of office furniture and equipment, supplies and materials, computer hardware, software, and Internet service; and other related administrative expenses approved by HUD.

Eligible costs must be reasonable, necessary, and recognized as expenditures in compliance with the uniform government-wide cost principles and other grant requirements found in HUD's regulations at 24 CFR part 84 (for private nonprofit organizations) and part 85 (for governments). Grant recipients must additionally be subject to allowable cost provisions in NOFAs and grant agreements. Owners of eligible housing projects who use a class or classes of project funds under this program must comply with the requirements that are applicable to approved withdrawals or uses of the class or classes of project funds under their governing agreements with HUD.

Ineligible program expenses are any costs that are not directly related to employing the service coordinator. Examples of ineligible program

expenses are expenses associated with holiday parties, purchase of televisions or exercise equipment, and recreational activities for residents.

#### Services for Low-Income Elderly or Persons With Disabilities (§ 892.255)

This section provides that a service coordinator funded under § 892.210 may provide services to low-income elderly individuals or nonelderly persons with disabilities living in the vicinity of an eligible housing project. Community residents choosing to seek assistance from a service coordinator must come to the eligible housing project to meet with and receive assistance from the service coordinator. Service coordinators must make reasonable accommodations for those persons with disabilities unable to travel to the housing project, and have the option to make accommodations for other community residents.

#### Sanctions (§ 892.260)

This section provides the sanctions for noncompliance with the requirements of the Service Coordinator in Multifamily Housing program. If HUD determines that an owner has not complied with the requirements of this subpart, then HUD may impose any or a combination of sanctions as listed in this section. HUD may temporarily withhold reimbursements, approvals, extensions, or renewals until the owner adequately remedies the deficiency. HUD may disallow all or part of the cost attributable to activities undertaken not in compliance with applicable requirements, and if applicable, require the owner to remit to HUD, or to redeposit in the source, account funds in the amount that has been disallowed. HUD may suspend or terminate, in part or in whole, the grant or approval to use project funds. HUD may place conditions on the awards of grants or approvals of one or more classes of project funds so that the deficiency be remedied and that adequate steps be taken to prevent future deficiencies. Lastly, HUD may impose other sanctions authorized by law or regulation.

#### Assisted Living Conversion Program (Subpart C)

##### Purpose and Applicability (§ 892.300)

This section describes the purpose of the Assisted Living Conversion program. This program provides grants for the physical conversion of eligible multifamily assisted housing developments to assisted living facilities or service-enriched housing for the elderly. Grants provided under this program must be used for the purposes

described in section 202b of the Housing Act of 1959 (12 U.S.C. 1701q-2). In addition, the requirements set forth in this subpart C apply only to eligible projects under the Assisted Living Conversion program, as authorized under section 202b(b)(1) of the Housing Act of 1959 (12 U.S.C. 1701q-2).

#### Definitions (§ 892.305)

This section defines certain terms applicable to the Assisted Living Conversion program (subpart C). The definitions under § 892.105 also apply.

*Assisted living facility (ALF).* Under this subpart, an "assisted living facility" will have the same meaning as provided under section 232(b) of the National Housing Act (12 U.S.C. 1715w(b)). Under this statute, an "assisted living facility" means a public facility, proprietary facility, or facility of a private nonprofit corporation. Each of these facilities must be licensed and regulated by the state (or if there is no state law providing for such licensing and regulation by the state, by the municipality or other political subdivision in which the facility is located). Such facility must make available to residents supportive services to assist the residents in carrying out activities of daily living (as defined under § 891.205). Lastly, such facility must provide separate dwelling units for residents, each of which contain a full bathroom and may contain a full kitchen, and include common rooms and other facilities appropriate for the provision of supportive services to the residents of the facility.

*Congregate space.* "Congregate space," otherwise known as community space, shall have the same meaning as provided under section 202(h)(1) of the Housing Act of 1959 (12 U.S.C. 1701q(h)(1)). This term excludes halls, mechanical rooms, laundry rooms, parking areas, dwelling units, and lobbies. Community space does not include commercial areas.

*Conversion.* The definition of "conversion" means activities in an eligible project designed to convert dwelling units into assisted living facilities. Conversion can include unit configuration and related common and service space, and any necessary remodeling, consistent with the Uniform Federal Accessibility Standards, section 504 of the Rehabilitation Act of 1973, and HUD's implementing regulations at 24 CFR part 8, as well as any applicable provisions of the Americans with Disabilities Act of 1990 and applicable Fair Housing Act design and construction requirements

for all portions of the development physically affected by such conversion. Where conversion may involve Medicaid reimbursement, conversion should be undertaken in accordance with the Home and Community-Based Services regulations of the U.S. Department of Health and Human Services (see 42 U.S.C. part 441.)

*Eligible project.* An “eligible project” under this subpart means eligible housing projects as defined under § 892.105; eligible projects as described in section 638(2) of the Housing and Community Development Act; and section 202 properties, as defined under § 891.105, with a PRAC.

*Emergency capital repairs.* “Emergency capital repairs” are repairs to a project that correct a situation that presents an immediate threat to the life, health, and safety of the project tenants, and if left untreated, would result in an evacuation of the tenants or long-term tenant displacement.

*Repairs.* Under the Assisted Living Conversion, “repairs” mean substantial and emergency capital repairs to a project that are needed to rehabilitate, modernize, or retrofit aging structures, common areas, or individual dwelling units.

*Service-enriched activities.* This section defines “service-enriched activities” as activities designed to convert dwelling units in the eligible project to service-enriched housing for elderly persons, as applicable under the Assisted Living Conversion program.

*Service-enriched housing.* This section defines “service-enriched housing” as housing that makes available, through licensed or certified third party service providers, supportive services to assist the residents in carrying out activities of daily living. Under this definition, “activities of daily living” means the definition under § 891.205. “Service-enriched housing” is housing that has a service coordinator, which may be funded as an operating expense of the property; provides separate dwelling units for residents, each of which contain a full bathroom and may contain a full kitchen; includes common rooms and other facilities appropriate for the provision of supportive services to the residents of the housing; and provides residents with control over health care and supportive services decisions, including the right to accept, decline, or choose such services and to have the choice of a provider.

#### Other Federal Requirements (§ 892.310)

This section is similar to section 891.155 (Other Federal requirements) that is being revised by this proposed

rule; however, the contents of this section are tailored to the program in this subpart. In addition to the requirements set forth in 24 CFR part 5, the requirements in this section apply to the Assisted Living Conversion program under this subpart.

In particular, this section incorporates requirements applicable for the rehabilitation, other construction, and related activities to be undertaken for the conversions to be conducted under this subpart. The introductory paragraph of this section is more focused than its counterpart in § 891.155, because the scope of this subpart is narrower. Similarly, § 891.155(e)(3), on acquisition, is not incorporated into this subpart based on the presumption that acquisitions will not be assisted under this program. Acquisitions may be assisted under one or more other HUD programs, and their regulations would apply to the acquisition.

In addition, 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 program must 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 under this paragraph. Contracts involving employment of laborers and mechanics under this subpart shall be subject to the provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333). Sponsors, owners, contractors, and subcontractors must comply with all rules, regulations, and requirements related to the Davis-Bacon Act (40 U.S.C. 276a–276a–5).

The Lead Safe Housing regulations (LSHR) (24 CFR 35, subparts B–R) is incorporated in the proposed § 892.310(h) because children under age 6 are not prohibited from residing in pre-1978 supportive housing for the elderly under this new subpart. When children under age 6 reside in or are expected to reside in supportive housing for the elderly under this subpart, such housing must abide by the requirements under the LSHR. When children under age 6 do not reside in nor are expected to reside in supportive housing for the elderly under this subpart, such housing is not required to abide by the requirements under the LSHR. HUD will determine, on a case-by-case basis, whether supportive housing for the elderly under this

subpart must abide by the requirements under the LSHR.

#### Additional Project Eligibility (§ 892.315)

This section provides that, in addition to the criteria for eligible housing projects as defined under § 892.105, projects receiving Assisted Living Conversion Program (ALCP) funds must also meet certain criteria as provided under section 202b(b) of the Housing Act of 1959 (12 U.S.C. 1701q–2(b)). The project must be owned by a private nonprofit organization, as defined under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q). The project must be designated primarily for occupancy by elderly persons, and the project may be unused or underutilized commercial property, except that HUD may not provide grants under this section for more than three such properties.

#### Notice of Funding Availability (§ 892.320)

This section provides that HUD will issue a separate notice of funding availability (NOFA) for the Assisted Living Conversion program. The NOFA will contain specific information on how and when to apply for the grant authority, the contents of the application, and the selection process.

As authorized under section 202b(c) of the Housing Act of 1959 (12 U.S.C. 1701q–2(c)), HUD has broad discretion to set the requirements for applications for assistance under this subpart. This section provides that an application for assistance under this subpart must contain certain requirements, in addition to the requirements outlined in the NOFA. The application must contain a description of the substantial capital repairs or the proposed conversion activities for either an assisted living facility or service-enriched housing for which a grant under this subpart is requested. The application must contain the amount of the grant requested to complete the substantial capital repairs or conversion activities, and a description of the resources that are expected to be made available, if any, in conjunction with the requested funding.

#### Requirements for Services (§ 892.325)

HUD will ensure that assistance under this subpart provides firm commitments for the funding of services to be provided in the assisted living facility or service-enriched housing as described in section 202b(d)(1) of the Housing Act of 1959 (12 U.S.C. 1701q–2(d)(1)). In addition, HUD will require evidence that each recipient of a grant for service-enriched housing provide relevant and timely disclosure of information to



residents or potential residents as described in section 202b(d)(2) of the Housing Act of 1959 (12 U.S.C. 1701q–2(d)(2)).

Section 8 Project-Based Assistance (§ 892.330)

This section provides that multifamily projects, which include one or more dwelling units that have been converted to assisted living facilities or service-enriched housing using funding made under this subpart, are eligible for project-based assistance under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f). Such project-based assistance is provided in the same manner in which the project would be eligible for such assistance, but for the assisted living facilities or service-enriched housing in the project. The maximum monthly rent of a dwelling unit that is an assisted living facility or service-enriched housing that receives section 8 assistance under this section (§ 892.330) must not include charges attributable to services relating to assisted living.

Vacancy Payment (§ 892.335)

A vacancy payment, under the Assisted Living Conversion program, is limited to 30 days after a conversion to an assisted living facility.

IV. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a

determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned. Executive Order 13563 also 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 was determined to be a “significant regulatory action” as defined in section 3(f) of the order (although not an economically significant regulatory action under the order). Consistent with Executive Order 13563, this rule revises the existing part 891 regulations for the supportive housing programs for the elderly and persons with disabilities to implement not only new flexible provisions required by the legislation signed into law on January 4, 2011, but from HUD’s own review of the existing regulations and where improvements could be made based on experience.

The costs and benefits of this rule are discussed in detail in the regulatory impact analysis (RIA) and a summary of

the costs and benefits are found in the executive summary in this preamble.

The rule and the RIA are available for public inspection on [www.regulations.gov](http://www.regulations.gov). These documents are also available for public inspection in the Regulations Division, Office of the General Counsel, Room 10276, 451 7th Street SW., Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202–402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service, at toll-free, 800–877–8339.

Information Collection Requirements

The information collection requirements contained in this proposed rule have been submitted to the OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

The burden of the information collections in this proposed rule is estimated as follows:

REPORTING AND RECORDKEEPING BURDEN FOR PARTS 891 AND 892

Section reference	Number of respondents	Response frequency (average)	Total annual responses	Burden hours per response	Total annual hours
§ 891.190—documentation to support approval of ePRAC	100	1	100	20	2,000
§ 891.308(b)(2)(ii)—application for waiver	20	1	20	0.5	10
§ 891.335—documentation to support conversion	10	1	10	16	160
§ 891.410—documentation of elderly individuals who can support having functional limitations	30	1	30	2	60
§ 891.430—notification to tenant of termination of tenancy	300	1	300	1	300
§ 891.530—documentation necessary to approve prepayment	280	1	280	2	560
§ 891.700—documentation necessary to approve prepayment	280	1	280	2	560
§ 891.800—information to be included in RAC	15	1	15	20	300
§ 891.882—information required by agreement; MOU, plan of participating agencies	15	1	15	1	15
§ 892.210(a)—information required for project income use	50	1	50	2	100
§ 892.210(b)—information required for renewals	1700	1	1700	2	3,400
§ 892.210(b)—information required for grant funding	200	1	200	40	8,000
§ 892.315—information required for funding	50	1	50	40	2,000
Total:				148.5	17,465

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public

and affected agencies concerning this collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the

functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this rule. Comments must refer to the proposal by name and docket number (FR-5576-P-01) and must be sent to: HUD Desk Officer

Office of Management and Budget  
New Executive Office Building  
Washington, DC 20503  
Fax number: 202-395-6947

and  
Reports Liaison Officer  
Office of Housing  
Department of Housing and Urban  
Development

451 Seventh Street SW. Room 9116  
Washington, DC 20410-8000

Interested persons may submit comments regarding the information collection requirements electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the <http://www.regulations.gov> Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

#### *Environmental Impact*

A Finding of No Significant Impact (FONSI) with respect to the environment has been made for this proposed rule 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)). The FONSI is available for public inspection between 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, an advance appointment to review the FONSI must be scheduled by calling the Regulations Division at 202-708-3055 (not a toll free number).

