

Summary of Letters and Waivers Issued in 202 Program

A number of letters and waivers have been issued by HUD addressing the structuring of Section 202 refinancing and Section 202 mixed finance transactions.

Letters

Interpretation of Section 831 of AHEO to Allow a For-Profit General Partner Owned by a Non-Profit Sponsor

A [June 8, 2005 letter](#) addressed a series of Ohio 202 refinancings. These transactions involved a for-profit general partner which will be owned 100% by the non-profit sponsor of the projects. This letter addressed the issue of whether a for-profit general partner of a limited partnership could be owned 100% by the non-profit sponsor of the projects. The letter stated that there is no prohibition of a for-profit general partner wholly owned or controlled by a non-profit entity under Section 831 of AHEO.

Interpretation of 202/811 Site Acquisition Calculations and Developer Fee Restrictions as Applied to Mixed-Finance Projects

In regards to the Lord Sterling Senior Housing Project in New Brunswick, N.J., a [December 20, 2005 letter](#) addressed site acquisition and developer fee restrictions. In response to a question regarding whether the Program Center must include the higher price in the processing when the sponsor is not requesting amendments funds and the State Tax Credit Agency has no objections to the higher acquisition price, HUD explained that the three HUD 92264 forms should be prepared in order to ensure proper allocation of costs in mixed-finance projects. The second question asked whether the 202/811 developer fee was applicable in a mixed-finance project, to which HUD responded that the 202/811 developer fee restrictions do not apply to mixed-finance projects.

20 Year HAP Contract (Intention to commit to preserve the affordability of the St. John Manor project for 20 years)

In a March 11, 2008 letter, HUD committed to a [20 year HAP contract](#) in connection with a 202 prepayment and a renewal of the Section 8 for the St. John Manor project.

Waivers

24 CFR 891.170 (HUD requirement of a note and mortgage use agreement, capital advance agreement, and a regulatory agreement from the owner in a form prescribed by HUD)

On the Barnes School Section 202 mixed finance project in Boston, a [waiver dated October 28, 2005](#) permitted the construction lender to be in a first mortgage position, while MassHousing agreed to permit the HUD Use Agreement and Regulatory Agreement to be recorded ahead of the construction mortgage

24 CFR 891.165 (duration of fund reservation for capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on case-by-case basis)

Also on the Barnes School Section 202 mixed finance project in Boston, [a waiver dated November 3, 2005](#) granted a fund reservation extension to allow adequate time for the project to obtain funding for the project, reach initial closing, and begin construction.

24 CFR 891.205 (requirement that Sponsor/Owner have tax-exempt status under 501(c)(3) or (c)(4)) and 24 CFR 891.805 (definition of private nonprofit organization)

[A December 21st, 2005 waiver](#) regarding the Barnes School project stated that because the project is a mixed-finance transaction, the definition of "owner" under 24 CFR 891.205 does not apply, and therefore no waiver of 24 CFR 891.205 is needed. Similarly, the Barnes School Apartments, Inc. meets the definition of "private nonprofit organization" under 24 CFR 891.805, and thus no waiver of 24 CFR 891.805 is needed.

24 CFR 891.165 (duration of capital advance) and 24 CFR 891.805 (definition of "mixed-finance owner," requirement for sole general partner to be a 501(c)(3) or (c)(4))

In addition to the December 20, 2005 letter received in the Lord Sterling Senior Housing Project, the Newark office also provided [a waiver dated January 5, 2006](#), allowing for the general partner to be under control and owned by a non-profit even though the general partner is a for-profit entity. The Community Builders is a sole shareholder of the general partner. The waiver also states that a single board member from a community would not be considered "significant" community representation on that board.

24 CFR 891.100(d) (prohibition of approval of amendment funds before initial closing) and 24 CFR 891.165 (duration of fund reservation for capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on case-by-case basis)

Also on the Barnes School, the project received [a January 12, 2006 waiver](#) of 24 CFR 891.100(d), permitting the subject project to receive amendment funds in the amount of \$1,100,000 before initial closing. However an extension of the fund reservation under 24 CFR 891.165 (in addition to the extension already approved on November 3, 2005) was denied due to an inadequate explanation of the need for the extension.

24 CFR 891.830(b) and (c)(4) (drawdown of capital advance funds)

With respect to a project called Trenton Terrace in Portland, Oregon, HUD granted [a waiver dated March 2, 2006](#) of 24 CFR 891.830(b) to allow capital advance funds to be drawn down using a different mechanism than a pro rata basis. In this waiver, HUD also waived 24 CFR 891.830(c)(4) to permit capital advance funds to be used to pay off that portion of a bridge or construction financing that strictly related to capital advance eligible costs.

24 CFR 891.830(c)(4) (capital advance funds as used to collateralize and pay off portions of tax-exempt bonds)

[An April 11, 2008 waiver](#) regarding the Lyons Place project in Dayton, OH waived 24 CFR 891.830(c)(4), which requires that the capital advance funds drawn down be used only for eligible costs actually incurred in accordance with the regulations and the mixed-finance project, but excludes the pay off of bridge or construction financing and the repaying or collateralizing of bonds. This waiver permitted capital advance funds to be used to collateralize the tax-exempt bonds and to pay off a portion of the tax-exempt bonds that strictly relate to capital advance eligible costs, so long as certain conditions placed on the project are met.

24 CFR 891.805 (definitions of mixed-finance owner and private non-profit organizations)

In reference to the Serviam Gardens Project in the Bronx, New York, HUD granted a request to waive 24 CFR 891.805, which requires that the sole general partner of a mixed-finance owner be a private, nonprofit organization with 501(c)(3) or (c)(4) status. [The April 17, 2008 waiver](#) approved the use of a LLC with the nonprofit sponsor as the sole shareholder, as the sole partner of the mixed-finance owner.