MULTIFAMILY ACCELERATED PROCESSING (MAP)

Guide

*Revised March 15, 2002

Office of the Assistant Secretary for Housing-
FHA Commissioner

*The original MAP Guide was published May 17, 2000.

The information collection requirements contained in this Multifamily Accelerated Processing Guide were approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). Approval of the Lender requirements in Chapter 2 are covered by OMB control number 2502-0541. The FHA and HUD Forms referenced in the Guide and set forth in the Forms Book which accompanies the Guide are approved as indicated on the Forms, particularly by approval control numbers 2502-0010, 2502-0057, 2502-0118, 2502-0331, and 2502 1112. 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 valid control number.

MULTIFAMILY ACCELERATED PROCESSING (MAP)

Guide

March 15, 2002

Office of the Assistant Secretary
for Housing–FHA Commissioner

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410-8000

OFFICE OF THE ASSISTANT SECRETARY
FOR HOUSING-FEDERAL HOUSING COMMISSIONER

Special Attention Of:

TRANSMITTAL
Multifamily Accelerated Processing (MAP) Guide
03/15/2002

1. **This Transmits** the MAP Guide updated 3/15/2002.

2. **Explanation of Changes:**
Attached is a listing of the major highlights or significant changes to the updated MAP Guide by Chapter and Section or specific Appendixes. All revisions to the MAP Guide are shaded in the Table of Contents and text.

3. **Frequently Asked Questions:**
With the exception of MAP Guide Book Chapter 9, Environmental Review, this updated MAP Guide includes the changes and clarifications found in the Q & As that are published on the HUD Map Web site. The Q & A list will be reduced to the extent that the existing Q & As were incorporated in this guide. At such time that Chapter 9 is updated, related Q & As will also be eliminated from the Web site. Any future changes or clarifications to the MAP Guide Book will be made to the Guide in lieu of posting new Q & As.

4. **Filing Instructions:**

Remove:
May 17, 2000 version
of MAP Guide

Insert:
March 15, 2002 version
of MAP Guide

Michael L. McCullough
Director
Office of Multifamily Housing Development

Table of Contents	Major Highlights
5.34.1	New section entitled "Accessibility Considerations for Section 232 Pursuant to Section 223(f).

Chapter/Section	Major Highlights
1.4A	MAP Lender must be approved by Office of MFDEV.
1.4.C8	New wording discusses selling or transferring commitment to another lender.
1.4.D	HUD will perform inspections and give copies of trip report to MAP Lender.
1.5.A	Where MAP Guide is silent on matter, old requirements are obsolete. This paragraph also gives MAP Web site.
1.7.A	Discusses what to do with programs not covered by MAP.
2.1.A	Introduces name for new Division entitled "Lender Qualifications and Monitoring Division" (LQMD) of the Office of MF Housing Development.
2.1.C	Discusses Lender responsibility regarding approval of third party contractors and environmental assessment contractor.
2.1.E	Discusses the sale of MAP applications
2.3.I	Discusses the handling of consultants under TAP & MAP.
2.5	Establishes the single point of contact for identity of interest questions.
2.9.B	Discusses reviews of Lender documentation.
2.13.A.1	Shifts responsibility from Director of LQMD to Director of MF Housing Development.
2.13.A.3	Same as above.
3.2.H	Discusses how mortgage insurance premium can vary with type of mortgage.
3.2.I	Discusses how bond financing allows up to 5.5% financing fee for all eligible MAP programs.
3.2.N	Discusses Bridge or GAP financing.

Chapter/Section	Major Highlights
3.2.O	Discusses Transient Housing/Hotel Services.
3.2.P	Small properties.
3.3	Condominium (under 234) and coops (under 213 & 221(d)(3)) are prohibited under MAP.
3.4.K	Discusses student Housing restriction.
3.5.A	What to include in BSPRA.
3.6.A	Non-profit requirement discussed.
3.9.A.3.a.(2)(b)	There are no minimum requirements for activities of daily living.
3.9.F	Commercial space & income limitations.
3.9.L	Line of credit discussion.
3.9.M	REITS
3.10.B.2	Sub-rehabilitation with building additions.
3.10.I	Commercial Space Limits.
4.2.C.1	No fee due at pre-application.
4.2.E.3	Note restriction on combining pre-application and firm in one submission.
5.1.A.3	Architectural analyst not required to review structural design details and calculations.
5.2.E	Spells out type of architectural exhibits.
5.4.A.5.c	Includes reference material for all applicable accessibility laws, especially the Fair Housing Act Design Manual.
5.4.A.5.f	Discusses accessibility for persons with disabilities.
5.4.A.15	Responsibility for errors, discussions, and accuracy of technical specialists.

Chapter/Section	Major Highlights
5.5.A.3	Discusses existing utility locations.
5.5.A.4.d	Requires level of detail of sketch plan dimensions.
5.6.B.5	Lender's architectural analyst certification.
5.8.B.1.a	HUD minimum property standards requirements.
5.12.A.2.b	Note adds bond premium mortgagor's and contractor's other fees. Also, warns of omissions.
5.15.A.3	Adds Sections 9.4D and 9.7B
5.24.A	Adds Fair Housing Accessibility Considerations for 223(f).
5.26.A	Changes from 90 to 120 days.
5.26.C	Discusses timing for doing non-critical repairs.
5.31.B.2	Itemized list of Minor Movable Equipment not required.
5.33.A.2	Removes Minor Equipment.
5.33.B	List of Major Movable Equipment at Firm Regulations.
5.34.A&B	Specification of accessibility requirements.
5.36.A	Discusses marketability of accessibility.
5.36.C	Impact on blended rate projects. Also, PCNA required on existing portion of 232.
5.38.A.1	Requires list of major movable equipment. Eliminates Minor Equipment list.
6.2.B.1.c	Clarification of lost package.
6.3.C.3.f.2	Change M to O.
6.5.B	Clarifies what form to use and where to sign.
6.5.D	Instructions on where to sign form HUD-92264.

Chapter/Section	Major Highlights
6.10.A.2	Property Insurance Schedule.
6.10.B.2	Value of structures only – no land value.
7.3.A.3.	Clarifies who is covered by USPAP.
7.3.A.6.Note	Further explains USPAP requirements.
7.3D	Appraisal and market study must be separate reports.
7.3.E	Instruments processing center to refer certain cases to LQMD at HQ.
7.4.A.2	Describes what kind of appraisal
7.4.A.4	Discusses impact of cost/summation approach.
7.4.A.5	Appraisal must not be more than 120 days old for Firm and pre-application packages.
7.4.A.8	Discusses USPAP Jurisdictional Exception Rule.
7.4.A.9	Primary appraiser must perform inspection and sign report and supporting forms.
7.4.C	Discounted Cashflow (DCF) is not permitted technique for MAP or TAP on any HUD programs.
7.5.B	Clarifies absorption time relative to 223(f).
7.5.F	If one person does both appraisal and market study, each must be submitted as an independent exhibit.
7.6.B	HUD-92264T required for tax credit/ or bond financed applications.
7.6.F	Discusses commercial income.
7.7.F	Clarifies updating of data in lieu of "trending to."
7.7.G	USPAP as it relates to confidentiality.
7.8.H	Sites sold by public body.

Chapter/Section	Major Highlights
7.8.H.2	Discusses "As Is" Value of Land.
7.11.A.7	Clarifies type of appraisal.
7.12.A.1	232 does not include BSPRA.
7.12.A.3.a	Requires "Business Value" in order to do proprietary income split in 232s.
7.12.A.9	Lenders may use modified 92273 & 9227H on 232 cases.
7.12.F.3	67/3/30 rule spelled out.
7.13.D.5	Discusses what to do to find project mortgage amount on 220 and 221.
7.13.J	Devlopers Fee-HUD Notice H96-63 applies to MAP.
7.14.A.4	New 3 Interval Operating Deficit.
7.14.A.7	Commercial operating deficit.
7.16.F.8	No single upfront leases allowed.
7.18	Tax Abatement
8.3.A.5	Discusses required experience for underwriter of 232 cases.
8.4.B.3.c Note	Medicare & Medicaid Cost Reports for last three years on 232 pursuant to 223(f) cases.
8.7.A.1.c.(3)(b)	240 maximum for family limits.
8.7.A.I.d.(2)	Tax Abatement must run with RE, not type of sponsorship.
8.8.A.2.c.(2)(b)	Recent indebtedness defined.
8.8.B	Existing Facility with an addition – Blended rate processing for Section 232.
8.9.E.4	Line of credit.
8.9.E.5	Real Estate Investment Trustee (REITS)

Chapter/Section	Major Highlights
8.12.A	221(D)(3) MAP & TAP-HQ review required.
8.15.B.3	5.5% financing and placement fee allowed on Bond financed applications.
Chapter 9	NO CHANGES AT THIS POINT.
10.2.A.2	Discusses relation of management plan to HUD 9832.
10.8	Discusses Fair Housing Act and Executive Order 11063 as they relate to 223(f).
11.1.A	Discuss who reviews and approves the lender's principal staff and consultants.
11.1.C.4	Proposed loans and processing must comply with all FHA statutory, regulatory and administrative requirements.
11.1.D	Discusses HUD forms submission.
11.1.D.1	Signing of 92264 by third party contractors.
11.1.D.2	Discusses qualifications of 3rd party contractors.
11.2.A	HUD field staff has five (5) days for completeness review of pre-application deliverables.
11.2.B	Discusses HUD Reviewers Signature and Certification.
11.2.E	Same as 11.2.B above.
11.2.F	Discusses modification of application.
11.2.G.Note	Lists who can sign FHA Firm Commitments or endorse FHA Mortgage notes.
11.2.J.5	Discusses submission requirements.
11.2.L	Discusses notification time tables.
12.1.4.D.4.c	Office of General Counsel has approved 1999 Min. Standard Detail Requirement (MSDR) for (ALTA) (ACSM) Land Title Surveys.

Chapter/Section	Major Highlights
12.1.17.A	Discusses what to do with Phase I Environmental clearance.
13.2	Pre-Construction conference can be conducted by Construction Coordinator or designate a HUD Inspector.
13.3.D.10	Discusses who signs as Chief Architect.
13.7.A.6	Discusses initial & final advances.
13.14B.1-3	Changes to the Major Movable Equipment (MME) during construction.
13.17.F	Discusses guarantee inspections.
13.18.B.3	Same as 13.14.B.1-3 above.
13.18.C.4.b	Approve payment for MME.
14.6.E	Who approves Request for Approval of Advance of Escrow Funds.

Appendices	Major Highlights
4.A.I.A.7	Submission clarification.
4.A.I.A.14	More clarification.
4.A.I.B.3	LBP & asbestos reports required.
4.A.II.A.7	Requires HUD 92264 and HUD 92264A
4B.I.A.9	120 day requirement 92273 (also 92264T)
4.B.II.A.49	List of Major Movables required.
4.B.11.B.Note	Refinance that includes an addition processed under 232-PCNA required.
4D.A.39	Three years audited Financial Statements Reg. & Last 3 years Medicare and Medicaid Reports.
5B.C.2	Standards applicable.

Appendices	Major Highlights
5B.G	Federal Regulations reference.
5B.H	Reference:
5C.C.1	LBP elimination.
5C.E	Clarifies Fair Housing Act regarding Accessibility.
5D.A	FEMA reference on Seismic issues.
5G.A.2	Refers AIA controls on Hospital and Medical Facilities.
5L.3 Note	UFAS accessibility on 223(f)s.
5M	Discusses CNAs in detail.
6	OK-No changes
7A.B.2 Note	Market Studies not required for 223(f).
7C.1.F.2	Comments Section Appraisers Signature, Date, License No. State Concurrence, Team leader's signature & Date.
7C.2.D.2	Same as above.
7C.3.F	Same as above.
8	OK-No changes
12.A.10 & 11	90 day period changed to 120 days throughout.
13.A.C.7.b (3)	Note lender's 3rd party costs are exempted from 65% rule.
13.I.1.a & b	Discusses disbursement from grant/loans/escrow.

Table of Contents

MAP Guide

	Title Page	
Chapter 1	**Introduction**	
1.1	MAP and Guide	1
1.2	Background	1
1.3	Purposes of MAP	2
1.4	Brief Summary of MAP	2
1.5	Relation of MAP to Handbooks and Notices	5
1.6	Work Management	6
1.7	Transition	7
Chapter 2	**Lender Qualifications**	
2.1	Overview	1
2.2	Lender Qualifications	2
2.3	Standards Required for Qualification	5
2.4	Electronic Capability and Internet Access	5
2.5	Identity of Interest	6
2.6	Application Package	6
2.7	Limitation on Requirements	8
2.8	Agreement to Accept Monitoring	8
2.9	Monitoring by LQMD	8
2.10	Termination or Probation of a Map Lender: Overview	9
2.11	MAP Review Panel	10
2.12	Recommendations for Termination	10
2.13	Effect of Probation and Termination	11

	Title	Page
2.14	Appeals	12
2.15	Referral to the Mortgage Review Board or the Inspector General	13
Chapter 3	**Eligible Multifamily Mortgage Insurance Programs**	
3.1	Introduction	1
3.2	General	1
3.3	New Construction/Substantial Rehabilitation Multifamily Rental Apartments: Eligible Programs -Sections 221(d)(4), 221(d)(3), and 220	3
3.4	New Construction/Substantial Rehabilitation Multifamily Rental Apartments: Requirements and Program Features	3
3.5	Section 221(d)(4)	6
3.6	Section 221(d)(3)	7
3.7	Section 220	9
3.8	Acquisition/Refinancing of Existing Apartments -Section 223(f)	10
3.9	Section 232 - Health Care Requirements	13
3.10	Section 232 - New Construction/Substantial Rehabilitation	21
3.11	Section 232/223(f) - Acquisition/Refinancing	23
Chapter 4	**Application Requirements**	
4.1	Overview	1
4.2	Stages of Application	1
4.3	Applications Checklist	4
Chapter 5	**Architectural Analysis**	
	General	
5.1	Qualifications, Responsibilities and Approval of Lender's Representative	1
5.2	Required Architectural Services for Design and Supervision	2
5.3	Architectural Standards and Other Criteria	4
	Section 221(d) and 220	
5.4	Lender Architectural Processing - New Construction	5
5.5	Architectural/Engineering Exhibits - New Construction	10
5.6	Lender Deliverables - New Construction	11
5.7	Firm Commitment Through Initial Endorsement - New Construction	13
5.8	HUD Procedures: Pre-Application Stage - New Construction	15

	Title	Page
5.9	HUD Procedures: Firm Stage - New Construction	16
5.10	HUD Procedures: Firm Commitment Through Initial Endorsement - New Construction	17
5.11	General Lender Procedures – Substantial Rehabilitation	17
5.12	Definitions - Substantial Rehabilitation	17
5.13	Standards - Substantial Rehabilitation	18
5.14	Architectural/Engineering Exhibits: Substantial Rehabilitation - Firm State	18
5.15	Lender Deliverables - Substantial Rehabilitation	18
5.16	Joint Inspection - Substantial Rehabilitation	19
5.17	Detail Work Write-up - Substantial Rehabilitation	19
5.18	Contract Documents - Substantial Rehabilitation	20
5.19	Engineering Reports - Substantial Rehabilitation	21
5.20	Required Professional Services - Substantial Rehabilitation	22
5.21	HUD Procedures - Pre-Application Stage – Substantial Rehabilitation	22
5.22	HUD Procedures - Firm Stage – Substantial Rehabilitation	22
	Section 223(f)	
5.23	In General – 223(f)	22
5.24	Standards – 223(f)	23
5.25	Lender Deliverables – 223(f)	23
5.26	Project Capital Needs Assessment and Replacement Reserve Escrow – 223(f)	24
5.27	HUD Procedures: Firm Stage – 223(f)	26
	Section 232	
5.28	General Lender Procedures – 232	27
5.29	References for Section 232	27
5.30	Narrative Program for Section 232 Projects	27
5.31	Nonrealty Equipment – 232	29
5.32	Realty Items - Section 232	30
5.33	HUD Procedures – Firm Stage – 232	30
	Section 232 Pursuant to Section 223(f)	
5.34	General – Lender	30
5.34.1	Accessibility Considerations for Section 232 Pursuant to Section 223(f)	30
5.35	Municipal Authorizations	31
5.36	Additional Narrative Program Requirements - Section 232 Projects Pursuant to Section 223(f)	31

	Title	Page
5.37	Major Movable and Minor Movable Equipment	32
5.38	HUD Procedures – Firm Stage – 232/223(f)	32
Chapter 6	**Cost Processing**	
	General	
6.1	Qualifications, Responsibilities, and Approval of Lender's Cost Estimator	1
	Section 221(d) and 220	
6.2	Lender Responsibilities and Deliverables	1
6.3	The Lender's Cost Estimate	3
6.4	Project Processing - Pre-Application Stage	10
6.5	Lender's Project Processing - Firm Stage	11
6.6	Lender's Processing - Substantial Rehabilitation	14
6.7	HUD Procedures for Pre-Application Stage	15
6.8	HUD Procedures for Firm Stage	17
	Section 223(f)	
6.9	Lender Responsibilities and Deliverables	18
6.10	Lender Project Processing - Firm Stage	19
6.11	HUD Procedures for Firm Stage	19
	Section 232	
6.12	General Lender Procedures	20
6.13	Lender Project Processing - Firm Stage	20
6.14	General HUD Procedures	21
6.15	HUD Procedures for Pre-Application Stage	21
6.16	HUD Procedures for Firm Stage	22
Chapter 7	**Valuation Analysis**	
7.1	Purpose of Valuation Analysis	1
7.2	Selection of Appraisers and Market Analysts	2
7.3	Appraiser and Market Analyst Qualifications	2
7.4	Appraisal Requirements	3
7.5	Market Study Requirements	4
7.6	Estimated Rental Income	5
7.7	Operating Expense Estimates	8

	Title	Page
7.8	Site Analysis	12
7.9	Pre-Application Stage for Sections 221(d) and 220	14
7.10	Firm Commitment Processing for Section 221(d) and 220	16
7.11	Firm Commitment Processing for Section 223(f)	18
7.12	Processing for Section 232	21
7.13	Substantial Rehabilitation Processing for Sections 220, 221(d)(3) & 221(d)(4)	33
7.14	Calculating Operating Deficits	36
7.15	Reserve for Replacement Escrow	38
7.16	Ground Leases	38
7.17	Site Not Attributable to Dwelling Use	46
7.18	Tax Abatement/Exception	47
Chapter 8	**Mortgage Credit Underwriting and Processing Requirements**	
8.1	Qualifications and Duties	1
8.2	Pre-Application Processing	2
8.3	Firm Commitment Processing - Determining Acceptability of the Borrower and General Contractor	3
8.4	Firm Commitment Processing Financial Statements	8
8.5	Term of Mortgage and Commencement of Amortization	15
8.6	Additional Firm Commitment Processing Exhibits	15
8.7	Sections 220 and 221(d) Firm Commitment Processing - Determining Mortgage Amounts, Cash Requirement, and Related Items	16
8.8	Section 232 Mortgage Amounts, Cash Requirements, and Related Items	18
8.9	Section 223(f) Firm Commitment Processing - Determining Mortgage Amounts, Cash Requirements, and Related Items	22
8.10	Secondary Financing	29
8.11	Firm Commitment Processing with Grants/Loans	31
8.12	Evaluating Nonprofit Sponsors and Mortgagors	34
8.13	Insurance Upon Completion (IUC)	39
8.14	Determining the Estimated Cash Requirements for Completing the Project	40
8.15	Bond Financed Projects	41
8.16	Lender's Review and Recommendation	44
8.17	Firm Commitment Processing - HUD Duties and Responsibilities	45

	Title	Page
Chapter 9	**Environmental Review**	
9.1	Overview	9-1
9.2	Qualifications of Professionals	9-3
9.3	Phase I and Phase II Environment Site Assessment	9-4
9.4	Environmental Report	9-6
9.5	Pre-Application and Firm Commitment	9-7
9.6	Consulting with the Hub or Program Center	9-7
9.7	List of Environmental Concerns	9-8
Chapter 10	**Management Analysis**	
10.1	Introduction	1
10.2	Exhibits Required for Firm Commitment	1
10.3	Lender Review of Management Documents	3
10.4	HUD Review of the Previous Participation Certification (Form 2530)	5
10.5	Bonding Requirements for Agents	5
10.6	Management Agreement Requirements	6
10.7	Approval/Disapproval of Proposed Management Agent	7
10.8	Affirmative Fair Housing Marketing	8
Chapter 11	**Lender Underwriting - HUD Review**	
11.1	Lender Underwriting	1
11.2	HUD Field Office Underwriting Review	3
Chapter 12	**Insurance Closings**	
12.1	Initial Closing	1
12.1.1	Objective	1
12.1.2	Authority and Responsibility for Closing	1
12.1.3	Closing Location	3
12.1.4	Closing Forms and Documents	3
12.1.5	Construction Contracts and Other Construction Documents	17
12.1.6	Additional Closing Requirements	21
12.1.7	Initial Endorsement of Credit Instrument	25
12.1.8	Revision of Closing Forms and Documents	25

	Title	Page
12.1.9	Local Rent Restrictions	26
12.1.10	Tax Exempt Bonds	26
12.1.11	Low Income Housing Tax Credits	30
12.1.12	Pre-Construction Conference	30
12.1.13	Initial Draw of Loan Proceeds	30
12.1.14	Loan Closings for Residential Care Facilities	30
12.1.15	Changes in Construction and/or Permanent Loan Interest Rates	32
12.1.16	Submission of Recorded Documents	32
12.1.17	Retention of Closing Documents	32
12.2	Final Closing - Insurance of Advances	33
12.2.1	General	33
12.2.2	Property Insurance Requirements	34
12.2.3	Incomplete On-Site and Off-Site Facilities	35
12.2.4	Chattel Mortgage and First Payment to Principal	36
12.2.5	Mortgage Amount	38
12.2.6	Final Endorsement	41
12.2.7	Guarantee Following Completion	43
12.2.8	Distribution of Closing Instruments	44
12.2.9	Requisition for Amortization Schedules	45
12.3	Final Closing – Insurance upon Completion	46
12.3.1	Preparation for Closing	46
12.3.2	Documents	46
12.3.3	Incomplete Facilities	47
12.3.4	Public Approvals	48
12.3.5	Endorsement of Credit Instrument	48
12.3.6	Revision of Instruments Prior to Endorsement	49
12.3.7	Chronology of Mortgage Transactions, FHA Form 260	49
12.3.8	Distribution of Closing Instruments	49
12.3.9	Requisition for Amortization Schedule	49
12.4	Section 223(f) Closings	49
12.4.1	Closing Requirements	49
12.4.2	Closing by Mail or Escrow	49
12.4.3	Handling of Administrative Requirements	50

	Title	Page
12.4.4	Attendance at Closing	50
12.4.5	Closing Forms	50
12.4.6	Additional Closing Documents	51
Chapter 13	**Construction Period**	
13.1	Start of Construction	1
13.2	Pre-Construction Conference	1
13.3	HUD Construction Monitoring	3
13.4	Architects Duties in Administering Construction Contract	10
13.5	Architect's Adequacy	12
13.6	Completion Inspections	13
13.7	Insurance of Advances and Related Matters	15
13.8	Construction Change Orders – General	19
13.9	Change Orders – HUD Inspector Instructions	23
13.10	Change Orders – HUD Architectural and Cost Instructions	24
13.11	Change Orders – Appraisal and Mortgage Credit Instructions	25
13.12	Labor and Fair Housing and Equal Opportunity (FHEO)	28
13.13	Surveys	28
13.14	Permission to Occupy	29
13.15	Escrowed Funds, Letters of Credit, Deposits, Holdbacks, & Related Matters	30
13.16	Insurance on Completion	34
13.17	Completion of Repairs Pursuant to 223(f)	36
13.18	Construction Variations Pursuant to Section 232	39
Chapter 14	**Cost Certification**	
14.1	Projects that Must Certify	1
14.2	Purpose for Certification	1
14.3	Certifiable Costs	1
14.4	Types of Cost Certification	1
14.5	Entities that Must Cost Certify	2
14.6	Sequence of Events	3
14.7	Final Completion Date/Cut-Off Date	4
14.8	Administrative Completion Date	4
14.9	Submission Date	5
14.10	Required Forms	5

	Title	Page
14.11	Required Statements and Certification	5
14.12	Deficiencies in Cost Certification Submission	11
14.13	HUD Mortgage Credit Limited Review	12
14.14	HUD Mortgage Credit Detailed Review	13
14.15	Allowable Costs in Form HUD-92330, Mortgagor's Certificate of Actual Cost	14
14.16	HUD Cost Review of Contractor's Cost Certification	25
14.17	Determine the Mortgagor's Initial Equity Investment – Nonprofit	30
14.18	Determine the Mortgagor's Initial Investment	31
14.19	Lease Payment/Net Income During Construction Period – Section 232	31
14.20	Modified Cost of Cost Certification – Section 223(f)	32
14.21	Mortgage Reduction After Cost Certification	33
14.22	Increase in Mortgage Amount	35
14.23	Restrictions for Mortgages Increases	36
14.24	Processing a Mortgage Increase	36
14.25	Authorization to Reopen Mortgage Transaction	38
14.26	Document Distribution	39
14.27	IG Audit	39
14.28	Cost Certification Incontestability	39
14.29	Post Closings Escrow	39

Chapter 1

Introduction

1.1 MAP and the Guide

Multifamily Accelerated Processing, abbreviated as MAP, is a new processing procedure designed to establish national standards for approved Lenders to prepare, process, and submit loan applications for Federal Housing Administration (FHA) multifamily mortgage insurance. The MAP Guide provides - in one volume with appendices- mortgage insurance program descriptions, mortgagor and Lender eligibility requirements, application requirements, U.S. Department of Housing and Urban Development (HUD) underwriting standards for all technical disciplines, construction administration requirements, and closing instructions.

1.2 Background

A. FHA multifamily mortgage insurance began in 1937 and has been a major source of financing for affordable housing since that date. The most recent figures of loans committed show that the FHA insured an average of nearly $4 billion in multifamily and health care facility mortgage loans each fiscal year from 1996 through l999.

B. HUD processes multifamily loan insurance applications through 51 Multifamily Hubs and Program Centers throughout the nation. In some of these Hubs and Program Centers, the volume of work in recent years created unreasonable delays in processing. Furthermore, Lenders complained that they were unable to get a tentative decision on an application early in the HUD review process.

C. To achieve faster processing and earlier decisions, the Seattle and Portland field offices (now part of the Northwest/Alaska Hub), followed by other Hubs and Program Centers, developed "fast-track processing" where qualified Lenders had the option of preparing FHA forms and doing preliminary underwriting for certain loan applications. In many Hubs, "Fast-track" processing eliminates the option of having a Site Appraisal and Market Analysis (SAMA) as part of traditional FHA processing. Instead, for new construction and substantial rehabilitation, local "fast-track" programs create a pre-application stage at which the Lender presents certain important elements of its

application, including a market analysis, preliminary sketches, and a narrative description of the proposed project. After the pre-application stage, HUD either rejects the Lender's application or invites the Lender to submit an application for a Firm Commitment. The invitation carries with it the assumption that, if the application for Firm Commitment is consistent with the pre-application exhibits, then the commitment will be issued after HUD review.

D. At the application for a Firm Commitment, the Lender directs the preparation and review of the exhibits required, such as the appraisal, the cost estimate and the final plans and specifications. HUD reviews the application and, if it passes review, issues the commitment.

E. Approximately 30 of the 51 Hubs and Program Centers are using a form of this "fast-track" processing for some of their loan applications. There are local variations, some of which assign part of the responsibility to the Lender, such as the appraisal, but retain at the HUD office certain other responsibilities, such as the preparation of mortgage credit exhibits. The "fast-track" procedures are not consistent from one Hub to the next. And "fast-track" is not available in many of the multifamily processing offices.

F. MAP is a form of "fast-track" processing which replaces local "fast-track" processing for the most widely-used FHA mortgage insurance programs.

1.3 Purposes of MAP

A. To establish a "fast-track" process that is consistent at each HUD multifamily processing office.

B. To provide the Lender an earlier review of the application for insurance on new construction and substantial rehabilitation. Therefore, if the application is rejected by HUD at a pre-application stage, the Lender and borrower do not spend the time and money required to prepare the exhibits and analysis for the application for a Firm Commitment.

C. To develop a process that will significantly reduce the amount of HUD review time.

D. To have in one volume, the MAP Guide, the basic information required for loan origination by the Lender and for review by HUD staff.

E. To bring Handbook and Notice instructions current and maintain up-to-date instructions through amendments to the MAP Guide.

F. To strike a careful balance between expedited processing and ensuring an acceptable level of risk for HUD's multifamily mortgage insurance programs.

1.4 Brief Summary of MAP

A. Lender Qualification

To use MAP, a Lender must be an approved FHA multifamily mortgagee, must apply for approval, and be approved by HUD's Office of Multifamily Housing Development as a MAP Lender. Qualification requirements are given in Chapter 2. The Chapter also covers how a Lender's MAP approval may be terminated. No fee is required for application for qualification.

A MAP Lender may submit an application for mortgage loan insurance and have it processed in the traditional way by the HUD office, or, alternatively, it may use the procedures discussed in this MAP Guide and have the application processed in an accelerated way under MAP. A Lender without MAP approval must have its applications processed by HUD under the traditional form of processing. The "traditional" form of processing means processing by HUD Staff and does not include "fast-track" processing.

B. Programs Covered by MAP

MAP may be used for Sections 221(d)(3) and 221(d)(4) (apartments), Section 220 (apartments in urban renewal areas) and Section 232 (health care facilities), either new construction or substantial rehabilitation. It may be used under Section 223(f) for refinancing or purchase of existing apartments or health care facilities. Program requirements for MAP are given in Chapter 3 of this Guide.

C. Processing

1. Preliminary inquiries from Lenders on all applications are encouraged. The Lender should submit the names of its staff and consultant reviewers prior to the pre-application stage.
2. The time frames for HUD MAP processing listed below have been established to assure timely decision making on FHA applications.
   a. Pre-application Review (New Construction/Substantial Rehabilitation) – 45 days.

      The performance standard for this stage is no more than 45 days. This stage of MAP is measured in calendar days; it begins when HUD receives a complete pre-application from an approved MAP Lender and ends when HUD issues a signed letter that advises the Lender whether to apply for a firm commitment.

   b. Firm Commitment Application Review (New Construction/Substantial Rehabilitation) - 45 days.

      The performance standard for this stage is no more than 45 days. This stage of MAP is measured in calendar days; it begins when HUD receives a complete firm commitment application and ends when HUD issues a signed commitment.

The MAP Team Leader may extend this review period under certain circumstances as described in Chapter 11, Section 11.2 D. Lenders will be advised immediately if the Team Leader determines that a more extensive review is needed.

c. Firm Commitment Application Review (Existing Property Purchase or Refinance) – 60 days.

The performance standard for this stage is no more than 60 days because there is no pre-application review for Existing Property Purchase or Refinance applications. This stage of MAP is measured in calendar days; it begins when HUD receives a complete firm commitment application and ends when HUD issues a signed firm commitment letter.

3. For new construction or substantial rehabilitation under Sections 221(d)(3) or (d)(4), or Section 220, or Section 232, an application goes through two stages: a pre-application review and an application for Firm Commitment. At the pre-application stage, the Lender submits a market study, including comparables, a Phase I Environmental Site Assessment, and an environmental report, a review of rough costs, sketch plans, proposed rents, income, reasonable expenses, estimated mortgage amount and replacement cost. No fee is required from the Lender or Sponsor for pre-application review.

4. The HUD review at the pre-application stage is thorough and includes, at a minimum, a site visit. HUD, for example, carefully reviews the market study prepared for the Lender, but does not prepare its own study. After the review, HUD either invites the Lender to submit an application for a Firm Commitment, with or without modifications, or declines to proceed further with the application.

5. For the Firm Commitment application, the Lender performs a complete underwriting of the application, including an architectural review, a cost review, a review of the appraisal, a management analysis, and a mortgage credit analysis. The exhibits required from the Lender for both the pre-application stage and the application for a Firm Commitment are listed as a checklist in the Appendix to Chapter 4 of this Guide. Underwriting by the Lender and the level of HUD review of an application is discussed in Chapter 11 of this Guide. HUD requires a fee of $3 per thousand dollars for review of the Firm Commitment application.

6. For refinancing or purchase under Section 223(f) or Section 232/223(f), there is no pre-application stage; the Lender files an application for Firm Commitment. The Lender is advised, however, to make a preliminary inquiry with the HUD processing office to provide information on the Lender's review team and the development team. This will avoid preparation of an application for Firm Commitment if one or more of the team members is unacceptable to the Hub or Program Center. Furthermore, the Lender should note that, for a refinancing or purchase of a health care facility under Section 232/223(f), a market study will be required in the application for a Firm Commitment. Generally, a market study is not required for refinancing or purchase of an apartment project.

7. To discuss the Lender's responsibilities and HUD's review responsibilities, this Guide goes into detail by discipline of the persons preparing the material: Chapter 5 discusses the architectural

responsibilities, Chapter 6 covers Construction Cost, Chapter 7 describes Valuation, Chapter 8 Mortgage Credit, Chapter 9 Environmental Requirements, and Chapter 10, Management Analysis.

8. HUD has certain responsibilities, which, by law or regulation, it does not assign to the Lender. For example, HUD is responsible for the environmental clearance on HUD Form 4128 (even though the Lender prepares the information). HUD must approve the owner's Affirmative Fair Housing Marketing program. HUD processes the Previous Participation clearance (Form 2530). HUD issues the commitment for mortgage insurance.

9. Some MAP-approved Lenders only originate loans. After obtaining a Firm Commitment for loan insurance under MAP, the originating MAP Lender may sell or transfer that Firm Commitment to another MAP Lender. The second MAP Lender handles the construction loan administration and services the loan. At the pre-application, the originating Lender should inform Hub or Program Center if it does not intend to administer the construction loan, and, therefore, which MAP lender will be responsible for that function.

D. Construction Responsibilities

Under MAP, HUD approves the initial and final draws utilizing current procedures. The MAP Lender prepares and approves the documents required for the interim draws during construction. HUD will perform inspection duties and will give copies of the Trip Report to the MAP Lender. HUD also retains the right to approve the construction amount for each item in advance and Change Orders during construction. Chapters 13 and 14 and Appendix 13 of this Guide cover the Construction Period and Cost Certification.

E. Closing

Closing procedures under all multifamily insurance programs have been rewritten as part of the effort to make mortgage insurance processing more efficient. The revised closing information is in Chapter 12 of this Guide.

F. No New Requirements for Servicing

MAP makes no changes in current procedures for servicing or asset management. A MAP Lender is not required to service the loan it originates. The servicer to whom a MAP loan is transferred must be FHA-approved for multifamily housing, but it need not be a MAP-approved Lender.

1.5 Relation of MAP to Handbooks and Notices

A. HUD's Handbooks, Notices, and Forms remain in effect. They will be used for traditional HUD processing of mortgage loan applications. For applications under MAP, the MAP Guide incorporates the majority of Handbook, Notice, and Form requirements. It includes in the Appendix

the forms that are required for the customary applications. Certain forms and requirements which are infrequently used, or are too detailed for inclusion in this Guide, are incorporated by reference to the Handbooks, Notices, Forms, statutes or regulations. If there is a conflict between the MAP Guide and the Handbooks, the MAP Guide will take precedence. Questions on conflicts should be raised to the HUD office processing the Lender's application. Where the MAP Guide is silent on a matter, old requirements are obsolete. Rather consult with HUD Headquarters. The MAP Website is **http://www.hud.gov/fha/mfh/map/maphome.html**

B. The MAP Lender must be familiar with Sections 221(d)(3), 221(d)4, 223(f), 220, and 232 of the National Housing Act. The Lender should also understand the regulations for those sections of the Act and the basic program requirements set forth in 24 Code of Federal Regulations Part 200.

C. The MAP Lender is encouraged to contact a Multifamily Hub office if it encounters any issues that are not addressed in the Guide or if it wishes clarification of any instructions contained in the Guide. Chapter 11 "Underwriting" of this Guide covers waivers. The Multifamily Hub Director retains the right to waive non-regulatory or non-statutory provisions of the Guide, but Chapter 11 specifies a limited number of requirements that may not be waived without prior approval from HUD headquarters. Regulatory provisions may be waived only on specific approval of the Assistant Secretary for Housing - FHA Commissioner. Statutory provisions may not be waived.

1.6 Work Management

A. At the start of the MAP program, applications for mortgage insurance, whether for pre-application review or for Firm Commitment in the case of a refinance or purchase of a multifamily property or health care facility must be submitted to the Hub having jurisdiction of the area where the property is located. The Hub Director may approve a Program Center as qualified to handle the processing of specific applications, for example, applications in the geographic area where the Program Center is located, or applications of a specific type, such as health care facilities. If the Program Center is approved by the Hub Director for MAP processing, the Hub Director may assign a specific application to the Center. In each case, the Hub Director or Program Center Director will assign a Team Leader to oversee HUD's responsibilities for processing the loan application, and will designate the HUD technicians who will be working on the application.

B. The Hubs or Program Centers may utilize review technicians from different HUD offices for the review process on one application. The ability to send documents by e-mail and obtain information on the internet permits review, for example, by a cost analyst in Phoenix of a document submitted to the San Francisco Hub. The Hub Director is responsible for managing the work load, including the authority to set priorities on loan applications received. The Hub Director is responsible for assuring that the goals are met for time limits on HUD review of MAP applications. The Hub Director is responsible for keeping track of all multifamily applications within the Hub's jurisdiction, including the applications processed by Program Centers in that jurisdiction.

D. Responsibilities assigned by this Guide to a Hub Director or Program Center Director may be delegated unless specifically restricted by this Guide or by regulation.

1.7 Transition

A. Transition rules apply only to the insured multifamily programs covered by MAP: 220, 221(d), 223(f), and 232. For programs not covered by MAP, such as Section 213 or Section 221(d)(3) cooperatives or Section 241(a) for Supplemental Loans or Section 223(a)7 for refinancing, any Hub or Program Center may continue to use its own fast-track procedures if it has developed such procedures. This applies both to MAP-approved Lenders and to non-MAP approved Lenders. It is expected that all of HUD's production programs will eventually come under MAP, but, until that happens, HUD field offices may use their own fast-track procedures for programs not listed in the MAP Guide.

B. Training will be offered in MAP. A Lender's underwriter must attend a MAP training session before submitting a MAP application.

C. Hubs and Program Centers may no longer accept any new applications for the covered programs, either for pre-application review or for Firm Commitment review, under local fast-track processing. The Lender must either submit the application in the traditional way where the HUD office processes the loan, or, if it has qualified for MAP, it may submit the application for review under MAP.

Chapter 2

Lender Qualifications

2.1 Overview

A. Multifamily Accelerated Processing requires Lenders skilled in underwriting multifamily housing loans and in the preparation of an application for FHA multifamily mortgage insurance. To provide HUD some assurance that MAP Lenders are qualified for their responsibilities, MAP requires a Lender to be approved by HUD's Lender Qualification and Monitoring Division (LQMD) of the Office of Multifamily Housing Development.

B. Approval of a MAP Lender by LQMD is on a nationwide basis, so that the MAP Lender may apply to process loans using MAP regardless of which HUD Multifamily Hub or Program Center will be processing the loan. By accepting the opportunity to use MAP, a MAP Lender agrees that its MAP loans will be subject to post-endorsement review by the LQMD. Moreover, the MAP Lender agrees that if it fails to meet HUD standards for underwriting loans, its MAP designation may be terminated. Qualification is continuing unless terminated in accordance with Sections 2.10–2.15 of this chapter.

C. Approval by LQMD as a MAP Lender is a prerequisite for the Lender, but MAP approval does not obviate the need to have an experienced team on each application.

1. Each time that a MAP Lender applies for mortgage insurance on a multifamily loan, the HUD office reviews the qualifications of the Lender's principal staff members or consultants who will be reviewing or preparing the borrower's loan application. Principal staff and consultants means the Lender's staff underwriter who will sign the underwriting summary, the person who will prepare the appraisal and market study, the person who will review the cost figures, and the person who will review the developer's architectural plans and specifications. The Lender should also verify that the person who will prepare the environmental assessment is a qualified professional. This consultant is not one of the third party contractors that is subject to HUD approval. Refer to Section 9.2 for qualifications of professionals. If a member of the Lender's staff or a contractor has been previously approved by a Hub, the Lender is required only to submit the names of the staff or contractor and note the prior approval. The Hub or Program Center retains the right to reject, for reasons given in writing, any member of the Lender's team for the particular loan application. The technical chapters of this Guide discuss reviewer's qualifications. Once a member of the Lender's staff, or a third party contractor, has been approved by one of the Department's Hubs, the lender need only submit the names of the staff or contractor and note this prior approval. This does not, however, give the lender the authority to use an appraiser that is not competent or not properly certified in the appropriate jurisdiction. The lender must insure that every appraisal contractor for every

application meets all requirements as outlined in Map Guide Section 7.3a, especially the USPAP Competency provision and jurisdictional certification requirements.

2. Names and resumes of the appraiser and/or market analyst should be submitted as soon as possible prior to the pre-application. The names of the architectural analyst and cost analyst should be submitted prior to the application for a Firm Commitment. For refinancing or purchase, the appraiser's resume should also be submitted prior to the application for the Firm Commitment. HUD has up to ten business days, after receipt of the names, to reject any principal staff member or consultant. If there is no notice from HUD within those ten days, the names are approved.

D. This Chapter covers, in Sections 2.2–2.7, the requirements imposed on Lenders so that they qualify to submit applications as MAP Lenders. Sections 2.8–2.9 briefly discuss the post-endorsement monitoring of MAP loans. Sections 2.10–2.15 describe termination of authority to use MAP, and it covers probation, which is a step short of termination.

E. Sale or Transfer of a MAP Application: The originating MAP Lender may sell or transfer a MAP application only upon receipt of a Firm Commitment. The application may only be sold to another MAP approved lender not currently subject to any suspension or Limited Denial of Participation penalties.

2.2 Lender Qualifications

A. HUD will announce a date after which LQMD will accept applications for approval as MAP Lenders. The announcement will also give the address and telephone number of LQMD.

B. The Lender prepares the application for approval as a MAP Lender. There is no required form for this application. Upon receipt of all the information specified in Section 2.6, LQMD has a goal of 30 days to act on the application.

C. The Deputy Assistant Secretary for Multifamily Housing will approve in writing each MAP Lender. The letter of approval accepted by the Lender constitutes an agreement between the Lender and HUD. The names of approved Lenders are posted by LQMD on the Internet.

D. LQMD may, instead, disapprove an application on the grounds that it has failed to meet the standards set forth in Section 2.3 of this chapter or that it has failed to provide sufficient information required in Section 2.6 of this chapter. LQMD may decide not to allow the Lender to participate in MAP until specified deficiencies are corrected. An appeal of a decision by LQMD to disapprove an application may be made to the Deputy Assistant Secretary for Multifamily Housing.

E. If the Lender's approval has been terminated, the Lender may not reapply for 12 months after termination. The Lender has an appeal of termination as stated in Section 2.10.B.

2.3 Standards Required for Qualification

Qualification as a MAP Lender is not intended to be a difficult or time-consuming process. It requires evidence that the Lender is an FHA-approved multifamily mortgagee, that it is financially sound, that it has on staff a principal employee or principal employees with multifamily underwriting experience, and that its record with FHA-insured or conventional multifamily loans has been satisfactory. The requirements are discussed in this section, as follows, and the required application exhibits are listed in Section 2.6, Application Package.

A. Evidence that the Lender is an FHA-approved multifamily mortgagee must be submitted.

B. The Lender must submit the most recent financial statement filed with the Federal Housing Administration which shows its net worth in excess of $250,000.

C. The Lender must not be subject to judgments in administrative claims or in lawsuits which would seriously affect its ability to do business. It must not unlawfully discriminate. Section 2.6 requires the Lender to report any lawsuits or judgments against it within the past three years. This includes any lawsuits or judgments of discrimination in employment or in lending practices.

D. Multifamily underwriting experience on staff is a key to MAP approval. The Lender must identify and have on staff a person or persons with at least three years of recent experience in multifamily underwriting. Over the three years the underwriter must have worked regularly in the multifamily lending business and have underwritten at least three loans which have actually been funded. The Underwriter must attend a MAP training session conducted by HUD before submitting an application or pre-application. An FHA mortgagee will not get MAP approval when it hires a multifamily underwriter on a contract basis for a particular loan application.

E. For Health Care Applications, the MAP underwriter must have within the previous five years experience in underwriting the development and operation/management of health care facilities. The underwriter's resume must demonstrate this specific experience and is submitted to the Lender Qualifications and Monitoring Division (LQMD) of the office of Multifamily Development in Headquarters for review and approval. Any MAP Lender, whose underwriter cannot demonstrate the necessary level of experience, must use Traditional Application Processing (TAP) Program when financing its health care facility.

F. In connection with its application showing experience of staff, the applicant must identify those persons who have the authority to underwrite loan applications under MAP and will sign the narrative summary in a loan application. The applicant must also identify the ownership of the Lender and also identify whose signatures may bind the Lender for any of its responsibilities under MAP.

G. FHA multifamily experience is not specifically required for initial approval as a MAP Lender, but, if the Lender lacks FHA experience for qualification, additional emphasis will

be placed on consistent and recent conventional multifamily lending experience. For any loan processed under MAP, the Lender must thoroughly understand FHA requirements for multifamily mortgage insurance.

H. A reason for rejection of an applicant for MAP qualification may be that the applicant has a recent history of assignments of FHA-insured loans. The reason for the assignment or assignments is subject to the evaluation of LQMD. Causes of assignments are difficult to measure because of the variety of reasons for assignments, such as unpredictable economic changes in the area, inadequate servicing or poor quality underwriting. LQMD will look primarily at any loan which the applicant has underwritten within the previous five years and which, since the loan was endorsed, has been assigned to HUD for insurance benefits. The purpose is to determine whether or not the applicant has been at fault in its origination of a loan that did not perform satisfactorily.

I. The applicant will submit a list of the Multifamily Hubs and Program Centers with which it has worked in the previous two years. LQMD will contact those Hubs or Program Centers to determine the experience of the Hub or Program Center in previous work with the applicant. Responses of the Hubs or Program Centers will be part of the file of LQMD for the particular applicant. A pattern of unsatisfactory applications for mortgage insurance at one or more Hubs or Program Centers may be grounds for rejection of the applicant as a MAP Lender.

J. It has long been common practice for lenders to use consultants, individuals and companies, to increase market share. The term consultant, as used here, applies to a mortgage broker, loan correspondent and packager.

Under Traditional Application Processing (TAP) and Multifamily Accelerated Processing (MAP) the role a consultant may play in processing a loan is different. This difference has lead to some confusion on the part of MAP Lenders and HUD Field Staff. Therefore, let me clearly restate what roles and relationships a consultant may or may not have under the TAP and MAP processes.

1. Under TAP

    a. The consultant refers new business to a lender including information supplied by a proposed mortgagor/sponsor.

    b. The consultant may provide a wide range of additional services to the lender. Field Offices may accept application packages, correspond with and rely on information submitted by the Consultant on behalf of the lender.

    c. The consultant's fee is paid from the mortgagee's fees.

d. The consultant cannot have any identity of interest with the mortgagor, sponsor or affiliated entity. HUD may permit an exception to the rule if:

(1) The consultant's regular business is brokering and processing loans; and

(2) The relationship is fully disclosed to and approved by HUD before an application for mortgage insurance is submitted to HUD.

1. Under MAP

a. The consultant's sole purpose is to refer new business to a MAP Lender including information supplied by a proposed mortgagor/sponsor.

b. The consultant's fee is paid from the mortgagee's fees.

c. The consultant cannot have any identity of interest with the mortgagee/sponsor or affiliated entity.

d. There is no additional role for the consultant. HUD only accepts application packages from, corresponds with and relies on information submitted by an approved MAP Lender. HUD staff only deals with employees of the MAP Lender and documents signed by the MAP Lender. In their applications for approval MAP Lenders submitted information on employees authorized to sign for them. MAP Lenders are authorized to hire third party contractors for appraisal, architecture and cost. The underwriter performs the mortgage credit function and must be a full time employee. The third party contractors cannot have any identity of interest with the mortgagor/sponsor or affiliated entity.

e. This should not be interpreted to mean that an approved MAP Lender couldn't underwrite a transaction and sell it to another MAP Lender before initial endorsement. See Section 1.4.C.8

2.4 Electronic Capability and Internet Access

HUD will post information on the Internet and will transmit messages to Lenders and to the lending community by e-mail, often with attached documents. Much of the information required by HUD may be submitted electronically. Therefore, it is a requirement that the Lender have Internet access and the capability of receiving and sending documents.

2.5 Identity of Interest

No financial or family relationship is permitted between an officer or partner of the MAP Lender, its principal staff or contract employees working on a particular application and, an officer, Director, or partner of the sponsor, the mortgagor, the principal of the mortgagors, the general contractor, subcontractor, or the seller of the land or property. Identify of Interest issues can be considerably complex and require a great deal of research to be properly answered. If there is a question about whether or not there is an identity of interest between the Lender and the mortgagor, contractor, and others, all questions and supporting documentation must be submitted to:

Lender Qualifications and Monitoring Division

Office of Multifamily Development

Room 6128

451 7th Street, SW

Washington, DC 20410

FAX Number: 202-708-3104

2.6 Application Package

No form has been developed for an application for approval as a MAP Lender, but the information submitted should include the following:

A. Exhibit A. Name of applicant, address, employer identification number, contact person or persons, telephone and fax number, e-mail address, branch offices for multifamily business with address, telephone and e-mail address.

B. Exhibit B. List of names an titles of those who are authorized to bind the Lender in matters involving the application, underwriting and origination of insured mortgages under MAP.

C. Exhibit C. Type of mortgagee, (e.g., supervised or non-supervised) type of legal structure (e.g., general corporation, limited liability corporation, partnership, housing finance agency or other), whether or not a subsidiary of another company and, if so, identification of the parent company.

D. Exhibit D. Copy of letter of approval/HUD approved Form HUD-92001 evidencing approval as an FHA approved multifamily mortgagee as well as the copy of the most recent Yearly Verification Report submitted to the Lender Approval Division.

F. Exhibit E. Copy of most recent financial statements submitted to HQ Lender Approval Division (not applicable to supervised mortgagees).

F. Exhibit F. Narrative discussion of the applicant's method of operation in multifamily lending. This would include whether or not it acts as a mortgage banker servicing loans, or an originator selling commitments or loans to others, whether it originates or holds loans in its portfolio of purchases loans from others, or both, experience in construction loan administration, the number, location and staffing of branch offices it operates, and any other information the applicant deems relevant in providing a clear picture of its business.

G. Exhibit G. Experience of the applicant in multifamily loan or origination, both conventional and FHA insured. List the FHA insured loans for which applicant has received firm commitments in the last 5 years and the number, name, location, original amount, HUD Office where processed and whether or not the loan is in default, an election to assign the loan to FHA for insurance benefits has been filed or the loan has been assigned to FHA. The extent of conventional lending may be summarized rather than listing each conventional mortgage originated in the last 5 years. It is important to cover the summary the extent of conventional multifamily experience, the estimated extent to which construction loan financing was involved and the number and percentage of defaults and foreclosures. If an FHA or conventional loan was sold since origination and is serviced by another lender, please list it. Please report, if you know, whether or not the sold loan is in default, foreclosure or if assigned to FHA for insurance benefits. Default for these purposes means a loan whose payment is more than 60 days overdue.

H. Exhibit H. Narrative discussion explaining any elections to assign FHA loans for insurance benefits where initial endorsement of the FHA loans occurred after May 1, 1995.

I. Exhibit I. Resumes of the staff who will be responsible for the applicant's submission of a MAP loan application which demonstrate that the staff has the required multifamily experience. Underwriter(s) must evidence a minimum 3 years recent experience, worked regularly in the multifamily lending business and underwritten at least 3 loans which have actually been funded. If multifamily experience is all conventional, provide evidence of understanding of FHA multifamily mortgage insurance origination requirements. For Health Care applications, the underwriter must have within the previous 5 years experience in underwriting the development and operation/management of health care facilities.

J. Exhibit J. Experience in construction loan administration if intending to perform construction loan administration. Identify those persons authorized to sign advances, construction change orders and escrow releases.

K. Exhibit K. Information regarding:

1. Lawsuits/claims/judgments filed or issued in the last 3 years against the applicant.

    a. Which concern equal employment or Lender discrimination prohibited by law, or

    b. Which are a result of, or might affect significantly affect its multifamily lending business.

2. Any criminal charges brought against the applicant related to the mortgage lending business.

L. Exhibit L. Certification by the Lender that it will certify with each preapplication and application for mortgage insurance that it is in compliance with the identity of interest provisions in the MAP Guide which will provide that, "No financial or family relationship is permitted between an officer, director or partner of the MAP lender, its principal staff or contract employees working on a particularly application and an officer, director or partner of the sponsor, the mortgagor, the principals of the mortgagor, the general contractor, subcontractors or seller of the land or property."

M. Exhibit M. Agreement that the Lender will open its files and records on FHA applications to monitoring by HUD staff, including the office of Inspector General.

2.7 Limitation on Requirements

A. There is no requirement for additional net worth requirements for a MAP Lender. All FHA-approved multifamily Lenders must have an adjusted net worth of not less than $250,000.

B. There is no fee required by HUD for qualifying (or deciding not to qualify) a MAP Lender.

C. There is no requirement that approved MAP Lenders notify LQMD if there has been a staff change. MAP Lenders are expected to maintain or improve the level of experience or the number of experienced staff members. The LQMD does not approve or disapprove of individuals working for MAP Lenders, but expects the MAP Lender to be certain that its staff meets the qualifications. If, for example, the Lender loses its staff underwriter, it must immediately replace him or her.

D. MAP Lenders must notify LQMD if there has been a change of address of the home office for multifamily business, e-mail address, telephone number, ownership, or if the Lender has a material change in the way of doing business. MAP Lenders must also notify LQMD if they withdraw as MAP Lenders, whether temporarily or not.

2.8 Agreement to Accept Monitoring

The applicant for MAP Lender approval agrees that, if it is approved, it will make its files and records available to HUD or HUD's authorized contractors for such monitoring of MAP processed loans as HUD wishes to make. The origination files should be maintained for 10 years by the Lender even though the loan itself may be sold to another entity. LQMD will provide further information at a later date regarding files to be retained.

2.9 Monitoring by LQMD

A. MAP Lenders are subject to monitoring and periodic on-site reviews by LQMD to verify for MAP HUD committed loans in processing by the Lender or HUD endorsed that:

1. The Lender adheres to statutory, regulatory and MAP Guide requirements.
2. The Lender's underwriting decisions are consistent with HUD requirements in the MAP Guide.
3. The Lender's technical processing is consistent with HUD requirements in the MAP Guide.
4. The Lender has complied with the conditions of the Firm Commitment and the requirements of initial endorsement (and final endorsement).
5. The Lender has complied with the requirements of construction loan administration set forth in the MAP Guide.

B. LQMD will not begin reviews of origination documentation until after the Lender's first MAP Firm Commitment has been endorsed for mortgage insurance. Any loan may be reviewed for up to three years after final endorsement.

C. If there has been fraud or misrepresentation, HUD reserves its legal rights under the contract of mortgage insurance and Mortgagee Review Board requirements.

D. The review by LQMD is not a substitute for other periodic audits and reviews by HUD, including a financial management review and a review of the Lender's quality control plan as required by HUD Handbook 4060.1 "Mortgagee Approval Handbook."

2.10 Termination or Probation of a MAP Lender: Overview

A. By authorizing a MAP Lender to prepare much of the documentation for a loan submission for mortgage insurance, HUD places confidence in the Lender's integrity and competence. If in the process of performing this work, the Lender places HUD at risk, HUD needs to terminate the Lender's authority to use the MAP process as quickly as possible. If a Lender's authority to use MAP is terminated, the Lender may still have loan applications for mortgage insurance processed in the traditional way by HUD staff.

B. The decision to terminate a Lender will be made by a three-member panel of HUD officials, called the MAP Review Panel. Recommendations for termination or probation will come either from LQMD, on the basis of its monitoring responsibilities, or from a Hub Director, on the basis of the Lender's performance. A Hub Director's recommendation for termination should be sent to the Director of LQMD for review before going to the MAP Review Panel. When the Review Panel makes its decision for termination, the decision takes effect immediately and the industry and Hub offices are notified by a posting on the web. There is,

however, an appeal allowed to the Deputy Assistant Secretary for Multifamily Housing who may confirm, modify, or overturn the Panel's decision.

C. LQMD or a Hub Director may place a Lender on probation for inadequate underwriting or poor construction administration, which does not seriously affect HUD's risk of loss, but needs to be corrected. Probation is limited by time or conditioned upon the Lender meeting a specific requirement or requirements to the satisfaction of LQMD or the Hub Director. Prolonged probation may lead to a recommendation for termination.

2.11 MAP Review Panel

A. The decision to terminate approval of a MAP Lender shall be made by a MAP Review Panel. The Panel shall consist of three HUD officials designated by the Deputy Assistant Secretary for Multifamily Housing. The three officials may serve on a continuing basis or may be chosen for the particular review, as the Deputy Assistant Secretary for Multifamily Housing determines. No Panel member shall also be the Hub Director making the recommendation. Neither the LQMD_Director nor LQMD staff shall be eligible as Panel members. Panel members are expected to have a good knowledge of multifamily housing origination and underwriting procedures. Panel members shall have no prior business affiliation or other conflicts of interest with the Lender under review.

B. The Panel is charged with an impartial review of the information submitted by the Director of the OQA or by the Hub Director through the Director of OQA. It may request further information from the Director of the OQA or from the Hub Director. If it chooses, it may invite, receive and review information submitted by the Lender.

C. It should be noted that MAP Review Panel's deliberations are not intended as an administrative hearing. MAP approval represents an agreement between HUD and the Lender to allow a Lender to use accelerated processing. The agreement may be terminated voluntarily by the Lender, or HUD may terminate that opportunity if it believes that the Lender has breached its responsibilities under MAP.

D. A prompt decision is important. When the MAP Review Panel has received the information that it needs, it has a goal of making its decision within ten working days of the receipt of the information.

2.12 Recommendations for Termination

A. A Hub Director may discuss with a MAP Lender at any time any reasons HUD has to consider improvements necessary to assure that the Lender is using its MAP authority correctly. If the Director determines that there are serious concerns about the Lender's underwriting, but HUD's risk is not directly and adversely affected, the Director may put the Lender on probation, discussed in Section 2.16, below. If the Director believes that there are

serious concerns about the Lender's underwriting and that HUD's risk will be directly and adversely affected, the Director may make the recommendation for termination to the Director of LQMD for review and submittal to the MAP Review Panel. The Program Center Director recommendation goes to the Hub Director (see Section 2.12.C) for recommendation.

B. As a result of its review of loans already committed, the Director of LQMD may also place a Lender on probation when the review of the Lender's documentation, or lack of documentation, for the pre-application stage or the application for a Firm Commitment indicates reasons for serious concern that does not adversely affect HUD's risk. If the serious concerns directly and adversely affect HUD's risk, the Director of LQMD may make a recommendation to the MAP Review Panel for termination.

C. Although a Program Center Director may initiate a recommendation for probation or termination, that action for probation or recommendation for termination must be made by the Hub Director responsible for the Program Center.

D. Reasons for serious concern about the Lender's underwriting will be determined by the Hub Director or the Director of LQMD, but may include the following examples, particularly when there is a pattern or practice of unacceptable performance over several applications:

1. Failure to provide required exhibits or the submission of incomplete or inaccurate exhibits. Although the Lender will be permitted to correct minor errors or provide additional information, substantial inaccuracies or lack of significant information will result in a return of the application and retention of any fee collected.
2. Preparation of an underwriting summary that is not supported by the appropriate documentation and analysis.
3. Failure to notify the HUD processing office promptly of changes in the mortgage loan application for a Firm Commitment submitted, such as change in rents, numbers of units, or gross project area.
4. Failure to meet MAP closing requirements or construction loan administration requirements.
5. Fraud or misrepresentation.
6. Repeated failure to complete processing to Firm Commitment.
7. Evidence that a Lender's inadequate or inaccurate underwriting was a cause for assignment of an FHA-insured mortgage loan for insurance benefits.

E. Post-endorsement monitoring, discussed in Sections 2.8–2.9 of this chapter, may result in a recommendation by the Director of LQMD that the Lender's MAP designation be terminated.

A. Probation

1. As noted in the previous section of this chapter, the Hub Director or the Director of Multifamily Housing Development may place a Lender's MAP designation in a probationary status. Probation is limited by time or conditioned upon the Lender meeting a specific requirement or requirements, such as replacement of a staff member, or both. When the specific requirement or requirements are met to the satisfaction of the Director placing the Lender on probation, the probation period may be ended and the Lender may resume its activities and responsibilities as a MAP Lender.

2. During the period that a MAP Lender is on probation, it may not submit materials for new pre-application reviews or new applications for Firm Commitments for FHA multifamily mortgage insurance under MAP. It may, however, continue to process applications which were initiated by the submission of exhibits to a HUD processing office prior to the probation date.

3. Probation shall last until the problems justifying probation are corrected to the satisfaction of the Hub Director, or, if probation has been imposed by the Director of Multifamily Housing Development, to the satisfaction of the Director of Multifamily Housing Development.

4. Probation initiated by a Hub Director is limited to the Lender's activities in the geographical area of the Hub and its Program offices. Probation initiated by the Director LQMD shall be on a national basis unless the LQMD Director determines that probation should apply only in a geographically restricted area. Notice of probation, whether limited to a geographical area or national, shall be posted on the web. When probation is lifted, that information shall also be posted promptly on the web.

B. Termination

1. As noted earlier in this chapter, either the Hub Director or the Director of the LQMD may make a recommendation to the MAP Review Panel for termination of a Lender's MAP approval. The Hub Director's recommendation for termination is forwarded to the LQMD Director for review and forwarding to the MAP Review Panel. When the Review Panel makes a decision for termination effective on a specific date, the MAP Lender may not initiate any new applications for FHA multifamily mortgage insurance under MAP, including exhibits for a pre-application review. Any pending applications which are being processed at the time of termination may no longer be processed under MAP. The Lender will either have to transfer the application for processing to another MAP Lender or continue with the application using traditional HUD processing. If traditional processing is used, the Hub or Program Center may require that the process start from the beginning.

2. An application for reinstatement of MAP authority may not be made until at least 12 months after the date of termination. The requirements for reinstatement shall be similar to initial qualification, discussed in Sections 2.3 and 2.6 of this chapter, and the applicant must show that the problems which led to termination have been resolved to the satisfaction of LQMD.

2.14 Appeals

A. When a MAP Lender has been placed in a probationary status, it may appeal this decision to the Deputy Assistant Secretary for Multifamily Housing. When a MAP Lender's approval has been terminated by the MAP Review Panel, the decision of the Panel may be appealed to the Deputy Assistant Secretary for Multifamily Housing. The request for the appeal must be made within 30 calendar days of the date the Lender was either placed in probation or the effective date for termination as determined by the MAP Review Panel.

B. If the decision is appealed, the Hub Director, LQMD Director, or MAP Review Panel will present to the Deputy Assistant Secretary for Multifamily Housing the evidence on which the Director or Panel made its decision, and the Lender may present such relevant evidence as it wishes. The presentation of evidence and any other relevant information shall be submitted with 30 days of the Lender's request for review. The Deputy Assistant Secretary will make his or her decision within 30 days after receiving the evidence from the Panel or the Director.

C. If the Deputy Assistant Secretary for Multifamily Housing reverses the Panel's or Director's decision, the Lender shall immediately return to an active status as a MAP Lender. The active status of the MAP Lender will be posted on the HUD web.

2.15 Referral to the Mortgagee Review Board or the Inspector General

If the LQMD or the Hub Director determines that a MAP Lender's actions or failure to act appears to be a compliance matter justifying action by the Mortgagee Review Board to penalize the Lender, including possible removal of its authority to do business as an FHA Lender, a referral of the matter should be made to the Mortgagee Review Board. If the issue involves possible fraud, misrepresentation or other criminal violations, then the matter should be referred to the Office of Inspector General.

Chapter 3

Eligible Multifamily Mortgage Insurance Programs

3.1 Introduction

This chapter contains the basic program requirements for the HUD/FHA multifamily mortgage insurance programs for which MAP Lenders can submit pre-applications and Firm Commitment applications. Other multifamily mortgage insurance programs such as Section 241 Supplementary Financing for Insured Project Mortgages are eligible under TAP or Traditional Application Processing and where local Hub and Program Centers offer fast track processing of this program. Section 241 and other multifamily insured programs will be added to MAP in the future.

3.2 General

The following requirements or program features apply to *all* HUD mortgage insurance programs:

A. Regulatory Agreement. All mortgagors must execute a HUD regulatory agreement governing the operation of the project. The regulatory agreement will be recorded at initial endorsement.

B. Sole asset. The mortgaged property must be the only asset of the mortgagor (borrower).

C. Non-recourse. The HUD mortgage note may contain a non-recourse provision, if the Lender agrees. (See Section 12.1.10 for exculpatory language.)

D. Fixed interest rate. The interest rate on a HUD insured loan is negotiated between the mortgagor and mortgagee and must be fixed for the term of the mortgage. The interest rate is fixed at initial endorsement for Insurance of Advances cases and at the start of construction for Insurance Upon Completion cases. For mortgage increases, a higher or lower rate may be fixed for the *increase only*.

E. Amortization plan. All HUD insured mortgages must be amortized through a level annuity monthly payment plan (LAMP), which requires equal monthly payments of principal and interest. LAMP variations are permissible for transactions involving bond financing and/or tax abatement.

F. HUD application fee. The HUD Firm Commitment application fee is $3 per thousand of requested mortgage amount.

G. HUD inspection fee. The HUD inspection fee is $5 per thousand of mortgage amount for new construction and $5 per thousand of improvement costs for substantial rehabilitation. The inspection fee for loans insured pursuant to Section 223(f) is

1. $30 per unit where the repairs are $3,000 or less per unit.
2. 1% of the cost of repairs where repairs are more than $3,000 per unit or the loan is insured under 232/223(f).

H. HUD mortgage insurance premium. The HUD construction and annual mortgage insurance premiums are based on a percentage of the mortgage amount and may vary, depending on the type of project mortgage. The initial premium is payable in advance at initial endorsement/loan closing.

I. Mortgagee fees and charges. The maximum financing fee the Lender may charge is 3.5% of the mortgage amount. (Higher fees up to 5.5% are permissible in bond transactions, for all MAP eligible programs. See Chapter 8 for details.) MAP Lenders can include Third Party costs as a mortgagable soft costs in the mortgage calculations. Include Third Party costs, i.e., appraisal, market study, PCNA, with Other Organization Costs, if any, in Section G., line 65 of Form HUD 92264. Third Party costs are included in the calculation of BSPRA where it is applicable. On the Form HUD-92264 HCF include Third Party costs along with any Organization Costs under Section H., Line 32.

The MAP Lender's Third Party Costs, reflected in Organization Costs are exempted from the 65 % initial endorsement disbursement rule. The rule only applies to the mortgagor's organizational costs.

J. Fair Housing and Equal Opportunity. Mortgagors and all contractors and subcontractors must comply with all HUD Fair Housing and Equal Opportunity requirements, including selection of occupants, employment, physical and programmatic accessibility (See 24 CFR Part 100 and subsequent sections), and "Affirmative Fair Housing Marketing" (24 CFR Part 200.600 and Handbook 8025.1 Revision 2).

K. Previous Participation. All principals in the proposed transaction must submit detailed information on Form 2530 regarding previous participation in governmental housing transactions in order to be approved by HUD for participation in any program of mortgage insurance.

L. Occupancy. Except in the case of a project specifically designed exclusively for the elderly (age 62 and over) or insured under Section 232, the mortgagor must certify that it will not discriminate against families with children.

M. HUD's Fiscal Procedures are contained in HUD Handbook 4410.1 Revision 2.

N. Bridge or Gap Financing. This is generally defined as, a loan spanning the gap between the termination of a short-term loan and the start of another long-term loan and is permitted as long as any recent indebtedness placed against the project was not in an effort to increase the mortgage or circumvent outstanding policy.

O. Transient Housing/Hotel Services Prohibition. Section 513 of the National Housing Act prohibits the use of the mortgage insurance programs for transient or hotel purposes. Leases for less than 30 days are prohibited. The mortgagor cannot execute leases for less than 30 days nor provide occupants with hotel services such as maid service, furnishing and laundering of linens, room service and bellboys.

P. Small Properties. Small properties may be processed using MAP, however, there are no special processing procedures for these projects.

3.3 New Construction/ Substantial Rehabilitation Multifamily Rental Apartments: Eligible Programs – Sections 221(d)(4), 221(d)(3), and 220

MAP Lenders can submit requests for pre-application review and Firm Commitment applications for the following programs

- Section 221(d)(4): general
- Section 221(d)(3): nonprofit mortgagor only
- Section 220: private or public

Condominium project mortgages (under Section 234(d)) and Cooperatives (under Section 213 or Section 221(d)(3)) are not currently eligible for MAP review procedures. Programs that are not currently covered by MAP may still be processed using the applicable processing center's TAP or pre-MAP FASTRACK Guidelines until such time as MAP is expanded to include that program.

3.4 New Construction/Substantial Rehabilitation Multifamily Rental Apartments: Requirements and Program Features

A. HUD can insure loans for 5 or more residential units with complete kitchens and baths for both the construction and permanent loan (called Insurance of Advances) or just the permanent loan (called Insurance Upon Completion).

B. New Construction: generally, proposed construction of improvements where no work has been done to the site prior to the initial endorsement of the loan.

   1. Work can begin after issuance of a HUD Firm Commitment with specific approval case-by-case from the HUD Field Office using the Early Construction Start process.

   2. Construction may not start on Insurance Upon Completion projects until issuance of a Firm Commitment.

C. Substantial Rehabilitation: a property qualifies as substantial rehabilitation if it meets one of the following criteria:

   1. The cost of repairs, replacements and improvements exceeds the *greater* of 15% of the estimated replacement cost after completion of all repairs, replacements, and improvements, or $6500 per unit adjusted by the local HUD Field Office high cost percentage for that area, *or*

   2. Two or more major building components are being substantially replaced. Additions are permitted in substantial rehabilitation projects, but the costs for the additions of new units (not building component additions) are *not* included in the eligibility test.

D. Mortgage Term. The maximum term is 40 years or ¾ of the remaining economic life of the property.

E. Prepayment Restrictions. HUD permits prepayment restrictions in connection with the financing. (See Appendix.)

F. Cost certification. The mortgagor is required to submit a cost certification prepared by an independent public accountant upon completion of construction or substantial rehabilitation. The amount of mortgage that is finally endorsed for insurance by HUD after completion of construction can be reduced based upon HUD review of the cost certified amounts. The general contractor is also required to submit a cost certification if there is an identity of interest with the mortgagor. Identity of interest subcontractors are also required to cost certify.

G. Federal Labor Standards. The general contractor and any subcontractors are required to comply with federal wage and reporting requirements, including the payment of prevailing wage rates and the submission of weekly certified payroll reports (Prevailing wage schedules may be obtained from the HUD Field Office).

H. Liens/secondary financing. The National Housing Act requires HUD insured mortgages to be first liens. Secondary liens are permissible in the case of other HUD insured second mortgages (supplemental loans and operating loss loans) and other loans. (See Chapter 8 for complete details on secondary financing.)

I. Commercial space. Commercial facilities adequate to serve the needs of the project's occupants may be included. Commercial space is limited to 10% of the gross floor area of

the project and commercial income is limited to 15% of gross income (higher percentages are permissible under section 220; see Section 3.7).

J. Military Impacted areas. HUD is prohibited from providing mortgage insurance in military impacted areas unless HUD determines that demand from nonmilitary households is sufficient to sustain occupancy in both the HUD-insured projects and the market as a whole. Section 238(c) of the National Housing Act authorizes insurance in military impacted areas upon certain findings by the Department of Defense and HUD Headquarters. Section 238(c) loans are not eligible for MAP review. In such areas, mortgagors should be encouraged to contact the Department of Defense for other potential programs administered by DOD which could provide other sources of financing for the proposed projects. Such projects can also be reviewed using the traditional HUD mortgage insurance review process under Section 238(c).

K. Student Housing. Projects financed with insured mortgages cannot be designed for student occupancy (e.g., 4 bedroom units with 4 baths.) Students and families are eligible occupants for family housing financed with mortgage insurance. However, project mortgages in college areas must be underwritten at comparable rents for family housing in the area. Loans cannot be underwritten with rental rates assuming multiple student occupants which would result in a processing rent higher than a typical family apartment.

L. Real estate requirements. The HUD insured mortgage must be on real estate:

1. held in fee simple, or
2. under a lease for not less than 99 years which is renewable beyond that; or
3. under a lease having a period of not less than 10 years to run from the maturity date of the mortgage.

M. Assurance of Completion. The mortgagor shall provide for assurance of completion of the project in forms approved by HUD.

1. For non-elevator or three story or less elevator buildings where the cost of construction or rehabilitation is more than $500,000, the assurance shall be in the form of corporate surety bonds for payment and performance, each in the amount of 100% of HUD's estimate of construction or rehabilitation cost including an imposed builder's profit on BSPRA transactions. As an option, HUD would accept a completion assurance agreement secured by a cash deposit or Letter of Credit in the amount of 15% of the HUD estimate of construction or rehabilitation cost.
2. For elevator buildings of 4 stories or more, the assurance shall be in the form of corporate surety bonds for payment and performance, each in the amount of 100% of HUD's estimate of construction or rehabilitation cost including an imposed builder's profit on BSPRA transactions.. As an option, HUD would accept a completion assurance agreement secured by a cash deposit or Letter of Credit in the amount of 25% of HUD's estimate of construction or rehabilitation cost. The mortgagee may provide more stringent requirements.

3.5 Section 221(d)(4)

In addition to the general requirements in Sections 3.2, 3.3, and 3.4, the following requirements apply to Section 221(d)(4) projects:

A. Builder and Sponsor's Profit and Risk Allowance (BSPRA). The BSPRA allowance is used as a credit against the mortgagor's required equity contribution. To use BSPRA there must be an identity of interest between the mortgagor and general contractor. There is no builder profit contained in the mortgage calculation. For new construction, BSPRA is 10% of the estimated cost of on site improvements; structures; general requirements; general overhead; architect's fees; carrying charges and financing; legal, organizational and audit expenses (total of lines 50, 63 and 67), exclusive of land. For substantial rehabilitation BSPRA is no more than 10% of the above costs exclusive of the as is value of the existing structure.

B. Sponsor's Profit and Risk Allowance (SPRA). An amount included in replacement cost where no identity of interest exists between the general contractor and mortgagor. SPRA is no more than 10% of the total estimated cost of: architect's fees, carrying and financing charges, legal, organizational, and audit expenses.

C. Elderly Developments. Apartments specifically designed for the elderly (age 62 and over) are permitted as long as they do not contain the mandatory meals and services, central kitchens and dining areas, and non-shelter spaces associated with retirement service centers. No non-shelter services may be made a mandatory condition of occupancy. Charges for any optional services must be reviewed by the MAP Lender and approved by HUD for reasonableness. Institutional central kitchens are not permitted, nor may the project provide meal services on either a mandatory or optional basis. This prohibition does not preclude the installation of modest (non-luxury) equipment in a common use kitchen (for example, sink, stove, or refrigerator) in a non-shelter space for use of tenants or by outside entities providing catered meals.

D. Maximum mortgage limitations. In general, the maximum insurable mortgage is limited to the *lesser of*:

   1. 90% of HUD estimated replacement cost (new construction) or 90% of the sum of the HUD estimated cost of repair and rehabilitation and the as is value of the property (substantial rehabilitation).
   2. A mortgage amount supported by 1.1 debt service coverage (90% of net income).
   3. Statutory per unit limitations, adjusted by the Field Office high cost percentage.

   (See Chapter 8 for complete details.)

3.6 Section 221(d)(3)

In addition to the general requirements in Sections 3.2, 3.3, and 3.4, the following requirements apply to Section 221(d)(3):

A. Nonprofit sponsor/mortgagors only. MAP review of Section 221(d)(3) insured loans is limited to nonprofit mortgagors, defined as corporations or associations organized for purposes other than profit or gain for itself or persons identified therewith and which HUD finds is in no way controlled by or under the direction or persons or firms seeking to derive profit or gain there from. Generally, such mortgagors are required to be chartered under Chapter 501(c)(3) of the Internal Revenue Code. HUD will review in detail the relationships between the nonprofit sponsor/mortgagor and profit motivated entities involved in the transaction. HUD will not insure Section 221(d)(3) transactions unless the nonprofit has the financial capacity and experience to own and operate the project successfully and is not under the direction or control of the profit motivated entities involved. A Headquarters review is required on all Section 221(d)(3) MAP and TAP firm commitment processing prior to the issuance of the firm commitment. The following documents must be submitted to the Office of Multifamily Development for review:

1. Form 3433, Request for Preliminary Determination of Eligibility as Nonprofit Sponsor/Mortgagor, and supplemental documents.

    a. Detailed explanation of motivation for sponsoring the project.

    b. A copy of the sponsor/mortgagor/s charger and bylaws or constitution as currently amended.

    c. Copy of current effect ruling from the Internal Revenue Service on sponsor/mortgagor's tax exempt status. (Copy of any ruling denying tax exemption and or if a ruling is pending, explain the application's legal and factual basis and current status).

    d. List of officers, directors or trustees of the sponsoring group/mortgagor including addresses and titles of positions and their social security numbers.

    e. Resumes on all principals and staff who will actively take part in the development of the proposed project.

    f. Current financial statement (balance sheet, profit and loss statement, and supporting schedules) as well as statements or the past 3 years if available.

    g. Signed written resolution of its directors or trustees, acknowledging the responsibilities and obligations of sponsorship and continuing ownership, and that this position reflects the will of the membership.

h. Form HUD-92013 Supp listing current bank and trade references for the sponsor, mortgagor, if formed and their officers (President, Vice President, Secretary, Treasury).

i. The information from the sponsor, mortgagor or any officer concerning prior Federal default or claim, if applicable.

j. Detailed statement of arrangements made or proposed for the following, (listing the principles involved, their relationship with the sponsor/mortgagor, the terms of the arrangements and a description of the circumstances surrounding each):

1. land on which the project will be built

2. Project construction, including selection of general contractor, subcontractors and architect.

3. Legal and consulting services.

4. Project financing, including any discounts.

2. Description of who is paying pre-development cost

3. Any proposed rent/income restrictions

4. Copy of Form FHA-2013, Application for Mortgage Insurance

5. Forms HUD-3434, Certificate of Relationships and Nonprofit Motives and HUD-3435, Certificate of Contractual Relationships.

6. Developers Agreement or any other document which shows the relationship and work responsibilities of all parties associated with the transaction.

7. Housing Consultant's Contract, if applicable.

8. Site control

9. Memorandum of Findings and Recommendations.

B. Elderly Developments. Apartments may be specifically designed for the elderly (age 62 and over) but may not contain the mandatory meals and services, central kitchens, dining areas, and non-shelter services associated with retirement service centers. No non-shelter services may be made a mandatory condition of occupancy. Charges for any optional services must be reviewed by the MAP Lender and approved by the Field Office for reasonableness.

Institutional central kitchens are not permitted, nor may the project provide meal services on either a mandatory or optional basis. This prohibition does not preclude the installation of modest (non-luxury) equipment in a common use kitchen (for example, sink, stove, or refrigerator) in a non-shelter space for use of tenants or by outside entities providing catered meals.

C. Maximum mortgage limitations. In general, the HUD maximum insurable mortgage is limited to *the lesser of*:

1. 100% of HUD estimated replacement cost (new construction) or 100% of the sum of the HUD estimated cost of repair and rehabilitation and the as is value of the property (substantial rehabilitation).
2. A mortgage amount supported by 1.05 debt service coverage (95% of net income).
3. Statutory per unit limitations, adjusted by the Field Office high cost percentage. (See Chapter 8 for complete details.)

D. Prepayments. A 221(d)(3) mortgage with a nonprofit borrower cannot be prepaid in full without the prior approval of HUD.

3.7 Section 220

In addition to the general requirements in Sections 3.2, 3.3, and 3.4, the following requirements apply to Section 220:

A. Eligible areas. The property must be located in one of the following:

1. Existing slum clearance and urban redevelopment projects covered by a Federal aid contract before the effective date of the Housing Act of 1954.
2. An approved urban renewal area under Title I of the Housing Act of 1949.
3. Disaster urban renewal projects assisted under Section III of the Housing Act of 1949 as amended.
4. An area of concentrated code enforcement being carried out under Section 117 of the Housing Act of 1949.
5. A concentrated development area, approved by the HUD Field Office, in which concentrated housing, physical development and public service activities are being carried out in a coordinated manner, pursuant to a locally developed strategy for neighborhood improvement, conservation or preservation. The locally developed strategy shall:

   a. Provide for a combination of physical improvements, necessary public facilities and services, housing programs, private investment and citizen self-help activities appropriate to the needs of the area.

b. Coordinate public and private development efforts;

c. Provide sufficient resources to produce substantial long term improvements in the area within a reasonable amount of time, taking into account the severity of the area's problems.

B. Commercial Facilities. Commercial space may be included which is intended to serve the needs of the project residents and other residents of the area. Commercial space is limited to 20% of gross project area and commercial income to 30% of gross income.

C. Maximum mortgage limitations. In general, the HUD maximum insurable mortgage is limited to *the lesser of*:

1. 90% of HUD estimated replacement cost (new construction) and 90% of the sum of the HUD estimated cost of repairs and rehabilitation and the as is value of the property (substantial rehabilitation).

2. A mortgage amount supported by 1.1 debt service coverage (90% of net income).

3. Statutory per unit limits, adjusted by the Field Office high cost percentage. (See Chapter 8 for complete details.)

D. Builder/ Sponsor Profit and Risk Allowance (BSPRA). See definition of BSPRA in section 3.5 above.

E. Sponsor Profit and Risk Allowance (SPRA). See definition of SPRA in section 3.5 above.

F. Elderly Developments. Apartments specifically designed for the elderly and/or limited to elderly occupancy are *not* permitted under this section.

3.8 Acquisition/Refinancing of Existing Apartments - Section 223(f)

In addition to the general requirements in Section 3.2, the following requirements apply to Section 223(f) when used for acquisition or refinancing. (Any property acquired before the date of the mortgage insurance application shall be treated as a refinance transaction. Any property acquired after the date of the mortgage insurance application shall be treated as a purchase. In a purchase transaction, any identity of interest, however slight, between seller and purchaser requires the application to be processed as a refinance.)

A. Eligible Property. The property must contain at least 5 residential units with complete kitchens and baths, and have been completed or substantially rehabilitated for at least 3 years prior to the date of application for mortgage insurance. Properties that were constructed or

substantially rehabilitated with HUD-insured multifamily mortgages that have been completed with the latent defects guarantee period expired, are exempt from the 3-year rule.

B. Ineligible properties.

1. Manufactured home parks are not eligible under this section.
2. Properties whose required repairs are so extensive that they meet the threshold for substantial rehabilitation are not eligible under this Section.

C. Repairs. Critical repairs must be performed prior to HUD endorsement of the mortgage. Non-critical repairs, approved by HUD, may be completed after endorsement with appropriate financial escrows at closing. Required repairs cannot be so extensive as to constitute substantial rehabilitation.

D. Elderly developments. Purchase or refinancing of existing apartments specifically designed for the elderly (age 62 and over) may be permitted under this program but may not contain the mandatory meals and services associated with retirement service centers. No non-shelter services can be a mandatory condition of occupancy and must be reviewed by the MAP Lender and approved by the Field Office for reasonableness. Non-shelter spaces already constructed for projects with current HUD-insured mortgages may include formal dining areas with meal services to be provided on an optional basis. Projects may provide modest kitchen equipment in a non-shelter space.

E. Prior Defaults/Claims. HUD does not prohibit applications for mortgage insurance for formerly HUD-held loans. However, HUD is not obligated to accept or process any mortgage insurance application with a borrower/principal who has not proven to be a good business partner. MAP Lenders should accept such applications only after they have considered and documented the economic, physical, operational, or management factors that led to the specific changes that have occurred which would justify new mortgage insurance. Early consultation with the field staff is strongly recommended since HUD will be very concerned with past experience of the loan and borrower/principal including Regulatory Agreement compliance.

F. Labor standards. Davis Bacon prevailing wage requirements do not apply to this program.

G. Insurance Upon Completion Only. HUD will insure only the permanent loan under this program.

H. Prepayment Provisions and Prohibition. The National Housing Act prohibits prepayment of loans insured under Section 223(f) for 5 years from the date of endorsement for insurance except where at the time of prepayment:

1. The mortgagor has entered into an agreement with HUD to maintain the property as rental housing for the remainder of the specified 5 year term;

2. HUD has determined that the conversion of the property to cooperative or condominium ownership is sponsored by a bona fide tenants organization representing the majority of households in the project;
3. HUD has determined that continuation of the property as rental housing is unnecessary to assure adequate rental housing for low and moderate income people in the community; or
4. HUD has determined that continuation of the property as rental housing would have an undesirable and deleterious effect on the community. (For specific prepayment provisions, see Appendix.)

I. Eligible Mortgagors. Both profit motivated and nonprofit borrowers are eligible mortgagors.

J. Ineligible Mortgagors. Condominium mortgagors are not eligible for this program.

K. Maximum mortgage limitations. In general the maximum mortgage limitations for the Section 223(f) program are as follows:

1. For a purchase transaction, *the lesser of* :
   a. 85% of HUD appraised value,
   c. 85% of acquisition cost,

   c. Section 207 statutory per unit limits, adjusted by the local Field Office high cost percentage for the locality, or
   d. A mortgage amount supported by 1.1765 debt coverage (85% of net income).
2. For a refinance transaction, *the lesser of:*
   a. 85% of HUD appraised value,
   b. Section 207 statutory per unit limits, adjusted by the local Field Office high cost percentage for the locality,
   c. A mortgage amount supported by 1.1765 debt coverage (85% of net income).
   d. The greater of the cost to refinance or 80% of HUD appraised value

(See Chapter 8 for complete details.)

L. Reserve for Replacements. HUD requires deposits to the Reserve for Replacements. (See Chapter 7 for the actual calculations.)

M. Secondary financing. HUD permits secondary financing on section 223(f) loans under certain conditions. (See Chapter 8 for complete details.)

N. Commercial space. Commercial area shall not exceed 20% of the total net rentable area of the project and commercial income shall not exceed 20% of effective gross income.

O. Real estate requirements. The mortgage shall be on real estate held:

1. in fee simple; or
2. under a lease for not less than 99 years which is renewable; or
3. under a lease executed by a lessor approved by HUD with a minimum term of 50 years from the date the mortgage is executed.

P. Mortgage Term. The maximum term of the mortgage is 35 years or ¾ of the remaining economic life of the property.

Q. Firm Commitment Processing Only. There is no preapplication submission for Section 223(f) applications. Preliminary inquires with the HUD staff are encouraged if there are concerns about marketability, environment or competing proposals.

3.9 Section 232 Health Care Requirements

In addition to the general requirements for HUD insured loans in Section 3.2, the following provisions apply to Section 232 projects.

A. Eligible Facilities. MAP Lenders can submit requests for pre-application review and Firm Commitment applications for the following types of facilities:

1. Nursing Home.
   a. A public facility, proprietary facility, or facility of a private nonprofit corporation or association, which consists of at least 20 beds and is licensed or regulated by the State municipality or other political subdivision in which the facility is located.
   b. Provides for the accommodation of convalescents or other persons who are not acutely ill and not in need of hospital care, but who require skilled nursing care and related medical services including past hospital care (sub-acute).
   c. Corresponds to the Department of Health and Human Services “Skilled Nursing Facility” (SNF).
2. Intermediate Care Facility.
   a. A proprietary residential facility or facility of a private nonprofit corporation or association which consists of at least 20 beds and is licensed or regulated by the State, the municipality or other political subdivision in which the facility is located.

b. Provides for the accommodation of persons who require minimum but continuous care (24-hour staffing/supervision) but are not in need of continuous medical or nursing services.

c. Corresponds to the Department of Health and Human Services "Intermediate Care Facility"(ICF).

3. Board and Care Home.

a. Board and Care Homes are known by many different names in different states, including domicilliary care, shelter care, adult congregate living facility, personal care, etc. HUD's definition is as follows:

(1) a proprietary residential facility or a residential facility owned by a private nonprofit corporation or association which consists of at least 5 accommodations, bedrooms with a maximum of 4 persons for each accommodation, each with a full bath. Group dining facilities must be available.

(2) provides room, board and continuous protective oversight. "Continuous protective oversight" must include the availability of both scheduled and unscheduled assistance for defined special needs of the occupants on a 24 hour basis and involve a range of activities or services such as:

(a) For relatively independent occupants, awareness by management and staff of the occupants' conditions and whereabouts as well as the availability of assistance for the occupants as needed; or

(b) For relatively dependent occupants, supervision of nutrition and medication with assistance for the activities of daily living bathing, dressing, shopping, eating and continuous responsibility for the occupant's welfare. There is no minimum requirement for activities of daily living.

(c) "Continuous protective oversight" is not limited to the above activities nor must it include the examples given.

(3) Must be a freestanding structure or an identifiable and separate portion of an intermediate care facility or nursing home.

(4) Intermediate care or nursing services may not be carried out in a board and care facility or the board and care portion of a residential care facility. However, to accommodate a couple, a board and care resident may reside in the nursing/intermediate care area. A resident may contract with a home health agency for nursing and personal care services.

(5) Must provide areas for central dining, kitchen (or preparation area where food is supplied from an offsite location), lounges, recreation, and other multipurpose rooms. Where food is provided from an offsite location, the preparation area in the facility must be of sufficient size to allow for the installation of a full kitchen if it becomes necessary, or additional land must be available to add kitchen space.

(6) Must offer three meals per day to each resident.

(a) Residents in accommodations without kitchens must take the three meals a day provided by the facility.

(b) Residents whose accommodations have a kitchen must take at least one meal a day provided by the facility.

(7) Charges may be assessed for providing other services that are in addition to those services included in the basic residential fee. Such services may include housekeeping, laundry, supervision of nutrition or medication and assistance with daily living (bathing, dressing, shopping, eating).

(8) Must be regulated by the State in accordance with Section 1616(e) of the Social Security Act (Keys Amendment) and meet the State's eligibility requirements. The State also must have certified to HUD that it is in compliance with the provisions of 1616(e).

b. Limitations on Independent Living Units

(1) May not exceed 25 percent of the total projected number of beds or units in any board and care project.

(2) Required Reserves and Escrows. A board and care project with independent living units (efficiency or one-bedroom units with complete kitchen and bath facilities) requires a 12-month debt service reserve in addition to any operating deficit.

(a) Operating Deficit Escrow. Must:

(i) Cover the period between construction completion and the time HUD and the MAP Lender estimate sustaining occupancy will be reached.

(ii) Be held until sustaining occupancy has been reached and maintained for 90 days thereafter.

(b) Debt Service Reserve. Must be required for any independent living units. Any combination of independent living units with a nursing home/intermediate care facility or a board and care facility requires a prorated debt service reserve (for example, 25 percent independent living units would require 25 percent of the 12-month debt service reserve for the portion of the project used as a board and care facility).

(c) Establishment of the operating deficit escrow and debt service reserve must be provided at initial endorsement either by:

(i) Agreement of sponsors to furnish additional funds and bond guaranteeing sponsor's performance (Forms FHA-2476 and 2477).

(ii) Escrow Agreement – Additional Contribution by Sponsors (Form HUD-92476A).

(d) Disbursement. When both an operating deficit escrow and debt service reserve is required, disburse first from the escrow and then from the reserve to fund operating expenses, debt service payments, initial marketing and rent-up costs, etc.

4. Assisted Living Facility.

a. A proprietary, public or nonprofit facility of at least 5 residential units (not to exceed 4 persons per unit or per bathroom) which is designed for frail elderly (62 years or older) persons who need assistance with at least 3 activities of daily living. Activities of daily living include such things as bathing, dressing, eating, getting in or out of beds and chairs, walking, going outdoors, using the toilet, preparing meals, shopping for personal items, obtaining and taking medications, managing money, using the telephone or performing light housework. Residents may make their own arrangements for support services, such as physical therapy, nursing care, podiatry, etc. Residents may employ their own private staff to provide assistance with activities of daily living or other household/personal needs. However, the facility is still responsible for the residents' continuous protective oversight. A resident may have a contract with a home health agency for nursing and personal care services.

b. Must provide areas for central dining, kitchen (or preparation area where food is supplied from an offsite location), lounges, recreation, and other multi-purpose rooms. Where food is provided from an offsite location, the preparation area in the facility must be of sufficient size to allow for the installation of a full kitchen if it becomes necessary, or additional land must be available to add kitchen space.

c. Must provide room, board, and continuous protective oversight. This involves a range of activities and services that may include such things as awareness by management and staff of the occupants' condition and location as well as the ability to intervene in a crisis for dependent and relatively independent occupants on a 24-hour basis.

(1) For independent occupants: awareness by management and staff of the occupants' condition and whereabouts as well as the availability of assistance for the occupants as needed; or

(2) For dependent occupants: supervision of nutrition, assistance with medication, and continuous responsibility for the occupants' welfare.

d. Assisted living facilities must offer three meals per day to each resident.

(1) Residents in accommodations without kitchens must take three meals a day provided by the facility.

(2) Residents whose accommodations have a kitchen must take at least one meal a day provided by the facility.

e. Assisted living facilities may need to cater to the special needs of residents depending on their condition or diagnosis such as Alzheimer's disease. If serving those needs, the design/environment of such facilities must accommodate those requirements in, for example, dementia special care units.

f. The assisted living facility's admission agreement must state that no dwelling unit in the facility will be occupied by more than one person without the consent of the other residents of that unit. The resident who signs the admission agreement will be the occupant of that dwelling unit and must meet the definition of frail elderly. The resident who signed the admission agreement must consent before another person(s) may occupy the unit.

5. Day Care. An eligible health care facility may provide nonresidential (outpatient) care for elderly individuals and others (e.g., persons with physical or mental disabilities) who require care during the day. A facility that contains *only* a day care component is *not* eligible under Section 232. Nonresident day care space may not exceed 20% of the gross floor area of the facility and nonresident day care income may not exceed 20% of gross income. Day care space at a separate site must have adequate toilet, bathing and cooking facilities and adequate transportation for its clients. A day care facility must meet the minimum requirements of any third party reimbursement agency. The mortgagor must provide a CoN (Certificate of Need) or operating license if required by State or local law and demonstrate that the day care space will be self-supporting.

B. State Approvals. The following approvals are required to be submitted at the pre-application stage:

1. Certificate of Need. Skilled nursing care and intermediate care beds require a certificate of need (CoN) from the state agency with jurisdiction. (See Forms Appendix).

2. If no authorized State agency exists, or if it is not empowered to execute a CoN, the State may conduct or commission an independent study of market need and feasibility acceptable to HUD that:

a. meets the standards of the American Institute of Certified public Accountants, as certified by the State and/or preparer of the market study,

b. assesses market need on a market wide basis, including excess beds and typical market wide operating occupancy rates of existing facilities,

c. discusses the impact of the proposed project on other health care facilities and services in the area,

d. provides demographic projections (size, density, distribution and vital statistics on household income) for the proposed project and market area,

e. discusses available alternative health care delivery systems (geriatric day care, board and care, etc.),

f. describes the reimbursement structure or payment sources of the proposed project and that of the competing projects in the area, including percentage of self-pay clients and daily cost to the client; percentage of Medicaid/Medicare clients and reimbursement rate; percentage of other clients (managed care, etc.).

g. estimates market absorption period of beds in the proposed project by month including discussion of market supply, market reaction to unit type (private, semi-private, 3-bed, etc.) and resident turnover.

3. If the State is not authorized to conduct, commission or certify the study as to form and substance, the MAP Lender must provide financial and market information acceptable to HUD.

4. The proposed mortgagor may reimburse the State for the cost of the independent market and feasibility study.

5. Exception from market study for certain small facilities. For small intermediate care facilities for the mentally retarded or developmentally disabled for less than 50 individuals, the State agency responsible for licensing, certifying, financing or monitoring the project may provide HUD with a written statement of the need for the project instead of the independent study of market need and feasibility.

6. Substantial Rehabilitation. If the authorized State agency requires a new CoN, a new certification on Form 2576-HF must be submitted. If the authorized State agency does not require a new CoN, the MAP Lender must provide a statement from the State agency that a new CoN is not required and a copy of the original CoN. If there is no authorized State agency and the rehabilitation involves new beds, the alternative market study described above must be submitted.

7. Acquisition or Refinancing. If the authorized State agency requires a new CoN, a new certification on HUD form 2576-HF must be submitted. If the authorized State agency does not require a new CoN, a statement from the state agency and the original CoN must be submitted.

8. Bed authority modifications. Any proposed modifications (additions, deletions or major improvements) in the bed authority for any Section 232 facility must receive prior Field Office approval in order to protect HUD's security interest.

9. If the State requires a CoN for assisted living or board and care facilities, the Lender must submit a copy to HUD.

C. Licensing. Any Section 232 facility must be regulated by the State, municipality, or political subdivision in which the facility is or is to be located and the appropriate agency for such jurisdiction must provide a license or certificate that the facility complies with the applicable State or local standards and requirements for such facilities, including issues of staffing, occupancy, etc.

D. Liability Insurance. HUD requires health care facilities to maintain liability insurance, failure to do so is a technical default under the terms and conditions of the mortgage insurance contract. When mortgage underwriting is performed by HUD [MAP Lender], the current prevailing premium rates in that State, at a minimum, must be used along with reasonable deductible levels, and adequate coverage levels.

E. Ineligible facilities. *The following are not eligible under section 232:*

1. Facilities that charge "founders fees", "life care fees" or similar charges.

2. Facilities not meeting program intent such as hospitals, clinics, diagnostic and treatment centers, group practice facilities, and halfway houses. (Residential care facilities may include clinics, medical offices and similar related services as commercial space).

3. Facilities not providing the continuous protective oversight or minimum assistance required, such as retirement homes, boarding houses or single room occupancy residences that provide only food and shelter.

F. Bankruptcy. Any owner or operator of a healthcare facility or their affiliate or renamed or reformulated company that has file for, is in, or has emerged from bankruptcy within the last five years is not eligible to participate in any manner in a facility which is the subject of a mortgage insured through the Section 232 Mortgage Insurance for Health Care Facilities Programs. A project in bankruptcy that is acquired by a non-identity-of-interest owner in good standing is eligible for mortgage insurance**. Any exception to this requirement must be approved by HUD Headquarters.**

G. Leased Facilities/Regulatory Agreement. Section 232 mortgagors are permitted to lease facilities to qualified operators with prior written HUD approval. The lessee must execute the Regulatory Agreement, Form HUD 92266 NHL. The MAP Lender must determine that:

1. The lease agreement contains a restriction against its assignment without HUD prior approval and does not conflict with Section 232 program requirements,

2. The lease payments are sufficient to properly maintain the project, enable the lessor to meet debt service requirements and other operating expenses and are comparable to other leases in the market,

3. The lease requires prior written approval by HUD for any modification in bed authority.

4. Nonprofit mortgagors can lease their facilities only to other nonprofits.

5. Failure to disclose a lease arrangement or identity of interest between mortgagor and lessee are grounds for HUD sanctions. A provision must be incorporated into the regulatory agreement that any and all future lessees must execute the regulatory agreement and that the lessee is required to submit financial statements to HUD within 60 days of the close of the project's fiscal year.

6. The lessee shall have the responsibility to seek State licensure and a provider agreement for Medicaid and Medicare residents if the facility has a dual certification. A copy of the provider agreement must be submitted to HUD.

7. The mortgagor/lessor must ensure that the facility meets State licensure and standards.

H. Commercial area limitations under Section 232.

Commercial space and income limitations. Any commercial activity must be compatible with the use of the facility. Day care space is not considered commercial space. See Sections 3.10 and 3.11 below for New Construction/Substantial Rehabilitation and Acquisition /Refinancing commercial area limitations.

I. Eligible mortgagors. The following are eligible mortgagors under Section 232:

1. Proprietary mortgagor. A proprietary mortgagor is a corporation, trust, partnership, individual or other qualified legal entity that is profit motivated.

2. Nonprofit mortgagor. A nonprofit mortgagor is a corporation or association organized for purposes other than profit or gain for itself or persons identified therewith that HUD finds is no way controlled by or under the direction of persons or firms seeking to derive profit or gain therefrom. Generally, such a mortgagor must be chartered under Chapter 501(c)(3) of the Internal Revenue Code.

3. Public mortgagor (Nursing homes only). A public mortgagor is a Federal or State instrumentality, a municipal corporate instrumentality of one or more States or a redevelopment or housing corporation formed under and restricted by Federal or State laws or regulations of a State banking or insurance department as to charges, capital structure, rate of return or methods of operation.

J. Sinking Fund. HUD requires establishment of a sinking fund for nursing homes in States that:

1. Include the capital component (depreciation and interest) in the Medicaid reimbursement for nursing homes and

2. Use a pass-through method of paying the provider for the depreciation (straight line depreciation) on the assets.

The sinking fund captures the excess capital in the early years of the mortgage and sets aside monies (per the mortgagee schedule) in a separate fund account to pay the principal payment to offset shortfalls in the later years' capital investment.

K. Funding Sources. Assisted living is primarily a private pay market. However, different States may have funding sources such as Medicaid or a State Supplemental Security Income (SSI) matching program.

L. Liens/Secondary Financing. HUD is required by law to have a first lien position. Secondary loans are permissible in the case of other HUD-insured second mortgages (supplemental loans and operating loss loans) and other loans. (See Chapter 8 for complete details on secondary financing.)

M. Real estate requirements. The mortgage shall be on real estate held:

1. In fee simple; or

2. Under a lease for not less than 99 years which is renewable or having a period of at least 10 years beyond the maturity date of the mortgage.

N. Line of Credit Financing.

1. HUD will recognize line-of-credit portfolio indebtedness attributable to acquisition costs, repairs and capital improvements.

2. The mortgagee must obtain a letter from the issuer of the line-of-credit listing each facility encumbered by the financing and the dollar amount needed for each facility to obtain a partial release from the financing. Absent the partial release information, the following are acceptable alternatives:

   a. Option One. HUD will divide the line-of-credit debt by the total number of beds in the facilities to come up with the per bed debt.

   b. Option Two. Based on MAP appraisals for all the facilities, HUD will add up the approved values for all the facilities. HUD will divide the line-of-credit debt by the sum of the values. Multiply the result by a facility's value to determine the amount of existing indebtedness to be assigned to a facility.

   Note: Lenders may develop other options for assigning debt. HQ will review and approve these options on a case-by-case basis.

O. Real Estate Investment Trusts (REITs).

Some REITs have purchased health care facilities with cash raised from the sale of shares in the REIT. Historically, HUD has recognized that special circumstances may exist from time to time when dealing with REITs. In this case, we will treat the cash payment for the facility in the same manner as line-of-credit financing with the following exceptions.

a. The REIT must submit from the independent certified public accountant a report of the cash payment made for each facility.

b. An authorized officer of the REIT signs and dates a cover letter to HUD attesting the accuracy of the report. Said letter must contain the 1010 Criminal warning.

c. HUD will recognize 75% of the cash payment as equivalent to existing debt.

3.10 Section 232 - New Construction/Substantial Rehabilitation

Requirements: HUD can insure loans to cover both the construction and permanent loans (Insurance of Advances) or just the permanent loan (Insurance upon Completion).

A. New construction. A facility qualifies as new construction when all project and construction elements are installed as part of the construction contract and no work has been done prior to the issuance of the HUD Firm Commitment.

   1. Work can begin after issuance of a HUD Firm Commitment with specific approval case-by-case from the HUD Field Office using the Early Construction Start process.

   2. Construction may not start on Insurance Upon Completion projects until issuance of a Firm Commitment.

B. Substantial rehabilitation. A facility qualifies as substantial rehabilitation when:

1. The hard costs of repairs, replacements and improvements (including major movable equipment eligible for inclusion in the mortgage) and additions exceeds 15% of the project's value after completion of all repairs, replacements, improvements and additions, or

2. Two or more major building components are being substantially replaced. Additions are permitted in substantial rehabilitation projects, but the costs for the additions are *not* included in the eligibility test. Building additions combined with refinancing of an existing structure should be processed as a new construction, blended rate 232/223f application unless the work proposed on the existing facility meets the criteria for substantial rehabilitation on it's own without considering the costs of the new addition.

C. Maximum mortgage limitations. In general the HUD maximum insurable mortgage is limited to the *lesser of:*

1. 90% of HUD appraised value, including major movable equipment (95% for nonprofit mortgagors).

2. mortgage amount supported by 1.11 debt coverage (90% of net income); 1.05 for nonprofit mortgagors (95% of net income). (See Chapter 8 for additional limits for substantial rehabilitation loans and complete details.)

D. Mortgage term. The maximum mortgage term is 40 years or ¾ of the remaining useful life of the property.

E. Cost certification. The mortgagor is required to submit a cost certification prepared by an independent public accountant upon completion of construction or substantial rehabilitation. The amount of mortgage that is finally endorsed for insurance by HUD after completion of construction can be reduced based upon HUD review of the cost certified amounts. HUD approved cost certified amounts may qualify for a mortgage increase under specific conditions. The general contractor is required to submit a cost certification where a cost plus form of construction contract is used. Subcontractors with an identity of interest with the mortgagor or general contractor are also required to cost certify. (See Chapter 14 for complete details.)

F. Federal Labor standards. The general contractor and all subcontractors are required to comply with federal wage and reporting requirements, including the payment of Davis Bacon prevailing wages and the submission of weekly certified payroll reports. (Prevailing wage schedules may be obtained from HUD.)

G. Assurance of Completion. The mortgagor shall provide for assurance of completion of the project in forms approved by HUD.

1. For non-elevator or three story or less elevator buildings where the cost of construction or rehabilitation is more than $500,000, the assurance shall be in the form of corporate surety bonds for payment and performance, each in the amount of 100% of HUD's estimate of construction or rehabilitation cost. As an option, HUD would accept a completion assurance agreement secured by a cash deposit or Letter of Credit in the amount of 15% of the HUD estimate of construction or rehabilitation cost.

2. For elevator buildings of 4 stories or more, the assurance shall be in the form of corporate surety bonds for payment and performance, each in the amount of 100% of HUD's estimate of construction or rehabilitation cost. As an option, HUD would accept a completion assurance agreement secured by a cash deposit or Letter of Credit in the amount of 25% of HUD's estimate of construction or rehabilitation cost. The mortgagee may provide more stringent requirements.

H. Medicaid/Medicare Rule. Medicaid rates, regardless of the composition of the project's actual or proposed occupancy, will be used to establish the income estimate for 67% of nursing home/intermediate care beds. Medicare rates will be used for 3% of the beds. This restriction does not currently apply to board and care or assisted living facilities.

I. Commercial Space and Income Limitations. New Construction/Substantial Rehabilitation is equivalent to 10 percent of the gross floor area of the project and 15 percent of the gross project income; commercial space that is intended to exclusively serve the residents of the facility is not counted toward the 10 percent limit.

3.11 Section 232/223(f) - Acquisition/Refinancing

The major requirements for Section 232/223(f) Projects for acquisition or refinancing are as follows: (Any property acquired before the date of the mortgage insurance application shall be treated as a refinance transaction. Any property acquired after the date of the mortgage insurance application shall be treated as a purchase. In a purchase transaction, any identity of interest, however slight, between seller and purchaser requires the application to be processed as a refinance.)

A. Property eligibility. The facility must have been completed or substantially rehabilitated for at least three years prior to the date of the Firm Commitment application. Projects with additions completed less than 3 years previous are eligible as long as the addition was not larger than the original project in size and number of beds.

B. Ineligible facilities. Facilities requiring a level of repairs which constitutes substantial rehabilitation as defined in section 3.10 above are not eligible for mortgage insurance under this section.

C. Insurance upon completion. HUD will only insure the permanent loan under this program if all critical repairs are completed before HUD endorsement of the mortgage.

D. Delayed completion of repairs. HUD permits completion of **non-critical** repairs after endorsement for insurance with appropriate financial guarantees. (See Chapter 12 for complete details).

E. Davis Bacon Labor standards. To be eligible under this section, the level of required repairs cannot meet the standard for substantial rehabilitation. Therefore, the prevailing wage requirements of the Department of Labor do not apply to this program.

F. Mortgage insurance premium. The HUD mortgage insurance premium is 1% of the mortgage amount for the first year, payable at endorsement of the mortgage, and .5% of the average outstanding principal balance thereafter. (See 24 CFR 207.252.)

G. Maximum mortgage limitations. The maximum insurable mortgage is:

1. For Purchase Transactions, the lesser of:

   a. 85 % of HUD appraised value (90% for nonprofit mortgagors).

   b. A mortgage amount supported by 1.1765 debt coverage (85% of net income); 1.11 for nonprofit mortgagors (90% of net income).

   c. 85% of acquisition cost (90% for nonprofit mortgagors).

2. For Refinance Transactions, the lesser of:

   a. 85% of HUD appraised value (90% for nonprofit mortgagors).

   b. A mortgage amount supported by 1.1765 debt coverage (85% of net income); 1.11 for nonprofit mortgagors (90% of net income).

   c. The cost to refinance the existing debt.

(See Chapter 8 for complete details.)

H. Cost certification. The mortgagor must certify the actual costs incurred in the acquisition or refinancing of the property.

I. Mortgage Term. The term of the mortgage cannot exceed 35 years or ¾ of the remaining economic life of the physical improvements.

J. No Equity Take-Out. Borrowers may not receive any cash proceeds from the refinance of the mortgage under Section 232/223(f). The sole purpose for the program is for owners to refinance at lower interest rates, reduce debt service requirements, and make needed repairs.

K. Medicaid/Medicare Rates. The income estimate should be based on the percentage of Medicaid/Medicare beds shown on the last 3 years of financial statements.

L. Firm Commitment Processing Only. There is no preapplication submission for Section 223(f) applications. Preliminary inquires with the HUD staff are encouraged if there are concerns about marketability, environment or competing proposals.

M. Commercial Space and Income Limitations. Refinancing Existing (232/223(f)) is equivalent to 20 percent of the total net rentable area of the project and 20 percent of the effective gross project income.