#### *Unfunded Mandates Reform Act*

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 proposed rule does not impose a Federal mandate on any state, local, or tribal government, or on the private sector, within the meaning of UMRA.

#### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (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.

As has been discussed in this preamble, this proposed rule is largely directed to: Establishing the requirements and procedures for the use of new project rental assistance for supportive housing for persons with disabilities; implementing an enhanced project rental assistance contract; providing for an allowance of a set-aside for a number of units for elderly individuals with functional limitations or other category of elderly individuals as defined in the NOFA; revising the requirements for the prepayment of certain loans for supportive housing for the elderly; implementing a new form of rental assistance called senior preservation rental assistance contracts (SPRACs); modernizing the capital advance for supportive housing for persons with disabilities; and establishing the requirements that will be applicable to grant assistance for applicants without sufficient capital to prepare a site for a funding competition.

This rule also proposes to establish the regulations for the Service Coordinator in Multifamily Housing program and Assisted Living Conversion program, long-term grant programs for which there have not been regulations promulgated to date.

The statutory changes to the Section 202 program and Section 811 program, for which this rule proposes regulations, increase flexibility with respect to use of funds and administration of these

programs. This flexibility benefits all participants in these programs, small and large entities. In addition to the statutory changes that increase flexibility to these programs, HUD proposes, administratively, regulatory changes to the Section 202 program and Section 811 program that would further increase administrative flexibility.

Given the proposed rule's goal to reduce burden and increase flexibility in the programs covered by this rule, HUD has determined that it would not have a significant economic impact on a substantial number of small entities. Notwithstanding HUD's determination that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

#### *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) preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This proposed rule does not have Federalism implications and does not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Executive order.

#### **List of Subjects in**

##### *24 CFR Part 891*

Capital advances, Persons with disabilities, Project rental assistance, Supportive housing for persons with disabilities, Supportive services.

##### *24 CFR Part 892*

Service Coordinator, Assisted Living Conversion, Elderly Persons, Persons with Disabilities, and Supportive Services.

Accordingly, for the reasons described in the preamble, HUD proposes to amend 24 CFR part 891 and add a new part 892 to read as follows:

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

■ 1. The authority citation for 24 CFR part 891 continues to read as follows:

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

■ 2. In § 891.100, revise paragraph (a) to read as follows:

**§ 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 voluntary services that are tailored to the needs of the residents. Owners of Section 811 projects shall ensure that the residents are offered, but are not required to accept, any necessary supportive services that address their individual needs.

\* \* \* \* \*

■ 3. Section 891.105 is revised by amending the introductory paragraph; revising the definitions of “family,” “operating costs,” “project rental assistance contract,” and “project rental assistance payment”; and adding, in alphabetical order, the definition of “enhanced project rental assistance contract;” 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, 891.805, 891.872, and 891.892, as applicable.

\* \* \* \* \*

*Enhanced project rental assistance contract (ePRAC)* means the contract entered into by the nonprofit organization and HUD setting forth the rights and duties of the parties with respect to the project and the payments under the ePRAC. An enhanced project rental assistance contract is made available for:

(1) Sponsors submitting a new application under section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013) or under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and who are accessing private capital, to fund the construction or provide permanent financing for supportive housing units for the elderly or persons with disabilities;

(2) Owners of existing 202 and 811 capital advance properties. Such contract would allow for the inclusion of debt service as an eligible expense for the units covered by the contract.

\* \* \* \* \*

*Family(ies)* means an *Elderly Family* as defined in § 891.505, and may include a “Disabled Family,” as defined in § 891.505, pursuant to the terms and conditions of an applicant’s original Section 202 loan.

\* \* \* \* \*

*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;

(5) Taxes and insurance;

(6) Allowances for reserves;

(7) Allowances for services (in the Section 202 Program only); and

(8) Allowances for debt service only for units in new or existing 202 and 811 capital advance properties covered by an ePRAC in accordance with the requirements in § 891.190.

*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, except for project rental assistance provided under subpart G and units covered by ePRACs under § 891.190 in subpart A.

*Project rental assistance payment* means the payment made by HUD to the Owner for assisted units as provided in the PRAC or ePRAC, except for project rental assistance provided under subpart G. 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 or ePRAC.

\* \* \* \* \*

■ 4. Redesignate § 891.140 as § 891.208.

■ 5. Remove § 891.145.

■ 6. § 891.150 is revised to read as follows:

**§ 891.150 Operating cost standards.**

(a) *Applicability.* The requirements under this section apply only to PRACs, as defined under § 891.105.

(b) *Standard.* 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, for 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.

■ 7. In § 891.155, the introductory text, paragraph (b), paragraphs (d)(1) and (2) are revised to read as follows:

**§ 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, projects funded under §§ 891.655 through 891.790, and prepayments under §§ 891.530 and 891.700. Other requirements unique to a particular program are described in subparts B, C, G, and H of this part, as applicable.

\* \* \* \* \*

(b) *Environmental requirements.* Except for the program under subpart G, the National Environmental Policy Act of 1969, and HUD’s implementing regulations at 24 CFR part 50, including the related authorities described in 24 CFR 50.4, apply. Environmental reviews under § 891.530 and 891.700 shall consider the use of a senior preservation rental assistance contract under subpart H of this part, regardless of whether an application for such contract has been made at the time of review. For the environmental requirements for the program under subpart G (see §§ 891.882(e) and (f)). 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.

\* \* \* \* \*

(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 (other than under subpart H) 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. 3141 *et seq.*). 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. 3701 *et seq.*).

\* \* \* \* \*

■ 8. § 891.160 is revised to read as follows:

**§ 891.160 Audit requirements.**

Nonprofits receiving assistance under this part are subject to the audit requirements in the notice of funding availability (NOFA).

■ 9. In § 891.165, paragraph (b) is revised to read as follows:

**§ 891.165 Duration of capital advance.**

\* \* \* \* \*

(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 initial closing to the start of construction. This duration can be up to 36 months, as approved by HUD on a case-by-case basis.

■ 10. Revise § 891.175 to read as follows:

**§ 891.175 Technical assistance.**

For purposes of the Section 202 Program and the Section 811 Program, HUD shall make available appropriate technical assistance.

(a) Assistance under this section must ensure that applicants having limited resources, particularly minority applicants, are able to participate more fully in the programs.

(b) HUD may offer competitive grants under this section in order to bolster an applicant's capacity to engage in preliminary work required in the development of supportive housing under the Section 202 Program or the Section 811 program.

(1) Assistance under paragraph (b) of this section is available only if:

(i) The applicant is eligible under the NOFA for the Section 202 Program or the Section 811 Program;

(ii) The applicant has site control; and

(iii) The applicant lacks access to capital to undertake initial efforts to confirm site feasibility, pursue initial site funding, and undertake the preparatory steps necessary to compete in the NOFA for the Section 202 Program or the Section 811 Program, as applicable.

(2) Competitive grants provided under paragraph (b) of this section may be used to cover initial costs of necessary architectural and engineering work, site control, and other activities related to the development of supportive housing for the elderly and persons with disabilities.

■ 11. Section 891.190 is added to read as follows:

**§ 891.190 Enhanced project rental assistance contracts (ePRACs).**

(a) *In general.* The ePRACs are available to applicants under this section in accordance with paragraph (b) of this section.

(b) *Requirements.* The following requirements apply to ePRACs:

(1) *Eligible applicants.* Applicants eligible for ePRACs are only nonprofit organizations, as defined under §§ 891.205, 891.305, and 891.805, with:

(i) Sponsors accessing private capital to fund the construction or provide permanent financing for supportive new housing units; or

(ii) Owners of existing properties accessing private capital and where debt service results in ongoing operating cost savings in an amount greater than the cost of debt service.

(2) *Eligible expenses.* Eligible expenses must include debt service covering the private financing obtained for the supportive housing units covered by the contract. Debt service for non-section 202 or non-section 811 units must not be included.

(3) *Rent setting.* (i) Initial rent levels, as well as the rent levels at the beginning of each 5-year term of the multiyear contract, must be based on the project's operating expenses that include private long-term debt service and must not exceed market rents (which may take the provision of a service coordinator into consideration); or

(ii) Rents during the 5-year term of the multiyear contract will be adjusted using the operating cost adjustment factor (OCAF).

(4) *Vacancy payments for assisted units.* Vacancy payments for units under

the ePRAC will be in the amount of 80 percent of the per-unit operating expenses that include debt service for the first 60 days of vacancy if the conditions for receipt of these project rental assistance payments under § 891.445 are fulfilled.

(5) *Operating cost savings.* HUD may retain a percentage of the ongoing operating cost savings. HUD will advise of the percentage of savings to be retained through notice.

(6) *Other requirements.* Except as provided under this section, ePRACs must follow the requirements provided under this subpart as well as under subparts D and F of part 891.

■ 12. In § 891.205, the definition for "activities of daily living" is revised, and definitions for "functional limitations" and "instrumental activities of daily living" are added in alphabetical order to read as follows:

**§ 891.205 Definitions.**

*Activities of daily living (ADL)* means eating, dressing, bathing, grooming, and transferring, 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;

(5) *Transferring*—Actions such as going from a seated to standing position and getting in and out of bed; and

(6) Other such activities as HUD deems essential for maintaining independent living.

\* \* \* \* \*

*Functional limitations* means the restriction or loss of ability to perform or complete ADL/IADL tasks. An elderly person with functional limitations requires assistance with three ADLs or one ADL and some combination of Instrumental Activities of Daily Living (IADLs) and/or other thresholds as established by HUD through publication of notice. An assessment of ADL/IADLs is a useful tool for tailoring services to meet the needs of elderly persons to allow for such persons to age in place and live independently. Assessment of functional limitations must be performed by a qualified professional and is generally documented by an individual's service provider or health care provider.

\* \* \* \* \*

*Instrumental Activities of Daily Living (IADLs)* means activities that are more

complex than those needed for the ADLs, they include but are not limited to handling personal finances, meal preparation, shopping, traveling, doing housework, using the telephone, taking or managing medications, or other such activities as HUD deems essential for maintaining independent living.

\* \* \* \* \*

■ 13. In § 891.225, paragraph (b) is revised to read as follows:

**§ 891.225 Provision of services.**

\* \* \* \* \*

(b)(1) HUD shall ensure that Owners have the managerial capacity to perform the coordination of services described in section 202(g)(2) of the Housing Act of 1959 (12 U.S.C. 1701q(g)(2)).

(2) Sponsors of projects may set aside a percentage, as determined by HUD in a NOFA, of units for elderly individuals with functional limitations or other category of elderly individuals as defined in the NOFA. Tenants of these set-aside units must be eligible for long-term services and support from home and community-based service providers. Such set-aside units must abide by the requirements under § 891.410(c)(3).

(3) 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 (42 U.S.C. 8011). 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; or such other amount as determined by HUD. 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. The limit of \$15 per unit, per month, or such other amount as determined by HUD, pertains only to the cost of supportive services and not to costs associated with the employment of a service coordinator.

■ 14. Remove § 891.230.

■ 15. Section § 891.235 is added to read as follows:

**§ 891.235 Owner deposit (minimum capital investment).**

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 percent) of the HUD-approved capital advance, not to exceed \$25,000. Such amount must be used only to cover operating deficits during the first 3 years of operations, and must not be used to cover construction

shortfalls or inadequate initial project rental assistance amounts.

■ 16. In § 891.305, the definition of “disabled household” is revised to read as follows:

**§ 891.305 Definitions.**

\* \* \* \* \*

*Disabled household* means a household composed of:

(1) One or more persons at least one of whom is an adult (18 years of age or older and less than 62 years of age), and who has a disability;

(2) Two or more persons with disabilities living together, or one or more such persons living with another person who is determined by HUD, based upon a certification from an appropriate professional (e.g., a rehabilitation counselor, social worker, or licensed physician) to be important to their care or well being; or

(3) The surviving member or members of any household, described in paragraph (1) of this definition, who were living in a unit as a lawful tenant assisted under this part, with the deceased member of the household at the time of his or her death.

\* \* \* \* \*

■ 17. Section § 891.308 is added to read as follows:

**§ 891.308 Cost limits.**

(a) *Group homes.* (1) 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 of group homes, as defined under section 811(k)(1) of the National Affordable Housing Act (42 U.S.C. 8013(k)). 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.

(2) The Replacement Reserve Account established under paragraph (a)(1) of this section must only be used for repairs, replacements, and capital improvements to the project.

(b) *HOME program cost limitations.*

(1) *In general.* Except for the cost limitations under paragraph (a) of this section, the provisions of section 212(e) of the National Affordable Housing Act (42 U.S.C. 12742(e)) and the cost limits established by HUD pursuant to section 212(e) for the HOME Investment Partnerships program under subtitle A of title II of such Act, apply on a per-unit basis to supportive housing for

persons with disabilities assisted with a capital advance.

