

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT****24 CFR Part 891**

[Docket No. FR-5097-P-01]

RIN 2502-A148

**Project Design and Cost Standards for the Section 202 and Section 811 Programs**

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would revise HUD's regulations that govern the project design and cost standards for HUD's Section 202 Supportive Housing for the Elderly and Section 811 Persons with Disabilities programs. Under these programs, project sponsors are prohibited from using HUD funds for certain project amenities, including swimming pools, private balconies, dishwashers, and washers and dryers. This rule proposes to remove an item from the list of restricted amenities. Specifically, this rule would allow project sponsors to use HUD funds for dishwashers in individual supportive housing units for the elderly and independent living projects for persons with disabilities. In addition, the proposed rule would clarify the applicability of the project design and cost standards to Section 811 group homes.

**DATES:** *Comment Due Date:* October 15, 2007.

**ADDRESSES:** Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500. Interested persons also may submit comments electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. HUD strongly encourages commenters to submit comments electronically so that HUD can make them immediately available to the public. Commenters should follow the instructions provided on that site to submit comments electronically. Facsimile (FAX) comments are not acceptable. In all cases, communications must refer to the docket number and title. All comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. 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). Copies of all comments submitted are available for inspection and downloading at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Yvonne Jefferson, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6154, Washington, DC 20410-8000, 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 toll-free Federal Information Relay Service at (800) 877-8339.

**SUPPLEMENTARY INFORMATION:****I. Background**

Section 202 of the Housing Act of 1959, as amended under section 801 of the Cranston-Gonzalez National Affordable Housing Act (12 U.S.C. 1701q) and Section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013), authorizes HUD to establish programs to provide assistance to expand the supply of housing with supportive services for the elderly and persons with disabilities. HUD's regulations that establish the Section 202 Supportive Housing for the Elderly program (Section 202 program) and HUD's Section 811 Supportive Housing for Persons with Disabilities program (Section 811 program) are set forth at 24 CFR part 891.

Under the Section 202 program, HUD provides assistance to expand the supply of housing with supportive services for the elderly. Specifically, HUD provides capital advances to eligible private, nonprofit sponsors to finance the development of rental housing with supportive services for the elderly. Similarly, the Section 811 program provides assistance to expand the supply of housing with the availability of supportive services for persons with disabilities. Again, HUD provides capital advances to eligible nonprofit sponsors, which have a Section 501(c)(3) tax exemption ruling, to finance the development of rental housing with the availability of supportive services for persons with disabilities.

Section 891.120 establishes the project design and cost standards for Section 202 and Section 811 projects. Projects must be modest in design and certain amenities are not eligible for HUD capital advance or project rental assistance contract (PRAC) funds. Among the amenities for which HUD

funding is restricted are private balconies and decks, atriums, bowling alleys, swimming pools, saunas, Jacuzzis, dishwashers, trash compactors, and washers and dryers. Section 202 and 811 project sponsors may include these amenities, but must not use HUD funds for the purchase of an ineligible amenity or the continued operating costs associated with the ineligible amenity.

**II. This Proposed Rule**

This proposed rule would revise HUD's regulations that govern the project design and cost standards for HUD's Section 202 and Section 811 programs. Although HUD believes that projects must be modest in design, HUD acknowledges that many items once considered "excess amenities" are standard in today's housing market. HUD is also aware that certain amenities, such as dishwashers, are necessary to maintain the quality of life for elderly and disabled residents. Providing the elderly and persons with disabilities with the necessary appliances to assist with cleaning of dishes would help promote healthy living conditions, and assist independent living.

This rule proposes to remove dishwashers from the list of restricted amenities. Specifically, this rule would amend 24 CFR 891.120(c) to allow project sponsors to use HUD funds for dishwashers in independent living units occupied by the elderly and persons with disabilities. In addition, HUD proposes to clarify the applicability of the regulations at 24 CFR 891.120 to Section 811 group homes. Currently, the provisions in § 891.120(c) do not address Section 811 group homes specifically; therefore, some confusion exists concerning eligible amenities in Section 811 group homes.

**III. Findings and Certifications***Environmental Impact*

This proposed rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

*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. The proposed rule would allow Section 202 and Section 811 funds to be used to include a certain household appliance in supportive housing units for the elderly and persons with disabilities. The regulatory change does not revise or establish new binding requirements on project sponsors or owners. Rather, this proposed rule updates HUD's regulations to authorize the use of Section 202 and Section 811 funds for an amenity standard in today's housing market. The change will assist the elderly and persons with disabilities to live independently. Accordingly, the undersigned certifies that this rule will 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 economic impact on a substantial number of small entities, HUD specifically invites comments regarding less burdensome alternatives to this rule that will meet HUD's objectives, as described in this preamble.

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1531–1538) establishes requirements for

federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and the private sector. This rule does not impose any federal mandate on state, local, or tribal government, or the private sector within the meaning of UMRA.

*Federalism*

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments, and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of Section 6 of the Executive Order. This 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.

*Catalog of Federal Domestic Assistance (CFDA)*

The CFDA number for the Section 202 program is 14.157 and the CFDA number for the Section 811 program is 14.181.

**List of Subjects in 24 CFR Part 891**

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

For the reasons stated in the preamble, HUD proposes to amend 24 CFR part 891 to read as follows:

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

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

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

2. Revise § 891.120(c) to read as follows:

**§ 891.120 Project design and cost standards.**

\* \* \* \* \*

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

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Dated: July 13, 2007.

**Brian D. Montgomery,**

*Assistant Secretary for Housing—Federal Housing Commissioner.*

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