03/01/02

Chapter 4

Application Requirements

4.1 Overview

A. Only an approved MAP Lender may submit an application for mortgage insurance using MAP. In addition, the Lender's staff underwriter must be approved by the HUD office processing the application. The Lender's appraiser and its architecture/engineering and construction cost reviewer(s), whether on contract or on staff, must also be approved.

B. There is a two-stage process for new construction and substantial rehabilitation under the Sections 221(d)(3) and 221(d)(4), 220, and 232 programs. First, the Lender submits exhibits for a pre-application review by HUD. After review, HUD either rejects the application or invites the Lender to submit an application for Firm Commitment. The second stage is the submission of the Lender's exhibits for the Firm Commitment. After review of the application for Firm Commitment, HUD decides whether or not to issue a Firm Commitment.

C. For acquisition or refinance of an apartment project under Section 223(f) or acquisition or refinance of a health care facility under Section 232/223(f), the Lender goes straight to the application for a Firm Commitment. No pre-application review is required or anticipated. It should be noted, however, that a market study is required for acquisition or refinance of a health care facility, but not for an apartment project.

D. The Site Appraisal and Market Analysis (SAMA) stage and the Conditional Commitment stage will not be used under MAP. If an applicant seeks a Conditional Commitment for Section 223(f) mortgage insurance where the purchaser has not yet been identified, the loan application must be processed using traditional HUD processing.

E. The submission of computerized forms generated by a Lender are acceptable, so long as the recreated form is identical in content and in the order of the line items on the MAP Form. The recreated form must be completed subject to the instructions included on that form in the MAP Forms Book, which in some cases may vary from the instructions included with a previous issuance of that form.

4.2 Stages of Application

A. Informal Information

Hubs and Program Centers welcome inquiries from MAP Lenders. Each Hub or Program Center which will serve as a processing center for multifamily mortgage loan insurance will designate a person or persons to respond to inquiries about potential applications. For example, if a Lender is considering a loan application, it may inquire whether there are other mortgage loan applications in the same area in process and under review by the Hub or Program Center. It may inquire about environmental concerns in the area, to the extent that HUD knows of such concerns. The Lender may clarify information about the MAP process. The Hub or Program Center, in responding to informal inquiries, will not commit HUD to approve a market, issue an invitation for an application for firm commitment, or make any commitment of any kind. Approval or disapproval of an application for FHA mortgage insurance is accomplished only in the manner set forth in this Guide, and not in response to informal inquiries.

B. Approval of Lender's Reviewers

1. The Lender's reviewers for the pre-application or the application for Firm Commitment must be approved by the field office processing the application. For the pre-application, the Lender must submit the name and experience of the underwriter (who must be employed full-time by the Lender), and the name and the experience of the Lender's appraiser, and of the market analyst (if separate from the appraiser). If a member of the lender's staff or a contractor has been previously approved by a Hub, the Lender is required only to submit the names of the staff or contractor and note the prior approval. For the application for Firm Commitment, the Lender must submit the names and experience of the staff underwriter and the Lender's appraiser (if not previously submitted), and of the reviewer or reviewers of the architectural and engineering plans and specifications, and the construction cost estimator. HUD will approve or disapprove these persons promptly. If HUD does not advise the Lender within ten working days that an underwriter, appraiser, or reviewer is unacceptable, giving the reasons for its decision, the person is approved. The Lender should submit the names and resumes, if possible, prior to the pre-application and, for applications going directly to Firm Commitment, prior to preparation of the application.

C. Pre-application. The pre-application stage for new construction or substantial rehabilitation is designed to permit HUD to review the most important exhibits affecting the feasibility of a proposed project. At the end of the review, HUD invites the Lender to submit an application for a Firm Commitment or declines to issue an invitation. The Lender who receives an invitation has reason to believe that, if its application for a Firm Commitment is consistent with the information it presented at the pre-application, there is a high likelihood that HUD will issue a Firm Commitment.

1. No application fee is required for the pre-application review by HUD. The HUD processing office (Hub or Program Center) may request clarifying information if it believes such information is essential to the review.

D. Letter of invitation

1. After the pre-application review, the Hub or Program Center will send a letter to the Lender inviting an application for a Firm Commitment or declining to invite the Lender to submit the application. The letter may also address issues related to project acceptability and it may suggest proposed project underwriting parameters.

2. If the letter is an invitation to submit an application, the Lender must advise HUD in writing within 30 calendar days of the date of the letter of invitation whether or not it plans to submit an application for the particular project. If it fails to notify HUD within the time required, the invitation letter expires, and it may be required to repeat the pre-application process. The application for a Firm Commitment must be submitted within 120 days of the date of the letter of invitation. Two 30-day extensions of this 120-day limit may be authorized by HUD, but there is no requirement that the extensions be approved. HUD will review the circumstances reported by the Lender to justify the extension of time. The Lender must certify and HUD must determine that the requested delay beyond 120 days is not likely to change the underwriting data on which the invitation was based or to undermine the feasibility of the project due to a change in the market or other factors determined at pre-application.

E. The Application for a Firm Commitment

1. After receiving an invitation to submit an application for a Firm Commitment, the Lender completes the processing of the application. It performs a full underwriting analysis and presents its recommendation in the Narrative Summary to HUD. The exhibits that accompany the application are listed below. HUD's review of these exhibits is discussed in Chapter 11 "Underwriting" and in each of the technical chapters.

2. Applications which the Hub or Program Center determines to be unacceptable will be returned to the Lender and HUD may retain the application fee for the work done by HUD in its review. However, if the Hub or Program Center determines that the defects in the application are minor and can be corrected, the Hub or Program Center will advise the Lender. The Lender will have five business days from the receipt of notification to cure the application. The goal for HUD review of the application will be extended by the time required to cure the application.

3. Every effort will be made for prompt review. If the exhibits for a Firm Commitment application are complete, the review time will be considerably shorter than it will be if the application is incomplete.

NOTE: Where both the pre-application and firm commitment stages are applicable under MAP for a given FHA insured program, separate pre-application and firm commitment

submissions are required as repeated throughout the Guide. Combining these applications into one submission is not permitted under MAP. MAP is designed to assure timely decision-making on FHA insurance applications and to ensure an acceptable level of risk for HUD's multifamily mortgage insurance programs. MAP reviews at the pre-application and firm commitment stages must be meaningful and thorough. To support this goal, processing time frames have been established for MAP as provided in the Guide. MAP Lenders have a stated number of days within which to submit a firm commitment application following FHA's letter of invitation. If the allotted time is not needed to prepare a complete firm application there is no prohibition against a much earlier submission which should expedite the overall process.

4.3 Applications Checklist

A. Each of the chapters in the MAP Guide describes forms and other reports that the Lender must submit, either as part of the pre-application or as part of the application for a Firm Commitment. Those chapters provide the detail that is needed when submitting the required exhibits. For example, the checklist calls for a Narrative Summary; Chapter 11 "Underwriting" describes what information should be in the Narrative Summary and what sort of certification should accompany it.

B. The appendices to this chapter are simply checklists of the exhibits that have to be provided to the Hub or Program Center. With new construction or substantial rehabilitation, the exhibits are divided into two parts: (1) exhibits required for the pre-application review, and (2) the exhibits required for the application for a Firm Commitment. With Section 223(f) for refinancing or purchase, there is no pre-application review, so the exhibits are required for the application for a Firm Commitment. Section 232 and Section 232/223(f) for health care facilities are treated separately.

C. Five copies of the exhibits will be required from the Lender to the HUD processing office, unless a lesser number is agreed upon by HUD and the Lender.

1. Appendix 4.A

   Sections 221(d)(3), 221(d)(4), and 220, New Construction and Substantial Rehabilitation, Exhibits Required for Pre-Application Review

   Sections 221(d)(3), 221(d)(4), and 220, New Construction and Substantial Rehabilitation, Exhibits Required for Application for Firm Commitment

2. Appendix 4.B

   Section 232, New Construction and Substantial Rehabilitation, Exhibits Required for Pre-Application Review

Section 232 for health care facilities, New Construction and Substantial Rehabilitation, Exhibits Required for Application for Firm Commitment

3. Appendix 4.C

   Section 223(f) for Refinance or Purchase of Existing Apartments, Exhibits Required for Application for Firm Commitment

4. Appendix 4.D

   Section 232/222(f) for Refinance or Purchase of Existing Healthcare Facilities, Exhibits Required for Application for Firm Commitment

Chapter 5

Architectural Analysis

GENERAL

5.1 Qualifications, Responsibilities, and Approval of Lender's Representative

A. Qualifications

1. The Lender shall hire a qualified architectural analyst(s) with experience in multifamily construction. The analyst must be knowledgeable and experienced with local building standards and construction methods for the type of project proposed, including the Federal Fair Housing Accessibility Guidelines. The Architectural analyst may also serve as the cost estimator if the qualifications are met.

2. Lender Architectural staff. The lender must be able to review all designs submitted. The lender must employ the services of a qualified architectural reviewer or contract for the services of a qualified reviewer, to review the architectural plans and specifications. The person providing the architectural services should be preferably a registered architect or engineer. However, persons with a degree in architecture or engineering with three years of experience in their respective field, may also provide this service. Additionally, individuals with experience as a construction manager, estimator, general superintendent of construction, draftsperson, degree in building construction, may also qualify to provide architectural services.

3. Lender Technical Specialists. Mechanical, structural, sanitary, site engineers, etc. may be required for review of a particular project. The prime principal of the technical specialists must be a licensed professional. The architectural analyst is not required to review structural design details and calculations.

B. Responsibilities

The Lender's architectural analyst:

1. Reviews mortgagor's Required Architectural Services. (See Paragraph 5.2)

2. Determines that the project design complies with the Minimum Property Standards, local codes, the applicable accessibility requirements, and HUD design standards. (See Appendix 5.)

3. Determines that mortgagor's Architect (or other persons or organizations providing architectural services) is qualified to provide the design services to the project and administer the construction contract.
4. Reviews mortgagor's Architect's certification that the project design complies with the Minimum Property Standards, all applicable local codes and ordinances, Fair Housing Act accessibility requirements, and HUD standards. (See Appendix 5N)
5. Determines that the mortgagor's Architect's liability insurance will be maintained up through acceptance of the 12-month warranty inspection.

C. HUD Approval of Lender's Architectural Analyst

The Department reserves the right to examine the credentials of all architectural analysts hired by the Lender, and to reject any and all individuals that it considers unqualified.

5.2 Required Architectural Services for Design and Supervision

The mortgagor shall engage the services of a licensed professional, which are required for the design of elevator and walkup projects, projects of 20 or more living units, and smaller projects of complex design or construction.

A. Architects, engineers or designers providing required design and/or construction services must be professionally licensed to render services in the design of buildings by the State in which the project is to be constructed.

B. Evaluation and Selection of Architect. The Architect must be one in whom the mortgagor, Lender, and HUD have confidence.

1. The Lender's architectural analyst
   a. reviews the Architect's work progress and product(s);
   b. may recommend that the mortgagor select another professional if the Architect's work progress or work product(s) is found to be unacceptable.
2. Failure of the mortgagor to engage an Architect acceptable to the Lender is basis for rejection of the project.

C. Owner-Architect Agreement. On projects requiring licensed professional service, an agreement between the Architect and the owner for architectural services will be executed.

1. The owner shall submit the agreement with the application for Firm Commitment.
2. The executed agreement shall be AIA Document B 181, Standard Form of Agreement Between Owner and Architect for Housing Services. It shall include the HUD Amendment. (See Appendix 12B.)

a. The scope of services shall provide all architectural, structural, mechanical, electrical, civil, landscape, and interior design and consulting services necessary to prepare drawings, specifications and other documents setting forth in detail the requirements for construction of the project. The scope of services shall also provide for administration of the construction contract.

b. The scope of services shall designate the responsibility for the services to be provided, whether by the Architect, owner, or others.

c. Additional B181 Agreements must be submitted for any part of the basic design services with more than one prime professional, e.g. for site, civil, mechanical, electrical engineering services, etc., or supervisory architectural services. The mortgagor's Architect shall have the authority to coordinate multiple prime professional contracts.

3. There may be separate agreements for design and construction services if the same Architect is not employed. When there is a separate agreement for administration of the construction contract, it must be submitted not later than initial endorsement. Where separate agreements are made, those sections not applicable shall be struck out.

4. An Architect with an identity of interest with the owner or general contractor cannot administer the construction contract. An identity of interest is defined in the HUD Amendment.

D. Modification of Owner-Architect Agreement. The document may be changed to reflect the actual agreement between owner and Architect for the specific project.

1. Generally modifications can be made by striking out inapplicable provisions and inserting additional provisions in Article 12. Also, adding directly to a specific provision is acceptable.

2. Changes shall not delete any service, either by the Architect or owner necessary to the project though the responsibility for a required service may be transferred.

a. The document shall provide a clear and definite statement of how responsibility for providing any required service is to be divided between Architect, owner, and others. Documents must conform to requirements in 5.2.C.2 above.

b. Required services may not be sublet or delegated to any one not acceptable to HUD.

3. The basis of compensation (Architect's fee) shall be a fixed fee for the services provided by the Architect as stated in the Agreement. No other method of stating compensation is acceptable. The amount of compensation for design services and for construction services shall be stated.

4. Where the Architect's basis fee exceeds that which may be paid from mortgage proceeds or where the Owner-Architect contract provides for reimbursables (note that reimbursables may not be paid from mortgage proceeds), the person/entity responsible for such extra fees must be identified at the bottom of the HUD Amendment. (See Appendix 12B)

5. HUD shall not be incorporated into any specific provision of the Agreement. The required inclusion of the HUD Amendment in Article 12 is sufficient to incorporate HUD requirements. No modification of the HUD Amendment is permitted.

6. The Lender's architectural analyst shall review the agreement for compliance with these instructions.

E. Architectural Considerations in Industrialized Housing. Architectural and engineering services are involved in the development of industrialized housing. The fees for such services are part of the cost of each manufactured unit. The Lender's analyst must contact the Hub Director to approve the use of industrialized housing. The Lender's analysis must then determine the acceptability of such services by examining the drawings and specifications.

1. These exhibits shall be equal in quality to the typical construction documents prepared by Architects engaged in designing the type of housing proposed. The exhibits should include the working drawings and specifications for the typical industrialized housing unit, along with an assembly plan and proper manufacturer's warrantee document.

2. Additional professional services may be required to provide a complete set of construction documents. The additional amount of professional services required must be determined by the Lender's architectural analyst for each project based on how much of the total is provided by the housing manufacturer. Usually, the Architect will integrate the manufacturer's drawings into his/her set of drawings and specifications, adapting them to the particular project.

3. The manufacturer (packager) shall provide complete professional design services. If his/ her services meet in all respects the quality required, the construction documents shall be accepted.

4. Owner-Architect Agreement, AIA Document B-181, shall be required only to cover the services provided by the Architect. No Owner-Architect Agreement is required for professional services provided within or by the housing manufacturer.

5. In all cases, an independent Architect with no identity of interest shall provide general administration of the construction contract.

5.3 Architectural Standards and Other Criteria

A. The principal architectural standards for MAP are the Minimum Property Standards for Housing (MPS) in HUD Handbook 4910.1 and local building codes or nationally recognized building codes accepted by the Hub. See Appendix 5 for complete standards.

B. Accessibility for persons with disabilities.

1. The Fair Housing Amendments Act of 1988 applies to all housing in the United States available for first occupancy after March 13, 1991. (See Appendix 5-A.)

2. Part 504 of the Rehabilitation Act of 1973, which is implemented by the Uniform Federal Accessibility Standards (UFAS), applies only to housing receiving Federal financial

assistance. Part 504 does not apply to projects where the only HUD involvement consists of FHA mortgage insurance. (See Appendix 5A and 5E)

C. Energy efficiency.

1. New Construction. HUD energy efficiency standards for new construction are adopted by the Secretary and incorporated by reference into the MPS. (See Appendix 5A, Paragraph O)

2. Substantial Rehabilitation. See Appendix 5B, paragraph I for rehabilitation energy guidelines.

SECTIONS 221(d) AND 220

5.4 Lender Architectural Processing – New Construction

A. Lender's Architectural Analyst's Duties

1. Review the mortgagor's Architectural/Engineering exhibits (Appendix 5I) for compliance with local code and HUD requirements.

   a. Drawings and specifications must be complete and correct.

   b. Acceptable evidence must be provided that the project has or will have necessary utility services and pedestrian and vehicular access.

      (1) Adequate assurance of continuing service by local utility companies and/or local public authorities, or

      (2) Construction documents and contract for completion by mortgagor's contractor.

2. Visit the site and prepare a written report on physical aspects of on-site and offsite features.

   a. Observe physical features such as existing construction, topography, soil conditions, drainage, vegetation, etc.

   b. Include unusual site conditions and necessary demolition and offsite construction.

   c. Determine and comment on HUD environmental conditions and criteria which may affect the proposal.

3. Provide for continuous architectural liaison with the mortgagor's Architect.

4. Maintain a processing record of all architectural/engineering actions when the proposal is first assigned.

   a. File all forms, reports, decisions, and documents relevant to architectural actions in chronological order.

b. Record all architectural actions, counteractions by others, or actions that may affect design or construction.

c. Record the receipt of forms and documents, the issuance of letters and memoranda, the completion of forms and worksheets, contacts with the Architect, etc.

d. Log and briefly describe contacts, including telephone calls, with the Architect.

e. Keep journal of architectural actions. Include:

(1) Application for Firm Commitment, Form HUD-92013.

(2) Reports of site visit (including technical specialist's if made).

(3) Drawings and specifications, identified and dated. (If filed elsewhere, reference in journal.)

(4) Owner-Architect Agreement, including HUD Amendment. (See Forms Appendix.)

(5) Data used to process. (If filed elsewhere, reference in journal.)

(6) Liaison meetings and telephone calls with Architect (Remarks in journal or notes).

(7) Letters, memoranda, notes and worksheets.

(8) Soil borings report or other soil exploration data.

(9) Invitation Letter.

(10) Form HUD-92264 with any memorandum for Firm Commitment.

(11) Firm Commitment approval.

(12) Surveyor's Report, Form HUD-2457 (Initial Endorsement).

5. Guide and assist the mortgagor's Architect (Architect) during design development to expedite orderly processing and avoid delays.

a. Assure that the Architect is licensed to practice within the State where the project is to be constructed.

b. Assure that the Architect and the mortgagor execute AIA Document B181, including HUD Amendment.

c. Provide the Architect a copy of the MAP Guide, applicable HUD program Handbook(s), HUD Minimum Property Standards (MPS) (Handbook 4910.1), and other applicable guides and publications, including reference material for all applicable accessibility laws, especially the Fair Housing Act Design Manual.

d. Discuss with Architect:

(1) Lender procedures;

(2) HUD procedures;

(3) Architect's responsibilities.

e. Discuss with Architect any available housing design data and all HUD-developed or industry norms which are applicable and beneficial to the project.

f. Review drawings and specifications during design development and identify questionable design concepts, elements or deficiencies early to avoid costly revisions at advanced stages of exhibit development. Special attention should be paid to accessibility for persons with disabilities. Because no accessibility review is done at Pre-Application stage, it is entirely the responsibility of the Architect to produce a building and site design at Firm stage that fully conforms to all applicable accessibility laws.

6. Request assistance by the Technical Specialist, e.g., engineers, when necessary.

   a. Review and use the Technical Specialist's Report.

   b. Furnish the Architect with consolidated design requirements, including recommendations or requirements of Technical Specialists.

7. Work with Lender's cost analyst to assure that project cost will fall within the established budget:

   a. Supply cost analyst with a current Davis Bacon wage rate schedule. The HUD Office will include, as part of its Firm Commitment invitation letter, the current Davis Bacon wage rate schedule applicable to the proposed project. Lender processing staff must keep in contact with HUD labor relations staff to obtain any updates (modifications) to the Davis Bacon wage rate schedule before the Lender submits the Firm Commitment application to HUD. Once the Firm Commitment application is submitted, HUD labor relations staff will provide any Davis Bacon modifications which may be published and applicable to the construction of the project.

   b. Evaluate appropriateness of type of structure, construction methods and materials considering initial costs and future maintenance.

8. Report any deviations from accepted concepts or HUD requirements which cannot be resolved with the mortgagor's Architect to the Lender's underwriter.

9. Be aware of design development progress in relation to established target dates and inform the Lender's underwriter of possible or actual delays or problems.

10. Review architectural/engineering exhibits submitted with the Firm Commitment application.

    a. Assure exhibits are as agreed to during design development, meet conditions of the previous stage, and comply with all HUD standards and criteria.

    b. Prepare the architectural/engineering portions of Form HUD-92264, Rental Housing Project Income Analysis and Appraisal (See Forms Appendix), upon completion of architectural analysis.

11. Furnish information to the Lender's cost analyst as to the scope of the Architect's work as a basis for the estimation of the Architect's fee.

12. Assure that drawings and specifications are complete prior to submission of a Firm commitment application to HUD.

13. Review experience and qualifications of general contractor.

14. Prior to initial endorsement: (See Paragraph 5.7)

    a. Review contractor's Progress Schedule.

    b. Review the legal survey and Surveyor's Report/ Certificate.

    c. Assure that HUD's sets of drawings and specifications are sealed and signed.

15. Consult with Technical Specialists. While the Lender's architectural analyst should report obvious errors or omissions (such as a lack of dimension to show the depth of a footing below grade) to the mortgagor's Architect, the analyst is not required to review, nor is the analyst responsible for, the accuracy of structural dimensions or other details that would require a professional structural review. When engineering review, advice and guidance on specific projects or problems is required, the Lender's architectural analyst should request the services of the appropriate engineers (mechanical, structural, sanitary, site, etc.).

16. Negotiations.

    a. The Lender's architectural analyst provides guidance to the mortgagor's Architect. The Lender's analyst will request the assistance of the mortgagor if the Architect is reluctant to follow such guidance.

        (1) Suggestions for improvement or betterment should not be pursued if unacceptable to the mortgagor.

        (2) HUD mandatory standards and criteria may not be modified or waived.

    b. Report to the Lender's underwriter when resolution is not possible.

        (1) Recommend rejection only if the design fails to comply with prescribed requirements, laws, ordinances or restrictions, or is inadequate in some major respect.

        (2) Request intervention and assistance, describing the deficiency or inadequacy that the Architect and/or sponsor are unwilling or unable to correct.

B. Mortgagor's Architect's Duties

1. Services. Provides architectural and engineering services in accordance with the Owner-Architect Agreement. (See Paragraph 5.2.)

    a. Develops documents that conform to concept of the sponsors program and proposal.

    b. Produces drawings and specifications that comply with local requirements and HUD standards and criteria.

2. Data. The Architect's work is shaped by data such as: codes, transportation, parking, space and mechanical requirements. The Architect develops data through surveys and research.
3. Lender Assistance. There must be continuous consultation between the mortgagor's Architect and the Lender's architectural analyst.
4. Pre-application Stage. The Architect must:
   a. Visit the site.
   b. Evaluate the mortgagor's and user's needs.
   c. Become familiar with applicable codes, restrictions, and requirements.
   d. Develop preliminary sketches.
5. Firm Commitment Stage. The mortgagor's design Architect, from the preliminary sketches, must:
   a. Prepare final construction documents after the basic exhibits are approved. These include contract drawings and specifications with:
      (1) Current wage decision,
      (2) Current edition of AIA Document A201, General Conditions of the Contract for Construction, and
      (3) Form HUD-2554, Supplementary Conditions of the Contract for Construction.
   b. Submit the final construction documents to the mortgagor for approval and submission to the Lender, and to HUD.
6. Construction Documents must be complete and:
   a. Clearly fix the scope of work.
   b. Define and describe the materials to be used.
   c. Illustrate the construction and methods of assembly.
   d. Contain all necessary information for bidding (if applicable) and constructing the project.
7. Alternates. The Architect may include alternates if they are of equal quality, safety, and performance, and within the budget. Alternates must be selected before a Firm Commitment is issued. Selection of alternates should be coordinated with the general contractor so as not to delay the bidding.

5.5 Architectural/Engineering Exhibits – New Construction

A. Pre-application stage for HUD review. The mortgagor shall submit the following Pre-application exhibits to the Lender to be forwarded to HUD.

1. Form HUD-92013, Application for Project Mortgage Insurance
2. Location map with property clearly defined.
3. Sketch plan of the site showing overall dimensions of main building(s), major site elements, e.g. parking lots, and location of existing utilities, e.g. water, sewer, electric, gas, in the streets adjacent to the site. Contour lines and elevations are not required in the sketch site plan.
4. Sketch plans of main building(s): Sketch plans of main building(s) must show overall dimensions of:
   a. Typical floor plan(s) showing apartment types and placement;
   b. Ground floor plan(s) showing common areas;
   c. Sketch floor plan(s) of typical dwelling unit(s);
   d. Typical wall section(s) showing footing, foundation, wall and floor structure. Notes must indicate basic materials in structure, floor and exterior finish.

   Sketch plan dimensions must be sufficient to allow the HUD architectural analyst to calculate the Gross Floor Area for the entire project and the Net Rentable Areas for all the apartment units in the project.

B. Firm Stage. The mortgagor shall submit the following Firm stage exhibits for the Lender's architectural analyst to review.

1. Form HUD-92013, Application for Project Mortgage Insurance.
2. Owner-Architect Agreement, AIA Document B-181 (and HUD Amendment to the B181 where required), fully defining the services and fees for each prime professional with which the mortgagor/owner contracts directly. Additional contracts must be submitted for any part of the basic design services with more than one prime professional, e.g. for site, civil, mechanical, electrical engineering services, etc., or supervisory architectural services. The mortgagor's Architect shall have the authority to coordinate multiple prime professional contracts.
3. Legal survey;
4. Completed Surveyor's Report, Form HUD-2457;
5. Engineering and specialty reports, e.g. geotechnical, environmental, noise, flood hazard, toxic hazard, termite control, structural integrity (for Existing or Substantial Rehabilitation projects), heat gain/loss calculations, etc.
6. Municipal and utility company letters of confirmation for the provision of services and/or offsite improvements.
7. Any documents necessary to establish:
   a. Site ingress and egress, utilities service and other general acceptability criteria in MPS 4910.1, Chapter 2.

b. Binding maintenance agreements where common use easements (e.g. driveways) are used.

8. Certifications from mortgagor's Architect that:

   a. Foundation designs reflect site soils limitations and design recommendations included in the foundation soils report and any other geotechnical reports (may be submitted by soils engineer);

   b. All project structures, amenities, and site improvements are in full compliance with all applicable accessibility laws.

9. Description of any identity of interest that exists between the prime professional providing supervisory architectural services, the owner, and the general contractor.

10. Contract drawings and specifications. (See Appendix 5I)

11. Offsite Construction: Describe all work outside the boundaries of the property essential to the project (See Appendix 5I, Paragraph S).

5.6 Lender Deliverables – New Construction

A. Pre-application Stage for HUD review. Mortgagor's architectural/engineering exhibits (See Section 5.5.A).

B. Firm Stage.

   1. Mortgagor's Architectural/Engineering exhibits for Firm Stage (See Section 5.5.B and Appendix 5I);

   2. Review Report prepared by Lender's architectural analyst. Report must state that all exhibits are acceptable without condition and all deficiencies have been acceptably corrected. Report should address the following:

      a. Completeness of contract documents;

      b. Conformance to local building codes and HUD Standards;

      c. Accessibility for persons with disabilities:

         (1) From property line to main entrance(s) to main building(s);

         (2) To all areas throughout the project site;

         (3) Within all residential structures:

            (a) Path of travel to all public areas;

            (b) Path of travel to all dwelling units required to be accessible under applicable accessibility laws.

            (c) Within accessible dwelling units, full accessibility to all areas within, and full usability of all areas, including kitchens and bathrooms.

d. Site design:

(1) Placement of buildings, roads, walks and parking on the site;

(2) Site erosion and drainage;

(3) Soil borings report.

e. Building design:

(1) Building circulation:

(a) Adequacy of elevators;

(b) Number and placement of stairs;

(c) Adequacy of lobbies and corridors;

(d) Adequacy of fire egress.

(2) Typical dwelling units: Adequacy of room sizes and circulation within.

(3) Fire safety: Provision of adequate fire safety measures, e.g. fire sprinklers, firewalls, fire doors (if required).

(4) Structural adequacy: Review of building structure and structural details.

(5) Mechanical and electrical adequacy: Review of mechanical and electrical plans.

(6) Energy efficiency. Review utility combination for energy efficiency and determine acceptability of utility combination. If HUD has required a life cycle utility analysis to be included in the Firm Commitment application (see Section 5.8.B.1.b), review utility analysis to determine acceptability of utility combination. See Appendix 5A, Paragraph O for energy efficiency standards.

3. Prepared architectural portion on Form HUD-92264, signed by Lender's architectural analyst under "Architectural Processor".

4. Copies of Lender's architectural analyst's project files and logs only at the request of the HUD Office.

5. Standard certification by Lender's architectural analyst, see Section 11.2.J.

5.7 Firm Commitment Through Initial Endorsement – New Construction

A. Changes After Firm Commitment. Prior to initial endorsement:

1. Drawings and specifications may be amended by addendum when the change(s) will have no effect on cost or value. The Lender's analyst must review the addenda for acceptability.

a. Addenda must clearly state or show the change with specific reference to the location of the item on the drawings or in the specifications.

b. Amendments shall be clearly noted and dated.

c. Addenda are not to be used to correct errors noted during firm commitment processing.

2. Firm Commitment reprocessing is required for major changes adding or deleting work, or affecting cost or value. Drawings and specifications affected must have sheets and pages revised and replaced.

B. Contractor's Estimated Progress Schedule. Article 3.10.1 of the AIA General Conditions requires the general contractor to prepare and submit an "estimated progress schedule for the work" to the mortgagor and Architect.

1. The mortgagor or Architect must submit a copy to the Lender's analyst at least 30 days before initial endorsement.

2. The Lender's analyst must review the Schedule to assure it relates to the entire project to the extent required by the contract documents. (Inclusive dates for stages of construction.)

   Copies of the approved schedule are given to the HUD representative (HUD Inspector) to determine scheduled progress at each site visit.

3. The Lender uses the schedule to determine when construction is falling behind, triggering a meeting of all parties to the contract, including the bonding company. The meeting is to determine the reason for delays, advise of the consequences of the delay and develop a plan to get construction back on schedule.

C. Contract Documents. The Lender shall submit the following contract documents to HUD's architectural staff for **HUD review** prior to initial endorsement:

1. Building Loan Agreement, Form HUD-92441, and Construction Contract, Form HUD-92442 or 92442A.

   a. Correct identification of drawings and specifications on forms.

      (1) Project name, HUD project number, and design Architect's name.

      (2) Drawings and specifications by sheets, pages and date or by index with date of last revision of sheet and page.

      (3) Addendum by number and date.

   b. Compliance with any architectural requirement or condition.

2. Survey and Surveyor's Report, Form HUD-2457, must be reviewed:

   a. For compliance with Survey Instructions and Certificate.

   b. To confirm that legal description and survey property boundaries agree.

c. To assure that the surveyor's report is complete per instructions.

3. Drawings and Specifications, three sets. Confirm that:

a. Master Set No. 1 and Sets No. 2 and 3, are the same as accepted and identified in the Firm commitment. Indicate total number of pages in the drawings and specifications.

b. Cover sheets are signed by representatives of design Architect, Architect administering contract, owner, contractor, Lender, and bonding company, if any.

c. Master set is initialed by signatories on face of each sheet and page. (Signatories initial opposite any "last minute" revisions not covered by Firm Commitment or addendum.)

D. If contract documents are correct, the HUD Team Leader will recommend Initial Endorsement. In the event of errors or inconsistencies, the contract documents will be returned to the Lender for correction and resubmission.

E. Distribution of Drawings and Specifications. After initial endorsement, the HUD Office will distribute drawings and specifications as follows:

1. Set No. 1, Master Set is the legal contract document. The HUD Office will:

a. Retain this Set until the last guarantee inspection.

(1) Add copy of each Change Order, Form HUD-92437.

(2) Add copy of each Architect's Supplemental Instruction.

b. Package specifications in a tightly rolled bundle with drawings on the outside, attach memo indicating HUD project number, and send to the Regional Federal Records Center 1 year after completion of construction.

2. Set No. 2 is the HUD Office's review set.

a. HUD staff will use this set for processing change orders, review of inspections, and similar functions. Do not use Master Set.

b. Dispose of this set after final endorsement.

3. Set No. 3 is the HUD Office's job site set.

a. The HUD Inspector uses this set for inspection of the project.

b. HUD Inspector conforms it to the contractor's “record set.” (Contractor is required to maintain at the site a record set for the Owner.)

c. HUD Inspector returns this set to the HUD Office upon completion of construction. This set is the HUD "as-built" set.

d. Use this set for guarantee inspections.

e. Send HUD "as-built" set to the Hub Director, 1 year after completion of construction, for use in project servicing.

5.8 HUD Procedures - Pre-Application Stage – New Construction

A. Lender will submit Pre-application deliverables (Paragraph 5.6) to the HUD Office.

B. HUD architectural analyst will examine the Architectural/Engineering (A/E) exhibits and will recommend either acceptance or rejection of the A/E portion of the Pre-application submission. Using the application and the sketch plans, the HUD architectural analyst will review:

1. Conformance to HUD Standards.
   a. HUD Minimum Property Standards.
   b. Energy efficiency. Using the application, the analyst will review the proposed utility selection for the project to determine conformance with the HUD standard cited in Appendix 5A, Paragraph O. If it is determined that the utility selection is energy inefficient, the analyst will include a recommendation in the written report (See Appendix 5L) that the Hub Director require a life cycle utility analysis to be included in the Firm Commitment application.
2. Site conditions including:
   a. Placement of building(s) on the site;
   b. Unusual site features;
3. Residential building(s), including:
   a. Circulation within the building(s);
   b. Typical apartment layouts;
   c. Typical apartment sizes. HUD appraisal staff will determine whether the apartment sizes are marketable for the proposed rents.
   d. Overall structure and exterior finish.

C. HUD architectural analyst will issue a written report (See Appendix 5L) containing recommendations and forward a copy to the HUD Team Leader.

5.9 HUD Procedures: Firm Stage – New Construction

A. Lender will submit Firm deliverables (Paragraph 5.6) to the HUD Office. The HUD architectural analyst will examine the Lender's review, the underwriting summary and the A/E exhibits. The HUD analyst will review the quality of the Lender's review and the transaction itself. The HUD analyst will not reprocess the case. However, if the HUD analyst determines that certain underwriting conclusions are not supportable and affect HUD's risk, the analyst

may recommend that the Lender modify the application or recommend a rejection. The Team Leader will approve, reject or modify the recommendation of the HUD Architectural analyst.

B. HUD architectural analyst:

1. Will review the Firm deliverables for completeness;
2. Will examine the Review Report and the A/E exhibits and will recommend either acceptance or rejection of the A/E portion of the Firm submission. HUD A/E recommendations will be based on areas of concern in the Review Report not covered at Pre-application stage, including:
   a. Detailed site soils information resulting from test borings, including the presence of unstable soils or soil contaminants (See Appendix 5-A, paragraph L);
   b. Detailed examination of accessibility for persons with disabilities from the street throughout the site and into and throughout the residential and common non-residential structure(s) and space(s), with respect to the Fair Housing Act requirements and any other accessibility laws and HUD requirements that apply;
   c. Site design, including placement of buildings and parking, erosion containment measures and site drainage; and
   d. Building design, especially involving fire safety and structural adequacy.
3. Will review the A/E portion of completed Form HUD-92264 for accuracy with respect to the A/E exhibits.
4. Will review portions of the A/E exhibits for consistency with the Review Report. Check the following:
   a. Sitework and elevations;
   b. Foundation design and placement;
   c. Accessibility for persons with disabilities, from the street throughout the site and into and throughout the residential and common nonresidential structure(s) and space(s).
   d. Any design features that are unusual for the particular structure type and or system.
   e. Utility analysis if required by Hub Director at Pre-application review.

C. HUD architectural analyst will issue a written report (See Appendix 5L) containing recommendations and forward a copy to the HUD Team Leader.

5.10 HUD Procedures - Firm Commitment Through Initial Endorsement – New Construction

A. HUD architectural staff will review contract documents as indicated in Paragraph 5.7.C prior to initial endorsement.

B. If contract documents are correct, the HUD Team Leader will recommend Initial Endorsement. In the event of errors or inconsistencies, the contract documents will be returned to the Lender for correction and resubmission.

C. The contract drawings and specifications will be distributed as indicated in Paragraph 5.7.E.

5.11 General Lender Procedures – Substantial Rehabilitation

All of the previous instructions in this Chapter apply to substantial rehabilitation projects unless otherwise modified therein.

5.12 Definitions – Substantial Rehabilitation

A. Substantial Rehabilitation - required repairs, replacements and improvements:

1. Involve the replacement of two or more major building components or,
2. Costs of which exceed the greater of:
   a. 15 percent (exclusive of any soft costs) of the property's replacement cost (fair market value) after completion of all required repairs, replacements, and improvements, or
   b. $6,500 per dwelling unit (adjusted by HUD's authorized high cost percentage).

   NOTE: Estimates for determining the cost for substantial rehabilitation must include general requirements and fees for contractor's general overhead and profit, bond premium, mortgagor's and contractor's other fees and design architect and supervisory architect. However, when determining the eligibility of Section 223(f) projects, include only the repair costs; do not add general requirements and fees.

B. Major Building Component. Roof structures; wall or floor structures; foundations; and plumbing, central heating and air conditioning systems, or electrical systems.

1. Major refers to the importance of the component and the extent of replacement.
   a. The element must be significant to the building and its use, normally expected to last the useful life of the structure, and not minor or cosmetic. Examples: Major: roof sheathing, rafters, framing members. Minor: shingles, built-up-roofing.
   b. Total replacement is not required, but the greater part (at least 50 percent) must be replaced.

5.13 Standards – Substantial Rehabilitation

Substantial rehabilitation must comply with applicable local codes and ordinances. For a full listing of standards and guidelines for substantial rehabilitation projects, see Appendix 5B and 5D.

5.14 Architectural/Engineering Exhibits – Substantial Rehabilitation - Firm Stage

In addition to the exhibits indicated in Paragraph 5.5, the mortgagor shall submit the following exhibits for the Lender's architectural analyst to review:

A. Detailed scope of rehabilitation work resulting from joint inspection. (See Paragraph 5.16)

B. If an abnormal amount of time has elapsed since the joint inspection, or if property damage may have occurred, reinspect the property to determine current physical condition and provide any necessary additional conditions for Firm Commitment.

5.15 Lender Deliverables – Substantial Rehabilitation

In addition to the deliverables indicated in Paragraph 5.6, the Lender will present the following deliverables to the HUD Office:

A. Pre-application Stage (for HUD review):

1. Sketch plans of the existing building(s) "as-is".
2. Basic Work Writeup: Description of the proposed rehabilitation (from preliminary inspection of the property conducted by mortgagor's Architect), including post-rehabilitation sketch plans. This precedes the joint inspection and the Detail Work Writeup. (See Paragraphs 5.16 and 5.17)
3. LBP and asbestos test reports for projects constructed prior to 1978. (See LBP and asbestos standards in Appendix 5B, paragraphs G and H, and Sections 9.4.D and 9.7.B.)

B. Firm Stage: Mortgagor's A/E exhibits for substantial rehabilitation as indicated in Paragraph 5.14.

5.16 Joint Inspection – Substantial Rehabilitation

As soon as possible after the pre-application approval is issued by HUD, the lender should schedule an on-site inspection with the mortgagor.

A. Team Members.

1. Must include architectural and cost staff employed by the Lender, the mortgagor's Architect, and the general contractor. A representative of the local building department

should be present. If not, the team must have a copy of the latest official inspection for compliance with local codes and ordinances.

B. Purpose.

1. Determine the project's condition, particularly concerning major defects, deterioration, and obsolescence.
2. Determine type and extent of work that would:
   a. Appropriately rehabilitate the project for the intended occupants.
   b. Result in reasonable operating costs.
   c. Ensure continued marketability after rehabilitation.

C. Scope. Since the joint inspection is the basis for the detail work write-up, cost estimate, commitment conditions and required exhibits, the inspection must be thorough and include:

1. All features of the project site; buildings and improvements, utilities, roads and parking, underground storage tanks, and surroundings.
2. Sufficient living units to ascertain all necessary rehabilitation. This may range from selected typical units to all units depending on physical conditions.

5.17 Detail Work Write-up – Substantial Rehabilitation

The mortgagor or its Architect prepares the detail work write-up reflecting the work agreed to, based on the joint inspection. However, the mortgagor's Architect may prepare drawings and specifications that describe clearly the work agreed to in lieu of a work write-up. Because there is no initial deposit to the Reserve for Replacements for substantial rehabilitation, the scope of work must provide for the replacement of all doors, windows roofs, cabinets, and mechanical/conveyance systems (e.g. elevators, plumbing, boilers/furnaces, ventilation/air conditioning, electrical) which are at or near the end of their useful lives. The rehabilitation must result in a structure which will require no complete replacement of doors, windows, roofs, cabinets, or mechanical/conveyance systems for at least five years.

A. The detail work write-up must describe in narrative form the required rehabilitation. Divide as follows:

1. General Requirements. Include work items applicable to all elements in the project, for example: site work, exterior work; painting and decorating; rehabilitation of kitchens, bathrooms, roofs, mechanical systems, electrical systems, interior walls, floors, windows and doors, etc.
2. Special Requirements. Describe work for a specific item, room, space, unit, or building.

B. All requirements must be specific and state the location, type and amount of work to be done. Do not use general phrases, such as, “repair or replace” or “as required”.

C. In case of a complete gut rehabilitation project, where only the structure will remain and the drawings and specifications will be as detailed as for new construction, the detail work write-up need only to be detailed enough to be a basis for the cost estimate and serve as a memorandum of understanding between the Field Office and the mortgagor.

D. Historic requirements including State Historic Preservation Office (SHPO) review, etc.

5.18 Contract Documents – Substantial Rehabilitation

Because the nature and extent of rehabilitation may vary widely among individual projects, the requirements for specific contract documents cannot be determined by the Lender's architectural analyst until the joint inspection and work write-up are complete.

A. Drawings. When required, drawings must clearly define the concept and detail of the rehabilitation, any demolition or removal, and repairs and replacements.

   1. Require complete drawings and details similar to those for new construction if the structure will be gutted, or there will be structural modification or addition to the existing structure.

   2. For projects with minor changes in space arrangement, structural or mechanical systems, require only drawings sufficient to show existing conditions and proposed work.

   3. Do not require drawings if the rehabilitation can be clearly and completely described in specification format.

B. Specifications. Work write-up/specifications are always required and must clearly define the scope of the rehabilitation, establish the quality of materials and workmanship, and the conditions of construction.

5.19 Engineering Reports – Substantial Rehabilitation

Surveys or special technical reports may be required of the mortgagor by the Lender for proper evaluation of the project.

A. Notify the mortgagor by letter immediately after the joint inspection of any requirement for such report.

B. Clearly state the exact nature of the engineering or technical investigation and the items to be covered.

C. Specify any special tests, such as pressure or flow tests of plumbing or cutting of pipe for examination.

D. Specify seismic resistance for substantial rehabilitation projects. Structures in seismic zones 3 and 4 must be capable of resisting three fourths (3/4) of the seismic forces contained in the FEMA-273, NEHRP Guidelines for Seismic Rehabilitaion of Buildings, and FEMA-274, NEHRP Commentary on the Guidelines for Seismic Rehabilitation of Buildings.

1. A seismic hazard analysis of the building(s) should be conducted by a registered engineer familiar with lateral force design, where applicable code requirements at the time of construction did not equal or exceed the referenced seismic standards.
2. The analysis should include an examination of the structure for continuity, ductility, and resistance to lateral forces.
3. Structural elements and connections between elements should be strengthened and retrofitted as required, if the existing structure does not provide three fourths (3/4) of the seismic force level resistance required. The objective is to prevent major failures, collapse or loss of life due to earthquake forces.

E. Work write-up cannot be completed until all required engineering reports are analyzed by the Lender's architectural analyst and a determination made in regard to the need for additional rehabilitation requirements.

5.20 Required Professional Services – Substantial Rehabilitation

The services of an architect or engineer, licensed to practice architecture or engineering in the state in which the project is located, will be required for design and construction of a rehabilitation project, when:

A. Working drawings and specifications are necessary to properly define the scope and concept of the rehabilitation.

B. Change of building use is proposed, existing spaces are to be altered, or structural changes are necessary, or

C. An addition is proposed to the existing structure.

5.21 HUD Procedures - Pre-application Stage – Substantial Rehabilitation

A. Lender will submit pre-application deliverables (Paragraphs 5.6 and 5.15) to the HUD Office.

B. In addition to procedures in Paragraph 5.8.B, the HUD architectural analyst will examine the Basic Work Write-up.

C. HUD architectural analyst will issue a written report (Appendix 5L) containing recommendations and forward a copy to the HUD Team Leader.

5.22 HUD Procedures: Firm Stage – Substantial Rehabilitation

A. Lender will submit Firm deliverables (Paragraphs 5.6 and 5.15) to the HUD Office.

B. In addition to procedures in Paragraph 5.9.B, the HUD architectural analyst will examine the detail Work Write-up.

C. HUD architectural analyst will issue a written report (Appendix 5L) containing recommendations and forward a copy to the Lender's architectural analyst and the HUD Team Leader.

SECTION 223F

5.23 In General – 223(f)

In general, all the previous instruction in this chapter apply to projects insured pursuant to Section 223(f), except as modified herein.

5.24 Standards – 223(f)

Eligible properties are existing construction. The criteria for acceptance are not the same as for proposed construction. See Appendix 5-C for a complete description of architectural standards for 223(f) projects.

A. Fair Housing Act Accessibility Considerations for Section 223(f):

If a project containing 4 or more units available for first occupancy after March 13, 1991 contains Fair Housing Act violations, the violations must be corrected as a condition of mortgage insurance. See Appendix 5C, paragraph E.

5.25 Lender Deliverables – 223(f)

The Lender will present the following deliverables to the HUD Office:

A. A complete Project Capital Needs Assessment and Replacement Reserve Escrow (PCNA) Report (See Appendix 5M) prepared by the Lender and described in Paragraph 5.26 below.

B. Lender's Review of PCNA Report.

C. A completed A/E portion of Form HUD-92264.

D. Mortgagor's Exhibits. The mortgagor shall submit the following exhibits for the Lender's architectural analyst to review:

1. Form HUD 92013.
2. Certificate of Occupancy or Final Inspection Report, if available or a statement from the jurisdiction of authority recognizing conforming use.
3. Municipal Code Violation Report/Clear Report and Fire Marshall's Report/Clear report.
4. City/County Health Officer's report/clear report where private water supply or sewage treatment systems are involved.
5. Latest State medical/personal care facility agency's report on the project's operation, where a residential care facility is involved.
6. "As Built" Survey, Form HUD-2457, Surveyor's Report; and Title Report.
7. Set of as built plans, if available.
8. Location map.

5.26 Project Capital Needs Assessment and Replacement Reserve Escrow – 223(f)

The Lender prepares the PCNA and Replacement Reserve Escrow in accordance with Appendix 5M.

A. Date of PCNA. The PCNA must be prepared and dated no earlier than 120 days prior to the submission of the application f or Firm Commitment.

B. The PCNA consists of the following:

1. A Physical Inspection Report (PIR) containing detailed information about:
   a. The condition of the project.
   b. Identification of the project's:
      (1) Immediate repair needs; and
      (2) Expected repair, replacement, and major maintenance needs over a specified time period such as ten years.
   c. An estimated cost, adjusted for inflation, to complete such items.
2. A Statement of Resources and Needs which discusses:

a. The Lender's review of and possible adjustment to the PIR;

b. Identifies:

(1) All critical repairs which must be completed before initial/final endorsement and the associated cost of doing the work.

(2) Non-critical repairs to be completed after final endorsement and the associated cost to be escrowed.

C. Repairs to be completed after Initial/Final Endorsement. Repairs may be completed after loan closing under certain conditions:

Note: It is the Department's preference that non-critical repairs be completed before closing. If the mortgagor wishes to defer non-critical repairs until after closing, the following instructions set specific conditions that the mortgagor must meet.

1. General.

a. Only non-critical repairs may be deferred. Non-critical repairs are those that will not:

(1) Endanger the safety and well-being of tenants, visitors and passersby;

(2) Adversely affect ingress or egress; or

(3) Prevent the project from reaching sustaining occupancy.

b. The repair deferral provision may be used only with the approval of the Hub or HUD Program Center Office.

c. Operating deficit determinations must consider occupancy disruptions to any units due to deferral of repairs.

d. After initial/final endorsement, work on deferred repairs must begin immediately.

2. Escrow Agreement (Form HUD-92476-1).

a. The costs of the deferred repairs (including materials, labor, permits, profits, etc., trended to the start of repairs) must be estimated and withheld ***in cash*** from mortgage proceeds and placed in escrow. A letter of credit may ***not*** be substituted for this 100 percent escrow.

b. An additional cash amount (or letter of credit, at the option of the Lender) of not less than 50 percent of the repair cost estimate will also be placed in escrow.

c. The Lender may release funds from the mortgage proceeds portion of the escrow in proportion of the cost of work completed, less a 10 percent holdback. The holdback amount must be held until all work is completed and found acceptable.

d. Funds remaining in the escrow account, including the holdback portion, may be released when:

(1) All repairs have been satisfactorily completed;

(2) Evidence of clear title has been provided to the HUD Office; and

(3) Latent defects assurances have been provided by one of the following:

(a) An escrow in cash, or letter of credit at the option of the Lender, equal to 2 ½ percent (or greater percentage as warranted) of the repair cost maintained for 15 months from completion of repairs to cover situations where the defect is discovered in the twelfth month and additional time is necessary to correct it.

(b) A Surety Bond covered by FHA Form 3259 from a surety on the accredited list of the U.S. Treasury for at least 10 percent of the repair cost. (The bond runs for a period of two years from the date of completion of repairs.)

3. Completion of Repairs.

   a. All repairs except those described in Section III.E of Appendix 5M must be completed by the mortgagor within twelve (12) months of endorsement (or such shorter period as HUD and the Lender may specify).

   b. If the mortgagor has not completed all repairs by the end of the repair period (including any approved extensions), the Lender will complete the repairs using the escrowed funds. The Lender will provide the mortgagor with a breakdown of these repairs and the cost(s) of completion (including administrative expenses). Funds remaining in the escrow account after completion of the repair work will be returned to the mortgagor less reasonable administrative costs incurred in completing the repairs. (See Section 13.15.D.5)

4. Requirements After Completion of Repairs. In cases where actual costs are less than estimated, the maximum insurable loan amount must be recalculated. If the maximum insurable mortgage is cut due to lower actual costs, the mortgagor must prepay the mortgage:

   a. In amounts equal to the scheduled monthly principal payments, to the extent possible; with

   b. Any remainder going to the Reserve for Replacements Fund.

5. Exemption for Repairs for Tax-Exempt Bond Financed Projects. Project repairs which are required to satisfy tax code requirements but not required for Section 223(f) program compliance are exempt from Provisions 1 through 4 above, but must meet the following:

   a. The costs of the repairs cannot be considered in the determination of the value of the project (for mortgage insurance) or the computation of the maximum insurable mortgage.

   b. The repairs must not be necessary for the project (or any unit in the project) to command the rent levels used in processing.

   c. The repairs must not delay or interrupt the occupancy of any unit in the project.

   d. Repairs must be paid from sources other than mortgage proceeds, secondary financing, or the required repair escrows.

   e. Funds for these repairs must not be commingled with the Section 223(f) escrow.

5.27 HUD Procedures Firm Stage – 223(f)

A. Lender will submit deliverables (Paragraph 5.25) to the HUD Office. The HUD architectural analyst will examine the Lender's PCNA Report, the underwriting summary and the mortgagor's exhibits. The HUD analyst will review the quality of the Lender's report and the transaction itself. The HUD analyst will not reprocess the case. However, if the HUD analyst determines that certain underwriting conclusions are not supportable and affect HUD's risk, the analyst may recommend that the Lender modify the application or recommend a rejection. The Team Leader will approve, reject or modify the recommendation of the HUD architectural analyst.

B. The HUD architectural analyst:

1. Will examine:

   a. The Project Capital Needs Assessment and Replacement Reserve Escrow (PCNA) Report;

   b. Lender's review of PCNA Report;

   c. A/E portion of completed Form HUD-92264;

   d. Mortgagor's Exhibits.

2. Will recommend either acceptance or rejection of the A/E portion of the submission. HUD A/E recommendations will be based on a comparison of selected areas of concern in the PCNA Report with the Mortgagor's Exhibits. At a minimum, consider Critical Repairs covering health and safety (and accessibility for persons with disabilities for projects built after March 13, 1991).

C. HUD architectural analyst will issue a written report (Appendix 5L) containing recommendations and forward a copy to the HUD Team Leader.

SECTION 232

5.28 General Lender Procedures – Section 232

For new construction and substantial rehabilitation, follow instructions for Section 221(d) and 220, with additions and modifications as indicated below.

5.29 References for Section 232

A. Qualifications of the Lender's architectural analyst are as indicated in Paragraph 5.1.

B. Responsibilities of the Lender's architectural analyst are as indicated in Paragraphs 5.1 and 5.4.

C. Deliverables of the Lender's architectural analyst are as indicated in Paragraph 5.6.

D. Additional architectural standards for projects to be built under Section 232 can be found in Appendix 5E through 5-H.

5.30 Narrative Program for Section 232 Projects

The mortgagor must submit a narrative program as part of its application. The Lender uses the program as a reference for reviewing building designs, work write-ups and joint inspections for substantial rehabilitation, acquisition, and refinance projects. The work write-up must include any waiver or deficiencies cited by the State Health Department or local Fire Marshall, or local building code non-compliance. The narrative program must provide the following:

A. Describe the following for all projects:

1. Type of project
2. Profile of residents
3. Beds/Units:
    a. Number and type of accommodation
    b. Furnishings
    c. Design
4. Services
    a. Maintenance
    b. Laundry (dirty/clean/washing/drying)
    c. Housekeeping (employees/lounge/offices/equipment)
    d. Nurses Station or Work Station
    e. Examining/treatment/therapy rooms and equipment
    f. Other proposed spaces
5. Community and resident spaces
    a. Dining/kitchen/storage
    b. Lounges
    c. Activity spaces and other proposed spaces
6. Commercial
7. Offsite and shared facilities, e.g., central kitchens
8. Administration work area
9. Therapy
    a. Physical therapy

b. Occupational therapy

c. Speech therapy

B. Describe the following for all Nursing Homes, ICF's, Board and Care Homes, and/or Assisted Living Facilities:

1. Each function or service;
2. Operational space required for each function;
3. Staffing patterns;
4. Number of staff or occupants for each space;
5. Administrative /operational systems;
6. Interrelationships of various functions and spaces; and
7. Major design features.

C. Board and Care Homes and/or Assisted Living Facilities

1. Describe the number and type of each type of residential accommodation (including square footage).
2. Common/community space (including square footage).

D. Non-resident Day Care Centers. If proposed, additionally describe:

1. Type of program(s) to be offered, e.g. geriatric, child care;
2. Number of participants;
3. Hours of operation;
4. Services provided.

5.31 Nonrealty Equipment – Section 232

Appendix 5K lists typical major and minor movable equipment and classifications for a 120-bed nursing home, and may be used as a general guide.

A. Major Movable Equipment may not be included in the general construction contract. It must be purchased, outside the construction contract, by separate purchase order(s) or contract(s).

1. The mortgagor must provide descriptions for the list of major movable equipment. The list and descriptions are used to monitor work completion.
2. List of Major Movable Equipment.

a. Identify the list(s) of Major Movable Equipment in Section P of Form HUD-92264-HCF.

b. All major movable equipment, regardless of how provided, must be listed to assess its adequacy for the intended project and to provide an inventory in the event of default.

c. The list(s) must separately identify major movable equipment and provide the estimated cost for each item.

B. Minor Movable Equipment and Supplies.

1. Expendable nonrealty items, e.g. china, flatware, utensils and instruments, linens, etc., may not be included in the mortgage amount. Accordingly, they may not be included in the general construction contract nor in major movable equipment.

2. Estimate of Minor Movable Equipment and Supplies. The estimate is used to establish an escrow for the mortgagor's purchase of these items from outside mortgage proceeds. For minimum amount see Section 8.8.B.1. An itemized list is not required for Minor Movable Equipment.

a. Check for adequacy for the intended project;

b. Identify the list of Minor Movable Equipment and Supplies in Section P of Form HUD-92264-HCF.

5.32 Realty Items – Section 232

All realty items, consisting of all built-in or attached construction and equipment, must be included in the general construction contract. The mortgagor may not contract or purchase it directly, nor lease it without HUD's permission. The mortgagor cannot serve as a subcontractor to the general contractor. Realty items and nonrealty major movable equipment will be included in the project mortgage.

5.33 HUD Procedures - Firm Stage – Section 232

A. Lender will submit: In addition to submission package required for Sections 221(d) and 220, submit the following:

1. Completed Form HUD-92264-HCF in lieu of Form HUD-92264;

2. Mortgagor's construction document package including:

a. List of Major Movable Equipment;

b. Mortgagor's Narrative Program.

B. HUD architectural analyst will review the Lender and mortgagor packages. In addition to the review procedures indicated for Sections 221(d) and 220, the HUD review will include the list of Major Movable Equipment, and the Mortgagor's Narrative Program.

C. HUD architectural analyst will issue a written report (Appendix 5L) containing recommendations and forward a copy to the Team Leader.

SECTION 232 PURSUANT TO SECTION 223(f)

5.34 General – Lender

For Section 232 projects pursuant to Section 223(f), follow instructions for Section 232 and existing projects pursuant to Section 223(f), with additions and modifications as indicated below.

5.34.1 Accessibility Considerations for Section 232 Pursuant to Section 223(f)

A. Fair Housing Act:

If a health care facility containing 4 or more units available for first occupancy after March 13, 1991 contains Fair Housing Act violations, the violations must be corrected as a condition of mortgage insurance. See Appendix 5E, paragraph C.

B. UFAS Requirements: See Appendix 5E, paragraph B.

5.35 Municipal Authorizations

The Lender's architectural analyst will review permission to occupy, use permits, identified violations of zoning ordinances, codes, etc. Also review the latest state agency operational reviews in regard to the property's condition and proposed use defined in the application Form HUD-92013-HCF, and Narrative Program. Where necessary for complete information or confirmation of submitted information, phone or visit municipal authorities. All variances must be justified in writing. HUD will make the determination if the variances are acceptable.

5.36 Additional Narrative Program Requirements - Section 232 Projects Pursuant to Section 223(f)

A. Narrative on marketability of project. The narrative must address any functional obsolescence of the existing facility, especially regarding accessibility, number of residents per room, and private access to bathrooms. Any decision on the part of the owner to retain

features considered functionally obsolete must be justified from a market standpoint not only for the present, but for the entire term of the mortgage.

B. PCNA and Replacement Reserve Escrow report in accordance with Appendix 5M. See Paragraph 5.26.

C. For blended rate projects, the existing structure must meet the general intent of the Minimum Property Standards (MPS). The existing portion in its present condition, must meet the general criteria for livability without the necessity of substantial rehabilitation. The objective is to assure an acceptable risk through only repair requirements.

To ensure an acceptable risk, the lender must provide a Project Capital Needs Assessment (PCNA) report for the existing portion of the project, prepared by an experienced needs assessor. The report must be provided at the time of submission of the application for mortgage insurance.

(Include these requirements in addition to the Narrative Program detailed in Section 5.30.)

5.37 Major Movable And Minor Movable Equipment

A. An itemized list of Major Movable Equipment (MME) is supplied by the mortgagor. The list of MME must be divided into existing equipment to be retained and new equipment to be purchased. See Appendix 5K for an example.

B. List of existing MME equipment to be retained must itemize all equipment, listing (for each item), estimated remaining useful life, and estimated replacement cost.

C. Lender's architectural analyst examines the MME list for completeness and adequacy and forwards the accepted list to the Lender's cost estimator for inclusion in the Reserve for Replacement.

D. The mortgagor is not required to submit an itemized list of Minor Movable Equipment.

5.38 HUD Procedures - Firm Stage – 232/223(f)

A. Lender will submit: In addition to submission package required for Section 232 and existing projects pursuant to Section 223(f), submit:

1. List of Major Movable Equipment itemized according to:

   a. Existing equipment to be retained (listed by room), and

   b. Newly purchased equipment (listed by room).

2. Mortgagor's narrative program.

B. HUD architectural analyst will review the Lender and mortgagor packages. In addition to the review procedures indicated for Section 232 and existing projects pursuant to Section 223(f), the HUD review will include the list of Major Movable Equipment, itemized according to existing and newly purchased equipment.

C. HUD architectural analyst will issue a written report (Appendix 5L) containing recommendations and forward a copy to the HUD Team Leader.

03/01/02

03/01/02

Chapter 6

Cost Processing

General

6.1 Qualifications, Responsibilities, and Approval of the Lender's Cost Estimator

A. Qualifications of Lender's Cost Estimator - The Lender shall hire a qualified construction cost estimator with experience in multifamily cost estimating. The estimator must be knowledgeable and experienced with local building standards and construction costs for the type of project proposed. A cost estimator may also serve as the architectural analyst if the qualifications are met.

B. Responsibilities of Lender's Cost Estimator - The cost estimator shall provide an independent cost analysis for the proposed project. This estimate is not limited to any one specific method. However, the method chosen must be one recognized by the construction industry. This detailed cost estimate must conform to HUD's line item format as shown on Form HUD-2328, Contractor's and/or Mortgagor's Cost Breakdown.

HUD Approval of the Lender's Cost Estimator - The Department reserves the right to examine the credentials of all cost estimators hired by the Lender, and to reject any and all individuals that it considers unqualified.

SECTION 221(d) AND 220

6.2 Lender Responsibilities and Deliverables

A. Responsibilities

A complete construction cost analysis must be submitted with the Firm Commitment application. The Cost Analyst's responsibilities are:

1. Preparation of detailed cost estimate.
2. Completing Cost portions of Form HUD-92264, Project Income Analysis and Appraisal.

3. Reviewing and approving or disapproving the Contractor's and/or Mortgagor's Cost Breakdown, Form HUD-2328.
4. Preparing the Property Insurance Schedule, Form HUD-92329. (See Forms Appendix.)
5. Reviewing and approving or disapproving requests for prior approval of identity of interest subcontractors.
6. Estimate costs of Replacement Reserve items (for substantial rehabilitation). Note that there is no initial Replacement Reserve for complete (gut) rehabilitation. See Chapter 7 for instructions.
7. Providing advice and assistance on cost matters to mortgagors, consultants, contractors, and others.

B. Deliverables

1. Firm Stage - Cost Estimate Package:

a. Detailed Cost Estimate. To be summarized on Form HUD-92326:

(1) Detailed structure(s) and land improvement cost estimates, for new construction and substantial rehabilitation, and costs of unusual site development.

(2) Contractor's General Requirements, General Overhead and Profit, and Architect's Design and Supervision fees.

(3) Bond Premium and Mortgagor's and Contractor's Other Fees.

(4) Onsite Demolition costs.

(5) Off-site improvement costs.

(6) Project's Cost Not Attributable (CNA) to dwelling use.

b. Preparation of Cost portions of Form HUD-92264, Project Income Analysis and Appraisal.

c. Preparation of Form HUD-92329, Property Insurance Schedule, including Form FHA-2447, Property Insurance Requirements.

d. Review the Contractor's and/or Mortgagor's Cost Breakdown:

(1) Submit Form HUD-2328, Contractor's and/or Mortgagor's Cost Breakdown.

(2) Review of Form HUD-2328, Contractor's and/or Mortgagor's Cost Breakdown, and recommendation for approval or disapproval. Review must include a trade line item comparison of Form HUD-2328 and the estimator's cost estimate (Form HUD-92326), which is to be provided on Form FHA-2331-B.

e. For substantial rehabilitation (in addition to the above):

(1) Joint work write-up;

(2) (2) Replacement Reserve estimate (See Chapter 7);

2. Identity of Interest and 50-75 Percent Rule Disclosure. (See Section 14.15.M.3 for 50-75 Percent Rule instructions.)

a. Identification of any identity of interest relationship(s) between or among:

(1) Mortgagor,

(2) Mortgagor's Architect,

(3) General contractor,

(4) Subcontractor(s),

(5) Material supplier(s),

(6) Equipment lessor(s),

(7) Manufacturer(s) of industrialized housing.

b. Identification of any subcontractor(s) that violate the 50/75 Percent Rule by analysis of Form HUD-2328.

6.3 The Lender's Cost Estimate

PURPOSE. The replacement cost estimate is one of the criteria used to determine the mortgage amount to be insured. It consists of estimates of the new construction and/or substantial rehabilitation costs of all proposed improvements to the property.

A. Method of Estimation. The method should be similar to that used by general contractors. Data should be organized by trade division using the Construction Specification Index (CSI) Format, and adjusted to reflect cost differences due to time, location and price fluctuations. The cost estimate may be prepared using a quantity survey takeoff or a square-foot and per-unit cost approach using established data and making adjustments.

B. Data. The data source used to prepare the cost estimate must be documented. Acceptable cost data may come from completed comparable projects, benchmark amounts taken from actual project costs, and published data from construction cost data publishers.

C. Detailed Cost Estimates. Use detailed plans and specifications supplied by Lender's architectural analyst as indicated in Chapter 5.5 as a basis for the cost estimate. Estimates must reflect the general level of construction costs in the locality where construction takes place. Costs must be projected to the estimated construction start date. Davis-Bacon labor wage rates must be used. (Current Davis-Bacon

wage rates will be supplied by HUD. See Paragraph 5.4.A.7.a.) The cost estimate is tabulated on Form HUD-92326, and totals are reported in Sections G, M, and O of Form HUD-92264. (See Forms Appendix for all HUD forms.) The cost estimate consists of the following items:

1. Structures and Land Improvements include:

   a. Dwelling structures. Costs of all residential buildings including footings and foundations. Costs must be organized in the Construction Specification Index (CSI) trade item format. Report trade costs in Divisions 3 through 16 on Form HUD-92326.

   b. Garages include all covered parking, from individual carports to complete parking structures. Include free-standing garage structures with other accessory buildings on the Accessory Structures line on Form HUD-92326. On Form HUD-92264, garages are reported separately on Line G.39.

      Exception: Where a garage structure serves as a base for the dwelling structure (common practice in high-rise reinforced-concrete apartment buildings), include the garage trades with the Dwelling Structure trade items; do not report separately on either Form HUD-92326 or HUD-92264.

   c. Accessory buildings. Include costs on the Accessory Structures line on Form HUD-92326 and on Line G.38 of Form HUD-92264.

      Exception: Where accessory uses are not placed in a separate building but rather occupy space within the residential structure(s), include the spaces within the Dwelling Structure trade items; do not report separately on either Form HUD-92326 or HUD-92264.

      (1) Community structures include non-residential uses intended for all project residents but not open to nonresidents. These include clubhouses, meeting halls, exercise rooms, etc.

      (2) Commercial structures include non-residential, commercial uses that derive their income from both project residents and the general public.

   d. Onsite land improvements make up the following trade line items on Form HUD-92326: Earthwork, Site Utilities, Roads and Walks, Site Improvements, Lawns and Planting, and Unusual Site Conditions.

      (1) Unusual land improvements are items not typical to most construction in the locality, such as excessive excavation, rock excavation, cuts and fills, special foundations, high water table, problem soils, etc. These items are taken from the Unusual Site Conditions trade line item on Form HUD-92326. Reported separately on Line G.36a of Form HUD-92264. A cost analyst works with the appraiser to determine existence of condition.

      (2) Other land improvements are typical sitework items. They are taken from the other 5 Land Improvement trade line items on Form HUD-92326. Reported on Line G.36b of Form HUD-92264.

e. Offsite extensions of roads, walks, and utilities immediately adjacent to project boundaries. See Section 6.3 C.2.b.(2) for more details.

2. Supplemental Cost Estimates include:

a. Demolition. This is onsite work to remove existing structure, footings, foundations, and utilities to prepare the site for new construction.

(1) Include the removal and disposal of debris and fill and compaction of excavations. Include general contractor's and subcontractor's overhead and profit in the estimate.

(2) (2) Report on Form HUD-92326, under "demolition," and Form HUD-92264, Section O. Appraiser will report Demolition costs in Section J of Form HUD-92264.

(3) Demolition should not be included in the construction contract.

(4) Outside demolition does not include interior demolition within existing structures undergoing substantial rehabilitation. See Section 6.6.B.1.b.(1)(a).

b. Offsite work that is not immediately adjacent to project boundaries.

(1) Include utilities, walks, curbs, gutters, streets, drainage structures, landscaping, etc., that extend away from the project site. These improvements are not included in the construction contract. Report on Form HUD-92326 and Section M of Form HUD-92264.

(2) Do not include short offsite extensions of onsite utilities, walks, curbs and drainage structures that connect with those immediately adjacent to the project site. These short extensions, and improvements such as sidewalks and curbs adjacent to the property lines, should be considered onsite improvements and included in the construction contract.

3. Cost Not Attributable to Dwelling Use (CNA) consists of certain project amenities and uses other than dwelling uses. CNA is calculated by the cost analyst and used by the appraiser to increase the maximum mortgage amount under Criterion 4 of Form HUD-92264-A. Include these costs within the estimate of total structures and land improvements; also itemize the costs and report separately in Form HUD-92326 and Section M of Form HUD-92264.

a. How CNA is calculated.

(1) CNA is calculated as a percentage. The CNA percentage consists of the ratio of the cost of the non-attributable spaces and facilities (abbreviated "B") to the total cost of land improvements and structures (abbreviated "A"), known as the B over A ratio, or simply B over A.

(2) B over A Ratio. Costs are generally based on gross floor area of the building, area of exterior site improvements, and/or lump sums.

(a) To calculate "B" costs:

(i) Prepare a worksheet describing by category each item considered in CNA, showing the calculation of the cost of each item.

(ii) Show the basis of measurement and the unit price.

(iii) Summarize the categories and total in Form HUD-92326 and Section M of Form HUD-92264.

(b) To calculate "A" costs:

(i) "A" is the sum of Total Structures and Total Land Improvements, before General Requirements or fees are added. To calculate "A", add the amounts in lines 36c and 41 in Section G of Form HUD-92264.

(c) To calculate B over A:

(i) Divide the "B" costs by the "A" costs. Express as a percentage and enter in Section M of Form HUD-92264.

(d) For a complete example of calculating CNA, see Appendix 6D.

b. CNA Categories. There are two main CNA categories, Residential and Commercial. Each is calculated independently of the other and each has a maximum limit of 15 percent, resulting in a total CNA of up to 30 percent. (See the Example in Paragraph 6.3.C.3.c below.) Note that any request to waive these limitations must be documented and justified in accordance with the provisions of Chapter 11.2.I.

(1) Residential CNA. This consists of nonattributable items solely for the use of residents of the project. Items to consider as not attributable to dwelling use are:

(a) Parking areas and the walks and driveways specifically leading to them and serving them. Do not include public roads and streets, or walks and driveways that lead to and serve the building entrance.

(b) Garages, garage spaces, and covered parking, and the walks and driveways leading to them, excluding public roads and streets.

(c) Other improvements include:

(i) Community space, such as: multipurpose rooms, game rooms, lounges, libraries, and hobby or craft rooms, with related equipment such as television sets.

(ii) Project administrative and maintenance spaces, such as: offices (with related equipment such as computers), repair shops, employees' toilets, and janitor or cleaning closets.

(iii) Storage facilities not for occupant use.

(iv) Recreational facilities, such as: swimming pools, tennis courts, basketball courts, and tot lots, with related and necessary equipment.

(v) Interior works of art.

(d) Special Exterior Land Improvements are features unusual or in excess of those typical in projects for similar occupancy.

(i) Include such items as patios, sitting areas, and gazebos for the use of all project occupants. Include fountains and pools, exterior works of art, unusual trees and shrubs, and ornamental lighting and fencing.

(ii) Do not include typical earthwork, roads and walks leading to and serving the dwellings, typical lawns and plantings, private balconies and patios, utility lines, retaining walls, or security lighting and fencing.

(2) Commercial CNA

This consists of areas or buildings and improvements intended for the use of the public as well as project residents. The most common commercial uses in residential developments are:

(a) Shops,

(b) Offices, and

(c) Public parking.

Include only the basic and permanent structural improvements typical in vacant commercial space. Do not include equipment, fixtures, movable partitions, special finishes, etc., for a specific business.

c. Limitation on CNA

(1) Residential CNA: The B over A ratio for residential CNA should not exceed 15 percent. This is exclusive of any commercial space in the project, which will have a separate commercial CNA.

(2) Commercial CNA. Commercial CNA applies to commercial space such as shops that are in a residential structure, but serve the general public as well as the residents. This is calculated separately from residential CNA. The B over A ratio for commercial CNA should not exceed 15 percent. The Lender's underwriter should be aware of the higher risk inherent in commercial space and take special care to evaluate the commercial market in order to determine the maximum commercial space that can be included in the project without imposing undue risk.

Example: A project has residential CNA of 12 percent, and commercial CNA of 7 percent. Each CNA category is within the 15 percent guidelines. Total CNA for the project is 12 percent residential plus 7 percent commercial, equaling 19 percent.

d. Items not to be included in CNA:

(1) Dwelling units. No portion of any dwelling unit, or any balcony or patio solely for the private use of the resident of the individual dwelling unit, is to be included in CNA.

(2) Utility rooms. Do not include utility rooms or portions of basements devoted to utilities such as boilers or furnaces, hot water heaters, water and sewer mains, gas mains, or electrical panels or closets.

(3) Circulation elements. Do not include entrances, lobbies, halls, corridors, stairs, and elevators used by the occupants to enter and leave dwelling units. Do not include roads and walks that lead to and serve the dwellings.

(4) Proration of circulation elements. A proration of circulation elements between dwelling use and any category in CNA is not permitted.

(5) For commercial CNA, do not include equipment, fixtures, movable partitions, special finishes, etc., for a specific business.

e. CNA for substantial rehabilitation. See Forms Appendix for instructions.

f. CNA Areas Used to Calculate Site Not Attributable

Site Not Attributable (SNA) is an extension of CNA. The value of the land containing a non-attributable use will be added to the CNA amount to increase Criterion 4 of Form HUD-92264-A. The SNA value equals the non-attributable site area multiplied by the Warranted Price of Land (Line G.73 of Form HUD-92264). The non-attributable site area is calculated by the cost analyst and provided to the appraiser who determines the SNA (See Chapter 7 and instructions for Form HUD-92264 in the Forms Appendix). Instructions:

(1) Calculate the area of each CNA element.

(a) Itemize interior and exterior uses, such as community rooms and parking lots, in the area calculations.

(b) Items such as fences, benches, tables, and ornamental planting should not be included in area calculations.

(2) Itemize the areas in Section O of Form HUD-92264.

4. Allowances and Fees are reported on Forms HUD-92326 and HUD-92264 as lump sum dollar amounts. Depending upon data, they may be calculated either as lump sums, or as percentages of subtotals which are converted to dollar amounts.

a. General Requirements (Job Overhead). Covers project-specific overhead expenses. Calculate as a percentage of the sum of Total Land Improvements and Total Structures. Percentage amount is determined by the nature, difficulty and size of the project, and the characteristics of the neighborhood.

(1) Include:

(a) Supervision and job-site engineering;

(b) On-site job office expenses directly related to the project including clerical wages;

(c) Temporary buildings, tool sheds, shops, and toilets,

(d) Temporary heat, water, light and power for construction;

(e) Temporary walkways, fences, roads, siding and docking facilities, sidewalk and street rental;

(f) Construction equipment rental not included in trade item costs;

(g) Cleanup and disposal of construction debris;

(h) Medical and first aid supplies and temporary facilities;

(i) Security guard wages and related costs, and theft and vandalism insurance.

(2) Do not include salaries of owners, partners, or officers of the general contracting firm when they visit the site. This is included in General Overhead. The only exception would be actual work done on the job by these individuals in a trade capacity, as laborers or supervisors.

b. General Overhead. Covers contractor's head office and general business expenses. Amount is fixed at 2 percent of the sum of Total Land Improvements, Total Structures, and General Requirements.

c. Builder's Profit. Calculate as a percentage of the sum of Total Land Improvements, Total Structures, and General Requirements. Percentage amount is determined by the nature and location of the project.

(1) BSPRA. Builder's and Sponsor's Profit and Risk Allowance (BSPRA) applies to projects where there is an identity of interest between the mortgagor and the general contractor. BSPRA is limited to Section 220 and Section 221(d)(4) projects with such an identity of interest. The appraiser calculates the BSPRA amount and enters it on line G.68 of Form HUD-92264. Where BSPRA applies, do the following:

(a) Calculate an equivalent builder's profit and an equivalent subtotal (See Section 6.3 C.4.d below).

(b) On the Builder's Profit line of Form HUD-92326 and on Line G.44 of Form HUD-92264, enter the word "BSPRA". The equivalent builder's profit calculated above is not included in the Total for All Improvements (bottom of Form HUD-92326 and Line G.50 of Form HUD-92264).

d. Architect's Fees. Source is Owner-Architect Agreement, AIA Form B-181, to be provided to Lender's estimator. In the event of multiple prime contracts (e.g. engineers), total in line G.45 of HUD-92264 and itemize in Section O, Remarks. Estimator should copy the fee amounts, unaltered, to the cost estimate. Estimator should document architect's fees and compare with existing fee data to determine reasonableness. Estimator should inform the Lender if fees are significantly different from the data range, but the fees should not be altered on the cost estimate without a prior meeting between the Lender, Lender's estimator, mortgagor, and project Architect. Fees should be documented as a percentage of the sum of Total Land Improvements, Total Structures, General Requirements, General Overhead, and Builder's Profit (equivalent Profit in BSPRA cases).

(1) Design Fee covers preparation of all construction documents (working drawings and specifications) up to start of construction. Usually 75 to 80 percent of total.

(2) Supervision Fee covers Architect's construction inspections, reports, and preparation of change order requests. Usually 20 to 25 percent of total.

e. Bond Premium covers Performance Bond. Used to ensure completion of construction in event of a default by the general contractor. Bonding company determines applicable rate by the nature and location of the project and the contractor's history.

f. Other Fees are costs of various required items and services. They can vary greatly from community to community. They can be paid either by the mortgagor or the general contractor. The mortgagor may submit an itemized list with costs as an aid to the cost estimator.

(1) Site and topographic surveys,

(2) Subsurface exploration (test borings),

(3) Soil tests, concrete tests, and other construction testing.

(4) Fees for utility taps and connections.

(5) Building permits and licenses.

(6) General Contractor's cost certification audit fee (if required).

NOTE: The mortgagor's cost certification audit fee is not to be included in Other Fees since it is recorded separately on Line G. 66 of Form HUD-92264.

5. Construction Time. Measured in months. Varies depending upon size, complexity, location, and type of construction. Estimate construction time through examination of data. When documenting, it is recommended to establish graphs for each project type and structural system. Graphs should indicate the number of dwelling units and number of months to construct. Report construction time on Line G.52 of Form HUD-92264.

6.4 Project Processing – Pre-Application Stage

Performed by HUD. See Section 6.7.

6.5 Lender's Project Processing – Firm Stage

At this stage, the Lender's cost estimator will prepare a detailed cost estimate and all required reports and recommendations indicated below:

A. Forms to Use

1. Form HUD-92326. Used for preparation of detailed construction cost estimate.
2. Form HUD-92331-B. Used to make detailed comparison of trade line items between Estimator's cost estimate (HUD-92326) and Contractor's trade payment breakdown (HUD-2328).
3. Form HUD-92329, Property Insurance Schedule. Used to determine the Maximum Insurable Value for all project structures.
4. Form HUD-92264, Project Income Analysis and Appraisal.
   a. Section G, Estimated Replacement Cost, Lines 36a through 52. Used to summarize Total Structures, Land Improvements, General Requirements, and Fees from Form HUD-92326. Also records Estimated Construction Time.
   b. Section M. Used to summarize Cost Not Attributable to Dwelling Use (lines 10 through 15), and Offsite Requirements (lines 16 and 17).
   c. Section O, Remarks. Used to explain Unusual Land Improvements, Other Fees, itemization of professional fees (e.g. engineers), overall difference between Lender's and mortgagor's cost estimates, and other cost items.

B. Prepare detailed cost estimate on Form HUD-92326 using instructions in Paragraph 6.3. Sign form on the "Estimate Prepared by" line and certify. See standard certification in Section 11.2.J. The Lender's architectural analyst will supply detailed plans and specifications as indicated in Chapter 5.5.

C. Resolve differences in Lender's and contractor's construction cost estimates.

Before the Firm application can be submitted for HUD review, there must be a general agreement between the construction cost estimates prepared by the general contractor and the Lender's cost estimator. The Lender's cost estimator is responsible for resolving major differences between the two estimates. When the two estimates generally agree, the Lender may use the contractor's cost figures as shown on Form HUD-2328 as its cost estimate. The Lender's cost estimator will use the following review procedure:

1. Prepare trade line item comparison of Lender's and contractor's cost estimates using Form HUD-92331-B.

   a. Enter costs from Form HUD-92326 and HUD-2328. For multiple-structure type projects, a separate HUD-2328 must be submitted for each structure type, and a master HUD-2328 for the entire project.

   b. Calculate and list line item percentage differences.

2. Review trade line item differences and note all variations beyond normal ranges. The range of trade line item differences varies from trade to trade. Major trades (e.g. engineers, carpentry) should have a smaller range difference than minor trades (e.g. sheet metal). The estimator should judge the variations based on established data.

   Front-end Loading: The estimator should be alert for a pattern of front-end loading in trade items, where the contractor inflates the first few trade item costs in order to secure more mortgage proceeds early on in construction. Such a pattern may indicate inadequate working capital or risky business practices on the contractor's part. Front-end loading can jeopardize the construction of the project, especially since the contractor must under-estimate later trades in order to balance out the bottom line of the estimate, making these later trades especially vulnerable to shoddy work practices and even outright default.

3. Meet with contractor to discuss and resolve all questionable trade line item differences. Resolution process may result in either the estimator or the contractor, or both, recalculating costs of various trade line items based on discussions.

   a. If differences are resolved, accept costs in Form HUD-2328 and use as Lender's Cost Estimate in Form HUD-92264.

   b. When dealing with suspected front-end loading, require rigorous documentation of early trade items that are higher than normal.

   c. If differences cannot be resolved, do not accept costs in Form HUD-2328.

      (1) Use estimator's cost estimate as Lender's cost estimate.

      (2) Inform the Lender's underwriter that the contractor's HUD-2328 is unacceptable.

      (3) Advise the Lender's underwriter to meet with the mortgagor and the contractor for further attempts at resolution.

D. Prepare cost portions of Form HUD-92264, using instructions in Paragraph 6.3. Sign form in the "Cost Processor" box and certify. See standard certification in Section 11.2.J.

E. Property insurance schedule, Form HUD-92329, provides a guide for the amount of insurance coverage. See Forms Appendix for preparation instructions.

1. Prepare form at submission of Firm Commitment package.
2. Estimate 100 percent insurable value for each building.
   a. Include cost of structures, foundations and basement, underground utilities within the building walls, and a proportionate share of allowances and fees, except for Other Fees.
   b. Do not include the cost of land improvements, onsite demolition, or offsite work.
   c. Include the cost of major mechanical equipment, such as boilers serving the entire project, in the cost of the building where the mechanical equipment is located.

F. Prior approval of identity of interest subcontractors' amount including overhead and profit.

1. Identity of Interest is a relationship that exists giving the mortgagor or general contractor apparent control or influence over a subcontractor, equipment lessor, material supplier, or manufacturer of industrialized housing. (See General Contractor's cost certification instructions in Chapter 14 - Cost Certification, for definition of relationships.)
2. Requirements. When subcontractors, material suppliers, or equipment lessors have an identity of interest with a mortgagor or general contractor, the lender must approve the subcontract amounts, including specific amounts for subcontractor general overhead and profit.
3. Timing. Approval is required before work begins under the subcontract. Failure to secure prior approval will result in the disallowance of the total general overhead and profit of the subcontractor at cost certification.
4. Request for approval (with the subcontracts, agreements, or leases) goes to the Lender's cost estimator, whose recommendations must cover:
   a. Acceptability of the documents;
   b. Reasonableness of guaranteed maximum prices for the subcontract work;
   c. Appropriateness of general overhead and profit dollar amounts.
5. Mandatory Conditions for Approval. Note that the burden of proof is on the subcontractor.
   a. Subcontracts:
      (1) There must be a separate one for each trade;
      (2) Subcontract must clearly identify scope of work;
      (3) Be on a cost plus fixed fee basis:

(a) Guaranteed maximum dollar amount for work;

(b) Specific dollar amount for general overhead and profit.

(4) Disapprove "paper conduit" arrangements where work is to be done by general contractor personnel or other subcontractors, suppliers or lessors.

b. Subcontract prices: For this criterion, recent reliable data is a better test than whether higher bids were submitted.

(1) The total price must not exceed the amount shown for the trade item on the accepted Form HUD-2328.

(2) Total price must not exceed reasonable prices taken from available data.

NOTE: The Lender's cost analyst must resolve disagreements in trade prices with the subcontractor.

c. Overhead and Profit. The amounts for general overhead and profit shall be no higher than the typical prices for the specific trade.

d. Subcontractor entity.

(1) The firm must operate and have documented experience as a subcontractor for the specific field covered in the subcontract.

(2) Must control labor, materials, and equipment typical for the trade.

(3) Must do significant business in its specific field with mortgagors and general contractors having no identity of interest.

6. If total of all identity of interest subcontracts, purchases and leases is less than ½ of 1 percent of the mortgage amount, the requirements for each identity of interest subcontractor to cost certify may be waived by the Hub Director upon notification by the Lender.

7. Prepare letter of approval or disapproval to the mortgagor or general contractor. Letter must address all mandatory conditions.

a. Approval will indicate any conditions, including whether or not subcontractor must cost certify.

b. Disapproval will state the reason for disapproval and indicate any cost certification requirements.

6.6 Lender's Processing – Substantial Rehabilitation

A. General. In developing the cost estimate for substantial rehabilitation, follow the instructions of other sections of this chapter, except as modified by the following.

B. Firm Stage:

1. Rehabilitation cost estimate:

a. Mortgagor's Cost Exhibits. Detailed plans, specifications, and scope of rehabilitation work supplied by Lender's architectural analyst as indicated in Paragraphs 5.5 and 5.14, and general contractor's Form HUD-2328.

b. Lender's cost estimator will do the following:

(1) Using the construction drawings and specifications, the scope of work indicated in the joint work write-up and applicable data (all supplied by the Lender's architectural analyst), the Lender's cost estimator will prepare a detailed cost estimate. Estimate must include quantities and unit costs for all items described in the joint work write-up. Include the following items that are specific to substantial rehabilitation:

(a) Interior demolition and removal of floors, walls, roofs, doors and windows, finishes, cabinets, appliances, plumbing, HVAC, and electrical, including boilers and central air conditioning. Also includes abatement of asbestos and lead based paint. Enter amount in Special Construction trade line in Form HUD-92326. If individual trades include removal (e.g. remove and replace cabinets), removal costs may be included in the trade line item.

(b) Onsite demolition is not part of the Construction Contract and should be estimated and recorded in the same way as for new construction. See paragraph 6.3.

(c) Allowances and Fees for substantial rehabilitation, especially General Requirements and Architect's Fees, are calculated the same way as for new construction, but they should reflect the risk and responsibility inherent in rehabilitation and consider the location of the project. Recommend that the cost estimator keep separate data for this item.

(d) Rehabilitation time is determined the same way as construction time for new construction, but the data used must take into account the time required for interior demolition, as repair and rehabilitation cannot begin until such demolition is complete.

(e) Rehabilitation cost not attributable to dwelling use includes an "as-is" value for nonattributable items in addition to a value for actual work performed. Calculate by using the format in the Appendix 6C. The cost analyst completes steps 1,2 and 3. Steps 4 through 8 are completed by the appraiser.

(f) Contingency reserve amount is based on available data for the type and condition of structure. Calculate as percentage of the sum of structures, land improvements, and general requirements. Percentage ranges from 1 to 10 percent, depending on the condition of the project, extent of rehabilitation, and experience and financial capacity of the mortgagor and contractor. Enter amount on line G.71 and in Section O of form HUD-92264.

2. Annual Deposit to Replacement Reserve. Because the rehabilitation work will result in a structure which will require no complete replacement of doors, windows, roofs, cabinets, or mechanical/conveyance systems for at least five years (see Paragraph 5.17), there is no initial deposit to the Reserve for Replacements for substantial rehabilitation. The cost analyst will work with the appraiser to determine the Annual Deposit to the Reserve for Replacement (ADRR). Monthly deposits to the Reserve for Replacement commence in accordance with the FHA Commitment. Calculations for the ADRR must be reviewed and appropriately revised every 10 years.

6.7 HUD Procedures for Pre-Application Stage

A. New Construction. No detailed cost estimate is done at this stage. Cost estimation is limited to a review of the bottom line amount for Main Buildings on the mortgagor's application, Form HUD-92013. HUD cost estimator will perform the review as follows:

1. The Lender will submit the Architect's sketch plans for the project at this stage.
2. Using the sketches, the cost analyst will determine the structure type and calculate the project's gross floor area.
3. Using construction cost data, the cost analyst will calculate an estimated Total Structures cost for the project's structure type and gross floor area.
4. The cost analyst:
   a. Will compare the estimated Total Structures cost with the mortgagor's amount for Main Buildings on Line 4 of Section G of Form HUD-92013, and will calculate a percentage difference between the two amounts;
   b. Will examine Total Land Improvements, General Requirements, Builder's Profit, Architectural Fees, Bond Premium, and Other Fees for reasonableness in comparison with established data.
   c. If the percentage difference is acceptable, accept the mortgagor's cost.
   d. If the percentage difference is in a questionable range, attempt to reconcile the percentage difference with the mortgagor to bring the mortgagor's figure into an acceptable range, or

e. If the percentage difference is unreconcilable, indicate in the review report that the project is unfeasible.

f. Prepare a review report (Appendix 6-A) containing cost findings and submit to Team Leader.

B. Substantial rehabilitation.

1. Mortgagor's Cost Exhibits: Sketch plans and basic work write-up for rehabilitation work supplied by mortgagor's Architect as indicated in Paragraph 5.14.A, and mortgagor's summary cost estimate for proposed rehabilitation. Note that a bottom line estimate is only acceptable for complete (gut) rehabilitation at this stage. For projects involving partial rehabilitation, the mortgagor's Architect must provide enough detail in the basic work write-up to establish a clear scope of work. The extent of rehabilitation work should be expressed in percentages. (Example: Remove and replace 20 percent of subfloor, 50 percent of kitchen cabinets, 25 percent of sinks and bathtubs, etc.). An itemized trade line item cost estimate is not required at this stage, but major trade groups, such as trowel trades (concrete, masonry), hammer trades (carpentry, drywall, insulation), and mechanical trades (plumbing, heating, electrical) should be separated.

2. HUD summary cost estimate of rehabilitation work: The cost estimator will do the following:

a. Review the Lender's exhibits.

b. Using available cost data, develop a summary cost estimate of rehabilitation work. The estimate will summarize rehabilitation costs for all main buildings, land improvement costs, and allowances and fees.

c. Compare the HUD and mortgagor's cost estimates and report significant differences.

d. Discuss differences with Lender in order to resolve.

e. Prepare report (Appendix 6-A) with recommendations:

(1) If significant differences are resolved, accept the Lender's cost.

(2) If the differences are unreconcilable, advise the Team Leader that the project is unfeasible.

6.8 HUD Procedures for Firm Stage

A. Lender will submit:

1. Lender's completed cost package including the detailed cost estimate and the property insurance schedule.

2. Mortgagor's cost document package consisting of completed contractor's cost breakdown on form HUD-2328, detailed plans and book specifications. For substantial rehabilitation, include useful life estimate of replacement reserve components (if applicable).

B. The HUD cost analyst will examine the Lender's cost estimate, the underwriting summary and the cost exhibits. The HUD analyst will review the quality of the Lender's estimate and the transaction itself. The HUD analyst will not reprocess the case. However, if the HUD analyst determines that certain underwriting conclusions are not supportable and affect HUD's risk, the analyst may recommend that the Lender modify the application or recommend a rejection. The Team Leader will approve, reject or modify the recommendation of the HUD cost analyst.

C. HUD cost analyst will review the lender and mortgagor packages and will recommend either acceptance or rejection of the cost portion of the firm submission. Architectural exhibits, including construction documents, will be used as backup. HUD cost recommendations will be based on:

1. Comparison of Lender's estimate and contractor's HUD-2328 cost breakdown with HUD cost data. Comparison will include:

   a. Bottom line figures for total structures and land improvements and figures for allowances and fees;

   b. Cost Not Attributable;

   c. Evidence of front end loading;

   d. Examination of lender-contractor variance report prepared by Lender's cost estimator, indicating resolution of cost differences.

2. Examination of identity of interest relationships and applications for identity of interest subcontractor overhead and profit.

3. Property insurance schedule.

D. HUD cost analyst will issue a written report (Format in Appendix 6-A) containing recommendations and forward a copy to the HUD team leader.

SECTION 223(f)

6.9 Lender Responsibilities and Deliverables

A. Responsibilities

1. The Lender prepares the Project Capital Needs Assessment (PCNA) and Replacement Reserve Escrow in accordance with Appendix 5M. The Lender's responsibilities are:

a. Preparing a Physical Inspection Report (PIR) containing an estimated cost, adjusted for inflation, to complete the project's:

(1) Immediate repair needs; and

(2) Expected repair, replacement, and major maintenance needs over a specified time period such as ten years.

b. Preparing a Statement of Resources and Needs which:

(1) Identifies:

(a) All critical repairs which must be completed before initial/final endorsement and the associated cost of doing the work.

(b) Non-critical repairs to be completed after final endorsement and the associated cost to be escrowed.

(2) Recommends:

(a) The amount of:

(i) The initial deposit to the replacement reserve, if any;

(ii) The monthly deposit to the replacement reserve

2. The Lender's cost analyst's responsibilities are:

a. Completing cost portions of Form HUD-92264, Project Income Analysis and Appraisal, regarding repair costs.

NOTE: The Lender's appraiser works with the cost analyst to determine the "as new" replacement cost estimate and will enter the figures in Section G, lines G.36 through G.50 of Form HUD-92264.

b. Preparing the Property Insurance Schedule, Form HUD-92329 (See MAP Forms Book).

B. Deliverables at Firm Stage

1. Project Capital Needs Assessment containing estimates of critical and non-critical repair costs and the initial and monthly deposits to the replacement reserve.

NOTE: The Lender's appraiser works with the cost analyst to determine the "as new" replacement cost estimate and will enter the figures in Section G, lines G.36 through G.50 of Form HUD-92264.

2. Preparation of Form HUD-92329, Property Insurance Schedule, (See MAP Forms Book).

6.10 Lender Project Processing – Firm Stage

The Lender's cost estimator will prepare all required reports and recommendations indicated below:

A. Forms to Use

1. Form HUD-92264

   a. Section G, Estimated Replacement Cost, Lines 36 through 50. Replacement cost figures are determined by the Lender's cost analyst and appraiser and entered by the Lender's appraiser.

   b. Section O, Remarks. The Lender's cost analyst will record totals for Project Repair costs and Initial Deposit to Replacement Reserve taken from PCNA.

2. Form HUD-92329, Property Insurance Schedule. Used to determine the Maximum Insurable Value for all project structures. Based on Lender's appraiser's estimate of value after repairs.

B. Property Insurance Schedule, Form HUD-92329, provides a guide for the amount of insurance coverage. See Forms Appendix for preparation instructions.

1. Prepare form at submission of Firm Commitment package.

2. Using replacement cost figures supplied by the Lender's appraiser, estimate 100 percent insurable value for each building.

   a. Value is of structures only. It does not include land value.

   b. Do not include the cost of land improvements, onsite demolition, or offsite work.

   c. Include the cost of major mechanical equipment, such as boilers serving the entire project, in the cost of the building where the mechanical equipment is located.

6.11 HUD Procedures for Firm Stage

A. Lender will submit a completed cost package including:

1. Cost estimates for repairs and Replacement Reserve deposits contained in the PCNA (supplied by HUD architectural analyst);

2. Summary Replacement Cost Estimate;

3. Property Insurance Schedule.

B. HUD cost analyst will review Lender exhibits and will recommend either acceptance or rejection of the Cost portion of the Firm submission. HUD cost recommendations will be based on review of:

1. Repair estimate based on the PCNA and compared with HUD data.
2. Lender's estimate for Initial Deposit to Replacement Reserve contained in the PCNA and compared with HUD data.
3. Property Insurance Schedule.
4. Any information produced by the Lender's architectural analyst which may affect cost.

C. HUD Cost Analyst will issue a written report (Format in Appendix 6-A) containing recommendations and forward a copy to the HUD Team Leader.

SECTION 232

6.12 General Lender Procedures

A. For new construction and substantial rehabilitation, follow instructions for Section 221(d) and 220, with additions and modifications as indicated below.

B. For Section 232 projects pursuant to Section 223(f), follow instructions for Section 223(f), with additions and modifications as indicated below.

6.13 Lender Project Processing – Firm Stage

A. Forms to Use

Use Form HUD-92264-HCF, Health Care Facility Summary Appraisal Report, dated 6/1995. Do not use Form HUD-92264. Cost sections are Section H for Estimated Replacement Cost, Section O for Offsite, and Section P for Remarks.

B. There is no Cost Not Attributable for section 232 projects.

C. Major Movable Equipment and Minor Equipment:

1. Definitions

a. Major Movable Equipment:

(1) Include large furniture and equipment with relatively fixed location, but capable of being moved. Examples: wheeled equipment, office machines (computers, copiers, fax machines), hospital beds and mattresses, tables, etc.

(2) Do not include any motorized vehicles, such as trucks, vans, automobiles, or golf carts. These are not mortgagable items.

Note: See Appendix 5K for typical equipment and classification.

b. Minor Equipment and Supplies. Expendable nonrealty items of small individual cost. Examples: china and flatware, utensils and instruments, linens, etc.

2. Processing instructions.

a. The mortgagor submits a schedule of Major Movable Equipment and estimated cost of each item. For rehabilitation projects, the list must include existing equipment with each item's remaining useful life and cost to replace.

(1) Check items for acceptability as Major Movable Equipment.

(2) Estimate costs, including delivery and placement, but no fees of any kind.

(3) Compare costs with mortgagor's. Accept mortgagor's estimate if reasonable.

(4) Provide bottom line estimate to appraiser to enter on line H.36 of Form HUD-92264-HCF. Attach copy of accepted or modified schedule.

b. Estimate cost of Minor Equipment and Supplies, and enter in Section P of Form HUD-92264-HCF.

3. Property Insurance Schedule

a. Enter Major Movable Equipment as separate category on Form HUD-92329.

b. Include in total 100 Percent Insurable Value.

6.14 General HUD Procedures

A. For new construction and substantial rehabilitation, HUD review procedures will follow those for Section 221(d) and 220, with additions and modifications as indicated below.

B. For Section 232 projects pursuant to Section 223(f), HUD review procedures will follow those for Section 223(f), with additions and modifications as indicated below.

6.15 HUD Procedures for Pre-Application Stage

In addition to procedure indicated in Paragraph 6.7:

A. Estimate bottom-line costs of Major Movable Equipment and Minor Equipment from available data, per room or per bed.

B. Compare to mortgagor's amounts on Form HUD-92013-HCF and determine if differences are reasonable. Inform mortgagor and Lender of findings.

6.16 HUD Procedures for Firm Stage

A. Follow procedures indicated in Paragraph 6.11.

B. Include list of Major Movable Equipment in the review.

Chapter 7

Valuation Analysis

7.1 Purpose of the Valuation Analysis

A. The Valuation Analysis is made for the purpose of evaluating the existing or proposed property as security for a long-term HUD-insured mortgage. Included in the evaluation is an estimation of the market value of the property and an analysis of the market need, location, earning capacity, operating expenses, and warranted cost of the property.

B. Valuation Analysis develops conclusions with respect to feasibility, suitability of improvements, extent, quality, and duration of earning capacity and other factors that have a bearing on the economic soundness of the property. The objective is to have a properly designed project in the right location, capable of supporting the loan. Such a project meets the demands of the rental market at rents which will pay all expenses of operation, debt service, and return to equity where such return is permitted.

7.2 Selection of Appraisers and Market Analysts

The MAP Lender is responsible for the selection, approval, and training (if needed) of appraisers and market analysts who are familiar with HUD reviews and guidelines. Lenders must ensure that each appraiser and market analyst selected is qualified to appraise or perform market analyses for multifamily properties by reviewing their education, quality, and frequency of multifamily experience, sample appraisals and market studies, professional affiliations, and state licenses or certifications.

A. Should the MAP Lender have difficulty finding a Certified General Appraiser, the Appraisal Subcommittee of the Federal Financial Institutions Examination Council maintains a national registry of Certified General Appraisers who are authorized, under Federal law, to perform Appraisals in connection with federally-related transactions. The MAP Lender would be able to review this list on the Internet at http://www.asc.gov.

B. The appraiser or the market analyst may not be affiliated with any individual or institution involved in the application other than the MAP Lender. Appraisers or market analysts who are on the Lender's staff must be independent of the lending, investment, and collection functions of the Lender.

C. The Department reserves the right to examine the credentials of all appraisers and market analysts hired by the Lender, and to reject any and all individuals that it considers unqualified

7.3 Appraiser and Market Analyst Qualifications

A. Each appraiser must meet the following minimum qualification requirements:

1. Be a Certified General Appraiser under the appraiser certification requirements of the State in which the subject property is located,
2. Be currently active and regularly engaged in the appraisal of multifamily properties,
3. Meet all requirements of the Competency Rule described in Uniform Standards of Professional Appraisal Practice (USPAP), this applies to each certified appraiser who signs the report. If any of the persons involved in preparing the report is a trainee acting as an assistant only, this should be disclosed to the processing center.
4. Have at least three years of income property appraisal experience,
5. Be knowledgeable concerning current real estate market conditions and financing trends in the geographic market area where the subject property is located, and
6. Be experienced in appraising multifamily properties with the complexity and characteristics similar to those of the subject property.

These requirements apply to EACH certified general appraiser signing the report. It is not permissible for an appraiser who is not certified in the appropriate jurisdiction to circumvent certification requirements by having a locally certified appraiser co-sign the report. Appraisers or appraisal assistants not certified in the appropriate jurisdiction may not perform the MAP required property inspections of the subject or comparable properties. If any of the persons involved in preparing the report are not certified general appraisers and are acting as an analyst, assistant or trainee, this must be disclosed to the processing center. Temporary certifications are permissible, however, competency requirements as defined above still apply.

B. Each Market Analyst must meet the following minimum qualification requirements:

1. Have at least three years of experience in performing market analysis for income producing property,
2. Be currently active and regularly engaged in performing market studies for multifamily properties,
3. Be knowledgeable concerning real estate market conditions and financing trends in the geographic market area where the property is located, and

4. Be experienced in performing market studies for multifamily properties with the complexity and characteristics similar to those of the subject property.

C. The appraisal and the market analysis may be performed by the same person or entity.

D. The Appraisal and market study must be complete and independent reports, even if prepared by the same person.

E. If the processing center believes that a lender is contracting unqualified or unlicensed professionals, they should refer the specifics of the case to the Lender Qualifications and Monitoring Division in Headquarters.

7.4 Appraisal Requirements

A. Each appraisal must meet the following requirements:

1. Be prepared for the Lender and paid for and initiated by the Lender.
2. For value-based programs, Section 223(f), Section 232 and Section 232/223(f), each appraisal shall be a complete appraisal in accordance with all applicable requirements contained in USPAP Standards Rule 1 and in compliance with this guidebook. For Sections 220 and 221, the appraiser may prepare a limited appraisal as outlined in paragraph 7.4 A 4 below. The appraiser should reference the Jurisdictional Exception Rule where appropriate. The Departure Rule is not authorized. The appraisal report format must meet the specifications of Standards Rule 2-2a and be a Self-Contained Report. Form HUD-92264 (92264-HCF for
Section 232 projects) and. supporting forms, i.e., HUD-92264-A, HUD-92273 and HUD-92274 must be completed by the appraiser. The self contained report will be supportive of and consistent with the conclusions made on the forms
3. Adequately describe the geographic area, neighborhood, rental competition, sales comparables, site, and improvements.
4. Produce a fair market value supported by the reconciliation of the cost, income, and direct sales comparison approaches to value for Section 207/223(f), 232, and 232/223(f). The cost or summation approach must consider all applicable forms of depreciation for 223(f) and 232/223(f) cases. For this reason, the replacement cost approach shall not automatically set the upper limit of value for these programs. For New Construction and Substantial Rehabilitation pursuant to Section 232, the replacement cost or summation approach shall in all cases set the upper limit of value in the reconciliation process. This policy is not intended to negate the necessity of the final reconciliation of the three approaches. Section 232 remains a value-based program. It is rather an acknowledgment of the basic principle of substitution in that no prudent purchaser would pay more for a property than the cost to acquire a similar site

and construct improvements of equal desirability and utility. A Limited appraisal using the Replacement Cost for projects insured through Sections 221(d) and 220 should be supported by the cost approach to value. Support "As Is" value in Substantial Rehabilitation by use of the income and direct sales comparison approaches to value.

5. Have an effective date within 120 days before the date the Firm Commitment application or pre-application package is delivered by the Lender to HUD. Updated appraisals can be submitted with the appraiser re-inspecting the subject property, re-surveying the rental comparables, and reviewing the market for any additional sales comparables.
6. Be prepared with the list of information supplied by the MAP Lender contained in Appendix 4.
7. Include appraiser's certification. See certification format in Chapter 11 of MAP Guide.
8. Under MAP the USPAP Departure Rule is not authorized. Instead, the appraiser shall invoke the USPAP Jurisdictional Exception Rule to fulfill MAP underwriting requirements. By definition, the Jurisdictional Exception Rule renders a specific portion of USPAP void and of no force or effect; therefore, for the purposes of that assignment, the excepted portion of USPAP does not exist and so cannot be subject to the Departure Rule. Pre-application valuation exhibits should be viewed as an Appraisal Consulting Assignment as defined in USPAP Standard 4, and are prepared as a precursor to the final report submitted at the firm commitment phase. For Section 223(f), Section 232 and Section 232/223(f), the appraisals should be a Complete Appraisal in accordance with all applicable requirements contained in USPAP Standards Rule 1, and in compliance with this guidebook. For Sections 220 and 221, the appraiser may prepare a Limited Appraisal as outlined in paragraph 7.4 A 4.
9. The primary appraiser designated by the Lender and approved by HUD must perform the property inspection AND sign the appraisal report and the supporting HUD forms
10. Photos of the subject, comparable sales and comparable rentals are required with all submissions.

B. Discrimination in appraising. As the basis of determining value, the appraiser may not consider, analyze, or report any information that makes reference to race, color, sex, handicap, familial status, religion, or national origin of the geographic area, neighborhood, occupants, owners or prospective owners. HUD will reject any Firm Commitment application for mortgage insurance that considers any of these issues in the preparation of an appraisal.

C. The Discounted Cash Flow (DCF) is not a permissible analysis technique under MAP or TAP for any HUD programs.

7.5 Market Study Requirements

Each market study must meet the following requirements:

A. Be prepared for the Lender and paid for and initiated by the Lender. A market study that has already been prepared for the borrower by a third party market analyst and meets all other market study elements as stated in the MAP Guide is acceptable.

B. Adequately describe the geographic boundaries and general characteristics of the market area, specific housing market conditions, characteristics of projects under construction and in the planning stages, and contain a demand estimate and analysis and estimated absorption time (absorption time is normally not applicable to refinance and purchase cases pursuant to Section 223(f)).

C. Have an effective date within 120 days before the date the pre-application is delivered by the Lender to HUD or within 120 days before the Firm Commitment application is delivered for a 232/223(f).

D. Be prepared with the list of information supplied by the MAP Lender described in Appendix 4.

E. Be prepared in conformance to the market study format found in Appendix 7A.

F. Both the appraiser and market analyst may be the same person or entity. If the same person does prepare the market study, it must be submitted as an independent exhibit.

G. Include market analyst's certification. See certification format in Chapter 11 of MAP Guide.

7.6 Estimated Rental Income

A. Rental estimates. First the annual gross income of the subject project is estimated. The processing will include estimates of income from market comparables, rental concessions, and an assessment of the general health of the rental market. The gross income estimate assumes a 100 percent occupancy level and reflects rent levels current as of the appraisal date or date of the market study. Also, the effect that any proposed repairs to the project will have on rents, expenses, and net income must be considered. (Not all repairs increase rents, occupancy, net income, and/or decrease expenses.)

B. Rent comparables. Market Rent by Comparison shall be estimated by the Lender's appraiser by completing HUD-92273. Note that use of HUD Form 97723-S8 is not authorized for FHA mortgage application processing. One HUD-92273 form is to be prepared for each type and size (if significantly different) of rental unit in the subject property. The rent comparables and units selected for comparison shall be as similar as possible to the subject property and units as they relate to location, structural type, number of bedrooms, and average unit size. Market rate units

from partially assisted projects can be used as rental comparables in the absence of better rental data. Consistent adjustments for significant differences between the comparables and the subject units shall be derived from the market and applied to the subject rent estimate. Rental adjustments are always made to the comparables for differences from the subject project. The Lender's appraiser should select the final rent estimate based on accepted correlation procedures. Generally, the indicated rent estimate will be from the central 60 percent of the rental range of the indicated rents. Just as the most appropriate rent comparable must receive more weight, the general health of the rental market must be recognized before relying upon one or two optimistic indicators. On tax credit and/or bond financed applications the appraiser should also complete the HUD-92264T in determining the appropriate processing rents.

C. Rents as of the appraisal date or market study date. Rather than being trended to some future date, rental estimates shall be made as of the appraisal or market study date. Since rent estimates are made based upon street rents currently being obtained by the comparables, no time adjustment is needed for an estimate as of the appraisal or market study date. Medicaid reimbursement rates may be trended for proposed nursing homes and intermediate care facilities.