(2) *Waivers.* (i) HUD may provide for the waiver of the cost limits under paragraph (b)(1) of this section. HUD may provide a waiver in such cases in which the cost limits established pursuant to section 212(e) of the National Affordable Housing Act may be waived under the HOME Investment Partnerships program, and to provide for:

(A) The cost of special design features to make the housing accessible to persons with disabilities;

(B) The cost of special design features necessary to make individual dwelling units meet the special needs of persons with disabilities; and

(C) The cost of providing the housing in a location that is accessible to public transportation and community organizations that provide supportive services to persons with disabilities.

(ii) The applicant will not receive a waiver in excess of 110 percent of the applicable HOME Investment Partnerships program cost limitations under paragraph (b)(1) of this section.

(3) *Reserve account.* HUD shall use the cost limits as established by paragraph (b)(1) of this section to calculate the maximum fund reservation amount of the capital advance to be made available to individual owners.

(i) Owners may elect to request an amount less than the amount determined under the development cost limits if such amount still allows for the project's financial feasibility.

(ii) Owners must not decline a capital advance amount.

■ 18. In § 891.310, the introductory text of paragraph (b), paragraphs (b)(1), (b)(2), and (b)(3) are revised, paragraph (b)(4) is redesignated as paragraph (b)(5) and a new paragraph (b)(4) is added, to read as follows:

**§ 891.310 Special project standards.**

\* \* \* \* \*

(b) *Additional accessibility requirements.* In addition to the accessibility requirements in § 891.120(b), the following requirements apply to group homes as defined under section 811(k)(1) of the National Affordable Housing Act, independent living facilities, and to projects funded under §§ 891.655 through 891.790:

(1) All entrances, common areas, units to be occupied by resident staff, and amenities must be readily accessible to and usable by persons with disabilities.

(2) All dwelling units in an independent living facility (or all bedrooms and bathrooms in a group home) involving new construction must be designed to be accessible or

adaptable for persons with physical disabilities.

(3) In a project for chronically mentally ill individuals, involving new construction, a minimum of 10 percent of all dwelling units in an independent living facility (or 10 percent of all bedrooms and bathrooms in a group home) must be designed to be accessible or adaptable for persons with physical disabilities.

(4) A project involving acquisition and/or rehabilitation may provide less than full accessibility if:

- (i) The project complies with the requirements of 24 CFR 8.23;
- (ii) The cost of providing full accessibility makes the project financially infeasible;
- (iii) Fewer than one-half of the intended occupants have mobility impairments; and
- (iv) The accessibility requirement will be met through existing properties that serve persons with disabilities.

\* \* \* \* \*

■ 19. In subpart C, new §§ 891.330, 891.335, 891.340, 891.345, and 891.350 are added to read as follows:

**§ 891.330 Project rental assistance.**

(a) *Renewals and increases in contract amounts.* (1) Upon the expiration of each contract term, subject to the availability of appropriations, HUD will adjust the annual contract amount to provide for reasonable project operating costs, including adequate reserves and service coordinators.

(2) Any contract amounts not used by a project during a contract term will not be available for such adjustments upon renewal.

(b) *Emergency situations.* For emergencies that are outside the control of the owner, HUD will increase the annual contract amount, subject to HUD's review and restrictions, as may be prescribed by HUD.

(1) Increases in contract amounts will be no greater than either 10 percent above the most recently approved budget-based rent, or 110 percent of FMR for market-based rents.

(2) Such increases will be solely for repaying loans or equity that was used for addressing emergency repairs to the building that are:

- (i) Beyond normal repair and maintenance;
- (ii) Are not attributable to deferred maintenance; and
- (iii) Caused by matters outside the control of the owner for which sufficient insurance proceeds are not available.

**§ 891.335 Conversions.**

(a) *In general.* An owner may request to convert some or all units from

supportive housing for very low-income persons with disabilities to very low-income persons if:

(1) The state agency responsible for administering the Medicaid program and/or the state health and human services agency indicates in writing that the need for supportive housing for very low-income persons with disabilities no longer exists or that the affordable supportive housing for very low-income persons with disabilities will be replicated in a more integrated setting;

(2) The project has had persistent vacancy, despite a reasonable effort to lease such units as determined by HUD; and

(3) A demonstrated need exists for the households that would benefit from such conversion.

(b) *Reservation.* In granting a conversion, HUD may reserve the right to request a change in management or require a conversion only for a certain period.

**§ 891.340 Limitation on use of funds.**

Section 811 funds may not be used to replace other state or local funds previously used or designated for use for persons with disabilities.

**§ 891.345 Multifamily housing projects.**

(a) *Restriction.* The total number of dwelling units in any multifamily housing project (including any condominium or cooperative housing project) containing any unit for which assistance is provided under this part for supportive housing for persons with disabilities, or with any occupancy preference for persons with disabilities, may not exceed 25 percent of such total.

(b) *Exception.* The restriction under paragraph (a) of this section shall not apply to any project that is a group home or independent living facility.

**§ 891.350 Voluntary supportive services.**

(a) *In general.* For Section 811 projects funded under this subpart, supportive services must be offered to, but are not required to be accepted, by persons with disabilities.

(b) *Supportive service plan.* A supportive service plan for housing for Section 811 projects must permit each resident to choose and acquire services, to receive any supportive services made available directly or indirectly by the owner of such housing or by others, or to not receive any supportive services.

■ 20. In § 891.410, paragraph (c)(2)(ii) is revised and paragraph (c)(3) is added to read as follows:

**§ 891.410 Determination of eligibility and selection of tenants.**

- \* \* \* \* \*
- (c) \* \* \*

(2) \* \* \*

(ii) Owners shall make selections in a nondiscriminatory manner without regard to considerations such as race, religion, color, sex, national origin, familial status, or disability. An owner may, with the approval of HUD, limit occupancy within the housing to persons with disabilities who can benefit from the supportive services, including the accessibility features, offered in connection with the housing.

(3) Under the Section 202 Program:

(i) In order to be eligible for admission, the applicant must also meet any project occupancy requirements approved by HUD.

(ii) Owners must lease units set aside under § 891.225(b)(2) to elderly individuals who can provide evidence of functional limitations or other category as defined in the NOFA.

Evidence can consist of a doctor's or nurse's written evaluation or a letter from the AAA or Aging and Disability Resource Center (ADRC) or other like social service agencies. Examples of service providers include, but are not limited to, Medicaid home and community-based service providers or Programs for All-Inclusive Care for the Elderly (PACE) providers (including collocation of PACE programs on site). Provider organizations must have the capacity to bill Medicaid or be affiliated with AAA.

(iii) Owners will continue to lease units not set aside for elderly individuals with functional limitations or other category of elderly persons as defined in the NOFA to any applicant determined to be eligible for the project. Owners will make selections in a nondiscriminatory manner without regard to considerations of race, religion, color, sex, national origin, familial status, or disability. Owners must also make selections without regard to actual or perceived sexual orientation, gender identity, or marital status, in accordance with 24 CFR 5.105(a).

(iv) Set aside units must be distributed throughout the project and must not be segregated to one area of a building or the project. A specified number of units, rather than specific units (e.g., units 101, 201, etc.), may be set aside for this purpose.

\* \* \* \* \*

■ 21. Revise § 891.430 to read as follows:

**§ 891.430 Denial of admission, termination of tenancy, and modification of lease.**

(a) *In general.* (1) The provisions of 24 CFR part 5, subpart I, apply to Section 202 and Section 811 capital advance projects.

(2) The provisions of 24 CFR part 247 apply to all decisions by an owner to terminate the tenancy or modify the lease of a household residing in a unit (or residential space in a group home), except as provided under paragraph (b) of this section.

(b) *Section 811 projects.* An owner may not terminate the tenancy or refuse to renew the lease of a tenant of a rental dwelling unit assisted with funds under Section 811 except:

(1) For serious or repeated violation of the terms and conditions of the lease, for violation of applicable Federal, State, or local law, or for other good cause; and

(2) The tenant must receive, no less than 30 days before such termination or refusal to renew, a written notice specifying the grounds for such action.

#### Subpart E—Loans for Housing for the Elderly and Persons With Disabilities

■ 22. In Subpart E:

■ a. Revise the undesignated heading, “Section 202 Projects for the Elderly or Handicapped—Section 8 Assistance,” to read “Section 202 Projects for the Elderly or Persons with Disabilities—Section 8 Assistance.”

■ b. Revise the undesignated heading, “Section for the Nonelderly Handicapped Families and Individuals—Section 162 Assistance” to read “Section for the Nonelderly Disabled Families and Individuals—Section 162 Assistance.”

#### § 891.500 [Amended].

■ 23. In § 891.500, replace the term “handicapped” with the term “disabled” every place the term “handicapped” appears in this section.

#### § 891.505 [Amended].

■ 24. In § 891.505, the definitions of “borrower” is amended by replacing the term “handicapped” with the term “disabled”; the definition of “handicapped family” is amended by replacing the term “handicapped” with “disabled” wherever the term “handicapped” appears in the definition; the definition of “handicapped person or individual” is amended by replacing the defined term with the words “person with disabilities”; and the definitions of “housing and related facilities” and “nonelderly handicapped family” are amended by replacing the term “handicapped” with the term “disabled” wherever the term “handicapped” appears in these two definitions.

#### § 891.510 [Amended].

■ 25. In § 891.510(e), remove the term “handicap” in the last sentence of paragraph (e) and replace with the term “disability.”

#### § 891.520 [Amended].

■ 26. In § 891.520, replace the term “handicapped” with the term “disabled” every place the term “handicapped” appears in this section.

■ 27. Revise § 891.530 to read as follows:

#### § 891.530 Prepayment privileges.

(a) *Prepayment prohibition.* The prepayment (whether in whole or in part) or the assignment or transfer of physical and financial assets of any Section 202 project is prohibited, unless HUD gives prior written approval.

(b) *HUD-approved prepayment.* HUD may not grant approval unless HUD has determined that the prepayment or transfer of the loan is part of a transaction that will ensure the continued operation of the project, until at least 20 years following the maturity date of the original Section 202 loan, in a manner that will provide rental housing for the elderly and persons with disabilities on terms at least as advantageous to existing and future tenants as the terms required by the original Section 202 loan agreement and any project-based rental assistance payment contract related to the project.

(c) *Refinancing.* The prepayment may involve refinancing of the loan if such refinancing results in:

(1) A lower interest rate on the principal of the Section 202 loan for the project and in reductions in debt service related to such loan; or

(2) An increase in debt service for a project requesting prepayment of a Section 202 loan carrying an interest rate of 6 percent or lower, which must abide by the following:

(i) The project owner proposing the refinance must address the physical needs of the project;

(ii) The transaction may not result in an increase in rents for unassisted families residing in the project;

(iii) The transaction must address the capital needs of the project and ensure its physical viability for the term of the new financing;

(iv) The overall cost for providing any rental assistance under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) for the project must not increase, except upon approval by HUD to:

(A) Mark-up-to-market contracts pursuant to section 524(a)(3) of the Multifamily Assisted Housing Reform and Affordability Act (42 U.S.C. 1437f

note) for properties owned by nonprofit organizations; or

(B) Mark-up-to-budget contracts pursuant to section 524(a)(4) of the Multifamily Assisted Housing Reform and Affordability Act (42 U.S.C. 1437f note), for properties owned by eligible owners (as such term is defined in section 202(k) of the Housing Act of 1959 (12 U.S.C. 1701q(k)); and

(v) If HUD determines that the transaction would not be feasible without a rent increase for unassisted families, such unassisted families may be eligible to receive assistance under a senior preservation rental assistance contract (SPRAC) pursuant to part 891, subpart H;

(A) HUD may make rental assistance available to unassisted households in other forms as authorized under section 8 of the United States Housing Act of 1937 to meet the requirement under this paragraph (c)(2)(v) of this section;

(B) Subject to the availability of appropriations for such assistance, HUD may set priorities for the consideration of prepayment approvals that require the provision of a SPRAC; and

(C) SPRACs shall only be provided for units occupied by unassisted, income-eligible families at the time of closing of the refinance of the Section 202 Direct Loan. Such families must meet the low-income eligibility guidelines under section 8 of the United States Housing Act of 1937.

(d) HUD must approve the use of loan proceeds resulting from the refinance of the project to ensure such proceeds are used in a manner advantageous to the tenants of the Section 202 Direct Loan project.

(e) Loan proceeds must be expended within 5 years of the closing of the Direct Loan refinance, except for approved ongoing social service programs. Use of proceeds may include, but are not limited to:

(1) No more than 15 percent of the cost for increasing the availability or provision of supportive services, which may include the financing of service coordinators and congregate services;

(2) Rehabilitation, modernization, accessibility modifications or retrofits of the project, including reducing the number of units by reconfiguring units that are functionally obsolete, unmarketable, or not economically viable;

(3) Construction of an addition or another facility in the project, including assisted living facilities;

(4) Rent reduction of unassisted tenants residing in the project;

(5) Rehabilitation of the project to ensure long-term viability; or

(6) The payment to the project owner, sponsor, or third party developer of a developer's fee in an amount not to exceed or duplicate:

(i) In the case of a project refinanced through a low-income housing tax credit program, the fee permitted by the low-income housing tax credit program; or

(ii) In the case of a project refinanced through any other source of refinancing, 15 percent of the acceptable development cost, which includes the cost of acquisition, rehabilitation, loan prepayment, initial reserve deposits, and transaction costs.

