

**HEATHER  
WAIGAND:**

Hello, my name is Heather Waigand. And I'm an attorney in the Office of General Counsel at HUD. I will provide a brief history of the Section 811 Capital Grants program and highlight a few legal requirements in the Section 811 Notice of Funding Opportunity, or NOFO.

In 1990, Congress passed the Cranston-Gonzales National Affordable Housing Act, which had created the Section 811 Supportive Housing for Persons with Disabilities program. Section 811 authorizes HUD to provide capital advances to private nonprofit organizations, and to enter into project rental assistance contracts, or PRACs, with owners to provide supportive housing for non-elderly, very low income adults with disabilities.

Major amendments to the Section 811 statute include the American Homeownership and Economic Opportunity Act of 2000, which authorized for-profit limited partners to be owners of Section 811 projects. This change to the definition of owner facilitated mixed finance development of Section 811 projects through use of tax credits and other private funding sources.

The Frank Melville Supportive Housing Investment Act of 2010 authorized increased PRAC contract amounts for reasonable project costs, subject to appropriations. The Frank Melville Act also imposed an occupancy limit for persons with disabilities to no more than 25% of units at a Section 811 Capital Advance project except for group homes and independent living facilities.

This act also created the Section 811PRA program, which is awarded under a separate NOFO. Congress authorizes funding for Section 811 Capital Advances and PRAC in the Annual Appropriations Act. New Section 811 Capital Advances were not funded between fiscal years 2010 and 2018. Starting in fiscal year 2018 and continuing through the present, Congress restarted funding for new Section 811 Capital Advances as well as renewing existing PRACs.

In addition to statutes governing Section 811 Capital Advance program, HUD has implemented regulations at 24 CFR Part 891. The relevant subparts for the Section 811 Capital Advance program are subpart a, which addresses general program requirements for both the Section 202 Housing for the Elderly and the Section 811 Housing for Persons with Disabilities programs; subpart c, which provides Section 811 specific requirements; subpart d, which provides project management requirements; and subpart f, which addresses mixed finance development.

Next, I'll move on to Section 811 Capital advance legal requirements. First, a sponsor must be a private nonprofit organization. A private nonprofit organization is defined in the program statute at 42 USC 8013, and in the program regulations at 24 CFR 891.305.

Eligible private nonprofit applicants must have IRS 501(c)(3) tax-exempt status, corporate purposes sufficiently broad to provide legal authority to sponsor the proposed project for persons with disabilities, and to apply for HUD funds under this NOFO; a governing board membership with significant representation of the views of persons with disabilities; language and organizational documents stating that no part of the net earnings go to benefit any private party; and the applicant is not controlled or under the direction of any person seeking to gain profit.

Please note that sponsors who intend to form a mixed-finance owner must also provide evidence of a structure as a single asset, for-profit limited partnership, of which a private nonprofit organization is the sole general partner. Unlike the Section 202 Capital Advance program, for-profit corporations, or LLCs, wholly owned and controlled by nonprofit organizations are not eligible applicants. Please see the NOFO for specific application requirements and documents that must be submitted.

In addition to demonstrating private nonprofit status, the sponsor must also demonstrate site control. Acceptable evidence of site control is a deed or long-term lease, a sale contract, or an option to purchase, or an option for a long-term lease. The sponsor must submit a title report identifying any encumbrances on the property. Again, please see the NOFO for specific application requirements.

In addition to the legal requirements I just discussed, the NOFO contains further applicable requirements, such as fair housing and civil rights and the Uniform Relocation Act.

Thank you.