D. Equipment and services. Equipment and services included in the subject rent must be identified– such as ranges, refrigerators, microwave ovens, air conditioning equipment and laundry facilities. Services frequently included are heat, air conditioning, water, trash removal services, etc. Comparable project equipment and services must correspond to the same items of equipment and services provided by the owner for the subject proposal. Differences between comparable equipment and services and those of the subject proposal must be reconciled by the adjustment process. Note: The above also applies to the expense analysis.

E. Vacancy and collection losses.

1. The Lender's appraiser must establish a factor for vacancy and collection loss when determining the effective gross annual income for the residential units. The factor must consider both historical and current data (applicable for existing properties) of the subject property, the rental comparables, and any anticipated changes in the market. The factor selected must reflect long-term occupancy rates that are expected to continue.

2. The vacancy and collection loss rate used by the Lender's appraiser may not be less than 5 percent and must be adjusted upward if property and/or market conditions require. This requirement applies to all programs, 221(d), 223(f), and 232 under MAP.

F. Commercial income. Where commercial facilities are included in a project, a separate analysis must be made of the effect that the commercial operation will have on the project. The Lender must calculate income, vacancy and collection loss, operating expenses, and replacement reserves attributable to commercial space separately from the residential. An individual analysis should be performed for each type space using the HUD Form 92273 or a similar format to summarize appropriate adjustments to comparable data. These studies can be incorporated in the overall

residential market study submitted at the pre-application or firm stages, depending on the program requirements. In addition to the following requirements, the study should also comply with Appendix 7A. Care should be taken in reviewing the allowable square footage and income percentage attributable to the commercial/office space. These requirements vary by program. See Chapter 3, Sections 3.4 I, 3.8 N, and 3.9 F for a more complete synopsis of space and income limitations.

1. The Lender's appraiser must: Conduct a complete analysis of at least three commercial income and expense comparables. Provide for each comparable the name of the tenant, the type and address of business, square feet, rent, vacancy, any concessions and major lease terms. Provide data to support the subject's commercial vacancy rate in relation to the overall market commercial vacancy rate and review the rollover risk and cost of tenant improvements to re-lease space. Use a vacancy factor of not less than 10 percent for Section 223(f) and 232/223(f); 20 percent for Section 221, 220 and 232 new construction/substantial rehabilitation to obtain effective gross commercial income for underwriting purposes. Provide for each lease, the term, commencement date, expiration date, name of the tenant, square footage, calculation of gross rents, expenses, reimbursement of expenses, cancellation clauses, and renewal clauses.

2. Limitations on the amount of commercial space and income vary by program. (See Chapter 3.)

3. The project expense estimate must include all commercial expenses payable by the project owner. The analysis of all commercial income and expenses must be reflected on Form HUD-92264 with all the supporting data attached to the form.

G. Project rent concessions. Rent concessions in a comparable must be included in the data and an appropriate adjustment made to the rent from that comparable unit. In all cases, adjustment should reflect the actual impact on gross annual income resulting from the comparable rental concession.

H. Occupancy. When the occupancy rate in a comparable project is less than the long-term occupancy rate estimated for the subject, a downward adjustment shall be made to the comparable's rent

I. Utilities/Services. All of the items for consideration under this heading refer to the cost of the services of water, sewer, gas and electricity included in the rent. In some cases, even though both the subject and the comparable units have the same service included in the rent, an adjustment may still be warranted to bring the comparable in line with the subject, due to size, equipment, utility rate, type of utility, etc. If included in the comparable rent, but not in the subject, enter a minus adjustment reflecting the portion of the comparable's rent attributable to the inclusion of the service. If excluded from the comparable rent, but included in the subject rent, enter a plus adjustment reflecting the estimated increase in rental value attributable to including the service in the subject's rent.

J. Project location. Consider the subject location relative to distance from shopping, recreational, social, medical and employment centers, neighborhood desirability, transportation, special hazards and nuisances.

K. Project amenities.

1. Among those "other" items that may be considered herein, are the following:

   a. Livability–reflect good or poor room sizes, layout adequacy of closets, lighting, elevators and laundry facilities, etc.

   b. Condition of improvements–reflect lack of maintenance, soundproofing, etc.

   c. Parking–reflect parking rates, adequacy of parking for visitors, proximity of parking to the units, inclusion/exclusion of parking space with unit rental, etc.

   d. Project density–consider open space or crowding of units, if the degree of either is such that it would affect the level of attainable rental.

   e. Unit location–reflect here features of location of unit within the project, such as view, proximity to swimming pool, tennis or other recreational facility, and/or other factors of this nature.

2. Elevator rents. Only high-rise elevator comparables are to be compared with the subject elevator high-rise proposal. Mid-floor level rents of the comparables are compared with the mid-floor level of the subject project. Adjustments for heights of the comparables above and below the mid-floor level of the subject also must be made, as indicated by the market.

L. Other income.

1. The Lender may consider income from laundry facilities, parking, and other sources such as equipment rental, vending machines, pet fees, pool fees, cable fees, and forfeited security deposits in the calculation of income based on the operating history of the project, if applicable, and whether income from these sources are common in the market. The Lender can consider the net amount of this income based on the actual or projected (as appropriate) amount received, adjusted for vacancy and income loss. The analysis must be discussed in the Remarks Section of Form HUD-92264.

2. The Lender should not include in the calculation of income any interest income or premiums for certain types of leases.

7.7 Operating Expense Estimates

A. Purpose. A determination is made of the portion of gross income, which must be used to maintain, operate, and repair the property and to defray the costs of ownership arising from it. An accurate

analysis of operating expenses is essential in determining a realistic net income estimate for the project.

Form HUD-92274, Operating Expense Analysis Worksheet, is used for the development of project expense estimates for Section E of Form HUD-92264, Project Income Analysis and Appraisal. Form HUD-92274 will be prepared for all cases processed. It is included in the processing file as supporting documentation for Form HUD-92264. For Section 232 and board and care facilities, an equivalent expense analysis must be provided based on line items found in Form HUD-92264-HCF.

B. Sources of expense data.

1. For new construction projects, operating expenses must be estimated on the basis of comparable projects.
2. For existing projects, operating expenses must be estimated on the basis of comparable projects, as well as tested against the past 3 years of operating experience for the subject project.
3. For refinance transactions where the project may not have been of under the current ownership for the 3-year period financial statements for the entire 3 years may not be available. This is particularly true for bankruptcies or the acquisition of defaulted properties.
4. Financial statements for the last 3 years are not required if there is satisfactory evidence that they are not obtainable because of circumstances beyond the mortgagor's control. However, the mortgagor must submit the project financial statements that are available including an owner-certified year-to-date balance sheet and operating statement. Furthermore, the mortgagor must submit a statement that explains why all the required records are not obtainable and a memorandum from the Lender stating that he has evaluated the mortgagor's statement and agrees that the information is not available.
5. For special cases in purchase transactions, such as acquisition through adversarial action, not all the required information may be available for reasons beyond the purchaser's control. Consequently, in such unusual circumstances, the requirement will not apply, provided the mortgagor provides a statement that explains why the required records are not obtainable and the Lender provides a memorandum stating that he has evaluated the mortgagor's statement and agrees that the information is not available.
6. Where the current owner has owned the project for 1 year or longer, an owner-certified year-to-date balance sheet and operating statement for the period since acquisition must be submitted.
7. The current owner also must submit financial statements beyond the period covered by the owner's certified financial statements (up to 3 years), if available.
8. Any owner-certified financial statement or owner-certified balance sheet and operating statement must include the following acknowledgment:

WARNING: 18 U.S.C. 1001 provides, among other things, that whoever knowingly and willingly makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter within jurisdiction of any department or agency of the United States, shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

9. It must be remembered that all projects must stand on their own and must not reflect shared expenses from nearby projects under the same management. If the nearby project should be subjected to foreclosure, the subject project would be adversely affected, thereby constituting an unacceptable underwriting risk. Furthermore, for the same reason, estimated expenses must reflect typical long-term operation and must not reflect a specific sponsor or management entity whose operation would not be typical.

C. General: operating expense. Operating expenses are periodic expenses needed to maintain real property and to continue the production of its effective gross income. For appraisal purposes, an operating statement that conforms to the above definition of operating expenses may differ from statements prepared for accounting purposes. Current or historic statements prepared for a property being appraised are either on a cash or accrual basis. It is important to know the accounting basis for the operating statement, since project operating expenses for appraisal purposes must be reported on a cash basis. Typical categories of expenses are as follows:

1. Fixed expenses. Fixed expenses are those that generally do not vary with occupancy and that has to be paid regardless of whether the property is occupied or vacant. Real estate taxes and insurance costs are typically included as fixed expenses. These expenses generally do not fluctuate greatly from year to year.

2. Variable expenses. Variable expenses comprise operating expenses that generally vary with the level or occupancy or the intensity of property operation. Operating expenses for large properties frequently list many types of expense variables, but typical broad categories include the following:

   a. Management charges.

   b. Utilities – electricity, gas, water, sewer charges.

   c. Heating and air conditioning expenses.

   d. General payroll and security expenses.

   e. Cleaning expenses.

   f. Maintenance and repairs.

   g. Decorating expenses.

   h. Grounds maintenance expenses.

   i. Exterminating expense.

j. Trash removal expense.

k. Miscellaneous expenses (supplies, etc.).

3. Reserve for replacements. This reserve category provides for the periodic replacement of the building components that wear out more rapidly than the building shell itself and must be replaced periodically during the building's economic life. These components may include among other things:

   a. Roof covering.

   b. Carpeting.

   c. Kitchen, bath, and laundry equipment.

   d. Compressors, furnaces and boilers.

4. Total operating expenses. Total operating expenses for residential properties are the sum of the fixed expenses and variable expenses updated to the appraisal date, plus the reserve for replacements.

5. Commercial facilities. Where commercial facilities are included in the subject project, a separate analysis must be made of the effect that the commercial operation will have on the project expense estimate.

D. Estimate of operating expenses by units of comparison. Items of expense shown under each comparable and the expense items applicable to the subject proposal reflected in a suitable unit of comparison–such as expense per unit per annum (PUPA), expense per room per annum (PRPA), and expense per square foot of net rentable area per annum (PSFPA), or percent of effective gross income. The expense comparables and units selected must be as similar as possible to the subject project and units as they relate to the subject location, structural type, number of bedrooms, and average unit size.

   For consistency purposes, expense components should be expressed in the same units of comparison so that the expenses for the subject proposal can be totaled. However, if the unit of comparison for a specific component is different from the basic unit of comparison for the other expense items, this different unit of comparison must be explained in the expense narrative. The dollar amount of the expense item can afterwards be converted to the same unit of comparison selected for the other expense components. Additional documentation should be submitted, as needed, for all component estimates that are not self-explanatory.

E. Expense adjustments. Project expenses must be expressed in the same units of comparison in order to ensure accurate adjustments and correct reporting of expense estimates. Consistent adjustments for significant differences between the comparables and the subject units shall be derived from the market and applied to the indicated subject expense estimate. The appraiser should enter the dollar amounts attributable to significant differences between the subject proposal and each of the expense comparables–such as for physical characteristics, equipment, services

provided, the level of management furnished to tenants and any differences in rates between tax and utility jurisdictions. Next, the process of correlation must be used to correlate the comparable expense for each component which is applicable to the subject project.

F. Updating procedures. It should be stressed that HUD no longer uses a "trended to" procedure to reflect a time adjustment from the effective date of the most recent expense comparable to the anticipated date of project occupancy following construction and initial endorsement. Expenses estimates should be effective as of the date of the appraisal. Income and expense estimates must reflect the same year of operation.

HUD does allow the appraiser to use an updating percentage to bring expense comparables up to the same date as the most current expense comparable in order to make a more creditable comparison. However, if all of the expense comparables have data from the same operating year, no updating percentage is necessary.

G. HUD has the right to request from the Lender's appraiser the names and addresses of any confidential expense comparables used in the expense analysis. The Confidentiality sub-section of the Ethics Rule, along with Standards 3.1.e and 3.2.f of the Uniform Standards of Professional Practice (USPAP) support this position. If the appraiser still refuses to provide this information, the HUD appraiser has the right to request from the contract appraiser additional non-confidential comparables.

7.8 Site Analysis

Key analyses for consideration of site acceptability for a proposed project are as follows:

A. Analysis of location. The analysis of location involves a determination of the desirability and utility of the site by reason of its location. The analysis of location requires a forecast of the changes likely to be experienced at the site due to probable future neighborhood trends in addition to an appraisal of the present situation. The pattern of appropriate improvements, the level of available rents, the level of warranted costs of construction, and the probable economic life of the structures are to a high degree determined by location factors.

B. Specific location. The specific site is considered in relation to neighborhood and city-wide physical, social, and economic influences. Limitation of use imposed by zoning or deed restrictions are discovered. Trends of development, stability, decay, and rehabilitation are discovered. Availability of utilities, services, and centers appropriate for the intended use are identified. The many and varied influences operating on the site which affecting its market and income potential, when improved, are analyzed. This includes a review of the crime rate in the area, its impact on the proposal and how the impact, if any, can be addressed through design or staffing.

C. Civic, social and commercial centers. When judging the desirability of a location, full consideration must be given to the sufficiency of community facilities as they relate to the needs of tenants of the

proposed project. A location for a multifamily project must be adequately served by grade and high schools, neighborhood shopping centers, churches, playgrounds, parks, libraries, hospitals, and theaters.

1. Schools. Accessibility to schools will be judged by the time involved, utilizing the means provided, or available, rather than walking distance alone. Thus, if school bus service will be provided and the time involved is reasonable, the location is acceptable. Overcrowded schools are the responsibility of the community in the granting of permitting zoning and the issuance of building permits. A project which is otherwise feasible will not be rejected because the local schools are considered overcrowded. School accessibility will not be a factor in projects designed for the elderly.

2. Neighborhood shopping centers. The convenience of a shopping facility should be judged on the basis of time rather than distance. The importance of grocery, drug, and other neighborhood shopping facilities within a reasonable walking distance will generally increase with the number of tenants who do not have private transportation.

3. Religious and recreation centers. Ready access to religious and recreation centers is desirable. Projects designed for large families (predominantly three- and four-bedroom units) have a greater need for playgrounds and active recreation areas. Adequate on-site provisions for playgrounds and other recreation areas should be incorporated into the proposal where adequate facilities are not in close proximity to the project site and available to the occupants.

D. Transportation. Convenient transportation to places of employment, major shopping districts and civic and social centers is a prerequisite to project location acceptability. In those communities where local public transportation is the principal means of commuting by the prospective tenants, the location of a project designed for such occupancy shall be within a reasonable walking distance to public transportation.

E. Special hazards and nuisances. Such conditions include unusual topography, subsidence, flooding, unstable soils, unusual traffic hazards and noise, danger from fire and explosion, exposure to airport noise and low-flying airplanes, smoke, chemical fumes, noxious odors, stagnant ponds or marshes, and sewage disposal failure. Any of these, or similar conditions, if serious and infeasible to overcome, will render a specific location ineligible for mortgage insurance.

F. Parking facilities. Consideration must be given to the effect on parking facilities in the neighborhood and on all-night parking, in particular, which would be caused by the additional number of cars of the tenants who would live in the proposed project. If the project site lacks adequate space for parking tenants' cars, the availability of other off-street parking space may be considered. An estimate shall be made of the number of parking spaces which would be required by the tenants of the proposed project and their guests and a recommendation shall be given as to the adequacy of the parking facilities to meet the estimated need.

G. Site suitability. The site must be adequate in size, shape, exposure, and contour for the proposed project. Building height limitation, project unit size and numbers, necessary on-site parking and play areas must be considered.

H. Sites Sold by a Public Body.

1. Fair Market Value of Land Fully Improved. Where sites are sold by a public body to the developer for a specific re-use purpose, the Fair Market Value of Land Fully Improved is the lesser of:

a. The amount found by comparison with other sites having the improvements and amenities that the subject site will have upon completion.

b. The dollar amount paid by the purchaser as set forth under terms of the purchase contract with the public body, plus an estimate of those costs, if any, additionally imposed under its terms or by HUD-FHA. Costs referenced above are those to be borne by the purchaser because of terms of the purchase contract, e.g., real estate taxes and special assessments accruing from date of purchase to date of commitment, legal fees incident to the land purchase, re-zoning costs, installation of certain designated off-site improvements, interest on investment in site from date of purchase to date of appraisal, razing structures and clearance of the site (after allowance for any income to the purchaser). This is not a complete list of items covered but these will serve as a guide to such costs required by the purchase contract.

2. "As-Is" Value of Land. The Assistant Secretary-FHA Commissioner's Estimated Value of Land "As is" for Cost Certification may include all of the items in paragraph 1.b above with the following exceptions: Installation of off-site improvements and cost of razing structures and clearing the site (less income received). This is intended to avoid duplication of costs that might be reflected in the Estimated Value of Land "As Is" and also allows for the sponsor to include them as separate items in Cost Certification which includes both off-site costs and demolition. The dollar amount of the land purchase contract plus a breakdown of the estimate of additional costs, must be fully itemized and documented.

7.9 Pre-Application Stage for Sections 221(d) and 220

A. Exhibits

1. Application for Multifamily Housing Project, Form HUD-92013

2. Location map

3. Phase I Environmental Site Assessment (ESA) with a narrative environmental report. If the Phase I Assessment indicates a need for further study, a Phase II Assessment should also be submitted at this time.
4. Evidence of site control (deed, purchase agreement, or option)
5. Market study with comparables
6. Estimate of Market Rent by Comparison, HUD-92273
7. Photographs and location map of rental comparables used in the HUD-92273 analysis.
8. Operating Expense Analysis Worksheet, HUD-92274

B. Lender's responsibilities

1. Based upon the market study prepared by the Lender's market analyst Lender's appraiser and the rental income and expense estimates prepared by the Lender's appraiser, the Lender is responsible for making the following determinations before recommending the proposed project to HUD:
   a. Determine the current occupancy levels, market absorption rates, and market demand for the number and type of units proposed.
   b. Analyze site for acceptability in accordance with Section 7.8 of this chapter.
   c. Determine market rents reflecting amenities, services, and equipment offered in accordance with Section 7.6 of this chapter.
   d. Estimate project income utilizing the methodology in Section 7.6 of this chapter.
   e. Estimate total operating expenses in accordance with Section 7.7 of this chapter.
   f. Estimate mortgage amount based on HUD 92264-A, Criteria 5, Debt Service Ratio.
   g. Make a determination of feasibility or non-feasibility of the sponsor's proposal.
2. The MAP Lender will have the Phase I ESA and narrative report prepared in accordance with Chapter 9.
3. The Lender's appraiser or market analyst will prepare the market study and project comparables in accordance with the requirements of Sections 7.5, 7.6, and 7.7 of this chapter.
4. The Lender's appraiser will determine project rents, estimated rental income, and operating expenses by completing forms HUD-92273, Estimate of Market Rent by Comparison, and HUD-92274, Operating Expense Analysis Worksheet, in accordance with Section 7.6 and 7.7 of this chapter. The forms and specific instructions to complete the forms can be found in the Appendix. For projects receiving Substantial Rehabilitation the Lender's appraiser will complete the HUD-92273 and HUD-92274 forms based on the assumption that all proposed substantial rehabilitation to the project has been completed.

5. The MAP Lender will utilize information and soft-cost and land cost information provided by the sponsor to calculate the total replacement cost. The Lender will compare its estimate of the total replacement cost with the mortgagor's amount.

6. The MAP Lender will also complete income, expenses, and total settlement portions of the HUD-92013 utilizing information from the comparables.

7. The Lender will compare the calculations on the HUD-92013 with those proposed by the mortgagor and either accept the mortgagor's proposal, recommend its modification, or reject it and advise the mortgagor that the project is infeasible.

C. HUD Review

1. The Lender will submit the exhibits listed in Section 7.9.A of this chapter to HUD.

2. The HUD appraiser and the EMAS economist will each provide a desk review of the market study submitted by the Lender. EMAS will not perform its own market analysis of a particular project. The EMAS advisor review would be provided to the team leader who would in turn provide it to the HUD appraiser. The HUD appraiser makes final recommendations to the team leader regarding market demand for the project.

3. The HUD appraiser will inspect the subject site and a reasonable number of the comparables used in the Lender's appraiser's HUD-92273 and HUD-92274 analyses.

4. In accordance with Chapter 9, the HUD appraiser will review the Lender-submitted Phase I ESA, prepare as much as possible HUD-4128, "Environmental Assessment and Compliance Findings for Related Laws" and the sample field notes checklist found in the MAP Form Book. The HUD appraiser will utilize procedures found in Chapter 9.

5. The HUD appraiser will review site characteristics for compliance to requirements found in Section 7.8 of this chapter. Based on the environmental analyses, and the site visits, the HUD appraiser will make a recommendation regarding site acceptability to the Team Leader.

6. The HUD appraiser will determine that the projects submitted as comparables to the subject property are acceptable comparables.

7. From a review of Forms HUD-92013, HUD-92273 and HUD-92274, and supporting information, the HUD appraiser will make a recommendation (Format in Appendix 7C) to the Team Leader regarding:

   a. The acceptability of proposed rents and estimated rental income and their compliance to requirements found in Section 7.6 of this chapter.

   b. The acceptability of total operating expenses and compliance to requirements found in Section 7.7 of this chapter.

7.10 Firm Commitment Processing for Sections 221(d) and 220

A. Exhibits

1. Application for Multifamily Housing Project, Form HUD-92013
2. Evidence of permissive zoning
3. Evidence of last arms-length transaction and price
4. Appraisal as described in Section 7.4 of this chapter
5. Rental Housing Project Income Analysis and Appraisal Form, HUD-92264
6. Appraiser's trial, Supplement to Project Analysis, HUD-92264-A
7. Updated estimates of Market Rent by Comparison, HUD-92273
8. Updated operating Expense Analysis Worksheet, HUD-92274
9. All exhibits for HUD to complete the Environmental Assessment and Complete Findings for the Related Laws (HUD-4128)

B. Lender's Responsibilities

1. The MAP Lender's appraiser will complete an appraisal establishing the Replacement Cost for the project utilizing the cost approaches in accordance with requirements found in Section 7.4 of this chapter. Furthermore, the appraisal will update the HUD-92273 and 92274 analyses provided in the Pre-Application.
2. The Lender's appraiser is also required to determine the "warranted price of the land" for new construction projects and the "As Is" value of the property for substantial rehabilitation projects in accordance with instructions in Section 7.13 of this chapter. In addition, for substantial rehabilitation projects, the Lender's appraiser must also determine the "value fully improved" of the project site.
3. The MAP Lender will forward information prepared by its cost analyst and any soft-cost and land cost information provided by the sponsor to the Lender's appraiser to assistance in the calculation of the total replacement cost. The Lender will compare his estimate of the total replacement cost with the mortgagor's amount.
4. The Lender's appraiser is to prepare certain sections of the Rental Housing Project Income Analysis and Appraisal, Form HUD-92264, found in the MAP Forms Book, in accordance with specific instructions found in MAP Forms Book, for the type of project proposed. Certain sections are solely the responsibility of the appraiser and others are done in cooperation with the lender's architect, cost analyst, and mortgage credit analyst.
5. Principal HUD-92664 items to be calculated by the Lender's appraiser include:
   a. Market rents and estimated income
   b. Estimated total operating expenses

c. Total estimated replacement cost of the project

d. “Warranted Price of the Land” for new construction projects and the "As Is" value for substantial rehabilitation projects

e. Estimate of operating deficit and replacement reserve

6. The Lender must provide written explanations in the underwriter’s narrative of any major changes to key project elements from those set at the pre-application stage.

7. The data provided in the Lender’s HUD-92013 and HUD-92264 should be consistent. Moreover, any inconsistency between the data reported on the HUD-92264 prepared by the Lender’s appraiser and the Lender’s HUD-92264 must be explained in the Lender’s Underwriting Summary.

C. HUD Review

1. The Lender will submit the Exhibits listed in Section 7.10.A of this chapter to HUD.

2. The HUD appraiser will perform a thorough technical review of the appraisal submitted for the project, making sure that it meets the requirements of Section 7.4 of this chapter including all USPAP requirements.

3. In accordance with Chapter 9, the HUD appraiser will complete Form HUD-4128 and the Sample Field Notes Checklist.

4. The HUD appraiser must review and approve each of the following exhibits:

   a. Rental Housing Project Income Analysis and Appraisal, HUD-92264

   b. Estimates of Market Rent by Comparison, HUD-92273 (updated)

   c. Operating Expenses Worksheet, HUD-92274 (updated)

   d. Appraiser’s trial, Supplemental to Project Analysis, HUD-92264-A

   Within these forms, the HUD appraiser must focus on and approve major items including the estimated income, the total operating expenses, the total estimated replacement cost, the “Warranted Price of the Land” or the "As Is" value as appropriate, and the maximum insurable mortgage.

5. The HUD appraiser will issue a written report (Format in Appendix 7C) containing recommendations and forward a copy to the HUD Team Leader.

6. The HUD appraiser will review the Lender’s Underwriting Summary, including justifications of discrepancies between Lender’s and Lender’s appraiser’s conclusions.

7.11 Firm Commitment Processing for Section 223(f)

A. Exhibits

1. Application for Multifamily Housing Project, Form HUD-92013
2. Location map
3. Evidence of permissive zoning
4. Evidence of site control (deed, purchase agreement, option)
5. Evidence of last arms-length transaction and price
6. Phase I Environmental Site Assessment (ESA) with a narrative environment report. A Phase II Environmental Site Assessment must also be submitted, should the Phase I Assessment disclose a need for further study.
7. Complete Self Contained Appraisal
8. Rental Housing Project Income Analysis and Appraisal, HUD-92264
9. Appraiser's trial, Supplement to Project Analysis, HUD-92264-A
10. Estimates of Market Rent by Comparison, HUD-92273
11. Operating Expenses Analysis Worksheet, HUD-92274
12. Balance sheets and operating statements in accordance with Section 7.7.B of this chapter.
13. Rent roll of the subject property
14. Project Capital Needs Assessment (See Appendix 5S)

B. Lender's responsibilities

1. The MAP Lender's appraiser will complete an appraisal of the property establishing market value utilizing the cost, income, and market approaches in accordance with requirements found in Section 7.4 of this chapter. Market studies for Section 223(f) apartment projects would only be required in special circumstances, such as proposed changes in the type of occupancy or high project vacancy rates.
2. The Lender's appraiser participates in the inspection of the property with the Lender's Needs Assessor as described in Appendix 5M. The appraiser considers the eligibility of the project, checks the project occupancy level, and verifies the owner's rent roll during the inspection process. When the appraiser established that the owner's rent roll is correct, the actual occupancy, based on the owner's rent roll, is entered in the Remarks Section of form HUD-92264. The appraiser must also determine whether the apartments are furnished or unfurnished.
3. The Lender's appraiser will analyze the property for acceptability in accordance with Section 7.8 of this chapter utilizing the prepared appraisal.

4. The MAP Lender will have the Phase I ESA and narrative report prepared in accordance with Chapter 9.

5. The Lender's appraiser will complete HUD-92273, Estimate of Market Rents, utilizing the instruction found in the MAP Forms Book The Lender's appraiser will determine project rents and estimated rental income in accordance with Section 7.6 of this chapter, utilizing HUD-92273, the appraisal and the operating history of the property (rent roll and financial statements).

6. The Lender's appraiser will complete HUD-92274, Operating Expense Analysis Worksheet, utilizing the instruction found in the MAP Forms Book. The appraiser will determine operating expenses for the property in accordance with Section 7.7 of this chapter, utilizing HUD-92274 and the operating history of the property (financial statements).

7. The Lender's appraiser is to prepare certain sections of the Rental Housing Project Income Analysis and Appraisal, HUD-92264), in accordance with instruction found in the MAP Forms Book for the type of project proposed. Certain sections are solely the responsibility of the appraiser, and others are done in coordination with the Lender's architect, and cost analyst.

8. Principal HUD-92264 items to be calculated by the Lender's appraiser include:

   a. Market rents and estimated income

   b. Estimated total operating expenses

   c. Total estimated replacement cost

   d. "Warranted Price of the Land"

   e. Fair market value of the project

   f. Estimate of operating deficit and replacement reserve

   g. Estimated occupancy rate

9. The data provided in the Lender's HUD-92013 and HUD-92264 should be consistent. Moreover, any inconsistency between the data reported on the HUD-92264 prepared by the Lender's appraiser and the Lender's HUD-92264 must be explained in the Lender's Underwriting Summary.

10. The Lender's appraiser will provide in the Remarks Section of HUD-92264 the following:

    a. The appraiser's statement of actual occupancy, based on the owner's rent roll.

    b. The required amount of initial deposit into the Replacement Reserve Fund as estimated in accordance with Section 15.B of this chapter.

    c. The estimated cost of required repairs as provided in the inspection report.

    d. The estimated amounts for legal, organizational (if applicable) and title and recording expenses based on the maximum insurable 223(f) loan.

C. HUD review

1. The Lender will submit the Exhibits listed in Section 7.11.A of this chapter to HUD.
2. The HUD appraiser will perform a thorough technical review of the appraisal submitted for the project, making sure that it meets the requirements of Section 7.4 of this chapter including all USPAP requirements.
3. The HUD appraiser will inspect the subject site and a reasonable number of the comparables supplied by the Lender's appraiser. At this visit, the HUD appraiser will also review the Mortgagor's proposed list of critical and non-critical repairs and provide an opinion of the acceptability of the list based upon the HUD appraiser's potentially limited knowledge of construction. The HUD appraiser may consult with a HUD construction analyst when formulating the opinion.
4. In accordance with Chapter 9, the HUD appraiser will complete Part A of HUD-4128.
5. The HUD appraiser will review the recommendations of the HUD architectural analyst and the HUD-92264. The appraiser will review property characteristics for compliance to requirements found in Section 7.8 of this chapter. Based on these reviews and the environmental analysis, the HUD appraiser will make a recommendation of site acceptability.
6. The HUD appraiser must review and approve each of the following Exhibits:
   a. Rental Housing Project Income Analysis and Appraisal, HUD-92264
   b. Estimate of Market Rent by Comparison, HUD-92273
   c. Operating Expenses Worksheet, HUD-92274

   Within these forms the HUD appraiser must focus on and approve major items including the estimated income, the total operating expenses, the total estimated replacement cost, the maximum insurable mortgage, and the fair market value of the project.
7. The HUD appraiser will review the Lender's Underwriting Summary for justifications of discrepancies between Lender's and Lender's appraiser's conclusions.
8. The HUD appraiser will review the Lender's Underwriting Summary to determine if the Lender's underwriter carried out a " due diligence" review of the Lender's appraisal.
9. The HUD appraiser will issue a written report containing recommendations and forward a copy to the HUD Team Leader, Appendix 7C.

7.12 Processing for Section 232

A. In general. Processing is to provide a valuation of a Skilled Nursing Facility (SNF), Intermediate Care Facility (ICF), Board and Care facility (BC), or Assisted Living Facility (ALF). These facilities will serve as the security for the Section 232 insured loan.

1. For new construction and substantial rehabilitation follow instruction for Section 221(d) with additions and modifications as indicated below. Section 232 does not include BSPRA.

2. For Section 232 projects pursuant to Section 223(f) follow instruction for existing projects pursuant to Section 223(f) with additions and modifications as indicated below.

3. The primary difference in determining market value for a healthcare facility as compared to an apartment complex is the net income of a Section 232 proposal includes a return to the realty, non-realty and to the business operation of the proposal. This return to the business operation (proprietary earnings) must be deducted from the net income, since only net income from the realty and major movable equipment may be used to support a Section 232 mortgage.

   a. The appraiser must first identify the overall "Business Value" a.k.a. "Going Concern Value " prior to establishing a proprietary income adjustment and "Real Estate Only" value. The review appraiser should insure that there is a reasonable relationship between "Business" or "Going Concern" value verses "Real Estate Only" value and the proprietary income adjustment. Note that because of the variances in return expectations for a "Business Value" analysis verses "Real Estate Only" value, there may not necessarily be a one-to-one relationship between the two values and the proprietary adjustment, however, if there is a significant difference, the methodology used by the appraiser must be questioned. It shall be the lender's appraiser's responsibility to make the determination as to how to best perform this analysis. That determination should be based upon the quantity and quality of information that is available. Several suggested methods of applying this analysis follow:

   b. One method of applying this analysis would be to compare the cost to build a new facility to that same property's sale price after reaching stabilized operation. In this case, the cost to construct the improvements and major movables would measure the value attributable to the real estate, whereas, the sale of the operating facility would reflect the purchaser's opinion of value of the total Going Concern or business value. Anther method would be to perform an analysis where the appraiser derives capitalization rates from sales of leased facilities to compare to capitalization rates from sales of going concern properties. In this case, analysis of the sales of leased facilities will reflect the landlord's real estate only interest whereas sales of operating facilities will reflect the value of the total business or the going concern.

   c. When this concept is applied to the analysis of comparable sales in an attempt to derive market extracted capitalization rates, the analysis should generally follow the following guidelines.

Capitalization Rate Extraction and Analysis Technique (sales of stabilized & operating facilities)

	Sale 1	Sale 2	Sale 3	Sale 4
Number Beds/Units	120	175	155	135

Sale Price	$2,500,000	$3,200,000	$2,900,000	$2,750,000
NOI	$420,000	$550,000	$475,000	$450,000
Overall Cap Rate	16.8%	17.2%	16.4%	16.4%
Proprietary Earnings	15%=$63,000	15%=$82,500	15%=$71,250	15%=$67,500
Proprietary Cap Rate	25%	25%	25%	25%
Capitalized Proprietary Earnings	$252,000	$330,000	$285,000	$270,000
Adjusted Real Estate Only Value	$2,248,000	$2,870,000	$2,615,000	$2,480,000
NOI Real Estate Only (85% of total NOI)	$357,000	$467,500	$403,750	$382,500
Real Estate Only Cap Rate	15.9%	16.3%	15.4%	15.4%
Ratio of Real Estate to Business Value	89.9%	89.7%	90.2%	90.2%

d. Note that the preceding examples are provided as guidance only and are not represented to be the only proper methods of performing the required "Business Value" verses "Real Estate Only Value" analysis. It is the appraiser's responsibility to make the determination as to how this analysis should be accomplished based upon the quantity and quality of data available, which will be specific to each report.

4. If the chosen method of deriving a capitalization rate is the cash dividend to equity method, the appraiser must use the prevailing market rates of return to both equity and the mortgage, without regard to any discounted or special financing specific to the subject property.

5. As detailed example 3c above, if the comparable sale property was the transfer of real property along with the business component, the appraiser must adjust the comparable accordingly when deriving the Real Estate Only rate of capitalization, or Gross Income Multiplier. This is also true when applying the sales comparison approach.

6. When deriving the final "Real Estate Only" value (HUD's insurable value determination), and when preparing the HUD 92264 and HUD 92264a, a management fee should not be included as an operating expense under Section 232. Management fees are viewed as a portion of the proprietary income deduction, so that applying a management fee in the Real Estate Only analysis and in preparation of the HUD 92264 and HUD 92264a would be a duplication of expenses thus unfairly penalizing the property.

7. The appraiser may NOT use apartment sales in lieu of health care facilities to derive capitalization rates as comparables in the sales comparison approach.

8. The cost or summation approach must consider all applicable forms of depreciation for 232/223(f) cases. Due to this requirement, the replacement cost approach does not automatically set the upper limit of value for 232/223(f) projects. For New Construction and Substantial Rehabilitation pursuant to Section 232, the replacement cost or summation approach shall in all cases set the upper limit of value. This does not negate the necessity of the reconciliation process for the three approaches to value. Section 232 remains a value based program and all three approaches to value must be considered. It is rather an acknowledgment that no prudent purchaser would pay more for a property than the cost to acquire a similar site and construct improvements of equal desirability and utility.

9. Appraisers are permitted to use a modified version of HUD Forms 92273 and 92274 to estimate the per bed/or unit charges and expenses for skilled nursing (NH) and intermediate care facility (ICF) proposals under Section 232. It is imperative that the forms and materials submitted in lieu of the 2273 and 2274 achieve the intent of these forms by providing the data that is needed to perform a thorough underwriting analysis and review.

B. Exhibits for New Construction and Substantial Rehabilitation

1. Pre-Application.

   a. Application–Project Mortgage Insurance, HUD-92013-NHICF.

   b. Certificate of Need for Health Care Facility and Assurance of Enforcement of State Standards, HUD-2576-HF, for SNF and ICF facilities. For state without certificate of needs procedures, an alternative study of market needs and feasibility with the state standards and enforcement of certification may be substituted.

   c. Section 1616(e) Certification (Keys Amendment) of the Social Security Act is required for Board and Care facilities.

   d. Market study with comparables. (See Appendix 7B)

   e. Location map.

   f. Phase I Environmental Site Assessment (ESA) with a narrative environmental report. A Phase II Environmental Site Assessment must also be submitted, should the Phase I Assessment disclose a need for further study.

   g. Evidence of site control.

   h Prospective reimbursement rate and percentage of population for each patient type.

   i Description of services included in base rate and any additional personal care fees above the base rate for Assisted Living and Board and Care facilities.

j HUD 92273 and HUD-92264T analysis, if appropriate, and operating expense analysis completed by the Lender's appraiser according Section 7.6, 7.7 and 7.12 of this chapter.

k Lender's appraiser's estimate of occupancy rate for the project.

l Lender's appraiser's estimate of proprietary income and Net Operating Income.

m Estimate of mortgage amount based on HUD 92264-A, Criterion 5, Debt Service Ratio.

2. Firm Commitment

a. Application–Project Mortgage Insurance, HUD-92013-NHICF.

b. Evidence of permissive zoning.

c. Evidence of last arms-length sale and price.

d. Current provider agreement for Medicare/Medicaid, if any.

e. Current licenses as required by state and local jurisdiction.

f. Appraisal as described in Section 7.4 of this chapter.

g. Health Care Facility Summary Appraisal Report, HUD-92264-HCF and all supporting HUD forms, i.e., HUD-92264-A, HUD-92273 (with appropriate modifications of adjustment characteristics) and expense analysis.

h. All Exhibits needed for HUD to complete the Environmental Assessment.

i. Documentation from the appropriate state regulatory agency of approval or conditional approval of the assisted living facility's plans and specifications.

j. Operating deficit proforma

k. Business Plan

l. For new construction, a list of major moveable equipment and cost schedule.

m. For substantial rehabilitation, a list of major moveable equipment not being replaced by new equipment during the rehabilitation with a cost new, age and remaining useful life schedule for each piece of equipment. In addition, a list of major moveable equipment to be purchased new with corresponding costs.

C. Exhibits for Existing Projects–Firm Commitment

1. Application–Project Mortgage Insurance, HUD-92013-NHICF.

2. Certificate of Need for Health Care Facility and Assurance of Enforcement of State Standards, HUD-2576-HF for SNF and ICF facilities. For states without certificate of needs procedures, an alternative study of market needs and feasibility with a state standards and enforcement certification may be substituted.

3. Section 1616e Certification (Keys Amendment) of the Social Security Act is required for Board and Care facilities.
4. Assisted Living Facilities must meet state and local licensing requirements.
5. Market study with comparables.
6. Location map.
7. Phase I Environmental Site Assessment (ESA) with a narrative environmental report. A Phase II Environmental Site Assessment must also be submitted, should the Phase I Assessment disclose a need for further study.
8. Evidence of site control.
9. Evidence of permissive zoning.
10. Evidence of last arms-length transaction and price.
11. Current provider agreement for Medicare/Medicaid, if any.
12. Current licenses as required by the state and local jurisdiction and latest state residential care facility agency's report of operations.
13. Appraisal as described in Section 7.4 of this chapter.
14. Health Care Facility Summary Appraisal Report, HUD-92264-HCF.
15. Board and Care facilities that have contracts with local and state agencies must submit letters of understanding regarding the subsidized amount.
16. Project Capital Needs Assessment (See Appendix 5M).
17. Three years of balance sheets and operating statements. The most recent year's financial statement certified by an independent public accountant or certified public accountant.
18. Monthly resident roster/accommodation charges.
19. Unit Vacancy and Resident Turnover Report, HUD-9447.
20. Description of services included in base unit rate and any additional personal care fees above the base rate for Assisted Living and Board and Care facilities.
21. Schedule of Major Movables and age/life/cost schedule.

D. Market analysis

The Certificate of Need (CoN) or alternative market needs study does not relieve the appraiser or market analyst from making an independent determination of current market conditions and demand for the type of facility proposed. The CoN reflects bed-need on a population and use basis without regard to total monthly charges or needs in a specific market or sub-market. The MAP market analysis is mandatory in all cases for Section 232 projects.

E. Equipment

1. Realty (fixed) equipment is included in the construction contract.
2. Major movable equipment may not be included in the construction contract but should be included in Line H-36 of HUD-92264-HCF.
3. Minor movable equipment is considered in the project's operating expenses and is not included in the estimated replacement cost.

F. Total earnings will include earnings for realty and major movable equipment, and also proprietary earnings. Proprietary earnings provide a return to the business of running a skilled nursing facility, an intermediate care facility, a board and care facility, or an assisted living facility or any combination of the above.

1. Proprietary earnings are not capitalized into the value for realty and major movable equipment.
2. The percentage of total net income before debt service attributable to proprietary earnings found typical is:

   a. Skilled nursing beds–15 to 25 percent.

   b. Intermediate care beds–10 to 20 percent.

   c. Board and care beds–5 to 10 percent.

   d. Living units in an assisted living facility–10 to 15 percent.

   The above percentages are only general guidelines. The key should be the intensity of the services provided by the proprietary operation. Accordingly, a board and care facility that will be providing intensive services such as those that might be associated with a drug or alcohol rehabilitation center could, in fact, have a percentage of income attributable to the proprietary operation that might be equal to, or even greater than, a skilled care facility. Net operating income (before debt service) of the realty and major movable equipment is a residual after subtracting proprietary earnings from total earnings.

3. For proposed construction and substantial rehabilitation, charges for no less than 67 percent of SNF beds and ICF beds shall be estimated at Medicaid rates. No more than 3 percent of beds shall be estimated at Medicare rates. Private Pay beds cannot exceed 30 percent. The remainder of SNF and ICF beds shall be estimated at market rates for such facilities. The following exceptions are permitted:

   a. With 223f refinance when the project has demonstrated it has been operating at a different bed unit mix for at least three years.

   b. With substantial rehabilitation when there is no change in the intended use and associated income of the project after completion of substantial rehabilitation. The same three years of bed mix operating history applies.

4. Board and Care beds and Assisted Living Facility units shall be estimated at market rates for similar facilities.

G. Economic life. The appraiser will enter his/her estimate of remaining economic life. The mortgage term may not exceed 75 percent of the remaining economic life.

H. Budget review

1. For proposed construction, the sponsor must submit a budget approved by its Board of Directors or owners showing projected income and expenses for the operation of the facility.
2. For substantial rehabilitation and Section 223(f) proposals, the sponsor must submit for review:
   a. Balance sheet, statements of income and expense and statement of changes in financial position for the last 3 years.
   b. A bed and residential accommodation charge roll listing: each bed; name of each occupant, if any, or vacant if none; source of payment (Medicare, Medicaid or private pay); monthly charge; and amount in arrears, if any.
   c. Copies of all Medicare and Medicaid audits with
      (1) Outstanding findings and/or
      (2) Repayment schedule for over-reimbursement in prior years.
3. The appraiser analyzes the financial information and compares proposed occupancy and room charges from the budget(s) with data from a facility of similar size and providing similar services.

I. Principal elements of the Lender's appraiser's duties

1. Land appraisal. Estimate the value of the site fully improved.
2. Site and market acceptability. Decide whether the site is acceptable for the project and whether a market exists for the units or beds at the estimated charges.

3 Bed and residential accommodation charges by comparison. Prepare estimates based on comparison for private pay and the reimbursement formula for Medicaid and Medicare units. Show formula and calculations. Board and Care beds and Assisted Living Facility units shall be estimated at market rates for similar facilities.

A. Because by definition, market value assumes a value in exchange, many appraisers make the assumption that there will be an automatic increase in the property's reimbursement rate when appraising in states that permit such a step increase with a change in ownership. HUD has determined that Medicaid and Medicare reimbursement rates used in the value (Criteria 3) and debt service analysis (Criteria 5) may NOT assume an automatic increase based upon this "Value in Exchange" concept

for refinance transactions where there is no true change in ownership. The net income estimates used for calculation of both Criteria 3 and Criteria 5 should be based upon the actual expected reimbursement rate for the up-coming year of operation for the applying ownership. Note that this does not preclude the appraiser from re-basing the rates and operating expenses based on current and expected conditions. It should be stressed that the NOI proforma presented for processing should reflect the true rate of reimbursement that the applying ownership can expect to receive. The appraiser is directed to invoke a Jurisdictional Exception, and amend his/her definition of market value used in the report as directed herein.

B. For 223(f) acquisitions, the appraiser must make an analysis and determination of the new ownership's likely rate of reimbursement. Note that there are cases where new ownership of an existing facility may actually experience a decrease in their reimbursement due to depreciation laws specific to certain states and associated re-basing of the property. In true 223(f) acquisitions, if there will be an increase in the reimbursement rate for the new ownership, the appraiser must document, analyze and provide supporting documentation from the appropriate authorities in that jurisdiction.

4. Annual expense. Estimate project expenses based on comparison with actual operating expense data from SNF, ICF, BC facilities, or ALF separate living units depending on type of occupancy. The expense estimates must reflect typical long-term operations.

5. Net income computations. After the gross income has been developed, then estimate occupancy and effective gross income; then subtract annual expense to arrive at net income before debt service and before subtraction of the return on proprietary earnings.

6. Determination of project value. Estimate the value of the project utilizing the income, cost, and market approaches. In order to prevent manipulation of data to circumvent the purpose of the proprietary income adjustment, an administrative decision has been made that each appraisal of properties submitted under MAP and TAP, Section 232 must first identify the overall "Business" or "Going Concern" value of the property prior to establishing a proprietary income adjustment and the "Real Estate Only" value. The review appraiser should insure that there is a reasonable relationship between "Business Value" verses "Real Estate Only" value and the selected proprietary income adjustment. Note that because of variances in return expectations for a "Business Value" analysis verses "Real Estate Value" there may not necessarily be a one-to-one relationship between the values and the proprietary adjustment, however, if there is a significant difference the methodology used by the appraiser must be questioned.

A. The cost or summation approach must consider all applicable forms of depreciation for 232/223(f) cases. Due to this requirement, the replacement cost approach does not automatically set the upper limit of value for 232/223(f) projects.

B. For New Construction and Substantial Rehabilitation pursuant to Section 232, the replacement cost or summation approach shall in all cases set the upper limit of value. This does not negate the necessity of the reconciliation process for the three approaches to

value. Section 232 remains a value based program and all three approaches to value must be considered. It is rather an acknowledgment that no prudent purchaser would pay more for a property than the cost to acquire a similar site and construct improvements of equal desirability and utility

7. Operating deficit. Estimate the operating deficit expected during the initial absorption period. See MAP Guide Section 7.14 for the procedures for calculating the operating deficit.

J. Substantial rehabilitation processing under Section 232

1. In general. The "As Is" value of the existing land and structures is used in the replacement cost in place of land, in substantial rehabilitation cases. Only the cost of the repairs is used in the cost estimate, rather than the cost of constructing the structures and other improvements. This definition of replacement cost in substantial rehabilitation provides for depreciation by using the "As Is" value of the existing realty, rather than including the construction cost new.

2. General processing consideration. As is value of the property (realty/major movable equipment) before rehabilitation is based on:

   a. The property's intended use, not the current or highest and best use,

   b. Its condition at the time of appraisal, and

   c. If the property is an operating health care facility, the "As Is" value must not include proprietary income.

3. The appraiser will complete the "As Is" appraisal using a supplemental HUD-92264-HCF as well as a narrative containing all pertinent conclusions and documentation.

4. Once the "As Is" value is determined, complete Form HUD-92264-HCF for value after rehabilitation for new construction, with the following exceptions and amplifications:

   a. Section C. Estimate of income. Estimate bed/unit charges to be obtained after rehabilitation.

   b. Section H. Replacement Cost. Comparable sales of an operating health care facility normally include the CON. Accordingly, the organization line item should not include any cost relating to the CON except for cases where costs are incurred in obtaining a CON for ALF units.

   c. Section L. Remarks. A deposit to reserve for major movable equipment must be calculated for those existing items of equipment which are not going to be replaced by the rehabilitation. The amount of this required initial deposit may be computed by the appraiser taking into account the cost and useful life information on these items from the accepted mortgagor's schedule.

   d. Section H. Estimated replacement cost. Complete the appropriate replacement cost format to show mortgage replacement cost were the only limiting criterion.

e. HUD-92264A. Complete the trial HUD-92264A to show the mortgage to be used in completing Section H.

K. Assisted living facility/board and care processing. The Lender's appraiser will process ALF or BC proposals following the instructions as outlined for SNF and ICF proposals for the completion of HUD-92264-HCF with the exception of the following:

1. Section C. Estimate of income. The type of room or unit should be analyzed carefully as to market:

   a. Particularly whether 3- and 4-person occupancy rooms or units will be marketable at the rate used in processing.

   b. BC and ALF charges are predicted on current market rates. Accordingly, income for a "stand-alone" ALF or BC proposal will not be trended to date of the initial project occupancy. However, charges for ALF units or BC beds which are part of a SNF or IDF proposal will be trended to the beginning of operations if Medicaid rates are established and projected into the future by the state reimbursement administrator. The state agency on aging may be able to provide a listing of ALF and BC projects for data purposes.

2. Sections D and F. Payroll salaries and estimate of annual operating expenses. Make an analysis of the expense component relating to the particular ALF and BC facilities. If data on BC and ALF expenses is lacking, SNF comparables may be used and adjusted on the basis of the intensity of the services being contemplated. However, this should be done only as a last resort.

3. Section K. Estimate of value of capitalization. Line 5–"Net Return to Realty and Major Movable Equipment Based on Leased Nursing Homes." If the project is to be entirely a BC facility or an ALF, and data on leased BC facilities or ALFs is lacking, adjustments to the best available data will have to be used.

   a. As a guideline, the amount of income attributable to proprietary earnings should fall in a range of 5 to 10 percent for BC facilities and 10 to 15 percent for ALFs.

   b. Generally, the greater the services provided, the greater the percentage attributable to proprietary income.

4. Section L. Comparison approach to value. If the project is entirely BC or ALF, data from sales of such leased facilities should be obtained if at all possible. If the project is primarily a SNF or ICF, sales data from that type use will be used with appropriate adjustments for any differences. Comparables that include proprietary value in their sales must be adjusted to exclude such value from the sales. The documentation supporting the estimates must be reasonable and convincing.

L. Processing projects under the Section 232 program pursuant to 223(f). The valuation and processing of a SNF, ICF, BC facility and ALF units under Section 223(f) program is basically the same as processing under the 232 program, new construction. Listed below are the differences:

1. Bed and AFL unit charge list. An inspection of a sufficient number of residents' accommodations will be required.

2. Financial statements (audited or owner-certified) for a 3-year period.

3. In a value program, such as an existing Section 223(f) project, the replacement cost must reflect the accrued depreciation that results from physical deterioration, functional obsolescence, or external obsolescence, or any combination of these sources. The replacement cost estimate must include the following under Section 223(f):

   a. Total cost of structures and equipment included in the construction contract,

   b. Soft costs during construction,

   c. Major movable equipment,

   d. Warranted price of land.

   Items a, b, and c are depreciable items. Land value for the site is determined as if vacant, but for its intended use, not its highest and best use.

4. A blended Loan-to-Value ratio must be calculated when the mortgage includes both the purchase or refinance of an existing health care facility (HCF) and new construction of any type of additional health care facility:

   a. The estimated monthly income from the SNF, ICF, B & C beds or ALF units in the proposed addition are added to the estimated total monthly income of the existing facility.

      For example, assume that the addition will include 40 ALF units with a total monthly income estimated to be $112,541. This amount is divided by the total income for the property (both existing and new addition) in the amount of $312,700. The result indicates that 35.99 percent of the income will come from the proposed addition; while 64.01 percent of the income will come from the existing property.

   b. The 35.99 percent of income from the proposed addition is multiplied by 90 percent authorized for profit-motivated owners loan ratio for proposed construction under Section 232 to equal a blended portion of 32.39 percent.

   c. The 64.01 percent of income from the existing property is multiplied by 85 percent authorized for profit-motivated owners of existing property to equal a blended portion of 54.41 percent.

   d. The blended ratio of loan to value of both the existing and the proposed addition to the subject is the sum of the blended portions under calculated above, or 86.80 percent.

   e. If the sponsorship of the HCF is a nonprofit, the percentage of income from the proposed addition would be multiplied by 95 percent and the income from the existing property would be multiplied by 90 percent.

5. The Lender's appraiser will provide in the Remarks Section of HUD-92264-HCF for the following.
    a. Occupancy of the subject as of the date of inspection plus an estimate of time required, if any, to reach sustaining occupancy.
    b. Loss of income due to incomplete repairs at endorsement.
    c. Estimated cost of required repairs including additional repairs and improvements proposed by sponsor reflecting what the appraiser considered in his/her value.
    d. Estimated amounts for legal, organization (if applicable) and title and recording based on the maximum insurable loan.
    e. Lender's appraiser's should determine a tentative maximum insurable mortgage. Attach HUD-92264a with Criteria1, 3, and 5 completed.

M. HUD review

1. The Lender will submit the Exhibits listed in Section 7.12.B for New Construction and Substantial Rehabilitation or Section 7.12.C for Existing Projects.
2. The HUD appraiser and the EMAS economist will each provide a desk review of the market study submitted by the Lender. EMAS will not perform its own market analysis of a particular project. The EMAS advisor review would be provided to the team leader who would in turn provide it to the HUD appraiser. The HUD appraiser makes final recommendations to the team leader regarding market demand for the project.
3. For projects at the Pre-Application stage, the HUD appraiser will inspect the subject site and a reasonable number of the comparables used in the Lender's appraiser's HUD 92273, income estimation, and the expense analysis.
4. The HUD appraiser will prepare the HUD-4128 in accordance with Chapter 9 from the Phase I ESA and supporting narrative submitted by the Lender and complete the Sample Field Notes Checklist.
5. Based on his site visit and environmental analysis, the HUD appraiser will make a recommendation to the Team Leader regarding the acceptability of the site.
6. The HUD appraiser will determine that the projects submitted as comparables to the subject are acceptable comparables.
7. At the Pre-Application stage, from his review of the Lender's appraiser's HUD-92273 and HUD92264T if appropriate, and expense analysis and all supporting information including the Lender's HUD-92013, the HUD appraiser will make a recommendation regarding:
    a. The acceptability of the proposed rents and estimated rental income and their compliance to requirements to requirements to Section 7.6 and 7.12 of this chapter.

b. The acceptability of operating expenses and compliance to Section 7.7 and 7.12 of this chapter.

c. The acceptability of the proprietary earnings estimate used in the Net Operating Income calculation and its compliance to Section 7.12 of this chapter.

d. The acceptability of the vacancy factor used in the Net Operating Income calculation.

e. The acceptability of the estimated mortgage amount based on HUD 92264-A, Criteria 5, Debt Service Ratio.

8. At the pre-application stage the HUD appraiser will issue a written report (format in Appendix 7C) containing recommendations and forward a copy to the HUD Team Leader.

9. At Firm Commitment, the HUD appraiser will perform a thorough technical review of the appraisal submitted for the project, making sure that it meets the requirements of Section 7.4 of this chapter including all USPAP requirements.

10. At Firm Commitment, the HUD appraiser must review and approve each of the following exhibits completed by the Lender's appraiser:

    a. Health Care Facility Summary Appraisal Report, HUD-92264HCF

    b. Estimates of Market Rent by Comparison, HUD-92273

    c. Expense estimate analysis

    d. Operating Deficit Proforma

    Within these forms, the HUD appraiser must focus on and approve major items including the estimated income, the total operating expenses, the proprietary earnings estimate, the total estimated replacement cost, the "Warranted Price of the Land" or the "As Is" value as appropriate, and the maximum insurable mortgage.

11. The HUD appraiser will review the Lender's Underwriting Summary, including any justifications of discrepancies between Lender's and Lender's appraiser's conclusions.

12. The HUD appraiser will issue a written report (Checklist in Appendix 7C) containing recommendations and forward a copy to the HUD Team Leader.

7.13 Substantial Rehabilitation Processing for Sections 220 and 221(d)(3) and 221(d)(4)

A. In general. A substantial rehabilitation project is processed in accordance with the instructions found in Sections 7.9 and 7.10 of this chapter, except as noted below.

B. Processing of HUD-92264: Form HUD-92264 is completed in accordance with basic valuation instructions for Sections 221(d) and 220 processing in Section 7.10 of this chapter, with the following modifications:

1. Supplemental HUD-92264. A supplemental HUD-92264 will need to be completed to estimate the "As Is" Value. The form should be titled Supplemental 92264 "As Is" Value. Both the Direct Sales Comparison and Income approaches to value are used in the value estimation.

2. The HUD-92273 and HUD-92274 analysis used to support the income and expenses on the primary HUD-92264 will reflect the conditions that exist after substantial rehabilitation has taken place. An estimate of replacement cost new is made on a worksheet (a supplementary form, HUD-92264, Section G) and the result is reported in Part O, Remarks Section of the primary HUD-92264.

3. A value for the land without improvements will need to be estimated and entered on the primary HUD-92264 in Section H.

C. "As Is" value in multifamily rehabilitation. The estimate of "As Is" value of the property before rehabilitation will be estimated by the direct market comparison approach and the income approach to value. The "As Is" value by the residual approach can be used in circumstances where there is a lack of market sales. The Fair Market Value (FMV) by the market comparison approach will be based upon market prices for comparable properties in similar condition to the project being appraised. For example, if comparable sale properties in similar condition are available at $4,000 per unit, there is no justification for finding a value "As Is" in an amount substantially in excess of $4,000 per unit.

D. Valuation Processing

1. Find the market value of the property "As Is". Complete the Location and Description of the Property, Information concerning Land or Property, Estimate of Income, Equipment and Services Provided in Rent, Estimate of Annual Expenses, Income Computations, Income Approach to Value, and Comparison Approach to Value on a supplemental HUD-92264. Do not complete the Summation estimate in Section M. This is the "As Is" value before rehabilitation. If the project involved rehabilitation and new construction with additional land to be added, also complete a land appraisal on the supplemental form for that portion of the land to be added for new construction.

   The market value of the project is the sum of the land appraisal for the vacant portion of the subject site and the value of the existing property (land and improvements) based upon the lesser of the "As Is" value by market comparison and the "As Is" value by a residual approach.

2. Use the Replacement Cost by Formula, Rehab Projects, with or without BSPRA, found in the MAP Forms Book to find the total project cost (summation estimate) using the market value

"As Is" of the property, and the rehabilitation cost estimate furnished by the cost analyst, plus carrying charges and financing.

3. Complete HUD-92264, headed "Value of the Project after Rehabilitation." In Section G of that form, the market "As Is" value of the property before rehabilitation will be shown on the line titled "As Is" value of property."

4. "As Is" value of property acquired as a leasehold estate. Instruction for limiting the "As Is" value of property before rehabilitation—when that property is acquired as a leasehold estate—are to be found in Ground Leases, Section 7.16 of this chapter.

5. To find the project mortgage amount for Section 220 and Section 221, use the lower of Criteria 1, 3, 4, or 5 on HUD-92264A. Estimate the "As Is" value of the property before rehabilitation. Then, add the total for all improvements, plus soft costs to the AS-IS Value to obtain the sum of the above costs. Afterwards, multiply the sum of the project costs listed above by 90 percent based upon Criterion 3 to obtain the maximum project mortgage amount. Under the Section 221(d)(3) program for nonprofit mortgagors, multiply 100 percent against the sum of the project's cost.

E. Contingency reserves. For the purpose of provision for unanticipated costs inherent in the rehabilitation of older structures, there will normally be included in the mortgage amount a reserve for contingencies. This reserve is based on the percentage of estimated rehabilitation cost without fees (the sum of the total land improvements, total structures and general requirements). This percent may range between 0 percent and 10 percent, depending upon the job conditions, the experience and financial ability of the sponsor, the mortgagor and contractor. In determining the amount of the contingency reserve, judgment should be made on whether the contractor's bid already contains a reserve for contingencies. This percentage, determined by the cost analyst, is included as a separate line item in the estimate of replacement cost on HUD-92264.

F. Interest during construction. For Section 220/221 projects, interest during construction will be calculated based on the sum of one-half the mortgage amount plus one-half of the "As Is" value of the property, plus demolition, plus off-site costs.

G. Inspection fee. The inspection fee is calculated at .5 percent of the loan amount when the project involves new construction. For substantial rehabilitation projects, the inspection fee is calculated as the sum of Total for All Improvements (plus BSPRA, if applicable), rounded to the next higher $100, times .5 percent.

H. Offsite costs. If there are any offsite costs associated with the rehabilitation, enter them as a line item in the Estimated Replacement Cost. This separate entry is necessary in rehabilitation processing, since the "As Is" value does not include offsite cost requirements.

I Rehabilitation cost not attributable to residential use. This entry must be completed for all rehabilitation projects. This cost is prepared on Rehabilitation Cost Not Attributable to Residential

Use, found in The MAP Book. This cost (line 8) is transferred to line 4b under Criterion 4, Amount Based on Limitations per Family Unit, HUD-92264A.

J. Developer's Fee. HUD Notice H 96-63 shall apply for MAP Projects.

7.14 Calculating Operating Deficits

A. In general. Estimate the operating deficit, if any, in the early years. A project which cannot rent-up in the first years should be carefully examined from a feasibility standpoint. On the other hand, it takes time to move tenants into a large project, and it is almost inevitable that the average overall occupancy percentage for the first year will be something less than the break-even percentage. When it is anticipated that the entire project net income will not be available during the initial rent-up period, the Lender's appraiser must estimate the anticipated project operating deficit, utilizing the following steps:

1. Estimate the total project expenses and add the debt service requirement (including principal, interest and M.I.P.). This total is divided by the potential gross income for the project. The resultant ratio is the break-even occupancy level. Multiply that percentage times the total project units to obtain the number of units required for break-even occupancy. (A fraction of a unit is rounded up.)

2. Afterwards, estimate the total number of units expected to be occupied at the time of project endorsement. The difference between the total units required for break-even occupancy and those occupied units at the time of project endorsement represent the total number of units that must be rented in order to reach a break-even occupancy level.

3. The appraiser must then make an estimate of the likely rate of absorption of the available units. The selected rate must take into account the current and proposed supply of housing units in the subject's market and must be balanced against demographic demand considerations. The absorption or lease-up rate should be supported by comparison with similar project's historic rates of absorption during their lease-up period whenever this comparison can be made. The number of units to be absorbed, divided by the monthly absorption rate, will yield the total number of months of the entire operating deficit period.

4. Because the deficit period can begin at certificate of occupancy, continue through the cost certification phase, and run into the amortization phase, there are three distinct expense Intervals to consider during the total deficit period. Note that not every project will require using all three intervals. Interval 1 spans the period of time between certificate of occupancy and the end of the construction period/cost certification period. (Note that the construction period is defined as construction time plus two months for cost certification purposes). This will be an optional interval, because some projects may have the same certificate of occupancy date and construction completion date and thus would not need an Interval 1. When calculating expenses for this Interval, there should be no debt service included as an expense.

The mortgage interest for this interval is included in the mortgage in Section G Line 53 "Construction Interest". Ground rent is also not to be included in Interval 1. The MAP Guide, at 7.16G, requires ground rent during the construction period to be included in the mortgage. Replacement reserves are also not included in Interval 1 (the MAP Guide at 7.14 6 directs that reserves are not included until amortization begins). This interval should only include the appraiser's estimate of all of the applicable operating and leasing expenses for each month (period) in this interval.

Interval 2 begins at the end of the construction period/cost certification process (construction time plus two months) and ends at the beginning of amortization. This period can be no greater than 2 months and is also an optional interval. (Map Guide at 8.5 A says amortization must begin "no later than 4 months after construction completion for insurance of advances and first day of second month after final endorsement for insurance of completion cases"). If amortization begins at the end of the construction period, this interval will not be necessary. Debt service should include payment for interest and MIP, but not amortization, as the beginning of amortization signals the beginning of Interval 3. (Section G Line 53 of the 92264 includes mortgage interest for the construction period plus two months. If amortization is deferred until 4 months after construction completion, there will be two months of unaccounted-for interest and MIP that must be included in the IOD). Ground rent must be included if the property is a leasehold. (only ground rent during construction can be included in the mortgage, this Interval begins after construction completion so ground rent must be included if there is a ground lease). Replacement reserves are not included in Interval 2. This interval should include the appraiser's estimate of applicable operating expenses for each month (period).

Interval 3 begins at the beginning of amortization. Amortized debt service is mandatory in this Interval, and should include payment to principle and interest and MIP. Ground rent, if applicable, is also mandatory in interval 3. Replacement reserves also are mandatory in Interval 3. This interval should include the appraiser's estimate of applicable operating expenses for each month (period). Interval 3 should end when NOI become positive.

Note that operating deficits can occur before and after the start of amortization. The operating deficit calculation for the first interval should begin at the point the Certificate of Occupancy is secured.

5. If the dollar debt service for a period is greater than the net income for that period, the difference represents the estimate of the operating deficit. One period of positive income does not cancel a prior period of income deficiency.

6. The operating deficit represents the total of all cumulative losses projected to occur before the project “breaks even” and produces a positive cash flow to the equity position.

B. Where commercial facilities are included in the project, a separate analysis will be made of the effect that the commercial operation will have on the project expense estimate. A separate operating deficit estimate of income loss for commercial rent-up will then be made. The appraiser should insure that expenses included in the residential deficit estimate are not duplicated in the commercial space deficit estimate so as to unfairly penalize the property. The commercial space deficit is then added to the residential operating income deficit to determine the total deficit escrow that will be necessary. It should be noted that positive income attributable to the commercial space during the deficit period does not offset the residential operating deficit requirements.

.7.15 Reserve for Replacement Escrow

A. Sections 221, 220 and 232 annual deposits to the Replacement Reserve shall be calculated by the following formulas:

1. Section 221 and 220

   a. New construction: 0.006 X Total Structure Cost

   b. Substantial rehabilitation: 0.004 X Mortgage Amount

2. Section 232

   a. New construction:

      (1) Realty: 0.006 X Total Structure Cost

      (2) Major Movable Equipment: 0.10 X Major Movable Equipment Cost

   b. Substantial Rehabilitation:

      (1) Realty: 0.004 X Mortgage Amount

      (2) Major Moveable Equipment: 0.10 X (Major Movable Equipment Cost + Replacement Cost new of existing equipment not being replaced by the rehabilitation)

      Note: An Initial Deposit to Reserve for Major Movable Equipment must be calculated for those existing items of equipment which are not going to be replaced by the rehabilitation:

      å (Cost new of each of the non-replaced major movable equipment X percentage of useful life used up for the piece of equipment)

B. Section 223(f) Initial and Annual Deposits to the Replacement Reserve: In general, the Lender's Needs Assessor will conduct a Project Capital Needs Assessment (PCNA) for long-term capital needs. The Lender's appraiser will provide a plan for financing the capital needs. See Appendix 5M for full details.

7.16 Ground Leases

A. DEFINITIONS. When used in this section, the words and phrases below are defined as follows:

1. Fee Simple Estate. This represents the entire ownership, from beneath the soil to the air above, enduring by inheritance and, indefinitely into the future. However, governmental limitations to the fee simple estate include taxation, condemnation, and police power (the power to regulate for the general good). Subject to these limitations, the owner of a fee simple estate may use the property and may exclude others from its use; he may dispose of the property by sale or by deeding it to another as a gift, or by allowing it to pass to an heir at his death including its bequest in the owner's will. The owner may also retain his ownership while allowing another person (a tenant) to use the property for a certain number of months or years in return for the payment of money (rent).

2. Lease. A lease is a contract between an owner (the lessor) and a tenant (the lessee) which contains a written agreement of the conditions under which the lessor transfers the use of real property to the lessee in return for lease payments (or rent.)

3. Ground Lease. The term ground lease is frequently used when a lessor leases an unimproved site to a lessee long enough (in years) to enable the lessee to construct a building on the leased site.

4. Ground Rent. The payments on a ground lease are frequently called ground rent, and must bear a reasonable relationship to the value of the site "As Is" (before construction of on-site or off-site improvements).

5. Leasehold Estate. The interest of the lessee (user or tenant) under a ground lease for a term of years is called a leasehold estate. When the term of the lease expires, all rights to possession and use revert back to the lessor/fee simple owner and the leasehold estate terminates.

6. The Leased Fee. The interest of the lessor/fee simple owner during the period when the property is under lease.

7. In computing payments due under the lease, the terms "gross collections," "operating expenses and taxes," "net income before debt service payments," and "net cash flow" shall be defined as follows:

   a. Gross collections (or effective gross income) shall mean the annual amount collected from all sources, less refunds.

   b. Operating expenses and taxes shall be composed of items of operating expense and taxes in accord with generally accepted accounting principles. However, for lease payment computations, taxes shall not include income taxes, and operating expenses shall not include interest charges, or charges or allowances for depreciation of real or personal property, or amortization of financing expense, or payments to any officer or director of the corporation, unless such payments are for services at the project which are necessary to

the operation of the project. Conversely, operating expenses shall include the annual amounts deposited to replacement reserve funds.

c. Net income before debt service payments shall mean the annual amount which remains after operating expenses and taxes are subtracted from effective gross income.

d. Debt service payments shall be the annual amounts paid to mortgage principal, interest, and mortgage insurance premium.

e. Net cash flow shall be the annual amount remaining after debt service payments are subtracted from net income.

B. Term of Lease. Leaseholds must conform to the FHA Lease Addendum Form FHA-2070. The term of The Lease Addendum may be varied to conform with applicable State and local law, except that the HUD closing attorney must approve:

1. The legal need for any proposed lease term changes, and

2. That any term changes are consistent with the following requirements of the Section of the Act under which the project is underwritten:

a. Section 207/223(f). The lease term must satisfy one of the following requirements):

(1) Term is 99 years and is renewable, or

(2) Term is at least 50 years from the date the mortgage is executed (where a lease is on trust/other land on a reservation the HUD closing attorney must ensure that the lease provisions are coordinated with Bureau of Indian Affairs requirements).

b. Section 220, 221(d) and 232. The lease term must satisfy one of the following requirements:

(1) Term is 99 years and is renewable, or

(2) Term has at least 10 years to run after maturity date of the mortgage.

C. Marketability. The purchaser of a multifamily housing project is typically an investor in a national or regional market of competing investments. The marketability of a rental project is based primarily on an investor's estimate of the present worth of future cashflows. If the ground lease increases the cash flow to equity, most investors will consider marketability enhanced. However, the leasehold estate cannot be considered marketable unless the lease meets the underwriting review requirements described in this section.

D. Regulation for Leaseholds. HUD regulations state "Reduced mortgage amount - leaseholds. In the event the mortgage is secured by a leasehold estate rather than a fee simple estate, the value or replacement cost of the property described in the mortgage shall be the value or replacement cost of the leasehold estate (as determined by HUD) which shall in all cases be less than the value or replacement cost of the property in fee simple."

E. Legal Review. The lease must receive both a legal review and MAP Lender underwriting review. Neither of these reviews may be substituted for the other. Legal review, performed by the HUD legal counsel, shall establish that the proposed lease is in conformity with the applicable statute, HUD regulations, Form No. 2070 (the Lease Addendum model form), and applicable provisions of local law. Any substantive deviations from Form 2070 must be to the Assistant General Counsel for Multifamily Mortgage Insurance.

F. Underwriting Review of Lease at Firm Commitment. In testing the lease payments for acceptability, the appraiser takes the following actions:

1. The appraiser performs a Firm Commitment review to develop the following estimates:

   a. Fair market value of land fully improved (in fee simple)

   b. Warranted price of site fully improved (in fee simple)

   c. Value of site "As Is" (in fee simple)

   d. Gross income

   e. Effective gross income

   f. Total operating expenses and taxes

   g. Net income

   h. Replacement cost by formula

      (NOTE: The replacement cost formula to be used with leasehold estates will be found in the MAP Form Book.)

   i. Value of project (in fee simple) if applicable

   j. Mortgage amount, by completing a valuation trial copy of Form HUD-92264A. (NOTE: The value of the leased fee equals the value of site "As Is" in fee simple, before construction of on-site or off-site improvements.)

   k. Annual debt service payments to principal, interest, and MIP.

   l. Annual cash flow to equity (after debt service payments but before ground lease payments.)

2. The appraiser analyzes lease provisions which determine the amount of annual lease rental payments (or ground rents). Although it has been administratively determined that certain kinds of ground rents will be permitted that vary with the passage of time, this must be accomplished without weakening the tests which are designed to assure that the position of the mortgagor and of HUD in an insured mortgage secured by a leasehold estate would be no worse than if the property were held in fee.

   a. Some methods of determining variable lease payments are not acceptable as these methods contain the danger of future payments being too burdensome to be made without default in

mortgage payments. Examples of unacceptable methods of determining variable ground rents are:

(1) A graduated schedule of future increases on a lump sum year-by-year basis.

(2) COLA increases.

(3) Increases based on the results of future appraisals.

b. To determine if the initial amounts are within underwriting limitations, ground rents may be computed using any of the following three methods:

(1) A fixed percentage of gross collections (or effective gross income). The percentage must remain the same throughout the term of the lease.

(2) A fixed percentage of net cash flow to equity (after debt service payments but before lease payments). The percentage must remain the same throughout the term of the lease.

(3) A stated dollar amount per year, which must remain fixed for at least ten years more than the term of the insured mortgage. (If monthly or quarterly payments are required, these will be converted to annual amounts by the appraiser). When the lease contains more than one method of computing lease payments, it will also indicate whether the amount to be paid shall be the greatest or the least, or the sum of these amounts. The stated annual dollar amount may be described as a minimum payment.

3. The appraiser estimates the lease payments, using the lump sum annual amounts and percentages contained in the lease provisions, as applied to the estimated annual effective gross income or annual cash flow to equity indicated by the appraisal and on Form HUD-92264. (The estimates are not based on the income which would be available during any period of deficit operation, but should reflect the effective gross income shown on Form HUD-92264 and the corresponding cash flow to equity which result when sustaining occupancy has been reached.)

4. Example: Assume the facts are as shown in the following example:

LAND VALUE

Warranted Price of Land Fully Improved (In Fee Simple).....$ 125,000

"As Is" Value of Land (In Fee Simple).. 115,000

Value of Leased Fee..... 115,000

Income and Cash Flow

Estimated Effective Annual Gross Income, All Sources.....$ 242,455

Estimated Total Annual Expense (incl. Replace. Res.).....120,500

Estimated Net Income (before mortgage payments).....121,955

Annual Mortgage Payments (principal, interest, MIP) 99,661

Estimated Annual Cash Flow to Equity (before ground rent) 22,294

Estimated Replacement Cost and Mortgage Amount

Estimated Replacement Cost (or Value) of Project

(In Fee Simple) $1,250,000

Estimated Value of the Leased Fee 115,000

Estimated Replacement Cost (or Value)

Of Project (leasehold Estate) 1,135,000

Maximum Mortgage Amount From Form 92264A

(Leasehold Estate) $1,021,500

Annual Ground Rent Required

Assume that provisions of the lease require annual lease payments to equal the greatest of the three following calculations:

a. Three percent (3%) of annual gross collections;

b. Twenty percent (20%) of annual net cash flow to equity (after debt service payments but before lease payments); and

c. Seven Thousand Dollars ($7,000.00) per year minimum.

The appraiser will use estimates he/she previously made in the appraisal for annual gross collections (effective gross income), and for the annual net cash flow to equity (after debt service payments but before lease payments.) The appraiser estimates the three amounts as follows:

a. 3% of annual gross collections ($242,455) = $7,274

b. 20% of annual net cash flow ($22,294) = $4,459

c. $7,000 per year, minimum = $7,000

The appraiser notes that the amount of initial ground rent required by the lease is the greatest of these three amounts: 3% of annual gross collections, or $7,274. This amount is next tested to determine whether it is within permissible limits.

5. Test for Acceptability of Variable Lease Payments. In the above example (Paragraph 4, above), the appraiser has determined the amount of the initial annual ground rent required by the lease; to be acceptable.

Except for level lease payments described in sub-paragraph g, the annual ground rents must not exceed the value of the site "As Is" in fee simple ($115,000) multiplied by 90% of the interest rate of the insured mortgage (.90 x .09 = .081).

The following is an example of Test for Acceptability of Variable Lease Payments:

$7,274, based on the estimate of annual gross collections (effective gross income) used in the appraisal. Thus $115,000 x .081 = $9,315. The ground rent ($7,274) is less than ($9,315) the value of the site "As Is" multiplied by 90% of the interest rate of the insured mortgage; therefore, the annual rent is acceptable.

6. Form No. 2070, 207 Lease Addendum. The appraiser also reviews provisions of the lease (other than those concerned with annual lease payments) to determine that they will not restrict the successful operation of the project. In analyzing the lease the appraiser must keep in mind that the provisions of Form 2070, the 207 Lease Addendum, must be included in, or legally appended to, the lease. The proposed lease must not contain any provisions in conflict with the lease addendum. If the above conditions are met and the annual lease payments required under the lease meet the test for acceptability described above, the appraiser recommends that the lease be accepted.

7. Test for Acceptability of Level Lease Payments. The provisions of the lease may require only payments that are a stated dollar amount per year, and these stated annual ground rent payments must remain fixed for at least 10 years more than the term of the insured mortgage. A lease may require payments that are in accord with the stated dollar amount, but may not require payments of a fixed percentage of gross collections, or a fixed percentage of net cash flow to equity (after mortgage payments but before ground lease payments). In such case, the amount of stated annual ground rent will be acceptable if it does not exceed the value of the site "As Is" multiplied by 100% of the interest rate of the insured mortgage.

8. Single, up-front payment Leases are not acceptable. HUD has a longstanding policy of only insuring mortgage proceeds for land that is owned in fee simple. Up-front, single payment ground rents are to be subtracted from property value in Criterion 3 (Line B-1 identified as “value of the leased fee”) and are not to be included in the mortgage. They are treated as any other leased fee in this regard because they do not include the total bundle of rights that are included in a fee simple case.

G. Ground Rent during Construction. For proposed construction under all sections of the Act, lease payments during construction MUST be included in the estimated replacement cost of the project (and also in the certified cost), subject to the following conditions:

1. The period for which ground rent is estimated is the same as that for which interest and other related charges are calculated, namely, the estimated construction time plus two months.

2. Ground rent during construction is entered in Line G 69 of Form HUD-92264 (currently labeled “Construction Fee.”) A remark should be entered in Section H, indicating that the amount in Line G 69 represents Ground Rent During Construction.

3. Ground rent is not to be included in the base on which Section 220, 221(d) Builder and Sponsor Profit and Risk Allowance (BSPRA) is calculated.

4. The annual amount of ground rent during construction may not exceed the test for acceptability of lease payments.

H. Replacement Cost by Formula

A formula that will provide the total project replacement cost and mortgage amount, based on cost for proposed construction where a leasehold estate is involved. This formula provides for Sections of the Act, which use BSPRA and also those without BSPRA. A separate formula is necessary for leasehold properties because the mortgage amount is less than it would be if no ground lease were involved.

H. Value of the Leased Fee

1. The procedures for estimating the value of the leased fee are composed of a general rule and two exceptions.

   a. General Rule. Except as provided in subparagraph b below, the value of the leased fee must be estimated to equal the market value of the site "As Is" in fee simple. The value of the leased fee must equal the value of the site "As Is" regardless of whether the ground rent is an escalating amount based on a percentage of gross collections, or cash flow, or whether it is a level stated dollar amount each year.

   (1) The value of the leased fee, so estimated, is entered in the appropriate space in line K-6, Form HUD-92264.

   (2) Next, the annual ground rent, based on the lease provisions and estimates of income and expense used in the appraisal is entered in the appropriate space in line K-6, Form HUD-92264.

   (3) Dividing the ground rent by the value of the leased fee will result in the earning rate indicated by this ground rent. This rate is also entered in line K-6.

   b. Exception for Leases Containing an Option to Buy. In cases which meet the following conditions, the value of the leased fee may be estimated by capitalizing the ground rent.

   (1) The lease must give the lessee an option to buy the site in fee simple for a stated purchase price at some time during the term of the lease. This stated purchase price must not exceed the value of the leased fee estimated by capitalization at the time of project review.

   (2) The annual ground rent required by the lease must be level payments of a stated dollar amount. The amount of these payments must remain unchanged from the date of mortgage endorsement to at least ten years after the mortgage term.

(3) The capitalization rate used must be the market capitalization rate for similar investments except that it may never exceed the interest rate of the insured mortgage. The ground rent divided by the capitalization rate results in the estimated value of the leased fee to be entered in line K-6, Form 92264.

J. Option Price for Assistant Secretary for Housing–Federal Housing Commissioner. The Assistant Secretary - Federal Housing Commissioner's option price in the lease addendum must reflect the value of the leased fee in Form HUD-92264.

K. Ground Leased from Public Bodies. Where sites are leased by a public body to a developer for a specific purpose, the procedures outlined in this chapter remain unchanged, except that the "As Is" market value of the site in fee simple (before construction of on-site and off-site improvements) may not exceed the value of the leased fee.

L. Rehabilitation of an Existing Leasehold Project. When a leasehold estate with existing buildings thereon is to receive an insured mortgage for substantial rehabilitation, Valuation processing will vary from fee simple rehabilitation processing as follows:

1. "As Is" Value of Entire Property, Land, and Buildings

   a. Tentative "As Is" value of both land and building(s) is made in the usual way by capitalization and by comparison.

   b. Value of land without building improvements is made by market comparison based on sales of similar sites.

   c. Acquisition Cost of Buildings. The maximum ground rent is limited by the value of the land without buildings multiplied by 100 percent of the market mortgage interest for level ground rent payments, or multiplied by 90 percent of the market mortgage interest rate for acceptable escalating payments. Since the value of the land without improvements does not include buildings, the cost of the acquisition of the buildings will be whatever added cash amount the buyer pays the seller of the subject property for the buildings, at or before initial closing. A certificate of the separately agreed amount for purchase of the buildings shall be submitted with the application exhibits. In a refinancing rehabilitation loan, which does not involve a buyer and seller, the acquisition cost of the buildings may not exceed the remaining mortgage balance.

   d. Final "As Is" value of entire property is the lesser of Paragraph 7.16.L.1.a or the sum of Paragraphs 7.16.L.1.b and 7.16.L.1.c.

2. Value of the Leased Fee. This value will be the amount shown in Paragraph 7.16.L.1.b, Value of Land without Building Improvements.

3. Term of Ground Lease. The term of the leasehold must comply with Paragraph 8 above.

4. Value of the Leased Fee. The value of the leased fee is estimated to equal the value of the site in fee without the on-site improvements and is entered on Line K-6 of Form HUD-92264.

5. Underwriting Review of Lease. The appraiser follows procedures in Paragraph F in this section of the Chapter to determine whether the annual ground rental is acceptable.

6. Lease Addendum. Form 2070 must be included in, or legally appended to, the lease. The appraiser also reviews provisions of the lease (other than those concerned with annual lease payments) to determine that they will not restrict the successful operation of the project. If the above conditions are met and the annual lease payments meet the test for acceptability, the appraiser recommends that the lease be accepted.

7. Ground Rent during Construction. For rehabilitation under all Sections of the Act, ground rent during rehabilitation MUST be included in the replacement cost in a manner which meets the requirements of Paragraph G above.

8. Replacement Cost by Formula. A formula which will provide the total project replacement cost and mortgage amount, based on cost for substantial rehabilitation wherein a leasehold estate is involved, is shown in the MAP Forms Book. This formula provides both for sections of the act which use BSPRA and those without BSPRA.

7.17 Site Not Attributable to Dwelling Use

For each project where the trial HUD-92264-A indicates the mortgage will be limited by Criterion #4, Amount Based on Limitation per Family Unit, the portion of the site value allocated to facilities not attributable to dwelling use will be calculated by the Lender's appraiser and entered in the Remarks portion of HUD-92264 or HUD-92264HCF.

A. The Lender's appraiser will calculate the site not attributable based on the square footage estimate of the Cost not attributable to Land developed by the Lender's Cost Analyst. For simplification designate this amount as *A*.

B. The Lender's appraiser next takes the total site square footage from his estimate on the front of the HUD-92264 or HUD-92264HCF. For simplification designate this amount as *B*.

C. The Lender's appraiser next takes the value estimate for the total site from the front of the HUD-92264 or HUD-92264HCF. For simplification purposes designate this amount as *C*.

D. To calculate the Site Not Attributable (S.N.A.) the Lender's appraiser uses the following formula: S.N.A. = $(A/B) \times C$

E. The Lender's appraiser will then enter the S.N.A. cost on line 4.c of the trial HUD-92264-A.

7.18 Tax Abatement Procedures

Tax Abatement is a reduction of property taxes for a specified term by the appropriate taxing body. Properties with a tax abatement agreement may be eligible for an increased mortgage amount, when the Debt Service Mortgage Criteria 5 controls the calculation of the FHA Maximum Insurable Mortgage. Additionally, the tax abatement must run with the real estate and not with the type of sponsorship if it is to secure additional mortgage proceeds. These tax abatement procedures are applicable to Sections 220, 221(d)(3), 221(d)(4), 223(f) and Section 232 processing.

A. Fixed Long Term Tax Abatement

If the amount of the tax abatement is fixed and runs the entire term of the mortgage, the real estate tax expense reported on the HUD-92264 should be the actual amount of taxes to be paid after the abatement is applied. The full amount of the real estate taxes without the abatement should be noted in the remarks section of the HUD-92264. This allows the property to benefit from an increased mortgage amount due to the lower proforma operating expenses and thus an increased NOI estimate. **Note, where the abatement is fixed for the full term of the mortgage no adjustment is made to Form HUD 92264A Criteria 5.**

B. Short Term or Variable Tax Abatement

If the abatement is short term or varied, it may be used to secure additional mortgage proceeds. The amount of the additional mortgage is the amount that the abated taxes will amortize over the term of the abatement. A special amortization plan must be requested which has debt service payments that are increased by the amount of additional net income generated from the abatement, over the agreed term of the abatement.

When processing a short term or varied abatement, the full amount of the property taxes will be estimated and included in the total project expenses on Form HUD-92264 as if there were no tax abatement. The additional debt service ability resulting from the abatement should be calculated on line I, criteria 5 of HUD 92264A.

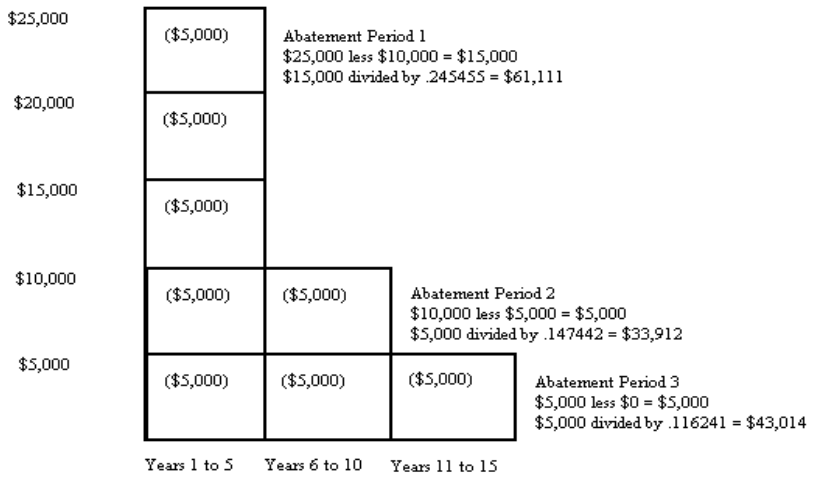
If Criteria 5, "Amount Based on Debt Service Ratio", does not control the mortgage, then the short term or variable abatement cannot be used to secure additional mortgage proceeds due to statutorily controlled loan to value limitations.

1. **Short Term Abatements:** Assume that Property A has been awarded a 5 year tax abatement of $5,000 per year. The interest rate on the loan is quoted at 7.5%. The FHA Mortgage Insurance Premium (MIP) is .5%. The amount of additional mortgage is calculated by dividing the annual abatement, $5,000 by the applicable debt service rate (P, I, and MIP). In this example the debt service rate is .245455383.

   $5,000 / .245455383 = $20,370 Additional Mortgage Amount.

   The mortgage amount based upon debt service, Criteria 5 of HUD 92264A would be increased by $20,370 and a special amortization schedule would be requested with a debt service payment that is $5,000 per year greater in years 1 through 5.

2. **Variable Abatements:** Varied tax abatements are a little more complex to quantify, but are essentially calculated in the same manor. Assume that Property B has been awarded a 15 year tax abatement. In years 1 through 5, the abatement is $25,000; in years 6 through 10 the abatement is $10,000; and in years 11 through 15 the abated amount is $5,000. The interest rate on the loan is quoted at 7.5%; MIP is .5%. The amount of additional mortgage is again calculated as the amount that could be fully amortized by the varied payments over the fifteen-year period based on the financing terms as stated. The graph below illustrates the calculation.



When there is more than one abatement amount and period, and the amounts decline, the abatement amount for each period may be found by subtracting the abatement amount of the next period. Period 1 will run 5 years, Period 2 will run 10 years, and Period 3 will run 15 years. Because all three periods begin amortization at the same point, or year 0, you must subtract the amount of the abatement for the next period to avoid double counting.

(1) Abatement Period 1 = $25,000 minus $10,000 (the amount of abatement in period 2)=$15,000 for 5 years. The debt service rate for a 5 year term at 7.5% interest with 5% MIP is .245455383. Dividing $15,000 by .245455383 indicates additional mortgage proceeds of $61,111 attributable to period 1.

(2) Abatement Period 2 = $10,000 minus $5,000 (the amount of abatement in period 3) = $5,000 for 10 years. The debt service rate for a 10 year term at 7.5% interest with

.5% MIP is .147442123. Dividing $5,000 by .147442123 indicates additional mortgage proceeds of $33,912 attributable to period 2.

(3) Abatement Period 3 = $5,000 minus $0 (since there are no periods remaining) = $5,000 for 15 years. The debt service rate for a 15 year term at 7.5% interest with .5% MIP is .116241483. Dividing $5,000 by .116241483 indicates additional mortgage proceeds of $43,014 attributable to period 3.

(4) Adding the supportable mortgages from each of the abatement periods results in a total additional supportable mortgage of:

Period 1 =	$ 61,111
Period 2 =	$ 33,912
Period 3 =	$ 43,014
Total =	$138,037

The mortgage amount based upon debt service, or Criteria 5 of HUD 92264A would be increased by $138,037 and a special amortization schedule would be requested with a debt service payment that reflects $25,000 per year in years 1 through 5; $10,000 in years 6 through 10; and $5,000 in years 11 through 15.

Chapter 8

Mortgage Credit Underwriting and Processing Requirements

8.1 Qualifications and Duties

A. Lender Qualifications

1. The Lender's underwriter must have basic knowledge and skills in a variety of financial areas, including:

   a. General experience in banking, accounting, finance, or commercial lending, and in multifamily mortgage financing.

   b. The ability to analyze corporate financial statements including, but not limited to, balance sheets, income statements, and statements of changes in financial position, and to evaluate the credit acceptability of individuals, partnerships, corporations, and other entities.

   c. A broad knowledge of lending practices for mortgages and construction loans and the financial structures of individuals, partnerships, and other entities.

B. Major Duties and Responsibilities of the Lender's Underwriter

1. The underwriter serves as a member of the Lender's processing team, calling for specific requirements and terms in the preparation of underwriting recommendations to HUD. The duties and responsibilities are divided into two phases. The first phase involves application underwriting and the second phase relates to the construction period.

   a. Duties and responsibilities associated with the application underwriting are as follows:

      (1) Makes a determination of the acceptability of the general contractor, the sponsor, the mortgagor, if formed, and its key principals through a thorough analysis of their credit, character, financial condition, motivation for ownership, availability of assets for closing and adequacy of income for total obligations.

      (2) Uses trade references, bank references, credit data and construction experience resumes in analyzing the construction capability of the general contractor including financial stability, and ability to complete the project.

(3) Determines the recommended maximum mortgage amount and other key terms of the loan.

b. Duties and responsibilities during the construction period are:

(1) Initial distribution of mortgage proceeds into various accounts and maintains a record of control and disbursement thereafter. This includes the preparation of Form HUD 2283, Financial Requirements for Closing, based on information contained in the Firm Commitment and approved closing documents.

(2) Determines construction cost (as approved by the HUD inspector), architect fees and carrying charges payable under request for advances of multifamily mortgage proceeds, preparing written reasons for modification as necessary.

(3) Recommends approval of construction change orders and recommends release of both on-site and off-site escrow funds, citing special requirements or conditions of approval as necessary.

C. Major Duties and Responsibilities of HUD

1. HUD is to perform the following major mortgage credit functions during the application underwriting and construction periods.

a. During application underwriting:

(1) Reviews the Lender's mortgage credit report(s) regarding the acceptability of the sponsor, mortgagor, and its key principals, and the contractor.

(2) Performs HUD 2530 Clearance Process.

(3) Determines the maximum mortgage amount and other key terms of the loan.

(4) Determines actual financial settlement requirements.

(5) Reviews initial and final closing documents for compliance and acceptability

b. During the construction period:

(1) Reviews and approves the Lender's proposed initial distribution of mortgage proceeds.

(2) Approves construction change orders.

(3) Reviews the mortgagor's cost certification based on HUD allowed costs.

(4) Determines the final maximum insurable mortgage.

(5) Reviews and approves the final distribution of mortgage proceeds.

8.2 Pre-application Processing

A. Exhibits

1. HUD-92013 Application for Multi-Family Housing Project
2. HUD-3433, Request for Preliminary Determination as Nonprofit Sponsor and/or Mortgagor and supplemental documentation

B. Mortgage Credit Duties and Responsibilities of the Lender's Underwriter

1. Determines general and financial acceptability of any proposed nonprofit sponsor/mortgagor in accordance with Section 8.12.

C. Duties of HUD

1. Makes final determination of acceptability of any nonprofit sponsors/mortgagors.

8.3 Firm Commitment Processing – Determining Acceptability of the Borrower and General Contractor

A. In General

A key component of the underwriting process is to assess the mortgagor's ability to manage the development, construction, completion, and successful lease-up of the property. The underwriting of multifamily and healthcare projects involves evaluating the character, ability and financial condition of the sponsor, mortgagor, its key principals, and the general contractor. The Lender's underwriter must:

1. Identify the mortgagor and its principal or key individuals.
2. Analyze the credit worthiness of the principal sponsors, the mortgagor entity, if formed, and the contractor.
3. Analyze the mortgagor and contractors experience record.
4. Determine the financial capability of the mortgagor and the general contractor.
5. Evidence specific experience (within the previous 5 years) in underwriting the development and operation/management of health care facilities.

B. Exhibits

1. Data in the Application Multifamily Projects, Form HUD-92013 disclosing:
   a. Type of mortgagor entity.
   b. Interest rate, costs of issuance (if the project will be financed with tax-exempt or taxable bonds), financing fees and discounts to be charged.
   c. Names, addresses, telephone numbers and Social Security Numbers (SSN) or Employer Identification Numbers (EIN) for the sponsor, mortgagor, if formed, general contractor, attorney, architect and consultant, if any. NOTE: Providing the SSN/EIN is mandatory for the sponsor, mortgagor and their principals; however, this information is voluntary for all other participants.

d. Sources of funds for the mortgagor entity.

2. Current resumes of the sponsor, mortgagor and its key principals, and the general contractor.

3. Form HUD-2530, Previous Participation Certification, for all parties identified on Page 1 of the Instructions for Completing the Previous Participation Certificate, Form HUD-2530.

4. Form HUD-92013 Supp, listing bank and trade references for all sponsors, the mortgagor, each principal of the mortgagor, and the general contractor along with disclosure of prior legal action, outstanding delinquent Federal debt, and SSN or EIN, whichever is applicable.

5. A verification of deposit, for each bank reference included on Form HUD-92013 Supp.

6. Grant and/or Loan Commitment letter (if applicable).

7. A listing from all sponsors, the mortgagor, all principals of the mortgagor entity and the general contractor of all business concerns in which these entities serve as a:

   a. general partner;

   b. limited partner with a 25 percent or more interest;

   c. stockholder with a 10 percent or more interest; or

   d. corporate officer.

8. A statement whether an identity of interest exists between the mortgagor and the general contractor, and/or architect.

9. Credit reports, current within 30 days of the application date.

10. Evidence of site control (valid option, purchase agreement or documentation proving ownership) and the date of the last arms-length transaction and price.

11. Certifications from the sponsor, the mortgagor entity, each principal and the general contractor which authorize the release of banking and credit information. A certification similar to the following is required:

    "To Whom It May Concern:

    Please be advised that the undersigned, as (mortgagor/a principal sponsor/general contractor), hereby consents to the release of any banking and credit information in connection with the loan application for the construction of _____(project name)_____ to the _____, Mortgagee, U.S. Department of Housing and Urban Development, and Delegated Processor or any Technical Discipline Contractor contracted by HUD to process this application.

    By: _____

    Date _____"

C. Identifying the Borrower and Its Principals

1. There are numerous ways for investors to own an interest in real property. Each of these different forms of ownership provides the investor with different capabilities and limitations in making a profit from the property. No particular form is necessarily ideal; each has certain advantages and disadvantages. Depending on the property and the goals of the investors, one form can be more beneficial than others. Each form has different effects on income from the property, payment to the investor, tax obligations, and the relationship between the manager and the owner. Identifying the form of ownership helps the underwriter in determining who the likely principals will be in a specific borrower entity.

2. Principal forms of Property Ownership are:

   a. sole proprietor;

   b. general partnership;

   c. limited partnership;

   d. corporation, C corporation, S corporation;

   e. limited liability company; and

   f. trusts.

   NOTE: Any combination of ownership forms can be used to establish a joint venture. The purpose is to jointly share the risks and the rewards by contributing the appropriate knowledge, skills or assets that are necessary.

D. Identifying the Principals

1. Pursuant to 24 CFR Section 200.215(e)(1), a principal is a public or private entity proposing to participate in a project as a sponsor, owner, prime contractor, nursing home administrator or operator, etc. The principal's role can be one of actual participation in directing the activities and affairs of the mortgagor entity or involvement in decision making, or one of inactive participation where an ownership interest has been acquired. All principals must be identified and analyzed based on their credit, experience, and financial histories.

   a. Who is a "Principal"

      (1) Sponsors and owners of the project: Principals of the mortgagor including all general partners, limited partners with a 25 percent or more interest, stockholders (in the case of corporations) or members (in the case of limited liability corporations) with a 10 percent or more interest, and operating officers of the corporation;

      (2) General contractors;

      (3) (3) Management agents;

      (4) Packagers, consultants and other persons or organizations hired: to furnish advisory services in project financing, construction or operation; select and

negotiate contracts with contractors, architects, attorney or managing agents; secure financing; or meet HUD requirements; and

(5) Architects and attorneys who have any interest in the project other than an arms-length fee arrangement for services.

Note: Financial and credit analysis are not required unless they meet the sponsor and owner criteria in 8.3.D.(1) above.

b. Who is not a "Principal" (Form HUD-2530 is not required for:)

(1) Stockholders with less than 10 percent interest in a corporation;

(2) Limited partners with less than 25 percent interest in the partnership;

(3) Attorneys and architects with only an arms-length fee arrangement for services;

(4) Minor corporate officers; and

(5) Sub-contractors.

E. The Credit Investigation

1. Lenders require credit reports or credit histories as a means of validating and cross checking information received from the borrower in the financial statements and application forms.

2. Credit reports give a picture of the borrower's payment history and financial interactions with its creditors and allow the underwriter to make sound conclusions about the borrower's credit worthiness. They also allow the Lender to reconcile any significant contradictions between the financial statements and the credit report.

3. A commercial credit report for business or a residential mortgage credit report (RMCR) for individuals current within 30 days of the application acceptance date is required on:

a. All Sponsors;

b. The mortgagor entity, if formed before submission of application;

c. Principals of the mortgagor defined in D.1.a.(1):

NOTE: If a principal is a business entity (i.e. corporation, partnership) with an operating history, a credit report will be required only on the business firm not the owners of the firm.

4. Business concerns listed in Section 8.3.B.7 require credit reports on:

a. All businesses involving a pending judgment(s), legal action or suit or bankruptcy claim;

b. A 10 percent statistical sampling selected by the mortgagee up to a maximum of 10 or any remaining ventures.

5. The general contractor.

6. The housing consultant, as applicable for nonprofit transactions.

F. Lender's Review of the Credit Report

1. It is important that all information obtained from credit reports and histories be compared to the financial statements provided by the relevant borrower or principal(s). Any contradictory issues should be the subject of further inquiry until the evidence shows a consistent and complete picture.

2. Make reasonable inquiries to determine if the applicant or any principal is in default on any Federal debt, i.e., direct loans, HUD insured loans, student loans, Small Business Administration loans, or judgment liens against property for a debt owed the Federal government.

3. Determine if discrepancies exist between the information included on the financial statement and in the credit report.

4. Investigate any adverse credit information that appears on the credit report or which becomes known because of making inquiries of bank and trade references and other HUD offices. Require a written explanation of any late payments, actions, judgments or derogatory information.

G. Delinquent Federal Debt:

1. When a delinquent Federal debt exits, the Lender shall include as part of the required application exhibits:

   a. A detailed written explanation from any applicant or principal with a prior Federal default or claim or whose credit report and financial statements contain conflicting or adverse information.

   b. A letter from the affected agency, or agency letterhead and signed by an officer, stating the delinquent Federal debt is current or satisfactory arrangements for repayments have been made.

   c. The Lender's reason(s) for recommendation of the applicant, which may be included in the Lender's report as described in Section 8.9.

H. Trade and Credit References

1. Review Form HUD-2530, Previous Participation Certification, for the principal's prior experience with HUD and approval to participate in the proposed transaction. In addition to the credit report, make inquiries of banks and trade references that have been disclosed on the HUD-92013 Supp.

2. For bank inquiries, rely on the completed Forms HUD-92004-F, Request for Verification of Deposit. Obtain verification of deposit for each bank reference listed on HUD-92013 Supp and the participant's financial statements.
3. Written inquiries of trade references should include a copy of the certification authorizing the release of credit information.
4. Do not require verifications of deposit on officers of a nonprofit corporation and officers of a profit-motivated corporation that have no ownership interest in the corporation and are not being relied upon for financial capacity. However, a general written inquiry to the bank about their experience with the individual/firm is required.

I. Rejection Because of Unacceptable Credit:

1. Consider the individual/firm a credit reject if:
   a. The credit investigation evidences that the principal has a history of not repaying creditors in a timely manner.
   b. Delinquent Federal debt has not been resolved or satisfactory arrangements made for repayment.
   c. There are judgments or actions against the party which:
      (1) Could significantly impact upon the financial position of the individual firm.
      (2) Result in a determination that the individual/firm is an unacceptable credit risk.

J. Analyzing the Borrower's and Contractor's Previous Experience:

1. The Lender's underwriter is to evaluate the resume of the principal(s). In doing so, the underwriter will be looking for their experience in developing, owning or building similar multifamily properties. Pay particular attention to:
   a. type and size of previous projects;
   b. geographic area of business involvement;
   c. length of time served in this capacity; and
   d. past roles in multifamily business.
2. Each resume should demonstrate the level of experience needed to successfully complete the development of the project.
3. Require the addition of members to the development team if necessary to satisfy experience requirements.

8.4 Firm Commitment Processing Financial Statements

A. Introduction

1. Financial statements give a picture of the financial position of an individual/company at a point in time and provide historical information for measuring and evaluating the financial performance of a principal/firm and provide advance warning of financial problems.
2. Use this information to determine if the sponsors, the mortgagor and/or the principals of the mortgagor have the financial capacity to develop, build and complete the project and whether the general contractor has the ability to deliver the project based on:
   a. past financial condition;
   b. present liquidity; and
   c. projecting future financial capacity.
3. Complete the financial analysis with the objective of determining the amounts available for investment in the project by performing an analysis of working capital. Working capital is the difference between current assets and current liabilities. It is used to purchase assets, pay off debt and make up deficits from operations. The financial analysis also determines which nonpledged, unsecured assets can be readily hypothecated to produce the required investment.

B. Exhibits

The sponsor, mortgagor, (if fully capitalized), and general contractor must furnish current financial statements with supporting schedules as part of the application for commitment processing.

1. Individuals must submit either:
   a. Personal Financial and Credit Statement, Form HUD-92417:
      (1) For married sponsors or principals, the form must also be signed by the spouse.
      (2) If a spouse's signature cannot be obtained, the principal must prepare the form reflecting only those assets that are solely in their name and any liability, including those joint liabilities, for which they have any responsibility.
   b. A substitute statement, which contains at a minimum the information contained on Form HUD-92417. This form must contain the following certification and criminal warning:
      (1) I HEREBY CERTIFY that the foregoing figures and statements contained herein submitted by me as agent of the mortgagor [owner] for the purpose of obtaining mortgage insurance under the National Housing Act are true and give a correct showing of _____'s (Name of mortgagor or owner) as of _____ (date of financial statement).
      (2) Signed this ____ day of _____, 20___ Signature of authorized agent with name printed or typed under signature _____.
      (3) Warning – HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

For married individuals, certification also must be signed by the spouse.

2. Business entities must submit the following separate statements and supporting documents for the last 3 years or the length of existence, if less than 3 years, signed and dated by an authorized officer of the organization.

   a. Balance Sheet which:

      (1) provides a breakdown of current and noncurrent assets and liabilities;

      (2) identifies restricted and nonrestricted funds; and

      (3) identifies the current portion of long-term debt.

   b. Income and Expense Statement which reflects:

      (1) income from normal operations;

      (2) investment income;

      (3) other income; and

      (4) total expenses.

   c. If the financial statements are audited, a Statement of Changes in Financial Position or if a fund accounting system is used, a Statement of Changes in Fund Balance, and all notes.

   d. Supporting Schedules:

      (1) An Aging Schedule of Accounts Receivable that provides the name, type of account (trade, affiliate, employee, relative or other), payment terms, amount and aging information.

      (2) An Aging Schedule of Notes Receivable that provides the name, type of account, payment terms, maturity date, current portion (due within 1 year or one operating cycle of the business, whichever is less), past due amounts and non-current amount.

      (3) Schedule of Pledged Assets, if applicable. Identify the pledged asset, the amount pledged and the offsetting liability.

      (4) Schedule of Marketable Securities that provides: name, number of shares, current market values of the date of the statement, and exchange where listed.

      (5) Schedule of Accounts Payable that provides: name, type of account (trade, affiliate, employee, relative or other), payment terms, amount and aging information.

      (6) Schedule of Notes and Mortgages Payable that provides: name, type of account, payment terms, maturity date, current portion (due within 1 year or one operating cycle of the business, whichever is less), past due amounts and noncurrent amount.

      (7) Schedule of Legal Proceedings, if applicable.

      (8) In addition to the applicable schedules in above paragraphs, general contracting firms must submit a schedule of jobs (work) in progress that identifies:

         (a) original contract price;

(b) construction start date;

(c) construction completion date; and

(d) percentage of completion.

e. Combined or consolidated statement(s), if applicable,

f. Other financial data necessary to determine the financial responsibility and capacity of the sponsorship or general contractor,

g. The certification, signed and dated by an authorized official of the company, or truth and accuracy and the criminal certification. The certifications must reference the name of the business and the date of the financial statement(s).

3. Section 223(f) Project Financial Statements.

The proposed mortgagor must submit the last three fiscal years financial statements on the facility and if more than three months have expired since the closing date of the financial statements, a year-to-date balance sheet and operating statement.

a. Audited Financial Statements.

The latest year's financial statements should be audited by a CPA or IPA. However, if the project owner does not maintain audited financial statements, an owner-certified financial statement for the latest year is acceptable. (See item c. below.)

b. There may be circumstances beyond the mortgagor's control where the required financial statements are not available.

(1) The mortgagor must submit:

(a) Evidence satisfactory to the Lender that the financial statements are not obtainable; and

(b) The project financial statements that are available including an owner-certified balance sheet and operating statement. (See item c. below.)

(2) Lender's case file must contain a statement from the mortgagor that explains why all the required records are not obtainable and a memorandum from the underwriter to the Hub or Program Center Director stating that he/she has evaluated the mortgagor's statement and agrees that the information is not available.

c. Any owner-certified financial statement or owner-certified balance sheet and operating statement must include certification and criminal warning found in 8.4 B.1.b. above.

Note: For Section 232 pursuant to Section 223(f) the mortgagor must submit Medicare and Medicaid Cost Reports for the last three years

C. Processing for Financial Statements

1. A current financial statement must be no more than 3 months old when Form HUD-92013 is submitted to the Lender for Firm Commitment review. Exceptions:

   a. The credit investigation or other circumstances may warrant more current financial statements.

   b. Audited financial statements prepared by an independent Certified Public Accountant or a Public Accountant may be up to a year old. The audited statements must be supplemented with updated interim financial statements, which may be management prepared, if more than six months have lapsed since the closing date of the audited statement.

2. A mortgagor entity with adequate capital does not require financial statements of the individual ownership interest(s). The mortgagor entity must be fully funded in an account in the name of the mortgagor entity.

3. A working capital determination is to be made by the Lender's underwriter for the mortgagor and the general contractor from a review of the financial statements. Working capital is the excess of current assets over current liabilities. The net working capital is to be adjusted for the effects of contingent liabilities and the financial needs of other projects in the planning stage or under construction adjusted by the percentage of completion.

4. Net worth in lieu of working capital: When fixed assets could secure loans to cover the project's financial requirements, recommend approval based on "true net worth" rather than on working capital.

   a. Require the principal to provide a commitment letter from a lending institution, which states:

      (1) The rate, amount, term and conditions, if any, of the loan that the lending institution is willing to provide.

      (2) The date by which the commitment letter must be exercised. (Must extend at least to the anticipated date for initial endorsement).

      (3) The party that will be responsible for repayment of the loan, if the commitment is exercised.

         (a) Repayment may not be an obligation of the mortgagor entity.

      (b) A certification indicating that the lending institution will not make any claim against the mortgaged property, mortgage proceeds, any reserve or deposit required by HUD, or against the rents or other income from the mortgaged property for payment of the loan. This certification must contain the criminal certification.