(f) HUD may approve the use of proceeds from the refinancing of the Section 202 Direct Loan for the provision of affordable housing and related social services for elderly persons who are tenants of other HUD-assisted senior housing.

(1) Such housing must be owned by the same private nonprofit organization that is the project owner, the project sponsor, or the private developer as the Section 202 project being refinanced. This includes limited partnerships for which the general partner is a private nonprofit organization, a corporation wholly owned and controlled by one or more nonprofit organizations, or a limited liability company wholly owned and controlled by one or more nonprofit organizations.

(2) The use of proceeds in other HUD-assisted senior housing must be approved by HUD.

(3) The use of proceeds in other HUD-assisted housing projects will be approved only if the proposed Section 202 Direct Loan refinancing will address all physical and financial needs of the project.

(4) The other HUD-assisted senior housing must be designated as senior housing serving only those residents 62 years of age and older, and must have an active program in place to provide social services for elderly residents.

(5) At the time of the application for prepayment of the 202 Direct Loan, the level of affordability of the project(s) receiving proceeds from the refinance must be at least as affordable as the Section 202 Direct Loan project being refinanced.

(6) All project(s) to receive proceeds from the refinance must have or put in place a Use or Regulatory Agreement requiring operation of the project as affordable senior housing for a period at least 10 years beyond the date of closing of the Section 202 refinance, or the date of termination of the existing Use or Regulatory Agreement, whichever is later.

(7) The other HUD-assisted senior housing may include Section 202 Direct

Loan and Section 202 Capital Advance properties, or may include affordable senior projects that receive HUD assistance including but not limited to project-based rental assistance, FHA mortgage insurance, Project-Based Vouchers, HOME Investment Partnerships (HOME), or Community Development Block Grant (CDBG) assistance.

**§ 891.575 [Amended].**

■ 28. In § 891.575, replace the term “handicapped” with the term “disabled” every place the term “handicapped” appears in this section.

**§ 891.610 Selection and admission of tenants.**

■ 29. In § 891.610:

■ a. In paragraph (a), replace the term “handicapped persons” with “persons with disabilities.”

■ b. In paragraph (b), replace the term “handicapped family” with “disabled family.”

■ c. In paragraph (f), replace the term “handicap status” with “disability status.”

**§ 891.655 [Amended].**

■ 30. In § 891.655:

■ a. In the definition of “family (eligible family),” replace the term “handicapped family” with “disabled family”.

■ b. In the definition of “group home,” replace the term “handicapped individuals” with “persons with disabilities.”

■ c. In the definition of “housing for handicapped families” replace the term “handicapped families” with “disabled families” every place the term “handicapped families” appears in this definition.

■ d. In the definition of “independent living complex,” replace the term “nonelderly handicapped families” with the term “nonelderly disabled families.”

**§ 891.665 [Amended].**

■ 31. In § 891.665, in the definition of “independent living complexes for handicapped families” replace the term “handicapped families” with “disabled families” every place the term “handicapped families” appears in the definition; replace the term “physically handicapped” with the term “physically disabled” every place the term “physically handicapped” appears in the definition; replace the term “handicap family” with the term “disabled family;” replace the term “handicapped individuals” with the term “persons with disabilities;” replace the term “handicapped person” with the term “person with disabilities;” and replace the term “handicapped person’s

well being” with the term “person with disabilities’ well being”.

**§ 891.680 [Amended].**

■ 32. In § 891.680(b), replace the term “handicapped persons” with “persons with disabilities” every place the term “handicapped persons” appears in paragraph (b).

■ 33. Revise § 891.700 to read as follows:

**§ 891.700 Prepayment of loans.**

The requirements of § 891.530 apply to all prepayments for 202/162 projects.

■ 34. Remove § 891.710.

**§ 891.720 [Amended].**

■ 35. In § 891.720(d), replace the term “handicapped” with “disabled.”

**§ 891.750 [Amended].**

■ 36. In § 891.750:

■ a. In paragraph (b), replace the term “handicapped family” with the term “disabled family.”

■ b. In paragraph (b)(3), replace the term “handicap” with “disability.”

■ 37. § 891.810 is revised to read as follows:

**§ 891.810 Project rental assistance.**

(a) *Project rental assistance contract* and *Project rental assistance payment* are defined in § 891.105. Project rental assistance payment is provided for operating costs, not covered by tenant contributions, attributable to the number of units funded by capital advances under the Section 202 Program and the Section 811 Program, subject to the provisions of § 891.445.

(b) The sponsor of a mixed-finance development must obtain the necessary funds from a source other than project rental assistance funds for operating costs related to non-Section 202 or non-Section 811 units.

**§ 891.830 [Amended].**

■ 38. In § 891.830, paragraph (c)(5) is removed, and, at the end of paragraph (c)(4), the semicolon and the word “and” are removed and a period is inserted.

■ 39. In § 891.835 paragraph (b)(1) is revised to read as follows:

**§ 891.835 Eligible uses of project rental assistance.**

\* \* \* \* \*

(b) \* \* \*

(1) Debt service on construction or permanent financing, or any refinancing thereof, for any units in the development, including the Section 202 or Section 811 supportive housing units, except for units under an ePRAC whereby debt service may be included as an eligible expense under § 891.190;

\* \* \* \* \*



■ 40. Revise § 891.853 to read as follows:

**§ 891.853 Development cost limits.**

The Development Cost Limits for development activities, as established at § 891.208 for Section 202 supportive housing units and at § 891.308 for Section 811 supportive housing units, apply in mixed-finance developments under this subpart.

■ 41. Subparts G and H are added to read as follows:

**Subpart G—Section 811 Project Rental Assistance Program**

Sec.

891.870	Applicability.
891.872	Definitions.
891.874	Allocation of funds.
891.876	Eligible projects.
891.878	Eligible tenants.
891.880	Terms and conditions of project rental assistance financing.
891.882	Responsibilities of participating agencies.

**§ 891.870 Applicability.**

The requirements in this subpart G apply only to project rental assistance provided to projects without capital advances under the Section 811 Program.

**§ 891.872 Definitions.**

In addition to the applicable definitions in §§ 891.105 and 891.305, the following definitions are applicable to the use of project rental assistance in the Section 811 program, as provided in this subpart:

*Admission* means the point-in-time the applicant and owner execute the lease agreement, and where occupancy is imminent.

*Eligible applicant* means any state housing agency currently allocating low-income housing tax credits under section 42 of the Internal Revenue Code of 1986 (26 U.S.C. 42), or any state housing or state community development agency that is currently allocating and overseeing assistance under the HOME Investment Partnerships (HOME) program as authorized by title II of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12701 *et seq.*), or under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f), or other similar Federal or state program, and the agency is determined to be in good standing by HUD in its administration of assistance. An eligible applicant may also be a state, regional, or local housing agency or agencies; or a partnership or collaboration of state housing agencies and/or state and local/regional housing agencies. To be eligible, the agency must have a formal partnership with the state health and human services agency and

the state agency designated to administer or supervise the administration of the State plan for medical assistance under title XIX of the Social Security Act.

*Extremely low-income family* has the same meaning as defined in 24 CFR 5.603.

*Housing agency* means a state, regional, or local housing agency.

*Inter-agency Partnership Agreement* means the agreement entered into between the eligible applicant and the state health and human services agency, and the applicable state Medicaid agency, if different entities. An eligible project must abide by such agreement in order to provide new project rental assistance under this subpart.

*Nonelderly adult* means a person who is 18 years of age or older and less than 62 years of age.

*Participating agencies* means the eligible applicant awarded project rental assistance funds, the state agency responsible for health and human services programs, and the state agency designated to administer or supervise the administration of the state plan for medical assistance under the Medicaid program.

*Project rental assistance* means funding made available by HUD to eligible applicants for purposes of providing long-term rental assistance for supportive housing for nonelderly, extremely low-income persons with disabilities and for extremely low-income households that include at least one nonelderly person with a disability.

*Rental assistance contract (RAC)* means contracts authorized under section 811(b)(3) of the National Affordable Housing Act (42 U.S.C. 8013(b)(3)) between the approved housing agency, as defined under this subpart, and the multifamily property owner to provide project rental assistance under this subpart.

**§ 891.874 Allocation of funds.**

HUD may allocate funds made available in any fiscal year for project rental assistance under this subpart by competition or in accordance with the formula allocation provided under 24 CFR part 791. In determining the method of allocation, HUD shall take into account such factors as the amount of funds available, the number and types of eligible applicants, the period of funding availability, and administrative efficiency.

**§ 891.876 Eligible projects.**

(a) *In general.* Any new or existing multifamily project is eligible for project rental assistance under this section if:

(1) Such project's development costs are paid with resources from other public and/or private sources, such as low-income housing tax credits as authorized under section 42 of the Internal Revenue Code (26 U.S.C. 42), equity, private debt, or HOME program funds as authorized under title II of the National Affordable Housing Act (42 U.S.C. 12701 *et seq.*);

(2) The project is not otherwise receiving assistance under the Section 811 program; and

(3) A commitment must be made by a Federal, state or local government agency.

(b) *Existing projects.* (1) Existing multifamily housing projects may only receive project rental assistance under this section if the assisted units have no existing contractual obligation to serve persons with disabilities, such as a recorded use agreement.

(2) Existing units receiving any form of operating housing subsidy, such as assistance under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f), are ineligible to receive project rental assistance under this section.

**§ 891.878 Eligible tenants.**

(a) Project rental assistance provided under this section may only be provided for dwelling units that are set aside for extremely low-income disabled households. The person with the disability must be 18 years of age or older and less than 62 years of age at the time of admission.

(b) A person with a disability assisted under this subpart must be eligible for community-based, long-term services and supports as provided through Medicaid waivers, Medicaid state plan options, state funded services, or other appropriate services (provided by state, local, nonprofit, or other entities) related to the target populations identified under the Interagency Partnership Agreement.

(c) The Interagency Partnership Agreement must include the target population to be served that shall benefit from the assisted units under this subpart and available services.

(d) Participation in community-based, long-term services and supports is voluntary and shall not be required as a condition of tenancy.

**§ 891.880 Terms and conditions of project rental assistance financing.**

(a) *In general.* Approved housing agencies receiving project rental assistance under this subpart must comply with the requirements of this section, and all the terms and conditions of the rental assistance contract.

(b) *Rental assistance contract (RAC).*

(1) The RAC will provide the housing assistance payments to the owner for eligible tenants, as determined under § 891.878, residing in units that have been set aside by the owner as supportive housing for persons with disabilities.

(2) The approved housing agency administering the project rental assistance under this subpart must enter into a RAC with the owner of the project, as defined in the NOFA.

(c) *Term.* (1) The initial term of RACs under this section between the approved housing agency administering the project rental assistance under this subpart and the owner of the multifamily housing project must be for a minimum of 20 years.

(2) RACs under this section may be renewed if all parties agree to such renewal, subject to the availability of project rental assistance funds.

(d) *Use restrictions.* (1) Any unit assisted with project rental assistance under this subpart must be subject to a recorded 30-year minimum use agreement for nonelderly, extremely low-income persons with disabilities.

(2) If a RAC is renewed under this subpart, the corresponding use agreement must be extended for the duration of the renewal.

(e) Projects must meet the accessibility requirements of section 504 of the Rehabilitation Act of 1973 and titles II and III of the Americans with Disabilities Act, as applicable. Covered multifamily dwellings must also meet the design and construction requirements of the Fair Housing Act.

(f) *Limitation on units assisted.* (1) In any multifamily housing project receiving project rental assistance under this section, no more than 25 percent of the total number of dwelling units in the project may be set aside for supportive housing for persons with disabilities or apply any occupancy preference for persons with disabilities, and no unit may have any preexisting occupancy preference requirement for persons with disabilities associated with such unit.

(2) These units must be distributed throughout the project, must not be segregated to one area of a building or the project (such as on a particular floor, part of a floor in a building, or certain sections within a project), and can consist of both accessible and nonaccessible units. Owners may designate unit types (e.g., accessible, one-bedroom, etc.) rather than designating specific units (e.g., units 101, 201, etc.) to be set aside for supportive housing for persons with disabilities.

**§ 891.882 Responsibilities of participating agencies.**(a) *Required agreement.* (1)

Participating agencies must develop an Interagency Partnership Agreement, which is a formalized agreement for collaboration (such as a memorandum of understanding (MOU), joint letter, or other document) that includes the eligible applicant and the state health and human services agency, and the applicable state Medicaid agency, if different entities.

(i) In states where health and human service functions have been separated, both agencies' participation must be evidenced in the collaboration.

(ii) Project rental assistance under this subpart may only be provided for eligible projects that conform to the Interagency Partnership Agreement.

## (2) Such agreement must:

(i) Identify the target populations to be served by the project;

(ii) Set forth methods for outreach and referral; and

(iii) Describe the services to be made available to the tenants of the project.

(3) *Target populations.* The Interagency Partnership Agreement must include the target populations to be served that will benefit from the assisted units under this subpart and available services. In addition to being extremely low-income, the person with disabilities as defined in § 891.305, must have a disability appropriate to the services to be provided in the community under such agreement. In the Interagency Partnership Agreement, states must identify the available state-funded services and other appropriate services (provided by state, local, nonprofit, or other entities), and describe how such services will be made available to the tenants.

