

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

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

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

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

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

#### § 891.105 Definitions.

The following definitions apply, as appropriate, throughout this part. Other terms with definitions unique to the particular program are defined in §§ 891.205, 891.305, 891.505, and 891.805, as applicable.

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

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

*Affiliated entities* means entities that the field office determines to be related to each other in such a manner that it is appropriate to treat them as a single entity. Such relationship shall include

any identity of interest among such entities or their principals and the use by any otherwise unaffiliated entities of a single Sponsor or of Sponsors (or of a single Borrower or of Borrowers, as applicable) that have any identity of interest themselves or their principals.

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

*Family* is defined in 24 CFR 5.403.

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

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

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

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

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

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

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

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

*Rehabilitation* means the improvement of the condition of a property from deteriorated or substandard to good condition. Rehabilitation may vary in degree from the gutting and extensive reconstruction to the cure of substantial accumulation of deferred maintenance. Cosmetic improvements alone do not qualify as rehabilitation under this definition. Rehabilitation may also include renovation, alteration, or remodeling for the conversion or adaptation of structurally sound property to the design and condition

required for use under this part, or the repair or replacement of major building systems or components in danger of failure. Improvement of an existing structure requires 15 percent or more of the estimated development cost to rehabilitate the project for a useful life of 40 years. The useful life period commences upon execution of a capital advance agreement.

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

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

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

*Single-asset entity*, for the purpose of this subpart, means an entity in which the mortgaged property is the only asset of the owner, and the entity is the only owner of the property.

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

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

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

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

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

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