5. Funds provided by a Parent Company or Affiliate of the Sponsor: Require a certification from the Board of Directors or authorized agent that specifies the funds the parent company/affiliate is willing to commit.

   a. Establish the availability of funds from parent company/affiliate. Consider whether:

      (1) Individual corporations have any operating capital to spare.

(2) Laws under which they are incorporated or their banks permit:

(a) Withdrawals, loans or advances to owners or sponsors.

(b) Stock investment in affiliated corporations.

(c) Guarantee of debts of associated corporations.

6. Letters of intent and letters of credit cannot be used to establish financial capability. At initial endorsement, letters of credit may be substituted for cash to set up many of the escrows required at initial and final endorsement, or during construction. If a sponsor draws down cash at initial closing to satisfy escrow requirements, a letter of credit cannot be substituted to establish the same escrow requirements. When a letter of credit is permitted, it must always be:

   a. Unconditional and irrevocable;

   b. Issued by a banking institution; and

   c. Valid and collectible.

7. The Lender of record may not be the issuer of any letter of credit without prior written consent of the Hub Director. If a demand under any letter of credit is not met immediately, the Lender must provide the cash equivalent to the undrawn balance under the letter of credit.

8. Lines of Credit: Existing lines of credit may be used to establish financial capability. With the Firm Commitment application, require the principal to provide a letter from a lending institution that confirms:

   a. The existence of the line of credit, original amount and available balance, repayment terms, and expiration date.

   b. The line of credit expiration date cannot occur prior to project completion.

9. Sponsor's Continuing Commitments

   a. A written statement must be submitted from principals who are sponsors indicating the parameters of their financial commitment to and contractual relationship(s) with the mortgagor:

      (1) If the relationship is not intended to continue until the project reaches sustaining occupancy, the financial requirements have not been met.

      (2) Any sponsor not having an ownership interest in the mortgagor entity must also certify in writing the amount it is willing to commit.

   b. The HUD Firm Commitment will contain special conditions to ensure the contractual association of the sponsor to the project:

      (1) The condition must indicate that the withdrawal of any individual/firm relied on for financial capacity requires prior HUD approval.

(2) Identify the individuals/firms relied on for financial capacity. For confidentiality reasons, do not indicate their alphabetic designation or their dollar contribution listed on Form HUD-92264-A.

(3) Indicate that the withdrawal of any individual/firm relied on for financial capacity could result in HUD declaring the commitment null and void.

c. Require closing documentation, i.e., organizational documents, reflecting such continuing contractual relationships.

d. If there is a change in sponsorship of the individuals/firms relied on for financial capacity and the remaining principals do not demonstrate the capacity to meet the financial requirements of the project:

(1) At any stage through Firm Commitment, this is considered a significant deviation from the original concept and generally cause for rejection of an application.

(2) After the issuance of the Firm Commitment, but before initial endorsement occurs, this is considered a significant derivation from the application for which the commitment was issued and may be cause for declaring the Firm Commitment null and void.

10. Individuals are prohibited from submitting financial statements as a sponsor and then abandoning the project and the mortgagor after the Firm Commitment is issued.

11. The submission of a financial statement that is used to influence Federal Officials concerning a mortgage insurance risk determination when the sponsor does not plan a continuing relationship with the mortgagor could result in appropriate sanctions being taken against the sponsor (e.g., suspension, debarment).

12. General Contractor with Adequate Capital: The general contractor's adjusted working capital position should equal 5 percent of the estimated construction contract.

a. The instructions for hypothecation of fixed assets may be applied if the general contractor does not have an acceptable working capital position.

b. The general contractor's ability to obtain a performance-payment bond does not negate or lesson this requirement.

c. Adjust the working capital for projects underway.

d. If the general contractor does not have an acceptable working capital position or sufficient fixed assets that can be hypothecated, a joint venture may be established with a financially stronger general contractor provided these firms' combined working capital equals at least 5 percent of all construction contract amounts for projects in construction and development.

13. In the case of Low Income Housing Tax Credit transactions, the application may include a Letter of Commitment to fund the required equity from a tax credit syndicator or investor. This Letter of Commitment must specify the amount, pay-in schedule and other matters so that HUD and the Lender can ensure sufficient equity in a manner which

meets HUD's other requirements. The Lender underwriting the loan will also make the determination to require additional documentation (e.g. financial statements, etc.).

8.5 Term of Mortgage and Commencement of Amortization

A. For Sections 220, 221(d)**(3),** 221(d)(4) and 232 projects:

1. The term of the mortgage is the lesser of 75% of the estimated remaining economic life of the physical improvements or 40 years from the date of the first payment to principal.

   a. The mortgage term must be in whole years.

   c. Disregard any fraction of a year.

2. Amortization starts:

   a. For Insurance of Advances projects, no later than 4 months after the date of construction completion.

   b. For Insurance of Completion project, the first day of the second month following the date of final endorsement.

B. For Section 207 pursuant to 223(f) projects and Section 232 pursuant to 223(f) projects:

1. The term of the mortgage shall not be less than 10 years, nor shall it exceed the lesser of 35 years or 75 percent of the estimated remaining economic life of the physical improvements.

   a. The mortgage term shall be the eligible number of whole years between 10 and 35.

   b. Disregard any fraction of a year

2. Amortization starts on the first day of the second month following the date of the initial/final endorsement of the mortgage for insurance.

8.6 Additional Firm Commitment Processing Exhibits

A. For Sections 220, 221(d)(3), 221(d)(4) and 207 pursuant to 223(f) projects:

1. HUD-92013, Application for Multifamily Housing Project
2. HUD-92264, Rental Housing Project Income Analysis and Appraisal
3. HUD-92264-A, Supplement to Project Analysis

B. For Section 232 and 232 pursuant to 223(f) projects:

1. HUD-92013, Application for Multifamily Housing Project
2. HUD-92264 (NHICF), Project Income Analysis and Appraisal - Nursing Homes - Intermediate Care Facilities and Board and Care Homes

3. HUD-92264-A, Supplement to Project Analysis
4. HUD-3434, Certificate of Relationships and Nonprofit Motives
5. HUD-3435, Certificate of Contractual Relationship

8.7 Sections 220 and 221(d) Firm Commitment Processing - Determining Mortgage Amounts, Cash Requirements, and Related Items

A. Firm Commitment Processing.

1. Amount of loan for new construction includes construction of all types of projects not involving substantial rehabilitation. The insurable amount is the lowest of:

   a. Application amount.

   b. The result of Lender's estimate of the replacement cost after completion, less the amount of grant/loan funds attributable to replacement cost items, multiplied by the applicable percentage.

Section	Mortgagor	Percent
221(d)(3)	Nonprofit	100
221(d)(4)	All Mortgagors	90
220	All Mortgagors	90

   c. An amount attributable to dwelling use, excluding exterior land improvements, not to exceed:

      (1) For walk-up structures:

         (a) Projects involving eligible nonprofit mortgagors to be insured under Section 221(d)(3), the per family unit limits in Appendix 8B.

         (b) Projects involving eligible mortgagors to be insured under Section 221(d)(4), the per family unit limits in Appendix 8B.

         (c) Projects involving eligible mortgagors to be insured under Section 220, the per family unit limits in Appendix 8B.

      (2) For elevator type structures:

         (a) Projects involving eligible nonprofit mortgagors to be insured under Section 221(d)(3), the per family unit limits in Appendix 8B.

         (b) Projects involving eligible mortgagors to be insured under Section 221(d)(4), the per family unit limits in Appendix 8B.

         (c) Projects involving eligible mortgagors to be insured under Section 220 the per family unit limits in Appendix 8B.

      (3) Per family unit limits may be increased by:

(a) The approved High Cost Percentage (HPC) for the jurisdiction in which the project will be located.

(b) A percentage above the approved HCP up to 140 percent maximum, which results in a maximum of 240 percent of the base per family unit limits. Hub Directors in the project jurisdiction may exercise their waiver authority on a case-by-case basis to increase the HCP.

(c) The limits for walk-up and elevator structures may be increased by up to 20 percent, if necessary, for purchase and installation of a qualified solar energy system. This is in addition to any increase in a high cost area.

(d) If the Commissioner finds good cause in Alaska, Guam, or Hawaii, the maximum, high cost percentage may be increased by up to one-half.

(4) The amounts in (3) may be increased by the percentage of the site not attributable and cost not attributable to dwelling use, including exterior land improvements.

Section	Mortgagor	Percent
221(d)(3)	Nonprofit	100
221(d)(4)	All Mortgagors	90
220	All Mortgagors	90

d. Debt service that does not exceed the applicable percentage of projects' estimated net income.

Section	Mortgagor	Percent
221(d)(3)	Nonprofit	95
221(d)(4)	All Mortgagors	90
220	All Mortgagors	90

The mortgage may exceed this limit by capitalizing the savings from any tax abatement. In such cases the net earnings estimate will not reflect that temporary tax abatement.

(1) That portion of the maximum mortgage supported by the tax abatement must be amortized over the life of the abatement.

(2) The Tax Abatement must run with the real estate and not with the type of sponsorship.

2. Amount of Loan - Rehabilitation. (This includes only projects involving substantial rehabilitation or reconstruction.) The insurable amount is the lowest of:

a. Amounts in paragraph 8.7 A.1., except b.

b. The result of the Lender's cost estimate of rehabilitation and fair market value of the land and existing improvements before rehabilitation, less the amount of grant/loan funds attributable to replacement cost items, multiplied by the applicable percentage.

Section	Mortgagor	Percent

221(d)(3)	Nonprofits	100
221(d)(4)	All Mortgagors	90
220	All Mortgagors	90

B. Insurance of Advances.

See Chapter 13 for processing instructions.

8.8 Section 232 Mortgage Amounts, Cash Requirements, and Related Items

A. Firm Commitment Processing for Section 232

1. Amount of Loan - New Construction:

   Includes construction of all types of projects not involving substantial rehabilitation. The insurable amount is the lowest of:

   a. Application Amount.

   b. Value Amount.

      (1) Proprietary Mortgagor. Ninety percent of result of the Lender's estimate of value including major movables less the amount of grant/loan funds attributable to replacement cost items.

      (2) Nonprofit Mortgagor. Ninety-five percent of Lender's estimate of value including major movables.

      Do not deduct that portion of grant/loan funds attributable to replacement cost items. Instead complete loan criteria d below.

   c. Debt service that doesn't exceed 90 percent for proprietary mortgagor, 95 percent for nonprofit mortgagor of the project's estimate net earnings attributable to realty and nonrealty (excluding proprietary earnings, line 6, Section G., Form HUD-92264, NHICF). The mortgage may exceed this limit by capitalizing the savings from any tax abatement. In such cases the net earnings estimate will not reflect that temporary tax abatement.

      (1) That portion of the maximum mortgage supported by the tax abatement must be amortized over the life of the abatement.

      (2) Tax Abatement must run with the real estate and not with the type of sponsorship.

   d. Replacement cost less grants, loans, and gifts. This criterion only applies to nonprofit mortgagors.

2. Amount of Loan - Rehabilitation:

This includes only projects involving substantial rehabilitation or reconstruction and additions and improvements where the existing facility is involved in rehabilitation. The insured loan must be the lesser of:

a. Amounts in paragraph 8.8 A.1.

b. Property held in fee - One hundred percent of the estimated cost of rehabilitation less grant/loan funds attributable to replacement costs items.

c. Property subject to existing mortgage - Lender's estimated cost of rehabilitation, reduced by grant/loan funds attributable to replacement cost items plus the lesser of:

(1) Secured indebtedness, or

(2) Ninety percent (95 percent for nonprofit mortgagors) of the sum of Lender's estimate of the Fair Market (As-Is) Value of the property before rehabilitation less:

(a) The value of the leased fee, if leasehold, and

(b) The amount of non-pre-payable special assessments.

Note: Investigate any recent debt placed against the property. Exclude from the mortgage computation any debt that was created to increase the existing indebtedness in an attempt to circumvent this mortgage criterion.

Note: HUD defines "recent indebtedness" as any debt incurred up to one year before application for mortgage insurance is made.

Debt incurred by the operator is not mortgageable. If the debt is secured by the health care facility, the lien must be removed at the time of initial/final endorsement.

Process a property acquired after the initial application as property to be acquired.

d. Property to be acquired - Ninety percent (95 percent for nonprofit mortgagors) of the sum of Lender's estimated cost of rehabilitation after subtracting grant/loan funds attributable to replacement cost items plus the lesser of:

(1) Ninety percent (95 percent for nonprofit mortgagors) of the actual purchase price of the property,

(2) Ninety percent (95 percent for nonprofit mortgagors) of the sum of Lender's estimate of the Fair Market (As-Is) Value of the property before rehabilitation less"

(a) The value of the leased fee, if leasehold and

(b) The amount of nonprepayable special assessments.

Note: If an identity of interest exists, regardless of how slight, between the seller of the property and the sponsor, the transaction must be considered a refinancing transaction rather than a purchase transaction.

B. Existing Facility with an Addition [AKA] Blended Rate Processing for Section 232

A. Overview.

HUD permits an existing health care facility that does not require rehabilitation, only repairs, to be refinanced or purchased and for the transaction to include the construction of an addition.

1. Process the transaction using "blended rate" underwriting requirements below. These requirements blend together Section 232 New Construction and Section 232 pursuant to 223(f) Existing underwriting instructions contained in this Notice.

2. At initial endorsement:

a. Release the monies for the:

(1) Addition under the insurance of advances procedure.

b. A large portion of the loan is represented by an existing facility that is operational and self supporting at the permanent loan interest rate.

(1) The underwriting for the existing facility will not provide construction loan interest funds.

(2) If the construction loan interest rate is higher than the permanent interest rate the appraiser will determine the amount of an interest rate shortfall escrow.

a. The escrow must cover the additional interest charges for the estimated construction period plus an additional 6 months.

b. The mortgagor must fund the interest shortfall escrow at initial endorsement.

Note: If a nonidentity of interest operator of a health care facility has financed improvements to the facility with debt, the cost of these improvements were performed as a result of a business decision and are NOT eligible to be included in the purchase transaction.

3. Amortization Period of the Mortgage.

The maximum term of the mortgage will not exceed 75 percent of the remaining economic life of the existing health care facility or 35 years, whichever is less.

B. Form 92264-HCF, Health Care Facility Summary Appraisal Report.

1. Prepare two HUD Forms 92264-HCF: one for the existing facility; and one for the addition.

a. The A & E/Cost processor:

1) Completes the sections of a 92264-HCF for the existing facility and a 92264-HCF for the new addition; and

2) Prepares two cost analyses: one for the required repairs, if any, on the existing facility and one for the new addition.

Note: Davis Bacon prevailing wage rates apply on new construction additions and when developing the estimated repair cost on the existing facility.

b. Valuation:

1) Completes two 92264-HCF Forms, one for the existing facility and one for the new addition following instructions as modified by this Notice; and

2) Establishes the amount of the interest shortfall escrow, if required and records the amount in Section L, "Remarks," of 92264-HCF.

2. Form HUD 92264-A, Supplement to Project Analysis.

The mortgage credit examiner prepares three HUD 92264-A's,

a. A Form HUD-92264-A for the existing facility based on instructions for computing the maximum insurable mortgage and the total requirements for settlement under Section 232 pursuant to 223(f)

b. A Form HUD-92264-A for the addition based on instructions for computing the maximum insurable mortgage and the total requirements for settlement under Section 232 for New Construction.

c. A composite Form 2264-A that:

1) Combines the maximum insurable mortgages and total requirements for settlement from of a. and b. above;

2) Indicates the sources of funds to meet cash requirements.

C. Cost Certification.

1. Complete two separate cost certifications under existing and new construction instructions.

2. Consider only income during construction generated from the addition as a recovery of cost.

D. Financial Requirements to Close:

1. Minor non-realty equipment escrow and the Initial Deposit to the Reserve for Major movable Equipment (for rehabilitation projects only) must be funded at or before initial endorsement.

   NOTE: 1) The minimum amount needed to fund the minor non-realty equipment escrow is based on $450 per bed. 2) Funds may be released as equipment is purchased. 3) Any remaining balance in the escrow account may be released after all equipment has been purchased and the project is operational.

2. Independent living units in a board and care home may not exceed 25 percent of the total projected number of residents and require a 12-month prorated debt service reserve in

addition to any operating deficit escrow required for project approval. Any combination of independent living with a nursing home/intermediate care facility or a board and care facility requires a prorated debt service reserve (e.g., 25 percent independent living units would require 25 percent of the 12-month debt service reserve for the portion of the project used as a board and care home).

3. An assisted living facility may contain apartment-like units. Therefore, the Lender will calculate a prorated 12-month debt service reserve based upon the number of proposed independent living units.

E. Insurance of Advances.

1. See Chapter 13 for processing instructions.
2. Changes to the major movable equipment list**:**

   a. The Lender and HUD must approve the change orders.

   b. The owner must set up with the mortgagee a cash escrow to cover the increased cost, if any, within 5 days of HUD's approval of the new equipment list.

   c. The increased cost of major movable equipment may be recognized for cost certification purposes but this is not a basis for a mortgage increase.

8.9 Section 223(f) Firm Commitment Processing - Determining Mortgage Amounts, Cash Requirements, and Related Items

A. Firm Commitment Processing for Section 207 pursuant to 223**(**f**)**:

1. Amount of loan in a purchase transaction.

   In a purchase transaction involving an arm's length sale, the mortgage may not exceed the lowest of:

   a. Application amount; or

   b. An amount not to exceed the 85 percent for for-profit and nonprofit mortgagors of the result of the Lender's estimate of value as repaired less the amount of grant/loan funds attributable to replacement cost items.

   c. The maximum per unit limitation for new construction under Section 207.

      NOTE: The per family unit limits may be increased. See paragraph 8.7 A.1.c.(3).

   d. Debt service that does not exceed the 85 percent for for-profit and nonprofit mortgagors of project's estimated net income. The mortgage may exceed this limit by capitalizing the savings from any tax abatement. In such cases the net earnings estimate will not reflect that temporary tax abatement.

(1) That portion of the maximum mortgage supported by the tax abatement must be amortized over the life of the abatement.

(2) Tax Abatement must run with the real estate and not with the type of sponsorship

e. Eighty-five percent for for-profit and nonprofit mortgagors of the cost of acquisition which is defined as the sum of the items:

(1) Purchase price shown in the purchase agreement and determined allowable by the Lender.

(2) The Lender's estimate of repair cost, if any, provided such costs are paid by the mortgagor and are not included in the purchase price.

(3) The sum of reasonable financing charges, legal, organizational, and title and recording expenses paid by the mortgagor.

(4) Eligible discounts paid by the mortgagor.

NOTE: Any fees, discounts or other amounts paid by the seller for or on behalf of the purchaser must be reflected as a reduction to the acquisition cost.

(5) The initial deposit to the Reserve Fund for Replacement, provided such deposit will be funded by the purchaser.

(6) Eligible architect's fees, mechanical engineering fees, municipal inspection fees, HUD inspection fees, if applicable, and other fees as may be determined eligible by the Lender including the cost of Lender third party reports.

(7) Less the amount of any:

(a) Reserve escrow for replacement that will be purchased as an asset of the project.

(b) Grant/loan funds attributable to mortgageable items.

2. Amount of Loan in a Refinancing Transaction:

The subject loan will be the lesser of:

a. Amounts in paragraph 8.9 A.1. except e.

b. An amount which equals the greater of the following

(1) 80 percent of the Lender's estimate of the value of the project, or

(2) The cost to refinance the project which is defined as the sum of:

(a) The amount needed to pay off the existing indebtedness as determined eligible by the Lender.

(b) The initial deposit to the Reserve Fund for Replacements.

(c) The sum of reasonable financing charges, legal and organizational, and title and recording expenses paid by the mortgagor.

(d) The Lender's estimate of repair cost, if any.

(e) Eligible discounts paid by the mortgagor.

(f) Eligible architect's fees, mechanical engineering fees, municipal inspection fees, HUD inspection fees, if applicable, and other fees as may be determined eligible by the Lender including the cost of Lender third party reports.

(g) Less the amount of any:

(i) Reserve escrow for replacement and/or major movable equipment that will be purchased as an asset of the project.

(ii) Grant/loan funds attributable to mortgageable items.

B. Firm Commitment Processing for Section 232 Pursuant to Section 223(f)

1. Amount of loan in a purchase transaction.

In a purchase transaction involving an arm's length sale, the mortgage may not exceed the lowest of:

a. Application amount; or

b. For Proprietary mortgagors, 85 percent of the Lender's estimate of value as repaired including major movable equipment; or

c. For Nonprofit mortgagors; or

(1) Ninety percent of Lender's estimate of value as repaired including major movable equipment.

(2) Sum of Lender's estimate of value including major movable equipment less grant/loan and gifts.

d. Debt service supportable by 85 percent (90 percent for nonprofit mortgagors) of net earnings attributable to realty and nonrealty (excluding proprietary earnings). The mortgage may exceed this limit by capitalizing the savings from any tax abatement. In such cases the net earnings estimate will not reflect that temporary tax abatement.

(1) That portion of the maximum mortgage supported by the tax abatement must be amortized over the life of the abatement.

(2) Tax Abatement must run with the real estate and not with the type of sponsorship

e. Eighty-five percent (90 percent for nonprofit mortgagors) of the cost of acquisition which is defined as the sum of items:

(1) Purchase price shown in the purchase agreement and determined allowable by Lender.

a. Do not recognize as part of the purchase transaction the cost of improvements made by a nonidentity of interest operator of a health care facility that has financed improvements to the facility with debt and now

is in the process of purchasing said facility and wants to include the cost of the improvements in the purchase transaction.

(2) Lender's estimate of repair cost, if any, provided such costs are paid by the mortgagor and not included in the purchase price.

(3) Sum of reasonable financing, legal, organizational, title and recording expenses paid by mortgagor.

(4) Eligible discounts paid by the mortgagor.

(5) Initial deposit to the Reserve Fund for Replacements (realty) and the Reserve Fund for Major Movable Equipment (Nonrealty) funded by the purchaser.

(6) Eligible architect's fees, mechanical engineering fees, municipal inspection fees, HUD inspection fees, if applicable; other fees as may be determined eligible by the Lender including the cost of Lender third party reports.

(7) Less the amount of any:

(a) Reserve escrow for replacement and/or major movable equipment that will be purchased as an asset of the project.

(b) Grant/loan funds attributable to mortgageable items.

2. In a refinancing transaction, the owner is restructuring the mortgage debt against the property. The loan is the lowest of:

a. Amounts in paragraph 8.9.B.

b. Cost to refinance the project which is defined as the sum of:

(1) Amount needed to pay off the existing indebtedness determined eligible by the Lender.

(2) Initial deposit to the Reserve Fund for:

(a) Replacements (realty).

(b) Major Movable Equipment (Nonrealty).

(3) Lender's estimate of repair cost, if any.

(4) Sum of reasonable financing, legal, and title and recording expenses paid by mortgagor.

(5) Eligible discounts paid by mortgagor.

(6) Eligible architect's fees, mechanical engineering fees, municipal inspection fees, HUD inspection fees, if applicable; other fees as may be determined eligible by the Lender including the cost of Lender third party reports.

(7) Less the amount of any:

(a) Reserve escrow for replacement and/or major movable equipment currently on deposit.

(b) Grant/loan funds attributable to mortgageable items.

C. Treat any property acquired:

1. Before the date of the original application as a refinance transaction; and
2. After the date of the original application as a purchase transaction.

D. Identity of Interest Purchase Transaction.

Refer to Chapter 14, Section 14.15

E. Determining Existing Indebtedness in a Refinancing Transaction.

Existing indebtedness in a refinancing transaction is defined as:

1. Outstanding mortgage(s) incurred in connection with the construction of the project or with capital improvements made to the property as confirmed by the current mortgagee using the pay-off letter which appears in Appendix 8C of this Guide.
2. Other recorded indebtedness such as mechanic's liens and tax liens provided they did not result from personal obligations of the mortgagor.
3. Unrecorded debt directly connected with the project supported by documentation from the mortgagor. If the indebtedness is not recorded, the mortgagor must provide the Lender with documentation which unquestionably identifies the indebtedness with the project. Examples are:
   a. Delinquent interest
   b. Prepayment penalties on the mortgage
   c. Indebtedness incurred in making significant betterments to the property

   NOTE: Program penalties arising from the defeasance of tax-exempt and taxable bonds cannot be recognized.
4. Line-of-credit portfolio indebtedness attributable to acquisition costs, repairs and capital improvements. The mortgagee must obtain a letter from the issuer of the line-of-credit listing each facility encumbered by the financing and the dollar amount needed for each facility to obtain a partial release from the financing. Absent the partial release information, the following are acceptable alternatives:
   a. HUD will divide the line-of-credit debt by the total number of beds in the facilities to come up with the per bed debt. Or,
   b. Based on MAP appraisals for all the facilities, HUD will add up the approved values for all the facilities. HUD will divide the line-of-credit debt by the sum of the values. Multiply the result by a facility's value to determine the amount of existing indebtedness to be assigned to a facility.
   c. Lenders may develop other options for assigning debt. HQ will review and approve these options on a case-by-case basis.

5. Real Estate Investment Trusts (REITs)

   We recognize that special circumstances may exists from time to time when dealing with REITS, therefore we will treat the cash payment for the facility in the same manner as line-of-credit financing with the following exceptions.

   a. The REIT must submit from an independent certified public accountant a report of the cash payment made from each facility.

   b. An authorized officer of the REIT signs and dates a cover letter to HUD attesting the accuracy of the report. Said letter must contain the 1010 criminal warning.

   c. HUD will recognize 75% of the cash payment as equivalent to existing debt.

6. Do not recognize indebtedness:

   a. Recently placed against the project to increase the mortgage or circumvent program intent.

   b. Created by wrap mortgages

      (1) Unless the mortgagor and Lender give a detailed explanation of the purpose of the wrap and a documented accounting of disbursement of the loan proceeds.

      (2) You may recognize loan proceeds used for capital improvements or project operations.

F. Reserve for Replacements.

The initial deposit to the Reserve Fund for Replacements is eligible for inclusion in the maximum insurable mortgage.

1. Purchase Transaction.

   a. The purchase agreement must specify:

      (1) Whether or not the transfer includes as an asset of the project, Reserve Fund for Replacements [or Reserve Fund for Replacements (Realty) and Reserve Fund of Major Movable Equipment (Nonrealty) in a Section 232 pursuant to 223(f) transaction] or other escrows.

      (2) Dollar amounts of escrow and/or items which the seller will pay on behalf of mortgagor, e.g., the operating deficit, discounts, initial deposit to the Reserve fund for Replacements [or Reserve Fund for Replacements (Realty)and Reserve Fund of Major Movable Equipment (Nonrealty) in a Section 232 pursuant to 223(f) transaction] etc.

   b. Apply existing Reserve Funds transferred as an asset of the project as a reduction of acquisition cost when computing Criterion 7 on Form HUD 92264-A.

2. Refinancing Transaction. The mortgagor must submit a list of escrows currently on deposit for the project:

   a. The escrows must remain with the project.

b. Apply funds currently on deposit in a Reserve Fund for Replacements as a reduction of:

(1) The cost of refinancing under criterion 10 on Form HUD 92264-A.

(2) The initial deposit to the Reserve Funds for Replacement [or Reserve Fund for Replacements (Realty)and Reserve Fund of Major Movable Equipment (Nonrealty) in a Section 232 pursuant to 223(f) transaction] at endorsement. Use the excess to cut the costs of discounts, miscellaneous fees and charges, etc., included in the determination of the maximum insurable mortgage.

G. Discounts and/or Costs of Issuance associated with bond financing may be eligible for inclusion in the computation of Criteria 7 and 10.

1. Review documentation regarding permanent financing. Documentation must state the amount of the discounts, financing fees, and/or costs of issuance to be charged and with whom they will be paid.

2. Permanent Placement Fee. This fee must include all permanent placement expenses except discounts. Where GNMA Mortgage-Backed Securities (MBS) are involved and the mortgagee charges:

a. The maximum permanent placement fee, it may not assess an additional charge for either the MBS application fee and/or the securities custodial fee.

b. Less than the maximum permanent placement fee, it may assess an additional charge for either the MBS application fee and/or the securities custodial fee provided the total fees and charges do not exceed the dollar value of the maximum permanent placement fee.

3. Determine if the discounts, financing fees and costs of issuance are reasonable and in line with prevailing market conditions and mortgage credit data.

Recognize financing fees and discounts charged by the permanent Lender, for inclusion in the mortgage:

a. Bond fees included in the mortgage transaction:

(1) Where a project is to be financed through the sale of either taxable or tax-exempt bonds, the maximum financing fees allowable in the mortgage computation and recognizable for cost certification purposes is 5.5 percent of the mortgage amount. Any cost beyond the 5.5 percent must be paid from sources outside the mortgage.

(2) The maximum financing fee the mortgagee may retain for its own account is 3.5 percent. This 3.5 percent covers the costs of origination, processing, underwriting, closing and delivery (including the mortgagee's legal fees), escrow monitoring, permanent placement, etc. The remaining 2 percent (or such greater percentage as may result from the Lender reducing its maximum retainable 3.5 percent fee) may be used to offset the cost of bond fees.

b. Discounts. In a refinancing or purchase transaction, discounts will be recognized only for those actual costs charged by the placement Lender which are determined to

be eligible. Discounts included in the computation of Criteria 7 and 10 must be reasonable based on current market conditions.

4. Do not recognize:

   a. Financing fees and discounts beyond the 3.5 percent included in the mortgage where an identity of interest exists between:

      (1) The sponsor/mortgagor and the new permanent Lender.

      (2) The present permanent Lender or the interim Lender and the new permanent Lender, in a refinancing transaction.

   b. GNMA application fee and securities custodial fee, where the GNMA Mortgage-Backed Securities Program will be used for permanent financing, since they are paid from the permanent placement fee.

   c. Charges for warehousing a mortgage for future delivery.

8.10 Secondary Financing - Section 223(f)

The terms and conditions of secondary financing are:

A. The secondary financing is represented by a promissory note, Form FHA-2223. [For Section 232 pursuant to 223(f) transactions involving nonprofit mortgagors use a Residual Receipts Note (Nonprofit Mortgagors), Form FHA 1710.] This note shall not be altered in any manner.

B. The amount of the secondary financing is based on the source of funding.

   1. When the loan is made by:

      a. A Federal, State or local government agency or instrumentality the amount of the loan cannot exceed the difference between the HUD insured mortgage and the HUD Fair Market Value of the project. However, no other form of secondary financing may be used.

      b. For other entities or natural persons [either alone or in combination with organizations listed in 1a], the aggregate amount of the insured first loan and the second loan cannot exceed 92.5 percent of HUD's Fair Market Value of the project.

   2. When the financing vehicle for the secondary financing is provided by a Federal, State or local government agency or instrumentality the amount of the loan cannot exceed the difference between the HUD insured mortgage and the HUD Fair Market Value of the project. However, no other form of secondary financing may be used. Examples of acceptable financing vehicles are 501(c)(3) tax exempt bonds issued by nonprofit organizations and the more common forms of tax exempt financing.

C. Repayment of the secondary financing including interest is geared solely to the availability of surplus cash. Include the following language in the Note:

"So long an the Secretary of Housing and Urban Development or his/her successors or assigns, are the insurers or holders of the first mortgage on (insert project name and FHA Project No.), payments due under this Note shall be payable only from surplus cash (or residual receipts) of said project, as the term surplus cash (or residual receipts) is defined in the Regulatory Agreement dated (insert date) between HUD and (insert name of mortgagor). The restriction on payment imposed by this paragraph shall not excuse any default caused by the failure of the maker to pay the indebtedness evidenced by this Note."

D. The mortgagor may secure a promissory note with an inferior lien against the property under the following conditions:

1. The mortgagee of the HUD-insured first mortgage must consent to the placing of the inferior lien and agree that its existence doesn't constitute a basis for default on the first mortgage.

2. There must be a simultaneous closing and same day recordation of the secondary financing documents and the insured first mortgage loan documents.

3. The terms of the second mortgage are:

   a. Approved by the Area Counsel;

   b. Consistent with the terms of the promissory note, the first mortgage, the Regulatory Agreement and all HUD regulations and requirements.

   c. The second mortgage shall not contain a cross default provision or any right of foreclosure before the termination of the HUD mortgage insurance.

   d. The term of the second mortgage may be extended, if:

      (1) The note matures, there are no surplus cash funds or residual receipts available for repayment and the first mortgage has not been repaid in full.

      (2) HUD grants a deferment of amortization or forbearance that results in an extended maturity of the insured mortgage.

   e. The second mortgage is assumable when a sale or transfer of physical assets occurs and the mortgage insurance remains in place.

      (1) The holder of the second mortgage cannot require that more than 70 percent of the net proceeds of the sale or transfer be applied to the reduction of the loan.

      (2) For these instructions, net proceeds are the funds available to the original mortgagor after:

         (a) Correcting any monetary or covenant default on the first mortgage.

         (b) Making:

            (i) Required contributions to any reserve funds.

            (ii) Needed improvements to the property as evidenced by HUD's annual inspection reports.

f. The second mortgage automatically terminates if HUD acquires title to the project by a deed in lieu of foreclosure.

g. Only 50 percent of surplus cash or residual receipts can be pledged to the repayment of the secondary loan(s). However, at the owner's option additional payments may be made from time to time.

8.11 Firm Commitment Processing with Grants/Loans

A. In General

These instructions apply to:

1. Grants and loans to the mortgagor entity from a Federal, State or local government agency or instrumentality.
2. Loans to principals of the mortgagor entity from a Federal, State or local government agency or instrumentality.
3. Grants and loans to the mortgagor entity or its principals from national, regional and local community service organizations (nongovernmental source), e.g., Ford Foundation, Rockefeller Foundation, etc.

B. Application for Mortgage Insurance.

1. At the commitment processing stage, the applicant:
2. Identifies the use of grant/loan funds on Form HUD-92013, Application for Project Mortgage Insurance.
3. Submits either:
   a. A commitment letter signed by an authorized agent of the government agency or instrumentality or the nongovernment source identifying:
      (1) Amount of grant/loan funds.
      (2) Intended use of the grant/loan funds.
      (3) Any conditions for the loan and reasons, if any, the letter of intent could be withdrawn.
   b. For those cases involving a grant/loan from a government/agency or instrumentality, an application showing the information above.

C. The Rental Housing Project Income Analysis (HUD-92264) and the Supplement to Project Mortgage Analysis (HUD-92264-A) are to be completed in accordance with instructions for each specific program.

D. Grants/Loans from government agency or instrumentality

1. Initial Endorsement

   a. Before scheduling the closing, the Field Counsel must review the grant/loan documents to assure the legal sufficiency of the documents.

   b. The Lender must consent in writing to the existence of the second mortgage and agree that its existence does not constitute a basis for default on the first mortgage.

   c. The mortgagor may use instead of that portion of the front money escrow provided by the grant/loan, either:

      (1) An unconditional irrevocable letter of credit issued by a banking institution, or

      (2) An agreement entered into by HUD, the government agency or instrumentality, the Lender and the mortgagor which provides the following:

         (a) HUD has:

            (i) The right to approve construction advances after considering any reported noncompliance by the agency or instrumentality if the project is proceeding in compliance with approved plans and specifications.

            (ii) Sole authority to resolve differences in the inspection process and disbursement of grant/loan proceeds.

         (b) The Lender will concurrently furnish HUD and the agency or instrumentality with copies of the approved interim advances [Form HUD-92448, Contractor's Requisition, Form HUD-92403, Application for Insurance of Advances of Mortgage Proceeds, and supporting documentation].

         (c) The agency or instrumentality must process the advance promptly and without adjustment.

            (i) Send the agency or instrumentality a copy of the approved requisition for its records.

            (ii) The agency must notify HUD and the Lender of a need to make an adjustment the following month.

         (d) The agency or instrumentality assumes the risk for any grant/loan funds disbursed in excess of the amount approved by HUD or the Lender and agrees to replenish the excess funds within 10 working days of notification by HUD or the Lender.

         (e) If a default occurs before completion of construction, the agency or instrumentality must disburse the remaining funds so long as the request for funds remains in the same ratio as previously authorized.

         (f) The agency's or instrumentality's attorney must render an opinion that the agreement and grant/loan commitment is legally binding on present and all future administrations.

         (g) The mortgagor must post either a cash escrow or an unconditional, irrevocable letter or credit equal to no less than 10 percent of the grant/loan proceeds.

(i) The Lender must draw upon the escrow if the government agency or instrumentality fails to advance the grant/loan proceeds in a timely manner.

(ii) The mortgagor must reinstate any portion of the escrow drawn during the term of the construction loan, within 10 days of the draft for payment.

(iii) HUD must establish control of the escrow in a separate agreement.

(iv) The escrow may be released at final endorsement.

(3) Grant/loan proceeds must be advanced either:

(a) Before mortgage proceeds, or

(b) Concomitantly on a pro rata basis with the disbursement of mortgage proceeds.

NOTE: If the grant/loan proceeds are not available at initial endorsement, HUD may either:

(i) Proceed to initial endorsement, but not disburse any mortgage proceeds until the grant/loan is in place and the funds are available, or

(ii) Have the mortgagor/sponsor fund an escrow equal to the grant/loan. Advances from this escrow must follow outstanding instructions for the disbursement of the grant/loan.

(c) Release of grant/loan proceeds cannot be geared to the completion of specific improvements.

E. Grants/Loans from nongovernment source

1. Commitment Processing.

a. Financial statements must be submitted which evidence that the providing source has the financial capacity to meet its commitment.

b. The latest 3 years published audited financial statements, if available, must be submitted.

c. If audited financial statements are not available, unaudited statements which meet the requirements of paragraphs 8.4.B must be provided.

2. Initial Endorsement.

a. Before scheduling the closing, HUD reviews the grant/loan documents to assure the legal sufficiency of the documents.

b. The grant/loan funds must be escrowed with the Lender before or at initial endorsement.

c. The grant/loan funds must be disbursed before mortgage proceeds.

d. Release of grant/loan proceeds cannot be geared to the completion of specific improvements.

3. All work performed with the grant/loan proceeds:
   a. Must be cost certified.
   b. Must conform with Davis-Bacon requirements including submission of payrolls, certifications, etc.

8.12 Evaluating Nonprofit Sponsors and Mortgagors

A. General

Decide general eligibility of prospective nonprofit sponsor/mortgagor before issuing Pre-application approval or Firm Commitment as appropriate.

Prior to the issuance of the firm commitment, a HUD Headquarters review is required on all Section 22d(d)(3) MAP and TAP applications. In addition to exhibits 1 thru 10 listed below the following exhibits must also be submitted to the Office of Multifamily Development

1. A description of who is paying pre-development cost.
2. Details of proposed rent/income restrictions.
3. Copy of Form-2013, Application for Mortgage Insurance
4. Forms HUD 3434, Certificate of Relationships and Nonprofit Motives and HUD-3435, Certificate of Contractual Relationships.
5. Developers Agreement or any other document which shows the relationship and work responsibilities of all parties associated with the transaction.
6. Housing Consultant's contract, if applicable.
7. Evidence of site control.
8. Memorandum of Findings & Recommendations
   a. It must include a description of the relationship between the nonprofit and profit motivated entities involved in the transaction.
   b. The determination of eligibility or ineligibility of the nonprofit sponsor/borrower must be signed off personally by the Hub/Program Center Director.

B. Required Exhibits from Nonprofit Sponsor

Form HUD-3433, Request for Preliminary Determination of Eligibility as Nonprofit Sponsor and/or Mortgagor, and supplemental documentation. This type of sponsor must submit this information at the earlier of pre-application or Firm Commitment, as appropriate. Documentation must contain, but is not limited to:

1. Detailed explanation of motivation for sponsoring the project including a history of the organization's involvement in multifamily housing.
2. Copy of sponsor/mortgagor's charter and bylaws or constitution as currently amended.

3. Copy of a current effecting ruling form the Internal Revenue Service on sponsor/mortgagor's tax-exempt status.

   a. Copy of any ruling denying tax exemption

   b. If a ruling is pending, explain the application's legal and factual basis and current status.

4. List of officers, directors or trustees of the sponsoring group/mortgagor including addresses and titles of positions and their social security numbers.

5. Resumes on all principals and staff who will actively take part in the development of the proposed project.

6. Current financial statement (balance sheet, profit and loss statement, and supporting schedules) as well as statements for the past 3 years. If available, audited statements should be submitted.

   a. If the sponsoring group/mortgagor has existed less than 3 years, the financial statements must be submitted from the date the group was formed.

   b. Statements must identify restricted and unrestricted assets along with the related liabilities.

   c. Financial statements must be signed by an officer of the sponsoring group.

   d. All statements must contain the certification of truth and accuracy and criminal certification identified in paragraph 8.4.B.1.b. This certification must reference the name of the sponsor and the date of the financial statements.

7. Signed written resolution of its directors or trustees, acknowledging the responsibilities and obligations of sponsorship and continuing ownership, and that this position reflects the will of the membership.

8. Form HUD-92013-SUP listing current bank and trade references for the sponsor/mortgagor, if formed, and their officers (President, Vice President, Secretary and Treasurer).

9. The information contained in paragraph 8.3.G.1a, b, and c if the sponsor/mortgagor or any officer which has a prior Federal default or claim.

10. Detailed statement of arrangements made or proposed for the following (listing principals involved, their relationship with the sponsor/mortgagor, the terms of the arrangements and the circumstances surrounding each):

    a. Land on which the project will be built.

    b. Project construction, including selection of general contractor, subcontractors and architect.

    c. Legal and consulting services.

    d. Project financing, including any discounts.

    NOTE: A national, State or regional organization acting as a cosponsor must submit a separate Form HUD-3433 and Supplemental documentation.

C. Mortgage Credit Review Stage

1. Review Form HUD-3433 to see if the nonprofit sponsor/mortgagor is qualified to start, complete and operate a project under one of HUD's insured loan programs. Determine that all of the following criteria are satisfied:

   a. Sponsor/mortgagor is acting on its own behalf and is not, either knowingly or unwittingly, under the influence, control or direction of any outside party seeking to derive a profit or gain from the proposed project—such as a landowner, real estate broker, contractor, architect, attorney or consultant.

   b. Sponsor/mortgagor has continuity and a serious long-range desire to supply housing for the intended client group.

   c. Sponsor/mortgagor has:

      (1) Strong roots in the neighborhood and community

      (2) Good reputation for reliability, service and commitment to the people for whom the housing is to be built.

   d. Sponsor/mortgagor fully understands the responsibilities and obligations in developing a housing project and continuing its successful operation. This is evidenced partly by:

      (1) General knowledge of the factors that contribute to project success or failure.

      (2) Familiarity with the housing programs.

      (3) Clear, specific objectives.

   e. Sponsor/mortgagor acknowledges, by majority resolution of its directors or trustees, the responsibilities and obligations of sponsorship to develop and manage the project. This position reflects the will of its membership.

   f. Sponsor/mortgagor and its principals are reliable based on:

      (1) Reputation and Past Performance.

      (2) Success and extent of previous experience, including the type of service furnished (financial, volunteer work, management, etc.), in providing housing or related social services.

   g. Sponsor/mortgagor is providing or has arranged for the professional and management skills essential to the successful start, development, completion, and operation of the proposed project.

2. Credit investigation.

   a. Order data and/or commercial credit reports on the sponsor/mortgagor, if formed, and the officers of the mortgagor entity and make inquiries of bank and trade references identified on Form HUD-92013 Sup to determine basic acceptability of credit reputation and previous experience.

   b. Check for the existence of any delinquent Federal debt.

c. Check with other HUD Offices in whose jurisdiction the nonprofit has done or now does business.

3. Analysis of financial data.

a. Determine:

(1) Amount of cash and liquid assets available for investment in the project.

(2) Whether the nonprofit entity has used prudent judgement in its past and present business affairs.

(3) Overall financial condition of the sponsoring group, particularly whether the financial statements indicate that income will be sufficient to met the expenses incurred by the group.

b. Financial statements of many large nonprofit organizations show various fund accounts, such as general and building fund, etc.

(1) Look out for interfund receivables and payables that cancel each other.

(2) Do not consider restricted-use funds in the analysis.

(3) Review Public Records section of credit report to eliminate assets which have been used as collateral in secured borrowing.

c. Project size should be in keeping with the abilities of the sponsoring organization.

D. Submitting forms HUD-3434, Certificate of Relationships and Nonprofit Motives, and HUD–3435, Certification of Contractual Relationship.

1. At the Firm Application stage and prior to initial endorsement (beginning of construction in the case of insurance upon completion), the sponsor and mortgagor must certify on Form HUD-3434, their relationships with parties or firms furnishing land and services.

2. Such parties or firms certify on Form HUD-3435 their relationship with the sponsor and mortgagor.

3. If there is a change in the certified relationship, the sponsor, mortgagor and other parties must furnish additional certifications with respect to each change.

4. All relationships are subject to HUD approval. HUD reserves the right to refuse endorsement of the note for insurance and to cancel the commitment if such relationships aren't approvable.

E. Nonprofit Sponsor and a Profit-Motivated Mortgagor Entity.

A nonprofit sponsor may request to establish a profit-motivated mortgagor entity for the purpose of obtaining BSPRA and distributions from surplus cash. Such a request may be approved provided:

1. The HUD Field Counsel determines that there is no legal impediment which would prohibit approval of the request.

2. The nonprofit agrees to be regulated by the terms and conditions of the regulatory agreement applicable to a profit-motivated entity.
3. The nonprofit is subject to the mortgage limitations applicable to a profit-motivated entity.
4. A working capital deposit is required.
5. A nonprofit developer's fee is not included in the mortgage.
6. If the nonprofit provides evidence that it has obtained exemption from real estate taxes, the tax exemption must run with the real estate and not with the type of sponsorship.
7. The potential tax consequences as well as the possible effect on the nonprofit's Section 501(c)(3) status with the Internal Revenue Service (IRS) is between the nonprofit and the IRS.
8. Form HUD-3433 is not required for such cases.

8.13 Insurance Upon Completion (IUC)

Insurance Upon Completion is an option for new construction and substantial rehabilitation projects financed under Sections 221(d), 220 and 232. Mortgage insurance is provided after project completion. The following instructions apply to IUC projects:

A. A financial and credit investigation will be required on the borrower and its principals.

B. MIP is not included in Form HUD-92264 nor it is charged until the project reaches endorsement

C. Working Capital Deposit is not required in IUC projects.

D. Assurance of Completion is not applicable to IUC projects. At endorsement, the general contractor must satisfy latent defects by:

   1. Setting up a cash escrow deposit equal to 2-1/2 percent of the mortgage, or
   2. Providing a surety bond equal to 10 percent of cost of construction or substantial rehabilitation.

E. Breakdown of Financing Charges: In IUC projects, before issuance of the Firm Commitment,

   1. The mortgagee must provide:

      a. A breakdown of financing charges and discounts by submitting Form FHA-2455, Request for Endorsement of Credit Instrument, Certificate of Mortgagee, Mortgagor and General Contractor, with the Certificate of Mortgagee portion completed. The balance of the Form is to be completed before Final Endorsement in lieu of Form FHA-2023.

      b. Information relative to the construction and permanent interest rates and mortgage term.

2. Each item is reviewed to ensure its reasonableness in relation to comparable projects and market conditions. The approved fees set to the upper limit for cost certifications purposes.
3. HUD must inform the mortgagor of the fees that are recognizable for cost certification.

F. Building Loan Agreement, Form HUD-92441, is not applicable to IUC projects.

G. Construction Change Orders. The procedure for change orders is the same as in Chapter 13 except as modified below:

1. Positive change orders in excess of $5,000. While the mortgagor must be able to provide the additional funds required, an escrow is not required. The mortgagor must not have any outstanding obligation in connection with construction other than the insured mortgage at the time the mortgage is presented for insurance.
2. Approval of the surety is not required when approved changes increase cost by 10 percent or more.

8.14 Determining the Estimated Cash Requirements for Completing the Project

Estimating financial requirements for completing a multifamily project is essential for determining the net amount of cash or its equivalent needed to close the transaction. Total the following:

A. Lender's total estimated development cost. Also include the amount by which the:

1. Contractor's and/or mortgagor's estimate for construction exceeds Lender's estimate.
2. Owner/Architect Agreement for design and/or supervisory services exceeds Lender's estimate.
3. Consultant's contract for services exceeds Lenders estimate.

B. Amount necessary to clear all debts on the land (or property if substantial rehabilitation). All indebtedness must be verified by the Lender. In purchase transaction, include other costs associated with the acquisition that will not be recoverable form mortgage proceeds, i.e., zoning costs.

C. Estimated cost of offsite improvements and demolition.

D. Cost of equipping and furnishing a project with nonrealty items, if applicable. Use the higher of Lender's estimate or the mortgagor's estimate.

E. Required working capital deposit, if required.

F. Operating deficit, if any.

G. Commitment, marketing fees, and discounts.

H. Cost of issuance to be paid out-of-pocket by the sponsor/mortgagor for tax-exempt or taxable bond financing.

I. Relocation payments not included in Lender's estimated replacement cost on Form HUD-92264-A.

Deduct the maximum insurable mortgage, any grant/loan funds attributable to replacement cost items and fees not to be paid in cash. The remainder is the estimated capital needed for the project.

Set forth these conclusions and the mortgagor's ability to close the transaction on Form HUD-92264-A.

This is general methodology. The Lender's underwriter is responsible for completing the HUD-92264-A for the appropriate program in order to determine cash requirements.

8.15 Bond Financed Projects

A. Review of Financing Documents. Financing documents associated with mortgage bonds are not reviewed.

1. The sponsor must submit, with the application for commitment processing, a separate statement itemizing the estimated costs of issuance, discounts and financing fees to be paid out of pocket by the sponsor/mortgagor and explaining the necessity of each cost.

2. Mortgage Credit.

   a. The Lender's underwriter checks the statement for reasonableness, using the data from previously processed bond financed projects.

   b. Make adjustment where appropriate.

   c. Uses this information to develop the Total Estimated Cash Requirement Form HUD-92264-A, Supplement to Project analysis.

B. Loan Rates.

1. If the bond obligations have a variable interest rate, the rate must have a cap which is below the permanent loan rate. The permanent loan rate must exceed the interest rate on the bond obligations.

2. In many cases, the interest rate on the bonds is unknown during the commitment process. Therefore, it is not uncommon for the mortgage interest rate to change once the bond

interest rate is established. Due to time constraints, if the mortgage rate is lower, HUD may not have sufficient time to reprocess the project. In such cases:

a. The Firm Commitment must contain the following condition:

"Any interest savings resulting purely from a differential between the HUD processed interest rate and the actual final interest rate may not be construed as excess funds that may be used to offset costs in other categories at the time of cost certification. Any such savings must be applied as a mortgage reduction."

b. An exception is that savings resulting from the early completion of construction may be used to offset cost certifiable overruns in other cost categories. Compute interest savings by:

(1) Recalculating the interest line item on Form HUD-92264, using the actual interest rate for the scheduled construction period.

(2) Subtracting the actual interest cost recognized at cost certification from the revised interest figure developed in (1) above.

3. HUD will allow for the inclusion of a total financing and placement fee of 5.5% on bond financed applications, for all MAP eligible Sections of the Act, in determining the replacement cost mortgage amount and a cap of 5.5% recognized at cost certification.

C. Bonds may be sold at a premium to investors, i.e., investor pays an amount in excess of the face value of the bonds. The premium results from the bonds carrying a higher coupon rate than is generally available in the marketplace. The premiums must be considered as excess income and may therefore be used to offset cost overruns on recognizable certified cost.

1. Traditionally, HUD does not look at the mortgagee's cost of funds. Any premium raised by a transaction is considered part of the mortgagee, bond underwriter or issuer's profit. However, if a mortgagee gives something of value without the expectation of being repaid, HUD considers this to be a kickback. The one exception involves tax-exempt bond transactions where the issuer of the bonds may permit the mortgagor to receive some portion of the premium. In this situation, the mortgagee, bond underwriter and issuer are simply conduits for the transfer of funds.

2. If any of the premium is returned to the mortgagor, it is considered excess investment income and is treated as project income and used to reduce the total allowable cost of the project.

3. For **all** MAP eligible Bond Financed Projects, the premiums may be treated as project income under the following conditions:

a. The sponsor/mortgagor entity cannot benefit monetarily from the excess investment

income.

b. The premium, if given to the sponsor or mortgagor entity it controls, is considered as excess investment income.

c. Closing documents must detail the amount of the premium being given to the sponsor or the mortgagor entity it controls.

e. The premium may be used to pay for additional cost associated with the cost of issuance and may be applied to other recognizable cost overruns.

f. The mortgagor's accountant for an audited cost certification, or the mortgagor for an unaudited cost certification, must detail in the notes to the financial statement the amount of excess income received.

4. On nonprofit applications, excess income generated from premiums may be applied to recognizable cost overruns. Any excess income over and above that used towards recognizable cost overruns must be transferred to the reserve for replacement account.

D. Itemized Statement of Costs. Attached to and reflected in the Mortgagee's Certificate, Form HUD-92434, is an itemized statement of the costs of issuance of the obligations, discounts, and financing fees paid through the mortgagee.

1. The statement must explain why each individual item is necessary for the issuance of the obligations.

2. Review the amount of each item to ensure its reasonableness in relation to comparable projects.

3. HUD will prepare a letter from the HUD Director informing the mortgagee that HUD will recognize for cost certification purposes the costs of issuance, discounts, and financing fees in an aggregate amount not to exceed 5.5% included in the mortgage for all MAP eligible programs.

4. The mortgagee, bond underwriter, and issuer have the option of deferring collection of additional discounts, financing fees, slow draw fees, etc., through the provision of Paragraph 18(f) of the Mortgagee's Certificate (Form HUD-92434).

a. The deferred collection of these items must be an obligation of a third party and both the third party and the mortgagee, bond underwriter or issuer must attest in writing that they will not look for payment from:

(1) Mortgagor;

(2) Mortgaged property;

(3) Mortgage proceeds;

(4) Any reserve or deposit required by HUD and/or mortgagee in connection with the mortgage transaction; or

(5) Rents or other income from the mortgaged property.

b. The mortgagor entity may issue, as evidence of the debt, a surplus cash or residual receipts note to the third party for costs identified in Paragraph 4 above which HUD determines to be reasonable.

E. Pre-Cost Certification Conference Information. Explain at the pre-cost certification conference that:

1. Net effect of negative interest arbitrage (capitalized interest) may be recognized if there are offsetting savings in the mortgage.

2. Any rebate to the sponsor/mortgagor from either the mortgagee, issuer, or bond underwriter automatically reduces the mortgage at cost certification. The following are two samples of the most common types of rebates.

a. Mortgagee/bond underwriter contributes a portion of the initial service charge that was collected to pay discounts or other fees.

b. Mortgagee/bond underwriter refunds a portion of the construction loan interest to the mortgagor or sponsor.

8.16 Lender's Review and Recommendation

The Lender's underwriter's recommendation after review of all processing is made in a report addressed to HUD.

E. The report must detail the project's financial requirements and the credit capacity of the sponsors and general contractor. Include, at minimum:

1. Name of the mortgagor entity.
2. Composition of the mortgagor entity.
3. Name of general contractor.
4. Mortgage amount and controlling criterion.
5. Financial requirements for closing.
6. Sources of funds to meet cash requirements.

7. The experience level of the development team relative to the proposed project.
8. A credit and financial review of sponsor(s) mortgagor and key principals and general contractor. This review must address positive and negative findings known by the Lender.
9. Bonding requirements.
10. Recommendation to accept or reject.
11. If accepted, any conditions to be included in the commitment.

F. Completed Form HUD-92264-A and exhibits for the type of mortgage proposed must be submitted to HUD.

G. The Lender will transmit to HUD all mortgagor submissions and related documents.

8.17 Firm Commitment Processing-HUD Duties and Responsibilities

A. Receiving HUD Approval to Participate in HUD Programs Previous Participation Certification:

1. Principals of project applying for mortgage insurance under HUD programs are subject to HUD approval based on their experience and participation in previous HUD projects. Form instructions indicate who must submit the form and the information to be provided. HUD staff will review the Form HUD-2530 Previous Participation Certification to establish the percentage of ownership interest, if any, the principal will have in the proposed project. In addition, a review will be made of the principals or participants role and status of previous projects. Principals must disclose any defaults, mortgage relief, assignments, and foreclosures relating to these projects.
2. HUD will advise the mortgagee of its findings. If HUD rejects a principal, their withdrawal does not necessarily result in a rejection of the application if it can be determined that the remaining principals can successfully proceed with the project.

A. HUD will review the Lender's underwriters report and the HUD 92264-A and will determine the following:

1. The acceptability of the sponsor, mortgager and its key principals, and the contractor.
2. The maximum insurable mortgage.
3. The total financial requirements for settlement.

B. HUD will verify, through use of the HUD 92264-A and documents supplied by the Lender, the sources of funds to meet cash requirements.

C. The HUD technician responsible will forward their recommendations (Format in Appendix 8) to the Team Leader.

Chapter 9

Environmental Review

9.1 Overview

This chapter outlines for the Lender and HUD staff the policies and procedures that the HUD staff must follow to meet environmental responsibilities. For new construction and substantial rehabilitation, requiring pre-application review, HUD will not issue a letter of invitation to the Lender to submit an application for a Firm Commitment if there are unresolved environmental issues with the Phase I Environmental Site Assessment (ESA) or with other significant environmental issues, such as the location of the project in a floodplain. The pre-application process should identify any unresolved environmental issues, and HUD and the Lender should reach agreement at the pre-application stage regarding the measures to be taken to resolve the issues. The invitation letter should memorialize the agreement.

A. Legal Authorities, Handbooks, and Forms

1. All Federal agencies are required to comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) (NEPA), and the implementing procedures issued by the Council on Environmental Quality at 40 CFR Parts 1500-1508. HUD regulations implementing NEPA are contained in 24 CFR, Part 50, "Protection and Enhancement of Environmental Quality." Related Federal laws and authorities are listed in 24 CFR 50.4. HUD may not delegate its environmental responsibilities to others; it is required to prepare the environmental assessment and make the appropriate environmental finding. (See 24 CFR 50.11.)

2. HUD has issued two handbooks covering environmental issues: Handbook 1390.2 "Environmental Assessment Guide for Housing Projects" and Handbook 1390.4 "Guide to HUD Environmental Criteria and Standards contained in 24 CFR 51." Informal guidebooks issued by HUD on environmental issues are cited in this chapter. In addition, HUD offices may make the Guide, "Choosing an Environmentally Safe Site," which is used in the Section 202 and 811 programs, available to all projects.

3. HUD has established an environmental form, HUD-4128, that documents compliance with NEPA, and other environmental Federal laws, authorities, Executive Orders, and HUD standards. HUD-4128, "Environmental Assessment and Compliance Finding for Related Laws" is in the Forms Appendix. The Forms Appendix also contains the Sample Field Notes Checklist which the HUD staff will use to provide information supporting the conclusions listed on Form HUD-4128. Existing apartment and healthcare projects to be refinanced under Sections 223(f) or 232/223(f) do not require an environmental assessment under the National Environmental Policy Act except in extraordinary circumstances (see exclusion in 24 CFR 50.20(a)(5)), but do need to comply with Part A requirements of Form HUD-4128. Rehabilitation projects that meet the condition of 24

CFR 50.20(a)(2) also do not require an environmental assessment under NEPA except in extraordinary circumstances.

4. This chapter is not a substitute for requirements in the laws, regulations, and Executive Orders regarding environmental analysis.

B. Summary of Lender Responsibility

1. All projects (new construction, substantial rehabilitation, refinancing or purchase) submitted under MAP require a Phase I Environmental Site Assessment (ESA), in conformance with the American Society of Testing Materials (ASTM) Standards E1527-97 as amended. This shall be prepared by a qualified environmental professional. If the Phase I ESA is inconclusive, a Phase II ESA will be required. Phase I ESA and Phase II, if necessary, shall be submitted at the pre-application review for Sections 221(d), 220, and 232, and at the application for a Firm Commitment for mortgage insurance under Section 223(f) and for Section 232/223(f).

2. The Lender should also provide an environmental report to the HUD staff which will identify any environmental issues to be resolved, and will help the staff prepare HUD Form 4128, "Environmental Assessment and Compliance Findings for Related Laws". HUD Form 4128 and the Sample Field Notes Checklist that the HUD staff will use are included in this MAP Guide in the Forms Appendix. The Lender should follow the sample Field Notes checklist as a guide concerning information required. The Lender does not fill out HUD Form-4128.

C. Summary of HUD Staff Responsibility

1. HUD, not the Lender, is responsible for making an environmental assessment on Form HUD-4128 (See 24 CFR 50.32) and determining that there are no environmental factors that are prohibited by law, Executive Order, or regulation, or which would endanger health or safety, or would put FHA mortgage insurance or the U.S. Government at financial risk or liability. Environmental assessments for projects with more than 200 apartment units or 200 beds shall be sent for review and comment to the Field Environmental Clearance Officer or, in the absence of such an officer, by the Program Environmental Clearance Officer in Headquarters. (24 CFR 50.32). The Hub Director, or designee, who issues the commitment is responsible for signing HUD Form 4128.

2. HUD-4128 has four principal parts:

   a. Lines 1-10: Basic project identification

   b. Lines 11-14: Findings and approvals

      (1) Line 11: NEPA finding and approval conditions

      (2) Line 12: Preparers signature

      (3) Line 13: Environmental Clearance Officer (24 CFR 50.32)

      (4) Line 14–GYD approving official (24 CFR 50.11)

c. Lines 16-20: Part A (24 CFR 50.4, Laws and Authorities)

d. Lines 25-33: Part B (Environmental/Program Features)

3. At the pre-application stage, HUD staff must review the Phase I ESA submitted by the Lender and must make a site visit. The site visit will help validate part of the information provided on the Phase I ESA and it also should be useful for evaluating other environmental factors. The site visit is customarily made by a HUD appraiser and/or environmental specialist.

4. HUD staff will use information provided by the Lender along with the data obtained during the site visit, to prepare the Sample Field Notes Checklist which is the basis for completing HUD Form 4128. As noted, this checklist is in the Forms Appendix.

5. In most cases, HUD Form 4128 will not be completed until after submission of the application for the Firm Commitment. If this is the case, close coordination between the Lender and the field office should make the production of this document a practical formality, with all issues resolved and agreed upon in advance. Environmental conditions which must be addressed prior to submission of a Firm Commitment application will be discussed in the letter of invitation for Sections 221(d), 220, and 232. Any requirements which affect project design will be fully detailed. The Lender must assure that any requirements affecting project design are conveyed to the design architect for incorporation into the contract drawings and specifications.

D. State and Local Laws

In cases where state or local laws, ordinances, codes or regulations are more restrictive than Federal requirements, the applicant will be responsible for compliance with the stricter local standard. An application for mortgage insurance does not relieve an owner of responsibility for compliance with state or local requirements. HUD will not assume any responsibility with respect to inspection, enforcement, interpretation or determination of compliance with such state or local requirements.

9.2 Qualifications of Professionals

A. The sponsor/developer will select the professionals to be used in the environmental review, but the Lender should verify that the professionals used are qualified for their assigned responsibilities. The environmental professional who prepares the Phase I Environmental Site Assessment must meet the requirements set forth in the ASTM E-1527-97 as amended "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process."

B. Other professionals may be required to evaluate technical areas, such as toxic chemicals or soil conditions. The Lender should assure itself that these technicians are qualified. When these professionals are required, the Lender may contract for those services, if the sponsor/developer has not done so.

9.3 Phase I and Phase II Environment Site Assessment

A. With the request for a pre-application review, the MAP Lender must submit a Phase I ESA. If the Lender is submitting an application for a Firm Commitment under Section 223(f) or Section 232/223(f), without a pre-application review, the Phase I ESA shall be submitted with the application.

B. The Phase I ESA must be prepared in accordance with the requirements of ASTM E-1527-97, as amended. It should include a review of current and historical records, interviews with people knowledgeable of the site, and inspection of buildings, grounds and adjacent/surrounding properties. The Phase I ESA should describe the process of investigating data and reporting findings. The report should detail the source of the data considered and provide an opinion as to its accuracy and completeness. For a Phase 1 ESA to be considered, it should have been completed within 180 days of the date of submission. If the borrower is updating an earlier report, the update must be no later than 150 days past the expiration of the original Phase I and within 60 days of the date of submission.

C. The Phase I ESA will be evaluated to determine if the property is acceptable for the hazards reviewed. If it is unacceptable because it shows an identified hazard (Recognized Environmental Condition) and no correction action is feasible, then the property is rejected.

   If no definite conclusion can be reached after the Phase I ESA, a Phase II ESA is required. The purpose of Phase II ESA is to provide and investigate specific technical issues and report on them, based on testing, sampling, etc. or to quantify the extent of an observed or suspected liability, such as underground tanks, surface or ground water contamination. The Phase II should include the standards against which the Assessment is to be measured, with a description of the methodology, data and sampling procedures used in the process, in addition to any relevant tests or laboratory results. Like Phase I, Phase II should only be completed by an environmental professional specifically qualified to meet the responsibilities for the issue of concern.

D. Remediation plan for site contamination.

   1. Following the Phase I ESA, and, if necessary, the Phase II ESA, the borrower may propose a remediation plan designed to eliminate contamination or bring it to an acceptable level as determined by the appropriate local, state or Federal authority. The plan must be submitted by the Lender at the pre-application stage and must be reviewed by HUD before an invitation is issued to submit an application for a Firm Commitment.

   2. If it is uncertain whether or not implementation of the remediation plan will remove the contamination or bring it to an acceptable level, the remedial work must be done and the site tested and approved prior to the issuance of a firm commitment. The approval from the appropriate authority must be submitted with the application for a firm commitment.

3. If, however, the extent of contamination can be definitively determined and the cost of removing that contamination can be specified, HUD may allow a plan which permits the work to be done prior to initial endorsement. The remedial work must be done, and the site tested and approved, prior to initial endorsement. Approval from the appropriate authority must be submitted either prior to or with the closing documents.

E. HUD will not accept property for firm commitment where a site contamination problem has been capped or paved over. One reason is that HUD's insurance will remain for a very long period of years, and solutions to environmental problems that seem acceptable now may turn into serious environmental problems in future years.

F. Testing, flushing or monitoring wells on a property may be evidence of site contamination or potential site contamination. A property with testing, flushing, or monitoring wells in operation will not be considered for mortgage insurance. Non-operating testing, flushing, or monitoring wells established on the property, which have been capped over, are not a barrier to environmental approval. A monitoring well to be placed on the property by order of the appropriate state, local or Federal authority may, if HUD has committed to mortgage insurance, be placed on the site with the approval of HUD.

G. HUD will require that remedial action taken shall be documented and approved by the appropriate local, state, or Federal authorities, and the Lender shall provide the appropriate closure and clearance document with the application.

9.4 Environmental Report

A. In addition to the Phase I ESA or Phase II ESA submitted at the pre-application review for new construction or substantial rehabilitation, the Lender should provide a narrative environmental report along with any available supporting documentation for the project. This report should cover the relevant topics in the Sample Field Notes Checklist in the Forms Appendix. It should focus on those environmental issues which might affect the acceptability of the project including any compliance issues with state environmental laws. The purpose of asking for an environmental report at the pre-application stage is to help make an early evaluation of any environmental issues to be resolved. It does not mean that all the documentation required for environmental review need be submitted at the pre-application stage. Important issues should be resolved at the pre-application stage; documentation on the issues may be submitted at the application for a Firm Commitment. The letter of invitation will condition the issuance of a Firm Commitment upon a finding on Form HUD-4128 that there are no unresolved environmental concerns.

B. In addition to the issues regarding site contamination, important issues that usually must be resolved at the pre-application review include:

   1. Whether or not the project might be affected by the requirements for historic preservation.

   2. Whether or not any residential buildings will be in a noise zone greater than 65 decibels originating from roadways (four lanes or more), railroads or airports and Runway Clear Zones, Clear Zones, and Accident Potential Zones.

   3. Whether or not any part of the property is located in a 100-year floodplain or a wetland.

   4. Whether property is located in a coastal high hazard area or coastal barrier resources area.

C. Lead-based paint, which may be present in buildings built prior to 1978, is not a topic that is covered by Form HUD-4128, but the topic must be addressed by the sponsor's architect. See Appendix 5B for substantial rehabilitation and Appendix 5C for existing buildings to be refinanced or purchased under Section 223(f). Section 9.7.A, infra, discusses lead-based paint requirements.

D. Asbestos, which may be present in building built prior to 1974, is not a topic that is covered by Form HUD-4128, but the topic must be addressed by the sponsor's architect. See Appendices 5B and 5C. Section 9.7.B, infra, briefly discusses asbestos.

E. The Phase I ESA or Phase II ESA is required for refinancing or purchase under Section 223(f) and Section 232/223(f). The narrative environmental report is also required for a refinancing or purchase, but may be modified where the requirements are not applicable to certain existing buildings. For example, if the building itself is not listed or eligible to be listed in the National Register of Historic Places, and the building is not located in an historic district, there is no need to obtain clearance from the State Historic Preservation Office. If there is a question about whether a particular item listed on the Sample Field Notes checklist should be covered by the environmental report for an existing property, the Lender should discuss the question with the Hub or Program Center which will process the application.

9.5 Pre-Application and Firm Commitment

A. At the submission of the application for the Firm Commitment, the Lender must demonstrate to the HUD office that all environmental issues have been, or can be, resolved. The issues should have been identified at the pre-application review and a decision made on any issues that require resolution. Remediation of site contamination is discussed in Section 9.3 of this chapter beyond the application for a Firm Commitment, but not beyond commitment.

   The implementation of plans which provide a remedy to other environmental conditions may continue through the construction period. However, the Lender must identify any plan for the cure of any environmental problem which will not be solved by the time the application for a firm commitment is submitted. HUD will have to review the Lender's plan, and, if HUD considers the plan acceptable, make the plan a condition that is spelled out in the Firm Commitment letter. This would include wetlands mitigation plans, noise abatement, historic preservation plans and floodplains map revisions. Lead-based paint and asbestos removal or containment may continue beyond final endorsement if HUD agrees.

B. The Lender should report any changes or updates to environmental information previously supplied at the pre-application. The Lender should review with HUD staff the information provided and used in the Sample Field Notes Checklist.

C. The HUD staff should complete the Sample Field Notes Checklist and Form HUD-4128, as soon as it has conducted its site visit and has sufficient information from its own sources and from the Lender. The results of Form HUD-4128 must be considered as part of the overall decision on the project, and any required mitigation measures included in the HUD approval documents.

9.6 Consulting with the Hub or Program Center

A. HUD encourages Lenders to consult early and often with field office staff on HUD environmental requirements. Local conditions and interagency relations affecting environmental review requirements differ from state to state and field office to field office. For instance, coastal zone management requirements are not applicable in most states and in states where they are applicable, procedures for showing compliance differ. In some states, a letter from the state coastal zone management agency for projects in the coastal zone is required. In others, alternative review procedures make this unnecessary. Factors such as these make it imperative that the field office be consulted where a project may involve environmental conditions of concern.

B. Lenders are responsible for communicating the importance of early planning for environmental conditions to the owner and the owner's architect. HUD staff will remain available for consultation where environmental conditions pose design issues. Lenders should not attempt to prescribe design mitigation or require special environmental studies in advance

of consulting the field office. HUD does not encourage unnecessary costs in developing the information needed to meet environmental review requirements.

9.7 List of Environmental Concerns

The environmental factors discussed below are:

A. Lead-based Paint (not covered in the Sample Field Notes Checklist (SFNC))

B. Asbestos (not covered in the SFNC)

C. Historic Preservation (Item 18 in the SFNC)

D. Floodplain Management (Item 17 in the SFNC)

E. Wetlands Protection (Item 22 in the SFNC)

F. Endangered Species (Item 24a in the SFNC)

G. Noise Analysis (Item 19 in the SFNC)

H. Explosive/Flammable Hazards (Item 20 in the SFNC)

I. Coastal Barrier Resources (Item 16, SFNC)

J. Coastal Zone Management (Item 10, SFNC)

K. Sole Source Aquifers (Item 24b of the SFNC)

L. Airport Clear Zones (Item 21 of the SFNC)

M. Other Federal or State Laws

N. Additional Hazards and Nuisances (covers pipelines, etc.)

Item 23 “Toxic Chemicals and Radioactive Materials” of the SFNC should be included as part of the Phase I ESA, discussed in Section 9.3, above.

For new construction or substantial rehabilitation, (including conversions from non-residential to residential), the Lender should review the Environmental Program Factors listed in items 25 through 33, of the Sample Field Notes Checklist and make certain that the issues are addressed in the environmental report or other exhibits submitted by the Lender.

The brief descriptions that follow are not a substitute for the requirements in the statutes, regulations, Executive Orders, and handbooks.

A. Lead-Based Paint

1. Lead-based paint requirements are applicable to apartments built before 1978, except they do not apply to housing designated exclusively for the elderly or persons with disabilities, unless a child of less than 6 years of age resides or is expected to reside, and they do not apply to 0-bedroom dwelling units. This section is relevant to conversion, substantial rehabilitation, and to refinancing or purchase of apartments under Section 232(f). It is not applicable to rehabilitation, refinancing or purchase of health care facilities.

2. All HUD regulations on lead-based paint have been updated and consolidated into a new regulation, which is at Part 35 of title 24 of the code of Federal Regulations (24 CFR Part 35). Prohibitions against using certain dangerous methods of removing paint took effect on November 15, 1999, but the remainder of the regulation takes effect on September 15, 2000. Until the latter date, applicants may chose to comply with the old regulations at 24 CFR 200.820 or the new regulations.

3. Copies of the new regulation, along with guidance materials, may be downloaded from www.hud.gov/lea or obtained by telephoning 1-800-424-LEAD. The regulation was published on September 15, 1999, beginning at page 50140 of the Federal Register.

4. Under the old regulations at 24 CFR 200.820, defective paint must either be removed or covered, and chewable surfaces must be tested for the presence of lead-based paint, and any lead-based paint found on chewable surfaces must be removed or covered. A visual assessment to identify defective paint and the testing of chewable surfaces must be conducted before commitment, and the removal or covering must be done before final endorsement.

5. Under the new regulation at 24 CFR Part 35, there are different requirements for:

   a. residential properties built before 1960,

   b. residential properties built between 1960 and 1977, and

   c. properties being converted form commercial or industrial to residential and for properties undergoing substantial rehabilitation.

   For residential properties built between 1960 and 1977. The owner must agree to incorporate ongoing lead-based paint maintenance operations and maintenance plans, as specified in the regulation, into routine building operations. For pre-1960 residential properties, a risk assessment must be conducted to identity lead-based hazards, and any identified hazards must be treated with interim controls prior to final endorsement (or after endorsement using escrowed funds). The terms “risk assessment,” “lead-based paint hazards,” and “interim controls” are explained in the regulation. Also, pre-1960 properties must agree to conduct ongoing lead-based paint maintenance. Furthermore, pre-1960 properties have the option of conducting “standard treatments” defined in the regulation instead of a risk assessment and interim controls. For conversions and major rehabilitations, there must be a lead-based paint inspection to identity all lead-based paint, and all lead-based paint must be abated (i.e, removed, enclosed or encapsulated). Certain notice requirements also pertain to all three types of property.

6. Most rental transactions are also subject to the HUD-EPA lead-based paint disclosure rule at 24 CFR Part 35, Subpart H (under the new regulation, the disclosure rule will be relocated to 24 CFR Part 35, Subpart A).

B. Asbestos

On any existing building built before 1974, a qualified asbestos inspector should determine if asbestos exists in the building. It may be part of insulation, may be sprayed on finishes, such as ceilings, or may be part of vinyl floor tile and the adhesive to fix the tile in place. Asbestos was used in roofing products and ceiling tiles, as well as other occasional uses. If there is

asbestos and it is friable, HUD recommends that it be removed. If asbestos is not friable or damaged, it is usually acceptable for encapsulation. This course of containment will require an Operations and Maintenance plan. An asbestos specialist should advise on the proper treatment of asbestos. All asbestos abatement shall be done in accordance with EPA and OSHA requirements for Worker Protection.

C. Historic Preservation (HUD Form 4128, Part A, No. 18)

1. HUD must follow the procedures implementing the National Historic Preservation Act (16 U.S.C. 470 et seq.) with regulations found at 36 CFR Part 800. All applications for HUD mortgage insurance, whether new construction, rehabilitation, refinancing or conversion from non-residential to residential property, are considered "federal undertakings" which require HUD to make a determination of no effect, no adverse effect, or adverse effect upon historic properties**.** An historic property means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. HUD must consider the area of potential effect, regardless of whether the property is on vacant land, is a rehabilitation of an older property, or is located in an historic district.

2. Lenders may obtain from the HUD office the name and address of the State Historic Preservation Officer (SHPO) who has the right to comment on the proposal. The request from the borrower or Lender to the SHPO should consist of a narrative explaining the proposal and the front page of HUD Form 92013. It should be made as early as possible in the development process.

3. Due to differing relationships between field offices and SHPOs, procedures vary from state to state. Some SHPOs will not accept requests that do not come from HUD directly. If this is the case, the Lender should contact the Hub or Program Center. In summary, the Lender should notify the SHPO when submitting exhibits for pre-application review or earlier. If a problem is expected, it should be discussed with the Hub or Program Center. The response from the SHPO need not be received prior to the application for a Firm Commitment, but must be received before a commitment is issued.

4. The SHPO is allowed 30 days (from the receipt of sufficient information from HUD) to reply to requests for consultation. If there is no reply within that time, and there is no reason to anticipate an objection to the application, HUD may make a determination of no effect, and a commitment may be issued. Where an undertaking (HUD insurance) affects an historic property or historic district, the result of the consultation may be design change, research and preservation, salvage, or in rare cases, rejection of the application. Consultation for these procedures may take considerable time before a commitment can be issued.

D. Floodplain Management (Form HUD-4128, Part A, No. 17)

1. Applications for mortgage insurance are subject to regulations regarding floodplain management found at 24 CFR Part 55 implementing Executive Order 11988 (Floodplain Management). The borrower should check the relevant floodplain map from the Federal Emergency Management Agency (FEMA). If any part of the site or integral offsite

development is located within the 100-year floodplain according to the applicable FEMA map, this should be discussed with HUD at the pre-application stage.

2. Mortgage insurance shall not be approved for (1) a property, other than a functionally dependent use, located in a floodway, or (2) any critical action located in a coastal high hazard area, or (3) any non-critical action located in a high hazard area, unless the property is a functionally dependent use, or meets the conditions specified in 24 CFR 55.1(b) and (c). The terms "critical use," "coastal high hazard area," "floodways," and "functionally dependent use" are defined in 24 CFR 55.2 24 CFR 55.12 lists categories of proposed actions for which the floodplain management requirements in 24 CFR 55 are not applicable.

3. New construction in mapped 100-year floodplains is strongly discouraged. This flood buffer zone is extended to the 500-year floodplain for proposed rehabilitation, refinancing, or new construction for facilities housing or serving mobility-impaired individuals. Sites for new construction which are in the 100-year floodplain according to the FEMA map will not be considered for mortgage insurance unless one of the following steps will be taken:

   a. A Conditional Letter of Map Amendment (CLOMA) or Conditional Letter of Map Revision (CLOMR) has been obtained from FEMA. Where the applicant has a CLOMA or CLOMR, HUD approval for a Firm Commitment will be conditioned on the requirements of the CLOMA or CLOMR and receipt of a Final Letter of Map Amendment (FLOMA) or Final Letter of MAP Revision (FLOMR), prior to final endorsement. HUD will require flood insurance on any building during the construction period until the FLOMA or FLOMR is issued; or

   b. Extraordinary circumstances exist which lead HUD to the conclusion that there are no practicable alternatives to siting the project in the floodplain. In order to come to a conclusion of no practicable alternative, HUD must conduct an 8-step decision making process which includes publishing two public notices and taking comments, as summarized in 24 CFR 55.20. In such instances, prior to issuing the first public notice, HUD will need detailed information regarding exactly how the property will be altered and improvements designed. This information includes the elevation of the property, the elevation of the flood plain, and location of life support system. From the time any portion of the project is built, flood insurance is required. The eight-step process shall be completed before issuance of the Firm Commitment. An abbreviated eight-step process may be used by the Hub or Program Center for purchase or refinancing actions described in 24 CFR 55.12(a)(2) or repair, rehabilitation, modernization or improvement actions described in 24 CFR 55.12(a)(3).

   c. All "critical actions" as defined in 24 CFR 55.2(b)(2), must comply with the requirements of 24 CFR 55.20(e).

4. Conversion projects, those changing a non-residential use to a residential use, are considered the same as "new construction" for floodplain in management.

5. Rehabilitation, purchase and refinancing proposals described in 24 CFR 55.12(a)(1) and (3) may be acceptable when located in the 100-year floodplain after HUD conducts an abbreviated version of the 8-step process specified in 24 CFR 55.20.

HUD will evaluate risks and mitigation measures in making its decision. It is HUD policy to discourage proposals if the lowest floor and/or the life support facilities or egress and ingress, of the existing building is more than 12 inches below the 100-year floodplain line.

6. Where a site does not appear to be located in the floodplain on official FEMA maps, but shows evidence of flooding, HUD is not precluded from qualitatively evaluating the acceptability of the site. Lenders will be required to provide extensive data to aid HUD in evaluating floodplain sites.

7. In addition to processing under paragraphs 3-6 of this section, any building accepted for mortgage insurance which is located within a FEMA mapped floodplain is required to carry flood insurance in the amount of the loan for the term of the loan, subject to available maximum coverage. At the time of application for Firm Commitment, the Lender is required to submit a completed Standard Flood Hazard Determination Form, and proof that the mortgagor has a commitment for flood insurance when the new mortgagor acquires the property.

8. All leases (new and renewal) must contain acknowledgements signed by tenants indicating that they have been advised that the property is in a floodplain and flood insurance is available for their personal property. This applies to properties within the 100-year floodplain and to critical actions within the 500-year floodplain.

E. Wetlands Protection (Form HUD-4128, Part A, No. 22)

1. Applications for mortgage insurance on new construction are subject to Executive Order (EO) 11990 “Protection of Wetlands” In general, the EO discourages the development or disturbance of wetlands. Proposals impacting wetlands must be reviewed by HUD to determine consistency with HUD wetland protection policy.

2. Wetlands are those identified on the National Wetland Inventory maintained by the U.S. Fish and Wildlife Service. Projects on land listed in the inventory will be considered only after HUD conducts an eight-step decision-making process which is the same as the one used for the flood plains process. It includes consultation, issuing two public notices and taking public comment. Wetlands under local or state jurisdiction are subject to state or local review as appropriate. The eight-step process is not applicable to state or local requirements. The eight-step process shall be completed before issuance of a Firm Commitment.

3. Only in rare cases will rehabilitation, purchase and refinancing proposals involve wetlands impacts.

4. The Lender will be required to provide extensive data to aid HUD in evaluating wetland impacts. The Lender should consult early with the Field Office on any application with a site impacting wetlands.

F. Endangered Species (Form HUD-4128, Part A, No. 19)

Under Section 7 of the Endangered Species Act, HUD must consult with the U.S. Fish and Wildlife Service or, where applicable with the National Oceanic and Atmospheric

Administration, whenever a proposal may affect an endangered or threatened species or its habitat. A required consultation should be assumed for any site within the critical habitat (as defined in 50 CFR Part 226) of a listed species. In areas where impacts on endangered or threatened species are a concern, all appropriate information regarding possible impacts of the project should be provided to HUD as early as possible. Consultation under Section 7 may result in more stringent conservation measures than would otherwise be imposed. The Hub will advise the Lender where information on endangered species may be obtained.

G. Noise (HUD Form 4128, Part A, No. 19)

1. HUD standards regarding the acceptability of noise impacts on residential property are found at 24 CFR Part 51. For new construction and conversion from nonresidential to residential projects, these standards must be met. Where threshold criteria are met or exceeded, a noise analysis utilizing the methodology in HUD's Noise Guidebook (HUD-953-CPD) will be performed by HUD as part of HUD's environmental assessment. The HUD field office should be consulted prior to attempting to design mitigation measures.

2. For rehabilitation and refinancing, noise exposure by itself will not result in the rejection of existing properties for insurance, but will be considered as a marketability factor. For rehabilitation projects, HUD will encourage appropriate noise attenuation measures for inclusion in the alternation.

H. Explosive/Flammable Hazards (HUD Form 4128, Part A, No. 20)

1. HUD will not insure a property where structures and residents will be exposed to unacceptable risks posed by proximity to explosive or flammable hazards. This means that for new construction projects, and rehabilitation projects where unit density is increased or where there is a conversion from non-residential to residential or where a vacant building is made habitable, there must be an Acceptable Separation Distance (ASD) away from aboveground storage facilities with explosive or flammable material contents and similar industrial facilities. HUD standards regarding proximity to explosive or flammable hazards are found at 24 CFR Part 51 Subpart C. Analysis of sites near or in the vicinity of these types of facilities must be performed by HUD as part of the environmental assessment in accordance with the HUD guidebook: "Siting of HUD-Assisted Projects Near Hazardous Facilities (HUD-1060-CPD)". If a plan is agreed upon with HUD before the invitation letter, these hazards may be mitigated during the construction period, if the work can be done on the subject property. For projects to be refinanced, purchased, and with minor rehabilitation, HUD will qualitatively evaluate the risks associated with proximity to hazardous facilities.

I. Coastal Barriers (HUD Form 4128, Part A, No. 16)

1. Under the Coastal Barriers Resources Act, as amended, and cited in 24 CFR 50.4(c), HUD is prohibited from insuring a project located within designated coastal barriers of the Atlantic Ocean, Gulf of Mexico, or the Great Lakes. Projects located within coastal barriers designated on Department of Interior coastal barrier resources maps will not be accepted for processing.

J. Coastal Zone Management (HUD Form 4128, Factor 10, Planning and Findings)

1. Projects located within a state's coastal management zone must be found consistent with the approved state Coastal Zone Management program. In many states, HUD will require a letter from the State Coastal Zone Management Agency confirming consistency with the approved program. Mortgagees should be aware of the extent of coastal management zones in coastal states and contact the field office early when examining a proposal in a coastal zone.

K. Sole Source Aquifers (HUD Form 4128, Part A, No. 24)

1. Projects utilizing municipal water and sewer and with appropriate local drainage and runout approval require no review for sole source aquifers. For other projects, new construction and some rehabilitation projects located within the boundaries of the recharge area of a designated sole source aquifer must be reviewed by EPA for their effect on the sole source aquifer. An aquifer is an underground body of water usually kept in place by rock, gravel, or sand. HUD offices will identify the local, state or Federal agency with maps of sole source aquifers.

L. Runway Clear Zone, Clear Zone, or Accident Potential Zone (Form HUD-4128, Part A, No. 21)

1. HUD standards regarding the acceptability of property located in Runway Clear Zones (also known as Runway Protection Zones), Clear Zones, and Accident Potential Zones are found at 24 CFR Part 51 Subpart D. An Accidental Potential Zone is an area at military airfields which is beyond the Clear Zone. Construction or major rehabilitation of any property located within a Clear Zone is prohibited. Acquisition, refinance and minor rehabilitation of projects within Clear Zones are allowed with some restrictions. HUD must determine that projects located in Accident Potential Zones are generally consistent with Department of Defense land use compatibility guidelines for Accident Potential Zones.

2. HUD, as part of its environmental review for an existing property, shall advise the Lender who will advise the mortgagor which is purchasing the property that the property is in a Runway Clear Zone, Clear Zone, and what the implications of such a location are. The buyer must sign a statement acknowledging receipt of this information. HUD may reject for mortgage insurance existing property within a Runway Clear Zone or Clear Zone because of the possibility that the property may be acquired at that later date by the airport operator.

M. Other Federal or State Laws (HUD Form 4128, Part A, No. 24)

1. Applications for mortgage insurance are also subject to provisions of other Federal authorities which seldom require action on the part of HUD, including the Wild and Scenic Rivers Act, Farmland Protection Policy Act, and regulations implementing the Clean Air Act. There are State regulations implementing air quality. HUD will advise the Lender if any actions under these or other Federal or State authorities are required.

2. The HUD office will also determine whether or not Executive Order (EO) 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations, is applicable to the project. This Executive Order requires that the provision of HUD mortgage insurance to projects not result in disproportionately high and adverse

human health or environmental effects on minority populations and low-income populations. Where impacts of a project on a minority or low-income population, or siting of a project in an adverse environment raises questions of discrimination, HUD will perform the necessary analysis before determining acceptability of the project, during the pre-application stage. HUD will advise the Lender at the pre-application stage if this is a concern.

3. HUD may require mitigation of a variety of nuisances and hazards on the property which would affect the health and safety of residents and the security of the collateral.

N. Commonly Found or Observed Additional Nuisances and Hazards

1. All parts of any structure must be at least 10 feet from the outer boundary of the easement for any high pressure gas or liquid petroleum transportation pipeline.

2. No structure shall be constructed within the easement of any overhead high voltage transmission line. In addition, all structures shall be located outside the engineered fall distance of any support structure for high voltage transmission lines, radio antennae, satellite towers, etc. This does not apply to local service electric lines and poles.

3. HUD has additional requirements regarding operating and/or abandoned oil or gas wells, sour gas wells, and slush pits. Additional information may be obtained from the HUD field office.

4. Hubs may adopt additional requirements to address unique local concerns, but, if any local requirement is mandated, the Hub must inform the Deputy Assistant Secretary for Multifamily Housing and the HUD headquarters Housing Environmental Clearance Officer of the requirement and its rationale.

Chapter 10

Management Analysis

10.1 Introduction

A. Management agents that operate HUD-insured multifamily properties play a key role in providing quality affordable housing. This chapter reflects the policy of property owners, management agents, residents and HUD working together over the long term to meet this objective. MAP Lenders play an important role in the analysis of the proposed management program.

B. While it is the ultimate responsibility of the project owner/mortgagor to select and oversee the management agent of an insured property, the establishment of an effective relationship among HUD, the owner, and the management agent is critical to the success of the development over the life of the mortgage. The relationship is clarified at the Firm Commitment stage, when detailed management documents are submitted with the Firm Commitment application or when there is a change in management.

C. The Lender will review these documents to determine whether the proposed management agent demonstrates the capability and track record to assure that the development will be managed in a prudent, efficient, and cost-effective manner. The required documents help to demonstrate whether or not the agent:

1. Is eligible for approval and in good standing with HUD.
2. Demonstrates effective management experience and acceptable operating procedures.
3. Demonstrates adequate fidelity bond coverage.
4. Is in compliance with civil rights laws, regulations and requirements.
5. Is able to positively communicate and cooperate with legitimate resident associations.

D. If the Lender favorably assesses the above items and HUD approves this assessment, then the owner may execute a Management Agreement with the proposed agent. Since the management agent's contract is with the project owner, it is HUD's policy to not unreasonably withhold approval of the management agent, consistent with the Department's responsibility to protect the public interest.

10.2 Exhibits Required for Firm Commitment

A. Exhibits

1. HUD 2530 Previous Participation Certification. For all principals and affiliates of the management agent. This form provides comprehensive information about all HUD-related experience by the management agent and is reviewed by the HUD Field Office, and at times by the HUD Washington office. This also applies to lessees.

2. HUD 9832, Management Entity Profile for the Agent. This form provides detailed information regarding the organization, operation, and experience of the proposed management agent. The management plan should provide a narrative overview as support to this exhibit and should include any pertinent leasing or management strategies that are not covered in Form HUD-9832.

3. HUD 9839 A, B, or C, Owner's/Management Agent's Certification, as appropriate. In this document, the agent and owner certify that HUD requirements and contract obligations will be complied with, and that an acceptable Management Agreement will be executed. The agent and owner also certify that no payments have been made to the owner in return for awarding the management contract to the agent, and that no such payments will be made in the future.

4. Proposed Staffing to be Charged Against the Project. Information is required regarding the job-titles, duties, and salaries of all employees to be working for the project. This information is reviewed to determine if the number, salaries, and duties of the proposed staff is reasonable for the size and type of project being proposed. If there is a non-customary situation, or arrangement, resulting in the need for more or less staff than usual, an explanation of this must be provided.

5. Resident Complaints Resolution Procedure. A description of the procedure used by the agent to resolve resident complaints, as well as examples of how the system has been implemented.

6. Management Agreement, if Applicable. Projects with identity-of-interest agents or independent fee agents must execute a Management Agreement. An Agreement is recommended, but not required, for owner-managed projects or projects managed by a project administrator.

7. Additional Information Required by HUD Field Office. It may be necessary to provide the HUD office with additional information so that a supportable determination of approval or disapproval can be made.

B. Additional Requirements for Section 232

The owner/mortgagor must select an agent which has the expertise to market and operate a nursing home, an Assisted Living, or Board & Care Facility. Inherent in this expertise is knowledge of the intended clientele, their specific health-related needs, and the best approach to meeting these needs. Skilled management is vital to the fiscal survival of the property. For Assisted Living and Board & Care, the developer or member of the development team must have a proven track record of 3 to 5 years in the Assisted Living or Board & Care market, and specifically in the developing, marketing *and* operating health care and senior housing projects. For proposals involving a niche market (e.g. Alzheimer's care, Hospice care), the Lender will review the proposed operator's track record in that specialized market. (If the mortgagor does not have the required experience to operate the facility but the project is otherwise acceptable, the Lender must condition the approval based on the mortgagor obtaining the services of a qualified management company.)

A lessee must meet the above requirements. If the license for the facility is held or is to be held by an entity other than the mortgagor, the license party must have an owner/operator lease arrangement and both parties will be required to execute a regulatory agreement.

10.3 Lender Review of Management Documents

The Lender will carefully review the deliverables included in the Firm Commitment application package to determine the acceptability of the proposed management agent. The Management Entity Profile is of particular importance in determining the qualifications of the proposed agent.

The Lender must review the qualifications for the proposed agent to assess the agent's ability to manage the project effectively and in compliance with HUD requirements. The Lender must consider each of the factors below in reviewing an agent's qualifications.

A. Past and Current Management

1. The Lender must review the proposed agent's past experience and current performance with respect to the following performance indicators:

   a. Billing

   b. Controlling operating expenses

   c. Vacancy rates

   d. Resident turnover

   e. Rent collection and accounts receivable

   f. Physical security

   g. Physical condition and maintenance

   h. Resident relations

2. If problems are identified with any of these indicators, the Lender must assess whether the agent has adequately improved its procedures to prevent the recurrence of such problems or whether management initiatives by the agent and owner are sufficient to correct the problems and their causes.

B. Ability to Manage Troubled Projects.

If the project the agent will manage has physical, financial or social problems that require special expertise or skills to manage effectively, the Lender must determine whether the agent has the necessary skills and expertise to manage the project and whether the agent's proposed remedies are appropriate. Agents proposed for these projects should have prior experience successfully addressing similar issues.

C. Management Qualifications.

The proposed management agent should have at least one person who establishes the agent's policies and supervises project operations with the following qualifications:

1. A professional designation in housing management from a national organization that provides such accreditation, or
2. A minimum of two years experience in directing and overseeing the management of multifamily projects serving a similar resident clientele.
3. The Lender may accept a proposed agent without the experience requirements listed in this subparagraph if the agent is satisfactorily managing other HUD-insured or subsidized projects.

D. Past Performance with Identity-of-Interest Contractors.

If the agent purchases goods or services from identity-of-interest companies and has previously managed HUD-insured projects, the Lender must assess the agent's past use of such companies and whether this use resulted in costs to the project that exceed the prices paid in arms–length transactions. The review should especially consider:

1. Goods and services purchased through any "pass-through" arrangements described in item 11(b) of the Management Entity Profile.
2. Evidence that the agent has compared prices and that the use of any identity-of-interest companies or pass-through arrangements has been more advantageous to the project than purchasing through arms-length transactions would have been.
3. Evidence that the management agent followed HUD contracting and hiring guidelines.

E. The Lender can utilize the following additional sources to determine the capability and expertise of the proposed management agent.

1. Management Entity Profile. The Lender can use the information listed on the form to solicit opinions from HUD Offices that have worked with this agent.
2. Performance Evaluations for the proposed agent and projects which the agent has managed or is currently managing if those projects are under Flexible Subsidy contracts or Workout Agreements.
3. Monthly and Annual Financial Statements of the Project including the Independent Public Auditor (IPA) Internal Controls Questionnaire.
4. Additional Documentation. Additional documentation that the Lender may review includes:
   a. HUD/mortgagee on-site review reports;
   b. Correspondence;
   c. Resident complaint files; and
   d. Previous management reviews.

10.4 HUD Review of the Previous Participation Certification (Form 2530)

A. In addition to providing the names of all principals and affiliates of the proposed management agent, management company, or lessee, the 2530 also lists the names and locations of any previous housing projects in which they have participated, as well as the ratings given on HUD's most recent management review or physical inspection. The 2530 is another source that HUD may use to inquire with an agency or other HUD Field Office about the proposed agent's management experience on a particular property.

B. The Previous Participation submission will be reviewed to determine whether any of the following indicators (flags) are present:

1. The agent or any of its principals have been suspended or debarred.
2. The agent or any of its principals have been placed in ineligible status by HUD Headquarters.
3. The agent or any of its principals have been placed under a Limited Denial of Participation (LDP) by the Field Office in whose jurisdiction the proposed project is located. Field Offices may also disapprove a management agent based on an LDP issued by another Field Office.
4. A HUD Field Office has raised concerns regarding the management practices of the proposed management agent.

10.5 Bonding Requirements for Agents

The Lender must also determine whether the agent has adequate bonding to provide a basic level of protection for the multifamily project assets.

A. The management agent must certify in the Management Certification that it carries fidelity bond or employee dishonesty coverage for:

5. All principals of the management entity, and
6. All persons who participate directly or indirectly in the management and maintenance of the project and its assets, accounts, and records.

B. The fidelity bond or coverage must name the mortgagee and the HUD as additional loss payees.

C. Coverage may be through one or more bonds, and one bond may cover more than one project, including projects whose mortgages are not insured or held by HUD. The agent's principals and supervisory and front-line staff may be covered under the same bond.

D. Each project must be insured for at least the value of two months' gross potential income for the project. If a bond covers more than one project, this minimum must be computed using the project with the highest gross potential income.

10.6 Management Agreement Requirements

A. Applicability. Projects with identity-of-interest agents or independent fee agents must execute a Management Agreement. An Agreement is recommended, but not required, for owner-managed projects or projects managed by a project administrator.

B. Required contents. The owner and agent may negotiate their own form of agreement provided that it contains language to meet the following requirements:

1. Scope of service. All management agreements must describe the services the agent is responsible for performing and for which the agent will be paid management fees.

2. Required clauses. All agreements must provide that:

   a. Management fees will be computed and paid according to HUD requirements.

   b. HUD may require the owner to terminate the agreement.

      (1) Immediately, in the event a default under the Mortgage, Note, Regulatory Agreement, or Subsidy Contract attributable to the management agent occurs;

      (2) Upon 30 days written notice, for failure to comply with the provisions of the Management Certification or other good cause; or

      (3) When HUD takes over as Mortgagee in Possession (MIP).

      NOTE: As good business practice, the management agreement should always give the owner the ability to terminate the contract for cause, with notice.

   c. If HUD terminates the agreement, the owner will promptly make arrangements for providing management satisfactory to HUD.

   d. HUD's rights and requirements will prevail in the event the management agreement conflicts with them.

   e. The management agent will turn over to the owner all of the project's cash trust accounts, investments, and records immediately, but in no event more than 30 days after the date the management agreement is terminated.

3. Prohibited "hold harmless" clause. Management Agreements cannot exempt the agent from all liability for damages and injuries.

C. Length/term of the Agreement. The length/term of the Agreement is negotiated between the owner and the management agent. HUD may impose a maximum term on the Management Agreement if the HUD staff approved the agent on a conditional basis.

1. The contract may provide for a fixed term or an open ended term (e.g., automatically renewable or "to remain in effect until cancelled by HUD, the owner, or the agent").

2. If the length /term of the Agreement changes, the owner/agent must submit a new Management Certification.

10.7 Approval/Disapproval of Proposed Management Agent

A. Generally, the Lender will recommend approval to HUD of the proposed agent as long as the HUD 2530, Previous Participation Certification is approved, the proposed agent has demonstrated capacity to effectively manage the property within HUD requirements, and the management agent has shown adequate fidelity bond coverage. In some instances, the Lender may find it necessary to recommend conditional approval if there are areas of the agent's procedures that are considered weak or that need to be changed. All conditional approvals will be discussed with the proposed agent and any agreements/conditions settled upon will be shown both in the letter approving the agent, and in HUD's Firm Commitment.

B. The Lender will provide a report to HUD regarding its review and recommendation to HUD which includes the following information:

   1. Name of the proposed management agent.
   2. Composition of the proposed management agent.
   3. Narrative of the agent's experience and capacity to operate the subject property.
   4. Demonstration that adequate fidelity bond coverage is in effect and that the proposed management agreement meets HUD's requirements.
   5. The Lender's recommendation to HUD to approve or disapprove the proposed management agent.

C. The HUD Office may disapprove a proposed management agent based on the decision of HUD Headquarters' Participation Control Office/Review Committee's decision to deny or withhold approval for the proposed agent's participation. To proceed with Firm Commitment review, the owner must then either propose another management agent (and supply all required documentation) or appeal the decision of the Previous Participation Committee under 24 CFR, Part 200.241.

D. HUD will review the Lender's report and the management entity profile for the agent (HUD-9832) and make the final determination to accept or reject the proposed management agent.

10.8 Affirmative Fair Housing Marketing

The Affirmative Fair Housing Marketing Requirements (24 CFR 200.600, Subpart M) apply to all insured multifamily projects of five or more units. Each applicant for the programs addressed in this Guide must submit an Affirmative Fair Housing Marketing Plan or Form HUD-935.2. The plan must describe an affirmative program to attract tenants regardless of race, color, religion, sex, disability, familial status or national origin to the housing for initial rental. The affirmative advertising program shall use majority and minority media and shall identity those groups within the eligible population that are considered least likely to apply for the housing without special outreach. The plan should also include information on the

applicant's nondiscriminatory hiring policy, its training program on nondiscrimination for its rental staff, and the display of the Department's Equal Housing Opportunity logotype and slogan. HUD shall review and approve the Plan prior to the issuance of the Firm Commitment.

Mortgage Insurance under Section 223(f) of the National Housing Act while covered by the nondiscrimination provisions of the Fair Housing Act and Executive Order 11063, is exempt from the submission of a written plan. However, a Section 223(f) applicant is required to conceive, implement and maintain records for its affirmative marketing efforts.

Chapter 11

Lender Underwriting
HUD Review

11.1 Lender Underwriting

A. Pre-application. When a Lender is contemplating submitting a pre-application to HUD, the Lender should provide HUD immediately in writing the names and qualifications of the proposed in-house underwriter, contract appraiser, and/or contract market analyst. The review and approval of the lender's principal staff and consultants must be made by the Hub Director and designated MAP staff within the Hub and Program Centers. If a member of the Lender's staff or a contractor has been previously approved by a Hub, the Lender is required only to submit the names of the staff or contractor and note the prior approval. HUD will advise the Lender within five business days of any problems with a proposed reviewer. If a Lender is concerned about key aspects of the transaction, competing proposals, or market or environmental issues, the Lender is encouraged to have informal discussions with HUD staff to gain their insights regarding those concerns. The MAP Lender's underwriter must review the developer's materials before submitting a request for HUD field office review and determine that based on the information provided the proposal should be able to meet the requirements of this guide and represents an acceptable risk to the FHA mortgage insurance fund. The pre-application submission to the HUD field office must include a narrative summary prepared by the underwriter which provides:

1. A description of the proposed project and the surrounding area including demand, extent of competition, vacancy rates, market absorption and any other information that would be useful to FHA.
2. Explanations for any differences between the HUD-92013 application and the market study.
3. Features of the proposal (e.g., zoning, unusual site conditions, environmental) which may present potential problems.
4. List of proposed MAP Lender reviewers of the Firm Commitment application, both in-house and third party, and their qualifications.

NOTE: If the proposed loan is a Section 223(f) or a 232/223(f) requiring no preapplication submission, the list of proposed reviewers and qualifications must be submitted to the Hub before the Lender initiates the appraisal or any technical review in order to avoid any problems with the individual reviewers at the Firm stage. Prior informal discussion with HUD staff would be available and encouraged, but not required for a mortgage insurance application pursuant to Section 223(f).

B. Firm Commitment application: The MAP Lender's underwriter must review the in-house and third party reports and determine that the processing of the loan is in accordance with the requirements of this guide and that the proposed loan represents an acceptable risk (replacement cost programs) or is economically sound (value programs). The underwriter must document any changes made to the Lender's technical reports. In the package submitted to HUD, the underwriter must provide a narrative analysis describing the mortgage transaction containing a discussion of:

1. Characteristics of the proposed mortgage that make it economically sound or an acceptable risk and the reasons why the Lender recommends the loan for mortgage insurance.
2. Any risk factors.
3. Changes in the project from the preapplication stage including changes in sponsorship, proposed mortgagor development team and Lender reviewers.
4. Evaluation of the financial capacity of the principals of the borrower and its ability to repay the loan.
5. Evaluation of the financial and technical capacity of the general contractor to build/rehabilitate the project.
6. Property's financial analysis (profile and trend) (Section 223(f),232/223(f) only)
7. Property's physical description (Section 223(f), 232/223(f) only).
8. History of borrower's equity investment in the property (Section 223(f), 232/223(f) refinances only).
9. Analysis of market, rents, expenses and estimated rent-up and operating deficit.
10. Adequacy of the proposed Reserve for Replacement (207/223(f) and 232/223(f) only).
11. Documentation of any changes the underwriter made to the appraisal/technical reports with justification.
12. Requests for any waivers of FHA requirements with supporting documentation.
13. Certifications from the individual reviewers. (See 11.2H.)

C. Due diligence. With the Firm Commitment package the MAP Lender certifies that:

1. The Lender has reviewed all in-house and third party forms/reports/reviews.
2. The preparer of the forms/reports/reviews is qualified as required by this guide, and has the insurance, if any required by this guide.
3. The forms/reports/reviews were prepared in the manner required by the guide and the forms/reports reviews are complete and accurate.
4. The proposed loan represents an acceptable risk to the Department (replacement cost programs) or is economically sound (value programs), based upon the Lender's review and analysis and the proposed loan and processing complies with all FHA statutory

regulatory and administrative requirements.

D. HUD Forms Submission. The lender prepares a **Master** HUD 92264 which whenever possible should be signed by the lender's underwriter and all third party contractors. If the third party contractor has signed the Master HUD 92264, they do not need to prepare an individual 92264. Third party contractors are cautioned not to sign the Master HUD 92264 if they are not in agreement with its conclusions. If the third party contractor is not in agreement with the conclusions in the Master 92264, they must prepare and sign an individual 92264. In all cases, the lender's underwriter must sign the Master HUD 92264. Any variations between the Master 92264 and the individual contractors' 92264 must be identified and justification for the variance provided.

1. If there is a logistical difficulty in getting all of the technicians' signatures on the Master HUD 92264, it shall be permissible for each third party contractor to complete and sign an individual HUD 92264. All of the individual contractor 92264s must be submitted to HUD along with the lender's master HUD 92264.

2. MAP requires the Lender to certify that all parties preparing forms, reports, or reviews are qualified as required by the MAP Guide. HUD does not review qualifications of the mortgagor's Architect; the Lender is responsible to determine that the mortgagor's Architect is qualified. This is also the case for 223(f) projects. HUD does not need to review the Needs Assessor's qualifications.

11.2 HUD Field Office Underwriting Review

A. Pre-application. HUD field staff must advise MAP Lenders of competing proposals submitted to the Hub and any market or environmental concerns. If the Team Leader determines that the submitted deliverables are incomplete but curable within a short time, the Lender can have five business days to correct the deficiencies. The Team Leader will advise the Lender by fax or email. Once the Team Leader determines that the pre-application deliverables are complete, the Team Leader assigns the deliverables to the HUD technical specialists including Economic and Market Analysis Staff (EMAS). HUD field staff have five business days for a completeness review of pre-application deliverables. The underwriting review time does not begin until the Team Leader determines the deliverables are complete. The format for the technical specialist review is in Appendices 5,6,7, and 8. Upon completion of the technical reviews of the submitted materials, including the list of Lender reviewers and their qualifications, the Team Leader will prepare a memorandum to the Hub director. The memorandum will summarize the results of the technical reviews and recommend whether or not to invite a Firm Commitment application. Where the Team Leader rejects or modifies the recommendation of a technical reviewer, it should be noted in the memorandum. If the director concludes that an application should be invited, the Team Leader will prepare an invitation letter (See 11.2.I) including any conditions. If the director concludes that an application should not be invited, or there are issues that need to be resolved before an application can be invited, the Team Leader will prepare a letter to the MAP Lender explaining why an application was not invited. If there are issues that need to be resolved or discussed, the Hub has the option of scheduling a meeting with the MAP Lender.

B. HUD Reviewers Signature and Certifications: Upon determination of acceptability for processing, the HUD reviewers should sign their individual Technical Reviews and when determined acceptable for processing, the Master HUD 92264 prepared by the lender. The Master HUD 92264 is the most critical underwriting document because it is a summarization of key technical processing conclusions which, along with the HUD Form 92264A, are the basis for the FHA Firm Commitment. Since MAP requires a technical review of the lender's underwriting conclusions, the Master HUD Form 92264 is the logical and appropriate form that HUD reviewers should sign or co-sign to authenticate their review as opposed to individual 92264s prepared by third party contractors. HUD appraisal reviewers should also sign the Forms 92273 and 92274 which provide crucial underwriting justifications for the amounts in the 92264. Long before the implementation of MAP, it has been an FHA basic procedure to require the HUD review appraiser's signature on the aforementioned forms.

The Department believes that the continuation of this long standing policy clearly documents the underwriting conclusions and decisions made by HUD staff. This same policy is extended to HUD architecture, and cost, and mortgage credit examiners performing review functions under MAP and their respective forms. HUD review appraiser signatures, on such Forms as the 92264, attest to the quality of the review, that the processing is in compliance with MAP technical instructions, that it is free of errors and has no omissions, and that the appropriate appraisal procedures and analysis have been completed. Additionally, as the MAP Guide currently states, MAP requires a Technical Review of appraisals.