(b) *Program requirements.* (1)

Participating agencies must provide a plan detailing the process by which the availability of units receiving project rental assistance under this subpart and waiting lists will be managed, including:

(i) A consideration of training; and

(ii) Costs, authority, and/or sources for establishing the infrastructure and process for establishing such a system if no process or system currently exists.

(2) Participating agencies must describe how the process of referring eligible persons with disabilities to the assisted multifamily housing projects will be carried out, describe how households will be tracked, and provide a list of people who property owners can contact if there are any problems.

(3) This system and framework must be incorporated into the Interagency Partnership Agreement between the

participating agencies as required under this section.

(c) *Administrative cost.* Participating agencies may use a percentage, as defined by HUD in a NOFA, of their total project rental assistance award under this section for initial and administrative costs relating to the administration of the project rental assistance program under this subpart. Such costs may include costs of hiring ongoing staff, training, contract assistance, infrastructure costs, and information technology. No charges relating to the administration of the program may be charged to the tenants.

(d) *Fair housing and equal opportunity requirements.* Approved housing agencies must ensure that the following fair housing and equal opportunity requirements are met.

(1)(i) *Affirmative fair housing marketing.* Participating agencies must adopt affirmative marketing procedures for their project rental assistance program funded under this subpart. Affirmative marketing procedures consist of actions to provide information and otherwise attract eligible persons to the program regardless of race, color, national origin, religion, sex, disability, or familial status, who are not likely to apply to the program without special outreach. Participating agencies must annually assess the success of their affirmative marketing activities and make any necessary changes to their affirmative marketing procedures as a result of the evaluation. Participating agencies must keep records describing actions taken to affirmatively market the program and records to assess the results of these actions. Eligible applicants must describe their methods of outreach and referral and waiting list policies in their applications, as prescribed in the NOFA. All methods of outreach and referral and management of the waiting list must be consistent with fair housing and civil rights laws and regulations and affirmative marketing requirements.

(ii) *Full disclosure of available housing.* Participating agencies must adopt a process for providing full disclosure to each applicant of any option available to the applicant in the selection of the development in which to reside, including basic information about available sites (e.g., location, number and size of accessible units, access to transportation and commercial facilities) and an estimate of the period of time the applicant would likely have to wait to be admitted to units of different sizes and types (e.g., regular or accessible) at each site.

(2) *Civil rights recordkeeping.* Participating agencies must require

projects receiving project rental assistance under this subpart to maintain records on the race, ethnicity, sex, and place of previous residency for applicants and approved eligible households. The owner must submit such reports to the housing agency to demonstrate compliance with applicable civil rights and equal opportunity requirements.

(e) *Environmental requirements and environmental assurance.* (1) General. As HUD does not approve program funding for specific activities or projects of the eligible applicants, HUD will not perform environmental reviews on such activities or projects. However, to ensure that the tenets of HUD environmental policy and the requirements of applicable statutes and authorities are met, eligible applicants selected for funding will be required to implement the analyses and determinations as set forth in this paragraph (e), for specific program activities and projects. The eligible applicant's signature on the application shall constitute an assurance that the applicant, if selected, will perform such implementation.

(i) The environmental tenets apply to both existing and new projects per the requirements below. Existing properties that are currently HUD-assisted or HUD-insured and that will not engage in activities with physical impacts or changes beyond routine maintenance activities or minimal repairs are not required to comply with the environmental tenets.

(ii) If, at the time that a project applies for Project Rental Assistance (PRA), the project is under construction or being rehabilitated, the project shall be subject to the environmental review requirements applicable to new construction or rehabilitation if the work has not progressed beyond a stage of construction where modifications can be undertaken to avoid the adverse environmental impacts addressed by the requirement.

(iii) Citations to authorities in the following paragraphs of this paragraph (3) are for reference only; to the extent that property standards or restrictions on the use of properties stated in the following paragraphs are more stringent than provisions of the authorities cited, the requirements stated in the following paragraphs shall control:

(2) *Site Contamination (24 CFR 50.3(i)).* It is HUD policy that all properties for use in HUD-assisted housing be free of hazardous materials, contamination, toxic chemicals and gases, and radioactive substances, where a hazard could affect the health and safety of occupants or conflict with the

intended utilization of the property (24 CFR 50.3(i)(1)). Therefore, projects applying for assistance must:

(i) Assess whether the site:

(A) Is listed on an Environmental Protection Agency (EPA) Superfund National Priorities or Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) list or equivalent State list;

(B) Is located within 3,000 feet of a toxic or solid waste landfill site;

(C) Has an underground storage tank other than a residential fuel tank; or

(D) Is known or suspected to be contaminated by toxic chemicals or radioactive materials. If none of these conditions exist, a letter of finding certifying these findings must be submitted and maintained in the site's environmental record. If any of these conditions exist, an American National Standards Institute (ASTM) Phase I Environmental Site Assessment (ESA), in accordance with ASTM E 1527-013 (or the most recent edition), must be provided; OR

(ii) Provide a Phase I ESA in accordance with ASTM E 1527-13 (or the most recent edition).

(A) An ASTM Phase I ESA that was prepared within the Phase I ESA continuing viability timeframe for the acquisition of the property or a real estate transaction (construction, rehabilitation, or refinancing) for the property and complies with ASTM E1527-05 or a more recent edition shall be deemed acceptable.

(B) If a Phase I ESA is conducted and the Phase I ESA identifies Recognized Environmental Conditions, a Phase II ESA in accordance with ASTM E 1903-11 (or the most recent edition) shall be performed. Any hazardous substances and/or petroleum products that are identified at levels that would require clean-up under state policy shall be so cleaned up in accordance with the state's clean-up policy. Risk-Based Corrective Actions are permitted if allowed for under a state's clean-up policy.

(3) *Historic Preservation (16 U.S.C. 470 et seq.).* (i) As the various states, territories, tribes, and municipalities have established historic preservation programs to protect historic properties within their jurisdiction, all work on properties identified as historic by the State, territory, tribe, or municipality, as applicable, must comply with all applicable state, territorial, and tribal historic preservation laws and requirements, and, for projects affecting locally designated historic landmarks or districts, local historic preservation ordinance and permit conditions.

(ii) In addition, all work on properties listed on the National Register of Historic Places, or which the eligible applicant knows are eligible for such listing, must comply with "The Secretary of the Interior's Standards for Rehabilitation." Complete demolition of such properties would not meet the standards and is prohibited.

(iii) *On-site discoveries.* If archaeological resources and/or human remains are discovered on the project site during construction, the recipient must comply with applicable state, tribal, or territory law, and/or local ordinance (e.g., state unmarked burial law).

(4) *Noise (24 CFR part 51, subpart B—Noise Abatement and Control).* All activities and projects involving new construction shall be developed to ensure an interior noise level of 45 decibels (dB) or less. In this regard, and using the day-night average sound level (Ldn), sites not exceeding 65 dB of environmental noise are deemed to be acceptable; sites above 65 dB require sound attenuation in the building shell to 45 dB; and sites above 75 dB shall not have noise sensitive outdoor uses (e.g., picnic areas, tot lots, balconies, or patios) situated in areas exposed to such noise levels.

(5) *Airport Clear Zones (24 CFR part 51, subpart D—Siting of HUD Assisted Projects in Runway Clear Zones at Civil Airports and Clear Zones and Accident Potential Zones at Military Airfields).* No activities or projects shall be permitted within the "clear zones" or the "accident potential zones" of military airfields or the "runway protection zones" of civilian airports.

(6) *Coastal Barrier Zone Management Act (16 U.S.C. 1451 et seq.).* Activities and projects shall be consistent with the appropriate state coastal zone management plan. Plans are available from the local coastal zone management agency.

(7) *Floodplains (Executive Order 11988; Flood Disaster Protection Act (42 U.S.C. 4001-4128)).* No new construction activities or projects shall be located in the mapped 500 year floodplain or in the 100-year floodplain according to the best available data of the Federal Emergency Management Agency (FEMA), which may be Advisory Base Flood Elevations (ABFEs), Preliminary Flood Insurance Rate Maps (P-FIRMs), or Flood Insurance Rate Maps (FIRM). Existing structures may be assisted in these areas, except for sites located in coastal high hazard areas (V Zones) or regulatory floodways, but must meet the following requirements:

(i) The existing structures must be flood-proofed or must have the lowest

habitable floor and utilities elevated above both the 500-year floodplain and the 100-year floodplain according to FEMA's best available data.

(ii) The project must have an early warning system and evacuation plan that includes evacuation routing to areas outside of the applicable floodplains.

(iii) Project structures in the 100-year floodplain must obtain flood insurance under the National Flood Insurance Program.

(8) *Wetlands (Executive Order 11990)*. No new construction shall be performed in wetlands. No rehabilitation of existing properties shall be allowed that expands the footprint such that additional wetlands are destroyed. New construction includes draining, dredging, channelizing, filling, diking, impounding, and related grading activities. The term wetland is intended to be consistent with the definition used by the U.S. Fish and Wildlife Service in Classification of Wetlands and Deep Water Habitats of the United States (Cowardin, et al., 1977). This definition includes those wetland areas separated from their natural supply of water as a result of activities such as the construction of structural flood protection methods or solid-fill road beds and activities such as mineral extraction and navigation improvements.

(9) *Siting of Projects and Activities Near Hazardous Operations Handling Conventional Fuels or Chemicals of an Explosive or Flammable Nature (24 CFR part 51, subpart C)*. Unshielded or unprotected new construction sites shall be allowed only if they meet the standards of blast overpressure (0.5psi—buildings and outdoor unprotected facilities) and thermal radiation (450 BTU/ft<sup>2</sup>—hr—people, 10,000 BTU/ft<sup>2</sup>—hr—buildings) from facilities that store, handle, or process substances of an explosive or fire-prone nature in stationary, above ground tanks/containers.

(10) *Endangered Species Act of 1973 (16 U.S.C. 1531 et seq)*. New construction shall not be permitted if it would result in a taking of endangered plant or animal species as listed under the Endangered Species Act of 1973. Taking includes not only direct harm and killing but also modification of habitat.

(11) *Farmland Protection (7 USC 4201 et seq)*. New construction shall not result in the conversion of unique, prime, or otherwise productive agricultural properties to urban uses.

(12) *Sole Source Aquifers (Section 1424(e) of the Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300 et seq., and 21 U.S.C. 349))*. Any new construction

activities and projects located in federally designated sole source aquifer areas (SSAs) shall require consultation and review with the U.S. Environmental Protection Agency (EPA).

(13) *The Coastal Barrier Resources Act of 1982 (16 U.S.C. 3501)*. Eligible applicants must comply with the Coastal Barrier Resources Act, which prohibits activities or projects in Coastal Barrier Resource System (CBRS) units.

(f) *Flood Insurance (Flood Disaster Protection Act of 1973 (42 U.S.C. 4106))*. Project structures in the 100-year floodplain must obtain flood insurance under the National Flood Insurance Program. No activities or projects located within the 100-year floodplain may be assisted in a community that is not participating in or that has been suspended from the National Flood Insurance Program.

#### Subpart H—Senior Preservation Rental Assistance

Sec.

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#### § 891.900 Applicability.

The requirements set forth in this subpart H apply only in connection with a prepayment plan for a project approved by HUD under §§ 891.530 or 891.700 to prevent displacement of elderly residents of the project in the case of refinancing or recapitalization, and the project is provided project-based rental assistance under a senior preservation rental assistance contract, as defined under § 891.902.

#### § 891.902 Definitions.

In addition to the applicable definitions in §§ 891.105, 891.205, and 891.505, the following definitions are applicable to senior preservation rental assistance contracts as provided in this subpart:

*Family(ies)* means an *Elderly Family* as defined by 24 CFR 891.505, and may include a “Disabled Family,” as defined in 24 CFR 891.505, pursuant to the terms and conditions of an applicant's original Section 202 loan.

*Low-income family* has the same meaning as defined in 24 CFR 5.603.

*Operational Cost Adjustment Factor (OCAF)* has the same meaning as defined in 24 CFR 402.2(c), and as otherwise prescribed by HUD.

*Senior preservation rental assistance contract (SPRAC)* means a contract for project-based rental assistance made available to a private nonprofit organization owner for a term of at least 20 years, subject to annual appropriations, and governed by the regulations of this subpart. Such contract is subject to a use agreement having a term of the SPRAC or such term as is required by the new financing, whichever is longer.

*Very low-income family* has the same meaning as defined in 24 CFR 5.603.

*Utility Allowance* has the same meaning as defined in 24 CFR 5.603.

#### § 891.904 Contract execution.

(a) *In general*. A SPRAC sets forth the rights and duties of the owner and HUD with respect to the project and the senior preservation rental assistance payments.

(b) *SPRAC execution*. (1) Upon the closing of the refinancing for the project, and following the approval of the prepayment of the Section 202 Direct Loan, the owner and HUD must execute a SPRAC on a form prescribed by HUD.

(2) The effective date of the SPRAC is the date of closing of the refinancing.