The HUD review appraisers' signature on the Master HUD 92264 and the 92273 and 92274 should not be construed as the reviewers' acceptance of full responsibility for all elements of the report. To avoid any confusion or misunderstanding regarding the HUD review appraiser signing the 92264, 92273 and 92274, the Department invokes the USPAP Jurisdictional Rule. The authority justifying this action should be stated in the review appraisers work product and in Section O, "Remarks and Conclusions", of the HUD Form 92264. As a guide and for the purposes of consistency we suggest that MAP review appraisers use the following language:

"Despite joint signatures of the appraiser and review appraiser on this document, the review appraiser's signature does not constitute the acceptance of full responsibility for the appraisal or the contents of the appraisal report under review. It indicates that the processing has been reviewed in conformance with USPAP Standard 3 and related provisions and found to be acceptable for use in HUD's internal underwriting decision making process".

The HUD's review appraisers' technical review should comply with USPAP Standard 3. To document his review, the review appraiser should complete Appendix 7C.1and the review report must include a signed certification as prescribed by USPAP Standard 3.

C. Review of MAP Lender team members. HUD staff needs to check the Limited Denial of Participation List and the Consolidated List of Suspended and Debarred Contractors. Where the Hub has problems with qualifications or past performance of a Lender reviewer who has prepared the preapplication materials, the Team Leader should halt the HUD review and

advise the Lender immediately. In cases where the Lender reviewer will only be involved at the Firm Commitment stage, the field office can make substitution of the reviewer a condition of the invitation letter. For Section 223(f) or 232/223(f) cases, or where the MAP Lender submits the list of reviewers prior to initiation of Lender processing, the Team Leader needs to request immediate reviews by the technical staff and advise the Lender within 5 days if the Hub has a problem with a particular reviewer.

D. Environmental Assessment. The MAP Lender can submit any additional or updated environmental information prior to submission of the Firm Commitment deliverables. The Team Leader can direct the staff to complete the HUD environmental assessment prior to submission of the Firm Commitment deliverables in order to expedite the review. The Team Leader should initiate such an action only in instances where it is clear that the MAP Lender will meet the deadline for submission of the Firm Commitment deliverables.

E. Firm Commitment. If the Team Leader determines that the application is incomplete but curable, the MAP Lender has five business days to correct the deficiencies. Once the Team Leader determines that the Firm Commitment deliverables submitted by the MAP Lender are complete and acceptable for review, the Team Leader will assign the deliverables to the HUD technical specialists. HUD field staff have five business days for a completeness review of firm application deliverables. (Project fiscal procedures (Handbook 4410.1 REV-2) including selection of project numbers, application and inspection fees, and mortgage insurance premiums, remain in effect.) The director or Team Leader can require a more extensive FHA review of the deliverables for transactions which may increase FHA's risk such as the following:

1. Mortgage amounts of $15 million or more.
2. Requests for waivers of commercial space or commercial income limitations.
3. Substantial rehabilitation proposals changing building use from non-residential to residential.
4. Waivers of the limitations on the cost not attributable to dwelling use or where the site value allocated for costs not attributable to dwelling use may be requested.

F. Underwriting recommendation. Each HUD technical specialist by discipline would review the respective Lenders' reviewers reports, the underwriting summary and certain key elements of the application specified in the Guide. The HUD technical specialist would review the quality of the Lender's review and the transaction itself. The HUD technical specialists would not reprocess the case. However, if the technical specialist determines that certain underwriting conclusions are not supportable and affect HUD's risk, the specialist would recommend modification of the Firm Commitment application, recommend that the Lender modify the application or recommend a rejection. Whether to modify internally or by the lender may depend upon the scale or severity of the issue, timing, etc. The team leader must make the decision to approve, reject or require modification of the application based upon the recommendation of the specialist. The formats for the HUD technical specialist reviews are in the appendices to Chapters 5,6,7 and 8. The Team Leader is authorized to approve, reject or modify the recommendation of the specialist.

Upon completion of the technical reviews and the environmental assessment, the Team Leader will prepare a memorandum to the director summarizing the individual reviews of the specialists, any proposed waivers of FHA underwriting requirements and the Team Leader's overall recommendation. The memorandum will specifically address

1. the adequacy of the initial operating deficit for any new construction or substantial rehabilitation loans,
2. the adequacy of both the initial deposit and ongoing reserve for replacement and any non-critical repairs to be performed after closing for section 223(f) loans,
3. any environmental conditions and any other concerns raised by the Lender or HUD staff, and
4. Subsidy layering compliance if requested in accordance with Notice 95-4 as modified by any subsequent directives.

Attached to the memorandum will be the previous participation (2530) approval, specific HUD staff reviews, the Lender narrative summary, the Lender's technical reviews and, if recommended for approval, a proposed FHA Firm Commitment with Forms 92264 and 92264a signed by the HUD reviewers and Team Leader. Where the Team Leader has rejected a conclusion by the reviewer, or has modified any technical recommendation by the MAP Lender or HUD reviewer, documentation and justification must be included in the memorandum.

G. Firm Commitment Decision. Once the director reviews the memorandum and backup documentation, the director will either issue the Firm Commitment and sign the Form 92264 as prepared by the Team Leader, instruct the Team Leader to modify the Firm Commitment, return the package to the Lender for modification or reject the application. If the director overrides the recommendation of the Team Leader, or modifies any technical recommendation by the Lender or any HUD reviewer, the decision and justification must be documented in the file. MAP Lenders can appeal any rejections/modifications to the Hub Director. Firm Commitments will be issued for a term of 60 days with the Hub Director permitted to grant extensions. The Hub Director must assure that prolonged extensions of commitments do not occur. When the Hub Director determines that extenuating circumstances justify extensions of outstanding commitments, the Hub Director must document that the requested delay is not likely to change significantly the underwriting data on which the commitment was based or to undermine the feasibility of the project due to a change in the market, inflation, or other factors affecting cost.

Note: Only the Hub Director, HUB Operations Director or Program Center Director or persons acting in those positions, are authorized to sign FHA Firm Commitments or endorse FHA Mortgage Notes.

The Department has some flexibility when dealing with the resubmission of rejected applications. In accordance with Section 3.2 M of this Guide the fiscal procedures contained in HUD Handbook 4410.1 Rev-2, Project Fiscal Procedures, will apply.

H. Amended commitments. An amended commitment bears the same date as the original commitment, followed by the date of the amendment. With this type of change, the effective regulations are those outstanding on the original issue date. Most underwriting changes such as changes in mortgage amount and/or interest rate are honored by amended commitments.

I. Reissued commitments. A reissued commitment carries only its own date since a mortgagee by accepting a reissued commitment surrenders all rights it had under the original or amended commitment. Reissuance is required for:

1. Request for reconsideration of an expired or terminated commitment.
2. Change in location.
2. Major change in plans and specifications.
3. Changes in Mortgage Insurance premiums

J. Waivers. The Hub Director can waive any requirements of this guide that are not statutory or regulatory except for the following:

1. Debt coverage ratios for all programs.
2. Loan to value ratios for Section 223(f) loans.
3. Restrictions on elderly meal and service packages that preclude high end Retirement Service Center type facilities.
4. Three year rule for Section 223(f), as modified for properties constructed or rehabilitated with FHA insured loans and Davis-Bacon wage rates.
5. Application exhibits required for pre-application submissions and Firm Commitment applications for specific programs. Documents required by the Guide text, that may in some cases not be mentioned on the exhibit list, are still submission requirements.
6. Processing stages (Pre-application and Firm Commitment) and HUD review procedures.

Any waiver requests requiring Headquarters approval should be submitted as early as possible by the Hub Director to the Director of the Office of Multifamily Housing Development. Please note that any requests for regulatory waivers will take Headquarters longer to process since they require review and concurrence from the Office of General Counsel and the Deputy Assistant Secretary for Multifamily Housing as well as the review and approval of the Assistant Secretary for Housing/ FHA Commissioner. Headquarters will not consider waiver requests submitted directly by MAP Lenders.

Any waiver granted in connection with the proposed transaction must be documented in the field office docket and Washington docket, along with the Lender's request and field office request. Waivers granted at the Hub level must be submitted, along with supporting documentation, to the Office of Multifamily Housing Development attn; lender Monitoring Division will review all waivers requested and granted to determine if changes to this guide or the regulations are necessary.

7. A Hub Director is authorized to waive the limitations on Cost Not Attributable (CNA) in Chapter 6 or Site Not Attributable (SNA) in Chapter 7 only in those instances where it can be documented that the project will produce affordable housing through the use of bond financing, tax credits, tax abatement, CDBG, HOME, HOPE VI, or similar local funds.

K. Certifications.

I understand that my (appraisal, market study or architectural, cost, mortgage credit, valuation review) will be used by _____ (name of MAP Lender) to document to the U.S. Department of Housing and Urban Development that the MAP Lender's application for FHA multifamily mortgage insurance was prepared and reviewed in accordance with HUD requirements. I certify that my review was in accordance with the HUD requirements applicable on the date of my review and that I have no financial interest or family relationship with the officers, directors, stockholders, or partners of the Borrower, the general contractor, any subcontractors, the buyer or seller of the proposed property or engage in any business that might present a conflict of interest.

I am employed full time by the MAP Lender (underwriter) or under contract for this specific assignment (appraiser, market analyst, cost architect) and that I have no other side deals, agreements, or financial considerations with the MAP Lender or others in connection with this transaction.

_____ Signature

Warning: Title 18 U.S.C. 1001, provides in part that whoever knowingly and willfully makes or uses a document containing any false, fictitious, or fraudulent statement or entry, in any manner in the jurisdiction of any department or agency of the United States, shall be fined not more than $10,000 or imprisoned for not more than five years or both.

L. Sample MAP Invitation letter format.

Mr./Ms.
_____
_____
_____

Dear Mr./Ms.:
Subject: MAP Invitation Letter
No.
Section
(Name of Project)
(City/State)

This is to inform you that our staff has reviewed the pre-application materials for the subject proposal and finds it to be worthy of further consideration should you decide to submit an application for Firm Commitment for mortgage insurance. There is a market for the proposal based upon our review of the appraisal and market study. The site appears acceptable based on our inspection and the information provided.

In the event that you desire to continue with this project and submit an application for Firm Commitment, it is understood that the project will have the following characteristics:

Type of Unit	Sq. Ft.	Number	Monthly Market Rental
Efficiency	_____	_____	_____
One Bedroom	_____	_____	_____
Two Bedroom	_____	_____	_____
Three Bedroom	_____	_____	_____
Four Bedroom	_____	_____	_____
Total	_____	_____	_____

Equipment and Services included in the rent are:

Number of Parking Spaces: Enclosed _____ Open _____
Estimated Monthly Parking Rental $ _____
Residential Accessory Income $ _____
Commercial Area _____ sq. ft. Estimated Monthly Rental $ _____

The operating expense estimate of $ _____ per unit per annum is acceptable. The total for all improvements appears to be within a reasonable range. Attached is the current wage decision for this area. Please contact the Labor Relations staff at _____ for any updates while preparing your Firm Commitment application.

Land value/as-is value will be determined at the Firm Commitment stage. Excess costs resulting from any unusual site conditions identified in the construction cost estimate at the Firm Commitment stage will be deducted from the land value fully improved (with offsite improvements installed). The HUD environmental assessment and HUD previous participation (Form HUD-2530) will not be completed until the Firm Commitment package is submitted to HUD.

It is important to understand that this letter is not to be construed as a commitment on the part of FHA to insure a mortgage for your proposal. It is intended only to establish general agreement on the basic concept, market, rents and expenses for your proposal. If the Firm Commitment application submitted is consistent with the pre-application submission, does not trigger the thresholds for a more extensive review and no problems arise because of environmental or previous participation issues, HUD should be able to complete its review within the scheduled time. If there are significant changes from the concept agreed to at the

pre-application submission, HUD will need more time to complete an extensive review, will not be bound by the scheduled review time and could result in rejection of the Firm Commitment application. Significant changes would include changes in:

a. Location,
b. Building type,
c. Market to be served,
d. Rents, unit number, unit mix or gross project area great enough to affect market potential (i.e., 5 percent) and/or require a new market study and HUD review.

Therefore, you are invited to submit a Firm Commitment application for mortgage insurance, along with a fee of $3 per thousand of mortgage amount fee with required MAP Lender deliverables, by (insert date 120 days after the date of the letter). The Lender must advise HUD in writing within 30 days of the date of this letter of invitation whether or not it plans to submit an application for the particular project. If it fails to notify HUD within the time required, the invitation letter expires, and it may be required to repeat the pre-application process.

The application for a Firm Commitment must be submitted within 120 days of the date of the letter of invitation. Two 30-day extensions of this 120-day limit may be authorized by HUD, but there is no requirement that the extensions be approved. HUD will review the circumstances reported by the Lender to justify the extension of time. The Lender must certify and HUD must determine that the requested delay beyond 120-days is not likely to change the underwriting data on which the invitation was based or to undermine the feasibility of the project due to a change in the market or other factors determined at pre-application.

The application for a Firm Commitment must be submitted within 120 days of the date of the letter of invitation. Two 30-day extensions of this 120-day limit may be authorized the feasibility of the project due to a change in the market or other factors determined at pre-application.

Chapter 12

Insurance Closings

12.1 Initial Closing

12.1.1 Objective

A. Guide the mortgagee, mortgagor and HUD Multifamily Hub Director (Hub Director) in preparing and reviewing documents for the initial closing for projects with insured advances. The Hub Director is the organizational position to which the Regulations and current administrative notices delegate the responsibilities for insuring an FHA loan. Note: Wherever the term "Hub Director" is used in this chapter it shall be deemed to include the Program Center Director where closings are processed in a Program Center.

B. Assist the Multifamily Hub Staff, HUD Field Counsel and other HUD staff in preparing for and conducting the closing.

C. Guide the mortgagor, the mortgagee and their attorneys in preparation for closing.

12.1.2 Authority and Responsibility for Closing

A. The Hub Director is responsible for:

1. Assuring that conditions of the HUD Firm Commitment are met.
2. Distributing the closing documents to the appropriate HUD staff, including the field office chief counsel. Each HUD review team member will complete the appropriate programmatic checklists and related documents in Appendix 12A.
3. Establishing the place for the closing, following consultation with the HUD closing attorney and the mortgagee.
4. Notifying the mortgagee and the mortgagor of the closing date, time and location.
5. Ensuring that a representative from the Office of Multifamily Housing with knowledge of the project being closed and authority to make decisions attends the entire closing, along

with the HUD closing attorney. In addition, the Hub Director will ensure that the requirements of Appendices 12E-12H have been completed.

6. Establishing processing priorities and start of construction target dates, and monitoring construction schedules.
7. Directing all activities essential to the insurance of mortgages, including approval of:
   a. Findings of acceptability with respect to program policy and eligibility criteria,
   b. Subordinates' preliminary underwriting determinations supporting insurance endorsements,
   c. Mortgagor entity,
   d. Eligibility statements.
8. Coordinating crosscutting office support activities required for multifamily mortgage insurance.
9. Obtaining Headquarters' approval of any credit subsidy, where required.
10. Establishing the financial requirements for closing.
11. Endorsing the note for mortgage insurance.
12. Waiving the requirement for a pre-construction conference based on the experience of the participants.

B. HUD closing attorney is responsible for:

1. Advising the Hub Director or his/her designee of the legal sufficiency of all closing documents. Legal sufficiency means that all closing documents include all required provisions and comply with applicable statutory and regulatory requirements. The Multifamily Hub staff must ensure that the contents of the documents are programmatically accurate.
2. Setting date and time of closing after consultation with the Hub Director, Mortgagee, and Mortgagor and after reviewing the full set of closing documents submitted by the Mortgagee.
3. Conducting the closing. (The lists of required closing documents are found in Appendix 12.)

C. Mortgagee (or its attorney) is responsible for preparing and reviewing the closing documents and then submitting three complete draft closing packages to the Hub Director early enough for HUD to complete its review prior to the date of the closing. One package is for the HUD closing attorney and two are for the Multifamily Hub staff and other technical disciplines. The Hub Director may request a different number of closing packages to be submitted if it is necessary.

1. For HUD to accept the draft closing package for review:
   a. All documents, not previously accepted by HUD, including a pro forma title policy (including legible copies of all exception documents), must be submitted at one time, and

b. Forms and exhibits must be completed.

Note: Documents previously submitted to, and accepted by, HUD do not need to be resubmitted at closing. The Hub Director will be responsible for providing the documents that have already been previously accepted by HUD to the HUD closing attorney.

2. For HUD to schedule the closing, the HUD closing attorney and the Hub Director must have reviewed and approved all of the closing documents.

12.1.3 Closing Location

A. The Hub Director is responsible for arranging accommodations for the closing, if the closing is held at HUD. In determining the location for the closing, the Hub Director will take into consideration project remoteness, e.g., where an office has multiple state jurisdiction, and whether a particular Field office will have an individual present who is authorized to make decisions for HUD and to endorse the Note. The closing may be held at a location other than a HUD office if the mortgagee, mortgagor and Hub Director all agree that it is appropriate to do so. If the closing is held at a non-HUD location, the mortgagee and mortgagor will be responsible for arranging closing facilities.

B. Initial closings also may be conducted by escrow or by mail, at the request of the mortgagor and mortgagee, if the HUD attorney determines such closing is appropriate under the circumstances of the particular case. HUD is under no obligation to endorse the note for insurance until all of the documents are presented to, and approved by, the Hub Director.

C. Except for the title policy, the mortgagor's attorney's opinion, and the incumbency certificate, if any, the documents may be dated and/or recorded prior to the day the note is endorsed by HUD for insurance. To the extent possible, however, all documents except the title policy and mortgagor's attorney's opinion should be dated with the same date. The fully executed original mortgage and UCC-1, Regulatory Agreement executed by the mortgagor and any other agreements, if applicable, should be submitted for HUD review enough in advance to allow for the Regulatory Agreement to be reviewed by the HUD closing attorney and executed by a HUD official, all the recordable documents to be reviewed by the title company or other entity tasked to provide for the recording of documents, and the documents to be in the hands of the person designated by the title company to record. Mortgagor and Mortgagee assume all risks associated with the recording or execution of any documents prior to the date of the endorsement of the Note by HUD.

12.1.4 Closing Forms and Documents

Closing forms and documents are listed in Appendix 12A and must be used in all closings for programs covered by the Guide (See Paragraph 1.4B.), unless a substitute has been approved in

writing by the Assistant General Counsel for Multifamily Mortgage Insurance. Local field offices are not authorized to modify the closing list except to meet the requirements of local law or custom or to meet the unique requirements of a particular case. The closing attorney will inform the mortgagee of any modifications to the closing list in Appendix 12A. The mortgagee's attorney must submit the draft closing packages to the Hub Director who will distribute the appropriate documents to the field counsel and to the housing program and technical discipline sections for document review and_completion of the review sheets. The project number should be typed on each closing document if not otherwise included in the document. The Hub Director will provide a statement to the HUD closing attorney that all administrative requirements have been met. HUD/FHA administrative and closing forms may not be waived or changed, except as follows:

A. The Multifamily Hub Director may approve administrative changes to any form, if the changes are required by local law or custom or the unique requirements of the particular case except those items specifically listed in 11.2.I. All such changes must be identified in the closing attorney's Certificate in the Washington Docket.

B. HUD closing attorney may approve legal changes to any form, if the changes are required by local law or custom or the unique requirements of the particular case. All changes must be identified in the closing attorney's Certificate in the Washington Docket.

C. Any changes in the forms must be identified in the mortgagor's attorney's opinion.

D. Title. Marketable title to the property must be vested in the mortgagor on the date the mortgage is recorded. See requirements of Mortgagee's Certificate, paragraph (3). Mortgagor must provide and HUD must review title documents for initial closing as follows:

1. The Multifamily Hub Director is responsible for:

   a. Determining the acceptability of the mortgagor's proposed title company as indicated by the prior experience that the Hub has had with that company.

   b. Assuring that any title exceptions do not adversely affect project value or marketability, or where a clear determination cannot be made, refer the exception to Headquarters, Office of Business Products. (The Hub Director should assure that the proposed construction contract documents and other contractual obligations call for the project to be constructed and managed consistent with the project's legal restrictions and covenants.)

2. HUD closing attorney is responsible for:

   a. Determining that the insured mortgage constitutes a valid first lien,

   b. Identifying title conditions, covenants and restrictions that violate Federal statutes or regulations, or the Regulatory Agreement, and directing the mortgagee to eliminate them from the title, and

   c. Bringing any title conditions, covenants or restrictions, including air right provisions, leasehold contracts, and common use easements and maintenance agreements, to the Hub Director's attention. It is the decision of the Hub Director whether or not to insure with these items.

3. Title Evidence. The mortgagee must provide a policy of title insurance, surveyor's certificate and survey of the covered property that are acceptable to HUD. The Hub Director may accept an alternative to a title policy in accordance with Paragraph 5 below, where satisfied after consulting with the HUD closing attorney who has determined that a title policy cannot be furnished. Any required policy of title insurance, survey or surveyor's certificate must be furnished without expense to HUD. The Note cannot be endorsed without delivery of an acceptable duplicate original title policy to HUD.

4. Title Insurance Policy must be issued by a title company acceptable to HUD in the ALTA format approved by HUD and, unless otherwise approved by the HUD closing attorney, must:

   a. Be in an amount at least equal to the full amount of the insured mortgage.

   b. Name the mortgagee and Secretary of HUD and his/her successors and assigns as the insured parties as their interests may appear.

   c. Provide the 1997 ALTA Policy and ALTA Form 8.1 Environmental Endorsement. The ALTA Form 9 Comprehensive Endorsement, Zoning Endorsement, and the Endorsement insuring over easements that cannot be platted may be required by the closing attorney, if applicable. A zoning letter may be accepted by the closing attorney instead of a zoning endorsement. The Office of General Counsel has advised that there is no objection to the use of the 1999 Minimum Standard Detail Requirements (MSDR) for (ALTA)(ACSM) Land Title Surveys for multifamily projects insured by FHA.

   d. Show the insured mortgage as the first lien. The insured mortgage and the Regulatory Agreement must appear in Schedule A-1 and the financing statements in Schedule B, Part II.

   e. Show no monetary liens other than the insured mortgage, real estate taxes not yet due and payable, and any other liens that the Hub Director approves.

   f. Show the deletion of all standard exceptions, such as the exception concerning mechanic's liens, claims to water, patent reservations, etc.

   g. Be dated the day of endorsement.

   h. The legal description in the policy must agree with the legal description in the survey and in all closing documents bearing a legal description.

   i. For projects already constructed, the policy must include standard endorsement forms 100 and 116. To the extent that the policy reveals any encroachments that are not covered by form 100, additional affirmative protection will be required.

   j. Any reference to taxes shall specify that the taxes are not due and payable. All due and payable taxes shall be paid prior to or at closing.

   k. If the title policy contains any exception for mineral rights, it also must include an endorsement offering affirmative protection against loss due to such matters.

l. All other exceptions must be acceptable to HUD.

m. Contain no exception for encroachment and other matters that a valid survey would disclose.

n. Delete any arbitration requirements except where such deletions are prohibited by State law.

5. Alternate Evidence of Title. Where acceptable to the Multifamily Hub Director, as provided in paragraph D.3, above, the mortgagee may use one of the following types of title evidence:

   a. Abstract of title acceptable to HUD, prepared by an abstract company or person engaged in the business of preparing abstracts of title, accompanied by a legal opinion satisfactory to HUD, as to the quality of such title, signed by an attorney-at-law experienced in the examination of titles;

   b. A Torrens or similar title certificate; or

   c. Evidence of title conforming to the standards of a supervising branch of the Government of the United States of America, or of any State or Territory thereof.

6. Surveyor's Report, Form HUD-2457, signed within 120 days before initial closing by a licensed surveyor and bearing the surveyor's professional seal. The Surveyor's report must be prepared in accordance with its attached instructions.

7. Survey. The survey must conform with the instructions on the back of the Surveyors Report, Form HUD-2457, and be dated, signed and sealed within 120 days before initial closing. The Survey should show all easements or encroachments upon the property. These easements or encroachments must be acceptable to HUD.

   a. The Hub Director may permit substitution of paragraph 7.a(1) below for the Form HUD-2457 requirement that, "The certificate should be addressed, to wit: "To all parties interested in title to premises surveyed," where the Form HUD-2457 requirement causes unwarranted legal difficulties or liability insurance costs. The certification must include the language contained in the instructions on the reverse of the surveyor's report, Form HUD-2457. (See paragraph 7a(2) and 7a(3), below.

      (1) "I hereby certify to the U.S. Department of Housing and Urban Development (HUD), (Borrower), (Sponsor), (Lender), (Title Insurance Underwriter), (other), and to their successors and assigns, that:"

      (2) "I made an on the ground survey per record description of the land shown hereon located in (city or town, country, township, etc.), on ___(date)___; and that it and this (these) map(s) was (were) made in accordance with the HUD Survey Instructions and Certificate, Form-HUD-2457 and meet the requirements for a Land Title Survey, as defined in the "Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys," dated 1999."

      (3) "To the best of my knowledge, belief and information, except as shown hereon: There are no encroachments either way across property lines; title lines and lines of actual possession are the same; and the premises are free of any (subject to a) 100/500 year return frequency flood hazard, and such flood free (flood) condition

is shown on the Federal Flood Insurance Rate Map, Community Panel No. _____ (state, if none)."

8. Air Rights Projects

   a. A three dimensional air rights map for air rights projects is required. The existence of adequate vertical ways to the ground for required services, e.g., utility and fire suppression lines, chimneys, trash chutes, elevators and emergency exit stairs must be verified. In addition, there must be an acceptable discharge to a public way from all building egresses, including emergency exits, and services, e.g., trash removal.

   b. Maintenance Agreements. In cases where common facilities exist between the insured parcel and an adjacent parcel, the mortgagor must provide for recordation of a maintenance agreement for the common use facilities, e.g., common drives; common lobbies, parking structures, or other air rights project common facilities; etc. The Hub Director must:

      (1) Assure that the integrity and maintenance of air rights platform foundations and other structural members are defined as the air rights provider's responsibility.

      (2) Verify that shared maintenance/operating costs are equitable and that enforcement rights protect the project interests.

E. Leaseholds. Leaseholds must conform to the FHA Lease Addendum Form FHA-2070.

1. The term of The Lease Addendum may be varied to conform with applicable State and local law, except that the HUD closing attorney must approve:

   a. The legal need for any proposed lease term changes, and

   b. That any term changes are consistent with the following requirements of the Section of the Act under which the project is underwritten:

      (1) Section 207/223(f). The lease term must satisfy one of the following requirements):

         (a) Term is 99 years and is renewable, or

         (b) Term is at least 50 years from the date the mortgage is executed (where a lease is on trust/other land on a reservation the HUD closing attorney must ensure that the lease provisions are coordinated with Bureau of Indian Affairs requirements).

      (2) Sections 220, 221(d) and 232. The lease term must satisfy one of the following requirements:

         (a) Term is 99 years and is renewable, or

         (b) Term has at least 10 years to run after maturity date of the mortgage.

2. HUD needs to ensure the non-default status of any ground lease that exists at the time of closing. This can be done by collecting an estoppel certificate from the lessor as part of the closing package. This certificate should be dated within 30 days of closing and state

that the lessee is current on all rents due, the lessee is not in default of any lease provision and no event has occurred which, with the passage of time, would be a default under the lease.

F. Organizational Documents. Organizational documents for the mortgagor entity are required to be submitted at closing. They must expressly indicate that the duration of the ownership entity is at least ten years longer than the term of the FHA-insured mortgage, that the terms of the Regulatory Agreement take precedence in the event of any conflict with the terms of the organizational documents, that the ownership entity has authority to enter into the transaction and to comply with the requirements of the insurance program and that unless approved otherwise by HUD, the mortgagor is a single asset entity.

1. The operating or partnership agreements, Limited Liability Corporation documents, or articles of incorporation for the mortgagor entity must include provisions stating that:

   a. If any of the provisions of the organizational documents conflict with the terms of the note; mortgage, deed of trust or security deed; security agreement or HUD Regulatory Agreement ("HUD Loan Documents"), the provisions of the HUD Loan Documents will control.

   b. No provision required by HUD to be inserted into the organizational documents may be amended without prior HUD approval, so long as HUD is the insurer or holder of the note.

   c. No provision in the organizational documents that results in any of the following will have any force or effect without the prior written consent of HUD:

      (1) Any amendment that modifies the term of the mortgagor entity;

      (2) Any amendment that activates the requirement that a HUD previous participation certification be obtained from any additional member;

      (3) Any amendment that in any way affects the note, mortgage, deed of trust or security deed, and security agreement on the Project or the Regulatory Agreement between HUD and the mortgagor entity;

      (4) Any amendment that would authorize any member other than the Manager/General Partner or pre-approved Successor Manager/General Partner to bind the mortgagor entity for all matters concerning the project which require HUD's consent or approval;

      (5) A change in the Manager/General Partner or pre-approved Successor Manager of the mortgagor entity; or

      (6) Any change in a guarantor of any obligation to the Secretary.

   d. The mortgagor entity is authorized to execute a note, mortgage, deed of trust or security deed and security agreement in order to secure a loan to be insured by the Secretary and to execute the Regulatory Agreement and other documents required by the Secretary in
   connection with the HUD-insured loan.

e. Any incoming member/partner/owner must as a condition of receiving an interest in the Company agree to be bound by the note, mortgage, deed of trust or security deed, security agreement, the Regulatory Agreement and any other documents required in connection with the HUD-insured loan to the same extent and on the same terms as the other members.

f. Notwithstanding any other provisions, upon any dissolution, no title or right to possession and control of the Project, and no right to collect the rents form the Project, shall pass to any person who is not bound by the regulatory Agreement in a manner satisfactory to the Secretary.

g. The members, partners, officers and directors and any assignee of a member/partner are liable in their individual capacity to HUD for:

(1) Funds or property of the Project coming into its possession, which by the provisions of the Regulatory Agreement, the person or entity is not entitled to retain;

(2) Its own acts and deeds, or acts and deeds of others which it has authorized, in violation of the provisions of the Regulatory Agreement;

(3) The acts and deeds of affiliates, as defined in the regulatory Agreement, which the person or entity has authorized in violation of the provisions of the Regulatory Agreement; and

(4) As otherwise provided by law.

h. The company shall not voluntarily be dissolved or converted to another form of entity without the prior written approval of HUD.

i. The company has designated [insert name] as its official representative for all matters concerning the project which require HUD consent or approval. The signature of this person will bind the company in all such matters. The company may from time to time appoint a new representative to perform this function, but within 3 business days of doing so, will provide HUD with written notification of the name, address, and telephone number of its new representative. When a person other than the person identified above has full or partial authority of management of the project, the company will promptly provide HUD with the name of the that person and the nature of the that person's management authority.

2. Corporate Mortgagor

a. Copy of Articles of Incorporation and Code of Regulations or Bylaws and all amendments thereto, certified by jurisdiction where filed;

b. Certificate of Good Standing. A certificate of good standing from the state where the project is located and, if the mortgagor is a foreign corporation, the state of incorporation or an opinion from mortgagor's attorney that such certificate is not required in that jurisdiction;

c. Enabling resolution which authorizes the loan and designates the appropriate officer(s) to execute the loan documents; and

d. Incumbency Certificate certified by corporate officer.

e. Corporate articles of incorporation and bylaw provisions which make the corporation responsible for indemnifying its officers and/or board members are not acceptable, except to the extent mandated by state law and/or to the extend that such indemnification is limited to liability insurance coverage or distribution approved by HUD from residual receipts or surplus cash.

3. Partnership Mortgagor

a. Certified copy of Partnership Agreement and all amendments thereto;

b. Copy of Certificate of Partnership, if applicable, which has been recorded in the appropriate jurisdiction, if required. If the mortgagor is a foreign partnership and the application for registration as foreign partnership, and an indication that it is qualified to do business where the project is located.

c. Copy of the "Full Force and Effect" Certificate or Certificate of Good Standing or like certificate, if any, provided by the state; and

d. If less than all the general partners are signing the loan documents, a partnership resolution which authorizes the loan and designates the appropriate partner for signing.

4. Limited Liability Company Mortgagor

a. Certified copy of Articles of Organization and Operating Agreement or Code of Regulations and all amendments thereto;

b. Certificate of Continued Existence. If the mortgagor is a foreign limited liability company holding a license as a foreign LLC under laws of the state in which the project is located, a certified copy of said license, and Continued Existence from the state of organization, or a legal opinion from an attorney licensed to practice in the state in which the project is located, that the company is qualified to do business and hold title to real estate in that state;

c. Enabling resolution which authorizes the loan and designates the appropriate manager or member to execute the loan documents; and

d. Incumbency Certificate with authorized member's signature.

G. Mortgage or (Deed of Trust) and Security Agreement

1. MORTGAGE (OR DEED OF TRUST). Must be a first lien on the entire property. Where permitted by local and state law and by the Section of the Act under which the project is insured, e.g., Section 232 projects, the property includes all nonrealty equipment and furnishings whether financed by mortgage proceeds or sponsor's funds. The property also includes major kitchen appliances financed from mortgage proceeds in projects insured under other sections of the Act. The Mortgage (or Deed of Trust) Form must be that approved by the Assistant General Counsel for Multifamily Mortgage Insurance.

2. Security Agreement and Financing Statement. The appropriate Uniform Commercial Code documentation (Chattel Mortgage where applicable) must be used as the

security instrument for nonrealty equipment and furnishings in accordance with State/local requirements. See the Mortgagee's Certificate, paragraph (12). The mortgagor's attorney's opinion should address the situation in which the owner is an out-of-state entity and a Financing Statement needs to be filed in the entity's home state.

a. The documents must be filed and/or recorded as specified by State/local law, which may include: the appropriate local court, Secretary of State, State corporation commission, etc.

b. Attach a property description (list(s) of major movable equipment) to the financing statement covering all the nonrealty equipment and furnishings covered. Furnishings do not need to be identified individually or with identification or serial numbers, unless it is customary in the jurisdiction to do so.

c. The legal description attached to the financing statement should be identical with that used in the Regulatory Agreement, Building Loan Agreement, mortgage, and other closing documents especially the title policy and survey.

3. Liens. The property, including any non-realty equipment and furnishings covered by the mortgage, must be free and clear of all liens other than the insured mortgage and any other liens that HUD approves.

4. Standard Exculpatory Language for the Mortgage (or Deed of Trust).

"Notwithstanding any other provision contained herein or in the Note, it is agreed that the execution of the Note shall impose no personal liability upon the mortgagor for payment of the indebtedness evidenced thereby and in the event of a default, the holder of the Note shall look solely to the property subject to this Mortgage and to the rents, issues and profits thereof in satisfaction of the indebtedness evidenced by the Note and will not seek or obtain any deficiency or personal judgment against the mortgagor except such judgment or decree as may be necessary to foreclose or bar its interest in the property subject to this Mortgage and all other property mortgaged, pledged, conveyed or assigned to secure payment of the Note; provided, that nothing in this condition and no action so taken shall operate to impair any obligation of the mortgagor under the Regulatory Agreement herein referred to and made a part hereof."

H. Mortgage (Deed of Trust) Note. The Mortgage (Deed of Trust) Note must be in the form approved by the Assistant General Counsel for Multifamily Mortgage Insurance. The section of the Act under which the mortgage is insured should be identified on the panel of the Note.

1. Term must be the same as included in the firm commitment, as long as the maximum and minimum term set out in the commitment meet the following requirement:

a. New construction or substantial rehabilitation projects--term may not exceed the lesser of 40 years or 75 percent of the project's remaining economic life.

b. Existing project (insured under either Section 207 or Section 232 pursuant to Section 223(f))—term must not be less than 10 years nor exceed the lesser of:

(1) 35 years, or

(2) 75 percent of the estimated remaining economic life of the physical improvements.

c. The Note term starts on the date of the originally scheduled commencement of amortization.

2. Prepayment Provisions. Except as specifically permitted in paragraph c, d, and f below, and subject to the conditions in Paragraph 3 below, the Note must contain the following prepayment provisions:

a. Proprietary (For-Profit) Facilities.

(1) Prepayment must be permitted in whole or in part so long as 30 days advance written notice is given to the mortgagee of intent to prepay, except as provided in paragraph H.2.f below.

(2) Prepayments must be permitted for up to 15 percent of the original principal amount in any one calendar year without a prepayment charge. Prepayments exceeding 15 percent may be subject to a charge agreed to by the mortgagor and mortgagee and included in the mortgage.

b. Nonprofit Facilities.

(1) Upon prior consent of the Commissioner, the mortgage debt may be prepaid in full.

(2) The Commissioner may approve partial payments to reduce succeeding monthly payments over the remaining portion of the original mortgage term.

(3) The Commissioner may also approve partial prepayments made after 30 days written notice. Prepayments exceeding 15 percent of the original principal amount may be subject to a reasonable charge on such excess agreed to by the mortgagor and mortgagee and included in the mortgage.

c. State and Local Bond Financed Projects. Subject to compliance with paragraph 3 below, projects funded from tax-exempt or taxable bonds issued by State or local governmental bodies may include the following prepayment restrictions and prepayment penalty charges:

(1) Prepayment restriction period (lockout) must not exceed 10 years plus the construction period stated in the construction contract, or, in the alternative, must not exceed 10 years from the commencement of amortization, and

(2) Prepayment penalty may be charged after expiration of the lockout stated in paragraph (1) above, provided the charge:

(a) During the first year following the lockout does not exceed 5 percent of the original mortgage,

(b) Declines on a graduated basis (to the extent practicable, the decline in the penalty percentage should be the same each year), and

(c) Does not exceed 1 percent at the end of the fifth year following the lockout.

d. Other Bond Obligations or GNMA Mortgage-Backed Securities. "Other bond obligations" refers to any agreement under which the insured mortgagee has obtained the mortgage funds from third party investors and has agreed in writing to repay such investors at a stated interest rate and in accordance with a fixed repayment schedule. Mortgages funded with the proceeds of GNMA Mortgage-Backed securities or "other bond obligations acceptable to HUD" may include the following prepayment restrictions and prepayment penalty charges, subject to compliance with paragraph 4 below:

(1) A lockout not to exceed 10 years plus the construction period stated in the construction contract, or in the alternative, not to exceed 10 years from the commencement of amortization; or

(2) A penalty charge provided the charge:

(a) Does not exceed 10 percent at the end of the first year following the construction period stated in the construction contract or the date of amortization,

(b) Declines on a graduated basis, and

(c) Does not exceed one percent at the end of the 10th year following the construction period stated in the construction contract.

If the initial penalty is 3% or less the HUD override language in paragraph 3 below, is not required; the penalty can be as great as 10% if the override language is included; or

(3) A combination lockout and penalty charge in which:

(a) The lockout period does not exceed 10 years plus the construction period stated in the construction contract, or in the alternative, 10 years from the commencement of amortization, and

(b) The prepayment penalty does not exceed 1 percent at the end of the tenth year following the construction period stated in the construction contract or commencement of amortization.

e. Mortgages containing both bond financing, other than state or local government, and GNMA Mortgage-Backed Securities may be subject to both a lockout provision and a penalty charge as set out in H.2.d above.

f. Other Mortgages: Prepayment lockout provisions are not permitted, except where required by HUD regulations to hold certain types of rentals available, e.g., for Section 223(f). (See Paragraph 12.4.5)

g. Those prepayment provisions which are preprinted in the Note may be deleted if the Guide authorizes alternative provisions which supersede the printed provisions.

3. Conditions For Including Lock-outs and/or Penalties. Compliance with the following conditions is required when prepayment lockouts and/or penalties are permitted.

Rider to the Note. The following language must be included, allowing HUD to override the prepayment lockout and/or penalty provisions in the event of a default:

Notwithstanding any prepayment prohibition imposed and/or penalty required by this Note with respect to prepayments made prior to _____, 20__, [enter first date on which prepayments may be made with a penalty of 1 percent or less] the indebtedness may be prepaid in part or in full on the last or first day of any calendar month without the consent of the mortgagee and without prepayment penalty if HUD determines that prepayment will avoid a mortgage insurance claim and is, therefore, in the best interest of the Federal Government."

Use of the above rider to the Note is a condition of permitting lockouts for "State and Local Bond Financed Projects," paragraph H.2.c above, "Other Bond obligations or GNMA Mortgage-Backed Securities," paragraph H.2.d above, and for prepayment penalties that initially exceed 3 percent in any project.

Mortgagees may add the following:

HUD would consider exercising an override of a mortgagee's prepayment lock-out and/or penalty provision only if the following conditions are met:

(1) The project mortgagor has defaulted and HUD has received notice as required by the regulations;

(2) HUD determines that the project has been experiencing a net income deficiency, which has not been caused solely by management inadequacy or lack of owner interest, and which is of such a magnitude that the mortgagor is currently unable to make required debt service payments, pay all project operating expenses and fund all required HUD reserves;

(3) HUD finds there is a reasonable likelihood that the mortgagor can arrange to refinance the defaulted loan at a lower interest rate or otherwise reduce the debt service payments through partial prepayment; and

(4) HUD determines that refinancing the defaulted loan at a lower rate or partial prepayment is necessary to restore the project to a financially viable condition and to avoid a full insurance claim.

4. Late Charge Provisions. The mortgagee may collect a late charge for the cost of handling delinquent payments, subject to the following:
   a. Charges must not exceed two cents per dollar of principal and interest more than 15 days in arrears.
   b. Late charges must be separately charged to and collected from the mortgagor and cannot be deducted from any total monthly mortgage payment, or collected from any reserve escrow, residual receipts funds, or from any interest accruals thereto.

5. Standard Exculpatory Language for the Mortgage (or Deed of Trust) Note.

   Notwithstanding any other provision contained in this Note, it is agreed that the execution of this Note shall impose no personal liability on the maker hereof for payment of the indebtedness evidenced hereby and in the event of a default, the holder of this Note shall look solely to the property described in the Mortgage and to the rents, issues and profits therefore in satisfaction of the indebtedness evidenced hereby and will not seek or obtain any deficiency or personal judgment against the maker hereof except such judgment or

decree as may be necessary to foreclose and bar its interest in the property and all other property mortgaged, pledged, conveyed or assigned to secure payment of this Note except as set out in the Mortgage of even date given to secure this indebtedness."

I. Second Mortgages. Secondary financing is permitted to evidence repayment of (i) a Federal, State or local government agency or instrumentality loan or (ii) a loan from a nongovernmental source, subject to compliance with the requirements set forth in Chapter 8 herein, including the use of the Secondary Financing Rider, which must be attached to the note, and, where applicable, to the mortgage used for any secondary financing. Before scheduling the closing, the HUD closing attorney must review the grant/loan documents to assure their legal sufficiency.

1. Grants or loans from Federal, State or local government agencies.

   a. If the grant/loan funds are not available at initial endorsement, HUD may proceed to closing but not disburse any mortgage proceeds until the grant/loan is in place and the funds are available or have the mortgagor fund an escrow equal to the grant/loan, disbursements from which must be made in accordance with instructions for disbursement of the grant/loan.

   b. Terms of the second mortgage note also must reflect those provisions found in Forms FHA-1710 and 2223, depending upon type of mortgagor. (Form FHA-2223 is applicable to for-profit mortgagors.) (See Paragraph J below.)

2. Grants or loans from nongovernmental source.

   a. The grant/loan funds must be escrowed with the mortgagee before or at initial endorsement.

   b. The grant/loan must be disbursed before the mortgage proceeds.

   c. Release of grant/loan proceeds cannot be geared to the completion of specific improvements.

   d. Terms of the second mortgage note must also reflect those provisions found in Forms FHA-1710 and 2223, depending on the type of the mortgagor.

J. Unsecured Promissory Notes.

1. Unsecured Promissory notes are used to evidence a debt of the mortgagor entity incurred as a result of the development of an insured multifamily project and must receive HUD approval prior to their issuance. Promissory notes are also called surplus cash notes or residual receipts notes.

   a. Promissory notes are used to evidence the following types of debt:

      (1) Discounts, financing fees, and/or extension fees paid by a third party on behalf of the mortgagor entity.

      (2) A secondary loan from a government or nongovernmental source.

(3) Deferment of the general contractor's profit in return for the mortgagor's agreement to pay upon completion of the project:

(a) Such arrangements must be disclosed by the parties before initial endorsement.

(b) Such arrangements are permitted only under those sections of the National Housing Act that do not provide for BSPRA.

(4) Amount by which the land acquisition cost exceeds HUD's warranted price of land fully improved.

b. Promissory notes are not to be executed for costs disallowed in the cost certification review.

c. Promissory notes are not executed to determine the distribution of surplus cash, nor are they issued to establish an equity interest.

2. Development Staff Duties. To coordinate the identification and handling of development-related liabilities and expenditures:

a. The Hub Director is responsible for approving the issuance of a promissory note before final endorsement.

b. The Hub Director will prepare a list of all promissory notes approved before the final endorsement of the mortgage. The list must include the name of the payee, the amount and the reason for the issuance.

c. Prepayment of the promissory notes from sources other than the project is permitted without HUD approval.

d. Payments for promissory notes will be made only as indicated in the applicable Regulatory Agreement.

3. Type of Promissory Note Used depends of the type of mortgagor entity and the Regulatory Agreement.

a.

Entity	Use
1. Nonprofit Entities	Residual Receipts Note, Form FHA-1710
2. All other Entities	Promissory Note, Form FHA-92223

b. Form FHA-1710, Residual Receipts Note (Nonprofit Mortgagors).

(1) Principal and interest shall be due and payable on or after the maturity date of the HUD insured mortgage.

(2) If the HUD insured mortgage is prepaid in full, the holder of the residual receipts note has the right to declare the whole principal sum or any balance with interest immediately due and payable.

(3) Prepayment to principal and interest may be made only from the residual receipts fund as defined in the Regulatory Agreement and only after obtaining written approval from HUD or from sources other than project income, e.g., syndication proceeds.

(4) Prepayments may be made only after final endorsement of the insured mortgage and after a semiannual or annual fiscal period.

(5) Any unauthorized prepayment accepted by the payee must be held by the payee in trust for the project.

(6) The residual receipts note is nonnegotiable and may not be sold, transferred, assigned, or pledged by the payee except with the prior written approval of HUD.

(7) Presentation, demand and notice of demand, nonpayment and protest of the residual receipts note are waived.

(8) Interest on the note must not be compounded.

c. Form FHA-92223, Promissory Note, (All other entities). Conditions and limitations are the same as Form FHA-1710, except that:

(1) Provisions may be made for interest payments only semiannually or at the end of a fiscal period. However, terms of the note should include the fact that interest accrues and is payable in full when the note matures.

(2) Prepayment of principal or any payment of interest must be limited to surplus cash as defined in the Regulatory Agreement or from sources other than project income, e.g., syndication proceeds.

(3) Any unauthorized prepayments, as determined by HUD, shall be the responsibility of the payor to return to the project.

d. FHA Form-1212.

e. The interest rate on the promissory note is negotiable between the payee and payor.

f. The HUD closing attorney may approve the modification of the HUD form promissory notes to more closely represent the requirements of the specific closing. The HUD closing attorney may also, if appropriate, approve the use of a promissory note on other than the HUD form as long as the necessary HUD required language is placed in the non-HUD note.

K. Regulatory Agreement must be incorporated into the mortgage by reference.

1. The Regulatory Agreement must be on a form approved by HUD for use by the mortgagor. The Agreement establishes the mortgagor's obligations in project operations and HUD's rights if the Agreement is violated.

2. For a Section 232 assisted living project, the Regulatory Agreement should state that the facility is being designed/developed as an assisted living facility for the frail elderly (62 years or older and require assistance with three or more activities of daily living).

3. Where a Section 232 project is leased to a nursing home operator, the lessee must also execute a Regulatory Agreement, Form-92466-NHL.
4. Additional restrictions may be imposed by the Multifamily Hub Director with prior approval from the Headquarters Office of Business Products and Assistant General Counsel for Multifamily Mortgage Insurance, where the additional requirements do not conflict with program criteria. These requirements will be set out in the commitment.
5. The individual(s) authorized to act on behalf of the mortgagor will execute the appropriate form of the Regulatory Agreement.

12.1.5 Construction Contract and Other Construction Documents

A. Construction Contract. See Chapter 13 and the Forms Book. Note that the contractor must be licensed to do business in accordance with the requirements of the state where the project is being constructed. HUD staff must assure that HUD Form-2554 "Supplementary Conditions of the Contract for Construction" and the current applicable wage decision are included in the specifications. HUD staff must confirm with Labor Relations that the Davis Bacon prevailing wage decision is current (use e-mail, fax, or phone if Labor Relations staff is not on-site).

B. Construction Contract Incentive Payment. Construction Contract Incentive Payment is an option that the mortgagor may elect to use, at its sole discretion, as a contractor inducement for early contract completion. It may not, however, be added to the construction contract after initial endorsement. The Forms Book contains additional instructions.

C. Early Start/Start of Construction. Construction may not start before initial endorsement and recordation of the insured mortgage, except with the prior approval of the Multifamily Hub Director pursuant to the early start procedures. (See Forms Book.)

D. Owner – Architect Agreement. Owner – Architect Agreement must be on AIA Document B181, Standard Form of Agreement Between Owner and Architect for Housing Services 1994 Edition, and the HUD Amendment, Appendix 12-B2, must be included as a rider. See Appendix 12B1 for additional information.

E. Assurance of Completion. All types of assurance of completion must be on HUD approved forms.

1. Except for Letters of Credit, the HUD closing attorney must review each type of assurance of completion, including the form of bonds where used, for legal sufficiency and compliance with applicable State requirements.
2. Letters of credit may be used instead of cash for all assurances of completion and escrows required at initial and final endorsement, or during construction, except for up-front cash escrows and Section 223(f) repair escrows.

a. Acceptance of a letter of credit is at the mortgagee's option. However, the letter of credit must always be:

(1) Unconditional and irrevocable.

(2) Issued by a banking institution.

(3) Valid and collectible.

b. The mortgagee may not be the issuer of any letter of credit without prior written consent of the Hub Director.

c. HUD will neither look at the letter of credit nor render an opinion as to its enforceability or acceptability at closing, as enforceability and acceptability is the mortgagee's sole responsibility.

F. Assurance of Completion for On-Site Improvements. Assurance of completion for on-site improvements must be provided by the general contractor for HUD's protection and to meet State/local requirements to protect material suppliers and mechanics or to assure contractor or subcontractor payment. See requirements of Mortgagee's Certificate, paragraph (9). The mortgagee or mortgagor may impose higher requirements, but must require one of the following as a minimum:

1. Corporate surety bonds. Form FHA-2452 should be used for payment bonds and Form FHA-2452A for performance bonds, each equaling 100 percent of the HUD estimate of the total for all improvements (Line 53, FHA 2328). Corporate surety bonds are required for the assurance of completion of on-site improvements where payment for components stored offsite is approved.

a. Surety must be on the accredited U.S. Treasury list, Circular 570, published annually in the Federal Register on or about July 1 (The list is also available at www.fms.treas.gov/c570/c570.html).

b. The bonds must not exceed limits listed in Circular 570.

c. HUD and mortgagee must be shown as payee as their interests appear. GNMA may also be named if GNMA securities are being issued.

d. An original power-of-attorney must be attached to each Performance and Payment Bond and dated the same day as both the Bonds.

e. A facsimile transmission addressed to the HUD closing attorney must be received in hand on the day of closing from surety's headquarters (not local office) confirming the agent's power-of-attorney to bind surety as of the date the bonds are executed. The facsimile transmission should identify the agent, date of bonds, amount of each bond, obligee(s), principal, FHA project name and number, and name and title of sender.

2. Completion assurance agreement. Use Form HUD-92450, secured by a cash deposit (or unconditional, irrevocable letter of credit) for the appropriate percentage of the HUD estimate of construction or rehabilitation cost, as described below:

   a. Small Projects and Walk-up Financing: HUD requires a deposit of 15 percent of the HUD estimate of construction or rehabilitation cost for projects meeting the following criteria:

      (1) Structure contains no elevator, or

      (2) Structure contains an elevator but is three stories or less.

   b. Large and Elevator Projects: HUD requires a deposit of 25 percent of the HUD estimate of construction or rehabilitation cost for projects meeting the following criteria:

      (1) Structure includes an elevator, or

      (2) Structure is four or more stories.

3. Mortgagor-contractor without construction contract. Require assurance of completion as defined in paragraphs 12.1.5.F above, except if corporate surety bonds are used, substitute Form FHA-3452 for Form FHA-2452 and substitute Form FHA-3452A for Form HUD-92452A.

4. HUD cost estimate for determining surety amount. Use the following guidelines in computing the HUD cost estimate for use in paragraph F.1 above:

   a. BSPRA projects.

      (1) Deduct the architect's fee from the "total for all improvements," Form HUD-92264, Line 50.

      (2) Add to the amount computed in step a.(1), a typical builder's profit, but no general overhead.

   b. Non BSPRA projects: Use only step a.(1) above.

G. Assurance of Completion for Off-Site Improvements. See requirements of Mortgagee's Certificate, paragraphs (7) and (8). To assure completion of the work, which may not be financed with mortgage proceeds, one of the following is required:

1. Public Body Agreement acceptable to HUD from the controlling jurisdiction giving assurance for installation of utilities, streets or other facilities without cost to the mortgagor. A mortgagor's attorney's opinion that the agreement is binding on the public body and succeeding administrations is required.

2. Cash Escrow (use Form FHA-2446, Escrow Agreement for Offsite Facilities) deposited with the mortgagee, a trustee or an escrow agent acceptable to HUD, or an unconditional irrevocable letter of credit (see paragraph 12.1.5.E). The amount must equal or exceed HUD's estimate of cost of offsite facilities.

3. Retention of Specified Mortgage Proceeds By Mortgagee may be used only when cash available to the mortgagor, as shown in line 42 of Form FHA-2283, equals or exceeds the

estimated offsite construction costs plus the lesser of HUD's as is estimate of value, or the actual latest arm's length purchase price. Where additional assurance is deemed necessary by the Hub Director, one of the following will be required:

a. Form FHA-2479, Offsite Bond, or

b. A letter of credit in accordance with paragraph 12.1.5.E above.

H. Hazard Insurance Policy

1. The mortgagee is responsible for insurance compliance per the Mortgagee's Certificate, paragraph 17. Mortgagor must provide hazard insurance and the policy(ies) must contain a loss payable clause with the mortgagee and the contractor named as their interests may appear. HUD will not review the Hazard Insurance Policy. The mortgagor may elect or the mortgagee may require a higher amount, but the insurance must at least equal 100 percent of the replacement value of structures as determined by HUD.

2. Property Insurance Requirements and Schedule. Mortgagee must provide to the mortgagor an original and one copy of Form FHA-2447, Property Insurance Requirements with Form HUD-92329, Property Insurance Schedule-Insurable Values for Property Insurance Coverage attached. The mortgagee is solely responsible for determination of whether the insurance requirements set forth in Form 2447 have been satisfied. There is no need for HUD to either review or obtain the policy itself.

3. Effective Coverage Date. Pursuant to the Property Insurance Requirements, Form FHA-2447, the property insurance should bear the Mortgage (or Deed of Trust) Note date.

I. Building Loan Agreement Form HUD-92441

See Mortgagee's Certificate, paragraphs (2), (3), and (5). Set out the responsibilities, conditions, and operating terms between the mortgagee and mortgagor, including the basis under which insured advances may be made during the construction period. Also use the Supplement to Building Loan Agreement, Form FHA-2441-SUP, where an Owner-Contractor does not use a construction contract. See Appendix 12-I.

J. Mortgagee’s Certificate Form FHA-2434

All required escrows, deposits, fees and other amounts must be properly reflected in the Mortgagee's Certificate as well as information concerning other bond obligations, extension fee agreements and permanent loan commitments. The Hub Director is responsible for determining that the financial amounts are correct.

K. Agreement and Certification Forms HUD-3305 and 3306 obligate the mortgagor to certify its actual costs of project construction or rehabilitation costs and to disclose any identity of interest among project participants.

L. Collateral Agreements. The mortgagor is required to submit with the closing package, signed duplicate copies for any collateral agreements needed to cover unusual conditions affecting construction of the project including actions of the principals of the mortgagor entity and any other agreements not involving HUD. These agreements cannot alter or amend HUD documents or alter the obligations of the parties there under without the written approval of the Hub Director.

12.1.6 Additional Closing Requirements

A. Working Capital Deposit. HUD requires a cash escrow or letter of credit of not less than 2 percent of the mortgage (lender may require more) at initial endorsement for all mortgagors. See the Mortgagee's Certificate, Paragraph 6.

B. Assurance of Funds to Meet Operating Deficits

1. Funding of any operating deficit projected on Form HUD-92264, including (where applicable to the program, e.g., Section 232 projects) equipment and supply purchases is required from other than mortgage proceeds. The operating deficit escrow is established in accordance with chapter 7. Mortgagor must supply funds as a firm commitment condition to meet project expenses during the HUD estimated period required to establish a sustaining level of operation. See the Mortgagee's Certificate, paragraph (10).

2. Funding may be an:

   a. Agreement of Sponsors to Furnish Additional Funds, Form FHA-2476, accompanied by Bond Guaranteeing Sponsor's/mortgagor's Performance, Form FHA-2477. The bond must equal the sum required to be deposited in Form FHA-2476, or

   b. Additional Contribution by Sponsors/Mortgagors, Form HUD-92476A. The required amount may be: a cash escrow, United States Treasury securities or securities issued by a federal agency with a market value equal to 115 percent of the required amount of the escrow, or an unconditional and irrevocable letter of credit.

      (1) The Hub Director must review the escrow agreement for sufficiency and the closing attorney must review it for legal acceptability.

      (2) If excess mortgage proceeds are used for the cash escrow:

         (a) A letter of credit for the operating deficit may not be accepted at initial endorsement.

         (b) A mortgagee's statement acknowledging that it must receive HUD's written approval before making any disbursements from the escrow account is required.

C. Sponsor's Guarantee Agreement. See Mortgagee's Certificate, paragraph (11). Section 232 Board and Care projects with independent living facilities require a 12-month debt service reserve in addition to any required operating deficit escrow. See Chapter 8 for additional details on the debt service reserve.

D. Discounts, Financing Fees, and Issuance Costs. See Mortgagee's Certificate, paragraphs (18)b through (18)f. Loan fees, including: discounts, permanent loan discounts, financing fees, bond issuance costs, and similar charges (fees) to be collected by/through the mortgagee and listed on the Mortgagee's Certificate, Form FHA-2434, and the required attachment explaining why each charge is needed to issue the obligations will be reviewed.

1. The Mortgagee will be informed in writing of the aggregate amount that will be allowed at cost certification for discounts, financing fees and issuance costs, stated as a definite percentage of the mortgage. Reflect the percentage that will be recognized at cost certification in the margins of Form FHA-2434.

   The amount cannot exceed 3-1/2 percent of the mortgage. However, an additional 2% of the mortgage amount can be recognized at cost certification for costs required for bond obligations, where the sponsor/mortgagor can't benefit monetarily from excess investment income or the proceeds from tax-exempt obligations for a total allowed of 5-1/2%.

2. The Mortgagee's Acknowledgment of the additional costs that HUD will allow at cost certification will be required on a copy of HUD's letter to the mortgagee, and will be filed with the Mortgagee's Certificate for use in reviewing the cost certification.

3. Dates Loan Fees Are Earned are as follows:

   a. Construction loan fees are earned at initial closing, except for any portion that the loan documents provide for payment at a later date. Construction loan extension fees are not earned until the time such extensions are made.

   b. Permanent loan fees, and permanent loan extension fees are earned at final closing. A permanent loan in this instance is a loan separate and distinct from the construction loan, and for which the proceeds are used to pay off the construction loan.

   c. Unitary loan fees are earned at initial closing, except for any portion that the loan documents provide for payment at a later date.

      (1) A unitary loan is one where the loan and involvement of the investors spans both the construction and permanent phases of the loan, so that the construction and permanent loans represent one transaction.

      (2) Where the loan documents approved by HUD provide for a "discount," "permanent discount," "marketing fee," or "bond underwriting fee" (fee), whether in a lump sum, discounted advance, or other basis, and under the terms of its agreement with its investors or participants, or with its broker, the mortgagee is obligated to pay the fee at any time prior to the date of assignment of the mortgage to HUD in order to receive insurance benefits, HUD will not surcharge the insurance claim by the amount of such fee.

E. Fee Payment from Cash Available to Mortgagor. See Mortgagee's Certificate, paragraph (18).

1. Fees Paid At Initial Closing. Excess mortgage proceeds may be used to pay construction and permanent loan discounts, including that for unitary loans, bond issuance costs, and GNMA indemnification escrow at initial closing to the extent recognized by HUD under

paragraphs (18)b through (18)e of the Mortgagee's Certificate, where loan documents approved by HUD provide for the payment of such fees at initial closing.

2. Fees Paid After Initial Closing, Excess mortgage proceeds may be used to fund permanent loan discounts, including that for unitary loans, and construction and permanent loan extension fees for payment after initial closing to the extent recognized by HUD under paragraphs (18)b, c, d and f of the Mortgagee's Certificate, where loan documents approved by HUD provide for the payment of such fees after initial closing, subject to the following:

   a. The mortgagee is required to escrow sufficient funds in mortgagor's behalf to cover fees approved under the Mortgagee's Certificate, paragraphs (18)b, c, d and f, for payment after initial closing,

   b. The mortgagor is required to furnish a written agreement to HUD that any disbursements from the escrow accounts must require HUD's written approval,

   c. A Letter of Credit will not be accepted at initial closing for any of the amounts to be satisfied from excess mortgage proceeds, and

   d. Such escrowed excess mortgage proceeds may be released when earned per paragraph 12.1.6.D.4 of this Guide.

F. Deferred Fee Collection. Where the mortgagee, bond underwriter or issuer may exercise the option for deferred collection of discounts, financing fees, etc., permitted by paragraph 18.f of the Mortgagee's Certificate, the deferred collection of these items must be an obligation of a third party.

1. Third Party Obligees, and the mortgagee, bond underwriter or issuer, must attest in writing that they will not look for payment from the: mortgagor, mortgaged property, mortgage proceeds, any reserve or deposit required by HUD in connection with the mortgage transaction, or rents or other income from the mortgaged property. Use Appendix 12D, Specimen - Third Party Obligee Certification, for the purpose.

2. Promissory Note. The certifications in paragraph F(1) above may not be binding on any party except the mortgagee in certain instances. Therefore, two conformed copies of a promissory note are required at initial closing for which:

   a. The maker must be the third party obligated for payment of the fee,

   b. The form and content must be satisfactory to the maker and mortgagee,

   c. The note may be unsecured or secured by pledging of specific assets, except that the assets must be completely separate from the mortgaged property or assets held in connection with it or its operation, including rental income and escrow accounts, and

   d. The note must include the following statement on its face.

      "It is a condition of this note that the payee or any subsequent holder hereof may not assert any claim arising from this note against the following assets of the maker:

      The interest of the maker in property located at _____ and covered by a mortgage insured by HUD under Project No. _____ or deposit

made with the mortgagee or another required by HUD in connection with the mortgage transaction or the rents or other income from the property."

e. The mortgagor entity may issue to the third party obligated for future fees payment a residual receipts note or surplus cash note as evidence of the promissory note debt. In such event, use:

(1) Form FHA-1710, Residual Receipt Note, for non-profit mortgagors,

(2) Form FHA-2223, Promissory Note, for all other mortgagors.

G. Broker's Fees. See Mortgagee's Certificate, paragraph (20).

1. Referral fees are prohibited in every instance.

2. Mortgagee may not pay anything of value directly or indirectly to any person or entity in connection with an insured transaction if the person or entity has received any other compensation from the mortgagor, seller, builder or any other person for services related to the transaction, or related to the purchase or sale of the mortgaged property, except as described in paragraph G(3) below.

3. The Hub Director may approve compensation for services actually performed, where:

a. The function must be performed in any event.

b. The services are actually rendered and payment is reasonable and customary.

c. The broker's fee is included on the Mortgagee's Certificate, and

d. The mortgagor submits a separate letter to HUD identifying the fee paid, the name of the broker, the reasons why it was necessary to employ a broker, and certifying that there is no identity of interest between the mortgagor/sponsor and the broker, or between the mortgagee and the broker. The Multifamily Hub Director must indicate approval of the fee in writing.

H. Mortgagor's Certificate. The mortgagor's certificate obligates mortgagor to comply with various requirements, including civil rights, during the insured period. In addition, mortgagors of Section 232 projects must certify at endorsement (initial and final endorsement for insurance of advances) that:

1. The mortgage is a first lien and covers the entire project, including the equipment financed with mortgage proceeds.

2. The property upon which the improvements have been made or constructed and the equipment financed with mortgage proceeds are free and clear of all liens other than the HUD-insured mortgage and such other liens as may be approved by HUD.

3. The certificate sets forth all unpaid obligations in connection with the mortgage transaction, the purchase of the mortgaged property, the construction or rehabilitation of the project or the purchase of the equipment purchased with mortgage proceeds.

I. Mortgagor's Attorney's Opinion

1. The mortgagor's attorney must submit a comprehensive opinion with the closing package in a format acceptable to HUD, addressed to HUD, the mortgagee, and the mortgagee's attorney as to the legal sufficiency of the security instruments, and collateral agreements affecting the mortgagor entity or project.

2. It also must include the following, as applicable:

   a. If the mortgagor is a Limited Liability Company (LLC), the mortgagor's attorney's opinion must be modified to include:

      (1) Opinion to the authority of the LLC's managing members or non-member manager, under applicable state laws and the LLC's organizational documents, to execute and perform under the terms of the Regulatory Agreement, Note and Mortgage.

      (2) Opinion that the LLC is qualified to hold title to real property and transact business in the property jurisdiction if the property jurisdiction is not the state of formation of the LLC.

   b. Any substantive changes to the HUD Forms, if approved by HUD pursuant to 12.1.4.A or B,

   c. The opinion required by Section 12.1.5.G.1, herein,

   d. The opinion required by Section 12.1.10.B, herein.

12.1.7 Initial Endorsement of Credit Instrument

The Hub Director, after consultation with other HUD staff, including the HUD closing attorney, is fully authorized to initially endorse the credit instrument (Mortgage/Deed of Trust Note) after the First Year's Mortgage Insurance Premium and Inspection Fee have been received and after concluding that all requirements for closing have been met.

12.1.8 Revision of Closing Forms and Documents

After closing and initial endorsement of the credit instrument, the closing forms and documents may not be revised or amended without the prior approval of the Hub Director.

12.1.9 Local Rent Restrictions

Local rent restrictions are not permitted to be placed in the deed covenants or other closing documents, where a municipality wishes to implement affordability rent restrictions pursuant to a Comprehensive Housing Affordability Strategy (CHAS) plan or other initiative, except where

significant financial assistance is approved such as in the form of tax-exempt bonds, CDBG, HOME funding, Low Income tax Credit or land write down:

A. Where rent restrictions are approved, the Mortgagor's Attorney's Opinion must be consistent with Paragraph 12.1.10.B for tax-exempt bond financing, except the type of state/local financial assistance should be substituted for "tax-exempt bonds" where applicable,

B. Where rent restrictions are approved, the Mortgagee's Attorney's Opinion must be consistent with Paragraph 12.1.10.C for tax exempt bond financing, except substitute the type of state/local financial assistance for "tax-exempt bonds" where applicable,

C. Where rent restrictions are approved, the HUD closing attorney must review the provisions relating to rent restrictions in accordance with provisions for tax-exempt bond financing, Paragraphs 12.1.10.C and D.

12.1.10 Tax Exempt Bonds

Projects financed with the proceeds from tax-exempt bonds pursuant to the Internal Revenue Code, Section 142d, must meet minimum low income occupancy restrictions to exempt the earned interest income from Federal income taxation. Such projects typically contain special deed covenants and other recorded restrictions to assure owner compliance with its occupancy and use requirements.

A. Low-Income Occupancy Requirements. The mortgagor must include with the initial closing review package the bond issuer's or bond counsel's certification indicating which of the occupancy restrictions will be imposed on the project. HUD will review the closing documents only to determine that they do not conflict with HUD occupancy or other requirements.

The IRS Code requires that:

1. Owners of residential rental projects must either meet the 20-50 test or the 40-60 test, e.g., set aside a minimum of either:

   a. Twenty percent of the units for occupancy by individuals whose income is 50 percent or less of the area median gross income (with adjustments for family size) for the term of the qualified project period (20-50 test), or

   b. Forty percent (25 percent in New York City) of the units for occupancy by individuals whose median gross income is 60 percent or less of the area median gross income (with adjustments for family size) for the term of the qualified project period (40-60 test).

2. "Qualified Project Period" means the period beginning on the 1st day on which 10 percent of the residential units in the project are occupied and ends on the latest of:

   a. The date which is 15 years after the date on which 50 percent of the project units are occupied,

b. The 1st day on which no tax-exempt private activity bond issued with respect to the project is outstanding, or

c. The date on which any assistance provided with respect to the project under Section 8 ends.

B. Mortgagor's Attorneys Opinion Tax–exempt Bond Financing. The following paragraph must be included in the opinion given at closing:

"Any contracts or other documents executed by the mortgagor or any other arrangements agreed to by the mortgagor in order to finance the mortgage with bonds exempt from taxation (and/or tax credits) under provisions of the Internal Revenue Code are consistent with the Mortgage, Mortgage Note, Regulatory Agreement, Building Loan Agreement, Construction Contract, and all other documents executed by the mortgagor and submitted to the lender in connection with the mortgage transaction."

C. A Mortgagee's Attorney's Opinion must contain the following certifications ensuring that the project covenants related to the bond financing are consistent with HUD requirements:

1. The covenants are expressly subordinate to the HUD insured mortgage, e.g., covenant instrument contains a subordination clause;

2. The covenants will automatically terminate in the event of foreclosure or transfer of title by deed in lieu of foreclosure, e.g., covenant instrument contains an automatic termination clause, (except that the requirements set out in 26 U.S.C. 42(h)(6)(e)(11) that for three years low income tenants may not be evicted and their rents may not be raised, may remain);

3. Failure to comply with the covenants will not serve as a basis for default on the HUD-insured mortgage;

4. The covenants do not appear in the Note, Mortgage, HUD Regulatory Agreement, or any other HUD/FHA loan document;

5. The covenant instrument contains a provision stating that enforcement of the covenants will not result in any claim against the project, the mortgage proceeds, any reserve or deposit required by HUD in connection with the mortgage transaction, or the rents or other income from the property other than:

   a. Available surplus cash, if the mortgagor is profit-motivated, or;

   b. Available residual receipts authorized by HUD, if the mortgagor is nonprofit.

6. The covenant instrument contains a provision making any subsequent amendment contingent on prior written HUD approval, so long as the property is subject to a mortgage insured or held by HUD;

7. Any provision requiring the owner to take any action necessary to preserve the tax exemption of the interest on the notes or bonds (and/or tax credits) (or prohibiting the owner from taking any action that might jeopardize the tax-exemption (and/or tax credit) is qualified to except actions prohibited (or required) by HUD pursuant to the National Housing Act, applicable mortgage insurance regulations, the HUD/FHA loan documents,

or, if applicable, Section 8 of the U. S. Housing Act of 1937 and the regulations thereunder;

8. The covenant instrument does not conflict with any applicable HUD mortgage insurance or Section 8 regulations; and

9. The covenant instrument contains the HUD subordination language prescribed in sub-paragraph D below:

D. HUD subordination language required for every recorded document that contains restrictive covenants:

"Notwithstanding anything in this document to the contrary, except the requirements in 26 U.X.C. 42(h)(6)(e)(11), the provisions hereof are expressly subordinate to the HUD insured mortgage or Deed of Trust, to the HUD Regulatory Agreement, and subordinate to all applicable HUD mortgage insurance (and Section 8, if applicable) regulations and related administrative requirements. In the event of any conflict between the provisions of this document and the provision of an applicable HUD regulations, related HUD administrative requirements, or HUD/FHA loan documents, the HUD regulations, related administrative requirements or loan documents shall control.

In the event of foreclosure or transfer of title by deed in lieu of foreclosure, any and all land use covenants contained herein shall automatically terminate.

Failure to comply with the land-use covenants contained herein will not serve as a basis for default on the HUD insured mortgage.

Enforcement of the covenants herein will not result in any claim against the project, any reserve or deposit required by HUD in connection with the mortgage transaction, or the rents or other income from the property other than:

1. Available surplus cash, if the mortgagor is profit-motivated;

2. Available distributions and residual receipts authorized for release by HUD, if the mortgagor is limited distribution; or

3. Available residual receipts authorized by HUD, if the mortgagor is non-profit.

Any subsequent amendment to this document is subject to prior HUD approval.

No action shall be taken in accordance with the rights granted herein to preserve the tax exemption of the interest on the notes or bonds (and/or tax credits), or prohibiting the owner from taking any action that might jeopardize the tax-exemption (and/or tax credit), except in strict accord with the National Housing Act, applicable mortgage insurance regulations, the HUD/FHA loan documents, or if applicable, Section 8 of the U.S. Housing Act of 1937 and the regulations thereunder."

E. State/Local Occupancy, Use and/or Rent Restrictions on projects financed by proceeds from their tax-exempt obligations are often more restrictive than the minimum requirements of the Internal Revenue Code. The Hub Director may approve a State or local restriction exceeding the minimum requirements of the Internal Revenue Code, only if the following conditions are met:

1. The Hub Director must determine that the restriction is not likely to have an adverse impact on project occupancy, marketability or long-term feasibility. This determination must be made on a project-by-project basis.

2. The restriction must not conflict with any applicable HUD mortgage insurance regulations or related administrative requirements.

3. The restriction must not appear in the note, mortgage, HUD Regulatory Agreement or any other HUD/FHA loan document.

4. The restriction must be qualified to provide that it will automatically terminate in the event of foreclosure or transfer of title by deed in lieu of foreclosure. Such a termination provision must be included in every legal instrument (e.g., deed, land use restriction agreement, Regulatory Agreement, or financing agreement) in which the restriction appears.

5. Every legal instrument containing the restriction must include the following provisions:

   a. "Enforcement of the provisions of this instrument will not result in any claim against the project, the mortgage proceeds, any reserve or deposit required by HUD in connection with the mortgage transaction, or the rents or other income from the property (other than available surplus cash)." For cases involving limited distribution mortgagors, substitute "available distributions and residual receipts authorized for release by HUD" for "available surplus cash."

   b. "Notwithstanding anything in this instrument to the contrary, the provisions hereof are subordinate to all applicable HUD mortgage insurance regulations and related administrative requirements. In the event of any conflict between the provisions of this document and the provisions of any applicable HUD regulations, related HUD administrative requirements, or HUD/FHA loan documents, the HUD regulations, related administrative requirements or loan documents shall control."

6. Rent restrictions must be in a form that permits the Field Office to make meaningful income estimates for the units subject to the restriction. For example:

   a. A restriction that limits the rent for a low or moderate income unit to a percentage of the actual tenant's income (an unknown amount at the time of HUD processing) is unacceptable.

   b. A rent limit based on a specified percentage of some recognized standard (e.g., 30 percent of 80 percent of the area median income or 120 percent of the Section 8 Existing FMR) may be acceptable.

F. Underwriting Review. The legal instruments, e.g., deed, land use restriction agreement, tax regulatory agreement, etc., containing tax exempt financing required covenants must be reviewed by HUD prior to initial closing for any effect on the mortgage insurance underwriting.

12.1.11 Low Income Housing Tax Credits

Tax credit provisions included in the Tax Reform Act of 1986 were designed to encourage owners to make rental housing units available to low income households at affordable rents. Where projects contain special deed covenants or other recorded provisions to assure owner compliance with occupancy and rent restrictions for tax credit eligibility, the mortgagor and mortgagee must comply with the following:

A. Mortgagor's Attorney's Opinion–Tax Credits must be on the attorney's letterhead and state as provided in Paragraph 12.1.10.B, except that where the term "tax exempt bonds" occurs, substitute the term "tax credits."

B. Mortgagee's Attorney's Opinion must address the legal instruments as to the acceptability of any covenants. Covenants required for tax credits are permitted on an insured project only as provided in Paragraph 12.1.10.C for tax exempt bonds.

C. Low Income Occupancy and Rent Requirements.

   1. For a minimum of 15 years the owner must assure occupancy that meets the same low-income occupancy restrictions as in either Paragraph 12.1.10.A.2.a or b, whichever the owner selects.
   2. Gross rents, inclusive of utility costs, for the project's low-income units may not exceed 30 percent of the applicable qualifying low-income limit, adjusted for family size.
   3. The Hub Director may not endorse the note for any project unless all requirements of Paragraph 12.10.D and all subsidy layering requirements are met.

12.1.12 Pre-Construction Conference

The pre-construction conference may be held concurrently with the initial closing, since the required parties attend the closing, and the pre-construction conference must be held before the start of construction. Instructions for conducting the pre-construction conference are in Chapter 13.

12.1.13 Initial Draw of Loan Proceeds

Initial draw of loan proceeds may be made on the day of closing upon recordation of the mortgage instruments and evidence that they constitute a first lien on the entire property. See Chapter 13 for information regarding an initial draw at initial closing.

12.1.14 Loan Closings for Residential Care Facilities

A. The requirements of paragraph 12.1.4 through 12.1.8 must be met except for the following below:

B. Mortgage (Deed of Trust) Note.

1. Must be on HUD/FHA form approved by HUD for use where the project is located.
2. Maximum term may not exceed 40 years from the beginning of amortization for new construction and 35 years for a refinancing pursuant to Section 223(f).
3. Must identify on the panel of the note the section of the NHA Act (Section 232 or Section 232 pursuant to Section 223(f) of the National Housing Act) and the regulations under which the mortgage is insured.
4. Shall contain the following prepayment provisions:

a. Proprietary Facilities

(1) Prepayment must be permitted in whole or in part so long as 30 days advance written notice is given to the mortgagee of intent to prepay.

(2) Prepayments must be permitted for up to 15 percent of the original principal amount in any one calendar year without a prepayment charge. Prepayments exceeding 15 percent may be subject to a charge agreed to by the mortgagor and mortgagee and included in the mortgage, except as set out in Paragraph 12.1.4.H.2.e, above.

b. Nonprofit and Public Facilities.

(1) Upon prior consent of the Commissioner, the mortgage debt may be prepaid in full.

(2) The Commissioner may approve partial payments to reduce succeeding monthly payments over the remaining portion of the original mortgage term.

(3) The Commissioner may also approve partial prepayments made after 30 days written notice. Prepayments exceeding 15 percent of the original principal amount may be subject to a reasonable charge on such excess agreed to by the mortgagor and mortgagee and included in the mortgage, except as set out in Paragraph 12.1.4.H.2.e, above.

C. Regulatory Agreement for Health Care Facilities (Form HUD-92466 for for-profits; Form 92466E for non-profits). Must be incorporated by reference into the mortgage. The mortgagor may be regulated or restricted (with prior Headquarters' approval) on other matters as long as they do not conflict with program requirements. Where a project is leased to a residential care facility operator, the lessee, and all future lessees, must also execute a Regulatory Agreement (Form HUD-92466-NHL).

D. Any reduction in the original principal amount of the mortgage resulting from the certification of cost from which HUD may require shall not be construed as a prepayment of the mortgage.

E. Delayed Repairs Escrow-Existing Projects pursuant to Section 223(f). Where repairs will be delayed until after endorsement, the cost of such repairs must be withheld in cash from mortgage proceeds. These funds, plus an additional amount in cash or letter of credit of at

least 50 percent of the repair estimate, must be placed in escrow. Only the amount above the 100 percent cash requirement may be provided by a letter of credit.

12.1.15 Changes in Construction and/or Permanent Loan Interest Rates

A. If the construction interest rate is reduced before initial endorsement and it is not feasible to reprocess the project, the firm commitment must be amended to contain the following condition:

"Any interest savings resulting purely from a differential between the HUD processed interest rate and the actual construction interest rate may not be construed as excess funds that may be used to offset costs in other categories at the time of cost certification. Any such saving must be applied as a mortgage reduction."

B. If the construction interest rate is increased before initial endorsement, the firm commitment must be rescinded and the application reprocessed to reflect the higher rate.

C. The firm commitment must be reprocessed if the evidence submitted does not indicate that the permanent financing will be available at the rate, for the term, and for at least the mortgage amount identified in HUD's commitment.

D. A willingness of the permanent lender to reduce the interest rate after initial endorsement does not constitute a basis for a mortgage increase.

12.1.16 Submission of Recorded Documents

The mortgagee is responsible for submitting to HUD, within 15 days of the receipt from the applicable recording office, three copies of the recorded and filed document as well as the original Regulatory Agreement.

12.1.17 Retention of Closing Documents

A. The HUD field office should retain the original review sheets as well as the original, duplicate original or executed copy of each closing document for the Washington Docket, except that a completely legible copy (certified true and correct) should be collected where the original is unavailable because of filing or recording requirements (certified true and correct by the recorder). Conformed copies of each closing document should be retained for the Hub Docket, using duplicate originals or executed copies where available. (The Hub Director shall prepare the information in the Closing Memorandum, Form FHA-290.)

The Phase I Environmental Clearance is a "program requirement" as well as a "supporting document" for the environmental assessment (HUD 4128). It should remain with the HUD 4128 in the Washington Docket as a part of the permanent, historical file.

B. Multifamily Insurance System (MFIS).

1. The Official Receipt, Form HUD-27038, and Schedule of Project Collections, Form HUD-3416, will be completed, and

2. Mailed within 5 days of a project's initial closing along with one copy each of the Closing Memorandum, Form FHA-290; Official Receipt, Form HUD-27038; and Schedule of Project Collections, Form HUD-3416; to:

   U.S. Dept. of HUD
   Multifamily Insurance Operations Branch
   P. O. Box 44124
   Washington, D. C. 20026-4124

12.2 Final Closing-Insurance of Advances

12.2.1 General

A. Introduction. Once construction has been completed in accordance with paragraph 12.2.1.C, below, and certification of costs has been presented to and approved by HUD, the mortgagor must proceed to the final closing of the mortgage insurance transaction. (If possible, it is advisable to hold final closing until after the period for filing mechanics liens under state law has expired.)

B. Title Evidence at Final Endorsement. Prior to final endorsement, the mortgagee must provide HUD with a new title policy, or, if approved by the HUD closing attorney, a title endorsement covering the following matters:

1. Showing what, if any, matters have gone of record since initial closing;

2. Bringing the effective date forward to the day of final closing;

3. If a Modification Agreement or Supplemental Mortgage and Consolidation Agreement are used, insuring that the mortgage, as modified, or as supplemented and consolidated, still is in first lien position. Should the title insurance company be unable to provide such endorsement, or should the endorsement show any lien intervening between the recordation of the original insured mortgage and the supplemental mortgage, HUD will not endorse the mortgage for insurance at the increased amount.

4. Any exception to title, not shown in the title evidence accepted at initial closing should be examined carefully by the field office to determine whether or not it affects the value and/or marketability of the project. Any exception which affects the value and/or marketability of the project as determined by the Hub Director shall be removed from the title policy or its effect insured against by an appropriate endorsement to the title policy.

5. Deleting the pending disbursements clause.

6. Increase of title coverage, if mortgage amount has increased.

C. Completion, for the purpose of final closing, means that:

1. The project has been completed in accordance with the drawings and specifications as indicated by the date of the final trip report, except for approved items of delayed completion covered by an acceptable escrow agreement (See paragraph 12.2.3.B); and

2. The entire project has been accepted for occupancy by the local authorities having jurisdiction, by the lender, and by HUD.

D. Preparation for Final Closing.

1. Upon the determination by HUD that an advance of mortgage funds is, or will be, the last advance prior to disbursement of the contract retainage (or at the time of substantial completion, whichever is earlier) preparation for final closing and final endorsement of the mortgage instrument should begin.

2. The Hub Director should advise the HUD closing attorney with respect to these determinations and should also advise the mortgagor in writing (with a copy to the HUD closing attorney) of the time estimated to be necessary to complete the work necessary to hold the final closing. The requirements for final closing are set out in the HUD Closing List, Appendix 1 and the HUD Form 2580, Maximum Insurable Mortgage. (These requirements may be modified to comply with local law requirements.)

E. Date for Final Closing. Upon completion of the review of the certification of actual cost, upon preparation of FHA Form 2580 and upon receipt of the agreement described at Paragraph 12.2.4.C, if such agreement is required, the Hub Director will advise the mortgagee and HUD closing attorney of his findings and readiness for final closing and a date acceptable to all parties for the closing shall be set.

F. The Hub Director must assure that Labor Relations Staff have approved proceeding to final endorsement, and that, if required, deposits to the U.S. Treasury have been established as a condition of closing to ensure payment of wages.

G. Final closings may be conducted by escrow or by mail, at the request of the mortgagee, unless the HUD closing attorney reasonably determines such closing to be inappropriate due to the circumstances of the particular case.

12.2.2 Property Insurance Requirements

A. Ascertainment of Changes. After the submission of the cost certification audit and before the mortgagor proceeds to final closing, the Hub Director will ascertain whether any changes in drawings and specifications, or any appreciable change in the cost of construction of the

project, have occurred during the course of construction which require a revision of Property Insurance Schedule, HUD Form 92329.

B. Action on Revised Form. If it is not necessary to revise the previous HUD Form 92329, no action on the part of the Hub Director is required with respect to property insurance. If a revision of HUD Form 92329 is necessary, the Hub Director will obtain revised and corrected copies of the Form, relating such changes, and, at the time of execution of FHA Form 2403, will forward duplicate revised copies to the mortgagee with an appropriate letter notifying the mortgagee to substitute the revised copies (identifying such revised form by date) for the previous HUD Form 92329. In all cases of revision of HUD form 92329, or correspondence in connection therewith, copies of the revised Form and correspondence will be filed in the Washington and duplicate dockets.

12.2.3 Incomplete On-Site and Off-Site Facilities

A. Conditions for Approval. It is desirable that all on-site construction be 100% complete before approval of a final advance of mortgage proceeds. There may however, be circumstances where it is desirable that approval of a final advance be given before 100% completion of on-site construction.

1. Approval of a final advance where minor items of on-site construction are incomplete will be given only in cases in which funds are placed in escrow to assure completion of such minor items, as provided in the certificate of mortgage insurance on FHA Form 2403, and in footnote on Request for Final Endorsement of Credit Instrument, HUD Form 92023. (For procedures in connection with HUD Form 92023, see Paragraph 12.2.6.A).

2. Approval of a final advance of mortgage proceeds will be given only in those cases in which:

   a. All on-site items in the entire project are completed, except those which qualify as items of delayed completion, as described in paragraph 2.c, herein;

   b. All off-site utilities such as sewer, water, electrical, and gas facilities are installed and connected, and the buildings are served by safe and adequate all-weather facilities (either permanent or temporary) for the ingress and egress of pedestrian and vehicular traffic, including fire apparatus, and all other construction requirements have been acceptably accomplished or acceptably assured;

   c. The Hub Director recommends that funds be placed in escrow for the completion of minor items because immediate completion is inadvisable or impossible, due to weather or other conditions beyond control; and

   d. The aggregate estimated cost of completing the above items does not exceed 2% of the principal amount of the mortgage.

B. Escrow for Completion. With respect to all incomplete items, the amount held in escrow for completion must be at least one and one-half (1 1/2) times the estimated cost of completion. The amount of any escrow shall be sufficient to assure an incentive to complete the work,

taking into consideration a possible rise in cost. Such escrow will be held by the mortgagee in accordance with the terms of the Escrow Deposit Agreement, FHA Form 2456, and the Hub Director will ascertain that the items to be completed are properly identified by attachment to FHA Form 2403. (See Paragraph 12.2.5.F.)

C. Escrow for Painting. In many instances the desirability of selection of color schemes by the incoming tenant is recognized. In order to enhance rentability, and if acceptable to the Hub Director, an escrow may be established to cover the cost of final interior painting of apartments without regard to the usual 2% of the principal mortgage amount limitations on escrows previously mentioned. This is conditioned upon the builder being bound to complete all work covered by the approved plans and specifications within a fixed period of time (not in excess of one year from the date of final endorsement for mortgage insurance) and without any additional charge either to the mortgagor or to the incoming tenants.

D. Distinction Between Forms of Assurance. When a request for approval of a final advance is received in a case in which off-site facilities are incomplete, a distinction must be made between those cases in which the assurance of installation and completion is in the form of a cash escrow, and those cases in which such assurance is in other form. In approving or disapproving the final advance, the Hub Director will be guided by the following instructions.

1. CASH ESCROW. When the completion and installation of off-site facilities is assured by a cash escrow, and all off-site sewer, water, electrical, and gas facilities are completely installed and connected, and other off-site facilities such as streets, walks, curbs, and gutters are incomplete but safe, and adequate facilities for ingress and egress are provided, approval of the final advance of mortgage proceeds may be given. The Hub Director will however require that the escrow agreement remain in force and will diligently pursue the completion of off-site facilities as assured by the escrow.

2. OTHER FORMS OF ASSURANCE. In those cases in which the assurance of installation and completion of off-site facilities is in a form other than a cash escrow, the final advance of mortgage proceeds cannot be approved. Instead, the Hub Director will invoke the provisions of the building loan agreement and construction contract wherein it is provided that the 10% holdback will be retained until 100% completion of off-site facilities.

E. Completion of Off-Site Utilities. Until all off-site facilities are completely installed and connected, as applicable, and the required ingress and egress is provided, HUD will not process a request for the final advance. In such cases:

1. Any FHA Form 92403 submitted for processing will not be treated as approval of a final advance, nor will the submission of Request for Final Endorsement of Credit Instrument, HUD Form 92023, be in order. Instead, the FHA Form 2403 may be treated as an ordinary application for advance of mortgage proceeds and may be approved in an amount which, when added to previous advances of mortgage proceeds, will equal 90% of the total advances to which the mortgagor will be entitled at 100% completion.

2. Following 100% completion of all off-site facilities, the Hub Director will require submission of a new FHA Form 92403 for approval of the final advance, and subsequent submission of HUD Form 92023.

3. The Hub Director will endeavor to obtain completion at the earliest possible time.

12.2.4 Chattel Mortgage and First Payment to Principal

A. Non-Realty Items. All non-realty items must be covered by the mortgage lien or security agreement, or both, whether or not paid for with mortgage proceeds, so long as such items are required in the operation of the project. These include, but are not limited to ranges, refrigerators, washers, dryers, water heaters, dishwashers, venetian blinds, removable air conditioning units, lobby furniture and similar items necessary for the operation of the project. Any items not secured at initial closing must be secured at final closing, See Paragraph 12.1.4.G.2.

B. Establishing First Payment to Principal

1. Start of Amortization. Whether construction has been completed or not, amortization must start on the date specified in the mortgage, unless a deferment has been recommended by the mortgagee and approved in advance by HUD.

2. Advance Amortization Requirements. In order for the Hub Director to determine whether or not advance amortization is required, the mortgagor must account for all operating income for the period ending three months prior to the originally scheduled date of the first principal payment under the mortgage (e.g., through June 30 if first principal payment is scheduled for October 1).

3. Income and Expense Statement Requirement. In connection with cost certification, the mortgagor will already have reported the results of occupancy during the cost certification period. Therefore, when more than three months intervene between the cost certification period and the first principal payment as originally scheduled, the Hub Director will require an income and expense statement covering the period beginning at the end of the cost certification period and ending three months prior to the date of the first principal payment under the mortgage as originally scheduled.

C. Agreement of Mortgagor. When final closing is scheduled after the close of the accountability period, the income and expense statement should, of course, be submitted prior to final closing. When final closing is scheduled before the expiration of the accountability period, the mortgagor must agree in writing, as an inducement to the Commissioner to approve the final disbursement of mortgage proceeds prior to the expiration of the accountability period:

1. To furnish an income and expense statement for the required period within 30 days after its expiration, and

2. To immediately apply, as a mandatory prepayment to the mortgage, such portion of the net operating income as the Commissioner may require.

D. Treatment of Items in Statement. In the preparation of the income and expense statement, the mortgagor must include as income all rents received, exclusive of security deposits. All expenses for operation, including taxes, insurance, HUD-FHA MIP, interest and reasonable

management fees (but not officers' salaries or depreciation), may be deducted in determining net income for this purpose. If the cost certification reveals an excess of expense over income, such excess (to the extent recognized by the Commissioner) may be carried forward to the statement required by this paragraph as "unrecovered expense prior period."

E. Required Prepayment. The amount of, and the handling of, the prepayment required is subject to the following:

1. In no case shall the required prepayment exceed the amount which would have been due in cumulative principal payments if the first scheduled payment had been on the first of the month in which the accounting period started.
2. Prepayment will be required only to the extent that the amount of the net income permits payment of one or more full monthly principal payments as scheduled.
3. If the circumstances are such that the operating statement is submitted before final endorsement, the mortgagee and mortgagor may elect to have the mortgage endorsed for less than the face amount by a sum equal to that which would have been required as mandatory prepayment.

12.2.5 Mortgage Amount

A. Determination of Maximum Mortgage. On completion of the review of certificates of actual cost and acceptance thereof, Form FHA-92580, Maximum Insurable Mortgage, shall be executed by the Hub Director for the purpose of indicating to the mortgagee and mortgagor whether or not a reduction in the original amount of the mortgage is necessary.

1. Upon execution of FHA Form 92580, the original shall be forwarded to the mortgagee and an executed copy shall be forwarded to the mortgagor.
2. One copy shall be placed in the field office docket and one copy in the Washington docket with copies of the cost certification exhibits.

B. Decrease in Mortgage Amount:

1. If HUD's review of the cost certification results in a decrease in the mortgage amount, which decrease would be set forth in Form HUD-92580, *Maximum Insurable Mortgage*, the Mortgagee must, subject to local practice, prepare and submit to HUD, prior to final endorsement, a proposed Modification Agreement, in a form acceptable to HUD, modifying the mortgage amount and the payment amount accordingly. The final endorsement for insurance shall be in the lesser mortgage amount. There is no prescribed form of modification agreement, although there is one mandatory provision, as follows:

   Nothing in this Agreement shall waive, compromise, impair or prejudice any right HUD may have to seek judicial recourse of any breach of that certain Regulatory Agreement executed by the parties hereto, recorded on even date with the Mortgage, which breach may have occurred prior to or may occur subsequent to the date of this Agreement. In the event that HUD initiates an action for breach of said Regulatory Agreement and recovers

funds, either on HUD's own behalf or on behalf of the Project or the Mortgagor, those funds may be applied, at the discretion of HUD, to payment of the delinquent amounts due under the Note or the Mortgage or as a partial prepayment of the Note.

2. In addition, an allonge to the mortgage note, to be approved by HUD, may also be necessary under state law to modify the mortgage amount and set forth the new amortization schedule. The allonge is to be attached to the original note. Prior to final endorsement, the modification agreement must be properly executed and recorded in the real property records of the county in which the project is located.
3. If a small mortgage decrease is involved, and the mortgagor does not request a change of amortization, a notation on the insured Note indicating that the mortgage loan amount is reduced without a change in amortization, may be used. In this case, the finally endorsed amount will reflect the reduced principal balance.

C. Increase in Mortgage Amount: If the Hub Director approves an increase in the mortgage amount, the following documents must be included in the package of draft closing documents submitted to HUD for final endorsement:

1. Increase Note. The Mortgagee must prepare a Note using the form required in Paragraph 12.1.4.G herein, but entitled "Supplemental Note," and containing a cross-default provision with the original note. The principal amount of the Supplemental Note shall be for the amount of the increase to the mortgage, not for the new total mortgage amount. The amount of the payments to principal shall be sufficient to amortize the increase amount over the mortgage term.
2. Increase Mortgage. The Mortgagee must prepare a mortgage or deed of trust using the form required in Paragraph 12.1.4.G herein, but entitled "Supplemental Mortgage," and containing a cross-default provision with the original mortgage. The Supplemental Mortgage shall encumber the project and shall secure repayment of the Supplemental Note.
3. Modification and Consolidation Agreement. The Mortgagee must prepare a Modification and Consolidation Agreement, using a format approved by HUD, to evidence that the original note and the supplemental note represent and shall be deemed one indebtedness, to evidence that the original mortgage and the supplemental mortgage represent and shall be deemed one security instrument, and modifying the original mortgage to provide for cross-default with the supplemental mortgage. Prior to final endorsement, the Supplemental Mortgage and the Modification and Consolidation Agreement must be recorded in the county real property records where the project is located.
4. Mortgagor's Attorney's Opinion. The Mortgagor's attorney must give an opinion, in a format approved by HUD, with respect to the documents evidencing the increased mortgage amount.

D. Excess Mortgage Proceeds. There is a remote possibility that the cash paid out for completion of a project may be less than the mortgage proceeds. In such circumstances, the Hub Director shall require that any part of the mortgage proceeds which have not been expended to pay necessary costs of completing the project shall be deposited in a special account of the mortgagor, from which disbursements may be made only with the prior written consent of the Hub Director. This requirement is stated in paragraph (4) of the Agreement and Certification, FHA Form 3305.

There will be no obligation for the investment of such funds in obligations of, or fully guaranteed as to principal by, the United States of America, or for their deposit in institutions whose accounts are insured by the United States. The establishment of the fund can be avoided by an immediate reduction of the mortgage at closing, before establishment of the amortization schedule.

1. The Hub Director will approve or disapprove the use of the funds for purposes other than reduction of the mortgage.
2. If the mortgage proceeds exceed the cash paid out for completion solely because there is a difference between the purchase price of land for a period of years and its “fair market value” in fee simple and as is: as determined by HUD, the Hub Director may waive this requirement.
3. The request for waiver should be accompanied by full information as to the date of purchase and purchase price of the land and normally will be approved in situations such as the case of an individual mortgagor who obviously cannot "buy" the land from himself, as contrasted with a corporate mortgagor, which could buy land from its sole or majority stockholder.

E. Mortgagor’s Investment

1. The amount of the mortgagor's initial equity investment is to be determined as follows:
   a. New Construction and Substantial Rehabilitation (Except 232 Substantial Rehabilitation): Equity is determined by taking line 6, FHA Form 2580 and subtracting from that amount the finally endorsed mortgage amount.
   b. Section 232 Substantial Rehabilitation-Property Owned: Equity is determined by taking line 4, FHA Form 2580 plus the HUD-FHA estimate of "as is" value of the existing land and improvements before rehabilitation and subtracting from that amount the finally endorsed mortgage amount.
   c. Section 232 Substantial Rehabilitation-Property Acquired: Equity is determined by taking Line 4, FHA Form 2580 plus the lesser of (1) FHA as is value of the existing land and improvements before rehabilitation or (2) acquisition cost of property and subtracting from that amount the finally endorsed mortgage amount.
2. To the base amount as determined by (a), (b), or (c) above, whichever is applicable, there may be added certain cash outlays for furnishings, equipment, or other betterments essential to the operation of the project. The nature and extent of such outlays shall be substantiated by a supporting schedule in a manner satisfactory to the Hub Director. The schedule shall set forth the vendor's name, a description of the item or items purchased, the total price, and the cash paid on account of the price. The schedule shall be signed by an authorized representative of the mortgagor.

   Once the aforesaid determination has been made, the Hub Director will immediately notify the mortgagor in writing as to the amount of the initial equity investments. A copy of such determination shall be attached to each copy of the FHA Form 2580.

F. Application for Insurance of Advance of Mortgage Proceeds. FHA Form 2403 is the form used during the course of construction for the advance of mortgage proceeds. When the final

advance is in order, the mortgagee and the mortgagor will execute the completed form, and the form will be submitted by the mortgagee in triplicate. The form shall be accompanied by: (1) a completed Contractor's Requisition, FHA Form 92448, signed by the contractor and the architect; and (2) a final as-built survey.

1. The survey accompanying this request must show the exact location of all buildings, water, sewer, gas and electric mains, and all easements for such existing utilities. It must be prepared by a licensed surveyor who must include a certification in the format set out in HUD Form 92457, Surveyor's Report.

2. If no items of on-site construction are incomplete, type into the Certificate of Mortgage Insurance on FHA Form 2403, in the space provided for the amount of the escrow deposit, the word "None". If items of on-site construction are incomplete and an escrow deposit (in accordance with paragraph 12.2.3B) is in order, attach to FHA Form 2403 an itemized list of incomplete items; and type into the Certificate of Mortgage Insurance, in the space provided, the amount of the escrow deposit required for completion of incomplete items.

3. On ascertaining that the advance will be the final advance of mortgage proceeds, the Hub Director will determine whether:

   a. Any items of on-site construction are incomplete;

   b. Any off-site facilities are incomplete;

   c. Any revisions are required in connection with hazard insurance; and

   d. The necessary chattel mortgage has been submitted;

   The Hub Director will be guided accordingly.

4. Following execution of FHA Form 2403, the Hub Director will forward the executed original to the mortgagee, with necessary attachments listing incomplete items, if any. If the FHA Form 2403 is for final advance of mortgage proceeds, at the time the Field Office Director returns the Form to the mortgagee, the mortgagee's attention must be called to the proviso in the "Certificate" section of the Form concerning the fact that this last advance shall not be considered insured until the occurrence of the events set forth in such proviso. An executed copy will be filed in the Washington docket, and one copy will be forwarded to the Hub Director.

4. In accordance with the Certificate of Mortgage Insurance, it is then the responsibility of the mortgagee to submit a completed Request for Final Endorsement of Credit Instrument, Form 92023, with the credit instrument and any necessary escrow agreement. It is desirable, however, that the Hub Director in forwarding the completed Form to the mortgagee, call to the mortgagee's attention such additional submissions as are required, and at the same time forward to the mortgagee copies of HUD Form 92023 and, if necessary, Escrow Deposit Agreement, FHA Form 2456.

12.2.6 Final Endorsement

A. Request for Final Endorsement of Credit Instrument, HUD Form 92023. After receipt by the mortgagee of approval of a final advance, HUD Form 92023 completed and executed by the mortgagor, mortgagee, and general contractor, must be submitted in duplicate, with the original credit instrument and, if required, three conformed copies of Escrow Deposit Agreement, FHA Form 2456.

1. On receipt, HUD Form 92023 will be checked against each previously approved FHA Form 2403 to determine that the amount of each advance is correctly stated and that the total shown on the HUD Form 92023 equals the total of all advances. If any error is found, the form will be returned to the mortgagee with an explanation of the correction required. The inclusion of an amount advanced by the mortgagee to the mortgagor from escrow funds required for completion of the project is a common source of error, and it is important that such amounts be excluded from HUD Form 92023. When reviewing this form, the Hub Director should examine the title evidence submitted prior to final closing to confirm the certification by the mortgagor as to items of outstanding indebtedness.

2. Particular attention is directed to the required certifications by the mortgagor and the general contractor with respect to their obligations and the penalty provided by law for misstatements. HUD Form 92023, as revised, requires in every case a full disclosure by both the mortgagor and the general contractor of all outstanding unpaid obligations. Sufficient funds from the final advance of mortgage proceeds should be placed in escrow with the mortgagee or with an escrow agent for disbursement to satisfy all unpaid obligations disclosed on HUD Form 92023 and attachments. Such funds are to be released from escrow only upon the mortgagee or escrow agent being furnished with simultaneous acknowledgment of payment by the general contractor and/or appropriate subcontractor or materialmen. However, in all cases the Hub Director shall proceed as follows:

   a. Mortgagors shall be advised that all unpaid obligations contracted in connection with the acquisition of land, purchase of property, construction of the project, or the mortgage transaction shall without exception be reported on HUD Form 92023 as required by the Certificate of the Mortgagor. Likewise, General Contractors shall be advised that all unpaid obligations contracted in connection with the construction contract shall be reported on HUD Form 92023 as required by the Certificate of the General Contractor.

   b. The unpaid obligations of the mortgagor listed under b and c of paragraph 2 of the Certificate of the Mortgagor on HUD Form 92023 shall not exceed the amount of the final advance of mortgage proceeds. In the event that a HUD Form is received showing such an excess, it shall be returned to the mortgagor with the advice that the differences must be liquidated by cash payment or through the issuance of stock or a promissory note. A corrected HUD Form 92023 must then be submitted. If a promissory note is used, it must be on the proper HUD prescribed note form and no change in substance shall be permitted. Two copies of all notes should be obtained for filing in the Field Office and Washington dockets.

   c. In any case where the amount of the unpaid obligations certified by the general contractor exceeds the amount certified as due the general contractor by the mortgagor, the Hub Director shall urge the prompt payment of such excess obligation. If there is an identity of interest between the mortgagor and the general contractor the Hub Director shall immediately notify the mortgagor that final endorsement will be

withheld until evidence is furnished that sufficient cash is available to pay all outstanding obligations in full.

d. When these forms are satisfactorily completed and submitted, it is in order to proceed with the final closing. The date of final endorsement will be the date the Field Office Director or his authorized agent affixes his signature to the credit instrument. The original of HUD Form 92023 will be filed in the Washington docket, the copy of FHA Form 2456 will also be filed in the Washington docket, and a conformed copy filed in the Field Office docket.

e. Paragraph 3 of the Certificates of the Mortgagor and the General Contractor on HUD Form 92023 requires the submission of receipts for the payment of the reported unpaid obligations within prescribed time limits.

(1) If the receipts for reported unpaid obligations are not received by the deadline, it is the responsibility of the Hub Director to immediately make appropriate inquiry in writing.

(2) If the receipts for the payment of the reported unpaid obligations are not received within two weeks from the date of such inquiry, the Hub Director will take appropriate action.

B. Amount of Endorsement. The credit instrument will be finally endorsed in an amount equal to the full amount of all insured advances to the mortgagor, as shown by the applicable HUD Form 92023, regardless of whether the final endorsement occurs before or after the commencement of amortization of the insured mortgage.

C. Working Capital Deposit. One year after the construction contract completion date, the mortgagee shall be entitled to release any balance of the working capital deposit to the mortgagor (but only to the mortgagor.) The Hub Director is not required to approve or disapprove such action; but, if consulted, shall point out to the mortgagor and mortgagee that both should give careful consideration to the position of the mortgagor (percentage of occupancy, etc.,) and should point out, also that any release of such funds while a mortgage default exists will be the sole responsibility of the mortgagee. The mortgagee must also consider the provisions of Paragraph 6(a) of the Mortgagee's Certificate.

D. Title Policy. The final title policy must be dated the same date as the date of the final endorsement of the Note.

12.2.7 Guarantee Following Completion

A. Assurance of Performance under Guarantee. The Construction Contract, Form HUD-92442 or FHA 2442A, contains a guarantee against any defects due to faulty materials or workmanship, which appear within a period of one year following completion. The date of completion is defined in paragraph 12.2.1.C, above.

B. Cash Assurance. Upon final endorsement, if a Completion Assurance Agreement, Form HUD 92450, was used at initial closing, the remaining escrow funds may be released except for the following:

1. An amount equal to the sum paid the general contractor pursuant to a Construction - Contract - Cost Plus less the actual cost of construction as determined in the cost certification which amount shall be refunded to the mortgagor; and

2. An amount equal to 2 1/2 percent of the total amount of the construction contract retained in an escrow for a period of fifteen months from the date of completion.

   The 2 1/2 percent escrow shall be held to guarantee against defects in the construction due to faulty materials or workmanship or damage to the mortgaged premises resulting from such defects that become apparent within one year after the date of completion. The contractor's liability for such corrections is not limited by the amount of the escrow. In addition, the funds are to be kept separate from any escrow that may have been provided to assure completion of any incomplete construction items.

C. Other Assurance. If Form FHA 2452, Performance Bond-Dual Obligee, or the American Institute of Architect's Form AIA A311, Performance Bond, were used, no action is required as both instruments remain in effect for two (2) years from the date on which final payment under the construction contract becomes due. As part of this assurance, the surety will be required to perform when the general contractor fails to refund any overpayment to the Owner, a requirement of Article 3, Construction Contract-Cost Plus, Form FHA 2442A.

12.2.8 Distribution of Closing Instruments

A. Chronology of Mortgage Transaction. At final closing, the Hub Director will be responsible for the preparation of two copies of Form FHA 260, Chronology of Mortgage Transactions, and the Closing Memorandum, Form FHA 290, and to promptly send these forms to the Office of the Comptroller in Headquarters. In addition, a copy of the chronology will be filed in both the Field Office Docket and the Washington Docket.

B. Preparation of Washington Docket. Immediately upon final endorsement of the credit instrument (regardless of whether there are any funds in escrow) the Hub Director will require preparation of a permanent Washington Docket. The forms and documents to be filed in it and instructions for its preparation are given in FHA Form 2471, Contents of Washington Docket.

1. As the availability of the Washington Docket is necessary for the adjustment of the mortgage insurance premium account and for routine preparation of the amortization schedule by the Multifamily Insurance Operations Branch, the following documents will be required:

   a. Insured Advances

      (1) Closing Memorandum (HUD Form 290)

(2) Copy of Note

(3) Copy of any Modifications

(4) Schedules of Advances (HUD Form 92023)

b. Insurance Upon Completion

(1) Closing Memorandum (HUD Form 290)

(2) Copy of Note

(3) Copy of any Modifications

2. If submission of the Washington Docket is delayed for any reason, separate requisition of amortization schedule must be made by the Field Office pursuant to instructions in Paragraph 12.2.9.A.

C. Mailing of Washington Docket. Immediately following preparation of the Washington Docket, it will be forwarded to the Chief, Records Management HOAMP, Department of Housing and Urban Development, Room B264, 451 Seventh Street, S.W., Washington, DC 20410. The Comptroller will be responsible for recordation and safekeeping.

D. Preparation of Field Office Docket. After preparation of the Washington Docket, all remaining original and duplicate material, except those covered in Paragraph 12.2.8.D, will be filed in the Field Office Docket. The contents of the Field Office Docket are to remain in chronological order.

1. Correspondence may be fastened to the left side of binder.

2. When a project is of such size as to make arrangement in one binder bulky, auxiliary binders will be made. The binder will be designated No. 1, No. 2, No. 3, etc., and the No. 1 binder will indicate the total number of binders.

3. None of these binders or their contents may be destroyed before termination of mortgage insurance, nor shall recommendation be made to the National Archives for their destruction without prior approval of the Director, _____.

E. Material Not In Washington or Field Office Dockets. The master set of drawings and specifications, and copies of all approved Construction Changes, FHA Form 2437, are not to be placed in either docket, but are to be handled as follows:

1. Retain in the Field Office until expiration of the one-year guarantee period under the construction contract.

2. After expiration of the one-year guarantee period review statements for completeness and so certify on FHA Form 2488.

3. After review, integrate each set of plans, specifications and change orders in a tightly rolled bundle with the plans on the outside. Tie securely with twine at each end. Paste FHA Form 2488 securely on one end of the rolled bundle.

4. Forward to the regional Federal Records Center in accordance with Records Control Schedule, FHA 1, Item 5. This schedule provides for reasonable accumulations, on a once a year basis.

F. Legal Docket. The HUD closing attorney may also require material for a docket to be kept by the legal office.

12.2.9 Requisition for Amortization Schedules

A. Preparation of Schedules. Timely preparation of amortization schedules is necessary for the convenience of mortgagees and to avoid misunderstandings on their part as to amortization requirements. Upon receipt of the Washington docket, the Comptroller may proceed with preparation and distribution of schedules to the mortgagee and field office.

1. If submission of the Washington docket is to be delayed, requisition for amortization schedule must be made by the Hub Director as follows: Immediately after final closing and insurance endorsement "Regulation for Multifamily Housing Mortgage or Loan Amortization Schedule", FHA Form 2409, will be prepared. When the required information has been entered on the Form and reviewed and the certification signed, it will be forwarded directly to the Multifamily Insurance Operations Branch, P.O. Box 44124, Washington, DC 20026-4124.

2. FHA Form 2409 will be accompanied by copies of (1) the mortgage instruments (including any modifications thereof), (2) FHA Form 3307, Computation of Advance Amortization, (3) FHA Form-92580, Maximum Insurable Mortgage and (4) either FHA Form 2023, Request for Final Endorsement of Credit Instrument, or FHA Form 2455, Request for Endorsement of Credit Instrument - Certificate of Mortgagee and Mortgagor.

B. Revision of Instruments. After final closing, revision of the terms or conditions of the insured mortgage will be governed by Paragraph 12.1.8.

12.3 Final Closing - Insurance Upon Completion

12.3.1 Preparation for Closing

Completion, for the purpose of closing the mortgage transaction, means that the project has been completed in accordance with the drawings and specifications, except for approved items of delayed completion covered by an acceptable escrow agreement, and the entire project has been accepted for occupancy by local authorities having jurisdiction and by the mortgagee and HUD-FHA. The procedure and instructions are set out in Section 12.2 above.

12.3.2 Documents

The documents required at closing are, for the most part, listed in Appendix 12A and are largely self-explanatory, except as discussed below.

A. Mortgage Same as Paragraph 12.1.4.G, above

B. Title Policy. Title evidence is to be continued to the date of endorsement of the credit instrument or recordation of the mortgage, whichever is later.

C. Regulatory Agreement. Same as Paragraph 12.1.4.K, above.

D. Assurance of Performance Under Guarantee. Before endorsement of the credit instrument, the mortgagor must furnish satisfactory evidence that the work of the a contractor is covered by a guarantee, running for a period of one year from the date of substantial completion, against defects due to faulty materials and/or workmanship. Performance will be assured by one of the following:

   1. Surety Bond: FHA Form 3259, Surety Bond Against Defects due to Defective Materials and/or Faulty Workmanship, by a surety on the accredited list of the U.S. Treasury and drawn in an amount not less than 10% of the cost of construction as estimated by HUD-FHA.

   2. Cash Escrow. A cash escrow equal to 2 1/2% of the principal amount of the mortgage, to be retained in escrow by the mortgagee for a period of one year.

E. Collateral Agreements. See Chapter 8.

F. Chattel Mortgage or Attorney's Certificate. Same as Paragraph 12.1.4.G.2, above.

G. Mortgagor's Attorney's Opinion. Same as 12.1.6.I, above.

H. Cost Certification. See Chapter 14.

I. Advance Amortization Requirements. Same as Paragraph 12.2.4.B, above.

J. Determination of Maximum Insurable Mortgage, FHA Form 2580. Same as Paragraph 12.2.5.A, above.

K. Excess Mortgage Proceeds. Same as Paragraph 12.2.5.D except that the reference to FHA Form 3305 is to be read as FHA Form 3305A.

L. Request For Endorsement of Credit Instrument. Certificate of Mortgagee and Mortgagor, FHA Form 2455. The procedure concerning outstanding obligations is the same as in Paragraph 12.2.6, above.

M. Leaseholds. Same as Paragraph 12.1.4.E, above.

N. Operating Deficit. If an operating deficit was projected on FHA Form 92264, the sponsors, at closing, must provide for funds to meet the deficit in the manner set forth in Chapter 7. The commitment requirements concerning funding shall not be waived, in whole or in part, unless specifically approved by the Hub Director. Amendments or modifications between the dates of start of construction and closing may not be waived without prior written approval of the Hub Director.

O. The Hub Director must assure that Labor Relations Staff have approved proceeding to final endorsement, and that, if required, deposits to the U.S. Treasury have been established as a condition of closing to ensure payment of wages.

12.3.3 Incomplete Facilities

A. Incomplete On-Site Facilities. Same as Paragraph 12.2.3, above.

B. Incomplete Off-Site Facilities. All off-site sewer, water, electrical, and gas facilities must be completely installed and properly connected. Other off-site facilities such as streets, walks, curbs and gutters may be incomplete but safe, and adequate facilities for ingress and egress must be provided.

1. In all cases involving incomplete facilities, the certifications of completion will be accepted only if they are accompanied with assurances satisfactory to the Hub Director that the incomplete facilities will be completed within a reasonable time after endorsement of the credit instrument.

2. The type of assurance with regard to completion of facilities shall be one of the following:

   a. Public Authority or Utility: An assurance by a public authority or public utility company that such authority or company will complete the facilities without cost to the mortgagor.

   b. Cash Escrow: A cash escrow held by or under the control of the mortgagee in an amount equal to at least the HUD estimate of the cost of completion. The escrow must provide that the funds cannot be released to the mortgagor except upon completion of all facilities to the satisfaction of HUD. It must further provide that the mortgagee has the right to expend the funds to the extent available for completion of such facilities, or to use such funds to reduce the principal amount of the insured mortgage by applying such funds to the last maturing installments of principal, upon receipt from HUD of notice to do so at such time as, in the opinion of the Hub Director, completion of the facilities is being unreasonably delayed.

12.3.4 Public Approvals

It having been determined before issuance of the commitment that the proposed project will not violate zoning laws or regulations, no further evidence will be needed unless, before final endorsement of the credit instrument, questions or litigation have arisen in connection therewith. If so, the Hub Director or closing attorney will require submission of such additional evidence as, in his opinion, may be necessary to substantiate the fact that no violations are involved.

12.3.5 Endorsement Of Credit Instrument

The Hub Director may consult with other HUD staff, including the HUD closing attorney, prior to endorsing the credit instrument. The Hub Director, however, is fully authorized to initially endorse the credit instrument (Mortgage/Deed of Trust Note) after the First Year's Mortgage Insurance Premium and Inspection Fee have been received and concluding that all requirements for closing have been met. In no event shall the Hub Director endorse the credit instruments for an amount greater than the principal balance of the mortgage which would have been outstanding if all payments to principal due before the date of endorsement, (including required advance amortization payments if any) had been paid. Nor shall he endorse for insurance on a date after the first principal payment, until he has determined that all principal payments due have actually been made and the mortgage otherwise is current.

12.3.6 Revision Of Instruments Prior to Endorsement

After commencement of construction, no commitment may be amended or reissued to permit any revision of terms or conditions of the mortgage which will result in any change in its principal amount (except as noted below), interest rate, or amortization provisions without the prior approval of the Hub Director. Any mortgage increase, if authorized, will be accomplished by an amended commitment.

12.3.7 Chronology of Mortgage Transactions, FHA Form 260

Same as Paragraph 12.2.7.D, above.

12.3.8 Distribution of Closing Instruments

Same as Paragraphs 12.2.8.A, above.

12.3.9 Requisition for Amortization Schedule

Same as Paragraph 12.2.9, above.

Acquisition of an existing project or refinance of existing indebtedness may be achieved through HUD's Section 223(f) program and may involve limited repairs and improvements to the project.

12.4.1 Closing Requirements

The requirements of paragraphs 12.1.1 to 12.1.13and 12.1.15 apply to section 223(f) closings except for such requirements as may apply exclusively to the insurance of construction advances.

12.4.2 Closing By Mail or Escrow

The mortgagee may submit the final, executed, closing documents (including the title policy) by mail or other delivery to the HUD closing attorney, to achieve closing without the need to be present in the HUD office if the HUD closing attorney determines such closing is appropriate under the circumstances of the particular case. The HUD attorney will review them to determine whether they are complete and in compliance with HUD requirements. If so, the HUD attorney will so notify the mortgagee and will obtain the endorsement of the promissory note by the appropriate HUD official. The mortgagee must make appropriate arrangements for handling of the original promissory note, both before and after endorsement.

12.4.3 Handling Of Administrative Requirements

HUD, and its closing attorney will take cognizance of any document(s) in proper form and content which are submitted during any stage of processing the HUD firm commitment and preparation for closing; such documents need not be resubmitted at closing.

12.4.4 Attendance At Closing

For the convenience of all parties, authorized agent(s) and signatories of HUD (housing officials) will be present or at all necessary times during the closing.

12.4.5 Closing Forms

There is no so-called "initial" closing/FHA endorsement because HUD does not insure advances from a construction loan. Instead, there is one closing at which FHA endorses only the "total sum" portion of the panel on the mortgage note. Many of the basic closing requirements for insurance of advances are the same or similar to those for insurance upon completion. Those that differ are discussed below.

A. Mortgage note. The prepayment provisions for the section 223(f) program (excluding loans insured under Section 232 pursuant to Section 223(f)) differ slightly from those in the section 221(d)(4) program. Section 223(f)(3) of the national housing act, 12 U.S.C.A. § 1715*n*f3 provides for a five-year prepayment prohibition, except under certain, specified circumstances. Consequently, the following provision must be included in the note in addition to any other prepayment restriction permitted under Paragraph 12.1.4.H.2:

The indebtedness evidenced by this Note may not be prepaid in whole or in part, for a period of five years from the date of endorsement here of, except where the express written approval by HUD is obtained and written approval is expressly based upon the existence of one of the following:

1. The mortgagor has entered into an agreement with the commissioner to maintain the property as rental housing for the remainder of the specified five-year period;
2. The commissioner has determined that the conversion of the property to cooperative or condominium ownership is sponsored by a bona fide tenants' organization representing a majority of the households in the project;
3. The commissioner has determined that continuation of the property as rental housing is unnecessary to assure adequate rental housing opportunities for low- and moderate-income people in the community; or
4. The commissioner has determined that continuation of the property as rental housing would have an undesirable and deleterious effect on the surrounding Neighborhood.

B. Evidence of zoning compliance. (If a zoning endorsement to the title insurance policy is obtained, HUD may choose not to require additional evidence that the project complies with local zoning requirements.)

C. Assurance of funds to meet operating deficits (if prescribed by the HUD firm commitment). For all facilities for which delayed completion of repairs will postpone or interrupt occupancy or income for any period, an additional deposit must be made to the operating deficit account.

D. Occupancy Certificate. Not required as long as there has not been any new construction.

12.4.6 Additional Closing Documents

In addition to the items listed in Paragraph 12.4, the following documents are required for section 223(f) projects:

A. Additional documentation of authority/amendment of organizational documents. The mortgagor's organizational documents must be amended, if necessary, to include the HUD required provisions. If the mortgagor's organizational documents require prior consent of or notice to the principals in the mortgagor entity for any proposed refinance, evidence of compliance therewith should be submitted.

B. Request for final endorsement of credit instrument, Form FHA 2455. This form includes a certificate of mortgagee, certificate of mortgage and certificate of general contractor. It is used for insurance upon completion cases only. It should be completed so as to account for all of the funds required by the Firm Commitment.

C. Short form cost certification (Form FHA-2205a). A modified form of cost certification for loans insured under Section 223(f) must be submitted 15 days prior to endorsement of the note. See Chapter 14, Cost certification, at paragraph 14.4.C.

D. Certified closing statement. The mortgagee must provide a certified loan closing statement signed by the mortgagee and the mortgagor detailing the amount of any promissory notes made by mortgagor and any cash contribution made by the mortgagor and itemizing the disbursement of the mortgage proceeds and of the mortgagor's cash contribution, if any. The statement must list the amounts to be paid to satisfy the mortgagor's obligations for existing or other indebtedness, acquisition, repairs, discounts, financing fees, legal expenses, organizational expenses, title and recording costs, and like items, and any mortgagee-required escrows for taxes, insurance or other items.

E. Escrow agreement for unpaid construction costs (Form HUD-92476.1). Generally, all work must be acceptable before the loan closing. Only noncritical repairs may be deferred until after endorsement. Noncritical repairs are those that will not endanger the safety and well-being of tenants, visitors and passersby, adversely affect ingress or egress, or prevent the project from reaching sustaining occupancy. The mortgagor must establish an escrow with the mortgagee for the estimated cost of repairs not completed at time of closing, plus an additional percentage, all as set forth in the firm commitment.

F. Latent defect guarantee. Latent defects assurances are not required where the repairs relate only to deferred maintenance items and minor cosmetic repairs such as painting. When repairs and replacements are more significant, assurance against latent defects for one year from completion of repairs must be provided by one of the following:

   1. An escrow in cash, or letter of credit at the option of the mortgagee, equal to 2-1/2 percent (or greater percentage if required by the firm commitment) of the repair cost maintained for 15 months from completion of repairs to cover situations where the defect is discovered in the twelfth month and additional time is necessary to correct it; or

   2. A surety bond covered by Form FHA-3259 from a surety on the accredited list of the U. S. Treasury for at least 10 percent of the repair cost. (The bond runs for a period of two years from the date of completion of repairs.)

G. Secondary financing. See Chapter 8.

Chapter 13

Construction Period

13.1 Start of Construction

A. Start of initial construction is the date when contract work commences. It must be diligently pursued without appreciable delay between activities. It includes site clearance and other preparatory site work.

B. Early start of construction may be authorized in accordance with early start procedures (See Appendix 12-H). Where it occurs:

1. A pre-construction conference is required before the start of initial construction;
2. Construction inspections and change orders must be done in accordance with this chapter;
3. Authorization of any insured advances cannot occur until the endorsed instrument is recorded at initial closing.

13.2 Pre-Construction Conference

Pre-construction conference is required for every project and must precede the initial start of construction, including early start of construction. The HUD representative, namely the HUD Inspector, usually conducts the pre-construction conference and should hold it at initial endorsement where feasible, since the major participants are present. The pre-construction conference may be conducted by the HUD Construction Coordinator (or designate), if the HUD Inspector is unable to attend.

A. Required attendees:

1. Mortgagor's representative;
2. Mortgagor's supervisory Architect;
3. General contractor;
4. Major subcontractor(s);
5. HUD representative;
6. HUD mortgage credit analyst; and
7. Lender's representative.

B. Supplementary Conditions of the Contract for Construction, Form HUD-2554. Address Davis-Bacon wage rates, Federal labor standards and equal employment provisions, including:

1. Contract obligations of the general contractor and all subcontractors, including:

   a. Contractor must certify compliance with Davis-Bacon wage rates with each request for advances.

   b. Davis-Bacon wage rates also apply to a second mortgage backing a governmental equity loan.

2. Statement of sanctions imposed for not complying with the supplemental conditions.

3. Requirement that the applicable Davis-Bacon wage decision and the Form HUD-2554 must be made part of the subcontracts for all tiers.

4. Emphasize the importance of Federal wage payments, prompt certified payroll submissions and proper record keeping. Instruct that a copy of the applicable Davis Bacon wage decision and Form WH-1321, Notice to Employees, must be conspicuously posted on the job site.

5. Indicate who on the HUD labor relations staff will review for labor standards compliance and refer any further inquiries concerning Davis-Bacon wage and reporting requirements to that staff..

6. Give copies of the Equal Opportunity poster to the general contractor and the subcontractor(s) to post conspicuously at the job site.

7. Make available copies of HUD's Contractor's Guide to Davis-Bacon.

C. Contract Administration

1. Explain general contract administration, including responsibilities of the Lender, mortgagor, mortgagor's Architect, general contractor, and HUD representative.

2. Explain the procedures for:

   a. Change orders;

   b. Requesting construction document clarifications;

   c. Reporting and correcting non-compliant work;

   d. Requesting periodic payments and release of escrows;

   e. Substantial completion of work or portion thereof;

   f. Permissions to occupy including management plans and rent rolls.

3. Stress that work changes completed in anticipation of a future change order will be regarded as non-compliant. There will be no insured advances for it or other work dependent on it.

4. Periodic advances. Explain:

a. Mortgagor's and general contractor's required preparation of requests, including the field approval and subsequent processing;

b. Provisions for submitting surveys, title reports, and other documentation in support of construction advances;

c. Requirements for contractor's retainage and its release.

5. Stored materials. Explain procedures to request payment for materials stored onsite, and components stored offsite where applicable. (See Appendices 13-B and 13-C)

6. Offsite work. Explain procedures to request payment for completed offsite work, the required retainage and its release.

7. Termination of contract(s). Discuss provisions for terminating the construction contract and/or Architect's contract, and the Lender's responsibilities during the construction stage and in the event of a default.

D. Cost Certification

1. Summarize cost certification requirements for the mortgagor and (if applicable) the general contractor, subcontractors, equipment lessors and suppliers, and industrialized housing manufacturers. Where there is a second mortgage backing a Governmental loan, advise that cost certification also applies to the second mortgage.

2. Inform all parties that a pre-cost certification conference will be held when construction is 90 percent complete and that complete instructions will be provided at that point.

3. Stress that:

a. Identities of interest that develop or become known after initial closing must be reported to the Lender and to HUD within 5 working days of having such knowledge;

b. HUD must give prior approval for all identity of interest subcontractors and apply penalties where this is not done;

c. Self-owned equipment must be certified;

d. Paper conduits are prohibited.

4. Clarify the 50/75 percent rule. (See Chapter 14.)

13.3 HUD Construction Monitoring

A. Purpose of Inspection.

1. Inspection means the periodic observations made of construction at the site of a multifamily housing project by a HUD representative (inspector) for the purpose of protecting HUD's interests. Inspections are made to evaluate the contractor's and Architect's performance, to obtain construction in accordance with the contract

documents, and to report on conformance with prevailing wages and other contract requirements.

2. The instructions for inspection are the same for projects involving the insurance of advances and those to be insured upon completion, except for those variations specifically stated to be applicable to one or the other.

B. Access. At all times, HUD has the right of access to the property and the right to inspect all work performed and materials furnished to complete the project.

C. HUD construction manager's/Coordinator's duties. The HUD construction manager (CM) or architectural designee is responsible for the proper performance of all functions relating to inspection, as well as the instruction and supervision of all HUD personnel involved. The CM must keep informed of the general progress of the work on all projects during the construction stage and guarantee period and be familiar with the problems involved.

1. Assignment. A member of the HUD staff will be assigned as inspector by the CM prior to the date set for the beginning of project construction. The person inspecting the project may be a Design Representative, a Construction Representative, or any other person or group hired by HUD to do the inspections. In this guidebook that person is referred to as an "inspector." The CM selects the inspector on the basis of competency with due regard to the scope of the project and to the type of construction involved. Several projects being constructed concurrently may be handled by one inspector. Only in very unusual circumstances will an inspector be assigned full time to any one project. Upon assignment, the CM issues to the inspector the following:

   a. Set No. 3 of the contract drawings and specifications. This set becomes the HUD as-built set by the inspector conforming it to the contractor's "Record Set."

   b. Copy of the construction contract. The required contract where insured advances are involved are Forms HUD-92442 or 92442A. These forms may or may not be used in insurance upon completion cases, but a construction contract in some form is required and must be furnished to the inspector.

      (1) Form HUD-92442, Construction Contract-Lump Sum, may be used when there is no identity of interest between the mortgagor and the contractor.

      (2) Form HUD-92442A, Construction Contract-Cost Plus, may be used in any case, and shall be used when there is an identity of interest between the mortgagor and contractor.

   c. Owner-Architect Agreement, AIA Document B-181, when an Architect is required to administer the construction contract.

   d. Contractor's and/or mortgagor's cost breakdown - Schedule of Values, Form HUD-2328 when insured advances are involved.

   e. Drawings and specifications pertaining to off-site improvements.

   f. Agreements or contracts providing for off-site construction.

2. Field Supervision. The CM shall keep informed of the general quality of inspections and the performance of inspectors by maintaining close contact with their work through job site visits. A regular routine for supervising field operations should be established and followed. Required and suggested methods of field supervision follow.

   a. A minimum of two field review inspections shall be made on each project to evaluate the performance of the HUD inspector. Field review inspections shall be recorded on a HUD Representative's Trip Report, Form HUD-5379. (See Forms Appendix.)

   b. The HUD inspectors may be accompanied during their rounds. This method is particularly advantageous in training new inspectors.

   c. Construction should be field reviewed where the use of questionable methods of construction, materials, uncorrected non-compliance, or other problems are reported.

   d. Projects should be field reviewed at construction stages where problems have occurred in that jurisdiction.

3. Office Review. The CM shall review all Trip Reports, Forms HUD-5379, completed by the HUD inspectors. If the reported conditions indicate the necessity or desirability of field review or other special handling, appropriate action shall be initiated.

   a. Review should not be restricted to the entries on the report. The absence of significant evaluation comments may, under certain circumstances, indicate desirability of field review.

   b. The CM should be aware of progress, trends, new or uncorrected non-compliance, unusual conditions, etc., in order to be familiar with the work and to initiate any required corrective action immediately.

   c. The inspector shall be advised of any unsatisfactory action or detail in the report, or any error in its preparation, so that similar mistakes will not occur in the future.

4. Training.

   a. Inspection conferences shall be held when deemed necessary by the CM. The purpose of the conference is to maintain and improve the quality and efficiency of the construction observation function.

   b. Field and office review of inspections will indicate individual training needs and subjects for discussion at inspection conferences.

   c. It is essential that new inspectors, staff and fee, be trained in the field as well as in the office.

5. Construction progress meetings. Prior to the start of construction the contractor, mortgagor, mortgagor’s supervisory Architect and the HUD inspector must be informed

by the CM that they are required to attend monthly job meetings. The meetings should be at the job site when monthly request for advances are prepared.

a. The owner's representative must be a member of the mortgagor entity, usually a general partner. Nonprofit organizations may be represented by a member of the Board of Directors.

b. The HUD Inspector must:

(1) Comment to the group on the quality of construction and of the Architect's observations and the contractor's supervision.

(2) Comment on all known construction defects and deficiencies (non-compliance) and methods of correction.

(3) Explain that changes in the work from the contract documents (non-compliance) must be resolved by approved change order requests or the work done in accordance with the contract documents.

(4) Inform parties of HUD policy for holdback of construction advances until non-compliance are corrected.

(5) Record on Form HUD-5379 the meeting and issues raised. Significant concerns of any party should be presented by memorandum through the CM to the Hub Director.

c. Monthly meetings may also be used to resolve equal opportunity and labor disputes. When such disputes are known, the HUD Labor Relations and Equal Employment officers must be invited to attend.

D. Inspector's Duties. The inspector is the field representative of HUD, not a superintendent for the contractor nor "clerk of the works" for the owner or Architect. The inspector, as HUD's agent, must endeavor in a tactful, helpful and courteous manner to obtain construction that conforms to the drawings, specifications, and sound construction practice within the scope of the contract. The inspector is factual and explicit in all statements in reporting and recording significant construction developments when observed.

1. Orientation. Upon assignment to a project, the inspector studies the drawings and specifications and becomes familiar with the conditions at the site. If, during this examination or during construction, any nonconformity with HUD requirements or site conditions not considered in the design are found, they are reported by memorandum through the CM to the Hub Director. The Hub Director will work with the Lender, owner, contractor and other related parties to resolve the noncompliance.

2. Facilities. The contractor must furnish the inspector with enclosed working space that is acceptable to HUD. Adequate, but not elaborate, facilities should be required as soon as actual construction begins at the site. (See the Construction Contract in the Forms Appendix.)

3. Inspections. The inspector shall make at least two job site visits each month. Additional visits may be necessary due to the nature of the project. The frequency of inspection

should assure reasonable continuity and recognize the size and character of the project, the speed with which construction is progressing and the quality of work on the project. Visits should be scheduled to observe major construction operations without neglecting lesser operations. Sufficient time must be allotted to each visit to make a complete inspection.

a. The major functions during inspection are to: evaluate the construction supervision of the contractor and contract administration of the Architect; report on occupancy, delays, disputes, and changes; report noncompliance with the contract documents observed by the inspector and/or the supervisory Architect; determine that the amounts requested by the contractor and recommended by the Architect for payment are reasonable; conduct employee wage interviews using Form HUD-11; and report on labor and EEO compliance.

b. Each inspection shall be recorded on a HUD Representative's Trip Report, Form HUD-5379. (See Forms Appendix.)

4. Start of Construction. The inspector will report the date of initial construction start and the date of the start of permanent construction on Form HUD-5379.

   a. The date of the initial construction start, used for recording and reporting purposes, is the "start of construction" as used in connection with labor standards and prevailing wage requirements. This is defined as the beginning of initial site clearance and preparation, provided these activities are pursued diligently and are followed, without appreciable delay, by other construction activities.

   b. The date recorded as the start of permanent construction, used for the purpose of determining the earning of the inspection fee, will correspond to the first day that permanent on-site building elements were put into place, such as footings and/or foundations, pilings, utility lines, etc.

   c. While excavation is an integral part of foundation work, it does not constitute a start of permanent construction.

5. Unified Report. At the beginning of construction, the inspector should consult with the HUD Design Representative and the CM in regard to the need for inspection of the project by HUD technical specialists. Any differences of opinion between the inspector and the technical specialist in regard to project construction will be resolved by the CM. The inspector submits a unified inspection report to the Architect and the Lender.

6. Shop Drawings and Other Data. During the construction period, the inspector checks whether shop drawings are being submitted by the contractor for approval of the Architect as required by the AIA General Conditions of the Contract. Upon request by the Architect or the inspector, the contractor will keep copies of tests, certifications and any other data required by the contract documents onsite for review.

7. Off-site Fabricated Construction. If off-site fabricated construction components are involved, the CM will determine if there is a need for inspection at the factory to determine acceptability. If the manufacturing facilities are outside of the jurisdiction of the HUD Office and inspection is essential, the CM submits drawings and specifications,

which are pertinent, together with a request to the Hub Director to have the inspection made by the HUD Office located near the factory.

8. Distribution. If an Architect is not required for contract administration, then where these instructions require the HUD inspector to submit findings to the Architect, they are submitted to the contractor.

9. Work Stoppage. The HUD inspector will report to the CM on Form HUD-5379 any work stoppage unless such stoppage is due to inclement weather or other similar reasons. If known to the inspector, the reason for the work stoppage should be stated and also when resumption of construction is anticipated.

10. Occupancy. The HUD inspector completes the portion, "FHA Inspection Report," of Form HUD-92485, Permission to Occupy, when submitted. This form is used to request permission to rent or occupy specific living units, commercial or other space. The Form is submitted when the inspector reports safe ingress and egress to the units and/or building, and is evidenced by a certificate of occupancy from the locality. Units and spaces should not be occupied prior to approval by HUD .The Construction Manager(CM)/Coordinator (CC) or a designated MAP staff person in the Program Center signs as Chief Architect. The Hub Director and MAP Coordinator should determine who in the Hub or Program Center approves the permission to occupy.

    a. Occupancy prior to the execution of Form HUD-92485 will be reported to the Hub Director by written memorandum.

    b. The inspector will also include on the Form HUD-5379, the number of units occupied prior to approval, as well as the date occupancy took place.

11. Additional duties. In addition, the inspector:

    a. Advises the Architect administering the construction contract on HUD requirements.

    b. Reviews the Architect's job log.

    c. Reviews copies of the Architect's decisions.

    d. Reports on project construction progress to the CM on Form HUD-5379.

    e. Notifies the Architect, and the contractor if an identity of interest exists between the owner and the contractor, as soon as possible if it is determined that there are any essential variations in the cost of the work installed, materials stored and the request for construction advances recommended by the Architect.

    f. Conducts interviews with an appropriate sampling of the laborers and mechanics engaged. Records interview information. Record of Employee Interview, Form HUD-11, in duplicate, in connection with wage and labor compliance in the construction of the project.

12. Construction record. From the initial construction start through final inspection, the inspector shall be responsible for maintaining a record of construction. The record should also include minutes of the pre-construction conference as well as reports of required guarantee inspections. The inspector shall initiate a record binder when the CM first assigns the project

or may elect to expand the project record binder to include inspection reports. All forms, reports, decisions and documents relevant to construction or inspection reporting shall be recorded in the binder in chronological order. The journal shall be on the left side of the binder and forms and documents on the right. The forms and documents listed below shall be included in the Construction Inspection Record Binder, when applicable.

a. Drawings and specifications: Sets 1, 2, and 3 referenced in journal though filed elsewhere. (Record the storage location of set 1 and use of 2 and 3.)

b. Off-site drawings and specifications. (Referenced in journal.)

c. Construction Contract, Form HUD-92442 or 92442A.

d. Owner-Architect Agreement.

e. Progress schedule.

f. Contractor's and/or Mortgagor's Cost Breakdown, Form HUD-2328.

g. HUD Representative's Trip Reports, Form HUD-5379.

h. Contractor's Requisition, Form HUD-92448.

i. Change Orders Form HUD-92437, AlA G710, and Architect's supplemental instruction or equivalent.

j. Letters, memoranda, notes, and worksheets.

k. Journal of Architectural Actions (if separate binder).

l. Surveyor's Report, Form HUD-92457 (final and others, if requested).

m. Permission(s) to Occupy, Form HUD-92485.

n. Record of established escrow including amounts escrowed, a complete list of unfinished construction items, record of call back inspections and recommendations for monies to be released.

13. Projects insured on completion. The inspector reports the percentage of completion of the project on Form HUD-5379 at the end of each month. This percentage is an approximation for general information and is not used for disbursement.

14. Off-site inspection. The inspector checks all off-site construction for conformity with the terms of the contract and reports progress of work by percentages on Form HUD-5379. Completion is reported on Form HUD-92464.

E. Reporting and dealing with serious construction problems. HUD Offices must identify and report to the Hub Director and the HUD Office of Quality Assurance all insured multifamily projects under construction or in the guarantee period which have serious construction defects or other serious construction related problems.

NOTE: This information will be used to reply to inquiries, as an "early warning system" to troubled projects, and to determine if assistance to the HUD Office is necessary.

1. The inspector must identify all construction problems that may delay completion or lead to foreclosure or assignment of the mortgage to HUD on Form HUD-5379, HUD Representative's Trip Report.
2. The CM must prepare a referral memorandum to the Hub Director when:
   a. Work stops for 20 calendar days.
   b. There are slow or non-payments to the general contractor and/or subcontractors.
   c. Contractor abandons the job.
   d. Contractor, owner or Architect changes during construction.
   e. Correction of any construction deficiency is not started within 30 days of the first notification to the contractor.
   f. Contractor can't or won't correct any construction defect or latent defect.
3. The referral memorandum must include full details of the construction related problem. Include at least:
   a. A copy of Form HUD-5379, which identifies the problem.
   b. The inspector's opinion of the cause and recommendation for correction.
   c. A report of action by the CM and/or other HUD Office staff.
   d. A report of actions by the owner, Architect, contractor, mortgagee and bonding company (when appropriate).
   e. A plan of action by the HUD Office if the mortgage is assigned to HUD during construction, or foreclosure is initiated by the Lender.
4. Only the initial report is required unless the Hub Director requests further action or follow-up by the HUD Office.
5. For complete instructions on handling problems before closing, see Appendix 13-D.

13.4 Architect's Duties in Administering Construction Contract

The Architect shall:

A. Provide services in accordance with the Owner-Architect Agreement.

B. Have no identity of interest with the owner or contractor. An identity of interest is defined in the HUD Amendment to the Construction Contract. (See Forms Appendix.)

C. Ensure that construction is carried out in accord with the contract documents.
   1. Restrict materials, products and equipment to those specified.

2. Restrict all deviations to those substantially consistent with the original design concept including form, color, and texture.
3. When arriving at the net amount due on every requisition, compare the cost of the work and materials with the cost to complete the project. Current and previous payment must relate to the total cost for completion.
4. Restrict substitution of items of a different design or size from those specified to those that are equivalent in utility (i.e., durability, quality, and ease of maintenance).
5. Restrict substitution of any material differing in composition or appearance from the one specified to one which is equivalent in its attributes (i.e., character, quality, durability and ease of maintenance).
6. Keep a log on the site that is readily available to the owner and HUD representatives.

D. Architect's supplemental instructions. The architect administering the construction contract may issue field orders using AIA Document G710, Architect's Supplemental Instructions, or a similar form.

1. The architect must send a copy of each supplemental instruction to HUD, though prior approval by the Lender and HUD is not required.
2. Supplemental instructions must not involve a change in contract sum or contract time.
3. Uses of supplemental instructions.
   a. Directive to contractor to bring construction into compliance with the contract documents.
   b. Interpretation or clarification of the contract drawings and specifications.
   c. Order minor changes in the work, not involving cost.
   d. Accept specified equivalent.
   e. Record other "field orders" that are not construction changes.

E. The Architect administering the construction contract is responsible for reporting in writing the results of periodic visits to the construction site. The Architect's log should provide information regarding assessment of the progress of the work and a record of the actions taken to insure that the work is being accomplished in the best interests of all the parties.

1. The American Institute of Architects (AIA) Document G711, Architect's Field Report, may be used for the log.
2. A log of each visit should show as a minimum the following:
   a. Date of inspection.
   b. HUD project identification and location.

c. Time, weather, and temperature range.

d. Estimated percent of completion.

e. Work in progress and conformance with the contractor's progress schedule.

f. Persons present at work.

g. Observations and items to verify.

h. Information or action required.

i. Firm name and signature.

13.5 Architect's Adequacy

The provision for the Architect's administration of the construction contract is covered by the Owner-Architect Agreement and by the General Conditions of the Contract for Construction, AIA Document A201. It is the responsibility of the HUD inspector to determine the adequacy of the Architect's administration. The determination of adequacy will not be based on the number of visits or the length of time spent by the Architect on the job but by construction that complies with the contract documents as a result of the Architect's observation.

A. Deficient administration. If the Architect does not report all observed noncompliances with contract documents and unacceptable performances by the contractor and exploit all avenues to obtain compliance with the contract, then the Architect's administration of the construction contract will be considered deficient. The Architect will not be responsible for actual construction, construction means, methods, techniques or other related responsibilities of the contractor. However, on the basis of on-site observation as the owner's representative, the Architect must keep the Lender, owner and HUD informed of the progress of the work and endeavor to guard the owner and HUD against defects and deficiencies in the construction.

B. Reasons for termination of services. Inadequate performance, undue delay, misrepresentation or failure to act on the part of the Architect or the Architect's associates and employees shall be reason for the termination of the Architect's services on the project and may adversely affect the firm's acceptability on future projects.

C. HUD office actions. The HUD inspector shall bring to the attention of the Architect specific areas in which services are considered deficient. Sufficient time and appropriate assistance shall be given to obtain necessary compliance.

1. When the Architect's performance is first observed as deficient, in addition to the HUD Representative's Trip Report, Form HUD-5379, the inspector shall also prepare a written memorandum to the CM of the deficiency advising of any planned actions or assistance. The memorandum should recommend that future requests for Architectural inspection fees be disallowed until performance improves to an acceptable level.

2. An immediate follow-up by the CM is always required. Conferences with the inspector and the Architect should be arranged and a target date established for the Architect to obtain compliance. The CM shall inform the Hub Director of current problems and of established target dates for corrections. Deficiencies related to misrepresentation, undisclosed identity of interest and known illegal kick-backs should be immediately referred to the HUD Office Counsel with a copy to the Hub Director. All actions by the HUD Office shall be clearly documented.

D. Request for contract termination. When compliance with the contract cannot be obtained within thirty (30) days, the Hub Director shall request termination of the Architect's contract in accordance with the provisions of the Owner-Architect Agreement. Upon termination, the Architect shall be entitled to only the prescribed portion of the fee determined by the percentage to which construction was completed on the date that the Architect was removed from the project. The Hub Director has full authority to secure acceptable performance.

E. Contract termination. The owner will hire an independent Architect who is acceptable to all parties to continue the administration of the project construction documents. The HUD inspector does not assume the Architect's responsibility.

13.6 Completion Inspections

A. Substantial completion. The Architect dates and signs the certification on Form HUD-92485, Permission to Occupy, that part or all the work is sufficiently complete, in accordance with the contract documents, and may be occupied for the use intended.

1. The contractor submits a punch list of items to be completed or corrected to the Architect when the work is ready for occupancy. (See Article 9.8, AIA Document A201.)

2. The Architect inspects, checks the punch list and modifies if necessary, and determines when the work is substantially complete. (Dwelling units containing punch list items will not be accepted for occupancy. However, punch list items in interior common areas and on the exterior do not preclude occupancy.)

3. The HUD inspector verifies on Form HUD-92485 the date when the work is suitable for occupancy.

B. Final completion inspection. The Architect and inspector make the final inspection upon written request of the contractor. (Inspection may be made individually.)

1. The Architect determines that all punch list items have been completed unless they are beyond the control of the contractor. (Items of delayed completion.)

2. The inspector prepares the final inspection report on Form HUD-5379. The inspector:

a. Reports onsite construction complete though there may be items of delayed completion.

b. Lists and describes any items of delayed completion.

c. Lists any offsite work and reports percentage of completion for each.

3. The HUD Construction Manager (CM)/Coordinator checks the final inspection report.

a. If unacceptable, requires reinspection. (Report is not considered final.)

b. If acceptable, endorses the report as follows:

(1) "Construction acceptably completed." (If there are items of delayed completion, add, "subject to escrow of funds to assure completion of listed items of delayed completion.")

(2) "All offsite sewer, water, electrical and gas facilities are complete, connected and operable, and safe, adequate, all-weather ingress and egress provided." (If offsite item incomplete, adds, "except as stated at the time of inspection.")

(3) CM dates and signs the endorsement.

c. CM prepares memorandum for the signature of the Hub Director transmitting the final inspection report.

(1) States date of final completion (date of final inspection).

(2) Lists incomplete offsite work.

(3) Lists items of delayed completion and estimate of cost of completion for each item.

NOTE: Escrow must not be less than 150 percent of the estimate to complete and must not exceed 2 percent of the mortgage. Work must be completed within 12 months of the date of the final HUD inspector's trip report.

C. Guarantee inspections. A minimum of two inspections are made of all work to discover and require correction of latent defects (defective or nonconforming work not observed during construction) within 1 year of the date of final completion.

1. The HUD CM/Coordinator schedules guarantee inspections.

a. First must be within 9 months of final completion and should provide for inspection of the entire project.

b. Others may be necessary to assure inspection of seasonal items such as heating and landscaping.

c. The last must be not later than the 10th day of the 12th month to check previously reported defects and correction, and discover any additional defects.

2. The inspector reports each guarantee inspection on Form HUD-5379.

a. If work is acceptable, state, "All observable work acceptable at the time of this inspection."

b. If unacceptable, list latent defects.

(1) Describe each item.

(2) Recommend method of correction.

(3) Estimate current cost of correction.

c. Check any item of delayed completion and list completed and uncompleted items under a separate heading.

d. Note any improper maintenance or casualty damage under a separate heading.

13.7 Insurance of Advances and Related Matters

A. General.

Insurance of advances is the process of releasing FHA insured mortgage funds and other funds necessary for the construction, acquisition, and/or refinancing of the project. The following general criteria apply to advancing such funds.

1. All escrowed funds for on-site improvements (with the possible exception of grant/loan proceeds furnished by a government agency or instrumentality) must be disbursed before mortgage proceeds.

2. The amount of construction funds approved and advanced for insurance must be consistent with construction progress reported by the HUD Field Representative.

3. Other mortgageable items must be supported with proper bills and/or receipts before funds can be approved and advanced for insurance.

4. The amount advanced for construction items must be adjusted for a 10 percent holdback.

5. The final amount approved for insurance must be supported by certified costs recognized in the cost certification review.

6. The Application for Insurance of Advance of Mortgage Proceeds is done on Form HUD-92403. It is initiated by the mortgagor. The initial and final advances are submitted by the Lender to HUD for review and approval. Interim advances are approved by the Lender, based upon HUD inspector approval of the construction amount.

   a. For the initial and final advances, the HUD Program Center Director signs Forms HUD-92403 and HUD-92448, in the following spaces:

      1) Under Authorized HUD Official for Form HUD-92403, and

      2) Under Director, Housing Development for Form HUD-92448.

   b. For the interim advances, the Lender (either the Lender's underwriter or construction loan administrator) signs Forms HUD-92403 and HUD-92448 for HUD, in the same spaces as in 6.a.1) and 2) above.

7. Supporting materials to Form HUD-92403 include supporting bills/receipts and Form HUD-92448, Contractor's Requisition, if requesting construction funds.

B. Lender's role in processing HUD-92403.

1. Completes application indicating:
   a. Amount requested by mortgagor;
   b. Approximate disbursement date;
   c. Amount to be advanced from mortgage proceeds;
   d. Amount disbursed from mortgagor's front money escrow, if any; and
   e. Total loan proceeds disbursed including current request.
2. Submits initial and final application to HUD for review and approval.
3. Processes and approves interim advances.
4. Ensures clear title before advancing the approved disbursement.
5. Notifies HUD in writing when clear title does not exist.

C. Stages of Advances.

In cases involving insurance of advances, HUD and the Lender's processing of the advance is divided into the following stages:

1. Initial advance. Refers to the first application and coincides with the initial endorsement of the credit instrument. The initial advance will be reviewed and executed by the HUD mortgage credit analyst. The Lender should submit Form HUD-92403, Application for Insurance of Advance of Mortgage Proceeds, with supporting documentation for HUD approval.
2. Interim advances. Refers to subsequent applications up to completion of the project. Interim advances will be processed and approved by the Lender. Ginnie Mae has approved this method.
3. Next to final advance. Refers to the application for the release of the final 5% of the construction holdback upon receipt of contractor's certification, and consent from mortgagor, and surety, if any.

   Note: This only applies to non-identity of interest contractors or where the contractor's identity of interest is a project ownership of less than 5 percent.
4. Final advance. Refers to the application for any remaining balance of mortgage proceeds at final endorsement. This advance takes into consideration funds necessary to set up the escrows for "Items of Delayed Completion" and "To Be Paid In Cash Items". The final advance will be processed by HUD. In addition to the Form HUD-92403, the Lender must submit a copy of Form HUD-92451 Financial Record of Mortgage Loan Transaction, which reflects releases to the various payees during the construction period.

D. Instructions for Approval of Initial/Interim Advances. These instructions can be found in Appendix 13A.

E. Contractor's Monthly Requisition and Related Matters. See Appendix 13B for instructions on completing Contractor's Requisition, Form HUD-92448, and related matters.

F. Next to Final Advance. Requested when construction is acceptably complete, even though there may be items of delayed completion.

1. It may provide for the release of the contractor's holdback provided the conditions in section 13.15.D have been met. The amount approved for release is based on the cost certification review and HUD-approved amount, and considers items of delayed completion.

2. The balance of the off-site escrow may be released provided:

   a. The off-site sewer, water, electrical and gas facilities are completely installed and connected; and safe and adequate all weather facilities for ingress and egress are provided.

   b. All other required off-site construction, if any, is completed.

   c. Otherwise, completion is to be assured by a cash deposit in an amount equal to 150 percent of the HUD estimate of the cost of such off-site construction.

G. Final Advance. The Application for Insurance of the Final Advance requests any remaining balance of mortgage proceeds. Ensure that:

1. The mortgagor's cost certification has been approved and the maximum insurable mortgage amount determined using Form HUD-92580, Maximum Insurable Mortgage. See Chapter 14.

2. Form HUD-92403 is accompanied by a completed Form HUD-92448, with required Contractor's Prevailing Wage Certificate, if the contractor's holdback has not been previously disbursed. Refer to section 13.15.D for instructions on releasing the contractor's holdback.

3. The sum to be approved for advance is the balance of the mortgage proceeds, based on the maximum insurable mortgage on Form HUD-92580. Refer to Chapter 7 for instructions relative to advance amortization adjustment, if any.

4. Set up the escrow under the provisions of Form HUD-2456, Escrow Deposit Agreement, for items of delayed completion.

5. Form HUD-92023, Request for Final Endorsement of Credit Instrument, or FHA-2453, Commitment to Insure Upon Completion, have been submitted and reviewed.

6. Set up the escrow for the mortgagor's unpaid construction costs under the provisions of Form HUD-92476.1, Escrow Agreement for Unpaid Construction Costs, Repairs or Needs Assessment Repairs. Refer to Chapter 14.

H. Keeping the mortgage in balance.

Overruns in soft cost such as interest, taxes, MIP, and insurance which results due to delays before completion of the project and which are the fault of the general contractor, i.e., poor performances, are funded from the liquidated/actual damages clause in the construction contract. This clause is not intended to penalize the contractor, but to provide a source of funds for the increased soft cost. When the interest allocation is near exhaustion, HUD should be notified immediately. The lender should ask the Architect and the HUD inspector to estimate an expected completion date, and follow the following procedure:

1. When the interest allocation is near exhaustion, ask the Architect and the HUD inspector to estimate an expected completion date.
   a. Compute the minimum liquidated damages for the period between the completion date specified in the construction contract, as adjusted by approved change orders, and the assumed completion date.
   b. When the interest allocation has been exhausted, Developer's fee if applicable, or the working capital escrow should be used to keep interest current.
   c. Transfer the computed liquidated damages amount from column I, Construction, to Column G, Carrying Charges and Financing, on Form HUD-92451.
      (1) Allocate full amount to interest, initially.
      (2) Funds may be used for MIP, taxes, or insurance payments, if requested, after the funds for these line items and nonprofit Developer's fee, if applicable, and working capital escrow are exhausted. However, funds transferred from the construction account may be used to cover only the cost of these items attributable to the period in Paragraph 1 above, specified in the construction contract and the assumed completion date.
2. Notify the mortgagor, contractor, HUD and surety, if any, by certified mail of the amount and the reason for the transfer.
3. Require written acknowledgment from HUD and surety, if any, before transferring funds.
4. The amount of transferred funds must be reflected on subsequent Forms HUD-92448 as a decrease to item 7, Sum of Cost Breakdown Items Plus Inventories of Materials.
5. After review of the cost certification documents, if the full amount of transferred funds was not needed to cover the cost of interest, MIP, taxes, and insurance attributable to the period identified, the balance will be transferred back to the construction account.
6. In processing Form HUD-92448, before releasing the general contractor's holdback, make adjustment for the lesser of actual or liquidated damages determined in the cost certification review.
7. This procedure only should be invoked only if in consultation with the Hub Director, it is determined that the problems causing the delay will be remedied within the near future.

13.8 Construction Change Orders – General

A. General instructions. Construction contract changes (change orders) to the scope of contract work, contract price or contract time must be requested by the mortgagor through the Lender on Form HUD-92437, Request For Construction Changes. Forms must be signed by the mortgagor's Architect, the mortgagor, the general contractor, and the Lender. HUD approves the change order.

1. HUD reviews and approval. Each HUD discipline as appropriate, including Architecture, Cost, Appraisal, Mortgage Credit, and the HUD inspector must review and make a recommendation to the HUD construction manager.

2. Approve change orders only when they are necessary, are a betterment, or an equivalent. The following information should appear on the face:

   a. Classification (necessity, etc.);

   b. Qualification for payment from the contingency reserve in rehabilitation projects and from the Developer's fee for nonprofit mortgagors;

   c. Whether change order results from error, omission, or negligence on the part of the Architect, contractor, or mortgagor.

3. Do not approve any change orders submitted after the final HUD Representative's Trip Report, except where:

   a. The change order pertains to "Items of Delayed Completion," or

   b. Written approval is given by Hub Director.

4. Surety Approval must be secured in writing before approving any change or aggregate of changes that increase the contract price 10 percent or more. There is no consent requirement where the project's assurance of completion is by a cash escrow or letter of credit.

B. Policy.

1. Changes must be accurately reported and accounted for pursuant to U.S. Criminal Code, Section 1010, Title 18, U.S.C.

2. Procedures for changes outlined here are not to be used to alter the intent of contract documents or to lower the quality or value of a project.

3. HUD does not initiate any change but may require them as a condition of approval in connection with a change proposed by the Architect, mortgagor, or contractor.

4. All changes must be approved in writing by the Lender and HUD before they are made.

5. Any change that is made without formal approval, even though tentatively agreed to as technically acceptable, must be recorded by the HUD inspector as a noncompliance. This stands until the Form HUD-92437, Request for Construction Changes - Project Mortgages, is approved, and also affects payment of advances.

C. Change order classification.

1. Necessary changes (HUD Representative should document the reasons) are those that arise from:
   a. Latent conditions that differ from conditions defined by the construction documents;
   b. Changes in the applicable codes, ordinances, etc. after:
      (1) Initial closing for insured advances;
      (2) Firm Commitment for insurance upon completion;
   c. The Architect's errors or omissions;
   d. Damage to completed construction.
2. Betterment changes are those that are economically justified. They must either:
   a. Increase net income;
   b. Reduce long-term project maintenance and/or operating expenses;
   c. Otherwise enhance the mortgage security.
3. Equivalent changes are those proposed because:
   a. Specified item is not readily available and the substitution provides equivalent or better utility, or
   b. Proposed substitution reduces the contract price but provides equivalent or better utility and performance.

D. Additive change orders. Do not give any explicit or implied assurance that an increase in the insured mortgage amount will be granted when approving construction changes.

1. Require the mortgagor, except for "necessary" change orders on substantial rehabilitation projects, to escrow funding with the Lender for any additive change order where HUD first estimates that the aggregated change orders equal or exceed a $5,000 increase in the construction contract price, and for all subsequent additive change orders. Nonprofit mortgagors may use the Developer's fee to fund additive change orders.
   a. Excess mortgage proceeds, if available, may be used to fund the escrow for "necessary" and "betterment" change orders. However, any excess mortgage proceeds used to fund the escrow for contractor estimated costs in excess of HUD estimated costs, or HUD estimated costs in excess of contractor estimated costs, may not be disbursed until final closing.
   b. Permit Lender to accept a third party letter of credit instead of a cash deposit, subject to the Lender agreeing to provide the cash equivalent, where the letter of credit is not immediately met.
   c. Recognize the cost of third party paid change orders at cost certification, where there are available mortgage savings.
2. On substantial rehabilitation projects, approve payment from the established contingency reserve in an amount not to exceed the HUD cost estimate for "necessary" additive change

orders. "Betterment" change orders are not eligible for payment from the contingency reserve.

a. Require an escrow for any amount that the contractor's cost estimate exceeds the HUD estimate.

b. Authorize use of excess mortgage proceeds, if available, to satisfy the escrow requirement, subject to the disbursement limitations in paragraph 13.8.D.1.a above.

3. Approve the following forms for mortgagor's application of funds for completed additive change orders:

a. Form HUD-92464, Request for Approval of Advance of Escrow Funds, where an escrow is used. Note: This form must be submitted to HUD for approval.

b. Form HUD-92403, Application for Insurance of Advance of Mortgage Proceeds, where a rehabilitation project's contingency funds or nonprofit's Developer's fee or excess mortgage proceeds are used.

E. Deductive change orders. Where the HUD estimated decrease in contract price for any aggregation of change orders:

1. Remains less than 2-1/2 percent of the contract price, reduce the Contractor's "Final" Requisition, Form HUD-92448, by the appropriate amount.

2. Equals or exceeds 2-1/2 percent of the contract price and for all subsequent deductive change orders regardless of the amount:

a. Reflect the decrease in the Contractor's Requisition, Form HUD-92448, Item (8).

b. Reduce the original mortgage amount at cost certification, where required.

F. Changes that adversely affect income are a basis for change order rejection, except where it is a necessary change order and the situation is unavoidable.

G. Extension of contract time.

1. Approve an extension only where:

a. The delay was beyond the contractor's control (e.g. strikes, differing site conditions, bad weather exceeding the average for the season, etc.) and is documented or associated with an approved change order,

b. The extension request was submitted within the limit provided by the contract and the general conditions for delays beyond the contractor's control, and submitted concurrently with any requested changes in the work, and

c. The request is accompanied by a surety's written consent. There is no consent requirement where the project's assurance of completion is by a cash escrow or letter of credit.

2. Require funding for the increased cost for overhead, interest, taxes, insurance, MIP, and contractor's general requirements by use of a cash escrow, or excess mortgage proceeds, or nonprofit's Developer's fee, if applicable, or from contingency reserve.
3. HUD enforces liquidated damages in accordance with the contract.
4. Required documentation. Within 21 days of the date a construction delay occurs, the contractor must document it with the Architect and include:
   a. Date of occurrence and number of calendar days it covered.
   b. Effect on construction progress.
   c. Cause of the delay. If the cause is of a continuing nature, submit the extension request when the cause ceases, but still record the initial date of occurrence and its effects on construction.
   d. Extension request must also include written consent of the surety and conform to AIA Document A201, Article 8.3.

H. Changes to items of delayed completion. These are the only construction contract changes that the HUD Office can approve after project completion. All others require the Hub Director's consent.

I. Emergency changes.
1. The only time a change can be made without prior written approval of the mortgagee and HUD is in emergencies that:
   a. Endanger life or property or
   b. Halt construction.
2. However, even then, the Architect must notify the Lender and HUD and, as soon as possible, submit a Form HUD-92437.

J. Insurance upon completion: Construction Contract Changes, Form HUD-92437, are processed in the same way as Insurance of Advance cases, except as modified:
1. An escrow is not required for additive change orders. The mortgagor:
   a. Must be able to provide the additional funds required and
   b. Must not have any outstanding obligation in connection with construction other than the insured mortgage at the time the mortgage is presented to HUD for insurance upon completion.
2. Surety approval is not required for the approval of additive change orders regardless of the percentage of contract increase.

K. Changes to offsite construction must be requested by letter or other acceptable format. Form HUD-92437 may be used as a general guide, but the actual form must not be used.

L. Other changes. These changes necessitated by error, omission, or negligence of Architect, owner, or contractor must be so recorded by HUD architectural staff or inspector, on Form HUD-92437.

1. Record the reason for the determination.
2. Indicate that the cost effect must not be included in the mortgage amount.

13.9 Change Orders – HUD Inspector Instructions

A. General procedure. (For specific situations, see the appropriate subject heading.)

NOTE: For projects involving insurance upon completion, references here to "contract requirements" or "contract documents" include the conditions and provisions of the commitment if there is no construction contract.

1. Contemplated changes are first discussed among the Architect, contractor, owner, and HUD inspector.
2. HUD inspector makes a preliminary determination of technical acceptability before the change is submitted for approval of the Lender and the HUD Office. (This neither commits HUD to the change, nor relieves the Architect or the contractor of having to submit the Form described below.)
3. All onsite changes to construction documents and requests for time extensions must be submitted for approval on Form HUD-92437, Request for Construction Changes - Project Mortgages.
   a. Required attachments for physical changes are:
      (1) Appropriate modifications to the contract drawings and specifications;
      (2) Architect's statement that the change:
         (a) Conforms to the original intent of the contract drawings and specifications; or
         (b) Is necessary to overcome an impediment to construction, or is an addition desired by the owner.
      (3) Backup documentation for amount(s) requested consisting of itemized quantities and costs.
   b. The form must be signed by:
      (1) mortgagor,
      (2) contractor,
      (3) Architect (if an Owner-Architect Agreement is in effect), and
      (4) authorized official for the Lender.
4. All offsite changes must be:

a. Requested in a letter or other format acceptable to the field office, but not Form HUD-92437.

b. Documented and processed the same as on-site changes.

5. The HUD office must promptly review all requests submitted. (Delays could affect construction or contractor requisitions.)

   a. Processing should normally take no more than 5 workdays and is directed by the Construction Manager.

   b. All construction change requests must be reviewed, signed, and dated by the Construction Manager.

6. Voiding changes. If an approved change is not made, it must be nullified by a Form HUD-92437 restoring the drawings and specifications to the status prior to the change request or to a status acceptable to HUD.

7. Unapproved changes. When there are unapproved changes in the construction, the HUD inspector must modify the amount of the contractor's requisition to cover:

   a. The non-compliance (any change that has not formally been approved on Form HUD-92437) and

   b. Construction removal that may be required if the unapproved change does not receive approval.

13.10 Change Orders – HUD Architectural and Cost Instructions

A. Architectural. Review all requested changes for technical acceptability.

B. Cost.

1. Construction changes:

   a. The HUD cost estimator will produce a cost estimate for each construction change request submitted by the mortgagor. Apply current data to accepted or amended change order quantities. Include amounts for general requirements and builder's overhead and profit using the percentage of each from Section G of Form HUD-92264 at Firm review.

   b. Compare estimate with mortgagor's estimate. If reasonable, use mortgagor's figure, otherwise use HUD estimate.

   c. Complete cost entries on Form HUD-92437 and forward completed form to HUD mortgage credit examiner and/or the appraiser, if applicable.

2. Approved time extensions:

   a. Calculate additional general requirements cost due to extension of time.

      (1) Divide cost of general requirements from contractor's approved Form HUD-2328 by the number of months estimated for construction from Section G of Form

HUD-92264 at Firm commitment. Sixty-five percent of this amount is the estimate per month of additional general requirements.

(2) Use one quarter of the monthly estimate per week.

(3) There is no cost effect for extensions of time for less than one week.

b. Complete cost entries on Form HUD-92437 and forward completed form to HUD appraiser and mortgage credit examiner.

13.11 Change Orders – Appraisal and Mortgage Credit Instructions

A. Appraisal.

1. The HUD appraisal staff must review all requested changes that may effect marketability, value, income, or maintenance or operating cost; and to identify and explain any estimated increase or decrease in net project income on the reverse of Form HUD-92437.

2. The appraiser must forward a Trial Form HUD-92264 and Trial Form HUD-92264-A reflecting the new data for Mortgage Credit redetermination of the maximum insurable mortgage.

B. Mortgage credit.

1. Processing.

a. If the mortgagor's or contractor's estimate for the change order exceeds HUD's estimate, the difference must be escrowed with the Lender. Excess mortgage proceeds, if available, may be used to satisfy this requirement. Conversely, that portion of HUD's estimate which exceeds the mortgagor's or contractor's estimate must be restricted and held until final endorsement to ensure funds to complete the project.

b. Process the cost and appraisal findings and show the cumulative effect on cost of all approved change items.

c. Use paragraphs 13.8.D and 13.8.E for additive and deductive change orders.

d. Recalculate the maximum insurable mortgage when any approved construction change or changes adversely affect net income, e.g., a change that causes an increase in operating costs.

(1) Appraisal completes a Trial Form HUD-92264 with an updated income and expense analysis.

(2) Re-determine the maximum insurable mortgage.

(3) If the re-determined mortgage is lower than the original mortgage amount, as a condition of approval of the change order, indicate in item 3b of Form HUD-

92437 that subsequent Contractor's Requisitions, Form HUD-92448, must be reduced by the greater of:

(a) The difference in mortgage amounts;

(b) The net increase in costs resulting from acceptable construction changes.

e. Extensions of time.

(1) Architectural and cost technicians are responsible for determining whether the delay was beyond the contractor's control and, if so, the length of the approved time extension.

(2) Calculate the cost increase due to the extension:

(a) Compute daily rate for interest, taxes and insurance by using estimates in Section G of Form HUD-92264 and multiply these rates by the approved time extension.

(b) An additional year of MIP will be required if the approved time extension, when added to the estimated construction term plus the 2 months included in Section G of Form HUD-92264 plus previously approved time extensions, will require an additional MIP payment during the construction period.

(c) Add the additional general requirements, if any, noted by the Cost branch on the change order request.

NOTE: Only Item (c) above amends the construction contract price on Form HUD-92437.

(3) Determine the source of funds for any increase due to the extension, i.e., cash, excess mortgage proceeds or nonprofit's Developer's fee, or contingency reserve funds.

(4) Requests for release of excess mortgage proceeds or contingency reserve funds set aside to fund time extensions are submitted on Form HUD-92403.

(5) Releases from a cash deposit are made using Form HUD-92464.

(6) These funds may be released only after the account for the soft cost item(s) being requested has been exhausted on Form HUD-92451, Financial Record of Mortgage Loan Transaction.

2. Requests for disbursement of contingency reserve funds and nonprofit's Developer's fee for completed change order items are made on Form HUD-92403. All requests:

a. Must be accompanied by a certification by the mortgagor's supervisory Architect and the HUD Inspector that all the work covered by the change order has been acceptably completed in accordance with contract documents.

b. Must include the mortgagor/borrower's certification relative to payment to the contractor contained on Form HUD-92464, Request for Approval of Advance of Escrow Funds.

c. Must include the criminal certification contained on Form HUD-92464 for certifications made in paragraphs a and b above.

d. Are subject to a 10 percent holdback.

3. Change orders funded from excess mortgage proceeds. Excess mortgage proceeds may be used to fund either necessary or betterment change orders.

   a. These funds may be used to fund HUD's estimate of increased costs as well as any portion of the contractor's estimate which exceeds the HUD estimate. The portion which exceeds HUD's estimate must be restricted until final endorsement.

   b. Funds are released in the same manner as contingency reserve funds.

4. Releasing Cash Deposit. The mortgagor submits through the Lender Form HUD-92464 when construction covered by a cash deposit is complete and acceptable to HUD.

   a. The mortgagor's supervisory Architect and the HUD inspector must certify on Form HUD-92464 that all work and materials covered by the change order are satisfactory and consistent with contract drawings.

   b. If construction costs were paid in full with other than the cash escrow or excess mortgage proceeds before submitting the disbursement request to HUD for approval, the mortgagor must submit a receipt of payment signed by the general contractor.

   c. If construction costs will be paid after HUD's approval for the release of the funds deposited for the construction change, before the next Form HUD-92403 is submitted, the mortgagor must submit a receipt of payment signed by the general contractor.

5. Change Order Summary Sheet_showing cumulative cost of all executed change orders should contain, at least:

   a. The date the change order was signed by the mortgagor;

   b. The date HUD received the change order;

   c. The date the Mortgage Credit branch processed the change order;

   d. The mortgagor's or contractor's estimate of cost for the change order;

   e. HUD's estimate of cost for the change order;

   f. The amount of change orders to be funded from contingency reserve, nonprofit's Developer's fee, or excess mortgage proceeds;

   g. The required cash escrow deposit, if any;

h. The HUD percentage of cost increase or decrease.

13.12 Labor and Fair Housing and Equal Opportunity (FHEO)

A. Wages

1. Payrolls. Contractor payrolls are submitted directly to the HUD Labor Relations staff a minimum of once a month.
2. On-site interviews. The HUD Construction Manager forwards all original copies of Form HUD-11, Record of Employee Interview, which are submitted by the HUD inspector, to the HUD Labor Relations Staff.

B. Labor violations. Advise the Labor Relations Staff of continuing minor infractions that cannot be resolved or of any identified or suspected major violations.

C. FHEO violations. Advise the HUD Director of FHEO of continuing minor violations that cannot be resolved or of any identified or suspected major violations.

13.13 Surveys

Surveys must be by a licensed surveyor and show the exact location of on-site improvements, including utility lines and easements.

A. The contractor must give the owner and HUD surveys:

1. At any time the owner or HUD requires, and
2. When construction is complete.("as-built" survey)

B. The inspector, when uncertain of the location of construction or stored materials in relation to property lines or easements, may ask the Architect to require a survey with the next contractor's requisition.

C. If encroachments are found, the inspector must notify the HUD Construction Manager by memorandum explaining the conditions. (Encroachments may jeopardize the entire property as security for an insured mortgage.)

13.14 Permission to Occupy

Permission to Occupy, Form HUD-92485, must be executed by HUD before the mortgagor permits occupancy of any dwelling unit, care facility unit, or other project service facility.

A. Physical completion. The Work or portion thereof for which a Permission to Occupy is approved must be sufficiently completed in accordance with the contract documents so the mortgagor can occupy or utilize the identified portion of the work for its intended use.

1. Support facilities (utilities, disability access, vehicular access and parking, fire life-safety equipment, etc.) must be in place.

2. Acceptability of each unit and facility for which a Permission to Occupy is requested must be established:

   a. Property must be inspected and Form HUD-92485 signed by the mortgagor, supervisory Architect, contractor, and HUD Representative.

   b. Minor items that do not preclude occupancy are permitted but must be listed as an attachment to Form HUD-92485.

   b. The contractor is fully responsible for any incomplete or improperly performed contract work whether or not listed.

B. Signatures, Approval, and Permission:

1. Form HUD-92485 is signed by the mortgagor, supervisory Architect, contractor, and HUD representative.

2. Approval: The Construction Coordinator or a designated MAP staff person in the Program Center signs as Chief, Architecture and Engineering Section. The MAP Team Leader signs as Chief Underwriter.

3. Permission to Occupy: The Hub Director and MAP Coordinator will designate an FHA Authorized Agent in the Hub or Program Center to sign the Permission to Occupy.

C. Submission Documents. The Lender must sign Form HUD-92485 agreeing with the request and stating that insurance risks have been covered for the project. The mortgagor must include the following documents with the completed Form HUD-92485:

1. A Certificate of Occupancy or equivalent permit from the governing municipal authority for all units and facilities listed on the Permission to Occupy; and any other required permits or authorizations;

2. A certificate of property insurance form the mortgagor's insurance company.

D. Partial Occupancy Approval.

1. Favorably consider partial occupancy of units as they become available, where vandalism could be minimized, needed project income is provided, an earlier rent-up date could be achieved, utility costs for occupied units can be metered separately from contractor’s utilities, etc.

2. Approve a series of Permissions to Occupy as units or facilities become available, e.g. individual buildings on multi-building projects, or individual floors or wings on larger buildings.
3. Approve a single Permission to Occupy for all units where dictated by management considerations, e.g. very small projects.

13.15 Escrowed Funds, Letters of Credit, Deposits, Holdbacks and Related Matters

A. Mortgagor's Application for Escrowed Funds.

Form HUD-92464, Request for Approval of Advance of Escrow Funds, must be used where the escrow is to ensure completion of offsite improvements, additive change orders, noncritical repairs (under the Section 223(f) program), or mortgagor's unpaid construction items at final endorsement.

1. The mortgagor initiates and forwards Form HUD-92464 to the Lender for its review.
2. Require the HUD inspector to reflect the percentage of acceptably completed escrow work on the HUD Representative's Trip Report, Form HUD-5379, and forward a copy after review to the Lender for use in reviewing Form HUD-92464.
3. Do not authorize advances in excess of the documented percentage completed, less previous payments and a 10 percent retainage.
4. Where excess mortgage proceeds are used to fund an escrow for completion of offsite improvements, additive change orders, or mortgagor's unpaid construction items, return the original copy of Form HUD-92464 to the depositor, and retain one copy.

B. Release of letters of credit. In the event of a claim:

1. Assignment. HUD will not accept an assignment of the letter of credit to HUD from the Lender.
2. Undrawn Balance. HUD will treat any undrawn balance from a letter of credit or escrow agreement as cash held by the Lender.
3. Cash equivalent. The Lender is required to provide cash equal to the undrawn balance, if demand on a letter of credit is not met.

C. Working Capital Deposit is established with the Lender at initial closing. It may be funded by cash, letter of credit or excess mortgage proceeds, if any.

1. Purpose. The deposit is used to:
   a. Defray cost of initial marketing and rent-up. This includes: sales and advertising, model furnishing, and equipment and supplies essential to initial rent-up, etc.

b. Set up accruals for items due during the first operating year that project income is not expected to cover, including real estate taxes, permanent property insurance premiums, mortgage insurance premium, ground rents and assessments.

c. Cover shortfalls in interest, taxes, property insurance premiums, mortgage insurance premiums, ground rents and assessments during construction after funds available under the Building Loan Agreement are exhausted.

c. May be allocated to the reserves for replacement for a project with low income housing tax credits, where acceptable to the mortgagor and HUD.

2. Control and Release Of Escrow. The Lender controls disbursements from the escrow, except where the mortgagor certifies at firm commitment that any balance of the escrow will be applied to the reserve for replacements on a Low Income Housing Tax Credit (LIHTC) project. In reviewing a mortgagor's request for release of part of the escrow, consider the following:

   a. Mortgagor's request for the release of such escrow funds must be by letter to the Lender, rather than on Form HUD-92403.

   b. None of the escrow can be used to defray any of the hard costs of construction applicable to the Total for All Improvements, Section G of Form HUD-92264, Rental Housing Project Income Analysis and Appraisal (or other Firm Stage underwriting form applicable to the Section of Act the project is to be insured under).

   c. Avoid premature disbursements and unnecessary expenditures.

   d. As portions of a project are ready for occupancy, a partial disbursement may be permitted for reasonable opening expenses: however, it must be determined that the escrow is not exhausted before the entire project is complete.

   e. An unsolicited recommendation may be offered by the Field Office that the deposit be used to cover any shortfall in interest, taxes, property insurance mortgage insurance premiums, ground rent and assessments.

   f. Fully document all expenditures from the escrow.

3. Final Release of Escrow.

   a. The Lender may release any balance of the working capital escrow to the mortgagor one year after substantial completion where the project is not in default.

   b. The Lender is advised to hold this escrow until any financial problems are resolved (e.g., has not reached sustaining occupancy, has poor liquidity or high payables, is operating at a deficit or is near default).

   c. If the project mortgage is in default, the Lender should use any balance of the working capital escrow to cure a default, where a default occurs before its release.

D. Release of contractor's 10 percent holdback. The holdback provides an incentive for the general contractor and mortgagor to: promptly complete the project, submit cost certification and reach final closing.

1. Amount of holdback. The Building Loan Agreement requires the Lender to retain at least 10 percent of the construction proceeds from each advance. The construction contract also provides for 10 percent holdback from the contractor's monthly payments for acceptably completed work, acceptably stored materials, and where applicable, components acceptably stored offsite.

2. Identity of interest contractor. Except as provided in paragraphs 4. and 5. below, do not release any part of the holdback until final closing for a contractor with an identity of interest.

3. Nonidentity of interest contractor. Release the contractor's holdback or remaining balance at the next to last advance, where requisitioned on Form HUD 92403, Application for Insurance of Advance of Mortgage Proceeds, and subject to compliance with the following:

   a. Contractor's cost certification, where required, has been reviewed and necessary adjustments made to Form HUD-92451, Financial Record and Mortgage Loan Transaction;

   b. Contractor has disclosed its final obligations on Form HUD-92023, Request for Final Endorsement of the Credit Instrument;

   c. All work under the construction contract has been inspected and approved by the controlling jurisdictions and/or authorities;

   d. Certificates of occupancy or other required approvals for the dwelling units, and non-dwelling facilities, where applicable, have been issued by governmental authorities having jurisdiction. Separate buildings for community rooms, rental offices, laundry rooms, etc., commonly require certificates of occupancy;

   e. Permission To Occupy, Form FHA-2485 has been issued by HUD for all units;

   f. All Davis-Bacon payroll requirements have been satisfied;

   g. Surveyor's Certificate, Form HUD-92457, and survey showing the location of all improvements, utility easements and site utility distribution lines have been submitted to HUD, and

   h. Retain, where applicable, an adequate amount for the following:

      (1) Items of delayed completion in an amount equal to 150 percent of the HUD representative's cost estimate for completion,

      (2) Any owed or contested amounts indicated by mechanics, subcontractor, supplier, or equipment lessor liens, etc.,

      (3) Lesser of the liquidated damages or actual damages computed at cost certification, and

      (4) Net effect of negative change orders.

4. Early partial release of holdback.

   a. After 90 percent contract completion, the Hub Director may release part of the contractor's holdback and suspend further withholding of holdback from payments due, where:

      (1) The contractor has no identity of interest or the contractor's only identity of interest is a project ownership of less than 5 percent;

      (2) The contractor, mortgagor and mortgagee request the early release of the holdback and attach the request to Form HUD 92403, Application for Insurance of Advance of Mortgage Proceeds; and

      (3) Prior written consent from surety, if any, for the early release of holdback is provided with the request.

   b. The Hub Director determines that:

      (1) The contractor's general performance warrants partial release of the holdback without conditions, or

      (2) Partial release of the holdback with conditions, e.g., measures to assure immediate distributions to subcontractors or others, would be in the mutual interest of all participants, and

   c. The undisbursed holdback must equal or exceed 5 percent of the contract amount.

5. Projects in difficulty. Release of part of the contractor's holdback before 90 percent contract completion may be granted only to prevent a default of the construction loan and only if it would solve the project's problems and enable it to reach construction completion.

   a. Consider the contractor's performance including:

      (1) The completed work must be satisfactory,

      (2) The percentage of completed contract work must be sufficient to ensure project completion within the specified contract time, and

      (3) Do not release any holdback if there are serious, unresolved questions concerning:

         (a) Quality of work,

         (b) Compliance with the contract, including outstanding change orders, or

         (c) Work is progressing behind the contractor's construction schedule, as amended by approved change orders.

   b. Require a written consent for the early release of holdback from the surety, if any, the mortgagor, and mortgagee.

13.16 Insurance on Completion

A. Basic requirements during construction stage are generally the same as for projects with insured advances. However, because HUD does not insure advances for the construction loan, HUD does not monitor the Lender's disbursements. Additionally, because HUD has no risk exposure until final closing, HUD does not become involved in the workout of construction problems. The following are major variations for insurance upon completion projects.

B. Firm Commitment to Insure upon Completion, Forms FHA-2453, FHA-2453-MM (for Section 223(f)), and HUD-92453-NH (for Section 232), must be valid and outstanding until project closing, i.e. endorsement of the permanent mortgage.

   1. No initial closing. Construction stage starts with the issuance of the Firm Commitment.
   2. Construction/rehabilitation must start within the period provided by the Firm Commitment.
   3. Extensions. See Chapter 11 for the extension of:
      a. Construction period;
      b. Firm Commitment expiration date, where required to permit project completion and final closing.

C. Required documents include:

   1. Construction contract, Form HUD-92442 or HUD-92442-A. The following must be made a part of the contract:
      a. General Conditions, AIA Document A201;
      b. Supplementary General Conditions, Form HUD-2554;
      c. Davis-Bacon Wage Rates (supplied by HUD Labor Relations);
      d. HUD Amendment to the Construction Contract to Identify Identities of Interest Between Owner/Contractor/Subcontractor/Architect;
      e. Cost certification criteria from Form HUD-92442-A, Article 10, where an identity of interest exists, or a "cost plus" form of contract is used.
   2. A complete master set of drawings and specifications and two duplicate sets;
   3. The Agreement and Certification, Form HUD-3306, executed by the mortgagor, Lender, and HUD.
   4. A title policy or title evidence showing:
      a. Insured property free of all encumbrances other than the mortgage and acceptable reservations of title;
      b. Proof that no unpaid obligations exist except as previously approved by HUD;
      c. Title policy continued to date of credit instrument endorsement.

5. Survey and Surveyer's Certificate, Form HUD-92457;
6. Contractor's Requisition Project Mortgages, Form HUD-92448. The Contractor's Prevailing Wage Certificate must be submitted at the time the mortgage is presented to HUD for insurance.
7. Assurance of funds to meet operating deficit. Completed Forms to assure funds are available to carry the project to a sustaining occupancy after final closing:
   a. FHA-2476, Agreement of Sponsors to Furnish Additional Funds,
   b. FHA-2476-A, Escrow Agreement, and
   c. FHA-2477, Bond Guaranteeing Sponsor's Performance.
8. Assurance of completion: Not applicable to insurance upon completion projects.
9. Warrantee against latent defects is required in accordance with Paragraph 13.16.S below.

D. The pre-construction conference must precede the initial start of construction. See Paragraph 13.2.

E. Construction monitoring and reporting must be done in accordance with Paragraph 13.3.

F. Labor and FHEO liaison. See Paragraph 13.12.

G. Contractor's monthly requisitions are not applicable to projects insured upon completion.

H. Offsite construction:
   1. Monitoring is recorded by the HUD inspector on Form HUD-5379.
   2. Advance of funds monitoring is not applicable to projects insured upon completion.

I. Construction contract changes and Architect's supplemental instructions. See Sections 13.8 to 13.11 and 13.4.D. Construction changes are processed in the same manner as insurance of advances, except as modified below:
   1. An escrow is not required for additive change orders, because HUD has no risk exposure until final closing. The mortgagor must be able to provide the additional funds required and must not have any outstanding obligation in connection with construction other than the insured mortgage at the time the mortgage is presented for insurance.
   2. Surety approval is not required for the approval of additive change orders regardless of the percentage of contract increase.

J. Permission to Occupy applies as in Paragraph 13.14.

K. Final HUD representative's Trip Report falls under HUD procedures.

L. Guarantee period falls under HUD procedures.

M. Working capital deposit is not required for insurance upon completion projects.

N. Property insurance schedule and requirements. When onsite construction is 80 percent complete (before endorsement of the credit instrument), the Lender must prepare:

1. Property Insurance Schedule, Form HUD-92329, that:

   a. Correctly shows the insurable value of the completed structures;

   b. Reflects any changes in cost occurring after issuance of firm commitment.

2. Property Insurance Requirements, Form HUD-92447.

O. MIP is not charged until the project reaches final closing.

P. Cost certification. See Chapter 14.

Q. Closing must occur within the period provided in the commitment.

R. Extension of Firm Commitment instructions are in Chapter 11.

S. Builder's warranty. The general contractor must provide one of the following at final closing to assure correction of any latent defects:

1. Cash escrow deposit of 2½ percent of the principal amount of the mortgage, to be retained in escrow by the Lender for a period of 15 months, or

2. Surety bond in the amount of 10 percent of the cost of construction or substantial rehabilitation. The bond must run for 2 years after substantial project completion. The bond must be on Form HUD-3259, Surety Bond Against Defects Due to Defective Materials and/or Workmanship.

13.17 Completion of Repairs Pursuant to Section 223(f)

A. Required Repairs are documented by the Lender. (See Paragraph 5.26 and Appendix 5M). A list is prepared which categorizes repairs into critical repairs and non-critical repairs.

1. Critical repairs must be completed before closing. Critical repairs are any individual or combination of repairs required to correct conditions that:

   a. Endanger the safety or well-being of residents, patients, visitors or passers-by;

   b. Endanger the physical security of the property;

   c. Adversely affect project or unit(s) ingress or egress;

   d. Prevent the project from reaching sustaining occupancy.

2. Non-critical Repairs consist of all repairs other than Critical Repairs. Non-critical Repairs may, at the request of the mortgagor, be completed after closing.

3. Completion of repairs.

   a. Completion of repairs before closing. Require a site visit(s) and report(s) by a HUD representative to confirm satisfactory completion of required repairs before going to closing.

   b. Completion of repairs after closing. Only non-critical repairs may be completed after closing. The following schedules are required:

      (1) Schedule of Values for payment of completed repairs;

      (2) Progress Schedule. All repairs must be completed within 12 months of loan closing;

      (3) Schedule of Delayed or Interrupted Occupancy or Income, must list:

         (a) All facilities for which occupancy or income will be delayed or interrupted by repairs delayed until after closing;

         (b) Period of delayed or interrupted occupancy or income;

         (c) Projected completion date for each facility having delayed or interrupted occupancy or income.

4. Payment for Repairs.

   a. Repairs completed before closing: No mortgage proceeds may be advanced.

   b. Repairs completed after closing:

      (1) A repair escrow account must be established. See Paragraph 5.26.C.2

      (2) The Schedule of Values for completed repairs will be provided to the HUD inspector, who will recommend progress payments from this Schedule as a part of the Trip Report, Form HUD-5379.

B. Inspection of completed repairs is performed by the HUD inspector.

1. Inspection Reports are filed on Form HUD-5379, HUD Representative's Trip Report, for each monitoring visit. The following are included in the Trip Report:

   a. Non-compliance with provisions of the commitment or closing, e.g. work write-up, drawings, specifications, etc., including changes made to the work without prior approval;

   b. Adverse conditions, e.g. slow work completion, destruction of work, new municipal requirements, disputes, etc.;

   c. Availability for use of facilities listed on the schedule of delayed or interrupted occupancy.

d. Municipal authorizations. Permissions to occupy, use permits, etc. Where applicable, these must be issued before closing, unless related to work delayed until after closing;

e. Items of delayed completion. The HUD inspector must include:

(1) A detailed list of any exterior work;

(2) Recommended escrow amount;

(3) Recommended completion date (not later than 12 months after closing);

2. Assignment documents. The HUD inspector should assemble the following documents to monitor repairs and recommend payments:

a. Firm Commitment;

b. Escrow agreement (where closing has occurred);

c. Survey, surveyor's report and legal description;

d. List of required repairs (work write-up);

e. Drawings and specifications (where required);

f. Schedule of Values (Required only for projects with repairs delayed after closing);

g. Progress schedule (Required only for projects with repairs delayed after closing);

h. Schedule of delayed or interrupted occupancy or income (Required only for projects with repairs delayed after closing);

i. Agreement and Certification.

C. Repair completion. All work must be acceptably completed before the loan closing, except for the following:

1. Minor exterior work, which cannot be completed because of weather conditions, may be completed after closing, on projects for which prior provisions were not made for completion of non-critical work after closing. Include amount(s) to be escrowed.

2. Non-critical repairs may be completed after closing when the commitment provides for it and a completion escrow is established at closing, except that:

a. All critical repairs must be completed before closing, and

b. An additional deposit must be made to the operating deficit account for all facilities for which delayed repairs will delay or interrupt occupancy or income for any period.

3. Repair monitoring. All work must be monitored and accepted whether it is performed before or after closing.

D. Final report must be made upon completion of all work. The final report must show that:

1. All work is acceptably completed in accordance with the firm commitment and/or closing escrow, as applicable, and approved changes;

2. Offsite work is completed or that the municipality has given written assurance for its completion;
3. Utilities are connected;
4. Permanent ingress and egress facilities are provided, and
5. Applicable municipal inspections, approvals, etc., have been issued.

E. Changes in the work, including associated cost changes, must be submitted by letter or other acceptable format. Form HUD-92437 may be used as a general guide, but the actual form must not be used.

1. Mortgagor, HUD and Lender must sign all changes;
2. Contractor and mortgagor's Architect, if employed, must sign all changes.

F. Guarantee inspections. Where the owner uses a contractor, rather than its own staff, to carry out repairs, guarantee inspections will be scheduled to discover and require correction of latent defects within 1 year of the date of final completion of all repairs. See Section 13.6.C.

13.18 Construction Variations Pursuant to Section 232

A. General.

1. For new construction and substantial rehabilitation, follow instructions for Section 221d and 220, with additions and modifications as indicated below.
2. For Section 232 projects pursuant to Section 223(f), follow instructions for Section 223(f), with additions and modifications as indicated below.

B. Major Movable Equipment.

1. The mortgagor prepares Form HUD-92403, Application for Insurance of Advance of mortgage proceeds. Mortgagor:
   a. Submits the form monthly to the Lender;
   b. Lists all Major Movable Equipment purchased and installed within the past month on the form;
   c. Includes all invoices for equipment purchased.
2. The Lender forwards the Mortgagor's Form HUD-92403 package, along with a copy of the Schedule of Major Movable Equipment, to the HUD inspector at the job site.
3. Changes to the Major Movable Equipment (MME) Schedule during construction:
   a. Lender requires the mortgagor to submit a revision of the itemized MME list. The revised MME list should itemize which specific MME items are being replaced, and

contain a complete description and cost of the MME items that have been chosen as replacements.

b. The mortgagor presents the revised MME list to the Lender for review. The Lender reviews the revised MME list and certifies that the replacement MME items are of equal quality and will perform the intended function of the MME items being replaced. Lender forwards a copy of the revised MME list and certification to the HUD Construction Coordinator.

c. The Lender forwards the Mortgagor's Form HUD-92403 package, along with a copy of the revised Schedule of Major Movable Equipment, to the HUD inspector at the job site.

C. Inspection of Major Movable Equipment.

The HUD inspector:

1. Confirms delivery and installation of Major Movable Equipment and the invoice amounts;

2. Will only approve payment for equipment actually delivered and installed, and may change the listed equipment and requested amount on Form HUD-92403 accordingly, to agree with actual delivery and installation;

3. Initials Form HUD-92403 and returns the Form to the Lender for release of mortgage proceeds.

1. For changes to the Major Movable Equipment (MME) Schedule during construction the HUD inspector:

a. Confirms delivery and installation of revised items of MME and the invoice amounts;

d. Approves payment from the Reserve for MME. If the revised MME item costs more than the item being replaced, the price differential may be paid from the Working Capital Deposit.

Chapter 14

Cost Certification

14.1 Projects that Must Certify

Cost certification is required by the National Housing Act and Regulations for all insured multifamily projects processed by MAP Lenders except for rental projects insured under: Section 207/223(f) refinances where the mortgage is 80 percent or less of value.

14.2 Purpose for Certification

The purpose for certification is to establish the mortgagor's actual costs, including contractor's cost, to establish the "maximum insurable mortgage" for final endorsement of the insured mortgage.

14.3 Certifiable Costs

Certifiable costs are those costs that have been paid in cash or will be paid in cash within 45 days of final closing, except

A. Land Value which will be calculated by HUD,

B. General Overhead which is certifiable whether or not paid in cash, and

C. BSPRA which is cost certifiable whether or not paid in cash, where there is an identity of interest between the mortgagor and contractor.

D. Non-profit Developer's Fee which is cost certifiable whether or not paid in cash, less amounts certified to and allowed on other line items.

14.4 Types of Cost Certification

A. Standard or "Long Form" Certification is required, except for projects permitted to use the "simplified" cost certification, and for certification of projects insured under Section 207 or Section 232 pursuant to Section 223(f).

B. Simplified Certification is restricted to projects involving 40 or less units of proposed construction or substantial rehabilitation. Simplified Certification is used for Sections 207/223(f) and 232/223(f), regardless of size.

C. Section 223(f) Certification is required for all projects insured under Section 207 or Section 232 pursuant to Section 223(f), except that certification is not required for Section 207/223(f) transactions, where the mortgage is 80 percent or less of value.

D. Section 223(f) Supplemental Certification is required for projects identified in paragraph C above, where completion of repairs is permitted after closing

14.5 Entities That Must Cost Certify

A. Mortgagor must certify for all projects, except 207/223(f) refinances where the insured mortgage is 80 percent or less of value.

B. Contractor must cost certify where:

1. The Contractor has an identity of interest with the mortgagor, whether such identity of interest existed before the initial closing (for insured advances projects) or issuance of the Firm Commitment (for insurance upon completion projects), or the identity of interest developed after those dates; and/or

2. The contractor used the Construction Contract-Cost Plus, Form HUD-92442A, whether or not any identity of interest with the mortgagor existed or came into being.

C. Subcontractor at any tier, equipment lessor, material supplier, and manufacturer of industrialized housing must cost certify where:

1. The total of all subcontracts, purchases and leases is more than .5 percent of the mortgage, and

2. An identity of interest exists or comes into being between such subcontractor, equipment lessor, material supplier, or manufacturer of industrialized housing and either:

   a. The mortgagor, or

   b. The contractor, where the contractor must cost certify.

14.6 Sequence of Events

A. Notification of Pre-Cost Certification Conference. HUD must notify the mortgagee, mortgagor, and contractor when the project is 80 percent complete. HUD should notify new sponsors and general contractors earlier than 80 percent completion. The letter should state that:

1. The conference should be attended by the mortgagor, general contractor, their accountants, and the mortgagee.

2. Enclose with the letter the 800 number or the Internet address for:

   a. Handbook IG 2000.4, Consolidated Audit Guide for HUD Programs.

   b. Four copies of each of the applicable forms:

      (1) Form HUD-92330, Mortgagor's Certificate of Actual Cost.

      (2) Form HUD-92330A, Contractor's Certificate of Actual Cost, if applicable.

B. Conduct of Conference is the responsibility of the assigned HUD Staff and should be held before the project is 90 percent complete. At the conference HUD staff will explain:

1. Final completion, administrative completion, and cut off dates.

2. Documentation required for cost certification including the income statement and balance sheet.

3. Remind the mortgagor and accountant that they are responsible for computing the liquidated damages/actual damages and incentive portions, if applicable, of the construction contract using the certified amounts on HUD-92330.

4. Necessity for a careful review and completeness of the documentation including dates and signatures, and timeliness of the submission, HUD review, and final endorsement.

5. Any problems with prevailing wage certifications or other labor issues.

C. Cut-off date established for computation of the cost certification.

D. Submission and HUD approval of the cost certification must occur before final closing, except that the Section 223(f) supplemental cost certification is not required until completion of non-critical repairs deferred until after closing.

E. Upon completion of the project, Form HUD-92464, Request for Approval of Advance of Escrow Funds should be prepared by the Lender and submitted to HUD for approval. The Lender does not approve (sign) this form on behalf of the Department.

14.7 Final Completion Date/Cut Off Date

A. Final completion date for determining actual costs is the date the HUD inspector signs the final HUD Representative's Trip Report, Form HUD-95379, provided that the trip report is subsequently endorsed by the Construction Manager. Construction must be complete, except for acceptable items of delayed completion. The mortgagor, general contractor, and mortgagee will be notified in writing of the final completion date.

   1. The final completion date is the effective date for cost certification. However, the mortgagor has the option to include in the cost certification all soft costs incurred up to 60 days beyond this date. The date selected by the mortgagor is the "cut-off date" for the soft costs.

   2. The mortgagor's balance sheet and operating statement date must agree with the selected cut-off date.

14.8 Administrative Completion Date

The Hub Director may advance the completion date to prevent unnecessary accumulation of soft costs. This is done when projects nearly completed, face unnecessary delay.

A. The Hub Director may set an administrative completion date for any project when the monthly inspection reports show 95 percent completion of work and thereafter less than 2 percent increase in percentage of completion in any month.

B. The Hub Director notifies the mortgagor, general contractor, and mortgagee in writing of the administrative completion date and the following:

   1. The administrative completion date is the effective date for cost certification except that all soft costs up to 60 days beyond this date may be included at the option of the mortgagor.

   2. The date of the balance sheet and operating statement must be the same as the cut-off date selected by the mortgagor.

   3. Liquidated/actual damages for cost certification purposes will be computed using the administrative completion date. However, the general contractor is responsible for liquidated/actual damages through the date of final completion.

C. Copies of the notification go to the Washington Docket, Office Docket, and Closing Attorney's file.

14.9 Submission Date

Submission Date for cost certification should be within 30 to 45 days after the cut-off date and not less than 30 days before the desired final closing date.

14.10 Required Forms

A. Form HUD-92330, Mortgagor's Certificate of Actual Cost, and line by line instructions are contained in the Forms Appendix.

B. Form HUD-92330A, Contractor's Certificate of Actual Cost, and line by line instructions are contained in the Forms Appendix. Also used by subcontractor, material supplier, industrialized housing manufacturer, or equipment lessor required to certify cost.

   Note: When a project includes rehabilitation and new construction, a separate form is required for each, with a master form summarizing total project costs, including fees.

C. Form FHA-2205A, Mortgagor's Certificate of Actual Cost (Section 207 Pursuant to Section 223(f)), and line by line instructions are contained in the Forms Appendix.

14.11 Required Statements and Certifications

Follow either A or B, below, depending on qualifications in A.1.

A. Simplified Form of Cost Certification. Use Forms HUD-92330, HUD-92330A (if a cost plus construction contract was used or an identity of interest exists between the mortgagor and the general contractor). An accountant's opinion is not needed.

   1. Simplified cost certification is permitted for new construction or substantial rehabilitation projects involving 40 units or less and for refinancing or purchase of existing properties under 207/223(f) and 232/223(f).

   2. If there is an identity of interest between a subcontractor, material supplier, equipment lessor, or manufacturer of industrialized housing and the mortgagor and/or general contractor who must cost certify, and the total of all identity of interest subcontracts, purchases and leases is more than 1/2 of 1 percent of the mortgage, the identified party uses Form HUD-92330A. This requirement established by the Agreement and Certification, Form HUD-3305/3306, applies in all cases.

3. An unaudited balance sheet of the mortgagor entity, as of the cut-off date is required in all cases. Format and content of the balance sheet must follow paragraphs B.4.a through g below.

4. An unaudited operating statement is required if occupancy occurred during construction. Format and content of the operating statement must follow paragraphs B.5.a through c below.

5. In those cases involving LIHTC's, the information must be audited even for those cases eligible to submit a simplified cost certification.

B. Long Form Cost Certification. For cases that do not qualify for simplified cost certification based upon paragraph A.1 above, submit the following:

1. Mortgagor's Certificate of Actual Cost, Form HUD 92330, supported by an accountant's opinion (refer to paragraph 14.11 B6).

2. Contractor's Certificate of Actual Cost, Form HUD-92330A, supported by an accountant's opinion (refer to paragraph 14.11.B.6), is required if there is an identity of interest with the mortgagor or if a cost plus construction contract was used.

3. Subcontractors, suppliers, and equipment lessors with an identity of interest with either the mortgagor or general contractor must submit Form HUD 92330A supported by an accountant's opinion.

   a. Material suppliers. Attach to Form HUD 92330A a sheet showing:

      (1) Quantities furnished.

      (2) Sources from which the materials were obtained.

      (3) Unit prices paid to the sources, brand names, model numbers, sizes, lumber grades, etc., as applicable.

      NOTE: No amount will be included for general requirements (job overhead).

   b. Equipment Lessor. Attach to Form HUD 92330A a sheet showing:

      (1) Dates the equipment was acquired,

      (2) Age of equipment at acquisition date,

      (3) Brand names and model numbers,

      (4) Sizes,

      (5) Dates and length of time used, and

      (6) Rates charged.

         (a) The Lessor(s) must certify that:

(i) The rates charged were not more than the local going rate obtainable in the area, including any maintenance and repair.

(ii) The time charged was not more than essential for the project.

(iii) The charges did not exceed the purchase price of the equipment.

(b) Lump Sum Basis. Instead of providing an attachment containing the above information, the lessor(s) may elect to certify to charges at 85 percent of the local going rates for identical equipment under arms' length (lump-sum) leases. When using this alternative, the lessor agrees:

(i) The Hub is the sole judge of the reasonableness of the time and rates charged, and

(ii) Equipment maintenance and repair expense is the responsibility of the lessor(s) and is not included as an additional cost.

(c) Subcontractor's equipment. Costs for subcontractor(s) equipment, whether owned or rented, are considered in the markup for overhead and profit. These costs shall be reflected in the total subcontract and in the prior approval of identity of interest entities. A separate certification of the equipment is not required.

(d) Manufacturer of Industrialized Housing. Attach to Form HUD 92330A, a breakdown of Division 13, Special Construction, showing:

(i) Manufacturing costs.

(a) Labor

(b) Materials

(c) Sales and any other taxes

(d) Factory overhead

(e) General overhead and profit

NOTE: The manufacturer's accounting system must follow generally accepted accounting procedures which will allow certification of the actual cost of manufacturing by a Certified Public Accountant or Independent Public Accountant. No amount will be included for transportation or work at the project site.

(ii) Transportation costs, factory to project site (if provided by manufacturer).

(a) Labor

(b) Equipment

(iii) On-site erection costs (if provided by manufacturer).

(a) Labor

(b) Equipment

(c) Materials

(d) General requirements (job overhead)

(iv) The remainder of the manufacturer's Form HUD 92330A is completed per outstanding instructions.

NOTE: There can be no duplication of manufacturing costs, i.e., repair of components damaged in shipment.

4. An audited balance sheet of the mortgagor entity, as of the cut-off date is required.

   a. The balance sheet must contain the following certification

      I HEREBY CERTIFY that the foregoing figures and statements contained herein submitted by me as agent of the mortgagor [owner] for the purpose of obtaining mortgage insurance under the National Housing Act are true and give a correct showing of _____ (Name of mortgagor or owner) financial position as of _____ (date of financial statement).

      Signed this ____day of _____, 20

      _____ (Signature of authorized agent with name printed or typed under signature)

      WARNING: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18U.S.C. 1001, 1010. 1012; 31U.S.C. 3729, 3802)

   b. Furnish reconciling information if short term liabilities on the balance sheet do not agree with Column B of Form HUD 92330.

   c. Explain the purpose of all liabilities in the notes to the financial statements and include repayment requirements of the liabilities.

   d. If proceeds and obligations from project syndication are passed through the books and records of the mortgagor entity, reflect receivables as an asset of the mortgagor entity.

   e. The notes to the balance sheet must identify the original amount of and summarize the expenditures from the working capital deposit.

5. An audited operating statement is required if occupancy occurs before the cost certification cut-off date.

   a. The statement must contain the certification contained in Paragraph 14.11.B.4.

   b. Prepare the operating statement on an accrual basis.

   c. The statement covers the beginning of marketing and rent-up activities (or date of initial endorsement in rehabilitation projects where occupancy is continuous) to the cut-off date.

   d. Marketing and rent-up activities will start no earlier than 6 months before the issuance of the first Permission to Occupy-Project Mortgages, Form HUD-92485.

e. The statement must show the actual dates covered rather than language such as "From the Date of Commencement of Marketing and Rent-up Activities, etc."

f. The statement must show income from all sources. Do not consider security deposits as income.

g. The operating statement should not contain any expense items that were paid or should have been paid from the working capital deposit or otherwise included in cost certification.

h. Operating expenses may include:

(1) Expenses directly relating to renting the project, such as:

(a) Rental commissions customary for the type of project, if any, and

(b) Marketing and advertising expenses.

(2) Purchase of furnishings, equipment not paid from the working capital deposit, and supplies essential to project operation.

(3) Reasonable fees for preparing any Federal, State, or local tax return information required of the project.

(a) For example: If the mortgagor entity is a partnership, the cost of preparing both Form 1065, U.S. Partnership Return of Income, and related K Schedules may be considered. Do not recognize the cost of preparing a partner's personal Form 1040 return.

(b) If the project is owned by an individual, include the cost of preparing any tax return schedule related to project operations, but not other parts of the owner's return.

(4) Electricity, gas, water, and operating salaries (maintenance, cleaners, gardeners, elevator operators, etc.) to the extent they are not included in construction cost of Form HUD 92330, Mortgagor's Certificate of Actual Cost, or HUD 92330A, Contractor's Certificate of Actual Cost.

(5) Management fee stated in the contract.

(6) Services not covered by the management fee under paragraphs 3b and c of Handbook 4381.5, Compensations for Management Services in Multifamily Housing Projects with Insured or HUD-Held Mortgages.

i. Operating expenses may not include:

(1) Depreciation

(2) Interest, taxes, property insurance premiums, and mortgage insurance premiums, that are reflected in Form HUD 92330, Mortgagor's Certificate of Actual Cost.

(3) Salaries paid to principals of the sponsor or mortgagor for managing the mortgagor entity.

j. Treat net income as:

(1) A recovery of construction costs for profit motivated mortgagors.

(2) For a nonprofit mortgagor:

(a) as a recovery of construction costs at cost certification, to the extent that it was used to reduce liquidated/actual damages,

(b) as an offset for an a mortgage increase,

(c) deposit the unused portion of net income into the reserve for replacement at final endorsement.

k. If operating expenses exceed income:

(1) No entry is made on Form HUD 92330, Mortgagor's Certification of Actual Cost.

(2) Operating deficit may be carried over as a reduction to net income on the supplemental operating statement.

6. A Certification by an independent Certified Public Accountant or an independent Public Accountant must accompany Form HUD 92330, Mortgagor's Certificate of Actual Cost, including the audited balance sheet and operating statement of the mortgagor, and Form HUD 92330A, Contractor's Certificate of Actual Cost.

a. The accountant must meet the auditor qualifications of the Government Auditing Standards (GAO Yellow Book), including the qualifications relating to independence and continuing professional education. The audit organization also must meet the quality control standards of the GAO Yellow Book.

b. Part 24 of Title 24 of the Code of Federal Regulations prohibits accountants from contracting for services when their name is shown on the HUD and General Services Administration Government-wide Consolidated List of Debarred, Suspended and Ineligible Contractors and Grantees.

c. The accountant must also comply with the requirements in Chapters 1,2,3 and 6 of HUD Handbook IG 2000.4, "Consolidated Audit Guide for Audits of HUD Programs."

7. The mortgagor must submit a supplemental operating income statement if more than 3 months exist between the cut-off date and the start of amortization. If a deferment of amortization has been granted, use the new date for the start of amortization in determining the need for a supplemental operating statement.

a. This requirement does not apply to nonprofit mortgagors, nor any project where the mortgage is $200,000 or less.

b. The statement covers the period from the cost certification cut-off date to the date which is 3 months before the start of amortization and should be submitted within 30 days after the expiration of this period.

c. The supplemental statement must be prepared and certified by a CPA or IPA if the original cost certification was required to be audited.

d. The mortgagor may advance the date of amortization to avoid submitting a supplemental income statement.

e. In preparing the statement, if the operating statement submitted at cost certification shows expenses in excess of income, such expenses may be carried forward as "unrecovered expense–prior period."

C. Section 223(f) Projects. The mortgagor certifies to the total costs incurred in the acquisition or refinancing of the property using Form FHA 2205-A, Mortgagor's Certificate of Actual Cost. The certification must be dated and signed by an authorized agent of the mortgagor. An accountant's opinion is not needed.

1. The certification must be submitted after all critical repairs have been completed, but at least 15 days before the desired closing date.

2. The general contractor will be required to cost certify using Form HUD 92330A if a cost plus construction contract is used.

3. A balance sheet and income statement are not required.

4. No cost certification is required for a 207/223(f) refinancing transaction where the mortgage is equal to or less than 80 percent of value.

5. For cases involving deferred repairs, the mortgagor must submit a supplemental cost certification detailing the actual cost of the deferred repairs.

14.12 Deficiencies in Cost Certification Submission

When the cost certification package is received for processing:

A. The Cost and Mortgage Credit reviewers will:

1. Determine deficiencies associated with the mortgagor's and contractor's cost certifications.

2. Advise the Hub Director and estimate the time needed to resolve the problem(s).

3. Attempt to resolve all problems by telephone before making a formal written request. This usually allows processing to continue while waiting for a formal reply.

4. Send a letter within 5 workdays to the mortgagor with copies to the general contractor (if applicable), their accountants, and the mortgagee stating the deficiencies and requesting information.

B. Upon receipt of all necessary information, combined processing should not exceed 15 workdays.

C. If the mortgagor or contractor indicates clarification will be forwarded within a very few days, the conclusions of cost certification can await the additional information.

D. If not, issue Form 2580.

14.13 HUD Mortgage Credit Limited Review

A. In cases where the mortgagor has not requested a mortgage increase, the HUD staff will:

1. Review Form HUD-92330, Mortgagor's Certificate of Actual Cost. Adjust for items paid out of working capital and costs reflected on income statement.

2. Review the reporting of:

   a. Net income earned before the start of amortization. For new construction projects and unoccupied substantial rehabilitation projects, all income earned from the beginning of marketing and rent-up activities to the cut-off date is to be reported. For substantial rehabilitation projects where occupancy is continuous, all income from the date of initial endorsement or, for insurance upon completion cases, the start of construction to the cut-off date is to be reported. Adjustments should be made for ineligible reported expenses, i.e., depreciation.

   b. The reporting of all grants/loans received for replacement cost items.

3. Complete Form HUD-92580, Maximum Insurable Mortgage, using the figures from Column C, Total, of Form HUD-92330. Complete the forms using the instructions in the MAP Forms Book, except for the following changes:

   a. Line 2. Reflect the amount indicated in Column C of Form HUD-92330.

   b. Line 3. Explain any adjustments made to the net income or grant/loan amounts reported on Form HUD-92330.

      NOTE: If adjustments are made to items other than net income and grants/loans, Form HUD-92331A should be completed.

4. Report anything suspicious in the submission, to the Hub Director, who has the authority to request that a full cost certification review be completed. For such cases, Forms HUD-92331-A, and HUD-92580 are to be completed based on the instruction in the MAP Forms Book and this chapter. Also, if an accountant's work is consistently deficient, the accountant should be warned that mortgagors using their services will be advised that a detailed cost certification review will be performed by HUD.

14.14 HUD Mortgage Credit Detailed Review

When a mortgage increase is requested of the Hub Director, a more detailed review is required. The HUD Mortgage Credit staff will:

A. Carefully review Forms HUD-92330 and HUD-92330-A if required for mathematical accuracy and compliance with prescribed procedures.

B. Ensure that the submission contains required schedules and bills, which have not been submitted with previous draw requests, to support the certified amounts for interest, taxes, property insurance, MIP, title and recording, financing fees, legal, organizational and audit fees, offsite costs and other fees.

C. Require clarification or breakdown of all, or any part of, the cost figures presented by the mortgagor or general contractor, if applicable.

D. Question the existence of any identity of interest subcontractor, material supplier or equipment lessor.

E. Review the notes and schedules attached to the accountant's opinion.

F. Recommend that the Hub Director request an audit of the mortgagor's and/or contractor's books by the Regional Inspector General for Audit before issuing Form HUD-92580, Maximum Insurable Mortgage, when differences of opinion arise from other than:

   1. Genuine misunderstanding of HUD instructions.

   2. Honest differences of opinion clearly identifiable as such.

   3. Other justifiable causes.

G. If considerable time has passed between initial occupancy and the cut-off date, some items properly allocable to renting and operating the project may be charged against construction cost.

   1. It may not be possible or practical to make precise allocation of such items as gas and electricity, clean-up costs, etc., between construction and operation periods.

   2. Insist on reasonable allocation(s) and eliminate duplicate claims for the expenses under both categories.

H. Advise Cost staff of any construction costs included in "Miscellaneous" and "Other" categories of Form HUD-92330.

I. Check items and amounts in the mortgagor's cost certification without auditing the mortgagor's books and records. An audit may be needed later. (Refer to Paragraph 14.27)

J. Record the results of the review on Form HUD-92331A, Cost Certification Review Worksheet.

14.15 Allowable Costs in Form HUD-92330, Mortgagor's Certificate of Actual Cost

A. Construction Contract:

1. A lump sum construction contract is permitted when no identity of interest exists between the mortgagor and general contractor. The amount allowed in cost certification is the lesser of:

   a. Actual cash paid or to be paid by the mortgagor under the construction contract.

   b. Contract price as adjusted by HUD's estimated cumulative effect of approved change orders paid, or to be paid, by the mortgagor and the liquidated/actual damages provision to the contract, if applicable.

2. A cost-plus construction contract is required when an identity of interest exists between the mortgagor and general contractor.

3. The amount allowed in cost certification when a cost-plus contract is used is the lesser of:

   a. Actual cash paid, or to be paid, by the mortgagor under the construction contract.

   b. Amount the cost analyst allowed for construction on Form HUD-92331, Summary of Cost Certification Review–Cost Section.

   c. Contract price as adjusted by the HUD estimated cumulative effect of approved change orders paid, or to be paid, by the mortgagor and, if applicable, either the incentive provision or the liquidated/actual damages provision of the contract.

   NOTE:

   (1) Recognize approved change orders necessitated by errors or omissions by the architect only to the extent there are savings in the mortgage. Do not recognize these change orders when processing a mortgage increase.

   (2) Do not recognize approved betterment change orders in calculating the adjusted upset price in Paragraphs A.1.B. and A.3.C, unless they are determined by the Cost staff to be necessary changes as defined in Paragraph 13.8.

   (3) Recognize the increase in general requirements, if any, noted on approved time extension change orders. Do not recognize increases in soft costs associated with the change order. The soft costs will be recognized under the applicable line items.

   (4) When BSPRA is not applicable, for profit motivated projects involving an identity of interest between the mortgagor and general contractor, the amount of builder's profit as shown on Form HUD-3305 or 3306 is eligible whether or not it was paid in cash.

(5) For nonprofit mortgagors, the allowable builder's profit is the lesser of the amount actually paid or to be paid in cash to the general contractor or the amount of builder's profit shown in Section G of Form HUD-92264, plus or minus any amount applicable due to HUD-approved change orders.

4. An identity of interest is construed to exist when:

   a. There is any financial interest of the mortgagor in the general contractor or any financial interest of the general contractor in the mortgagor.

   b. Any officer, director, or stockholder or partner of the mortgagor is also an officer, director or stockholder or partner of the general contractor.

   c. Any officer, director, stockholder, or partner of the mortgagor has any financial interest in the general contractor; or any Officer, director, stockholder, or partner of the general contractor has any financial interest in the mortgagor.

   d. The general contractor advances any funds to the mortgagor.

   e. The general contractor supplies and pays, on behalf of the mortgagor, the cost of any architectural services or engineering services other than those of a surveyor, general superintendent, or engineer employed by a general contractor in connection with its obligations under the construction contract.

   f. The general contractor takes stock or any interest in the mortgagor corporation as consideration of payment.

   g. There exists or comes into being any side deals, agreements, contracts, or undertakings entered into or contemplated, thereby altering, amending, or canceling any of the required closing documents, except as approved by the Secretary.

   h. Any relationship (e.g. family) existing which would give the mortgagor or general contractor control or influence over the price of the contract or the price paid to the subcontractor, material supplier or lessor of equipment.

5. Incentive. The construction contract may be modified before initial endorsement to provide for a contractor's incentive when construction is completed before the date specified in the construction contract (as amended by HUD-approved time extensions).

   a. Identity of interest mortgagor and general contractor.

      (1) General contractor may benefit from savings in construction interest, taxes, property insurance, and mortgage insurance premiums to the extent there are construction cost overruns.

      (2) Incentive payment is included in the adjusted upset price of the construction contract.

   b. Nonidentity of interest mortgagor and general contractor.

      (1) Use Construction Contract Incentive Payment, Form HUD-92443.

      (2) Include the incentive payment under "Other" on Form HUD-92331A.

6. Damages Clause. Apply the damages clause of the construction contract when the general contractor does not complete the project on time. The clause holds the general contractor financially responsible for the added soft costs resulting from the contractor's delay.

   a. Calculate the amount of actual damages and liquidated damages, using the lesser to determine the adjusted upset price.

   b. To determine actual damages, compute the actual cost of interest, taxes, insurance, and MIP for the period from the scheduled completion date (as amended by HUD-approved change orders) through the final completion date.

   c. To determine liquidated damages multiply the daily liquidated damages rate from the construction contract by the number of days between the scheduled completion date specified in the construction contract, as amended by the HUD-approved time extensions, through the final completion date.

   d. Reduce the damages by the portion of the net operating income earned during the liquidated/actual damage period.

   e. For those cases where an administrative completion date has been established, use this date for computing damages for cost certification purposes. However, the general contractor is responsible for damages through the date of final completion.

7. If a mortgagor acts as its own general contractor:

   a. A construction contract is not executed. Instead, Form FHA-2441-Supplement, is added to the Building Loan Agreement, Form HUD-92441.

   b. The upset price for construction is line 51 of the approved Form HUD-2328, Contractor's and/or Mortgagor's Cost Breakdown (Schedule of Values), as adjusted by the cumulative effect of HUD-approved change orders and the incentive provision, if applicable.

   c. Incentive clause, if any, is incorporated by addendum to Form FHA-2441-Supplement.

   d. There is no liquidated/actual damages clause.