(c) *Payments to owners*. The eligible SPRAC payments consist of the following:

(1) *Assistance to eligible families leasing assisted units*. The amount of the housing assistance payment (HAP) made to the owner for an assisted unit leased to an eligible family is equal to the difference between the contract rent for the unit and the tenant rent payable by the family.

(2) *Vacancy payments*. SPRAC payments can be made to owners for vacant assisted units. The amount of and conditions for vacancy payments are described in § 891.912(k).

(i) Vacancy payments only apply to units that were initially occupied at the time the SPRAC was executed, in the case that those units are later unoccupied during the term of the contract. The unit must be in a decent, safe, and sanitary condition during the vacancy period for which payment is claimed.

(ii) SPRAC payments are made monthly by HUD upon proper requisition by the owner. If a SPRAC unit remains vacant for more than 60 consecutive days upon tenant turnover, the owner shall not be eligible to receive further SPRAC payments for that SPRAC Unit.

(d) *Utility reimbursement.* As applicable, a utility reimbursement will be paid to a family occupying an assisted unit if the utility allowance (for tenant-paid utilities) exceeds the amount of the total tenant payment (see 24 CFR 5.628):

(1) The SPRAC will provide that the owner must make this payment on behalf of HUD. Funds will be paid to the owner in trust solely for the purpose of making the additional payment.

(2) The owner may pay the utility reimbursement jointly to the family and the utility company, or if the family and utility company consent, directly to the utility company.

#### § 891.905 Project rents.

(a) The initial project rents shall not exceed the lesser of either:

(1) Comparable market rents for the market area as specified under the recipient's rent comparability study (RCS), and approved by HUD; or

(2) A reasonable percentage of the fair market rents, as defined by HUD.

(b) After initial rent setting, existing rents shall be adjusted by an Operating Cost Adjustment Factor (OCAF), as defined in § 402.2(c), on the anniversary of each executed SPRAC. Section 514(e)(2) of Multifamily Assisted Housing Reform and Affordability Act (MAHRA) (42 U.S.C. 1437f note) requires HUD to establish guidelines for rent adjustments based on an OCAF. HUD has therefore developed a single factor to be applied uniformly to all projects utilizing OCAFs as the method by which renewal rents are established or adjusted. Under this subpart, the contract administrator shall conduct annual project rent adjustments according to the OCAF methodology prescribed under this notice.

(c) *Comparability adjustments.* (1) At the expiration of each 5-year period of the SPRAC, the contract administrator shall compare existing contract rents with comparable market rents for the market area. At such contract anniversary, the contract administrator will make any adjustment necessary in the monthly contract rents necessary to set the contract rents for all unit sizes at comparable market rents. Such adjustments may result in a negative adjustment (decrease) or positive adjustment (increase) of the contract rents for one or more unit sizes.

(2) To assist in the redetermination of contract rents, the contract administrator may require that the owner submit to the contract administrator a rent comparability study prepared at the owner's expense.

#### § 891.906 Contract term.

(a) The minimum term of the SPRAC for assisted units under this subpart shall be 20 years.

(b) Any projects for which a SPRAC is provided shall be subject to a use agreement to ensure continued project affordability having a term of the longer of the term of the SPRAC, or such term as is required by the new financing.

#### § 891.908 Distributions and replacement reserves.

(a) *Limitations on distributions.* (1) Nonprofit owners are not entitled to distributions of project funds.

(2) For the life of the SPRAC, project funds may only be distributed to profit-motivated owners at the end of each fiscal year of project operation following the effective date of the SPRAC after all project expenses have been paid, or funds have been set aside for payment, and all reserve requirements have been met. The first year's distribution may not be made until cost certification, where applicable, is completed. Distributions may not exceed the following maximum returns:

(i) For projects receiving SPRAC assistance, the first year's distribution will be limited to 6 percent on equity resulting from the refinance of the property's mortgage for purposes of Section 202 prepayment and recapitalization. HUD may provide for increases in subsequent years' distributions on an annual or other basis, and in accordance with all HUD and other Federal regulations and requirements. Any such adjustment will be made by notice in the **Federal Register**.

(ii) If the Section 202 project is/will be owned by a for-profit limited partnership (meeting the statutory requirements in AHEO, as amended) and the Section 202 project has a Section 8 HAP contract that imposes no percentage cap on distributions, then, upon refinance/prepayment, the for-profit limited partnership may continue receiving the benefit of not having a percentage cap on distributions.

(3) Any short-fall in return may be made up from surplus project funds in future years.

(4) If HUD determines at any time throughout the term of the SPRAC that project funds exceed the amount needed for project operations, reserve requirements, and distributions permitted under this subpart, HUD may require the owner to deposit these residual receipts in an account to be used to reduce SPRAC payments or for other project purposes. Upon termination of the SPRAC, any excess funds that remain in this residual

receipts account must be remitted to HUD.

(5) In the case of HUD-insured projects, the provisions of this section will apply instead of the otherwise applicable mortgage insurance program regulations, except in the case of small, partially assisted, or previously HUD-owned, insured projects that are and shall remain subject to the applicable mortgage insurance regulations.

(b) *Replacement reserves account.* (1) A replacement reserve must be established and maintained in an interest-bearing account to aid in funding extraordinary maintenance and repair and replacement of capital items.

(i) Under this subpart project owners will deposit an amount equivalent to 0.006 of the cost of total structures, including main buildings, accessory buildings, garages, and other buildings, or any higher rate as required by HUD from time to time, in the replacement reserve, annually. This amount will be adjusted each year by the amount of the applicable OCAF, as determined by HUD.

(ii) The reserve must be built up to and maintained at a level determined by HUD to be sufficient to meet projected requirements. Should the reserve achieve that level, the rate of deposit to the reserve may be reduced with the approval of HUD.

(iii) All earnings including interest on the reserve must be added to the reserve.

(iv) Funds will be held by the mortgagee, and may be drawn from the reserve and used only in accordance with HUD guidelines and with the approval of, or as directed by, HUD.

(2) In the case of HUD-insured projects, the provisions of this section will apply instead of the otherwise applicable mortgage insurance provisions.

#### § 891.910 Leasing to eligible families.

(a) *Availability of assisted units for occupancy by eligible families.* (1) Eligible families must meet the income guidelines established for a low-income family in accordance with title II of the Section 202 Act of 2010. In the renting of the SPRAC units, the owner must comply with the income eligibility requirements of the SPRAC program. See § 891.903 for definitions of Low-Income and Very Low-Income.

(2) During the term of the SPRAC, an owner shall make available for occupancy by eligible families the total number of units for which assistance is committed under the SPRAC. For purposes of this section, making units available for occupancy by eligible families means that the owner:

(i) Is conducting marketing in accordance with § 891.912(c);

(ii) Has leased or is making good faith efforts to lease the units to eligible families, including taking all feasible actions to fill vacancies by renting to such families; and

(iii) Has not rejected any eligible applicant family, except for reasons acceptable to HUD.

(3) If the owner is temporarily unable to lease to eligible families all units for which assistance is committed under the SPRAC, one or more units may, with the prior approval of HUD, be leased to otherwise eligible families that do not meet the income eligibility requirements under paragraph (a)(1) of this section. Those over-income families must pay 30 percent of their income towards rent, up to the contract rent level.

(4) Failure on the part of the owner to comply with the requirements under this section is a violation of the SPRAC and grounds for all available legal remedies, including specific performance of the SPRAC, suspension or debarment from HUD programs, and reduction of the number of units under the SPRAC as set forth in paragraph (b) of this section.

(b) *Reduction of number of units covered by the SPRAC.* HUD may reduce the number of units covered by the SPRAC to the number of units available for occupancy by eligible families if:

(1) The owner fails to comply with the requirements of paragraph (a) of this section; or

(2) Notwithstanding any prior approval by HUD, HUD determines that the inability to lease units to eligible families is not a temporary issue.

(c) *Restoration.* An amendment to the SPRAC will be authorized by HUD to provide for the subsequent restoration of the reduction made under paragraph (b) of this section if:

(1) HUD determines that the restoration is justified by demand;

(2) The owner has a record of compliance with the owner's obligations under the SPRAC; and

(3) Contract and budget authority is available.

(d) *Occupancy by nonelderly or nondisabled families.* (1) HUD may permit SPRAC units in the project to be leased to nonelderly or nondisabled families if:

(i) The owner has made reasonable efforts to lease assisted and unassisted units to eligible families;

(ii) The owner has been granted HUD approval under paragraph (a) of this section; and

(iii) The owner is temporarily unable to achieve or maintain a level of

occupancy sufficient to prevent financial default and foreclosure.

(2) HUD approval under paragraph (d)(1) of this section will be of limited duration. If there is a HUD-insured mortgage on the project, HUD may impose terms and conditions for this approval that are consistent with the program objectives, and necessary to protect its interest under the FHA-insured loan.

(e) HUD's regulations in 24 CFR part 5, subpart L, apply to the admission and occupancy of eligible families in cases where there is incident of, or claimed to be incident of, or criminal activity related to, domestic violence, dating violence, or stalking.

#### § 891.912 Applicability of other Part 891 regulations.

(a) *SPRAC administration.* HUD is responsible for the administration of the SPRAC.

(b) *Notice upon SPRAC expiration.* The owner is responsible for all of the HAP notice requirements under § 891.590.

(c) *Responsibilities of the owner.* The owner is responsible for all requirements that pertain to responsibilities of the borrower under § 891.600, except for § 891.600(a)(1) and (a)(3).

(d) *Selection and admission of tenants.* The owner must comply with the requirements under § 891.610, which pertain to selection and admission of tenants, with the exception of § 891.610(c). The applicant must meet the low-income guidelines under section 8 of the United States Housing Act of 1937 in order to be eligible under this subpart.

(e) *Obligations of the family.* The obligations of the family are provided under § 891.415.

(f) *Overcrowded and underoccupied units.* The owner must comply with the requirements under § 891.650, except § 891.650(b) does not apply.

(g) *Lease requirements.* The lease requirements are provided in § 891.425.

(h) *Adjustment of rents.* The owner must comply with the requirements under § 891.6.905(b).

(i) *Adjustment of utility allowances.* In connection with adjustments of contract rents as provided in § 891.640(a), the requirements for the adjustment of utility allowances provided in § 891.440 apply.

(j) *Conditions for receipt of vacancy payments for assisted units.* The owner must comply with the requirements under § 891.650, except § 891.650(b) does not apply.

#### § 891.914 Default by owner.

(a) If HUD determines that the owner is in default under the SPRAC, HUD will notify the owner in writing of the actions required to cure the default and of the remedies that must be satisfied, including an action for specific performance under the SPRAC, and a reduction or suspension of senior preservation rental assistance payments and recovery of overpayments or inappropriate payments, where appropriate; and

(b) If HUD determines that the owner is in default of any of the terms and requirements of the SPRAC, HUD will notify the owner in writing of the nature of the default, the actions required to cure the default, and the time within which the default must be cured. The notice will also identify the remedies that HUD may impose if the default is not cured within the applicable time. These may include termination of the SPRAC, reduction or suspension of payments under the SPRAC, and recovery of overpayments or inappropriate payments, where appropriate.

#### § 891.916 SPRAC extension or renewal.

(a) A Section 202 owner shall agree in writing that upon expiration of each annual increment of a given SPRAC, the owner shall accept each offer of annual increment renewal during the period of the Use Agreement.

(1) Each such offer of a renewal and the renewals themselves are subject to the availability of appropriations and further subject to the requirements of this part.

(2) The number of assisted units under the renewed SPRAC must equal the number of assisted units under the original SPRAC, subject to the availability of appropriations, except that HUD and the owner may agree to reduce the number of assisted units by the number of assisted units that are not occupied by eligible families at the time of the renewal.

(3) With respect to Section 202 Direct Loan prepayments with approved SPRAC units, each owner shall agree to enter into a Section 202 Use Agreement, which will expire at either 20 years beyond the maturity date of the original Section 202 Direct Loan or, the term of new financing, whichever is longer.

(4) Upon expiration of the term of the SPRAC and at HUD's sole discretion, the term of the SPRAC may be renewed or extended (subject to available funds) pursuant to the terms and conditions of the SPRAC and the Use Agreement.

(5) Each owner shall agree in writing to operate the assisted Section 202 project for the full term specified under

the executed SPRAC and for each renewal term in accordance with all statutory, regulatory, and administrative requirements of the SPRAC program.

(b) The number of assisted units under the extended or renewed SPRAC must equal the number of assisted units under the original SPRAC, subject to the availability of appropriations, except that HUD and the owner may agree to reduce the number of assisted units by the number of assisted units that are not occupied by eligible families at the time of the extension or renewal.

**§ 891.918 Denial of admission, termination of tenancy, and modification of the lease.**

(a) HUD's regulations in 24 CFR part 5, subpart I, apply to projects previously financed with Section 202 direct loans.

(b) HUD's regulations in 24 CFR part 247 apply to all decisions by an owner to terminate the tenancy or modify the lease of a family residing in a unit.

(c) In actions or potential actions to terminate tenancy, the owner must follow HUD's regulations in 24 CFR part 5, subpart L, in all cases where domestic violence, dating violence, stalking, or criminal activity directly related to domestic violence, dating violence, or stalking is involved or claimed to be involved.

**§ 891.920 Security deposits.**

(a) The general requirements for security deposits on assisted units are provided under § 891.435, with additional requirements under § 891.635.

(b) For purposes of this subpart, additional requirements apply:

(1) The owner must maintain a record of the amount in the segregated interest-bearing account that is attributable to each family in residence in the project.

(2) Annually for all families, and when computing the amount available for disbursement under § 891.435(b)(3), the owner must allocate to the family's balance the interest accrued on the balance during the year.

(3) Unless prohibited by state or local law, the owner may deduct for the family, from the accrued interest for the year, the administrative cost of computing the allocation to the family's balance. The amount of the administrative cost adjustment must not exceed the accrued interest allocated to the family's balance for the year.

**§ 891.922 Labor standards.**

(a) All laborers and mechanics (other than volunteers under the conditions set out in 24 CFR part 70) employed by contractors and subcontractors in construction, rehabilitation, or repair performed in connection with the

provision of assistance under this subpart to nine or more units of housing in a project where the total cost of such repair, replacement, or capital improvement is in excess of \$500,000 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. 3141 *et seq.*).

(b) 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. 3701 *et seq.*).

(c) Sponsors, owners, contractors, and subcontractors must comply with related rules, regulations, and requirements as directed by HUD.

■ 42. A new part 892 is added to read as follows:

**PART 892—SERVICE COORDINATOR IN MULTIFAMILY HOUSING AND ASSISTED LIVING CONVERSION PROGRAMS**

**Subpart A—General Program Requirements**

Sec.

892.100 Applicability and scope.

892.105 Definitions.

892.110 Eligible funding recipients.

892.115 Nondiscrimination and equal opportunity requirements.

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**Subpart B—Service Coordinator in Multifamily Housing Program**

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**Subpart C—Assisted Living Conversion Program**

892.300 Purpose and applicability.

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892.310 Other Federal requirements.

892.315 Additional project eligibility.

892.320 Notice of funding availability.

892.325 Requirements for services.

892.330 Section 8 project-based assistance.

892.335 Vacancy payment.

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

**Subpart A—General Program Requirements**

**§ 892.100 Applicability and scope.**

The requirements set forth in this subpart A apply to the Service

Coordinator in Multifamily Housing program, as authorized under sections 671, 672, 674, 676, and 677 of the Housing and Community Development Act of 1992 (Pub. L. 102–550), as amended by section 851 of the AHEO (Pub. L. 106–569); and to the Assisted Living Conversion program, as authorized under section 202b of the Housing Act of 1959 (12 U.S.C. 1701q–2).

**§ 892.105 Definitions.**

The following definitions apply, as appropriate, throughout this part. Other terms with definitions unique to the Service Coordinator in Multifamily Housing and Assisted Living Conversion programs are defined in §§ 892.205 and 892.305, as applicable.

*Activities of daily living (ADLs)* shall have the same meaning as provided under § 891.205.

*Elderly person* means a person who is at least 62 years of age.

*Eligible housing project* means:

(1) Housing for which project-based assistance is provided under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f);

(2) Housing that is assisted under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q);

(3) Housing that is assisted under section 202 of the Housing Act of 1959, as such section existed before the enactment of the National Affordable Housing Act (Public Law 101–625);

(4) Housing financed by a loan or mortgage insured under section 221(d)(3) of the National Housing Act (12 U.S.C. 1715) that bears interest at a rate determined under section 221(d)(5) of such Act;

(5) Section 515 rural housing projects, as authorized under section 515 of the Housing Act of 1949 (42 U.S.C. 1485), receiving Section 8 rental assistance;

(6) Housing insured, assisted, or held by the Secretary, a state, or a state agency under section 236 of the National Housing Act (12 U.S.C. 1715z–1); or

(7) Housing constructed or substantially rehabilitated pursuant to assistance provided under section 8(b)(2) of the United States Housing Act of 1937 (42 U.S.C. 1437f), as in effect before October 1, 1983, that is assisted under a contract for assistance under such section.

*Frail elderly person* means an elderly person who is unable to perform at least three of the activities of daily living described in this subpart.

*Functional limitations* shall have the same meaning as provided under § 891.205.

*Housing assistance* means, with respect to federally assisted housing as

provided under this part, the grant, contribution, capital advance, loan, mortgage insurance, or other assistance provided for an eligible housing project, as defined under this section. This term also includes any assistance provided for the housing by HUD, including any rental assistance for low-income occupants.

*Instrumental activities of daily living (IADLs).* Under this part, the definition of instrumental activities of daily living has the same meaning as in § 891.205.

*Low-income and very low-income family* shall have the same meanings as provided in section 3(b)(2) of the United States Housing Act of 1937 (42 U.S.C. 1437a).

*Owner* shall have the same meaning as provided under § 891.205.

*Person with disabilities* shall have the same meaning as provided under § 891.305.

*Private nonprofit organization* shall have the same meaning as provided under § 891.205.

*Retain* means service coordination performed by a partnering agency that results in a reduction to the project's cost to hire or contract a service coordinator.

*Service coordinator* means a social service staff person hired, contracted, or retained by the assisted housing owner or its management company, who assists residents in identifying, locating, and acquiring supportive services necessary for elderly persons and nonelderly persons with disabilities to live independently and age in place.

*Supportive services* mean health-related services, mental health services, services for nonmedical counseling, meals, transportation, ADL services, (eating, bathing, grooming, dressing, transferring, and other such activities as HUD deems essential for maintaining independent living), housekeeping, chore assistance, safety, group and socialization activities, assistance with medications (in accordance with any applicable state laws), case management, personal emergency response, and other appropriate services that are designed to prevent hospitalization or institutionalization and permit elderly residents to age in place and live independently in a residential setting. The supportive services may be provided through any agency of the Federal, State or Local Government, or other public or private department, agency or organization.

*Service expenses* means those costs of providing supportive services necessary to permit residents to live independently, age in place, and to prevent hospitalization or institutionalization.

*Vicinity of the housing project* means the area close enough to the eligible housing project to allow for easy access by individuals to the service coordinator's office space, and by service coordinators to individuals' residences.

#### § 892.110 Eligible funding recipients.

Recipients who receive assistance under the Service Coordinator in Multifamily Housing and Assisted Living programs must:

(a) Own an eligible housing project, as defined in § 892.105;

(b) Comply with any regulatory agreement, HAP contract, or any other HUD grant or contract, where applicable;

(c) Be current in mortgage payments for any FHA-insured loan or Section 202 direct loan, unless the entity has signed a work-out agreement for the delinquent loan and is current on and in compliance with the workout agreement, as applicable; and

(d) Meet the Physical Condition Standards in 24 CFR part 5, subpart G, as evidenced by a satisfactory score in the most recent final physical inspection report or by an approved work-out plan for housing projects that received a failing score.

#### § 892.115 Nondiscrimination and equal opportunity requirements.

(a) *In general.* Recipients under this part shall comply with all applicable nondiscrimination and equal opportunity requirements, including HUD's generally applicable nondiscrimination and equal opportunity requirements at 24 CFR 5.105(a). This includes, but is not limited to, the Fair Housing Act and its implementing regulations at 24 CFR part 100; title VI of the Civil Rights Act of 1964 and its implementing regulations at 24 CFR part 1; section 504 of the Rehabilitation Act of 1973 and its implementing regulations at 24 CFR part 8; and titles II and III of the Americans with Disabilities Act and their implementing regulations at 28 CFR parts 35 and 36.

(b) *Affirmatively furthering fair housing.* Recipients under this part shall affirmatively further fair housing in their use of funds under this part. Specific activities will be detailed in the individual program NOFAs.

(c) *Most integrated setting appropriate.* Recipients under this part shall ensure that programs or activities under this part are administered in the most integrated setting appropriate to the needs of qualified individuals with disabilities. The most integrated setting is defined as a setting that enables

individuals with disabilities to interact with nondisabled persons to the fullest extent possible. See the Home and Community-Based Services regulations of the U.S. Department of Health and Human Services at 42 U.S.C. part 441, the regulations pertaining to nondiscrimination on the basis of disability in HUD programs and activities at 24 CFR 8(d), and the regulations of the U.S. Department of Justice pertaining to nondiscrimination on the basis of disability in state and local government services at 28 CFR 35.130(d).

#### § 892.120 Environmental requirements.

(a) The National Environmental Policy Act of 1969, and HUD's implementing regulations at 24 CFR part 50, including the related authorities described in 24 CFR 50.4, apply to this part.

(b) If funding under subpart B will be used to cover the cost of any activities that are not exempt from environmental review requirements, such as acquisition, leasing, construction, or building rehabilitation, HUD must perform an environmental review to the extent required by 24 CFR part 50, prior to grant award.

#### Subpart B—Service Coordinator in Multifamily Housing Program

##### § 892.200 Purpose and applicability.

(a) *Purpose.* The Service Coordinator in Multifamily Housing program allows owners of eligible projects to assist elderly persons and nonelderly persons with disabilities living in HUD-assisted housing and in the vicinity of the housing project to obtain needed supportive services from the community and to continue living as independently as possible in their homes. HUD makes funds available to employ and support a service coordinator, by awarding grants and by approving owners' requests to use certain classes of project funds to pay for the costs of providing a service coordinator.

(b) *Applicability.* The requirements set forth in this subpart B apply only to the Service Coordinator in Multifamily Housing program, as authorized under sections 671, 672, 674, 676, and 677 of the Housing and Community Development Act of 1992 (Pub. L. 102–550).

##### § 892.205 Definitions.

In addition to the definitions under § 892.105, the following definitions apply to this subpart:

*At-risk elderly person* means an elderly person who is unable to perform one or two of the ADLs, as defined under § 892.105.



*Available funds* means funds for supportive services, as approved by HUD, and which must not be used to address critical property needs.

*Eligible project* includes eligible housing projects as defined under § 892.105 and means a project that:

(1) Has no available project funds as defined under § 892.105 to pay for a service coordinator; and

(2) Is designed or designated for the elderly or persons with disabilities and continues to operate as such. This includes any building within a mixed-use development that was designed for occupancy by elderly persons or persons with disabilities at its inception and continues to operate as such, or consistent with title VI, subtitle D, of the Housing and Community Development Act of 1992 (Public Law 102–550). If a project was not so designed at its inception for occupancy by elderly persons or persons with disabilities, an eligible project includes a property in which the owner gives preferences in tenant selection (with HUD approval) to eligible elderly persons or nonelderly persons with disabilities for all units in that property.

#### § 892.210 Sources of funding.

Owners of eligible housing projects may request the use of or apply for the following types of funding to cover service coordinator program expenses:

(a) *Project rent and other income.* Service coordinator expenses, in accordance with § 891.250(b), is an eligible project expense. This includes funding provided through:

(1) Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f);

(2) PRACs, pursuant to section 802 of the National Affordable Housing Act (42 U.S.C. 8011); and

(3) Income generated from programs in paragraphs (a)(1) and (2) of this section or from tenant rental payments that exceed operating expenses and that may be used only upon approval from HUD.

(b) Multifamily service coordinator grants, subject to appropriations.

#### § 892.215 Application and selection.

HUD will provide through a NOFA the form and manner of applications for grants under this subpart and for selection of applicants to receive such grants.

#### § 892.220 Duties.

(a) *In general.* Service coordinators must perform the following duties:

(1) Perform an initial needs screening, with subsequent annual reviews, to identify service needs. If a comprehensive needs assessment is

required, service coordinators must refer tenant to a qualified professional;

(2) Maintain detailed case files on each resident served;

(3) Refer and link the residents to supportive services available in and provided by trusted partners/resources in the general community. Such services may include, but are not limited to, case management, personal assistance, homemaker services, meals-on-wheels/congregate meal provision, transportation, counseling, visiting nurse, preventive health screening/wellness training, and legal advocacy;

(4) Educate residents on matters such as, but not limited to, service availability, application procedures, client rights, etc.;

(5) Establish linkages with agencies such as, but not limited to, a local area agency on aging (AAA)/Aging and Disability Resource Center (ADRC) and home and community-based service providers. Perform market analysis to determine/develop the best “deals” in service pricing, to assure individualized, flexible, and creative services for the involved resident. Provide advocacy as appropriate;

(6) Provide case management when such service is not available through the general community. This might include evaluation of health, psychological and social needs, development of an individually tailored case plan for services, periodic reassessment of the residents’ situations and needs, and assistance identifying, obtaining, and completing appropriate documentation in order to secure needed services;

(7) Monitor the ongoing provision of services from community agencies. Manage the provision of supportive services where appropriate;

(8) Help the residents build informal support networks with other residents, family, and friends;

(9) Work and consult with tenant organizations and resident management corporations. Provide training to the property’s residents in the obligations of tenancy or coordinate such training;

(10) Create a directory of service providers for use by both housing staff and residents;

(11) Educate and train other staff of the management team on issues related to aging-in-place and service coordination, to help them to better work with and assist the residents;

(12) Provide service coordination to low-income elderly individuals or nonelderly persons with disabilities living in the vicinity of an eligible property. Community residents should come to your housing site to meet with and receive service from the service coordinator, but you must make

reasonable accommodations for those individuals with disabilities unable to travel to the housing site, and have the option to make accommodations for other community residents;

(13) Affirmatively market the service coordinator’s services to residents of the property and surrounding community who are least likely to inquire; find counselors to help tenants with counseling for mobility and fair housing choice.