   NOTE: The mortgagor may serve as its own general contractor only when the mortgagor is an individual or a general partnership.

8. Incomplete Minor Items. The mortgagor's certification of the amount due under the terms of the construction contract may include the cost of minor items of on-site work which remain incomplete under the construction contract.

B. Architect's fee(s) are limited to the amounts paid in cash.

   1. Recognize the cost of additional services set form in Article 10 of the Standard Form of Agreement between Owner and Architect for Housing Services, AIA Document B181. Ask Architectural and Cost staff to check the reasonableness of these charges.

   2. Disallow:

a. Any portion of the Architect's fee paid in stock.

b. Any costs associated with a clerk of the works.

3. If any identity of interest comes into being between the Architect and either the mortgagor or general contractor during project construction:

   a. See maximum design Architect's fee for cost certification purposes set forth in the Agreement and Certification, Form HUD-3305/3306.

   b. Do not allow a fee for supervisory services to an identity of interest Architect.

4. Treat any unused balance of the total Architect's fee as a direct mortgage reduction to the original mortgage amount on Form HUD-92580.

C. Interest is allowable in the amount accrued on the first mortgage between initial endorsement (start of construction for insurance upon completion projects) and the cut-off date defined in Paragraph 14.7.

1. Recognize interest costs associated with an approved early start provided:

   a. The mortgagor entered into an agreement with the contractor which:

      (1) was approved by the Hub Director.

      (2) agrees to reimburse the contractor for interest on money borrowed for construction prior to initial endorsement.

      (3) states that reimbursement will be made only to the extent the mortgagor has funds available in the amount estimated for interest during construction.

   b. The certified amount, when added to the interest cost incurred directly by the mortgagor, does not exceed the total amount of interest estimated in Section G of Form HUD-92264.

   c. Form FHA-2415, Request for Permission to Commence Construction Prior to Initial Endorsement for Mortgage Insurance, was executed and approved.

   d. Interest costs reflect the contractor's actual cost of money borrowed to cover the cost of construction between the early start date and the initial endorsement as adjusted by Section 1.e below.

   e. Rate of interest does not exceed rate established for the insured loan.

2. Interest rate paid on the construction loan cannot exceed:

   a. For insurance of advances: the rate stated in the Firm Commitment.

   b. For insurance upon completion: the rate acknowledged by the Hub Director of Housing Development before issuing the Firm Commitment.

3. Deduct accrued interest forgiven by the lender or otherwise not paid in cash.

4. Treat lender/bond underwriter's refund of any portion of the construction loan interest to the mortgagor or sponsor, as a direct mortgage reduction to the original mortgage amount on Form HUD-92580.

5. If the construction interest rate changes before initial endorsement and it was not feasible to reprocess the project or if a State Housing Agency sold bonds to finance the construction loan and the true interest rate was not known until cost certification:

   a. Interest savings may be created from the difference between the processed interest rate and the actual final interest rate.

   b. Treat these savings as a direct mortgage reduction if the condition in Paragraph XX was included in the Commitment.

6. Neither the interest on subordinated liens nor other obligations of the mortgagor are allowed as certifiable costs.

D. Taxes are allowable in the amount accrued during the same period identified in Paragraph C above. Do not recognize costs accrued during early start period.

E. Property insurance is allowable in the amount accrued during the same period identified in Paragraph C above. Do not recognize costs accrued during early start period.

F. Mortgage Insurance Premium (MIP). The FHA Comptroller's office cannot compute the exact amount of MIP due during the construction period until the project has been completed and the Washington Docket forwarded to Headquarters.

   1. For a project involving insurance of advances, allow MIP of ½ of one percent per annum on the mortgage amount on the basis of accrual for the number of days in the period used to Paragraph C above, when applicable.

   2. For a project involving insurance upon completion, no MIP is paid during construction.

G. HUD application, commitment and inspection fees are allowable in the amounts paid. Fees paid to reopen an expired or terminated commitment are not allowable costs.

H. Financing expense includes the initial service charge, discounts fees, FNMA or GNMA or other permanent lender commitment and marketing fees, and other similar fees.

   1. Allow the lesser of:

      a. Amounts paid, or to be paid, in cash.

      b. Amounts shown on Form HUD-2434, Mortgagee's Certificate, or Certificate of Mortgagee portion of Form FHA-2455 and approved by the Hub Director before initial endorsement (Insurance of Advances) and issuance of Firm Commitment (insurance upon completion), respectively.

2. Construction Lender's initial service charge (usually 2 percent):

   a. Is expected to cover:

      (1) Processing fees.

      (2) Expenses of lender's counsel.

      (3) All other charges by the construction lender.

   b. Excludes:

      (1) Construction loan discount.

      (2) Construction loan extension fees.

   c. Any charges made by the Lender for payment of counsel, or charges paid directly to the Lender's counsel, to the extent they cause the initial service charge to exceed 2 percent, are not certifiable. Charges related to "Title and Recording" expenses are certifiable under that line item.

3. Permanent Lender's placement fee (usually 1.5 percent):

   a. Is expected to cover all permanent placement expenses except discounts and some of the fees associated with a bond financed transaction.

   b. If GNMA Mortgaged Backed Securities are involved, the mortgagee may not assess an additional charge for the MBS application fee or for the custodial or delivery fee.

      NOTE: Construction and Permanent Lenders' fees in the aggregate shall not exceed 3-1/2 percent and may be divided as agreed upon by the parties involved.

4. Recognize for cost certification:

   a. Reasonable discounts (based upon current interest rate levels at the time of initial closing for projects involving insurance of advances and issuance of the Firm Commitment for projects involving insurance upon completion) charged by the construction and permanent lenders and extension fees charged by the construction lender, if funded at initial endorsement and shown on the Mortgagee's Certificate, Form HUD-2434.

   b. Permanent lender extension fees, shown on Form HUD-2434, if funded before the final completion date.

   c. For insurance upon completion cases, construction and permanent loan extension fees, shown on the Certification of Mortgagee portion of Form FHA-2455, if funded before cost certification cut-off.

   d. Financing fees (including extension fees and discounts) paid on behalf of a mortgagor by a third party under Paragraph 18(f) of the Mortgagee's Certificate or Paragraph 10h of Certificate of Mortgagee portion of Form FHA-2455 and shown as a current liability on the mortgagor's balance sheet to the extent there are savings in the

mortgage. At final endorsement, require a promissory note be used for any unpaid balance of the obligation recognized in cost certification.

e. For bond financed projects, cost of issuance, discounts and financing fees in excess of 3-1/2 percent provided the cost certification evidences that the sponsor/mortgagor could not benefit monetarily from excess investment income from the proceeds of the invested obligations. Refer to Appendix 14.

5. Do not recognize for cost certification:

   a. Any "side deals" (except for approved discounts) by which the mortgagor agrees to pay for "added cost of money."

   b. The cost of purchasing of FNMA stock.

6. Treat the following as a direct mortgage reduction at final endorsement:

   a. Premiums paid by Lender to the mortgagor or sponsor for acquiring the construction or permanent loan.

   b. Partial refunds of the Commitment fee allowed in processing, which are returned to the mortgagor or sponsor.

   c. Discounts or other fees paid for by a contribution of a portion of the initial service charge by the Lender/bond underwriter.

   d. Rebates paid to a mortgagor or sponsor by the Lender/bond underwriter for bond financed mortgages.

I. Title and recording expense is limited to cash paid for:

1. Title search and policy at the time of initial endorsement;

2. Recording fees at initial endorsement;

3. Mortgage and stamp taxes;

4. Survey recording fees;

5. Updating title policy during construction;

6. Final title policy and recording charges; and

7. Legal fees incurred with any of the above.

J. Legal, organization and audit expenses are limited to expenses incurred in organizing the mortgagor entity, developing the proposal to submit to HUD and other necessary governmental agencies and required services during closing and construction.

1. Organizational allowance:

a. Allow only the amount included in Section G of Form HUD-92264 for organizational fee, unless fully supporting documentation is submitted by the mortgagor which justifies the need for and reasonableness of the additional expenditure.

b. Any costs incurred in excess of this allowance are not eligible for recognition in processing a mortgage increase or the equity computation on Form HUD-92580.

2. Allow a marketing allowance for Section 232.

3. Limit legal expenses to those incurred for: initial through final closings; tax advice during organization of mortgagor entity only; and preparation of documents and representation for and during organization of the mortgagor entity.

   a. Allow customary expenditures expected to be incurred before and during initial closing, construction period, and final closing.

   b. Do not allow:

      (1) The usual expenses connected with land acquisition which are already included in, or contributing to:

         (a) Title and recording expense.

         (b) Estimated market price of site.

         (c) Obtaining changes in zoning.

      (2) Cost of legal services to create tax shelters, trusts, etc.

4. Recognize cost of a "package deal" for organization and legal services provided:

   a. Supplier is qualified to furnish the needed services.

   b. Do not allow duplicate credit for the same services.

5. Audit fee covers the cost of the accountant's audit and opinion of the mortgagor's certificate of costs.

6. Amounts included in Form HUD-92264 for legal and audit expenses are not blanket allowances, but ordinarily set an upper limit on allowable amounts.

   a. Non-typical fees must be borne by the mortgagor, unless in an exceptionally complex case, a higher fee is proven by the mortgagor to be necessary and reasonable. Detailed invoices and/or other documentation is required as to the reasonableness, purpose, necessity, and proper classification of all items in the category.

   b. This limitation is not flexible where a "package" for legal and organizational services is involved or where a substantial amount of the legal and organizational services are performed by the same firm.

K. Offsite Costs. Where the mortgagor enters into a supplemental contract for constructing offsite improvements, allow the lesser of:

1. Contract price as adjusted by the HUD's estimated cumulative effect of approved offsite change orders.

2. Actual cash paid or to be paid for offsite work.

3. Amount allowed by cost analyst for offsite construction of Form HUD-92331, Summary of Cost Certification Review - Cost Section.

NOTE:

a. The Valuation Branch must adjust the as-is land value of the property, if the allowed amount for offsite and demolition differs from HUD's estimate on Form HUD-92264 issued at Firm Commitment.

b. Offsite cost is not allowable for leasehold estates when the ground rent is based on a land value that reflects all required offsite improvements since those improvements have not been paid for by the mortgagor.

c. If the mortgagor certifies to off-site cost, the land value entered on Form HUD-92580, "Maximum Insurable Mortgage" will be reduced by the amount of off-site cost.

L. Other Costs include all costs and/or recovery of costs which are not provided for elsewhere and which are clearly attributable to the actual cost of the project.

1. Cost of acquiring the leasehold interest provided the acquisition cost plus ground rent and offsite costs paid by the mortgagor, if any, do not exceed the HUD Fair Market Value of the Land Fully Improved. Any excess is to be reflected as a disallowed cost of acquiring the leasehold.

2. Ground rent paid during the period used in Paragraph C above.

3. Incentive payment due a nonidentity of interest contractor for completing construction before the scheduled completion date as amended by HUD-approved change orders.

4. Compensation from an insurance claim including any income earned by investing the proceeds of the claim. Treat as recovery of cost after computing BSPRA.

5. Contractor's bond premium if paid by the mortgagor. If the construction contract contained an amount for the bond premium, subtract it from the contract amount when developing the adjusted upset price on line 1c of Form HUD-92331A.

6. Other fees, including engineering and topographical survey. Cost staff must determine if such costs are reasonable and not duplicated in the general contractor's costs.

7. Contingency reserve is included in the replacement cost of substantial rehabilitation projects.

a. The contingency reserve may be used for unforeseen costs of necessary change orders approved by HUD and unanticipated soft costs for time extensions approved by HUD.

b. Expenditures for change orders and shortfalls in soft costs should be certified to and allowed under those specific line items.

c. Normally there will not be an amount certified to under contingency reserve since all expenditures will be certified to on other line items.

d. An itemization of all expenditures covered by contingency reserve funds must be attached to the cost certification submission.

8. Grants/loans to the mortgagor entity and/or principals of the mortgagor entity used to pay for allowed items of cost.

   a. Treat as a recovery of cost after BSPRA.

   b. Do not deduct grant/loan funds used to pay for non-replacement cost items, i.e., grant/loan proceeds used to pay the acquisition cost of the land in excess of the HUD allowance are not deducted from the total recognized costs.

9. Residential relocation fund established on Form HUD-92264. Allow only those expenses approved by the HUD CPD relocation specialist up to the amount established on Form HUD-92264. Apply unused allowance as a direct mortgage reduction.

10. Third party costs for appraisals, market analysis, etc., involved with MAP processing.

M. Builder's and Sponsor's Profit and Risk Allowance (BSPRA)

1. HUD does not control the division of BSPRA.

2. Compute without regard to amounts on Form HUD-92264. Base the BSPRA computation on a percentage of allowed costs.

   a. Use the same percentage (not to exceed 10 percent) used to compute BSPRA in the Firm Commitment review.

   b. Exclude from the computation the cost of off-site work, land, payments for acquisition of leasehold, ground-rent, relocation expenses, and supplemental management funds, and Major Moveable Equipment, if applicable.

3. 50/75 percent rule.

   a. Whether or not there is an identity of interest, <u>no</u> general contractor's fee (general overhead and profit) will be allowed when:

      (1) More than 50 percent of the contract sum in the Construction Contract–Cost Plus, Form HUD-92442-A, is subcontracted to one subcontractor, material supplier or equipment lessor, or

(2) 75 percent or more with three or less subcontractors, material suppliers and equipment lessors.

Note:

If two or more subcontractors have common ownership, they are considered as one subcontractor.

b. Exceptions: The fifty/seventy-five percent rule is not applicable to:

(1) Manufacturers of Industrialized Housing.

(2) Trade items performed by persons on general contractor's payroll.

(3) Mobile Home Park program.

(4) Supplemental Loan program.

(5) Rehabilitation programs other than gut rehabilitation.

c. The cost analyst determines the applicability of the 50/75 percent rule.

d. Where the 50/75 percent rule is violated, the general contractor forfeits its profit and only Sponsor's Profit Risk Allowance (SPRA) is allowed.

4. Where there is no identity of interest between the mortgagor and builder or when the 50/75 percent rule has been violated, compute a SPRA which is 10 percent of allowable:

a. Architectural fees.

b. Carrying charges and financing.

c. Legal, organization, and audit expenses.

5. If an identity of interest between the mortgagor and general contractor is established after initial endorsement and exists at the time of final completion, BSPRA is allowed in lieu of a builder's profit and SPRA.

6. If prior to the final completion date an identity of interest no longer exists between the mortgagor and builder, substitute SPRA for BSPRA.

a. The construction contract may be amended to permit a typical builder's profit.

b. Treat the difference between BSPRA and the combination of SPRA and builder's profit as a direct mortgage reduction on Form HUD-92580.

N. Non-profit Developer Fee. The allowable amount is the amount included in the Firm Commitment less amounts certified and allowed on other line items.

14.16 HUD Cost Review of Contractor's Cost Certification

A. Actual costs are all costs, paid by the general contractor under the Construction Contract for completion of the project, and to which the general contractor certifies, using Form HUD-92330A.

1. Include actual costs paid in cash, or to be paid in cash (items of delayed completion), within 45 days after the date of the substantial completion, for labor, materials, equipment, subcontract work, general requirements (job overhead), fees and general overhead. Also include amounts estimated for any items requiring an escrow.

   a. General Requirements:

      (1) May include salaries of clerical staff for time actually spent at the project site. Proration of annual salaries on the percent basis is not permitted.

      (2) Salaries of executives may not be included in General Requirements. Such salaries are included in General Overhead.

   b. General Overhead:

      (1) Include only the amount of the accepted Schedule of Values, Form HUD-2328, adjusted by the effect of approved change orders.

      (2) Itemization is not required.

2. Kickbacks, rebates, adjustments, discounts, or any other devices which the contractor may have received or is entitled to, must be deducted form actual costs.

B. For those cases where the mortgagor is not seeking a mortgage increase or a detailed review is not requested by the Hub Director:

1. The cost analyst will not review Form HUD-92330A, Contractor's Certificate of Actual Cost, in assisting the Mortgage Credit Examiner (MCE) in the analysis of the Mortgagor's cost certification.

2. The cost analyst will advise Mortgage Credit Staff of the approved change orders.

C. Cost Review

1. Conduct a detailed review when the mortgagor applies for a mortgage increase or the Hub Director orders a detailed review.

2. Review certifications where required from the contractor, or any subcontractor, equipment lessor, material supplier or manufacturer of industrialized housing.

3. Forms necessary to make reviews:

   a. Form HUD-92330, Mortgagor's Certificate of Actual Cost.

   b. Form HUD-92330-A, Contractor's Certificate of Actual Cost.

c. Forms FHA-3305, or 3306, Agreement and Certification (applicable to project).

d. Form HUD-92437, Request for Construction Changes–Project Mortgages (all approved for project).

e. Form HUD-92326, Project Cost Estimate (HUD Estimate).

f. Form HUD-2328, Contractor's and/or Mortgagor's Cost Breakdown.

g. Form HUD-92331-B, Cost Certification Review Worksheet.

h. Form HUD-92331, Summary of Cost Certification Review.

i. Form HUD-95379, Trip Report (all for projects).

4. Steps to make review:

a. 50/75 percent rule check (See 14.15.M.3): Use information from "total" and "name of subcontractor or payee" columns of general contractor's cost certification. If rule applies, disallow general contractor's general overhead and profit. If project uses BSPRA, disallow only general overhead, but inform mortgage credit examiner.

b. Identity of interest subcontract review: (Mortgagor, general contractor, subcontractors, equipment lessors, material suppliers, and industrialized housing manufacturers.)

(1) Examine Form HUD-3305 or HUD-3306 and Form HUD-92330-A to establish all declared identities of interest.

(2) Review each identity of interest subcontractor's cost certification.

NOTE: If cost certification not received, disallow subcontractor's overhead, profit, and all questionable costs.

(a) If no prior approval as an identity of interest subcontractor, disallow subcontract overhead and profit.

(b) For prior approval:

(i) Allow prior approved subcontract overhead and profit, plus or minus the effect of approved change orders. Disallow excess.

NOTE: Do not reduce the prior approved subcontract overhead and profit in the event that the certified cost for the work is less than the prior approved maximum subcontract price.

(ii) Allow up to the prior approved maximum subcontract amount for work, plus or minus the effect of approved change orders. Disallow excess.

5. Trade line item review:

a. On Form HUD-92331-B

(1) Enter all trade line costs from HUD estimate (Form HUD-93236) or Contractor's schedule of values (Form HUD-2328) after adjusting for approved change orders.

(2) Enter all trade line costs from general contractor's cost certification (Form HUD-92330-A). Take architect's fees from mortgagor's cost certification (Form HUD-92330).

(3) Using dollar and percentage variance columns, compare each trade's actual cost with the estimate. Determine allowable amounts.

b. Allowable amounts are <u>not</u> limited by the estimates. Analyze differences.

(1) Allow actual costs paid to complete the work in accordance with the construction contract.

(2) Allow actual costs due to unusual circumstances, e.g., subcontractor bankruptcy, code changes, required replacement of completed work, replacements due to natural occurrences (storms, floods, earthquakes, etc.).

c. Question only amounts substantially in excess.

(1) Contact general contractor and/or mortgagor requesting explanation or more documentation.

(2) Make disallowances if explanation/documentation is not received in a reasonable amount of time.

(3) Reallocation of monies from one trade item to another may be made only by the accountant.

(4) As a result of discussion, have the accountant amend Form HUD-92330-A and resubmit.

d. Disallow any amount not justified or supported as being part of the construction contract work.

e. Disallow costs for duplication of work due to contractor's error or negligence, e.g., improper placement, failure to protect, noncompliance with contract, etc.

D. Summary of Cost Certification Review on Form HUD-92331

1. Enter all recommended disallowances.

2. Enter summary of construction contract costs.

3. Enter contractor's profit from mortgagor's Form HUD-92330. Add profit from all HUD-approved change orders.

4. Enter offsite costs from mortgagor's Form HUD-92330, if applicable.

a. Review itemized offsite breakdown.

b. Disallow any cost duplication on general contractor's Form HUD-92330-A.

5. Property Insurance Schedule, Form HUD-92329. Complete new form using allowed construction costs.

E. Lump Sum Construction Contract Cost Certification

1. Review mortgagor's certification (Form HUD-92330) if requested to do so by Hub Director.

2. Review cost certification of any subcontractor that has identity of interest with the mortgagor.

F. Section 232 Procedures

1. Follow the above instructions for Section 221(d) and 220 with additions and modifications as indicated below.

a. Actual costs include Major Movable Equipment.

(1) Mortgagor submits a schedule of Major Movable Equipment installed and the actual cost of each item as part of its cost certification.

(2) Major Movable Equipment is not a part of the construction contract, and it is not included in the general contractor's cost certification. Do not include this cost in calculating the 50/75 percent rule.

b. Kickbacks, rebates, adjustments, discounts, or any other devices must be deducted from actual cost.

c. HUD staff should review:

(1) Mortgagor's itemized estimate of Major Movable Equipment submitted at Firm Commitment.

(2) Mortgagor's schedule of Major Movable Equipment installed and the actual cost of each item.

d. HUD staff should compare Firm Commitment estimate with schedule of actual equipment.

(1) Determine whether the schedule of actual equipment installed generally agrees with the list submitted at Firm Commitment.

(2) Determine whether actual costs generally agree with estimated amounts at Firm Commitment.

(3) If there is general agreement in both the amounts and costs of equipment, accept the schedule.

(4) Note all new items of equipment that appear questionable; also note significant items appearing in the Firm Commitment estimate which do not appear on the schedule of actual equipment (e.g., 120 beds listed in Firm Commitment estimate but no beds appear in schedule of actual equipment). Also note any costs that are unreasonably higher than those estimated at Firm Commitment.

(a) Advise Team Leader to contact mortgagor and request explanation or further documentation.

(b) Accept if explanation/documentation is adequate.

2. Summary of Cost Certification Review of Form HUD-92231

a. Under Recommended Disallowed, describe any disallowed items of Major Movable Equipment and their cost.

b. In the Remarks section, enter the total allowed amount for Major Movable Equipment.

3. Property Insurance Schedule:

a. Enter Major Movable Equipment as separate category on Form HUD-92329. Use allowed amount.

b. Include in total 100 percent insurable value.

14.17 Determine the Mortgagor's Initial Equity Investment–Nonprofit

The nonprofit mortgagor will be permitted a six percent return on its initial equity as computed on Form HUD-2580, Maximum Insurable Mortgage.

A. It is determined as follows:

1. New Construction: Line 6, Form HUD-92580, minus finally endorsed mortgage determined in line 10 of the form.

2. Rehabilitation–Property Owned: Reduce the sum of line 4, Form HUD-92580, plus HUD's estimate of the "as is value" of the existing land and improvements before rehabilitation, by the finally endorsed mortgage determined in line 10 of the form.

3. Rehabilitation–Property Acquired: Reduce the sum of line 4, Form HUD-92580, plus the lesser of HUD's estimate of the "as-is value" of the existing land and improvements before rehabilitation or the acquisition cost of the property, by the finally endorsed mortgage determined in line 10 of the form.

4. Rehabilitation under Section 220 and 221(d): Use the New Construction formula in Subparagraph a above.

B. The base equity computed in #1 above may be increased by:

1. The cost of furnishing, equipment or other betterments essential to the operation of the project.

2. The nonprofit developer's fee used to reduce the estimate closing costs of the project.

3. Grants from national, regional, and local community service organizations (non-government source).

4. Sponsor's cash contribution for the cost of land over and above what HUD has allowed.

C. Modify the Regulatory Agreement to require the return on equity be used for:

1. Continued affordable housing initiatives; or

2. Pledged to the repayment of surplus cash or residual receipts notes given in favor of secondary financing.

D. Asset Management will monitor the nonprofit mortgagors to be certain that the return on equity is used only for permissible purposes.

E. The return on equity is paid from surplus cash/residual receipts. Any shortfall in return may be made up from surplus project funds in future years.

14.18 Determine the Mortgagor's Initial Investment

A. New construction and substantial rehabilitation projects under Sections 220 and 221(d): Line 6, Form HUD-92580, minus the maximum insurable mortgage determined in line 10 of this form.

B. Rehabilitation Property Owned under Section 232: Reduce the sum of line 4, Form HUD-92580, plus HUD's estimate of the as is value of the existing land and improvements before rehabilitation, by the maximum insurable mortgage determined in line 10 of this form.

C. Rehabilitation–Property Acquired under Section 232: Reduce the sum of line 4, Form HUD-92580, plus the lesser of HUD's estimate of the as is value of the existing land and improvements before rehabilitation or the acquisition cost of the property, by the maximum insurable mortgage determined in line 10 of this form.

D. The amount determined by above Paragraphs 1,2, or 3 may be increased by:

1. Expended working capital funds not recognized in the cost certification review.

2. Residential relocation expenses approved by the relocation specialist in excess of the amount established on Form HUD-92264, Section G.

14.19 Lease Payment/Net Income During Construction Period – Section 232

Lease Payment/Net Income during Construction Period–Section 232

A. When an identity-of-interest situation exists, all project income in the construction period, irrespective of the lease amount paid by the identity-of-interest lessee, will be considered and mortgage reductions applied accordingly. There should be no difference in the overall basic income figures whether or not there is an identity of interest leasee.

B. At the time of cost certification, an audited operating statement covering the period from the beginning of marketing and rent-up activities (or date of initial endorsement in rehabilitation projects involving insurance of advances or start of construction for rehabilitation projects involving insurance upon completion) to the cost certification cut-off date, must be submitted by:

   1. The mortgagor entity, in all cases;

   2. The lessee, when an identity-of-interest exists between the mortgagor and lessee and the lessee has executed the Regulatory Agreement–Nursing Home, Form HUD-92466 NHL.

   3. The mortgagor entity only, where no identity-of-interest exists between the mortgagor and lessee and the lessee has executed the Regulatory Agreement, Nursing Home, Form HUD-92466 NHL. The mortgagor's income statement should reflect a market comparable lease payment as income.

   4. The mortgagor, where the mortgagor and the administrator are the same entity and Form HUD-92466 NHL has not been executed.

C. Treat net income resulting from review of the operating statement as a recovery of construction costs (on Form HUD-92331A, Cost Certification Review Worksheet) for a profit motivated mortgagor and for a nonprofit mortgagor as:

   1. At cost certification, as a recovery of construction costs to the extent it was used to reduce liquidated/actual damages.

   2. As an offset for any eligible mortgage increase.

   3. At final endorsement, deposit the unused portion of net income to the Reserve Fund for Replacements.

D. Nonprofit Developer's Fee may be used to recover the cost of Administrator's Salary during lease-up. Check to make sure this cost is not duplicated in the income and expense statement.

14.20 Modified Form of Cost Certification – Section 223(f)

A. A modified form of cost certification shall be completed and submitted for review 15 days prior to the initial/final endorsement of the loan for insurance for all projects processed pursuant to Section 223(f) except those 207/223(f) refinancing transactions where 80% of value is the controlling criterion. (In such cases, cost certification is not required.)

1. The mortgagor must certify to the total actual costs incurred in the acquisition or refinancing of the property. The certification must be submitted on Form FHA-2205-A, and it must be dated and signed by an authorized agent of the mortgagor.

2. The mortgagee must submit the certification to HUD for computation of the maximum insurable mortgage and completion of Section II of Form FHA-2205-A.

3. If, in a purchase transaction, the amount of the acquisition cost determined allowable at cost certification exceeds the estimate of value which was determined during processing, the rent formula shall be recomputed. This re-computation may be accomplished using the allowable acquisition cost as determined by cost certification and the collar amount of secondary financing represented by the approved promissory notes (Form HUD-92223).

B. A supplemental cost certification must be submitted by the mortgagor where an escrow was established at endorsement for completion of non-critical repairs. In cases where actual costs are less than estimated, the maximum insurable mortgage must be recalculated. If the maximum insurable mortgage is reduced due to lower actual costs, the mortgagor must either:

1. Provide the required prepayment to the mortgagee.

2. Have the required prepayment deducted from the repair escrow.

14.21 Mortgage Reduction after Cost Certification

A. The National Housing Act requires that the mortgage will not exceed the applicable percentage of actual costs. If certified actual costs are lower than original projected cost as reflected in Form HUD-92264, a reduction in mortgage may be applicable. The Agreement and Certification, Form HUD-3305/3306, also addresses this issue and provides that where the Commissioner accepts, for cost certification, estimates of cost for any item, the later substitution of certified actual costs may require a reduction of the mortgage.

B. Reductions of cost may arise from:

1. Refunds, rebates, or discounts.

2. Excess of escrows over the actual costs of incomplete construction items.
3. Refunds of deposits made by the mortgagor to prevent losses to the mortgagee from loss in connection with sale of the mortgage.
4. Settlement of claims against bonding companies or others after project completion.

C. At final endorsement, the mortgagor must set up a cash escrow to pay all "to be paid in cash items" identified on Form HUD-92330, Mortgagor's Certificate of Actual Cost, and debts to third parties who made the original disbursement for an item listed as paid on Form HUD-92330.

1. Reconcile the difference between:
   a. Obligations listed on Form HUD-92023, Request for Final Endorsement of Credit Instrument or FHA-2455 (For Insurance Upon Completion Projects only).
   b. The "to be paid" column on Form HUD-92330 plus debts to third parties.
2. Difference must be supported by paid receipts and a statement from the mortgagor identifying by name and cost, those items paid in cash. The receipts and statement are affixed to Form HUD-92023/FHA-2455.
3. Do not accept personal or business checks issued by the mortgagor at final endorsement as evidence of payment. Payment must be in certified or cashier checks.
4. Prepare a new Form HUD-92331A to disallow obligations listed as "paid" or "to be paid" on Form HUD-92330, which are represented at final endorsement as paid by HUD-approved notes. Prepare a new Form HUD-92580 from the total of HUD-approved cost of revised Form HUD-92331A.
5. Undisbursed mortgage proceeds may supplement or satisfy the cash escrow.
6. Use Form HUD-92476-1, Escrow Agreement for Unpaid Construction Costs:
   a. To set up the cash escrow.
   b. Attach a detailed listing of the unpaid costs.
7. Use Form HUD-92464, Request for Approval of Advances of Escrow Funds to disburse escrow.
8. Escrow should be disbursed within 45 days after final endorsement. If all of the funds are not disbursed follow the procedures in D below.
9. At final endorsement, if all obligations have been paid in cash, nothing else is needed.

D. Sixty days after final endorsement:

1. Prepare a new Form HUD-92331A. Enter under the column heading:
   a. "2264" - the amount of each item of cost recognized from the earlier Form HUD-92331A "Allowed" column.
   b. "2330/2330A" - the amount listed in Column C of the Mortgagor's Certificate of Actual Cost, Form HUD-92330, for each item of cost.

c. "Allowed" - the amounts paid in cash based on the reconciliation performed in Paragraph B above and disbursements from the cash escrow account.

c. "Disallowed" - the lower of the amounts previously allowed or paid in cash.

2. Compute a new Maximum Insurable Mortgage, Form HUD-92580, based on the total of the "Disallowed Column" (Form HUD-92331A). If this computation produces an amount less than the mortgage finally endorsed:

   a. Notify the Directors of Housing Development and Management by memorandum that prepayment to the mortgage is required.

   b. Prepayment is mandatory and is applied:

      (1) In amounts equal to the scheduled monthly principal payments, to the extent possible.

      (2) Any remainder goes to the Reserve for Replacements Fund.

   c. If HUD is notified that payment has been delayed because of a dispute or litigation, retain funds to pay the amount pending resolution of the dispute.

   d. Notify the mortgagee or escrow agent by letter of the required prepayment.

   e. Control the remaining balance in a special account, as a reserve for unpaid construction costs from which disbursements may be made only after written consent of the Field Office.

3. The mortgagee will continue to use the existing amortization schedule for servicing the mortgage.

   a. The prepayment is in addition to the regular monthly payments to principal.

   b. There is no adjustment in the amount of the annual MIP due because of these mandatory prepayments.

4. The escrow requirement does not apply to funds the general contractor owes. However, the general contractor must submit a reconciliation of its "to be paid" items.

14.22 Increase in Mortgage Amount

A. Timing–Generally, requests for a mortgage increase should not be considered until the project is complete, cost certification has been submitted, and final endorsement will likely be achieved immediately following processing of the mortgage increase.

B. Base for considering mortgage increase:

1. Necessary changes that arise from differing site conditions (as defined in the construction contract).

2. Compliance with local codes.

3. Unforeseen conditions that may affect the safety and health of occupants.

3. Betterments that are economically justified (e.g., those that produce significant cost savings to project operation, can be reflected in increased income expectancy, or enhance the security of the mortgage).

C. Costs caused by extensions in construction time, when such extensions: are approved by HUD; justifiable under AIA General Conditions; and caused by problems beyond the contractor's control.

D. Other costs not known at Firm Commitment resulting from requirements of local authorities and beyond the mortgagor's control.

E. Construction (hard) cost increases caused by a natural disaster declared by Federal or State government, to the extent not covered by casualty insurance.

F. Increased costs resulting from concealed subsurface site conditions, provided it is determined that exploratory tests during project design were sufficient and thorough and neither the architect nor engineer were at fault.

G. Cost of substituting a general contractor when the original general contractor is terminated for cause and the surety has failed to perform.

H. To correct a substantial HUD error in the original processing which would otherwise result in serious inequities.

I. Any mortgage increase for an insured project must be more than 2-1/2 percent of the original mortgage and at least $50,000.

14.23 Restrictions for Mortgage Increases

A. A mortgage increase may not be granted for cost overruns associated with: completion of the work in accordance with the original contract documents by the original contractor, changes made primarily for the convenience of the mortgagor or contractor, nor for the aggrandizement of the mortgagor or contractor.

B. Cost overruns are not a basis for granting a mortgagor's request for mortgage increase nor are changes made primarily for the convenience or aggrandizement of the mortgagor or contractor.

C. Any mortgage increase for an insured project must be more than 2-1/2 percent of the original mortgage and at least $50,000.

D. The increase must be supported by net income under Criterion 5 of Form HUD-92264-A.

E. A mortgage increase may not be granted for replacing a contractor where the mortgagor sets up a "straw contractor" for purposes of BSPRA.

14.24 Processing a Mortgage Increase

Technical processing consists of Step One through Step Four below. The four steps to processing a mortgage increase, depending on the condition being considered, are:

A. Step One: Use the alternative applicable to the condition being considered:

1. Alternative One. Applicable to necessary and betterment change order cost increases.

   a. Architecture and Valuation staff review the change orders to determine eligibility for processing a mortgage increase. Architecture further reviews for the added cost.

   b. Mortgage Credit computes the allowable costs on Form HUD-92331-A, Cost Certification Review Worksheet–Mortgage Credit Staff, Line 1.d. Reduce this amount by the cost attributable to any change order(s) not qualifying for a mortgage increase.

   c. The adjusted hard cost forms the basis of the mortgage increase computation

2. Alternative Two. Applicable contract time extension increase to soft costs.

   a. Mortgage Credit computes the allowable costs on Form HUD-92331A, Cost Certification Review Worksheet–Mortgage Credit Staff, Line 3 through 6.

   b. The adjusted soft cost forms the basis of the mortgage increase computation.

3. Alternative Three. Applicable to construction contract cost increases due to a change in the contractor.

   a. A&E staff computes a new Form HUD-2328 and Form HUD-92264, Section G through Line 50.

   b. Mortgage Credit staff computes the allowable costs of Form HUD-92331A, Cost Certification Review Worksheet–Mortgage Credit Staff, Line 1.c. for hard cost increases between the original contractor and the contractor completing the work, and Lines 3 through 6 for soft cost increases associated with the change in contractor.

   c. The adjusted hard and soft costs form the basis of the mortgage increase computation.

4. Alternative Four. Applicable to substantial error in HUD cost processing.

   a. A and E staff computes a new Form HUD-2328, and Form HUD-92264, Section G through line 50.

b. Mortgage Credit computes the allowable costs on Form HUD-92231A, Cost Certification Review Worksheet–Mortgage Credit Staff, Line 1.c, using the criteria in below paragraph.

c. The allowable construction costs for processing the increase will be based upon the lesser of:

(1) The amount of the construction cost certified by the mortgagor, or

(2) The upset price of the construction contract as adjusted by approved change orders eligible for a mortgage increase, plus the increases resulting from correcting or errors in the original processing.

d. The adjusted hard cost forms the basis of the mortgage increase computation.

NOTE: The mortgage credit examiner must not use the adjusted upset price of the construction contract as a limiting criterion at cost certification where there is a substantial error in HUD cost processing.

B. Step Two: Mortgage Credit must compute (for use by Valuation in completing Form HUD-92264) the eligible costs and fees for the following: architect's fees, bond premium if paid by the mortgagor, other fees not included in the construction contract and paid by the mortgagor, interest, taxes, insurance, developer's fee (if applicable), legal, organizational and audit fees, marketing (if applicable), offsite costs, as-is land value and "as-is" value of property (if applicable). Mortgage credit must comply with the following in computing the costs and fees.

1. Do not increase BSPRA or restore Contingency Reserve or Developers Fee.

2. Do not include non-mortgageable items (construction or permanent loan extension fees; discount rate, maintenance fees, etc.)

3. Offset non-mortgageable items by net income (net non-proprietary income, if applicable) to offset amount of mortgage increase, and

4. For increases caused by natural disaster:

a. Consider in the revised cost any increases from any interim closing for: carrying charges, financing fees, and legal fees. Do not include any cost due to construction delays before the disaster,

b. Cut the new estimated replacement cost by the amount of any actual recovery through insurance proceeds, and

c. Require prepayments to be made for any late recovery of insurance proceeds.

C. Step Three. Valuation must use the costs and fees developed by Mortgage Credit in Step Two in revising Form HUD-92264. Valuation must consider each of the following:

1. Examination fee, initial service fee, GNMA/FNMA fee, inspection fee MIP, and title and recording based on the approvable increased mortgage amount.

2. Net income derived from market rent, expense and occupancy estimates current as of the date of mortgage increase processing.

D. Step Four. Mortgage Credit must prepare a revised Form HUD-92264-A, using the revised Form HUD-92264 and Trial Form HUD-92264A prepared by Valuation in Step Three.

14.25 Authorization to Reopen Mortgage Transaction

A. Advise the mortgagee of HUD's approval or denial of the request for a mortgage increase upon completion of technical processing. Use Specimen Letter–Agreement Authorizing Reopening of Mortgage Transaction, to notify the mortgagee, where a determination is made to increase the mortgage.

1. Approval of a mortgage increase is subject to the payment of the following fees based on the amount of the increase.

   a. Application Fee of $3.00 per thousand of the increase.

   b. Inspection Fee of $5.00 per thousand of the increase applicable only where the increase involves construction (hard) costs.

14.26 Document Distribution

A. Form HUD-92580, Maximum Insurable Mortgage.

1. Mortgagee–original and one executed copy.

2. One executed copy to each of the following: Closing Attorney, Mortgage Credit Control File, Washington Docket, Field Office Docket, Field Office Valuation Data Bank.

B. Cost Certification Documents. Original documents filed in the Washington Docket and one copy in the Field Office Docket.

14.27 Audit by Inspector General

The Hub Director should request the District Inspector General for Audit to audit the mortgagor's and/or contractor/s books where apparent discrepancies appear to arise from other than inadvertent error, or creditable misinterpretation of applicable criteria. Do not issue Form HUD-92580, Maximum Insurable Mortgage, before completion of an IG Audit initiated before its issuance. An audit must also be requested for any indicated fraud or material misrepresentation detected after issuance of Form HUD-92580.

14.28 Cost Certification Incontestability

After HUD approves the certifications, and issues Form HUD-92580, Maximum Insurable Mortgage, they are final and incontestable unless there is fraud or material misrepresentation by the mortgagor, general contractor, or subcontractors.

14.29 Post Closing Escrows

Post Closing Escrows must be set up at final closing to pay all "to be paid in cash" items identified on Form HUD-92330, Mortgagor's Certificate of Actual Cost, and debts to third parties who made the original disbursement for an item listed as paid on Form HUD-92330. These amounts may be adjusted for payments made between the cut-off date and the date of final closing.

CHAPTER 15

QUALITY ASSURANCE ENFORCEMENT ACTIONS

15.1. SANCTIONS OF A MAP LENDER: OVERVIEW.

A. By permitting a MAP Lender to prepare much of the documentation for a loan submission for mortgage insurance, HUD places confidence in the Lender's integrity and competence. HUD and MAP Lenders have a mutual interest in ensuring consistent Lender competence and compliance with the MAP Guide and other relevant guidance and handbooks. If in the process of performing this work, the Lender places HUD at risk, HUD needs to issue a Warning Letter or sanction the Lender as quickly as possible.

B. Every HUD multifamily employee plays an important role in the MAP Quality Assurance (QA) effort. This Chapter provides QA guidance to Program Centers, Hubs, and the Office of Multifamily Development (OMD) including the Lender Qualifications and Monitoring Division (LQMD), regarding QA tools: i) Warning Letters; ii) Probation; iii) Suspension; iv) Termination; v) Limited Denial of Participation (LDP); and vi) referral to the Mortgagee Review Board or the Office of Inspector General. An LDP is a sanction applied to participants in loan transactions other than FHA-insured lenders; the procedures governing LDP are set forth in 24 CFR § 24.700, *et seq*. The purpose and authority of the Mortgagee Review Board is set forth in 24 CFR Part 25.

15.2. WHO HAS THE AUTHORITY TO ISSUE WARNING LETTERS, PROBATIONS, SUSPENSIONS AND TERMINATIONS, INITIATE LIMITED DENIAL OF PARTICIPATION ACTIONS AND MAKE RECOMMENDATIONS TO THE MORTGAGEE REVIEW BOARD AND THE OFFICE OF INSPECTOR GENERAL?

A. General.

1. At any time a Hub/Program Center Director or the Director of OMD may initiate discussion with a MAP Lender regarding any concerns HUD has with respect to any of the Lender's actions or personnel, or any changes the Lender should make using its MAP authority. In this connection, HUD employees are reminded of the Department's policy on use of electronic mail contained in HUD Administrative Handbook 2400.1, Chapter 7.

2. If there are concerns about the Lender's underwriting and/or construction loan administration, a Hub/Program Center Director, or the Director of OMD, or the MAP Lender Review Board may take certain actions as detailed below.

3. Every HUD multifamily employee is required to refer possible instances of fraud, material misrepresentation or other criminal violations to the Office of the Inspector General.

B. A Program Center Director may:

1. Issue a Warning Letter to the MAP Lender.

2. Recommend to the Hub Director that s/he recommend to the Director OMD that s/he submit a MAP Lender to the MAP Lender Review Board for possible Probation, Suspension or Termination of MAP privileges.

3. Recommend to the Hub Director that s/he:

a. Refer the MAP Lender to the Mortgagee Review Board.

b. Initiate the issuance of a Limited Denial of Participation (LDP) of an individual or firm involved in a "covered transaction" as defined in 24 CFR 24.110.

C. A Hub Director may:

1. Issue a Warning Letter to the MAP Lender.

2. Initiate the issuance of an LDP of an individual or firm involved in a "covered transaction" as defined in 24 CFR 24.110.

3. Recommend to the Director OMD that s/he submit a MAP Lender to the MAP Lender Review Board for possible Probation, Suspension or Termination of MAP privileges.

4. Refer a MAP Lender to the Mortgagee Review Board.

D. The Director of OMD may:

1. Issue a Warning Letter to the MAP Lender.

2. Refer an individual or firm involved in a "covered transaction," as defined in 24 CFR 24.110 to the Deputy Assistant Secretary (DAS) for Multifamily Housing for imposition of an LDP in which case the LDP may be imposed on a nationwide basis or a more restricted basis.

3. Recommend the MAP Lender to the MAP Lender Review Board for possible Probation, Suspension or Termination of MAP privileges;

4. Refer the MAP Lender to the Mortgagee Review Board.

E. The MAP Lender Review Board may:

1. Issue a Warning Letter to the MAP Lender.

2. Place a MAP Lender on Probation, as described below.

3. Suspend or Terminate a Lender's MAP privileges, as described below.

4. Enter into a Settlement Agreement with a MAP Lender.

5. Refer an individual or firm involved in a "covered transaction," as defined in 24 CFR 24.110 to the DAS for Multifamily Housing for imposition of an LDP in which case the LDP may be imposed on a nationwide basis or a more restricted basis.

6. Refer a MAP Lender to the Mortgagee Review Board.

F. All recommendations authorized in sections 15.2B through D above shall be in writing, and shall state the reasons for the recommendations and the facts supporting those reasons. Recommendations shall be transmitted to the next higher level of review, as set forth above, together with copies of all supporting documents.

15.3. BASIS FOR ISSUING A WARNING LETTER OR SANCTIONING A MAP LENDER.

A MAP Lender's underwriting and construction loan administration may lead to a Warning Letter or sanction. Examples include, ***but are not limited to,*** the following:

A. Minor offenses that may be the basis for a Warning Letter include:

1. Failure to provide required exhibits or the submission of incomplete or inaccurate exhibits. Although the Lender will be permitted to correct minor errors or provide additional information, substantial inaccuracies or lack of significant information will result in a return of the application and retention of any fee collected.

2. Repeated failure to complete processing to Firm Commitment unrelated to an underwriting analysis, which demonstrates that the process should not proceed to firm Commitment.

3. Preparation of an underwriting summary that is not supported by the appropriate documentation and analysis.

4. Failure to notify the HUD processing office promptly of changes in the mortgage loan application for a Firm Commitment submitted, such as changes in rents, numbers of units, or gross project area.

5. Failure to meet MAP closing requirements or construction loan administration requirements.

6. Business practices that do not conform to those generally accepted by prudent lenders or that show irresponsibility.

7. Failure to cooperate with a Lender Qualifications and Monitoring Division review.

B. Serious offenses that might be a basis for a Warning Letter and/or Probation, Suspension, or Termination include:

1. Receipt of multiple Warning Letters over any one-year period. In any sanction action that is being pursued as the result of prior Warning Letters, the facts and circumstances surrounding those warning letters and the corrective actions, if any, undertaken by the Lender shall be considered.

2. Fraud or material misrepresentation in the Lender's participation in FHA multifamily programs.

3. Lender collusion with or influence upon Third Party Contractors to modify reports affecting the Contractor's independent evaluation.

4. A violation of MAP procedures by a Third Party Contractor, which the MAP Lender knew, or should have known, was occurring and which, if performed by the MAP Lender itself, would constitute a ground for a sanction under this chapter.

5. Evidence that a Lender's inadequate or inaccurate underwriting was a cause for assignment of an FHA-insured mortgage and claim for insurance benefits to HUD.

6. Identity-of-interest violations under Section 2.5 of the MAP Guide.

7. Payment by or receipt of a payment by a MAP Lender of any kickback or other consideration, directly or indirectly, which would affect the Lender's independent evaluation, or represent a conflict of interest, in connection with any FHA-insured mortgage transaction.

8. Failure to comply with any agreement, certification, undertaking, or condition of approval listed in a MAP Lender's application for approval.

9. Noncompliance with any requirement or directive of the MAP Lender Review Board.

10. Violation of the requirements of any contract with HUD or violation of the requirements in any statute, regulation, handbook, notice, mortgagee letter, or other written rule or instruction including the MAP Guide as interpreted by answers to Frequently Asked Questions (FAQs) that are posted on the Multifamily MAP website.

11. Submission of false information, or a false certification, to HUD in connection with any MAP mortgage transaction.

12. Failure of a MAP Lender to respond in a timely manner to inquiries from the MAP Lender Review Board in accordance with this Chapter.

13. Indictment or conviction of a MAP Lender or any of its officers, directors, principals or employees for an offense that reflects on the responsibility, integrity, or ability of the Lender to participate in the MAP initiative.

14. Employing or retaining an officer, partner, director, or principal at the time when the person was suspended, debarred, ineligible, or subject to a Limited Denial of Participation (LDP) under 24 CFR Part 24, or otherwise prohibited from participation in HUD programs, when the MAP Lender knew or should have known of the prohibition.

15. Employing or retaining an employee who is not an officer, partner, director or principal, and who is or will be working on HUD-FHA program matters, at a time when that person was suspended, debarred, ineligible, or subject to a Limited Denial of Participation under 24 CFR Part 24 or otherwise prohibited from participation in HUD programs, when the MAP Lender knew or should have known of the prohibition.

16. Failure to cooperate with an audit or investigation by the HUD Office of Inspector General or an inquiry by HUD into the conduct of the MAP Lender's FHA-insured loans.

17. Failure to fund MAP mortgage loans or any misuse of mortgage loan proceeds.

C. The issuance of a Warning Letter is not a prerequisite to the Probation, or Suspension, or Termination of MAP privileges.

15.4. ADMINISTRATIVE RECORD.

When any final action is taken against a MAP Lender, an administrative record must be prepared. It should include all materials that might have influenced the decision, and not merely those relied upon in the final decision. Although not intended to be an exhaustive listing, examples of material that should be included are:

- Copies of correspondence;
- Copies of E-mails, if relied on in the decision process;
- FAXes including the FAX cover sheet and the FAX confirmation sheet;
- Application and underwriting submissions;
- Copies of appropriate sections of notices, guide books including Frequently Asked Questions (FAQs) posted on the Multifamily web site, handbooks, regulations and statutes;
- Notes from meetings and telephone conversations; and

- Work product and recommendations from subordinates.

All the material should be placed in date order with an index cover sheet.

The term "final action" includes issuance of a Warning Letter but does not include any referral, recommendation for action, or presentation to the MAP Lender Review Board (Board). In matters before the Board, the administrative record ordinarily will consist of the referral and the materials accompanying referrals to the Board, any written materials submitted by the Lender and any written materials submitted by the Director of OMD in response to those materials, the transcript of the informal meeting when that transcript is a part of the record, and the final decision of the Board.

***Note**: Intra-agency memoranda and other such records should be included, but will not be released if privileged. The administrative record in its final form as described in this Section, which shall be made available in its entirety to the Office of General Counsel, relates to and supports HUD's final action and is not to be released to any person outside of HUD until it has been reviewed by the Office of General Counsel. All evidentiary material supporting any recommendation to the MAP Lender Review Board must be delivered to the Lender as provided in Section 15.13.A and must be included in the administrative record.*

15.5. WARNING LETTERS.

A. The Program Center Director/Hub Director, the Director of OMD, or the MAP Lender Review Board may issue a Warning Letter to a Map Lender.

B. The Warning Letter:

1. May require a meeting in the official's office with principal owners of, and/or Officers of the MAP Lender to discuss the problem(s) and possible corrective action(s).

2. Shall specify the violation(s) for which the Warning Letter is issued. If the Warning Letter explains or interprets a section of the MAP Guide, the text of the letter (after deleting all information that might identify the MAP Lender concerned) shall be posted on the Multifamily MAP web site as a FAQ.

3. Direct the taking of a corrective action.

C. The Warning Letter does not suspend a Lender's MAP privileges but may impose a higher level of review of the Lender's underwriting by the Field Office and/or Headquarters.

D. The Warning Letter must clearly state that it is a Warning Letter issued pursuant to Chapter 15 of the MAP Guide. The letter is mailed to:

1. The MAP Lender's contact person as listed on the Multifamily MAP website.

2. The Director, Lender Qualifications and Monitoring Division (LQMD), Room 6128, Headquarters along with a copy of the administrative record.

E. The Lender must be sent, along with each Warning Letter, a copy of the administrative record prepared with respect to that letter.

15.6. MAP PROBATION.

Only the MAP Lender Review Board may place a Lender on probation.

Probation is intended to be corrective in nature and not punitive. As a result, release from probation is conditioned upon the Lender meeting a specific requirement or requirements, such as replacement of a staff member.

A. During the probation period a MAP Lender may:

1. Not submit, and the HUD Field Office may not accept, materials after the close of business of the date of the probation letter for a new:

   a. MAP Pre-application for a Section 220, 221(d) or 232 project involving new construction/substantial rehabilitation; or

   b. MAP Firm commitment application for a Section 207 (pursuant to Section 223(f)) project or Section 232 (pursuant to 223(f)) project involving a purchase or refinance.

   Note: If either a new pre-application or a new firm commitment application for a Section 207 pursuant to Section 223(f) or Section 232 pursuant to 223(f) was accepted after the date of the probation letter, it shall be returned to the MAP Lender.

2. Continue to process any:

   a. MAP Section 220, 221(d) or 232 project involving new construction/substantial rehabilitation when a pre-application was submitted to a HUD Hub/Program Center before the close of business on the date of the probation letter.

   b. MAP Section 207 (pursuant to Section 223(f)) project or Section 232 (pursuant to 223(f)) project involving purchase or refinance when a firm commitment application was submitted to a HUD Hub/Program Center before the close of business on the date of the probation letter.

B. Probation continues until all specific corrective actions required by the Board (for example, exclusion of a specific staff member from work on MAP loans) are taken by the MAP Lender. At the point when all corrective actions have been taken, the MAP Lender shall notify the Board. Once the Board is satisfied that the corrective actions have occurred, the Probation period shall end. A false statement that corrective action has been taken constitutes a false certification as described under Section 15.3, and in addition may constitute a violation of 18 US.C. § 1001. A Lender's failure to take prompt corrective action after Probation has become final may be the basis for a recommendation of either Suspension or Termination. Any such recommendation shall, when possible, go to a MAP Lender Review Board composed of the same members who issued the original Probation.

C. Probation is nationwide in effect. The Lender's name shall be removed from the MAP-Approved Lender list on the web. When Probation is lifted, the Lender's name shall be re-posted promptly on the web.

D. The probation notice is:

- Sent by overnight delivery;
- Addressed to the MAP Lender's contact person as listed on the Multifamily MAP website; and
- Signed for by an employee of the MAP Lender upon receipt.

E. Refer to Section 15.12 and 15.13 for sanction and notice procedures.

15.7. SUSPENSION OF MAP PRIVILEGES.

Only the MAP Lender Review Board may suspend a Lender's eligibility for MAP.

Suspension is limited by time, not to exceed 12 months. In addition, a Suspension may impose any conditions that may be imposed by Probation. Where such additional conditions are imposed, a Suspension shall terminate only when the time period of the Suspension has elapsed, the Lender has certified its compliance with those additional conditions and the Board is satisfied that the corrective actions have occurred.

A. During the suspension period a MAP Lender may:

1. Not submit, and the HUD Field Office may not accept, materials after the close of business of the date of the suspension letter for a new:

   a. MAP Pre-application for a Section 220, 221(d) or 232 project involving new construction/substantial rehabilitation; or

   b. MAP Firm commitment application for a Section 207)pursuant to Section 223(f)) project or Section 232 (pursuant to 223(f)) project involving purchase or refinance.

   ***Note*: If either a new pre-application or a new firm commitment application for a Section 207 pursuant to Section 223(f) or Section 232 pursuant to 223(f) project was accepted after the date of the suspension letter, it shall be returned to the MAP Lender.**

2. Continue to process any:

   a. MAP Section 220, 221(d) or 232 project involving new construction/substantial rehabilitation when a pre-application was submitted to a HUD Hub/Program Center before the close of business on the date of the suspension letter.

   b. MAP Section 207 (pursuant to Section 223(f)) project or Section 232 (pursuant to 223(f)) project involving purchase or refinance when a firm commitment application was submitted to a HUD Hub/Program Center before the close of business on the date of the suspension letter.

B. The suspension notice is:

- Sent by overnight delivery;
- Addressed to the MAP Lender's contact person as listed on the Multifamily MAP website; and
- Signed for by an employee of the MAP Lender upon receipt.

C. Suspension is nationwide in effect. The Lender's name shall be removed from the MAP-Approved Lender list on the web. When Suspension is lifted, the Lender's name shall be re-posted promptly on the web.

D. Refer to Sections 15.12 and 15.13 below for sanction and notice procedures.

15.8. TERMINATION OF MAP PRIVILEGES.

Only the MAP Lender Review Board may terminate a Lender's eligibility for MAP.

A. A terminated Lender may not submit, and the HUD Field Office may not accept, materials after the close of business of the date of the termination letter for a new:

1. MAP Pre-application for a Section 220, 221(d) or 232 project involving new construction/substantial rehabilitation; or

2. MAP Firm commitment application for a Section 207 (pursuant to Section 223(f)) project or Section 232 (pursuant to 223(f)) project involving purchase or refinance.

B. Any MAP pre-application or MAP application in process may no longer be processed under MAP by the terminated Lender. The Lender will either:

1. Immediately transfer the transaction to the Traditional Application Processing (TAP) procedure. The HUD Field Office will completely reprocess all stages of the transaction; or

2. Immediately transfer the project to a new MAP Lender. The new MAP Lender must completely reprocess all stages of the transaction. At no time can the new MAP Lender assign the pre-application, the firm application, the mortgage insurance

commitment, or the insured construction loan back to the original MAP Lender.

C. The Department will not endorse any MAP loan processed by the terminated lender unless a firm commitment was issued before the date of termination.

1. Firm commitments involving new construction or substantial rehabilitation must be immediately transferred to a new MAP Lender. At no time can the new MAP Lender assign the firm mortgage insurance commitment, or the insured construction loan, back to the original MAP Lender.

2. Firm commitments issued for Section 223(f) projects may be transferred before final endorsement to any approved FHA lender or kept in the Lender's portfolio.

3. For those construction loans that have been initially endorsed, the MAP Lender will lose its MAP privileges for construction loan administration. HUD will assume all the construction loan administration duties it normally performs for TAP processing.

D. The original Lender may service a transferred loan once it is finally endorsed.

E. An application for reinstatement of MAP authority may not be made until at least 12 months after the date of termination. The requirements for reinstatement shall be similar to initial qualification, discussed in Sections 2.3 and 2.6 of the MAP Guide, and the applicant must show that the problems, which led to termination, have been resolved.

F. The termination notice is:

- Sent by overnight delivery;
- Addressed to the MAP Lender's contact person as listed on the Multifamily MAP website; and
- Signed for by an employee of the MAP Lender upon receipt.

F. Termination is nationwide in effect. The Lender's name shall be removed from the MAP-Approved Lender list on the web.

G. Refer to Sections 15.12 and 15.13 below for sanction and notice procedures.

15.9. SETTLEMENT AGREEMENTS.

A. The Director of OMD is authorized on behalf of the Office of Multifamily Housing to negotiate settlement agreements with MAP Lenders.

1. ***Before*** the Director of OMD has recommended a MAP Lender to the MAP Review Board for possible Probation, Suspension or Termination, the DAS for Multifamily Housing or his/her designee must approve any proposed settlement agreement. Furthermore, in this situation substitute the DAS for Multifamily for the Board in Section 15.9.C below.

2. ***After*** the Director of OMD has recommended a MAP Lender to a MAP Lender Review Board for possible Probation, Suspension, or Termination, the Board must approve any proposed settlement agreement.

B. Settlement agreements may provide for:

1. Cessation of any violation.

2. Correction or mitigation of the effects of any violation.

3. Removal of Lender staff from positions involving origination, underwriting and/or construction loan administration.

4. Actions to collect sums of money wrongfully or incorrectly paid by the MAP Lender to a third party.

5. Implementing or revision of a Quality Control Plan or other corrective measure acceptable to HUD.

6. Modification of the length of any administrative action and such other provisions the Board or DAS for Multifamily Housing deems to be appropriate.

C. A MAP Lender's compliance with a settlement is evidenced by the Lender certifying its compliance with those additional conditions, and the Board or DAS for Multifamily Housing being satisfied that the corrective actions have occurred.

D. Failure by a MAP Lender to comply with a settlement agreement may result in a probation, or suspension, or termination of MAP approval or referral to the Mortgagee Review Board.

15.10. MAP LENDER REVIEW BOARD.

A. The Board is authorized to take action against any MAP Lender that violates MAP requirements.

B. Composition.

1. The Board shall consist of three HUD Multifamily Housing Officials designated by the DAS for Multifamily Housing.

2. Board members

   a. Are selected from among Hub and Program Center Directors or Multifamily Housing employees.

   b. May serve on a continuing basis or may be chosen for the particular review, as the Deputy Assistant Secretary for Multifamily Housing determines.

   c. Shall have no prior business affiliation or other conflicts of interest with the Lender under review.

   d. Shall select one of their members to act as Chairman of the Map Lender Review Board.

   e. Are expected to have a good knowledge of multifamily housing origination, underwriting and construction loan administration procedures.

3. The following individuals cannot serve on the Board:

   - The Hub/Program Center Director making the recommendation;
   - Staff from the Hub/Program Center making the recommendation;
   - The Director of OMD; and
   - Staff from OMD.

C. Non-voting Advisors to the Board.

- Designee of the Office of Inspector General

- Designee of the Office of General Counsel

D. The Director of OMD or his/her designee presents the cases to the MAP Lender Review Board.

E. Functions, Duties and Powers.

1. The MAP Lender Review Board may impose appropriate sanctions on a MAP Lender after:

   a. Impartial review of all information and documentation submitted to the Board and

   b. Making factual determinations that there has been a violation of MAP guidelines or instructions.

2. In determining what action is appropriate, the Board considers among other factors:

   - The seriousness and the extent of the violation(s);
   - Any history of prior offenses;
   - Deterrence of future violations;
   - Any inappropriate benefits received by the MAP Lender;
   - Potential inappropriate benefit to other persons; and
   - Any mitigating factors.

3. The Board may refer:

   a. A MAP Lender to:

      1) The Mortgagee Review Board for possible termination as a HUD-FHA approved mortgagee or lender, and/or imposition of civil money penalties for knowing and material violations of HUD-FHA requirements. (See Section 15.17 below.)

      2) The Office of Inspector General.

   b. A an individual or firm involved in a "covered transaction," as defined in 24 CFR 24.110 to the DAS for Multifamily Housing for imposition of an LDP in which case the LDP may be imposed on a nationwide basis or a more restricted basis.

15.11. SUPPORT STAFF FOR MAP LENDER REVIEW BOARD.

A. The Chairman of the Board supplies the clerical staff for the MAP Lender Review Board. The clerical staff:

1. Coordinates Board activities with other HUD offices and government agencies.

2. Develops the agenda and policy issues for Board meetings.

3. Notifies a MAP Lender of any sanction imposed by the Board.

4. Notifies a MAP Lender, when the Board is to consider sanctions.

5. Keeps the official minutes of the Board and the case files on all Board actions.

6. Drafts all notices, orders, letters and directives on behalf of the Board.

7. Performs other duties assigned by the Chairman or directed by the Board.

B. The Office of Multifamily Development staff serves the MAP Lender Review Board as the prosecutor. The Office:

1. Is the contact point within HUD for Headquarters and Field Offices on all matters concerning the Board.

2. Presents the sanction cases to the Board.

3. Collects, analyzes, prepares and submits to the Board the charging document and supporting documentation together with possible options or recommendations as to sanctions against a MAP Lender.

4. Refers cases for Board consideration.

5. Negotiates settlement agreements with MAP Lenders.

6. Prepares the administrative record of all matters before the Board.

C. Office of Inspector General

1. Refers MAP Lenders for Board consideration as a result of audits or investigations.

2. Performs audits or investigations of approved MAP Lenders.

D. Office of General Counsel

1. Advises the Board as to the legal sufficiency of actions it proposes to take.

2. Assists the Board in the drafting of Board decisions and orders.

3. Assists the Director of OMD in settlement negotiations.

4. Provides other legal advice as requested by the Board.

15.12. PROCEDURES FOR SANCTIONS.

A. Requests for MAP Lender Review Board Action. The Director of OMD, or his/her designee, may refer a MAP Lender to the Board for consideration of sanctions.

1. Any referral from a Hub Director must be sent to the Director of OMD.

2. The referral must contain a written report, which includes:

a. A full factual background description of the violations;

b. Specific citations of the Department's requirements that have been violated; and

c. All available supporting documentation that bears upon the violations (the administrative record discussed earlier).

3. There is no notification to the Lender until the Board is constituted and receives the charging documents from the Director of OMD. (At that point, notification under Section 15.13 is automatic, and does not require substantive consideration by the Board of the nature of the charge.)

B. Appointment of the Board.

When the Director of OMD intends to send a referral to the MAP Lender Review Board, s/he requests the DAS for Multifamily Housing to appoint a Board, as described in Section 15.10 above

C. Initial Consideration by the Board.

When the Board receives a referral from the Director of OMD, the Board members may confer by email or by conference calls (telephone or video), or may meet in person. Any record of confidential communications between and among Board members at this stage of the proceedings is privileged from disclosure and will not be regarded as a part of the administrative record of any matter.

D. Informal Conference.

1. The Lender may respond and/or exercise its right to an informal conference as discussed in Section 15.13 below. The Board will schedule the informal conference, if one is requested.

2. After notifying the Lender and permitting the Lender an opportunity to respond (all as set forth more fully below), the Board will meet with the Lender or its designees (unless the Lender declines to be represented at the meeting) and with the Director of OMD and his/her designees to review documentary evidence and presentations by both sides. (See 15.13A.3. below.)

a. Transcript of the informal meeting.

1) No transcript of this informal meeting will be made, unless the Lender elects to have a transcript made by a certified court reporter at its own expense. If the Lender elects to have a transcript made, it must provide three copies of the transcript to HUD within five business days of the informal meeting. The transcript will not become a part of the record unless it is submitted within the 5-day time frame.

2) If a transcript is not provided within the time limit set forth above, oral statements made at the informal meeting will not be considered as part of the record, except that the Board may consider voluntary admissions, made by a representative of the Lender, of any element of the violation charged.

b. Any additional documents, evidence, or written arguments, which the Lender wishes to present to the Board, must be presented within five working days after this informal meeting.

E. Action by the Board.

1. Upon consideration of evidence submitted by the Director of OMD and the MAP Lender, the Board will confer and make a final decision regarding the matter.

2. Any final decision by the MAP Lender Review Board placing a Lender on Probation, or Suspension, or Terminating a Lender shall be in writing and shall state the reasons for the decision and the facts supporting those reasons. Higher level officials and decision makers, including the MAP Lender Review Board, are not bound by the recommendations from other HUD officials described above, except that the Board may not take any action against a Lender which is more severe than the action recommended by the Director, OMD. In any case where the action taken or the recommendation made differs from the recommendation received, that difference shall be explained in writing.

F. Effective Date of Action.

Unless the Board decrees that a later date should apply, any sanction (probation, suspension or termination) shall become effective on the date of the Notice of Action to the Lender.

G. The Lender may appeal the Board's decision to the DAS for Multifamily Housing or his/her designee, as specified in Section 15.14 below.

15.13. NOTICE OF VIOLATION.

A. Before the MAP Lender Review Board reviews a matter for consideration of a sanction, the Board's Chairman will issue written notice of the proposed action to the MAP Lender's contact person as listed on the Multifamily MAP web site. The notice is sent by overnight delivery and must be signed for by an employee of the MAP Lender upon receipt. The notice:

1. Informs the Lender that the Board is considering a specific violation.

2. States the specific alleged factual violations with citation to the Department's requirements that have been violated.

3. Includes as attachments copies of all documents evidencing the violation or upon which the Board will be asked to rely in reaching a decision.

4. Provides the Lender with the opportunity, within 15 business days from the date of the issuance of the proposed action, to:

   a. Meet informally with the Board in person or by video conference using HUD facilities at Headquarters or one of the various Field Offices; and/or

   b. Present written evidence and any other relevant information.

5. Offers the MAP Lender the opportunity to reply in writing to the Board within 15 business days from the date of the issuance of the proposed action. Failure to reply may result in a determination by the Board without considering the MAP Lender's comments.

6. Requires the response to be addressed to the Chairman of the Board. The response may not exceed 15 double-spaced typewritten pages and must include an executive summary, a statement of the facts, an argument and a conclusion. All written material and supporting documentation must be submitted in triplicate.

Accompanying the notice of violation is a copy of the charging document and all of the supporting documentation that has been submitted to the Board.

B. The MAP Lender Review Board has the power to issue a Notice of Action discussed in 15.14 below to terminate a Lender, or to place a Lender on probation or suspension without advance notice to the Lender when there is an imminent need to protect the financial interests of the Government. No such action shall be taken except upon the written recommendation of the Director of OMD and upon a determination by the Board that immediate action is necessary. In every such case, the Lender shall be promptly notified of the Board's decision and the reasons for it, and shall have the right to submit materials to the Board and appear before the Board to seek a prompt reconsideration of the Board's decision.

15.14. NOTICE OF ACTION.

A. A prompt decision is important when the Board acts to place a MAP Lender on probation, or to suspend or terminate a Lender's MAP privileges. The Board will issue its final decision within 10 business days of the receipt of the Lender's information and/or the informal conference.

B. The Board will notify the MAP Lender of its final determination by overnight delivery of a written notice of the final decision to the MAP Lender's contact person as listed on the Multifamily MAP web site.

C. The final decision will:

a. State the nature and duration of the action.

b. State the violations and any factual findings of the Board.

c. Inform the MAP Lender of its right to an appeal conference.

d. May add or modify the reasons for the decision as stated in the initial notice.

D. A copy of the administrative record will be sent to the Lender by overnight express within one business day after the issuance of the final decision.

15.15. APPEALS.

A. Informal Appeal Conference.

1. Whenever the MAP Lender Review Board imposes a sanction of probation, suspension or termination against a MAP Lender, the Lender may request an informal conference before the DAS or his/her designee (the Appeals Official). The DAS or his/her designee cannot have been previously involved with the proceedings or settlement discussions up to this point.

2. No transcript of this informal meeting will be made, unless the Lender elects to have a transcript made by a certified court reporter at its own expense. If the Lender elects to have a transcript made, it must provide three copies of the transcript to HUD within five business days of the informal meeting.

3. Oral statements made by any participant at this meeting are not considered as evidence on any matter under consideration, except that the Appeals Official may consider voluntary admissions by a representative of the Lender of any element of the violation charged.

4. Any additional written arguments, which the Lender wishes to present to the Appeals Official, must be presented within five business days after this informal meeting.

B. The informal conference regarding the Board's action will be held within 10 business days of HUD receiving the MAP Lender's appeal request.

1. The Director of OMD provides the administrative record to the Appeals Official and points out the evidence on which the decision was made; and

2. The MAP Lender may provide oral arguments in support of its position and the evidence previously submitted. No new evidence may be submitted to the Appeals Official at this point.

C. A MAP Lender may voluntarily request to have a conference held more than 10 business days after it makes a request for the conference and the Department receives it.

D. Within 10 business days after the conference, the Appeals Official makes a written determination. S/he may confirm, modify, or overturn the MAP Lender Review Board's decision.

E. If the MAP Lender does not request a conference within 10 business days of receiving the sanction letter, the right to a conference will be considered waived.

F. If the Appeals Official overturns the MAP Lender Review Board's decision, the Lender shall immediately return to an active status as a MAP Lender. The active status of the MAP Lender will be posted on the HUD web.

G. Participation in the appeal process is not a prerequisite to filing of an action for judicial review under the Administrative Procedure Act.

15.16. LIMITED DENIAL OF PARTICIPATION.

See Chapter 4 of OGC Handbook 1300.13 REV 1, Debarment, Suspension, and Ineligibility of Participants and Contractors, and HUD Regulations at 24 CFR 24 Subpart G. In case of any conflict between this section and the foregoing authorities, those authorities control.

A. Who Can an LDP Be Imposed Upon?

An LDP may be imposed upon any participant or contractor and its affiliates, except HUD-FHA approved mortgagees. Examples of participants that may be sanctioned are (but are not limited to):

1. Independent Fee Appraisers
2. Third Party Cost Analysts
3. Needs Assessors
4. Environmental Analysts and Engineers
5. General Contractors
6. Architects
7. Specific underwriters or loan analysts.
8. Application Sponsors

B. Who will the LDP Apply to?

Once issued, the LDP may apply to any contractor, participant or to a participating organization. For example, a specific appraiser may be issued a LDP, or an entire appraisal firm may be issued a LDP. A LDP may also apply to all affiliates of that contractor or participant at the discretion of the imposing official.

C. Conditions Warranting Referral to Headquarters Recommending Consideration for a National LDP.

Referral to Headquarters for recommendation for a National LDP shall be at the discretion of the Hub Director. When it is determined that the offense warrants such a measure, the Hub Director should forward all pertinent information along with a formal recommendation to the Deputy Assistant Secretary for Multifamily Housing for review. The recommendation should include:

1. All related processing associated with the case(s) that initiated the action.

2. A narrative summary detailing the description and nature of the alleged offense(s) committed.

3. A synopsis of the participant's historic performance in past cases dealing with the Department.

4. A recommend course of action to be taken.

D. Questions should be addressed to the Director of the Compliance Division of the Enforcement Center.

15.17. REFERRAL TO THE MORTGAGEE REVIEW BOARD OR THE INSPECTOR GENERAL.

A. If the Hub/Program Center Director determines that a MAP Lender's actions or failure to act appears to be a compliance matter justifying action by the Mortgagee Review Board, including possible removal of its authority to do business as an FHA Lender, s/he must bring this matter and the administrative record to the attention of the Director, Office of Multifamily Development in Headquarters. The Director will refer the matter to the Director of the Mortgagee Review Board Division in the Departmental Enforcement Center.

See Section 2-4, Requests for Mortgagee Review Board Action, HUD Handbook 4060.2 REV 2, Mortgagee Review Board, and HUD Regulations at 24 CFR 25.

B. If the issue involves possible fraud, material misrepresentation or other criminal violations, then refer the matter to the Office of Inspector General.

See Section 3-1, Responsibilities of Departmental Management and Employees, OIG Handbook 2000.3 REV-4, Office of Inspector General Activities.

Table of Contents

MAP Guide Appendix

	Title
Appendix 4	**Application Requirements Checklist**
4A	Sections 221(d)(3), 221(d)(4), and 220 New Construction and Substantial Rehabilitation
4B	Section 232 New Construction and Substantial Rehabilitation
4C	Section 223(f) for Refinance or Purchase of Existing Apartments
4D	Section 232/223(f) for Refinance or Purchase of Healthcare Facilities
Appendix 5	**Architectural Analysis**
5A	Common HUD Standards and Other Criteria for Sections 220 and 221(d)
5B	Additional HUD Standards and Other Criteria for Sections 220 and 221(d) – Substantial Rehabilitation
5C	Additional HUD Standards and Other Criteria for Projects Insured Pursuant to Section 223(f)
5D	Seismic Resistance and Fire Protection Standards for Substantial Rehabilitation and Projects Pursuant to Section 223(f)
5E	Section 232 – Additional Codes, Standards and Guides
5F	Section 232 – Additional Accessibility Requirements
5G	Section 232 – Primary Facility Requirements
5H	Section 232 – Nonresident Day Care Facility Requirements
5I	Firm Commitment Drawings and Specifications to be Submitted by the Mortgagor's Architect
5J	Specification Guide
5K	Major and Minor Movable Equipment
5L	Review Reports
5L.1	HUD Architectural Review Report for Pre-Application Exhibits
5L.2	HUD Architectural Review of Lender's Architectural Analyst's Report for Firm Exhibits - New Construction and Substantial Rehabilitation
5L.3	HUD Architectural Review of Lender's Architectural Analyst's Report for Firm Exhibits - Section 223(f)
5M	PCNA Instructions – Section 223(f)
5N	Design Architect's Certification

Appendix 6 Cost Processing

6A Cost Review Reports

6A.1 HUD Cost Review Report for Pre-Application Exhibits

6A.2 HUD Cost Review of Lender's Cost Analyst's Report for Firm Exhibits – New Construction and Substantial Rehabilitation

6A.3 HUD Cost Review of Lender's Report for Firm Exhibits - Section 223(f)

6B Amendment to the Construction Contract to Identify Identities of Interest Between Owner /Contractor/Subcontractors/Architect

6C Rehabilitation Cost Not Attributable to Residential Use

6D Example of Calculating Cost Not Attributable

Appendix 7 Valuation Analysis

7A Guide for Content and Format of a Market Analysis for General Occupancy Rental Housing

7B Guide for Content and Format of a Market Analysis for Residential Care Facilities

7C HUD Appraiser Review

7C.1 HUD Valuation Report - Administrative Review of Multifamily Accelerated Processing - Pre-Application Stage - Section 220, 221 and 232

7C.2 HUD Valuation Report - Administrative Review of Multifamily Accelerated Processing - Firm Application Stage - Section 220, 221 and 232

7C.3 HUD Valuation Report - Administrative Review of Multifamily Accelerated Processing - Firm Application Stage - Section 223(f) and 232/223(f)

Appendix 8 Mortgage Credit Underwriting and Processing Requirements

8A HUD Mortgage Credit Review of Lender's Underwriter's Processing

8B Table of Basic Statutory Mortgage Limits – National Housing Act

8C Payoff Letter for Existing Mortgage

Appendix 12 Insurance Closings

12A Closing Lists

12B1 Owner-Architect Agreement

12B2 Amendment to AIA Document B181, Standard Form of Agreement Between Owner and Architect for Housing Services

12C Certification of Architectural/Engineering Fees

12D Specimen – Third Party Obligee Certification

12E Initial Endorsement Document Review – Architectural and Cost

12F Initial Endorsement Document Review – Mortgage Credit

12G Initial Endorsement Document Review – Valuation

12H Initial Endorsement Document Review – Housing Programs
12I Secondary Financing Rider

Appendix 13 Construction Period
13A Instructions for Approval of Initial / Interim Advances
13B Contractor's Monthly Requisition and Related Matters
13C Amendment to the Construction Contract for Payment for Components Stored Offsite
13D Problems Before Final Closing

Appendix 4

Application Requirements Checklist

Table of Contents

Appendix	Title
4A	Sections 221(d)(3), 221(d)(4), and 220 New Construction and Substantial Rehabilitation
4B	Section 232 New Construction and Substantial Rehabilitation
4C	Section 223(f) for Refinance or Purchase of Existing Apartments
4D	Section 232/223(f) for Refinance or Purchase of Healthcare Facilities

THE FOLLOWING APPENDIX 4 APPLICANT REQUIREMENTS CHECKLISTS INCLUDES FORMS AND DOCUMENTATION THAT ARE CUSTOMARILY SUBMITTED. OTHER EXHIBITS WHICH ARE LESS FREQUENT SUBMISSION REQUIREMENTS OR ARE TOO DETAILED FOR INCLUSION ON THESE EXHIBITS LISTS ARE REFERENCED IN THE MAP GUIDE CHAPTERS. IN SUCH CASES, DOCUMENTS REQUIRED BY THE GUIDE TEXT, THAT MAY IN SOME CASES NOT BE MENTIONED ON THESE EXHIBIT LISTS, ARE STILL SUBMISSION REQUIREMENTS.

New Construction and Substantial Rehabilitation - Sections 221(d)(3), 221(d)(4), and 220

4A

I. PRE-APPLICATION

A. Exhibits Required for the Pre-application Review

1. Narrative Description of Proposed Project.
2. Form HUD-92013, "Application for Multifamily Housing Project," including developer's summary cost figures.
3. Resumés showing experience of owners/sponsor and key principals.
4. Resumés of Lender's underwriter, appraiser, and/or market analyst if not submitted prior to the pre-application.
5. If Sponsor is nonprofit, resumé of Housing Consultant, if any, and Form HUD-92531, "Standard Contract for Housing Consultant Services."
6. If Sponsor is nonprofit, Form HUD-3433, "Request for Preliminary Determination as a Nonprofit Sponsor and/or Mortgagor" and supporting documents.
7. If Sponsor is non-profit, Developer's Agreement or another document showing relationships and work responsibilities of all parties associated with the transaction.
8. Preliminary sketch plans, consisting of:
   a. Site plan.
   b. Typical unit and building layouts.
   c. Ground floor and typical floor plans.
   d. Wall section plan.
9. Market Study with comparables (See Chapter 7 and Appendix)
10. Appraisal Exhibits. Forms HUD-92273 and HUD-92274, dated no more than 120 days prior to the date of submission of the pre-application package. See Chapter 7 and Appendix 7. If the processing calls for tax credit and/or bond financed applications, a HUD-92264T must also be included.
11. Photograph(s) of the property and immediate area.
12. Evidence of site control.
13. Location map or maps.
14. If commercial space involved, show estimated percentage of total square feet and estimated total income.
15. If pre-application is under Section 220, evidence that property is in eligible area (See Chapter 3, section 3.7)
16. Copy of ground lease, if any.

17. If state or local grants or loans are anticipated a part of the project, evidence that such funds will be available.
18. Phase I Environmental Site Assessment.
19. Environmental Report.

B. Additional Exhibits at Pre-Application for Substantial Rehabilitation.

1. "As is" sketch plans in addition to preliminary sketch plans listed in 7, above.
2. Mortgagor's architect's basic work write-up, including summary cost estimates of major trade item groups if a partial (non-gut) rehabilitation.
3. LBP and asbestos test reports for projects constructed prior to 1978. (See Chapter 5 and Chapter 9)
4. Plans for relocation of existing residents affected by work.
5. Financial statements for the property for the past three years.

II. APPLICATION FOR FIRM COMMITMENT

A. Exhibits Required for Application for Firm Commitment for Sections 220 and 221(d)

Make any changes necessary in the pre-application exhibits and resubmit any exhibit that is changed. In addition:

1. Transmittal letter.
2. Application for Multifamily Housing Project (Form HUD-92013) with fee of $3 per $1000 of mortgage.
3. Narrative Summary and Underwriter's Recommendation.
4. Intergovernmental review. See HUD Processing Office to determine State Single Point of Contact and whether review is required for state where property is located.
5. Byrd Amendment (Lobbying Certification and disclosure). See 24 CFR Part 87.
6. Form HUD-92013 - Supplement for Sponsor, mortgagor, each principal of the mortgagor and general contractor and disclosure of prior legal action relevant to mortgage financing, outstanding delinquent Federal Debt.
7. Completed Form HUD-92264 Multifamily Summary Appraisal Report with technical analysis and standard certifications (see Section 11.2.J.) by all Lender third party analysts, and Form HUD 92264-A Supplement to Project Analysis.
8. Form 2530, "Previous Participation Certification" for all parties designated on page 1 of Instructions for this Form (see Section 8.3). Also applies to Lessees.
9. Verification of social security or employer identification number.
10. Organizational documents creating mortgagor entity, if applicable.
11. If Sponsor is nonprofit, Developer's Agreement (if not submitted at pre-application)

12. Form HUD-3434 – Certificate of Relationships and nonprofit motives, and Form HUD-3435-Certificate of Contractural Relationship.
13. Site control document (sales contract)
14. Affirmative Fair Housing Marketing Plan (Form HUD-935.2).
15. Equal Employment Opportunity Certification.
16. Certification from Mortgagor's Architect. (See Chapters 5.5 (B.8) and 5.6)
17. Report prepared by Lender's architectural analyst. (See 5.6(B.2))
18. Resumés of Lender's architectural reviewer and cost reviewer, if not submitted prior to the application.
19. Owner-architect agreement on A1A Form B 181 and Amendment.
20. Legal Survey Form HUD-92457, Surveyors Report.
21. Engineering and specialty reports, if not covered under environmental report.
22. Contract drawings and specifications. (See Appendix 5-L)
23. Municipal services and other utilities' assurance letters.
24. Off-site improvements/construction (description). (See Appendix 5I(M))
25. Cost estimate package (listed in Section 6.2(B.1).
26. Identity of Interest disclosure (see Chapter 6, Sections 6.2 and 6.5F) and the 50-75 percent rule disclosure (see Section 14.15M).
27. Resumé of the general contractor and Schedule of jobs (work) in progress (See Chapter 8.4).
28. Soils report and foundation analysis.
29. Appraisal with all supporting documents:
    a. Rental Housing Income Analysis and Appraisal, Form HUD-92264,
    b. Estimates of Market Rent by Comparison Form HUD-92273,
    c. Operating Expense Analysis Worksheet Form HUD-92274
30. If relevant, tax credit certification
31. If supplemental grants and/or loans are part of project financing, provide commitment letter.
32. Certification approving release of banking and credit information.
33. Evidence of last arms-length transaction and price.
34. Personal Financial and Credit Statement, Form HUD-92417 (see Section 8.3)
35. Credit reports current within 30 days of the application date.

36. Requests for verification of deposits for each bank reference included on Form 92013 Supp.
37. HUD-92264A Supplement to Project Analysis.
38. Financing plan (sources and uses statement for tax credit projects).
39. Environmental report if updated from report submitted at pre-application.
40. Resumé of management agent.
41. Form HUD-9839 A,B, or C Management Certification.
42. Form HUD-9832 Management Entity.
43. Management Plan and Sample Lease.
44. Management Agreement, if any.

B. Additional Exhibits for Substantial Rehabilitation

1. Detailed scope of rehabilitation work resulting from joint inspection by Lender and mortgagor (see Section 5.16).
2. Lead-based paint reports and asbestos test reports for projects built before 1978.
3. Cost estimate package (see supplemental instructions in Section 6.6.)

New Construction and Substantial Rehabilitation – Section 232

4B

I. PRE-APPLICATION

A. Exhibits Required for Pre-application Review of Section 232

1. Narrative Description of Proposed Project, type of facility proposed, how project will be managed, whether leased or not, and requirements of state for approval. (See Chapter 7.)
2. Form HUD-92013 NHICF - Application for Project Mortgage Insurance: Nursing Homes Intermediate Care Facilities, and Board and Care Homes.
3. Resumés showing experience of owner/sponsor and key principals.
4. Resumés of Lender's underwriter, appraiser, and market analyst, if not submitted prior to pre-application.
5. Mortgagors Narrative Program.
6. If Sponsor is nonprofit, Form HUD-3433, "Request for Preliminary Determination as a Nonprofit Sponsor and/or Mortgagor."
7. Preliminary sketch plans, consisting of:
   a. Site plan.
   b. Typical unit and building layouts, showing patient beds per unit.
   c. Typical building elevations.
8. Market Study (with comparables).
9. HUD Form 92273 analysis and operating expense analysis (must be dated no more than 120 days prior to submitting package to HUD) reimbursement rate fees, and base rate. If the processing calls for tax credits and/or bond financing a Form HUD-92264T must also be included.
   a. Description of services included in base rate and any additional personal care fees above the base rate for Assisted Living and Board and Care Facilities and Ancillary Income for Nursing Homes.
   b. Lender's appraiser's estimate of occupancy rate for the project.
   c. Lender's appraiser's estimate of proprietary income and New Operating Income.
   d. Prospective reimbursement rate and percentage of population for each patient type.
10. Photograph(s) of the property and immediate area.
11. Evidence of site control.
12. Location map or maps.

13. If commercial space is involved, show estimated total square feet and estimated percentage of total income to be used for commercial purposes.
14. Copy of ground lease, if any.
15. If State or local grants or loans are anticipated as part of the funding of the project, evidence that such funds will be available.
16. Phase I Environmental Assessment and Environmental Report.
17. Nursing Home or Intermediate Care Facility, Board and Care Home and Assisted Living Facility Form HUD-2576, a Certificate of Need if required by state.
18. Information about the management company which is or will be under contract to lease the facility or under contract to manage the facility and provide services to the residents. If owner-managed, Resumes of the owner's management group..

B. Additional Exhibits for Substantial Rehabilitation Under Section 232

1. "As is" sketch plans in addition to preliminary sketch plans listed in 8, above.
2. The applicant must show that it has the required operating licenses for its existing operation.
3. Current provider agreement with Medicaid/Medicare if applicable.
4. Mortgagor's Architect's basic work write-up, including summary cost estimates of major trade item groups if the rehabilitation is partial rehabilitation, not gut rehabilitation.
5. Description of how existing residents will be moved and served during the work, or any plans for relocation of existing residents because of sub-rehab work.
6. Audited financial statements for the property for the past three years.
7. Latest survey report from the State agency (either a medical or personal care facility agency) on the existing project operation before rehabilitation, if applicable.

II. APPLICATION FOR FIRM COMMITMENT

A. Exhibits Required for Application for Firm Commitment for Section 232

Make any changes necessary in the pre-application exhibits and resubmit any exhibit that is changed. In addition to the pre-application exhibits, submit:

1. Transmittal letter.
2. Narrative Summary and Underwriter's Recommendation
3. Application (Form HUD-92013 NHICF) with fee.
4. Form HUD-92013-Supplement for Sponsor, mortgagor, each principal of the mortgagor and general contractor, and disclosure or prior legal action relevant to mortgage financing and Federal dept.
5. Complete Form HUD-92264-NHICF, and HUD 92264A-Supplement to Project Analysis.

6. Previous Participation Form HUD-2530. "Previous Participation Certification" for all parties designated on page 1 of the instructions for this form
7. Byrd Amendment - (Lobbying certification and disclosure). See 24 CFR Part 87.
8. Affirmative Fair Housing Marketing Plan- Form HUD-935.2.
9. Identity of Interest disclosure (See Chapter 6, Section 6.2 and 6.5F) and the 50-75 percent rule disclosure (See Section 14.15M).
10. Equal Employment Opportunity Certification.
11. Listing of sponsors, mortgagor, principals, general contractor entities in which they serve as partner, etc. (See Chapter 8). Include information on provider of services to residents.
12. Verification of social security or employer identification number.
13. Organizational documents creating mortgagor entity, if applicable.
14. Intergovernmental review.
15. Copy of license from State agency requiring license for Nursing Homes and intermediate care facility, Board and Care Home and Assisted Living Facility that operating standards will be enforced at the facility.
16. For board and care homes, a statement executed by the appropriate state certifying agency that the facility meets or will meet the state's eligibility requirements and is regulated by the state in accordance with Section 1616(e) of the Social Security Act (Keys Amendment).
17. Completed application for operating license.
18. Business Plan outlining nature of business, target market competition and management team.
19. Current provider agreement for Medicare/Medicaid, if any.
20. Documentation from the appropriate state regulatory agency of approval or conditional approval of the Assisted Living Facility's plans and specifications.
21. Report prepared by Lender's architectural analyst (see 5.6B.2).
22. Cost estimate package (listed in Section 6.2.B1).
23. Updated list of Major Movable Equipment
24. Owner-architect agreement on AIA Form B181 and Amendment.
25. Resumé of the general contractor and schedule of jobs (work) in progress. (See Chapter 8-4)
26. Contract drawings and specifications (See Appendix 5L).
27. Soils report and foundation analysis.
28. Municipal service's and other utilities' assurance letters.

29. Off-site improvements/construction (description) (See Appendix 5I(S)).
30. Legal Survey and Form HUD-92457, Surveyors Report.
31. Complete appraisal with supporting document:
    a. Form HUD-92264-HCF
    b. Estimates of Market Rent by Comparison, Form HUD-92273,
    c. Operating Expense Analysis Worksheet, Form HUD-92274
    d. Operating deficit proforma
32. Evidence of last arms-length transaction and price.
33. Evidence of Permissive Zoning.
34. Payor source and reimbursement rate: Medicare/Medicaid and percentage of resident population, private pay, long term care insurance, SSI residents, and other Veterans Administration and managed care or state contracts.
35. Proposed operating budget, showing projected income and expense and cash flow projection from date of initial occupancy through sustaining occupancy.
36. Copies of any leases for office equipment, computers, printers, etc.
37. List and conditions for supplemental grants or loans, if any. Grant and/or loan commitment letter if applicable.
38. If applicable, tax credit certification.
39. Certification authorizing release of banking and credit information.
40. Environmental report if updated from report submitted at pre-application.
41. Engineering and specialty reports, if not covered in the environmental report.
42. Resumé of Management Company or Lessee, if changed from pre-application exhibit.
43. Form HUD-9832 Management Entity.
44. Management Agreement and or Lease.
45. A list of Major movable equipment and cost schedule.

B. Additional Exhibits Required for Application for Substantial Rehabilitation

The exhibits required for new construction of a health care facility are applicable to substantial rehabilitation, with the following modifications:

1. Existing certificate of need may be used, unless there is an increase in number of beds or number of persons served.
2. The existing facilities license may not need to be revised, but the operator must submit the existing license if there is no major change in the project and a copy of revised, if applicable..

3. If the facility is to remain open during the rehabilitation, the owner must provide a statement covering expected revenues and expenses.
4. Plans for provision of services to existing residents during rehabilitation.
5. Detailed work write-up from joint inspection by Lender and mortgagor (See Section 5.16).
6. Cost estimate package (see supplemental instructions in Section 6.6).

NOTE: Refinance applications that include the construction of an addition are insured under Section 232 as opposed to Section 232 pursuant to Section 223(f). A PCNA will be a required exhibit under these circumstances.

Section 223(f) for Refinance or Purchase of Existing Apartments

4C

A. Exhibits Required for Application for Firm Commitment

No pre-application exhibits are required, but the Lender is advised to make preliminary inquiries to determine whether or not its reviewers will be acceptable to HUD. The firm application exhibits are:

1. Transmittal letter.
2. Narrative Summary and Underwriting Recommendation
3. Form HUD-92013 "Application for Multifamily Housing Project" with application fee.
4. Form HUD-92013 – Supplement with information on the Sponsor and Mortgagor entity.
5. Completed Form HUD 92264- Multifamily Summary Appraisal Report and Form HUD-92264A - Supplement to Project Analysis.
6. Form HUD-2530 Previous Participation Certificates for all parties designated on page 1 of instructions for this form.
7. Disclosure of any identity of interest between Sponsor and Lender.
8. Byrd Amendment (lobbying certification and disclosure). See 24 CFR Part 87.
9. List of principals of Sponsor and Mortgagor entity.
10. Current Resumés for the Sponsor, and each principal of the Sponsor.
11. Organizational documents creating Mortgagor entity, if applicable.
12. Verification of Social Security Number or Employer Identification Number.
13. Property Capital Needs Assessment: Physical Inspection Report, detailed list and cost estimates for critical and non-critical repairs and improvements, and estimate for Replacement Reserve Deposits.
14. A report from appropriate officials, such as Fire Marshal or building inspector, identifying any code violation(s) of record.
15. Lenders Review of PCNA Report
16. Plans and specifications for repairs and improvements, if required.
17. Copy of Certificate of Occupancy or Final Inspection Report.
18. Property Insurance Schedule Form HUD-92329
19. Complete appraisal with supporting documents:
    a) Rental Housing Income Analysis and Appraisal, Form HUD-92264,
    b) Estimates Of Market Rent By Comparison Form HUD-92273, and
    c) Operating Expenses Analysis Worksheet Form HUD-92274.

20. Evidence of site control (deed, purchase agreement, option)
21. Evidence of last arms-length transaction price.
22. Description of condition of property, list of repairs and improvements made in last two years and their estimated cost
23. A current Phase I Environmental Site Assessment.
24. If part of the project is devoted to commercial space, copy of lease or leases. Show of total square feet and amount, and percentage of total income used for commercial.
25. Evidence of permissive zoning.
26. Area map showing location.
27. Photographs of building
28. Legal description of property and title report.
29. Balance sheets and operating statements (see Section 7.7B).
30. As-Built" Survey and Form HUD-2457, Surveyor's Report.
31. Environmental report (to include lead-based paint and asbestos if project built in 1978 or earlier).
32. If private water supply or private sewage system is in use, report from City/County Health Officer stating that health standards are met.
33. List and conditions for supplemental grants or loans, if any. Grant and/or commitment letter if applicable.
34. If low-income housing tax credits are part of financing, provide copy of certification.
35. Certification approving release of banking and credit information.
36. Financial statements (last 3 years) and credit reports.
37. Certified statement by mortgagor listing all outstanding obligations on project.
38. Current rent roll.
39. Occupancy history, by quarter for last three years.
40. Report on experience of management agent.
41. Management Entity profile (Form HUD-9832).
42. Management Certification (Form HUD-9839A, B, or C).
43. Management Plan and Sample Lease.
44. Management Agreement, if applicable.

Section 232/223(f) for Refinance or Purchase of Healthcare Facilities

4D

A. Exhibits Required for Application for Firm Commitment

No pre-application review is required, but the lender is advised to make preliminary inquiries at the Hub or Program Office to assure that its review team is acceptable to HUD. Moreover, refinancing or repurchase of health care facilities, unlike refinancing or purchase of an apartment project, requires a market study. If the study does not justify the project, it is unwise for the Lender to proceed.

1. Transmittal letter.
2. Narrative Summary and Underwriting Recommendation.
3. Form HUD-92013 "Application for Multifamily Housing Project with application fee.
4. Supplemental Form HUD-92013 with information on the Sponsor and Mortgagor entity.
5. Completed Form HUD-92264(HCF) "Health Care Facility Summary Appraisal Report" and Form HUD-92264A, Supplement to Project Analysis.
6. If Sponsor is a Nonprofit, submit Form HUD-3433 "Eligibility as a Nonprofit" including:
   a. Sponsor's charter and by-laws.
   b. Written authorization by directors of sponsor stating that sponsor has authority to enter into agreement for financing of project.
   c. Copy of current ruling from IRS on Sponsor's tax-exempt status.
   d. Resume of housing consultant, if any, and Form HUD-92531, "Standard Contract for Housing Consultant Services."
7. Form HUD-2530 Previous Participation Certificates.
8. Byrd Amendment (See 24 CFR Part 87).
9. Disclosure of any identity of interest between Sponsor and Lender.
10. Current resumés for the Sponsor and each principal of the Sponsor.
11. List of principals of Sponsor and mortgagor entity.
12. Social security number or Employer Identification Number for the operator of the facility.
13. Copy of license required for the facility.
14. Latest State/Medicaid/Medical Care Facility Agency's report on the project's operation, where a residential care facility is involved.
15. Property Capital Needs Assessment, Physical Inspection Report, detailed list, and estimates for critical and non-critical repairs and improvements and estimates for Replacement Reserve Deposits.

16. A report from appropriate officials such as Fire Marshal, State Health Department, or HCFA identifying any violations of physical building requirements or life safety codes.
17. Lenders review of PCNA report.
18. Plans and specifications for repairs and improvements.
19. List of minor equipment and list of major moveable equipment itemized according to:
    a. Existing equipment to be retained (list by room), and
    b. Newly purchased equipment (listed by room)
20. Occupancy history, by quarter, for last three years.
21. Current Census report: type of room/accommodation, payor source, rate per day, vacancies.
22. Property Insurance Schedule Form HUD-92329.
23. Mortgagor's Narrative Program.
24. Set of "As Built" plans, if available.
25. Complete Appraisal with supporting documents:
    a. Form HUD-92264 HCF
    b. Estimates of Market Rent by Comparison, Form HUD-92773
    c. Operating Expense Analysis Worksheet
26. If property is to be purchased, copy of purchase contract or option.
27. If part of the project is devoted to commercial space, copy of lease or leases. Show percentage of total square feet and percentage of total income used for commercial.
28. Photographs of building.
29. Area map showing location.
30. Legal description of property and title report.
31. "As built" survey Form HUD-2457 (HUD Survey Instructions and Report).
32. Operating budget with income and expense statements and cash flow projection/worksheet.
33. Reimbursement rate and Medicare/Medicaid percentage of resident.
34. Current provider agreement for Medicare and Medicaid, if any, including reimbursement rates and number of beds certified.
35. Operating history of facility for past three years. Operating history to include payor reimbursement rate, percentage of Medicare/ Medicaid, private long-term care insurance, SSI residents, other Veterans Administration and managed care contracts or state contracts.

36. Market Study with comparables
37. A current Phase I Environmental Site Assessment.
38. If private water supply or private sewage system is in use, report from the city/county health office stating that health standards are met.
39. Last 3 years Audited Financial Statements AND Last 3 years Medicare & Medicaid Cost Reports.
40. If supplemental grants and/or loans are part of project financing, provide commitment letter.
41. If low-income housing tax credits are part of financing (assisted living facility), provide copy of certification.
42. Certified statement by mortgagor listing all outstanding obligations on project.
43. Certification approving release of banking and credit information.
44. List of leases of office equipment, such as computers, printers.
45. Report on experience of management agent, or lessee.
46. Copy of license required for the service provider, whether a management firm or a lessee.
47. Management Entity profile (Form HUD-9832).
48. Management Certification (Form HUD-9839).
50. Management Agreement and copy of Lease.

NOTE: Refinance applications that include the construction of an addition are insured under Section 232 as opposed to Section 232 pursuant to Section 223(f). A PCNA will be a required exhibit under these circumstances.

Appendix 5

Architectural Analysis

Table of Contents

Appendix	Title
5A	Common HUD Standards and Other Criteria for Sections 220 and 221(d)
5B	Additional HUD Standards and Other Criteria for Sections 220 and 221(d) – Substantial Rehabilitation
5C	Additional HUD Standards and Other Criteria for Projects Insured Pursuant to Section 223(f)
5D	Seismic Resistance and Fire Protection Standards for Substantial Rehabilitation and Projects Pursuant to Section 223(f)
5E	Section 232 – Additional Codes, Standards and Guides
5F	Section 232 – Additional Accessibility Requirements
5G	Section 232 – Primary Facility Requirements
5H	Section 232 – Nonresident Day Care Facility Requirements
5I	Firm Commitment Drawings and Specifications to be Submitted by the Mortgagor's Architect
5J	Specification Guide
5K	Major and Minor Movable Equipment
5L	Review Reports
5L.1	HUD Architectural Review Report for Pre-Application Exhibits
5L.2	HUD Architectural Review of Lender's Architectural Analyst's Report for Firm Exhibits - New Construction and Substantial Rehabilitation
5L.3	HUD Architectural Review of Lender's Architectural Analyst's Report for Firm Exhibits - Section 223(f)
5M	PCNA Instructions – Section 223(f)
5N	Design Architect's Certification

Common HUD Standards and Other Criteria for Sections 220 and 221(d)

5A

A. Minimum Property Standards.

1. Design must meet HUD Handbook 4910.1, Minimum Property Standards for Housing (MPS).

   a. Local Building codes or nationally recognized building codes accepted or designated by the local HUD Office are part of the MPS.

   b. The Field Office enforces and interprets accepted local building codes for HUD.

   c. The Field Office does not enforce local building codes for the local Government.

2. For community sewerage systems, use HUD Handbook 4940.3, Minimum Design Standards for Community Sewerage Systems.

B. Accessibility for Persons with Disabilities.

1. Uniform Federal Accessibility Standards (UFAS) apply when compliance with Section 504 or specific program criteria is required.

2. Title VIII of the Civil Rights Act of 1968, as amended, commonly known as The Fair Housing Act (the Act) directs the Secretary of HUD to provide technical assistance to States, local governments, and other persons in implementing the accessibility requirements of the Act. Section 804(f)(3)(c) requires that all residential buildings which have four or more units and which are built for first occupancy after March 13, 1991 (referred to in the Act as "covered multifamily dwellings"), be designed and constructed to have at least one building entrance on an accessible route, unless it is impracticable to do so because of terrain or unusual site characteristics. Such dwellings must provide for accessibility in all common and public areas. In addition, certain accessibility requirements must be included in all of the dwelling units in buildings with elevators, and in all of the ground floor dwelling units in buildings without elevators. They are:

   a. Public and common use areas must be readily accessible to and usable by persons with disabilities;

   b. All doors designed to allow passage into and within all premises are wide enough to allow passage by persons in wheelchairs;

   c. All premises contain the following:

      (1) An accessible route into and through the dwelling unit;

(2) Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(3) Reinforcements in bathroom walls to allow later installation of grab bars; and

(4) Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

As a part of processing and commitment, the Lender's analyst will review construction documents for covered multifamily dwellings pursuant to the MPS (HUD Handbook 4910.1), and the Fair Housing Accessibility Guidelines (the Guidelines). The Guidelines provide minimum accessibility standards. The Guidelines are found in the Federal Register, Vol. 56, No. 44, Wednesday, March 6, 1991. Additional material may be found in the Fair Housing Act Design Manual.

C. Commercial Facilities. The term "Commercial" is applied to any space or facility permitted and acceptable for "Nonresidential Use" from which income is derived or anticipated. However, facilities such as swimming pools and garages to be use solely by occupants are not considered commercial even though fees may be collected.

1. The nature and extent of nonresidential use are important for underwriting determinations. Basis of determinations are suitability, market demand, economic feasibility in the utilization of space, and Regulatory or Statutory limitations.

2. The aggregate commercial floor area may not exceed 10 percent of the gross building floor area and includes corridors, stairs, elevators, lobbies, and other service areas for commercial use, but excludes laundry space, project storage space, and interior tenant parking.

3. Design of commercial facilities must be harmonious with the project and conform to standards of design and construction, and local zoning and building codes.

4. Do not include fixtures, equipment, furnishings or finish for commercial spaces in the mortgage unless customarily provided in competitive projects.

D. Day Care Facilities. Space for day care facilities must be adequate, appropriate to the market need, and conform to local and State requirements. In processing, it is considered as "Commercial" space except that the area of space for day care facilities may be provided over and above the maximum area allowed for commercial uses as stated in paragraph C above.

E. Carpet and Cushion. Wall-to-wall carpet and cushion may be included as part of the mortgage security. Carpet and cushion selected by the architect must comply with current applicable Use of Materials Bulletins.

1. Carpet is acceptable in all public spaces except laundry rooms, storage rooms, boiler rooms, and similar service areas.

2. Carpet is acceptable in living units except in kitchens and bathrooms.

F. Blinds and Draperies. Operable draperies, track and hardware, venetian blinds or shades are acceptable as part of the mortgage security when:

1. Appropriate to the property, considering types of windows, rental range, and occupants.

2. Primary uses are to control the intensity of natural light and to provide privacy.

3. The quality and type of materials, appearance, manufacture, manner of fastening and operations are suitable and sufficiently durable to avoid excessive replacement or maintenance expense.

G. Air Conditioning. Where air conditioning is required to provide year-round indoor comfort, assure continued marketability, and prevent premature obsolescence, projects should be air-conditioned. In projects acceptable without air conditioning, assure air movement for summer comfort by adequate mechanical or cross ventilation. Particular attention should be given to the need for air conditioning in elevator structures, especially for senior citizens.

H. Eligible Equipment.

1. Equipment included as part of the mortgage security must be acknowledged by the mortgagor and Lender to be part of the real estate and:

   a. Be essential for successful operation and market acceptance.

   b. Have qualities in design, construction, materials and finishes which are not subject to early deterioration or obsolescence.

   c. Be appropriate to the location, the design of the building, and the anticipated occupants.

2. Equipment needed for operation and market acceptance, such as ranges and refrigerators, should be included. The equipment should be relatively long-lived.

   a. Replacement is paid for from a reserve for replacements account that is funded from project income.

   b. Many items formerly considered chattels by custom and legal precedent now have status as part of the real estate.

   c. Customs change and if doubts arise as to legal precedent concerning whether an item is chattel or real estate, essential and required items may be covered by a security agreement or chattel mortgage, as well as being covered by the mortgage on the real estate if deemed necessary by the Lender and its attorneys.

3. Equipment that may not be included:

    a. Supply items, utensils, tools, vehicles, portable equipment, furniture, furnishings, or accessories normally provided by tenants or management

    b. Built-in or attached furniture.

I. Water and Sewerage. Public water and sewerage facilities are generally required for multifamily projects. If the extension of public facilities is infeasible, construct a water and/or sewerage system as part of the project or provide services from existing offsite privately owned systems with continuing service at reasonable rates.

1. Water and/or sewerage facilities must:

    a. Provide a sufficient supply of water with adequate pressure, and satisfactory bacterial and chemical qualities.

    b. Provide a sewerage system with adequate collection, treatment and final disposal of domestic waste, which requires minimum maintenance and will not endanger the public health.

2. Duplicate water and sewerage systems are not acceptable except where it is determined that the construction of a single system will be infeasible due to the topography of the site.

3. Individual septic systems or sewerage systems designed to dispose of effluent by subsurface soil absorption methods are generally not suited for multifamily construction because of maintenance problems. Satisfactory operation can be expected only under unusually favorable soil conditions. When these methods of sewerage disposal are proposed, an environmental (sanitary) engineer, with no other interest in the project, should be hired by the mortgagor to investigate soil and site conditions and make recommendations. A copy of the report must be available to the mortgagor's Architect and be included in the exhibits submitted for review by the Lender's analyst.

4. Privately Owned Offsite Water and Sewerage Systems.

    a. Evidences of acceptable control are:

        (1) Certificate of Convenience and Necessity from the State Utility Regulatory Commission.

        (2) Franchise from local unit of Government

        (3) Trust Deed

        (4) Third Party Beneficiary Agreement

(5) An incorporated nonprofit owners association.

b. If control of continuity of service and the equitability of the service rate schedule is other than (1) above, all legal documents and other appropriate exhibits must be acceptable to HUD's Counsel.

5. All community systems and privately owned systems must meet local health authority or EPA MCL standards.

J. High Pressure Gas and Liquid Petroleum Transportation Pipelines.

1. All parts of a residential structure must be at least 10 feet from the outer boundary of the pipeline easement for pipeline maintenance access.

2. Surveyor Identification of Gas and Hazardous Liquids Pipelines Regulated by 49 CFR Parts 192 and 195, and A&E Collection of Pipeline Operator Compliance Certifications.

a. PURPOSE:

(1) Eliminate requirements for surveyors to identify gas and hazardous liquids pipelines regulated by the Department of Transportation under 49 CFR Parts 192, Transportation of Natural Gas and Other Gas by Pipeline: Minimum Federal Standards, and 49 CFR Part 195, Transportation of Hazardous Liquids by Pipeline, for such pipelines that are within 220 yards of the project site; and

(2) Eliminate requirements for HUD A&E to collect documentation regarding compliance of gas and hazardous liquids transportation pipelines regulated by the Department of Transportation under 49 CFR Parts 192 and 195.

Note: The surveyor must still identify all easements and pipelines that cross or are adjacent to the project, as otherwise prescribed by the Minimum Standard Detail Requirements and Classifications for ALTA/ACSM Land Title Surveys dated 1997, and Form HUD-92457, Surveyor Instructions and Report.

b. HUD REQUIREMENTS:

(1) This cancels HUD requirements calling for identification on the survey of high pressure gas and liquid petroleum pipelines within 220 yards of the property; and regarding collection of pipeline operator certifications for compliance with 49 CFR Parts 192 and 195;

(2) Modifies the surveyor's certificate to read as follows:

"I made an on the ground survey per record description of the land shown hereon located in _(city or town, county, township. etc.)_, on _(date)_; and that it and this (these) map(s) was (were) made in accordance with the HUD Survey Instructions and Certificate, Form HUD-92457, and meet the requirements for an

Urban Survey, as defined in the 'Minimum Standard Detail Requirements for ALTA/ACSM Land Title Survey,' dated 1997."