(b) *Prohibited duties.* Service coordinators must not perform the following activities:

(1) Act as a recreational or activities director; or

(2) Provide supportive services directly.

#### § 892.225 Qualifications.

Service coordinators must possess the following qualifications:

(a) A bachelor’s degree;

(b) Experience in social service delivery for the elderly and persons with disabilities;

(c) Demonstrated working knowledge of supportive services and other resources available for the elderly and persons with disabilities in the area served by the eligible housing project; and

(d) Demonstrated ability to advocate, organize, problem-solve, and provide results for the elderly and persons with disabilities.

(e) HUD may allow for the substituting of a bachelor’s degree based on the extent of qualifications in paragraphs (b) through (d) of this section and/or other qualifications. The extent of qualifications will be determined by HUD through a NOFA.

#### § 892.230 Form of employment or retention.

An owner may directly employ a service coordinator or may procure by contract the services of a service coordinator. Owners may also utilize a service coordinator whose expenses are supported by external sources of funding.

#### § 892.235 Training.

Service coordinators must receive and document training, at minimum, in the following subject areas:

(a) The aging process;

(b) Elder and disability services;

(c) Eligibility for and procedures of Federal and applicable state entitlement programs;

(d) Legal liability issues relating to providing service coordination;

(e) Drug and alcohol use and abuse by the elderly; and

(f) Mental health issues.

**§ 892.240 Administrative requirements.**

(a) Owners must provide on-site private office space for the service coordinator to allow for confidential meetings with residents. Office space must be accessible to persons with disabilities and meet all Federal accessibility standards, including section 504 of the Rehabilitation Act of 1973, 24 CFR part 8, and titles II and III of the Americans with Disabilities Act of 1990, as applicable.

(b) Resident files must be kept in a secured location and only be accessible to the service coordinator as required under § 892.245, unless the residents provide signed consent otherwise. Resident files must include documentation that demonstrates the resident's supportive service needs, referrals for needed supportive services (both short- and long-term) and follow-up from the service coordinator on the types and amounts of services residents receive, and any aging-in-place statistics or information.

(c) As directed, owners must submit to HUD performance reports completed by the service coordinator and financial reports detailing program expenses.

**§ 892.245 Confidentiality.**

(a) Service coordinators must store in a secure manner all files containing information related to the provision of supportive services to residents served by the service coordinator. Files must be accessible only to the service coordinator.

(1) A service coordinator may not disclose to any person any individually identifiable information that relates to the provision of supportive services to a resident, unless and only to the extent the resident to whom the information relates has knowingly consented. Any such consent must be in writing and be signed by the resident, and must clearly identify the parties to whom the information may be disclosed, as well as the scope and purpose of the disclosure.

(2) In the absence of an applicable consent to disclosure in accordance with this section, service coordinators may nonetheless disclose individually identifiable information that relates to the provision of supportive services to a resident, to the extent necessary to protect the safety or security of a resident, housing project staff, or the housing project.

(b) These policies must be consistent with maintaining confidentiality of information related to any individual as required by the Privacy Act of 1974 (5 U.S.C. 552a).

**§ 892.250 Program costs.**

(a) *In general.* Funds provided under § 892.210 may be used to cover the costs of employing or otherwise retaining the services of one or more service coordinators.

(b) *Eligible costs.* (1) Eligible program expenses include:

- (i) Salary and fringe benefits;
- (ii) Training;
- (iii) Creating private office space;
- (iv) Purchase of office furniture and equipment; supplies and materials; and computer hardware, software, and Internet service; and
- (v) Other related administrative expenses (both direct and indirect costs) approved by HUD.

(2) Eligible costs must be reasonable, necessary, and recognized as expenditures in compliance with the uniform government-wide cost principles and other grant requirements found in 24 CFR parts 84 and 85.

(i) Grant recipients must additionally be subject to allowable cost provisions in NOFAs and grant agreements.

(ii) Owners of eligible housing projects who use a class or classes of project funds under this subpart must comply with the requirements that are applicable to approved withdrawals or uses of the class or classes of project funds under their governing agreements with HUD.

(c) *Ineligible costs.* Ineligible program expenses are any costs that are not directly related to employing the service coordinator. Examples are expenses associated with holiday parties, purchase of televisions or exercise equipment, and recreational activities for residents.

**§ 892.255 Services for low-income elderly or persons with disabilities.**

A service coordinator funded under § 892.210 may provide services to low-income elderly individuals or nonelderly persons with disabilities living in the vicinity of an eligible housing project. Community residents choosing to seek assistance from a service coordinator must come to the eligible housing project to meet with and receive assistance from the service coordinator. Service coordinators must make reasonable accommodations for those persons with disabilities unable to travel to the housing project, and have the option to make accommodations for other community residents.

**§ 892.260 Sanctions.**

(a) If HUD determines that an owner has not complied with the requirements in this subpart, then HUD may impose any or a combination of the following sanctions:

(1) Temporarily withhold reimbursements, approvals, extensions, or renewals until the owner adequately remedies the deficiency;

(2) Disallow all or part of the cost attributable to activities undertaken not in compliance with applicable requirements, and if applicable, require the owner to remit to HUD or to redeposit in the source account funds in the amount that has been disallowed;

(3) Suspend or terminate, in part or in whole, the grant or approval to use project funds;

(4) Place conditions on the awards of grants or approvals of one or more classes of project funds so that the deficiency be remedied and that adequate steps be taken to prevent future deficiencies; or

(5) Other sanctions authorized by law or regulation.

b) Reserved.

**Subpart C—Assisted Living Conversion Program****§ 892.300 Purpose and applicability.**

(a) *Purpose.* The Assisted Living Conversion program provides grants for the conversion of elderly housing to assisted living facilities and other purposes. Grants provided under this program must be used for the purposes described in section 202b of the Housing Act of 1959 (12 U.S.C. 1701q–2).

(b) *Applicability.* The requirements set forth in this subpart C apply only to eligible projects under the Assisted Living Conversion program, as authorized under section 202b(b)(1) of the Housing Act of 1959 (12 U.S.C. 1701q–2).

**§ 892.305 Definitions.**

In addition to the applicable definitions in § 892.105, the following definitions are applicable to the Assisted Living Conversion program, as provided in this subpart:

*Assisted living facility (ALF)* shall have the same meaning as provided under section 232(b) of the National Housing Act (12 U.S.C. 1715w(b)), which states that an “assisted living facility” means a public facility, proprietary facility, or facility of a private nonprofit corporation that:

(1) Is licensed and regulated by the state (or if there is no state law providing for such licensing and regulation by the state, by the municipality or other political subdivision in which the facility is located);

(2) Makes available to residents supportive services to assist the residents in carrying out activities of

daily living, as defined under § 891.205; and

(3) Provides separate dwelling units for residents, each of which contain a full bathroom and may contain a full kitchen, and

(4) Includes common rooms and other facilities appropriate for the provision of supportive services to the residents of the facility.

*Congregate space* (hereinafter referred to as *community space*) shall have the same meaning as the definition provided under section 202(h)(1) of the Housing Act of 1959 (12 U.S.C. 1701q(h)(1)). The term “congregate space” (also referred to as *community space*) excludes halls, mechanical rooms, laundry rooms, parking areas, dwelling units, and lobbies. Community space does not include commercial areas.

*Conversion* means activities in an eligible project designed to convert dwelling units into assisted living facilities. Conversion can include unit configuration and related common and service space, and any necessary remodeling, consistent with the Uniform Federal Accessibility Standards, section 504 of the Rehabilitation Act of 1973, and HUD’s implementing regulations at 24 CFR part 8, as well as any applicable provisions of the Americans with Disabilities Act of 1990 and applicable Fair Housing Act design and construction requirements for all portions of the development physically affected by such conversion. Where conversion may involve Medicaid reimbursement, conversion should be undertaken in accordance with the Home and Community-Based Services regulations of the U.S. Department of Health and Human Services (see 42 U.S.C. part 441).

*Eligible project* means eligible housing projects as defined under § 892.105; eligible projects as described in section 638(2) of the Housing and Community Development Act; and section 202 properties, as defined under § 891.105; with a PRAC.

*Emergency capital repairs* are repairs to a project that correct a situation that presents an immediate threat to the life, health, and safety of the project tenants and which if left untreated, would result in an evacuation of the tenants or long-term tenant displacement.

*Repairs* mean substantial and emergency capital repairs to a project that are needed to rehabilitate, modernize, or retrofit aging structures, common areas, or individual dwelling units.

*Service-enriched activities* means activities designed to convert dwelling

units in the eligible project to service-enriched housing for elderly persons.

*Service-enriched housing* means housing that:

(1) Makes available, through licensed or certified third party service providers, supportive services to assist the residents in carrying out activities of daily living, as defined under § 891.205;

(2) Includes the position of a service coordinator;

(3) Provides separate dwelling units for residents, each of which contains a full kitchen and bathroom;

(4) Includes common rooms and other facilities appropriate for the provision of supportive services to the residents of the housing; and

(5) Provides residents with control over health care and supportive services decisions, including the right to accept, decline, or choose such services, and to have the choice of a provider.

#### § 892.310 Other Federal requirements.

In addition to the requirements set forth in 24 CFR part 5, the following requirements in this section apply to the Assisted Living Conversion program under this subpart.

(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 requirements.* The National Environmental Policy Act of 1969; HUD’s implementing regulations at 24 CFR part 50, including compliance with 24 CFR 50.3(i) and the related authorities described in 24 CFR 50.4. For the purposes of Executive Order 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 actions 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) *Coastal Barrier Resource Units.* The Coastal Barrier Resources Act (16 U.S.C. 3501).

(e) *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 subpart 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 under this paragraph.

(2) Contracts involving employment of laborers and mechanics under this subpart 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 rules, regulations, and requirements related to the Davis-Bacon Act (40 U.S.C. 276a–276a–5).

(f) *Displacement and relocation.* (1) *Minimizing displacement.* Consistent with the other goals and objectives of this subpart, 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, or farms) as a result of a project assisted under this subpart.

(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 (42 U.S.C. 4201–4655), as implemented by 49 CFR part 24.

(g) *Intergovernmental review.* The requirements for intergovernmental review in Executive Order 12372 (47 FR 30959, 3 CFR, 1982 Comp., p. 197), as amended by Executive Order 12416 (48 FR 15587, 3 CFR, 1983 Comp., p. 186), and the implementing regulations at 24 CFR part 52 are applicable to this program.

(h) *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.

#### § 892.315 Additional project eligibility.

In addition to the criteria for eligible housing projects as defined under § 892.105, projects receiving Assisted Living Conversion Programs (ALCP) funds must also meet the following criteria:

(a) The project must be owned by a private nonprofit organization, as defined under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q);

(b) The project must be designated primarily for occupancy by elderly persons; and

(c) The project may be unused or underutilized commercial property, except that the Secretary may not provide grants under this section for more than three such properties.

**§ 892.320 Notice of funding availability.**

(a) *In general.* HUD will issue a separate notice of funding availability (NOFA) for the Assisted Living Conversion program. The NOFA will contain specific information on how and when to apply for the grant authority, the contents of the application, and the selection process.

(b) *Application.* An application for assistance under this subpart must contain the requirements under this section, in addition to the requirements outlined in the NOFA:

(1) A description of the substantial capital repairs or the proposed conversion activities for either an assisted living facility or service-enriched housing for which a grant under this subpart is requested;

(2) The amount of the grant requested to complete the substantial capital repairs or conversion activities; and

(3) A description of the resources that are expected to be made available, if any, in conjunction with the requested funding.

**§ 892.325 Requirements for services.**

(a) HUD will ensure that assistance under this subpart provides firm commitments for the funding of services to be provided in the assisted living facility or service-enriched housing as described in section 202b(d)(1) of the Housing Act of 1959 (12 U.S.C. 1701q-2(d)(1)).

(2) HUD will require evidence that each recipient of a grant for service-enriched housing provide relevant and timely disclosure of information to residents or potential residents as described in section 202b(d)(2) of the Housing Act of 1959 (12 U.S.C. 1701q-2(d)(2)).

(b) Reserved.

**§ 892.330 Section 8 project-based assistance.**

(a) *Eligibility.* Multifamily projects, which include one or more dwelling units that have been converted to assisted living facilities or service-enriched housing using funding made

under this subpart, are eligible for project-based assistance under section 8 of the United State Housing Act of 1937 (42 U.S.C. 1437f). Such project-based assistance is provided in the same manner in which the project would be eligible for such assistance, but for the assisted living facilities or service-enriched housing in the project.

(b) *Calculation of rent.* The maximum monthly rent of a dwelling unit that is an assisted living facility or service-enriched housing with respect to which assistance payments are made under this section must not include charges attributable to services relating to assisted living.

**§ 892.335 Vacancy payment.**

A vacancy payment, as related to assistance provided under this subpart, is limited to 30 days after a conversion to an assisted living facility.

Dated: September 24, 2014.

**Carol J. Galante,**

*Assistant Secretary for Housing—Federal Housing Commissioner.*

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