"To the best of my knowledge, belief and information, except as shown hereon: There are no encroachments either way across property lines; title lines and lines of actual possession are the same; and the premises are free of any (subject to a) 100/500 year return frequency flood hazard, and such flood free (flood) condition is shown on the Federal Flood Insurance Rate Map, Community Panel No. __ (state, if none)_."

K. Reports. The Lender's analyst must assure that the environmental and/or valuation required reports and requirements, such as seismic, flooding (Executive Order 11988), underground storage tanks, etc., contained in the application are properly evaluated and are adhered to in the project design.

L. Subsurface Exploration. Before foundation design and application for Firm commitment, reliable information, i.e., soils reports, test boring logs, test pit data, soil bearing values, geotechnical study, etc., must be made available to the Lender's analyst by the mortgagor's Architect.

1. The Architect must advise the owner of the scope and type of soils information and/or subsurface investigation required for structural design.

2. The mortgagor must provide the services of a soils engineer or other consultant for determining subsurface conditions. These services shall be provided in accordance with the Owner-Architect Agreement.

3. The Lender's architectural analyst will assure that the architect has comprehensive, well-documented soils information and that project foundation design follows the report recommendations. When necessary, the Lender's architectural analyst may request engineering help in reviewing soil reports and related designs.

4. Minimum soils reports requirements.

   a. Soils must be identified and described by the nomenclature of the Unified Soils Classification System ASTM D2487 and/or Description of Soils, Visual Manual Procedures, ASTM D2488.

   b. Borings must be in or adjacent to the proposed foundation area.

   c. At least one boring must be made for every 2500 sq. ft. of foundation area. For buildings supported on piling, one boring must be made for every 1600 sq. ft. of foundation area.

   d. Borings must be at least to the bottom of proposed footings and deep enough to locate bearing strata that will support the proposed structure. When rock is encountered,

depth of drilling into rock shall be at least 5 feet or enough to establish rock quality regarding voids, fissures and strength, or whether it is a boulder.

e. Borings and sizes and types of samples for standard tests must be according to ASTM D1586 and D1587. Alternate methods must be justified by soils engineer.

f. When ground water conditions influence the building design, observation of ground water levels must be recorded at the time of boring and at least 48 hours later.

5. Load tests must be required when the allowable safe load on the soil is in doubt. A structural engineer must supervise the test and certify the results.

6. Additional information must be required when unusual soil conditions may affect foundation design:

a. Presence of alkali or other deleterious materials in quantities harmful to concrete, steel or masonry.

b. History or evidence of seismic activity, subsidence, or earth slides and rock movement.

c. Presence of stray electrical currents harmful to foundations.

d. History of any type of problem in project area.

M. Noise Abatement and Control. The Lender's architectural analyst in collaboration with the mortgagor's Architect and the Lender's appraiser must identify existing and potential sources of noise which represent a threat to the serenity and quality of life in, and the economic soundness of, HUD-insured multifamily housing projects.

1. The mortgagor's Architect will recommend to the Lender's architectural analyst and to HUD, the appropriate means of separating uncontrollable noise sources from residential areas.

2. External and interior noise exposure standards should be complied with.

N. Other Tests. Other exploration or tests may be required for environmentally hazardous materials such as asbestos, radon, PCB, gasoline, methane, etc, if:

1. History indicates possible problems in project area.

2. Previous usage of the site indicates possible contamination.

3. There is evidence of possible contamination or presence of hazardous material.

O. Energy Efficiency. The project design must achieve HUD energy efficiency standards for new construction, which shall meet or exceed the requirements of the Council of American

Building Officials (CABO) Model Energy Code, 1992, or in the case of multifamily high rises (defined as residential structures of 4 or more stories), the requirements of the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Standard 90.1 - 1989 (or later versions as adopted by the Secretary of HUD), and shall be cost-effective with respect to construction and operating costs on a life-cycle cost basis.

For guidance on the life-cycle cost analysis, see 1999 ASHRAE Application Handbook, 35.8, and NIST "Building Life-Cycle Cost" Program, Version 4.3 User's Guide and Reference Manual.

Additional HUD Standards and Other Criteria for Sections 220 and 221(d) - Substantial Rehabilitation

5B

STANDARDS. Substantial rehabilitation must comply with common HUD standards in Appendix 5A, except as modified herein, and applicable local codes, ordinances, and guidelines.

A. All new construction or additions that enlarge existing buildings are not rehabilitation and must meet applicable codes and standards for new construction.

B. Rehabilitation projects are subject to environmental requirements in:

   1. Title 24 of the Code of Federal Regulations (CFR), Parts 50 and 55, and

   2. The statutes, Executive Orders, and HUD Standards and criteria (24 CFR Part 51) cited in 24 CFR Part 50.4. Compliance shall be documented on Form HUD 4128.

C. Historic Structures and/or Districts: Projects that include historic structures or affect historic structures or districts are subject to 24 CFR Part 50.4 and must comply with:

   1. Section 106 of the National Historic Preservation Act and

   2. Secretary of the Interior, Standards for Rehabilitating Historic Buildings.

D. A full Environmental Assessment, Form HUD-4128, is required for the following activities which are not categorically excluded pursuant to 24 CFR 50.20 and involve or include:

   1. Additions (new construction);

   2. Rehabilitation with estimated costs that are more than 75 percent of the total estimated cost of replacement after rehabilitation;

   3. Conversion of non-residential use (hotels, offices, stores, lofts, etc.) to residential occupancy; or

   4. Change of unit density by more than 20 percent.

E. Seismic Resistance. See Appendix 5D, paragraph A.

F. Accessibility for Persons with Disabilities. Only if required by program or for properties built after March 13, 1991 containing Fair Housing Act violations. See Appendix 5A, paragraph B.

G. Lead-Based Paint Hazard Elimination.

   Refer to Part 35 of Title 24 of the code of Federal Regulations (24 CFR Part 35)

Note 1: Regulations for the abatement of Lead-Based Paint hazards do not apply to Section 232 or Section 232 pursuant to Section 223(f).

H. Asbestos Hazard Elimination.

Refer to Environmental Protection Agency regulations in Title 40, Part 61 of the Code of Federal Regulations (40 CFR Part 61).

I. Energy Savings.

HUD has published an informational booklet entitled "HUD Rehabilitation Energy Guidelines for multifamily Dwellings."

Additional HUD Standards and Other Criteria for Projects Insured Pursuant to Section 223(f)

5C

In general, all the instructions in Appendix 5A for Sections 220 and 221(d) of the National Housing Act apply to projects insured pursuant to Section 223(f), except as modified herein.

STANDARDS. Eligible properties are existing construction. The criteria for acceptance are not the same as for proposed construction. The property in its present condition, must meet the general criterion for livability without the necessity of substantial rehabilitation in order to be eligible for consideration under the Section 223(f) program. The objective is to assure an acceptable risk through only repair requirements. The Minimum Property Standards (MPS) apply in the following manner:

A. The General Acceptability Criteria shall be met with the exception of the requirement for a primary entrance readily accessible to the physically handicapped.

B. The property shall comply with the general intent of all other chapters of the MPS.

C. Compliance with Statutory and Regulatory Requirements is mandatory. These include:

   1. Lead-based paint hazard elimination. See 24 CFR Part 35

   2. Asbestos hazard elimination. See 40 CFR Part 61.

   3. Flood hazard limitations.

   4. Smoke detector(s) installed near the sleeping location(s) for each living unit.

D. Seismic Resistance. See Appendix 5D, Paragraph A.

E. Accessibility for Persons with Disabilities. Only if required by program or for properties built after March 13, 1991 containing Fair Housing Act violations. If a project built after March 13, 1991 is submitted for 223(f) refinancing and the PCNA inspection reveals that it contains violations of the Fair Housing Act construction standards, the Department must require that the owner correct the violations as a condition of insurance. The extent of the violations and the cost of correction will determine whether the project is feasible as a 223(f) or whether to resubmit it as a substantial rehabilitation. In no case may the Department insure such a project with outstanding Fair Housing Act violations. See Appendix 5A, Paragraph B.2 for an outline of Fair Housing Act standards.

Seismic Resistance and Fire Protection Standards for Substantial Rehabilitation and Projects Pursuant to Section 223(f) 5D

Projects must comply with the provisions of each referenced standard, and the following:

A. Seismic Resistance for Substantial Rehabilitation and Existing Projects pursuant to Section 223(f). Structures in seismic zones 3 and 4 must meet three fourths (3/4) of the seismic force level resistance contained in FEMA-310, Handbook for the Seismic Evaluation of Buildings – A Prestandard, FEMA-356, Prestandard and Commentary for the Seismic Rehabilitation of Buildings, and FEMA-274, NEHRP Commentary on the Guidelines for Seismic Rehabilitation of Buildings.

   1. A seismic hazard analysis of the building(s) must be made by a registered engineer familiar with lateral force design, where applicable code requirements at the time of construction did not equal or exceed the referenced seismic standards.
   2. The evaluation must include an examination of the structure for continuity, ductility, and resistance to lateral forces.
   3. Structural elements and connections between elements must be strengthened and new elements installed as required, if the existing structure does not provide three fourths (3/4) of the seismic force level resistance required by paragraph A above.

B. Fire Protection.

   1. Fire/smoke detection, alarm and communication systems must comply with the Life Safety Code, NFPA 101, for the entire project. Additionally, a smoke detector is required in each sleeping area.
   2. Any new construction must have a sprinkler system as required by NFPA 101.
   3. Nursing facilities (skilled and intermediate) must comply with NFPA 101.
   4. Substantial rehabilitation exceeding 50 percent of the replacement cost of the fully repaired structure (or floors/wing(s) to which work is limited) must with comply with NFPA 101 provisions for new construction.
   5. New additions must be separated from existing structures, even if the entire facility is included under one mortgage. Separation must equal or exceed:
      a. Two-hour rated firewall;
      b. One and one half (1 ½) hour protected openings;
      c. Class B labeled fire doors;
   6. New work on substantial rehabilitation or existing 232/223f projects must comply with standards for new construction.

Section 232 – Additional Codes, Standards and Guides 5E

STANDARDS. All applicable standards in Appendices 5A, 5B, 5C, and 5D, in accordance with the type of construction or program, apply to Section 232 projects. The following additional standards also apply:

Priority and interpretation of referenced standards:

- The Minimum Property Standards (MPS) takes priority over all other codes and standards where a conflict exists, unless the other codes and/or standards require a greater degree of protection for life safety and accessibility than the MPS, in which case the other code and/or standard would control.
- Projects must meet this Appendix's specific requirements for Section 232, even if excepted by other standards.
- HUD is the final interpreter for codes and standards referenced for the Department's purpose.
- Compliance with the referenced standards does not relieve the need for compliance with any other applicable Federal, State or local requirement.

A. Minimum Property Standards for Housing (MPS), HUD Handbook 4910.1, including: Local Codes and/or Model Codes accepted by HUD for the municipal jurisdiction as per MPS Paragraph 102.

B. Uniform Federal Accessibility Standards (UFAS); Note that the UFAS is scheduled to be replaced by the ABA/ADA Accessibility Guidelines in the year 2000.

C. Fair Housing Accessibility Guidelines issued pursuant to the Fair Housing Act, P.L. 100-430, approved Sept. 13, 1988; Note: Must be met as a condition of insurance of insurance for Section 232 pursuant to Section (223f). See Appendix 5C, paragraph E for 232/223(f) project.

D. Life Safety Code, NFPA 101;

E. State Standards established, maintained and enforced by the State (or local authorities designated by the State) for each level of care facility, i.e. Skilled Nursing Facilities (SNF), Intermediate Care Facilities (ICF), Board and Care Facilities (B&C), and Assisted Living Facilities (ALF).

F. Guidelines for Construction and Equipment of Hospital and Medical Facilities (AIA Press, Order No. R673);

G. ASHRAE 1987 HVAC Systems and Applications, Chapter 23, Health Facilities;

H. Uniform Building Code (UBC), 1982 Edition, Chapter 23, Earthquake Regulations;

I. FEMA-273, NEHRP Guidelines for Seismic Rehabilitation of Buildings;

J. FEMA-274, NEHRP Commentary on the Guidelines for Seismic Rehabilitation of Buildings.

SOURCES OF CODES, STANDARDS, AND GUIDES

A. Government Publications. The Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, DC 20402;

B. Codes Accepted by HUD for Local Areas. MPS Paragraph 102 and Appendix I;

C. State Standards: State agencies;

D. Life Safety Code, NFPA 101. The National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269;

E. Guidelines for Construction and Equipment of Hospital and Medical Facilities, AIA Press. The American Institute of Architects, 1735 New York Avenue, NW, Washington, DC 20006;

F. ASHRAE 1987 HVAC Systems and Applications, American Society of Heating, Refrigerating and Air Conditioning Engineers, New York, NY;

G. Uniform Building Code (UBC), 1982 Edition. International Conference of Building Officials, Whittier, CA;

H. AHA Estimated Useful Lives of Depreciable Hospital Assets, American Hospital Association, 840 North Lake Shore Drive, Chicago, IL 60611.

Section 232 – Additional Accessibility Requirements 5F

Section 232 projects must comply with all applicable accessibility requirements, in accordance with the type of construction or program, in Appendices 5A through 5C. In addition, the following requirements apply:

A. Skilled Nursing and Intermediate Care Facilities.

1. Design must comply with UFAS.

2. Accessibility for the mobility impaired must be provided for 100 percent of resident bedrooms and toilet rooms, public use spaces (primary entrances, elevators, etc.) and common use spaces (community rooms, dining rooms, etc.).

3. Accessibility for the vision or hearing impaired must be provided for:

   a. Two (2) percent of the resident bedrooms but not less than 1 unit;

   b. All public use facilities and

   c. Not less than one each of common use facilities.

4. Require a furniture layout plan demonstrating accessibility for people with disabilities for:

   a. Typical resident rooms, spaces and accommodations;

   b. Public spaces;

   c. Common use spaces including congregate dining areas.

B. Board and Care Facilities and Assisted Living Facilities.

1. Accessibility for the mobility impaired must be provided for 100 percent of the public areas, common use areas, and residential accommodations, except that the following applies to residential accommodation kitchens:

   a. Ten percent of kitchens included for independent living units and other residential accommodations must comply with UFAS provisions for residential kitchens, except:

      (1) A 30-inch wide counter work area with clear knee space (in addition to the sink area with clear knee space) is not required where a galley kitchenette (manufactured compact or site assembled components) of 6 or fewer feet is used, and

(2) A pullout bread board work surface is provided in lieu of the counter work area with clear knee space beneath.

(3) Full compliance with UFAS is required where kitchen facilities exceed a 6-foot galley kitchenette.

b. The balance of the kitchens included for independent living units and other residential accommodations must comply with UFAS provisions for residential kitchens, except:

(1) A 30-inch wide clear knee space is not required at either the sink or for a separate work area, where a galley kitchenette (manufactured or site assembled components) of 5 or fewer feet is used, and

(2) Kitchenette counter tops need not be 34 inches high nor adaptable.

(3) Comply with item a. above, where accommodation kitchen facilities exceed a 5-foot galley kitchenette.

2. Accessibility for the vision or hearing impaired must be provided for:

a. Two (2) percent of the resident bedrooms but not less than 1 unit;

b. All public use facilities and

c. Not less than one each of common use facilities.

3. Require a furniture layout plan demonstrating accessibility for persons with disabilities for:

a. Typical resident rooms, spaces and accommodations;

b. Public spaces;

c. Common use spaces including congregate dining areas.

Section 232 – Primary Facility Requirements 5G

STANDARDS. Section 232 projects must comply with all applicable standards in Appendices 5A through 5F, in accordance with the type of construction or program In addition, the following requirements apply:

A Skilled Nursing Facility, Intermediate Care Facility, Board and Care Facility or Assisted Living Facility must be either a free-standing building(s) or an identifiable, separate portion of one of the other facilities.

A. Skilled Nursing and Intermediate Care Facilities

1. Project size must equal or exceed 20 beds.

2. Areas of Design Concern to the AIA Guidelines for Construction and Equipment of Hospital and Medical Facilities apply:

   a. Where State standards do not exist, or are not maintained or enforced;

   b. To the unregulated area(s) where State standards do not regulate each Area of Concern.

3. Nursing facilities having patient use areas on more than one floor shall have electric or hydraulic elevator(s).

   a. At least one hospital-type elevator shall be installed where resident beds are located on any floor other than the main entrance floor;

   b. When 60 to 200 resident beds are located on floors other than the main entrance floor, at least 2 elevators (one of which shall be of the hospital type) shall be installed in the absence of an engineered traffic study.

4. Automatic Door Release, if installed, must be activated by the resident smoke detector.

5. Door closure devices on corridor doors are optional (resident rooms) and may be mandatory based on State/local codes.

6. Skilled Nursing and Intermediate Care Facilities must meet State/local licensing requirements, building codes and other occupancy standards.

B. Board and Care (B&C) Facilities.

1. Project Size must be five or more residential accommodations.

2. Residential Accommodations.

a. A "residential accommodation" is:

(1) A complete efficiency or one bedroom dwelling unit, or

(2) A single bedroom or suite of bedrooms in which the bedrooms:

(a) Are for single or shared occupancy;

(b) Have a bathroom per bedroom, or a bathroom shared by the residents of more than one bedroom, not to exceed four residents per bathroom, and

(c) May, but need not, include any combination of individual or shared living, cooking and dining areas in addition to required project community spaces and congregate cooking and dining facilities.

(3) In a B&C home, independent living accommodations, i.e. complete efficiency or one bedroom dwelling units, may not provide more than 25 percent of the total projected resident capacity.

(a) An independent living accommodation includes its own kitchen, bathroom, and sleeping area or bedroom;

(b) A kitchen consists of a sink, refrigerator, slip-in range with oven or built-in cooktop plus a built-in oven, and storage for cooking/eating utensils and foodstuffs.

(i) The range or cooktop must have two or more burners;

(ii) A conventional, convection or microwave oven may be used.

(4) A small refrigerator, and/or bar-type sink, two-burner cooktop and/or microwave for the convenience of the tenant (making tea, storing cold drinks or medicines) does not constitute a kitchen, but rather a kitchenette. However, provision of this kitchenette is generally only permissible in units (room and bath) that do not exceed 350 square feet or where the Lender's market analyst specifically determines that the project does not appeal to the same limited market as Retirement Service Centers. This determination should be maintained in the project file.

(a) A bathroom must include a lavatory, toilet, and bathtub or shower meeting accessibility criteria for persons with disabilities;

(b) A bedroom must be separated from other spaces by a door and include a clothes closet(s).

b. The maximum number of occupants per residential accommodation shall be regulated by State or local standards. If such standards do not exist or do not regulate such occupancy, no more than 4 persons may occupy a bedroom.

3. Kitchen and Dining Criteria.

   a. Program must provide congregate kitchen and dining facilities to serve all residents, including those in accommodations with individual or shared kitchens and dining areas.

   b. If food is to be prepared at an offsite location, a serving area may be substituted for the congregate kitchen, if:

      (1) The serving area is of sufficient size to permit subsequent installation of a congregate kitchen, if required, or

      (2) The site and building layout permit the subsequent addition of a congregate kitchen.

   c. A congregate kitchen may provide meals for several structures, including a skilled nursing or intermediate care facility that is part of the board and care or assisted living facility mortgage.

4. Bathrooms. The maximum number of residents per bathroom shall be governed by State or local standards except:

   a. Not less than one full bathroom must be provided for every four residents;

   b. Hand-washing facilities must be included in each bedroom, except that they may be omitted when the bathroom serves only one single- or double-occupancy bedroom;

   c. Access to required bathrooms from bedrooms served shall not be through public corridors or areas;

   d. An additional bathroom(s) may be included for assisted bathing. Provide a lavatory, toilet, dressing area, and means for privacy for such bathrooms.

5. Emergency Call Systems. Program must furnish each sleeping area and each bathroom with an emergency call system that:

   a. Registers a call (annunciator and alarm) at one or more supervised locations, or

   b. Has an intercommunicating telephone system connected to a switchboard which is monitored 24 hours a day, or

c. Sounds an alarm (not the fire alarm) in the immediate corridor and automatically activates a visual signal in the corridor at the entrance to the residential accommodation.

6. Recreational Rooms must provide for:

   a. Passive activities such as sitting, reading, conversing and parlor games;

   b. Active functions such as crafts, group exercises, etc., and

   c. Communal activities including meetings and group entertainment.

   Multipurpose spaces may also serve as part or all of the congregate dining space.

7. Project Character.

   a. The board and care facility must maintain a residential rather than a medical character.

   b. Facilities requiring staffing in excess of 1 ½ hours per resident day indicate a tendency toward a medical rather than a residential facility. Such proposed physical improvements and operational plans must be closely reviewed by the Lender to assure compliance with board and care program objectives.

8. The program must meet State/local licensing requirements, building codes and other occupancy standards.

C. Assisted Living Facilities.

1. Zoning. An Assisted Living Facility (ALF) must comply with the local zoning ordinance. In addition to meeting HUD's program standards, the ALF shall meet any other applicable Federal, State or local requirements.

2. Project size must be five or more residential units.

3. Structure.

   a. An ALF assisted living facility (ALF) shall be:

      (1) One or more free-standing structures (architecturally independent of any other structure);

      (2) An entity of an existing structure such as a board and care home, or

      (3) Connected to a main building or identifiable separate portions of one or more free-standing structures.

b. An ALF may be a component or an identifiable part of another HUD-insured facility (nursing facility, intermediate care facility or board and care facility).

c. Additions.

(1) An addition to an existing facility may be insured under Section 232 as new construction.

(2) If the existing structure does not have an FHA-insured mortgage or is not being substantially rehabilitated, the addition qualifies as new construction under Section 232.

(3) An addition may consist of additional beds or other space such as additional administration areas.

4. Residential Units:

a. A Residential Unit may be:

(1) An efficiency or one-bedroom dwelling unit, or

(2) A single bedroom or suite of bedrooms in which the bedrooms provide separate dwelling units for residents.

b. A bedroom must be separated from other spaces by a door and include a clothes closet(s).

c. The maximum number of occupants per residential accommodation shall be regulated by State or local standards, not to exceed four persons per accommodation.

d. The assisted living unit may have a full bathroom per bedroom, or a bathroom shared by the residents of more than one bedroom, not to exceed four residents per bathroom. A bathroom must include a lavatory, toilet, and bathtub or shower meeting accessibility criteria for persons with disabilities.

e. The assisted living unit may contain a kitchen, kitchenette or no kitchen depending on the design and market conditions. Cooking facilities may be disconnectable for certain residents.

(1) A full kitchen consists of a sink, refrigerator, slip-in range with oven or built-in cooktop plus a built-in oven, cabinetry, and storage for cooking/eating utensils.

(2) A kitchenette has a small sink and small refrigerator, cooktop or microwave.

(3) A kitchen is not required in each unit.

f. Assisted living facilities (ALF) are required to have an emergency call system, sprinklers and/or security systems, depending on State licensure or Life Safety Codes adopted by the NFPA (Limited Care Facility).

g. An ALF shall have an emergency response system (audio or visual) in each room and 24-hour staff coverage.

h. Individual dwelling doors may be locked depending on the licensure requirement and project management's policies.

i. Assisted living environments should be architecturally designed to allow for the needs of the residents, e.g. special care units for Alzheimer's residents with suitable outdoor areas, indoor walking area, appropriate lighting and decor, and suitable security (alarms, exits, doors, etc.).

5. The Assisted Living Facility:

   a. Shall not contain any nursing home or intermediate care beds;

   b. May contain board and care beds;

   c. Must provide areas for central dining, kitchen (or preparation area where food is supplied from an offsite location), lounges, recreation, and other multipurpose rooms. Where food is provided from an offsite location, the preparation area in the facility must be of sufficient size to allow for the installation of a full kitchen if it becomes necessary, or additional land must be available to add kitchen space.

   d. Must meet State and local licensing requirements, governmental building code and other occupancy standards.

6. Additional design considerations for Assisted Living Facilities (ALF):

   a. Private rooms with a full bath are the standard. Because ALF residents generally are private pay and have a choice (unlike Medicaid recipients in nursing homes), private rooms with a full bath are the standard.

   b. Semi-private rooms have generally not been successful in the ALF market. However, there may be a few semi-private rooms:

      (1) Where market experience supports it;

      (2) The developer wants to have some units affordable for SSI and low-income residents.

   c. Alzheimer's facilities may be developed as free-standing facilities, but the trend is to build smaller facilities of 16 to 44 beds.

d. No typical ALF model.

(1) There is no typical ALF model, but some developers use prototypes in multiple locations.

(2) Housing Finance Agencies may choose to develop ALFs with an affordable housing component.

(a) This is done by reducing construction costs and partnering with local communities.

(b) However, these facilities have less space, fewer services, and different design features.

e. Aging in place.

(1) Developers that initially build retirement communities with independent living units may have to retrofit and convert these units to ALFs due to aging in place.

(2) To qualify for Section 232 mortgage insurance, these converted units must comply with:

(a) Federal, State, local building and fire codes, and

(b) Federal and State accessibility requirements for persons with disabilities.

f. Facility should be home-like, rather than an institutional model.

g. Unit Sizes: The unit size ranges from 150 square feet (sf) for a semi-private room to 650 sf for a two-bedroom unit.

h. Common spaces: A minimum of 25 sf of dining area and 30 sf of recreational and common space per resident are recommended minimum standards.

D. Mixed Use Buildings. Due to specific needs, B&C (personal care) or ALF (frail elderly care) residents are generally incompatible with SNF or ICF (medical care) patients, where personal and medical care facilities occupy the same building. Accordingly, the mixed use building program should minimize the shared use of the same building spaces and facilities between the personal care and medical care use groups.

1. The building design should not intermix B&C and ALF residential accommodations or services with SNF/ICF patient rooms or services. Personal or frail elderly care facilities should be located in a separate building wing or floor from medical care facilities.

2. The building design should provide separate building entrances for the personal/frail elderly care and the medical care facilities where both are in the same building, except in an elevator structure where a common elevator(s) is used for all floors.

3. Where a common elevator lobby and elevators are used by B&C/ALF residents and SNF/ICF patients:

   a. the elevator lobby must separate B&C/ALF residential accommodations from SNF/ICF patient bedrooms;

   b. The route of travel between an elevator lobby and B&C/ALF residential accommodations must not pass SNF/ICF patient bedrooms, nor may the route of travel between the lobby and SNF/ICF patient bedrooms pass B&C/ALF residential accommodations.

4. Interior and exterior passive and active recreation spaces must segregate B&C/ALF residents from SNF/ICF patients.

5. Congregate dining facilities may be shared between B&C/ALF residents and SNF/ICF patients only if SNF/ICF patients can be successfully separated and screened from the B&C/ALF residents.

6. Facilities for chapel, therapy and similar activities for which duplication is not warranted may be for common use by B&C/ALF residents and SNF/ICF patients.

E. New Additions may be self-sufficient entities with independent means of ingress and egress, beds or space. Addition to an existing project that does not require substantial rehabilitation is processed as new construction under Section 232, and the existing facility is insured under Section 232 pursuant to Section 223(f).

   1. If concurrent upgrading of the existing improvements (minus work associated with the new addition) meets the definition of substantial rehabilitation, then a single mortgage may cover the total property including the new addition and is processed as substantial rehabilitation.

   2. Standards for new construction apply to new additions.

Section 232 – Nonresident Day Care Facility Requirements 5H

STANDARDS. Section 232 projects must comply with all applicable standards in Appendices 5A through 5G, in accordance with the type of construction or program. In addition, the following requirements apply:

Nonresident day care facilities may be provided in conjunction with a skilled nursing facility (SNF), intermediate care facility (ICF), board and care facility (B&C), or an assisted living facility (ALF), but may not be the sole facility in the mortgage.

A. General Standards and Criteria.

1. Net nonresident day care area may not exceed 20 percent of the total project net area.

2. Nonresident day care area must provide space and facilities for any one or more of the three eligible programs, i.e. restorative, maintenance or social, identified for inclusion by the narrative program.

   a. Various facilities may be shared with the SNF, ICF, B&C or ALF, provided that they do not cause objectionable infringement on patient or resident use or privacy, e.g. chapel or therapy facilities.

   b. The care center program activity area, including multipurpose rooms, must be separate from SNF, ICF, B&C or ALF patient/resident activity areas.

3. The following facilities must be provided:

   a. Kitchenette for minor food preparation and special events. This may be incorporated as part of a multipurpose room.

   b. Dining area for snacks and meals. This may be incorporated as part of a multipurpose room.

   c. Toilet rooms for both sexes providing one toilet for each 10 participants. Fifty percent of required toilets may be urinals in the men's room(s).

   d. Rest area providing privacy for participants who become ill or need to rest, sized to accommodate one cot for every 15 participants. Where evening or night care is indicated by the narrative program, increase the facility according to need.

   e. Cloak room and/or closets for participant and staff coats and similar personal items, and general storage closet(s) for equipment, material and supplies.

   f. Room for private consultations.

   g. Parking and passenger loading zone(s) close to one or more of the day care facility's primary entrances.

B. Separate Site Prohibited. The day care facility may not be on a different site than the primary facility.

Firm Commitment Drawings and Specifications to be Submitted by the Mortgagor's Architect

5I

A. Cover sheet:

1. Project name and identification number.

2. Spaces for signatures of architect, owner, contractor, and bonding company.

3. Tabulation of living units:

   a. Number of units for each type.

   b. Number of units and type in each building.

   c. Non-rental living unit.

   d. Number of parking spaces, open and covered.

B. Index of drawings by name, numbered consecutively, with date of preparation and latest revision date.

C. Topographic survey, that is, a "transit survey" at a minimum scale 1" = 40'-0", recent, dated, and signed by a registered surveyor, and including:

1. Contours at one-or two foot intervals, except that for steeply sloping sites, the intervals may be five feet.

2. City, county, state, and lot and block numbers of the property and adjacent sites.

3. Distance to the nearest street, dimensioned length of each boundary, such as monuments, markers, fences, etc., and all encroachments or deviations from description of the subject property or conflicts with descriptions of adjacent properties.

4. Easements, rights-of-way, setback lines, and other restrictions.

5. Existing streets, alleys, and drives as well as surfacing, curbs, street names, and other data.

6. Location and sizes of public utilities with invert sewer elevations and direction of flow.

7. Preservable trees.

8. Location and description of all existing structures.

9. Legal description of the property, with total square footage and acreage.

D. Plot plan at a scale not less than 1”=40’-0”, showing:

1. Land boundaries, dimensions, and North Point.

2. Streets, alleys, or roads adjacent or within the property boundaries, together with walks, curbs, pavements, steps, ramps, play areas, parking areas, and drying yards, and utilities such as gas, water, electric, and sewer lines.

   a. Dimension or size with distance from location points, material indication for such items as walks and pavements, and extent of each.

   b. Indications of “new” or “existing” and public dedication of any streets or alleys in the project.

3. Buildings, building designations, location dimensions, and overall dimensions.

4. Elevations of first floor, elevations of finish and existing grade at building corners and entrances, elevations of curbs and streets, and invert elevations of main sewer and direction of flow.

5. Utilities servicing the property, or distance to point of connection and utility lead-ins of service connections; yard lighting; lawn hydrants and lawn sprinkler systems with the pipe sizes and controls; drains; and fire hydrants.

6. Retaining and garden walls, fences, guard rails, garages and accessory structures, with dimensions.

7. Existing trees and other natural features and whether to be removed or preserved.

E. Grading and drainage plan at a scale not less than 1”=40’-0” when essential information cannot be clearly shown entirely on the plot plan.

1. Grade elevations at all building corners and at entrances, walks, drives, parking areas, terraces, yards, walls and steps, and first floor elevations. Existing and proposed grading contours at appropriate intervals.

   a. Yard and roof drainage with controlling grades and dimensions of drainage lines, culverts, catch basins, drainage inlets, gutters, curbs, drainage disposals, and any existing facilities.

F. Planting plan at a scale not less than 1”=20’-0”, indicating:

1. Outline of buildings and other improvements with physical features of the site to establish the location and relationship of planting and landscape construction.

2. Distribution of plant material, location, quantity and key number of each general species in each group; outline of planting beds, primary lawn areas, secondary lawn areas and existing trees to be preserved or transplanted.

3. List of plant material using English and Latin names, key number for each variety for reference to plan, and the size, quality or other description.

G. Basement plans for each building type at a scale not less than 1/8”=1’-0”. (Foundation plans when no basements.)

1. Dimensions and names indicating use of spaces, with the layout of permanent equipment.

2. Location of structural elements with dimensions or notes as to: thickness and size; windows; vents; areaways; doors; lights and switches; drains; sumps; etc. Unless there is a separate foundation plan, show locations and size of footings, piling and other substructure work.

3. Large-scale drawings or details of spaces not clearly shown.

H. Floor plans:

1. Unit floor plans at a scale not less than ¼”= 1’-0” for each basic type living unit and any major variation. Separate unit plans are not required when the general floor plans are provided at ¼-inch scale and contain all essential information.

   a. Partitions to scale; rooms, closets and hall dimensions; over-all dimensions; window locations and type designations referring to schedule showing design, thickness, and size; dimensioned stair locations, runs and width, landings and handrails.

   b. Plumbing fixtures; soil and vent stacks; kitchen cabinets and equipment; electric lights; switches, receptacles, and special power outlets; closet shelving and clothes rods; radiators or other heating devices, chimneys, and all other such items.

   c. Location of structural elements such as columns, lintels, joists, beams, girders, and bearing partitions. Show sizes, spacing and direction of members. Separate structural drawings are required where the structural information would obscure other information.

   d. All conditions where units are to join other units; end-unit conditions.

   e. Identification of living unit types by a number or letter.

2. General floor plans at a scale not less than 1/8”=1’-0”.

   a. Dimensional relation of living and building units with over-all dimensions of building units and buildings, partition arrangement and fenestration of end units, units at corners and units at offsets; other partitions as necessary to show variations from the

typical unit plans and relation of rooms in adjacent living units, wall separating building units, and their material and thickness.

b. Buildings and those units identified by numbers or letters.

I. Roof plans at a scale not less than 1/8”=1’-0”.

1. Relation of intersection of the various building unit roofs; direction of slopes; parapets, chimneys, vents, and other projections; downspout locations and sizes.

2. Omit where the essential information can be shown clearly on the plot plan or other drawings.

J. Elevations:

1. General elevations at a scale not less than 1/8”=1’-0”. Exterior design of all sides of buildings with existing and proposed grades at buildings, floor lines and elevations, floor height dimensions, roofs, attic vents, parapets, cornices, downspouts, openings, material notes, and other essential features.

2. Typical elevations at a scale not less than ¼”=1’-0” to show portions of facade with a special exterior design. Show materials, jointing, special features, windows, doorways, cornices, parapets, and details.

K. Sections:

1. Outline sections - scale not less than ¼”=1’-0”. Show various height conditions, cross sectional characteristics, and floor level relations, when other drawing information is not adequate.

2. Detail sections - scale not less than 3/8”=1’-0”. Show each type of exterior wall and bearing wall or partition, from footings to roof.

3. Exterior wall sections - scale not less than 3/8”=1’-0”. Show complete construction of walls with thickness at various stories, floors, furring, waterproofing, ceilings, roofs, including pitch and flashings, room heights, anchorage and bearings, cornice and gutter, insulation, vapor barrier, foundation walls and footings, conditions at various basement depths, basement floors or access space, roof space, attic and foundation vents.

L. Details at a scale not less than 3/8”=1’-0”. Provide the following except where such features do not occur:

1. Front and rear entrances, plan of each with elevations and sections.

2. Stair plans and sections showing stringers, treads, risers, newels, balusters, handrails, rise, run, and headroom.

3. Kitchen cabinet plans, elevations and sections.

4. Bathroom plans with elevations showing accessories and cabinets.

5. Entrance lobbies.

6. Platforms and areaways.

7. Special exterior and interior details, such as bay windows, dormers, cupolas, vents, fireplaces, and built-in furniture.

M. Schedules:

1. Door schedules - size, thickness, material and design of each door, with plan identification. Fire doors, show rating.

2. Window schedule - size, thickness, materials and design of each window, with plan identification.

3. Finish schedule - material and type finish of floors, base or wainscot (with height), walls, ceilings and trim for various rooms or spaces.

N. Structural: Drawings and details as appropriate, with complete structural information, must be provided when such information cannot be shown on general drawings without obscuring other information.

O. Mechanical: Heating, cooling, plumbing and electrical layouts on separate drawings unless the systems are simple enough to be shown on other drawings. Include all pertinent design data. Show special mechanical installations separately.

1. Heating drawings for each system (information in specification should not be on drawings).

   a. Location and size of boilers, furnaces, or heaters; the make, model number or type and net output of each.

   b. Layout, location, and sizes of supply and return piping, ducts, risers, and branches, and insulation locations.

   c. Location, sizes and output in BTU of radiators, registers, grille and panel surfaces, valves, vents, traps, dampers and other accessories; make, model number or type of each.

   d. Make, model number, and firing rate of all firing equipment, and similar detailed data on other components of each system, such as, controls, pumps, blowers, and filters.

   e. Location, type, manufacturer's name, and model number of domestic water heating and related equipment including: storage, arrangement and sizes of connecting piping; make and model number and other pertinent information for control equipment and safety devices.

f. Design data for the system, including outside design temperature, boiler operating temperature, BTU output, pressure or temperature drops, air temperatures at registers, pump or fan capacities, volumes, and velocities, heat loss of each building and total calculated heat load connected to each heating system; net output in BTU of each boiler and system.

g. Design data for each domestic hot water system and, when connected to a heating system, the additional heat load included in the total for the connected system.

2. Plumbing drawings:

   a. Horizontal sewer and drain systems with soil, waste, and vent stacks; branch wastes and vents; drains, cleanouts, traps, sump pumps, etc., connections to sewer, sizes of lines and stacks. Diagram of typical stack including soil, waste, and vents.

   b. Cold water distribution system, size of mains and branches, location of hose bibs, valves and drains.

   c. Hot water distribution system together with circulating lines and pumps, valves, sizes of mains and branches.

   d. Gas distribution system, size of mains and branches, meters, etc.

3. Electrical drawings:

   a. Service lines, primary distribution and secondary distribution, service characteristics and wire sizes.

   b. Meter and panel locations and manner of mounting.

   c. Interior distribution and wiring of typical units.

   d. Lights, receptacles, switches, special purpose outlets, and connections to equipment if not on the architectural plans.

   e. Yard and grounds lighting and lighting of all public and common spaces and controls.

   f. Power riser diagram and switchboard schedule.

   g. Fire detection and alarm system riser diagram and schedule.

   h. Symbol list.

4. Air conditioning drawings:

a. Locations, cooling capacity, and horsepower of compressor; cooling tower condensing units; and individual cooling units. Make, model number, and rating.

b. Layout of system including ducts, grilles, registers, diffusers, pipe sizes, and location of valves, vents, dampers and controls.

c. BTU load for each space, size and rating of equipment.

d. Design data for the system, including: CFM space requirements; blower ratings, type condenser cooling; inlet and outlet water temperature; and GPM water-flow rate.

e. Electric wiring layout, location of motors, fans, pumps, switches, and their load requirements.

P. Any other drawings required by lender.

Q. Appropriate general and supplementary conditions and Davis-Bacon wage rates (where applicable).

R. Contract specifications: Use 16 basic divisions of the Masterformat Construction Specifications Institute (CSI).

1. Describe all materials, equipment, and construction and include two, and preferably three, comparable products where practicable, or specify by performance characteristics.

2. Include the latest edition of the "General Conditions of the Contract for Construction", AIA Document A201.

3. Fully describe all materials, including alternates, and do not use general references to HUD's Minimum Property Standards. Do not include the words "or equal".

4. Divide into sections separately describing the work to be done by each trade essential to project completion. Consecutively number pages and include:

a. A cover sheet: Must include Title of project, the lender project number, project location, and a signature block setting forth:

IDENTIFICATION

Architect (Print Name) by (Signature)
Owner (Print Name) by (Signature and Title)
Contractor (Print Name) by (Signature and Title)
Bonding Co.(Print Name) by (Signature and Title)
Date_____

b. Index.

(1) Divisions with name.

(a) Trade, name and page number.

(b) Trade section, name and page number.

(2) Pages numbered consecutively

c. Conditions.

(1) General Conditions of the Contract for Construction, AIA Document A201, latest edition.

(2) Supplementary Conditions of the Construction Contract, Form HUD-2554, latest edition.

(3) Architect's Supplementary Conditions, if any.

d. Trade sections. Include:

(1) Complete description of all work to be performed. This will include scope of work, materials and workmanship.

(2) Necessary specific instructions for coordinating the work with other trades.

e. Methods of Specifying.

(1) Performance. List required qualities of products and assemblies and end result.

(2) Reference Standards. Incorporate references to nationally recognized standards published by industry associations, testing organizations and government, such as American National Standards Institute (ANSI), Underwriters' Laboratories (UL), and Department of Commerce (DOC).

(3) Proprietary. List products and assemblies by manufacturer or brand name, and grade or model.

(a) Include at least two comparables.

(b) Use a single brand only if there is no comparable.

f. Unacceptable.

(1) Use of the words "or equal".

(2) Reference to HUD or HUD publications, such as:

(a) Minimum Property Standards (MPS),

(b) Materials Bulleting (UM),

(c) Materials Releases (MR), and

(d) Structural Engineering Bulleting (SEB).

(3) Cash or lump sum allowances.

S. Offsite Drawings and Specifications.

1. Offsite improvements are those required to service the project but outside of the property boundary lines.

   a. Include utilities, walks, curbs, gutters, streets, drainage structures, landscaping, and similar improvements beyond the property lines.

   b. Do not include short extensions of utilities, walks, drives, drainage structures and similar improvements beyond the property lines which connect with those next to the property lines.

2. Offsite improvements may be included in the contract drawings and specifications but the extent must be clearly defined on the plot plan and in the specifications.

3. Complete, separate offsite drawings and specifications are preferred.

T. Utility Analysis. If required by the Hub Director, the mortgagor's Architect will prepare a utility analysis. For HUD energy efficiency standards see Appendix 5A, Paragraph O. For guidance on the life-cycle cost analysis, see 1999 ASHRAE Applications Handbook, 35.8, and NIST "Building Life-Cycle Cost" Program, Version 4.3 User's Guide and Reference Manual.

Specification Guide 5J

Division 1 - General Requirements

01010 Summary of Work
01020 Allowances
01025 Measurement and Payment
01030 Alternates/Alternatives
01040 Coordination
01050 Field Engineering
01060 Regulatory Requirements
01070 Abbreviations and Symbols
01080 Identification Systems
01090 Reference Standards
01100 Special Project Procedures
01200 Project Meetings
01300 Submittals
01400 Quality Control
01500 Construction Facilities and Temporary Controls
01600 Material and Equipment
01650 Starting of Systems/Commissioning
01700 Contract Closeout
01800 Maintenance

Division 2 - Sitework

02010 Subsurface Investigation
02050 Demolition
02100 Site Preparation
02140 Dewatering
02150 Shoring and Underpinning
02160 Excavation Support Systems
02170 Cofferdams
02200 Earthwork
02300 Tunneling
02350 Piles and Caissons
02450 Railroad work
02480 Marine work
02500 Paving and Surfacing
02600 Piped Utility Materials
02660 Water Distribution
02680 Fuel Distribution
02700 Sewerage and Drainage
02760 Restoration of Underground Pipelines
02770 Ponds and Reservoirs
02780 Power and Communications
02800 Site Improvements
02900 Landscaping

Division 3 - Concrete

03100 Concrete Formwork
03200 Concrete Reinforcement
03250 Concrete Accessories
03300 Cast-in-Place Concrete
03370 Concrete Curing
03400 Precast Concrete
03500 Cementitious Decks
03600 Grout
03700 Concrete Restoration and Cleaning
03800 Mass Concrete

Division 4 - Masonry

04100 Mortar
04150 Mortar Accessories
04200 Unit Masonry
04400 Stone
04500 Masonry Restoration and Cleaning
04550 Refractories
04600 Corrosion Resistant Masonry

Division 5 - Metals

05010 Metal Materials
05030 Metal Finishes
05050 Metal Fastening
05100 Structural Metal Framing
05200 Metal Joists
05300 Metal Decking
05400 Cold-Formed Metal Framing
05500 Metal Fabrications
05580 Sheet Metal Fabrications
05700 Ornamental Metal
05800 Expansion Control
05900 Hydraulic Structures

Division 6 - Wood and Plastics

06050 Fasteners and Adhesives
06100 Rough Carpentry
06130 Heavy Timber Construction
06150 Wood-Metal Systems

06170 Prefabricated Structural Wood
06200 Finish Carpentry
06300 Wood Treatment
06400 Architectural Woodwork
06500 Prefabricated Structural Plastics
06600 Plastic Fabrications

Division 7 - Thermal and Moisture Protection

07100 Waterproofing
07150 Dampproofing
07190 Vapor and Air Retarders
07210 Insulation
07310 Shingles and Roofing Tiles
07400 Preformed Roofing and Cladding/Siding
07500 Membrane Roofing
07610 Sheet Metal Roofing
07700 Roof Specialties and Accessories
07800 Skylights
07900 Joint Sealers

Division 8 - Doors and Windows

08100 Metal Doors and Frame
08200 Wood and Plastic Doors
08250 Door Opening Assemblies
08300 Special Doors
08400 Entrances and Storefronts
08500 Metal Windows
08600 Wood and Plastic Windows
08650 Special Windows
08700 Hardware
08800 Glazing
08900 Glazed Curtain Walls

Division 9 - Finishes

09100 Metal Support Systems
09200 Lath and Plaster
09230 Aggregate Coatings
09250 Gypsum Board
09300 Tile
09400 Terrazzo
09500 Acoustical Treatment
09540 Special Surfaces
09560 Wood Flooring
09635 Brick Flooring
09660 Resilient Flooring
09680 Carpet
09700 Special Flooring
09780 Floor Treatment
09800 Special Coatings
09900 Painting
09950 All Coverings

Division 10 - Specialties

10100 Chalkboards and Tackboards
10150 Compartments and Cubicles
10200 Louvers and Writs
10240 Grilles and Screens
10250 Service Wall Systems
10260 Wall and Corner Guards
10270 Access Flooring
10280 Specialty Modules
10290 Pest Control
10300 Fireplaces and Stoves
10340 Prefabricated Exterior Specialties
10350 Flagpoles
10400 Identifying Devices
10450 Pedestrian Control Devices
10500 Lockers
10520 Fire Protection Specialties
10530 Protective Covers
10550 Postal Specialties
10600 Partitions
10650 Operable Partitions
10670 Storage Shelving
10700 Exterior Sun Control Devices
10750 Telephone Specialties
10800 Toilet and Bath Accessories
10880 Scales
10900 Wardrobe and Closet Specialties

Division 11-Equipment

11010 Maintenance Equipment
11020 Security and Vault Equipment
11030 Teller and Service Equipment
11040 Ecclesiastical Equipment
11050 Library Equipment
11060 Theater and Stage Equipment
11070 Instrumental Equipment
11080 Registration Equipment
11090 Checkroom Equipment
11100 Mercantile Equipment
11110 Commercial Laundry and Dry Cleaning Equipment
11120 Vending Equipment
11130 Audio-Visual Equipment
11140 Service Station Equipment
11150 Parking Control Equipment

11160 Loading Dock Equipment
11170 Solid Waste Handling Equipment
11190 Detention Equipment
11200 Water Supply and Treatment Equipment
11280 Hydraulic Gates and Valves
11300 Fluid Waste Treatment and Disposal Equipment
11400 Food Service Equipment
11450 Residential Equipment
11460 Unit Kitchens
11470 Darkroom Equipment
11480 Athletic, Recreational and Therapeutic Equipment
11500 Industrial and Process Equipment
11600 Laboratory Equipment
11650 Planetarium Equipment
11660 Observatory Equipment
11700 Medical Equipment
11780 Mortuary Equipment
11850 Navigation Equipment

Division 12-Furnishings

12050 Fabrics
12100 Artwork
12300 Manufactured Casework
12500 Window Treatment
12600 Furniture and Accessories
12670 Rugs and Mats
12700 Multiple Seating
12800 Interior Plants and Planters

Division 13 - Special Construction

13010 Air Supported Structures
13020 Integrated Assemblies
13030 Special Purpose Rooms
13080 Sound, Vibration. and Seismic Control
13090 Radiation Protection
13100 Nuclear Reactors
13120 Pre-Engineered Structures
13150 Pools
13160 Ice Rinks
13170 Kennels and Animal Shelters
13180 Site Constructed Incinerators
13200 Liquid and Gas Storage Tanks
13220 Filter Underdrains and Media
13230 Digestion Tank Covers and Appurtenances
13240 Oxygenation Systems
13260 Sludge Conditioning Systems
13300 Utility Control Systems
13400 Industrial and Process Control Systems
13500 Recording Instrumentation
13600 Solar Energy Systems
13700 Wind Energy Systems
13800 Building Automation Systems
13900 Fire Suppression and Supervisory Systems

Division 14 - Conveying Systems

14100 Dumbwaiters
14200 Elevators
14300 Moving Stairs and Walks
14400 Lifts
14500 Material Handling Systems
14600 Hoists and Cranes
14700 Turntables
14800 Scaffolding
14900 Transportation Systems

Division 15 - Mechanical

15050 Basic Mechanical Materials and Methods
15250 Mechanical Insulation
15300 Fire Protection
15400 Plumbing
15500 Heating, Ventilating, and Air Conditioning (HVAC)
15550 Heat Generation
15650 Refrigeration
15750 Heat Transfer
15850 Air Handling
15880 Air Distribution
15950 Controls
15990 Testing, Adjusting, and Balancing

Division 16 - Electrical

16050 Basic Electrical Materials and Methods
16200 Power Generation
16300 High Voltage Distribution (Above 600-Volt)
16400 Service and Distribution (600-Volt and Below)
16500 Lighting
16600 Special Systems
16700 Communications
16850 Electric Resistance Heating
16900 Controls
16950 Testing

Planning and Preparation of Equipment List for a Nursing Home

5K

Nursing homes play an important role in today's comprehensive health programs. Nursing homes are providing more and better nursing care, admitting sicker patients, containing costs in a competitive environment, and maximizing reimbursements.

In planning and equipping a skilled nursing facility or intermediate care facility, the administrator should determine the equipment requirements and prepare an equipment list.

1. Assign room numbers.
2. Prepare a room legend sheet.
3. Determine equipment provided by equipment contract.
4. List major movable equipment.
5. List minor movable equipment.
6. Price the equipment.
7. Total the costs by department or cost center.
8. List building/leasehold improvements.
9. List operating lease by department, term of lease, and cost.
10. Calculate the facility's cost for equipment and furnishings.

The following equipment list has been developed as a general guide for a 120-bed nursing home. The list does not purport to establish minimum or maximum equipment requirements. The equipment required for each nursing home will vary with the services each facility offers. There will be variations based on the facility design, size, operations, ownership, and scope of services rendered.

Note: The nursing home industry uses straight line depreciation in determining the estimated value of the asset, based on the useful life.

Nursing Home Equipment List
120-Bed Nursing Facility

Equipment Description	Life (years) Expectancy
Lobby	
Brass Table Lamps	10
Directory	10
Lamp Tables	15
Love Seat	10
Magazine Table	10
Sofa Chairs	10
Conference Room	
Arm Chairs	15
Conference Table	15
Console T.V./Video Unit	10
Table Lamp	10
Business Office	
Arm Chairs	15
Bulletin Board	5
Calculator	5
Copy Machine with stand	5
CRT Stand	10
Electronic Mail Station w/ Scale	5
Executive Chair	15
Executive Desks	15
Fax Machine	5
File Cabinets	15
Key Cabinet	15
Metal Shelving	20
Mobile Forms Rack	10
Personal Computer System	5
Printer	10
Safe	20
Secretarial Chairs	15
Time Clock	10
Typewriter (Electronic)	10
Administrator's Office	
Arm Chairs	15
Bookcase	15
Brass Table Lamps	10
Credenza	15

Equipment Description	Life (years) Expectancy
CRT Console	10
Executive Desk	15
Love Seat	15
Personal Computer System	5
Director of Nursing's Office	
Arm Chairs	15
Bookcase	15
Calculator	5
Executive Chair	15
Executive Desk	15
File Cabinet – 4 Drawer	15
Personal Computer System	5
Social Worker's Office	
Arm Chairs	15
Bookcase	15
Brass Table Lamps	10
Executive Chair	15
Executive Desk	15
Love Seat	10
Director of Maintenance Office	
Bookcase	15
Calculator	5
File Cabinet – 2 Drawer	15
Pedestal Desk	15
Secretarial Chair	15
Stack Chair	15
Dietician's Office	
Bookcase	15
Bulletin Board	5
Calculator	5
Chair	15
Desk	15

File Cabinet – 2 Drawer	15
Stack Chairs	15
Outdoor/Patio Furniture	
Benches	10
Chairs	10
Patio Tables with 4 Chairs	10
Umbrellas	10
Nursing Units	
Chest of 3 Drawers	15
Convalescent Chairs	15
Desk	15
Entertainment Center	10
Mattresses 76”	15
Non-Electric Beds	15
Over Bed Tables	15
Audio Visual	
Camcorder	5
Camera	8
Color TV 19” (Portable)	5
Over Head Projector	5
Screen (Portable)	5
Tape Recorder	5
Utility Carts	10
Video Cassette Recorder	5
Beauty/Barber Shop	
Convalescent Chair	10
Dryer Lounge with Chair	8
Dryer on Wheel Stand	8
Hydraulic Chair	15
Hydraulic Styling Chair	15
Love Seat	10
Stack Chairs	15
Sterilizer	15
Treatment Room	
Arm Chair	10
Blood Pressure Unit (Portable)	5
Blood Pressure Wall Unit	8
Bookcase	15
Cordless Telephone	5
Desk	10
Diagnostic Set	8
EKG Machine	8
Electronic Thermometer	8
Exam Lamp	10
Exam Screen	5
Exam Table	15
Footstool	10
IV Poles	8
Secretarial Chair	15
Swivel Chair with Castors	10
Upright Scale	10
Utility Cart	10
Whirlpool (Portable)	15
Therapy (Physical, Occupational, & Speech)	
Bookcase	15
Bulletin Board	10
Desk	15
Exam Table	15
Exercise Bike	5
Exercise Mats	5
Exercise Weights	5
File Cabinet –2 Drawer	15
Hydrocollator	10
Parallel Bar 7”	15
Safe-T Mirror	5
Secretarial Chair	15
Side Chairs	15
Whirlpool (Portable)	15
Nurses Station	
Bulletin Boards	5
Chart (CPR)	20
Cordless Telephones	5
Personal Computer	5
Personal Computer Stand	10

Resident Chart Holder	5
Secretarial Chairs	15
Clean Utility Room	
Gerry Chairs	10
Ice Machine	10
IV Poles	8
Microwave	5
Refrigerator	10
Stretchers	10
Wheel Chairs	10
Morgue Room	
Cabinet – 2 Door (locked)	10
Litter Stretcher/Mattress	15
Medicine Room	
Cabinet (locked)	10
Medication Refrigerator	5
Pharmacy Mobile Charts	5
Stethoscopes	5
Suction Pumps	10
Tray Dispensers	10
Janitor's Closet	
Metal Shelving	10
Mop Bucket Ringer	5
Mop Buckets	5
Utility Carts	10
Dietary	
Cash Register	10
China Heater	10
Cold Food Unit	10
Dish Carts	10
Electronic Can Opener (Comm.)	10
Food Carts	10
Food Processor	10
Hot Food Unit	10
Metal Shelving	10
Microwave	5
Mixer, Beater	10
Open Tray Carts	10
Scale	10
Slicer	10
Storage Receptacle with Covers	5
Toasters (Commercial)	10
Tray Carts	10
Utility Carts	10
Walk In Refrigerator	10
Dietary Closet	
Mop Bucket Wringers	5
Mop Buckets	5
Pressure Spray Machine -Portable	8
Two Wheel Hand Truck	8
Maintenance Shop	
Drills/Hand Tools	8
Ladder, 10'	8
Ladder, 16'	8
Ladder, 4'	8
Ladder, 6'	8
Ladder, 8'	8
Metal Shelving	10
Mobile Tool Cart	10
Paint Sprayer	5
Platform Truck	10
Pressure Spray Machine	8
Sidewalk Edger	4
Snow Blower	5
Tool Racks	10
Two Hand Wheel Truck	8
Wet Vac	5
Wheelbarrow	8
Housekeeping Store Room	
Buffer	8
Maid Carts	10
Metal Shelving	10
Recycle Bins	8

Soiled Trash Containers	8
Step Stools	10
Utility Carts	8
Vacuum Cleaners	10
Wet Vacuum	10
Laundry	
Closed Linen Carts	10
Floor Fans	10
Folding Tables	15
Laundry Carts	8
Metal Shelving	10
Mop Bucket Wringers	5
Mop Buckets	5
Open Linen Storage Carts	10
Pedestal Fans	10
Scale	15
Side Chairs	8
Housekeeping Office	
Desk	15
Secretarial Chair	10
Stack Chairs	10
Equipment and Supply Storage	
Beds (Electric)	8
Blood Pressure Units	5
Cabinets (Locked)	10
Canes	8
Footboards	8
Geriatric Chairs	10
Gooseneck Lamps	10
Hoyer Lifts	15
Humidifiers	5
In Bed Scale	15
IV Monitor Sets	8
IV Stand on Wheels	8
Lockers	10
Metal Shelving	10
Reclining Chairs	10
Restraint Belts	8
Safety Rails	8
Step Stools	10
Trapeze Bar	10
Walkers	8
Wheel Chairs	10
Staff Lounge Room	
Bookcase	15
Bulletin Boards	5
Clothes Rack	5
Metal Lockers	10
Microwave	5
Mirrors	5
Recycle Bins	8
Refrigerator	10
Round Tables	10
Upholstered Stack Chairs	10
Oxygen Storage Room	
Cylinder Truck	10
Oxygen Cylinders	10
Oxygen Cylinders Caddies	10
Paint Room	
Metal Shelving	10

HUD Architectural Review Report for Pre-Application Exhibits

5L.1

HUD Office Name _____

Pre-Application Submission Date _____

Project Name _____

Project Location (City, State) _____ , _____

MAP Lender Name _____

Summary of HUD Architectural Review

A. Architectural/Engineering exhibits (including Mortgagor's Architect's Basic Work Write-up for Substantial Rehabilitation projects)

If incomplete, specify:

B. Conformance to HUD Standards

If unacceptable, indicate reasons:

C. Site conditions:

1. New construction projects:
   a. Placement of residential building(s)
   b. Unusual site conditions

If unacceptable, indicate reasons:

2. Substantial rehabilitation projects:
   a. Mortgagor's Architect's Basic Work Write-up

If unacceptable, indicate reasons:

D. Residential building(s):

1. Lobby floor:
   a. Circulation
   b. Mortgagor's Architect's Basic Work Write-up (for substantial rehabilitation projects)

If unacceptable, indicate reasons:

2. Typical floor:
   a. Circulation
   b. Mortgagor's Architect's Basic Work Write-up (for substantial rehabilitation projects)
   c. Acceptability of design

If unacceptable, indicate reasons:

3. Typical apartment layout(s):
   a. Circulation
   b. Mortgagor's Architect's Basic Work Write-up (for substantial rehabilitation projects)
   c. Size and marketability (determined by appraiser)
   d. Acceptability of design

If unacceptable, indicate reasons:

4. Structural system (Include Mortgagor's Architect's Basic Work Write-up for substantial rehabilitation projects)

If unacceptable, indicate reasons:

5. Exterior finish (Include Mortgagor's Architect's Basic Work Write-up for exterior doors, windows and building finish for substantial rehabilitation projects)

If unacceptable, indicate reasons:

6. Rehabilitation of roof(s) (substantial rehabilitation projects)
   a. Mortgagor's Architect's Basic Work Write-up

If unacceptable, indicate reasons:

I have reviewed the subject project and hereby make the following recommendation(s):

Reviewer:

Name of Reviewer _____

Signature and Date of Review _____ Date _____

Concurrence:

Name of Team Leader _____

Signature and Date of Concurrence _____ Date _____

HUD Architectural Review of Lender's Architectural Analyst's Report for Firm Exhibits - New Construction & Substantial Rehabilitation

5L.2

HUD Office Name _____

Firm Commitment Submission Date _____

Project Name _____

Project Location (City,State) _____ , _____

MAP Lender Name _____

Summary of HUD Architectural Review

A. Firm Commitment deliverables:

If incomplete, specify:

B. Lender's Architectural Analyst's Review Report:

1. Site design and conditions:
   a. New construction:
      (1) Placement of buildings and parking
      (2) Erosion containment and drainage
   b. Substantial Rehabilitation: Detail Work Write-up regarding:
      (1) Site utilities
      (2) Roads, walks, parking
      (3) Site improvements
      (4) Erosion containment and drainage
   c. Accessibility for persons with disabilities (For Substantial Rehabilitation projects only if required by program or local code and for all Section 232 projects):
      (1) From street to residential and non-residential building(s)

(2) From parking lot(s) to residential and non-residential building(s)

(3) Throughout site

(4) Any violation of Fair Housing Act requirements for Substantial Rehabilitation projects constructed after March 13, 1991.

If unacceptable, indicate reasons:

2. Building design and conditions (include Detail Work Write-up for Substantial Rehabilitation):

   a. Fire safety

   b. Structural adequacy

   c. Accessibility for persons with disabilities - residential and non-residential structures for common use (For Substantial Rehabilitation projects only if required by program or local code and for all Section 232 projects):

      (1) Circulation and community spaces

      (2) Offices and other public spaces

      (3) Typical residential units

If unacceptable, indicate reasons:

3. Major and Minor Movable Equipment (for Section 232 Health Care Facilities projects)

If unacceptable, indicate reasons:

C. Review of A/E portion of completed Form HUD-92264 (HUD-92264-HCF for Section 232 Health Care Facilities projects) for accuracy with respect to A/E exhibits (Include Detail Work Write-up for Substantial Rehabilitation projects):

If unacceptable, indicate reasons:

D. Review of A/E exhibits for consistency with Lender's Review Report (Include Detail Work Write-up for Substantial Rehabilitation projects):

1. Sitework (and site elevations for new construction):

If unacceptable, indicate reasons:

2. Foundation design and placement (new construction):

If unacceptable, indicate reasons:

3. Residential and non-residential structures:

If unacceptable, indicate reasons:

4. Accessibility for persons with disabilities (For Substantial Rehabilitation projects only if required by program or local code and for all Section 232 projects):
   a. From street and parking lots to residential and non-residential buildings
   b. Throughout site
   c. Throughout residential and common non-residential structures and spaces.

If unacceptable, indicate reasons:

5. Design features unusual for the particular structure type and/or system.

If unacceptable, indicate reasons:

6. Major and Minor Movable Equipment (for Section 232 Health Care Facilities projects)

If unacceptable, indicate reasons:

E. Other A/E exhibits (indicate):

If unacceptable, indicate reasons:

I have reviewed the subject project and hereby make the following recommendation(s):

Reviewer:

Name of Reviewer _____

Signature and Date of Review _____ Date _____

Concurrence:

Name of Team Leader _____

Signature and Date of Concurrence _____ Date _____

HUD Architectural Review of Lender's Architectural Analyst's Report for Firm Exhibits - Section 223(f)

5L.3

HUD Office Name _____

Firm Commitment Submission Date _____

Project Name _____

Project Location (City,State) _____ , _____

MAP Lender Name _____

NOTE: Although UFAS requirements technically apply only to new construction and alterations to existing buildings, the Department still requires compliance with UFAS on refinance transactions. This is true even though most repairs under Section 223(f) would not meet the definition of "alteration" as indicated in UFAS. State and local entities have the authority to require non-conforming health care facilities to upgrade their facilities to acceptable standards of accessibility, such as found in the UFAS. Any non-conforming health care facility with State and/or local accessibility citations that is refinancing under Section 232/223(f) must include these mandatory upgrades in the Critical Repairs portion of the PCNA. Furthermore, even if a non-conforming HCF has no outstanding accessibility citations, it is HUD's responsibility to determine whether the project will be viable for the duration of the mortgage.

Summary of HUD Architectural Review

A. Firm Commitment deliverables:

1. Lender's Project Capital Needs Assessment and Replacement Reserve Escrow (PCNA) Report
2. Lender's review of PCNA Report
3. Completed Form HUD-92264 with signatures (Form HUD-92264-HCF for Section 232 Health Care Facility projects)
4. Lists of Major and Minor movable Equipment (for Section 232 Health Care Facility projects)

If incomplete, specify:

B. Lender's Review of PCNA Report:

1. Physical Inspection Report (PIR):
   a. Condition of project
   b. Project's:

(1) Immediate repair needs

(2) Expected repair, replacement, and major maintenance needs

If unacceptable, indicate reasons:

2. Statement of Resources and Needs
   a. Lender review/adjustment to PIR
   b. Critical repairs and non-critical repairs to be completed before endorsement
   c. Non-critical repairs to be completed after endorsement

If unacceptable, indicate reasons:

3. Accessibility for persons with disabilities (for all Section 232 projects and all other projects constructed after March 13, 1991):
   a. From streets and parking lots to residential and non-residential building(s)
   b. Throughout site
   c. Residential and non-residential structures for common use:
      (1) Circulation and community spaces
      (2) Offices and other public spaces
      (3) Typical residential units
   d. Any violation of Fair Housing Act requirements for projects constructed after March 13, 1991.

If unacceptable, indicate reasons:

4. Major and Minor Movable Equipment(for Section 232 Health Care Facility projects)
   a. Existing equipment to be retained
   b. Equipment to be newly purchased

If unacceptable, indicate reasons:

C. Review of A/E portion of completed Form HUD-92264 (HUD-92264-HCF for Section 232 Health Care Facility projects) for accuracy with respect to Lender's PCNA Report:

If unacceptable, indicate reasons:

D. Review of A/E exhibits for consistency with Lender's PCNA Report:

1. Critical repairs

If unacceptable, indicate reasons:

2. Accessibility for persons with disabilities (for all Section 232 projects and all other projects constructed after March 13, 1991):

   a. From street and parking lots to residential and non-residential buildings

   b. Throughout site

   c. Throughout residential and common non-residential structures and spaces.

If unacceptable, indicate reasons:

I have reviewed the subject project and hereby make the following recommendation(s):

Reviewer:

Name of Reviewer _____

Signature and Date of Review _____ Date _____

Concurrence:

Name of Team Leader _____

Signature and Date of Concurrence _____ Date _____

Project Capital Needs Assessment

5M

I. WHAT IS A PROJECT CAPITAL NEEDS ASSESSMENT?

A Project Capital Needs Assessment (PCNA) defines what a Project's immediate and long term capital needs are and provides a plan for financing the capital needs. It consists of several components:

- The Physical Inspection Report;
- Lender Review of Physical Inspection Report;
- Lender Computation of Replacement Reserve Account;
- Lender Statement of Resources and Needs.

These are described separately below; HUD Review is also described.

II. THE PHYSICAL INSPECTION REPORT (PIR)

A. The Lender hires a "Needs Assessor" to prepare a PIR on the Project.

1. A Needs Assessor is any firm or individuals, including the Lender's architectural and cost analysts, qualified by training and experience to evaluate building systems and site conditions and to provide cost estimates.

2. The Needs Assessor and its Subcontractors participating in the preparation of the PIR may not have an Identity of Interest with the Mortgagor, sponsor, and managing agent (if any) of the proposed Project. An arms-length relationship is essential.

B. The PIR describes the current and future physical needs of the proposed multifamily Project. The PIR supplies the Lender and HUD with detailed information regarding:

1. The condition of the Project.

2. An identification of the Project's:

   a. Immediate critical and non-critical repair needs;

   b. Expected component replacement and major maintenance needs;

c. Compliance with accessibility laws for persons with disabilities (for projects built after March 13, 1991).

3. The total estimated cost, adjusted for inflation, for all repair, component replacement and major maintenance items.

C. PIR Format:

1. Cover Sheet must include:

a. The Project name, number and location.

b. Name, address, and telephone number of the preparer(s).

2. Table of Contents.

3. Project description.

4. Project Inspection Report(s) indicating existing conditions.

5. Repair Work Write-Up indicating scope of repairs:

a. "Critical" (health and safety) repairs to be completed by initial/final endorsement of the mortgage;

b. "Non-critical" repairs which may be deferred (subject to approval by the Hub or HUD Program Center Office) until after endorsement, but which must be completed within 12 months thereafter.

6. Component replacement and major maintenance schedule(s):

a. "Near Term" from the initial/final endorsement through the tenth year of the mortgage.

b. "Long Term" from the eleventh through the twentieth year of the mortgage.

c. "Remainder" from the twenty-first year until about two years beyond the maturity date of the Note and Mortgage.

7. Cost Estimate(s):

a. The cost of "critical" [health and safety] and "non-critical" repairs.

b. The Initial Deposit to the Reserve for Replacement Account and the Annual Deposit to the Reserve for Replacement Account based on the cost of "Near Term" replacement and major maintenance needs of the Project.

c. The cost of "Long Term" replacement and major maintenance needs of the Project.

d. The cost of "Remaining Term" replacement and major maintenance needs of the Project.

8. Engineering and Specialty Reports.

9. Standard size color photographs necessary to illustrate the conditions discussed in the report and a narrative describing each photograph.

D. Conducting the Inspections.

1. The Needs Assessor may find it desirable to subcontract with other entities or persons for portions of the Project's physical inspection. For example, the Needs Assessor may wish to engage the services of a roofing subcontractor to furnish a roof inspection, a paving subcontractor to inspect the parking lots and sidewalks, a plumbing subcontractor to inspect the plumbing system, etc.

2. The Department is leaving the working details of these arrangements to the Lender and the Needs Assessor hired by the Lender.

3. The Needs Assessor must inspect enough dwelling units to be able to formulate an accurate estimate of repair, replacement and major maintenance needs.

   a. In some cases, depending on the size and condition of the Project, all or nearly all units will need to be inspected by the Needs Assessor.

   b. In other cases, a lesser number of units may need to be inspected by the Needs Assessor.

   c. The Department expects that appropriate statistical sampling methods and techniques will be used by the Needs Assessors to reach their conclusions about repair needs.

E. Estimating Repair, Replacement and Major Maintenance Needs Costs.

Regardless of the inspection procedures used, the final cost estimates of repairs, replacements and major maintenance items should be as accurate as practical in terms of present dollar values. The present dollar values will then be trended for future scheduled work using a reasonable inflation factor supplied by the Lender.

1. The Needs Assessor should assume that the Project will be in a better than "Satisfactory" condition when the Project's Note and Mortgage is paid off.

   a. This assumption is made explicit only for the purpose of standardizing or normalizing the data that will be furnished by the Department.

   b. Assume the Project to be in such a financial and physical condition that no unfunded major capital repairs would be anticipated for a period ending about two years after the maturity date of the Note. In other words, the PIR should not anticipate that the buildings would be run down or in need of the unfunded major repairs as of the maturity dates of their Notes and Mortgages.

2. The Department realizes that these long term estimates are projections that are subject to change.

F. Projections of Repairs, Replacements and Major Maintenance Costs. The Needs Assessor itemizes repairs, replacements, and major maintenance needs and breaks out the estimated dates by year that repairs, replacements and major maintenance needs will be needed according to the following format:

1. "Critical" [health and safety] repairs (to be completed before initial/final endorsement of the mortgage), and "non-critical" repairs (which may be completed after initial/final endorsement of the mortgage.) The following items must be addressed:

a. Accessibility for persons with disabilities (for properties constructed after March 13, 1991). The report must state whether the project appears to be in compliance with the Fair Housing Act and any other applicable accessibility laws. All violations discovered must be reported in detail.

b. Abatement of lead-based paint and asbestos.

c. Items of deferred maintenance: Defined as "Postponed, infrequent, or inadequate maintenance practices on a building or property, often resulting in physical depreciation and loss of value." Conditions that should have been prevented or repaired as part of a previous year's (or multiple years') project maintenance program are considered deferred maintenance. Items that coincidentally become necessary at the time of underwriting are not considered deferred maintenance.

(1) Where such items bring about a condition(s) that requires a Critical Repair(s), all such repairs must be completed before initial/final endorsement.

(2) Where the condition(s) requires Non-Critical Repairs, if the project is being processed as:

(a) A refinance transaction, the items must be completed before initial/final endorsement of the mortgage.

(b) A purchase transaction, the items may be included in the non-critical repairs list to be completed after initial/final endorsement.

2. Replacements and Major Maintenance Schedule:

The Needs Assessor will prepare a schedule to estimate the remaining useful life of all short-lived building components and equipment included in the Project. The Remaining Useful Life estimate must come from a nationally recognized source such as "Marshall and Swift." The schedule will be itemized according to the three main categories defined above:

a. "Near Term",

b. "Long Term", and

c. "Remainder".

III. LENDER REVIEW OF THE PHYSICAL INSPECTION REPORT

The Lender reviews the PIR and makes any appropriate adjustments as indicated below.

A. The Lender's review is to determine whether:

1. The PIR covers the appropriate mortgage term;

2. All items requiring action during the mortgage term are included in the PIR;
3. An adequate sampling of units was made, and management reported replacements have been verified and considered;
4. Appropriate ages are given for individual elements and whether any deviations from the expected useful lives are adequately justified; and
5. The PIR contains any material mathematical errors.

B. Some items identified in the PIR may be part of the current operating budget for the Project.

1. If these items (such as replacement of garbage disposals or smoke detectors) are included in the normal operating budget for the Project, funds for their maintenance or replacement should not be included in the Replacement Reserve.
2. The Lender should only remove such items from the Needs Assessor's estimate if there is clear evidence that the operating budget for the Project includes these items and the items are of relatively nominal cost.
3. The Lender should also ensure, in the review of prior operating statements for the Project, that any "capital" items deleted from the maintenance line items are addressed in the calculation of reserves if they are likely to recur during the term covered by the PCNA.

C. The Lender should review the PIR to assure that all items indicated below are appropriately listed, and the Needs Assessor's cost estimates and projected dates of completion are reasonable.

1. Review all repair, replacement or major maintenance items that could potentially impact the health or safety of tenants (e.g., installation of exit lighting at a basement exit), or that violate applicable codes; these should be listed as Critical Repairs to be completed before initial/final endorsement.
2. Review all other repair, replacement or major maintenance items not included in the operating budget. Included in this category are any items that are necessary to:
   a. Correct any deferred maintenance;
   b. Prevent physical deterioration of the Project; and
   c. Correct conditions that decrease the marketability of the Project (e.g., items of functional obselescence.)
3. The Lender must determine the dates for the completion of all work.
   a. These completion dates must be appropriate for the significance of the work being done.
   b. However, in all events, the critical repairs must be completed before, and non-critical repairs no later than 12 months after, initial/final endorsement.

D. The Lender should review the PIR to ascertain that the number of years over which replacements and major maintenance items are expected to occur represents a reasonable

conclusion and that the Needs Assessor's cost estimate is reasonable and adequate to address the Project's needs. The Lender should ensure that the Needs Assessor has not:

1. Estimated costs based on the worst case (e.g., replacement of all aging refrigerators in a single year).
2. Been unduly optimistic in determining the schedule or costs (e.g., replacement of only a small percentage of refrigerators per year such that replacements exceed life expectancy or are stretched beyond the term of the Mortgage without justification).

E. Completion of Repairs:

The Lender is expected to exercise independent judgment when recommending which items must be completed before initial/final endorsement and which items are non-critical items that may be completed after initial/final endorsement.

1. At initial/final endorsement of the mortgage, the Project shall not have any conditions that threaten the health or safety of tenants.
2. Non-critical repairs may be completed after initial/final endorsement (with concurrence of the Department).

IV. COMPUTATION OF THE REPLACEMENT RESERVE ACCOUNT BY THE LENDER.

The Needs Assessor prepares an analysis of the remaining useful life of short-lived building components and systems, and other Project features. Lender uses this to evaluate the adequacy of the replacement reserve account and any necessary initial deposit to that account.

A. Ineligible items. Items generally considered routine maintenance are not included in the calculation of Replacement Reserve Account.

B. Remaining useful life:

1. To derive the remaining useful life of an item, subtract the actual age of the item from the estimated economic life of the item.
2. The schedule shall provide a description of the item, actual age and estimated economic life of the item.

C. Reserve for Replacement Account for Near Term items:

The Lender must, in the Statement of Resources and Needs, determine and recommend to HUD the Total Near Term Reserve for Replacement Account for the Project.

To provide for anticipated Near Term replacements and major maintenance needs, prepare a 100 percent replacement cost estimate (less salvage) for each item in the group whose estimated remaining useful life is expected to expire in the first 10 years.

1. Include the sum of the costs of labor/installation, materials, and appropriate fees, when applicable. Using a cost adjustment factor for inflation, project the cost of each item from the date (month and year) of the estimate to the expected expiration date. The sum of the

estimated cost is the Total Near Term Reserve for Replacement Account, which includes the initial deposit and the annual deposits required from the Mortgagor.

a. The Total Near Term Reserve for Replacement Account must be at least equal to the total estimated cost (adjusted for inflation) of completing the items shown in the Near Term replacement and major maintenance needs schedule of the Project.

b. The total deposits by the Mortgagor in the Near Term Reserve for Replacement Account should equal the Total Near Term Reserve for Replacement amount.

c. If the Mortgagor is required to make an initial deposit into the Reserve for Replacement, the Lender may subtract the amount of the initial deposit from the Total Near Term Reserve for Replacement amount in determining the amount of the monthly deposits to the Reserve for Replacements to be made by the Mortgagor.

2. Davis-Bacon Requirements do not apply and, therefore, the costs of labor shall <u>not</u> include the provisions of Davis-Bacon.

3. Identify the location of items, if required for clarification.

4. The Total Near Term Reserve for Replacement Account must be at least equal to $150 per unit, per annum.

D. Evaluation of the Reserve Account for Long Term and Remainder items:

1. An additional evaluation must be made by the Lender every ten years to determine whether annual deposits to the reserve account are sufficient (See VI.C).

2. The Lender must address how later adjustments in the annual deposit will be made and the financial risk to HUD.

E. Funding Schedules for Near Term, Long Term, and Remainder items in the Reserve for Replacement Account.

The Lender's Statement of Resources and Needs must set forth a funding schedule for the entire mortgage term, and demonstrate that the funding schedule shows that money will be there yearly to meet the physical needs of the Project and the overall underwriting of the loan.

The Lender recommends to HUD the appropriate funding structure for Near Term, Long Term, and Remainder items in the Reserve for Replacement, based on the timing of the expected replacements, and/or whether the Mortgagor will receive cash upon closing the Mortgage. If HUD accepts the Lender's recommendation, the funding schedule (along with the requirement for a re-evaluation every ten years) will be inserted into the Regulatory Agreement by HUD.

The following are examples of alternative ***funding schedules:***

1. No initial deposit and large monthly deposits because the repairs and replacements are

concentrated in the later years of the Mortgage term.

2. Monthly deposits that increase over the term of the Mortgage (e.g., payments which increase 5 percent per year over the term of the Mortgage) to match the estimated timing of repairs and replacements may be appropriate in some instances.

Note: If there is no initial deposit, a disproportionately small monthly deposit in the first year, designed to reduce the impact on underwriting, is unacceptable.

V. STATEMENT OF RESOURCES AND NEEDS.

The Lender's statement must:

A. Address the quality of the PIR; and

B. Discuss any adjustment made to the PIR by the Lender.

C. Identify the replacement and major maintenance items for which the owner may be reimbursed from the Replacement Reserve.

Note: HUD will only disburse funds for those replacement or major maintenance items specifically listed in the Statement.

D. Recommend to HUD the dollar amount of:

1. The cost of repairs to be completed before initial/final endorsement of the mortgage.
2. The cost of, and the amount to escrowed for, non-critical repairs to be completed within one year of date of initial/final endorsement of the mortgage.
3. Initial deposit, if any, and the amount of the monthly deposits and the funding schedule of such deposits into the Replacement Reserve based on "Near Term" projections of replacement and major maintenance costs.

E. Describe:

1. Current financial or other assistance needs and resources of the Project.
2. Future financial or other assistance needs and resources. Specifically how "Long Term" and "Remainder" projected replacement and major maintenance costs will be covered.

VI. HUD REVIEW.

A. The HUD Office should:

1. Review the PCNA for completeness and adequacy. The review should include a careful examination of the Department's long-term risk associated with non-traditional calculation of annual deposits to the replacement reserve.
2. Discuss all weaknesses or inadequacies of the PCNA with the Lender in an effort to reach consensus about the needs and resources of the project. The results of these discussions and agreements reached must be incorporated into the firm commitment and loan closing documents.

B. If the HUD Office determines that a PCNA is substantially incomplete or inadequate:

1. Notify the Lender of the portion(s) of the PCNA that require completion or revision and require the Lender to submit an amended PCNA within thirty (30) days from receipt of the Field Office's notification.
2. If HUD and the Lender fail to reach closure, HUD will impose its own methodology for computation of annual deposit to the replacement reserve.

C. The Lender will recommend and HUD may set up the Total Near Term Replacement Reserve Account.

1. HUD will reevaluate the Project's Replacement Reserve needs and, if appropriate, adjust the Mortgagor's required deposits to the Replacement Reserve every ten years.
   a. To assist in completing this evaluation, the Lender must obtain a new PCNA every 10 years which covers the next ten years [or the remaining term of the Mortgage] plus two years.
   b. Replacement Reserve funds may be used to pay for the additional PCNAs.
2. The Hub or Program Center at the time of initial/final endorsement will have a rider signed by the Lender and HUD and attached to the Lender's Certificate which will require the Lender to comply with the requirements of C.1. above.

Design Architect's Certification 5N

HUD Project Name

HUD Project Number

Mortgagor

I, the undersigned Design Architect, to the best of my knowledge, belief and professional judgement, hereby certify that the proposed construction in accordance with the working drawings and specifications prepared for the subject Project (a) is permissible under the applicable zoning, building, housing, and other codes, ordinances and/or regulations, as modified by any waivers obtained from appropriate officials, and (b) complies with the HUD Minimum Property Standards, applicable accessibility laws for persons with disabilities, and other applicable HUD Standards, guidelines and criteria.

Waiver of codes, etc., were obtained as listed in attachment (identify):

Signed Date

Architect's Name

Business Address

License Number

Warning: Title 18 U.S.C. 1001, provides in part that whoever knowingly and willfully makes or uses a document containing any false, fictitious, or fraudulent statement or entry, in any manner in the jurisdiction of any department or agency of the United States, shall be fined not more than $10,000 or imprisoned not more than five years or both.

Appendix 6

Cost Processing

Table of Contents

Appendix	Title
6A.1	HUD Cost Review Report for Pre-Application Exhibits
6A.2	HUD Cost Review of Lender's Cost Analyst's Report for Firm Exhibits – New Construction and Substantial Rehabilitation
6A.3	HUD Cost Review of Lender's Report for Firm Exhibits - Section 223(f)
6B	Amendment to the Construction Contract to Identify Identities of Interest Between Owner/Contractor/Subcontractors/Architect
6C	Rehabilitation Cost Not Attributable to Residential Use
6D	Example of Calculating Cost Not Attributable

HUD Cost Review Report for Pre-Application Exhibits 6A.1

HUD Office Name _____

Pre-Application Submission Date _____

Project Name _____

Project Location (City, State) _____

MAP Lender Name _____

Summary of HUD Cost Review

A. Cost exhibits:

1. Mortgagor's Architect's sketch plans
2. Form HUD-92013 (HUD-92013-NHICF for Section 232 Health Care Facilities)

   If incomplete, specify:

B. For Substantial Rehabilitation projects, include the following:

1. Mortgagor's Architect's Basic Work Write-up
2. Mortgagor's summary cost estimate for substantial rehabilitation (based on Basic Work Writeup)

   If incomplete, specify:

C. HUD Cost Estimator determination of:

1. Structure type (from sketch plans):
2. Gross floor area (from sketch plans):
3. Estimated Total Structures cost (from cost data):
4. For Substantial Rehabilitation, indicate major trade item groups (if required), and subtotals:
5. Estimated Total Land Improvements cost (from cost data):
6. Estimated General Requirements (from cost data):
7. Estimated fee items (from cost data):
   a. General Overhead
   b. Builder's Profit

c. Architectural Fees

d. Bond Premium

e. Other Fees

8. Estimated Major Movable Equipment cost (from cost data) for Section 232 Health Care Facilities.

D. Review of mortgagor's Form HUD-92013:

1. Percentage difference between mortgagor's Total Structures cost (Section G, Line 8) and HUD Cost Estimator's Total Structures cost:

   If unacceptable, document:

2. Percentage difference between mortgagor's Total Land Improvements cost (Section G, Line 3) and HUD Cost Estimator's Total Land Improvements cost:

   If unacceptable, document:

3. Percentage difference between mortgagor's General Requirements and fees (Section G, Lines 10 through 19) and HUD Cost Estimator's General Requirements and fees:

   If unacceptable, document:

4. Percentage difference between mortgagor's Major Movable Equipment costs (Section 232 Facilities - Form HUD-92013-NHICF, Section G, Line 36) and HUD Cost estimator's Major Movable Equipment cost:

   If unacceptable, document:

I have reviewed the subject project and hereby make the following recommendation(s):

Reviewer:

Name of Reviewer _____

Signature and Date of Review _____ Date _____

Concurrence:

Name of Team Leader _____

Signature and Date of Concurrence _____ Date _____

HUD Cost Review of Lender's Cost Analyst's Report for Firm Exhibits – New Construction and Substantial Rehabilitation

6A.2

HUD Office Name _____

Firm Commitment Submission Date _____

Project Name _____

Project Location (City, State) _____

MAP Lender Name _____

Summary of HUD Cost Review

A. Firm Commitment deliverables (Review for completeness only):

1. Mortgagor's:
   a. Detailed plans and specifications
   b. Detail Work Write-up (For substantial rehabilitation projects)
   c. List of Major and Minor Movable Equipment (for Section 232 Health Care Facilities)

   If incomplete, specify:

2. Lender's Cost Analyst's Review Report:
   a. Lender's detailed cost estimate
   b. Comparison of Lender's and general contractor's cost estimates
   c. Prior approval of Identity of Interest subcontracts
   d. Property Insurance schedule
   e. For substantial rehabilitation projects, include the Lender's estimate for Annual Deposit to the Replacement Reserve.
   f. For Section 232 Health Care Facility projects, include Lender's cost estimate for Major and Minor Movable Equipment.

   If incomplete, specify:

3. Completed Forms with signatures:

a. HUD-92264 (HUD-92264-HCF for Section 232 Health Care Facility projects)

b. HUD-92326

c. HUD-92331-B

d. HUD-92329

e. HUD-2328

If incomplete, specify:

4. Subcontracts for Identity of Interest subcontractors

If incomplete, specify:

B. HUD Cost Review:

1. Comparison of Lender's cost estimate and contractor's HUD-2328 with HUD cost data:

a. Total Structures

b. Total Land Improvements

c. General Requirements

d. Fee items

e. Cost Not Attributable items

If unacceptable, document:

2. Evidence of front end loading

If unacceptable, document:

3. Examination of Lender-contractor variance report (Form HUD-2331-B)

If unacceptable, document:

4. Examination of:

a. Identity of Interest relationships

b. Applications for prior approval of Identity of Interest subcontractor overhead and profit

If unacceptable, document:

5. Examination of Property Insurance Schedule

   If unacceptable, document:

6. Examination of Major and Minor Movable Equipment (For Section 232 Health Care Facility projects)

   If unacceptable, document:

I have reviewed the subject project and hereby make the following recommendation(s):

Reviewer:

Name of Reviewer _____

Signature and Date of Review _____ Date _____

Concurrence:

Name of Team Leader _____

Signature and Date of Concurrence _____ Date _____

HUD Cost Review of Lender's Report for Firm Exhibits - Section 223(f)

6A.3

HUD Office Name _____

Firm Commitment Submission Date _____

Project Name _____

Project Location (City, State) _____

MAP Lender Name _____

Summary of HUD Cost Review

A. Firm Commitment deliverables:

1. Lender's Project Capital Needs Assessment and Replacement Reserve Escrow (PCNA) Report
2. Completed Form HUD-92264 with signatures (Form HUD-92264-HCF for Section 232 Health Care Facilities projects)
3. Completed Form HUD-92329
4. Mortgagor's cost estimate of Major and Minor Movable Equipment (for Section 232 Health Care Facilities projects)

If incomplete, specify:

B. HUD Cost Review:

1. Examination of Lender's PCNA Report:
   a. Critical repairs to be completed before endorsement
   b. Non-critical repairs to be completed after endorsement and estimated repair costs
   c. Expected repair replacement and major maintenance items over a specified period of time
   d. Initial Deposit to Replacement Reserve, if any
   e. Monthly Deposit to Replacement Reserve

   If unacceptable, document:

2. Lender's Property Insurance Schedule

If unacceptable, document:

3. Lender's cost estimate of Major and Minor Movable Equipment (for Section 232 Health Care Facilities)

   If unacceptable, document:

I have reviewed the subject project and hereby make the following recommendation(s):

HUD Office Name _____

Pre-Application Submission Date _____

Project Name _____

Project Location (City, State) _____

MAP Lender Name _____

Amendment to the Construction Contract to Identify Identities of Interest Between Owner/Contractor/Subcontractors/Architect

6B

Project Name _____ Project Number_____

1. Definition of terms used in this Amendment.
   a. Architect. Architect administering the Construction Contract.
   b. HUD. The U.S. Department of Housing and Urban Development.
   c. Owner. The Mortgagor/Owner.
   d. Subcontractor. Any Project subcontractor, materials supplier, equipment lessor, or industrialized housing manufacturer/supplier.
2. The undersigned hereby certify that all identities of interest known to exist between the Owner and the Contractor, and/or between the Owner and/or the Contractor and the Architect and/or any Project subcontractor are listed herein. The Owner and the Contractor shall each inform HUD in writing within 5 working days of its knowledge of any identity of interest that develops after execution of this Contract.

   List all Identities of Interest:

   _____

   _____

   _____

   _____

   _____

   _____

3. An Identity of Interest is construed to exist where:
   a. The Contractor, Architect and/or any subcontractor take any financial interest in the Project and/or Owner as part of the consideration to be paid.
   b. The Contractor advances any funds to the Owner or Architect; or the Architect advances any funds to the Owner, contractor and/or any subcontractor; or any subcontractor advances any funds to the Owner, Contractor and/or Architect.
   c. The Owner has any financial interest in the Contractor, Architect and/or any subcontractor; or the contractor has any financial interest in the Owner, Architect and/or any subcontractor; or the Architect has any financial interest in the Owner, Contractor and/or any subcontractor; or any subcontractor has any financial interest in the Owner, Contractor and/or Architect.
   d. Any officer, director, stockholder or partner of the Owner has any financial interest in the Contractor, Architect and/or any subcontractor; or any officer, director, stockholder or partner of the Contractor, has any financial interest in the Owner, Architect and/or any subcontractor; or any officer, director, stockholder or partner of the Architect has any

financial interest in the Owner, Contractor and/or any subcontractor; or any officer, director, stockholder or partner of any subcontractor has any financial interest in the Owner, Contractor and/or Architect.

e. Any officer, director, stockholder or partner of the Owner is also an officer, director, stockholder o9r partner of the Contractor, Architect and/or any subcontractor; or any officer, director, stockholder or partner of the Contractor is also an officer, director, stockholder or partner of the Owner, Architect and/or any subcontractor; or any officer, director stockholder or partner of the Architect is also an officer, director, stockholder or partner of the Owner, Contractor, and/or any subcontractor; or any officer, director, stockholder or partner of any subcontractor is also an officer, director, stockholder or partner of the Owner, Contractor and/or Architect.

f. The Owner, Contractor and/or any subcontractor, or any officer, director, stockholder or partner of such Owner, Contractor and/or subcontractor provides any of the required architectural services; or where the Owner, Contractor and/or any subcontractor, or any officer, director, stockholder or partner of such Owner, Contractor and/or subcontractor, while not directly providing an architectural service, acts as a consultant to the Architect.

g. Any family relationships between the officers, directors, stockholders or partners of the Owner and officers, directors, stockholders or partners of the Contractor, Architect and/or any subcontractor; or between the officers, directors, stockholders or partners of the Contractor and officers, directors, stockholders or partners of the Owner, Architect and/or any subcontractor; or between any officers, directors, stockholders, or partners of the Architect and officers, directors, stockholders or partners of the Owner, Contractor and/or any subcontractor; or between any officers, directors, stockholders or partners of any subcontractor and the officers, directors, stockholders or partners of the Owner, Contractor and/or Architect which could cause or results in control or influence over prices paid and/or work accepted.

h. Any side deal, agreement, contract or undertaking, thereby altering, amending, or canceling any of the required closing documents, except as approved by HUD.

OWNER	CONTRACTOR
_____	_____
_____	_____
DATE _____	DATE _____

WARNING: Title 18 U.S.C. 1001, provides in part that whoever knowingly and willfully makes or uses a document containing any false, fictitious, or fraudulent statement or entry, in any matter in the jurisdiction of any department or agency of the United States, shall be fined not more than $10,000 or imprisoned for not more than five years or both.

Rehabilitation Cost Not Attributable to Residential Use

6C

1. Total Rehab Cost
(Without fees - Lines G 36c + G41) $ _____

2. Rehab Cost Not Attributable
(Dollar amounts without fees) $ _____

3. Ratio of Not Attributable
Project Not Attributable Square Feet _____sq. ft.
Divided by Total Project Gross Square Feet _____ sq. ft.** = _____ %

4. "As-Is" Not Attributable
Total "As-Is" (Land + Structures) $ _____ X Ratio from #3 _____ % = $_____

5. Total Cost Not Attributable
"As-Is" Not Attributable (#4) $ _____
plus Rehab Cost Not Attributable (#2) $ _____ = $ _____

6. Cost Without Fees
Total Rehab Cost Without Fees $ _____ (From #1) +
Total "As-Is" Value $ _____ (From Line 73b of Form HUD-92264) Total = $ _____

7. The Percentage Not Attributable
Divide Total Rehab Cost Not Attributable
(#5) $ _____ by Total Cost Without Fees (#6) = _____%

8. Line G 74
Total Estimated Replacement Cost of Project
$ _____ X Percentage Not Attributable (#7) _____ % $ _____

* From Cost Analyst

Example of Calculating Cost Not Attributable

6D

EXAMPLE OF CALCULATING COST NOT ATTRIBUTABLE

A 50-unit apartment building has a gross floor area of 30,000 sq.ft., a Total Structures cost of $1,665,000, and a Total Land Improvements cost of $250,000. It has a community room on the ground floor, a parking lot, an exterior patio with benches, tables, and ornamental shrubs, and a playground with swings and slides. Using the architectural drawings, determine the area of the community room, parking lot, patio, and playground, and the number of benches, tables, ornamental shrubs, swings and slides. Calculate the cost of each item.

Unit quantities:

Community room - 650 sq.ft.
Asphalt parking lot for 50 cars - 15,000 sq.ft.
Concrete Patio - 400 sq.ft.
Playground - 900 sq.ft.
6 ft concrete patio benches - 6
3 ft x 3 ft concrete patio tables - 6
Ornamental shrubs - 12
Playground swing sets - 2
Playground slides - 2

Unit costs:

A. The community room is part of the structure, while the rest of the non-attributable features are exterior. The unit cost for the community room will be the Total Structures cost per gross square foot of building area. In Form HUD -92264, divide $1,665,000 (Line 41 of Section G) by 30,000 sq.ft.(Line 33 of Section C), giving a cost per gross square foot of $55.50.

B. Determine unit costs for exterior features from the Office benchmark data bank or a published data source. The exterior unit costs used in this example are typical.

Parking lot:

Asphaltic concrete parking lot paving - $1.25 per sq.ft.
Concrete perimeter curbing (500 lin ft) - $10.50 per lin. ft.
Concrete parking bumpers - $30 ea.
Stormwater catch basins (4) - $1500 ea.
Storm drain line (350 lin ft) - $27 per lin. ft.
Parking lot striping - $4 per car

Patio:

Concrete patio paving - $4 per sq.ft.
Concrete patio benches - $500 ea.
Concrete patio tables - $1000 ea.
Ornamental shrubs - $100 ea.

Playground:
Asphalt paving - $2 per sq.ft.
Rubber safety surface - $3 per sq.ft.
Swing sets - $500 ea.
Slides - $1000 ea.

C. Cost Calculations:

1. "B" Costs:
These are summarized according to category in Section M of Form HUD-92264.

M.10 - Parking

Parking lot paving - 15,000 sq.ft. x 1.25	=	18,750
Parking lot curbing - 500 lin.ft. x 10.50	=	5,250
Parking bumpers - 50 x 30.00	=	1,500
Catch basins - 4 x 1500.00	=	6,000
Storm drain - 350 lin.ft. x 27.00	=	9,450
Striping - 50 x 4.00	=	200
Summary cost	=	41,150

M.13 - Special Exterior Land Improvements

Patio paving - 400 sq.ft. x 4.00	=	1,600
Patio benches - 6 x 500.00	=	3,000
Patio tables - 6 x 1000.00	=	6,000
Ornamental shrubs - 12 x 100.00	=	1,200
Playground paving - 900 sq.ft. x 2.00	=	1,800
Safety surface - 900 sq.ft. x 3.00	=	2,700
Swing sets - 2 x 500.00	=	1,000
Slides - 2 x 1000.00	=	2,000
Summary cost	=	19,300

M.14 - Other
Community room - 650 sq.ft. x $55.50 = $36,075

Total Summary Costs = M.10 + M.13 + M.14 = **TOTAL "B" COSTS = $96,525**
Enter summary costs and breakdown in Section M.

2. "A" Costs

Total Structures (HUD-92264, line G.41)	=	$1,665,000
Total Land Improvements (line G.36c)	=	250,000
TOTAL "A" COSTS	**=**	**$1,915,000**

3. Cost Not Attributable (B over A):

"B" costs @ $96,525 divided by "A" costs @ $1,915,000 = 0.0504 = 5.04 per cent
Enter the percentage in Section M of Form HUD-92264.

Appendix 7

Valuation Analysis

Table of Contents

Appendix	Title
7A	Guide for Content and Format of a Market Analysis for General Occupancy Rental Housing
7B	Guide for Content and Format of a Market Analysis for Residential Care Facilities
7C	HUD Appraiser Review
7C.1	HUD Valuation Report - Administrative Review of Multifamily Accelerated Processing - Pre-Application Stage - Section 220, 221 and 232
7C.2	HUD Valuation Report - Administrative Review of Multifamily Accelerated Processing - Firm Application Stage - Section 220, 221 and 232
7C.3	HUD Valuation Report - Administrative Review of Multifamily Accelerated Processing - Firm Application Stage - Section 223(f) and 232/223(f)

Guide for Content and Format of a Market Analysis for General Occupancy Rental Housing–Section 220, 221(d)(3), 221(d)(4) Programs

7A

A. Project Description

1. The number of units by type and size. Include information on number of bedrooms, number of bathrooms, structure type, square footage, etc.
2. The estimated shelter and gross rents by unit type.
3. The unit and project amenities and services.
4. The project location in terms of:
   a. Characteristics of the neighborhood and sub-market in relation to schools, transportation, shopping, employment centers, social and community services, etc., to include an analysis of the adequacy of the public facilities that will service the site. Include a map showing the site and important neighborhood facilities and amenities.
   b. Any other location consideration relevant to the market and marketability of the proposed project.
5. Any income or rent restrictions imposed on the project by the use of public financing and/or subsidies (e.g., low income housing tax credits, tax-exempt bonds. HOME funds). The market analysis should address how these income and rent restrictions will affect demand.
6. Identify target market.

B. Market/Sub-market Definition:

1. Description of the geographic boundaries of the market area and the sub-market area (if applicable) and a discussion explaining the definition of the market.
2. Define the Secondary Market.

C. General characteristics of the Housing Market Area:

1. Provide an assessment of current and forecasted economic conditions and employment characteristics, to include an analysis of recent trends and how they relate to demand for additional new rental housing. Identify growth sectors in the economy and emerging growth trends. Include information on significant sectors of the economy such as military facilities, colleges and universities, federal and state government and tourism. Discuss any anticipated changes in employment, including plant closing, openings, expansions or cutbacks, with a particular emphasis on their effects on the rental market during the forecast period. Provide information on the types of new jobs being created and lost, including data on pay scales and how these wage levels relate to affordability of the proposed rental units.
2. Discuss past and anticipated trends in demographic characteristics, including population growth, household growth, and changes in the average size of households and tenure patterns. Provide estimates of population and households (by tenure) that include 1990,

the current date, and a forecast date (two or three years from the date of the market study). Include an explanation of any significant changes.

D. Housing Market Conditions:

1. Estimate the current competitive rental inventory in the market and sub-market area. Provide details on the number of units by unit type, number of bedrooms, structure type, rents, age, and location.

2. Recent Market Experience. Present and analyze the following information:

   a. Absorption experience of recently completed projects, with particular emphasis on the most similar project.

   b. Current occupancy levels and occupancy trends in existing rental projects.

   c. The current shelter and gross rents for comparable and competitive projects, including a discussion of the trend in rent increases during recent years. Identify any services included in base rents or offered at a premium. Discuss whether current rents are overstated due to concessions or other factors, along with information on and the extent of rent concessions or similar incentives in projects in initial occupancy.

   d. Identify the current overall rental vacancy rate along with a current vacancy rate for units similar to those in the proposed project. Discuss any significant seasonal variations in vacancy rates, if applicable. Include a discussion of any vacancy or absorption problems in the market or sub-market. Identify the vacancy rate for the segment of the market most relevant to the subject project and provide an analysis if significantly lower or higher than the overall rental vacancy rate.

   e. Provide a map showing locations of competing rental projects and those under development.

E. Characteristics of projects under construction and in planning:

1. Estimate the total number of units under construction and provide a discussion of the characteristics of these units and their distribution by unit type, rent ranges, and locations.

2. Estimate the total number of units in planning stages that are likely to be developed, including but not limited to those with building permits or firm financial commitments. Provide details on the number of units by unit type, rental rates, locations and stage of development.

F. Demand Estimate and Analysis:

1. Provide an estimate of annual demand for rental housing taking into consideration anticipated shifts in tenure; projected losses to the rental inventory via demolition, conversion, and other means; with adjustments as necessary for current excess levels of vacancies and construction activity. The demand estimate should show the number of additional rental units that would promote balanced market conditions. Demand information should include a general discussion of demand by unit size, number of

bedrooms, price range and other unit and project characteristics. Describe the demand methodology and sources of information.

2. Provide an analysis which reconciles the proposed project with the demand estimate, taking into consideration the forecasted renter household growth, the current vacancy situation, and the supply in production. This analysis should include an estimate of the absorption period needed for the project to reach sustaining occupancy.

3. The market analysis should also include an opinion on characteristics of the proposal that will have a specific bearing on its market prospects and overall marketability, such as amenities, features, or design.

4. Provide an assessment of whether the development of the proposed project would adversely affect the existing rental inventory. Pay particular attention to the impact on other HUD insured properties.

G. Data, Estimates, and Forecast

1. The analysis should document the methods and techniques used to develop all estimates and forecasts; and provide adequate citations on the sources of all data, estimates and forecasts.

2. The data and estimates provided should be relevant and current; conclusions in the analysis must be consistent with the facts presented; findings and recommendations should be based on a reasonable forecast of market supply/demand conditions and sound assumptions regarding capture rates, absorption, achievable rents, income affordability and similar factors.

NOTE: Market Studies are not required for a 223(f) application. See Appendix 7B for instructions for 232/223(f) applications.

Guide for Content and Format of a Market Analysis for Residential Care Facilities – Section 232 Programs

7B

A. Project Description

1. Total number of beds and units by unit size or type of accommodation (i.e. private or semi-private).
2. The estimated total monthly fees for shelter and mandatory services per resident by type of occupancy or accommodation.
3. The estimated total monthly fees for optional services or care provided on an as needed basis.
4. The proportions of the project to be occupied by private pay/market rate tenants and by public pay/assisted tenants, e.g., SSI Medicaid-waiver, Optional State Supplement.
5. The amenities, services and care provided by this type of housing and how they relate to the physical, mental, or social conditions of the prospective tenants, including such conditions as Dementia, Alzheimer's and other special needs.
6. Project location in terms of proximity to facilities and services essential to the tenants such as hospitals, medical/health care facilities, social and community services, public transportation, shopping and recreational activities; and any other location considerations relevant to the market or marketability of the proposed project. Include a map showing the site and important facilities and services.
7. Analysis of the adequacy of the public facilities regarding existing and proposed development.
8. Any income or rent restrictions imposed on the project by the use of public financing and/or subsidies. The overall market analysis should address how these income and rent restrictions will affect demand for the project.

B. Definition of the Market and Sub-market Area:

1. Description of the geographic boundaries of the housing market area and an explanation for the definition, including a discussion of the primary and secondary geographic market areas.
2. Description of the sub-market for the type of housing and care proposed by the economic and demographic characteristics of the target market (projected residents): income levels, household size, age, etc.

C. Current Inventory: Quantitative and Qualitative Characteristics of Projects in the Market Area. Present this information individually for each existing project.

1. Total number of units or accommodations by type of facility and type and size of units. Include information on all residential care and housing facilities that cater to seniors who need assistance with Activities of Daily Living (ADLs), including assisted living

facilities, rest homes, board and care facilities, congregates, retirement service centers, nursing homes, independent living etc. Discuss expansion plans of existing facilities.

2. Total monthly charges by unit type, type of accommodation, and level of services. Provide information on the base rate and any added costs for optional services.
3. Typical types of services and amenities offered, whether these are mandatory or optional fee for services, and whether services are provided by the facility (directly or by contract) or through a third-party arrangement (tenant and care provider).
4. A discussion of the types of projects and other housing options comparable to and competitive with the subject project; both in terms of the type of ownership/financing and tenant admission, e.g., private or public financed, extent of private pay or public pay (Medicare, Medicaid and SSI patients).
5. Condition of inventory with consideration of the proportion that may be substandard or obsolete in terms of physical plant, services, amenities, etc. This is particularly important when the proposal involves skilled nursing care or a project with a combination of levels of care revolving around a "medical model".
6. Characteristics of the current tenants in terms of socio-economic and psycho-physiological conditions e.g. age, income, sex, household composition, previous tenure, location of prior residence, and limitations in activities of daily living, cognitive impairments, disabilities, etc.
7. Absorption experience or recently completed projects on a units per month basis, discussing the level and extent of pre-sale or pre-marketing efforts.
8. Extent of turnover and size of waiting lists in existing projects.
9. Current occupancy in comparable and competitive projects in the market area for the type(s) of product, including a discussion of reasons for any vacancy or absorption problems in the market.
10. Extent of concessions or similar incentives in existing projects or projects in initial rent-up.
11. Provide a map showing locations of competing facilities and those under development in relation to the subject property.

D. Alternative Health/Medical Care and Social Service System

1. Description of the extent and types of alternative housing, care and services in the market.
   a. Home heath care, adult day care, housekeeping services, meal preparation, visiting nurses, on-call transportation services, health care, and alternative providers of supportive services for the target market such as state and local government social service agencies or fraternal, social, charitable or religious organizations.
   b. The impact of these alternatives on demand for the subject project.
   c. Analysis of the comparative costs of these various alternatives.

2. Discussion of the current levels of public payments by the State for the types of care proposed relative to the typical "private pay" rate for the same level of shelter, care and services.

E. Characteristics of Pipeline Activity:

1. Total number of units under construction by the total monthly costs by bedroom size or type or accommodation, and the services or amenities planned (mandatory or fee for service).

2. Total number of units in planning stages that are likely to be developed, including but not limited to those with building permits or firm financial commitments. It is essential to have the most current and comprehensive information possible on the pipeline. Provide details on the number of units and beds by unit type, rate, location and stage of development.

F. Demand Estimate and Analysis

1. The market analysis is based on an estimate of annual demand for the type of residential care proposed. The demand estimate should show the number of units or accommodations by type and the total monthly charges. Include a description of methodologies and sources of information.

2. An analysis which reconciles the proposed project with the demand estimate, taking into consideration the forecasted household and population growth of the target group(s), the current vacancy situation, and the supply in the pipeline. This analysis should include an estimate of the absorption period needed for the project to reach sustaining occupancy.

3. The demand estimate should reflect "effective demand" and should be based on the numbers of households with sufficient incomes and need for the type of shelter and care that could reasonably be expected to be captured by the market during the forecast period. HUD's approach to estimating demand for assisted living typically focuses on the number of single persons (one person households) 75 and older, who are in need of assistance with Activities of Daily Living (ADL's) or Instrumental Activities of Daily Living (IADL's) and who have sufficient income and assets to afford proposed costs of housing and services.

4. A descriptive analysis of the demand estimate which addresses the primary determinants including:

   a. Current and projected population of the target group(s) by age cohort and the proportion of the market each group comprises. Projections should typically be for two to three years.

   b. Current and projected estimates of the primary group to be served by social, physiological, psychological characteristics, i.e., the extent and type of limitations in activities of daily living or cognitive impairment/disability. Projection should typically be for two to three years.

   c. Current income level/band of income of prospective households comprising demand, including cost/rent to income ratio(s) assumed in the analysis.

   d. Changes in the population (including migration patterns) of adult children of the frail elderly. Discuss the impact of anticipated population changes on the demand for this

facility. Indicate the proportion of demand expected to come from outside of the primary market area.

5. An assessment of whether the development of the proposed project would adversely affect similar existing facilities. Pay particular attention to the impact on other HUD insured properties.

G. Data, Estimates, and Forecasts

1. The analysis should document the methods and techniques used to develop all estimates and forecasts; and provide adequate citations on the sources of all data, estimates and forecasts.

2. The data and estimates provided should be relevant and current; conclusions in the analysis must be consistent with the facts presented; findings and recommendations should be based on a reasonable forecast of market supply/demand conditions and sound assumptions regarding capture rates, absorption, achievable rents, income affordability and similar factors.

HUD Appraiser Review 7C

HUD Valuation Report - Technical Review of Multifamily Accelerated Processing - Pre-Application Stage - Section 220, 221 and 232 7C.1

HUD Multifamily Hub: _____
Team Leader: _____
Reviewer: _____
Date Received for Review: _____
Date of Site Visit by Reviewer: _____
Review Report Completion Date:_____

Section of the Act:

Project Name: _____
Mortgagee: _____
Mortgagor: _____
Appraiser/Market Analyst: _____

A. Appraiser's/Market Analyst's market study:

1. The market study complies with guidelines listed in the MAP Guidebook?

   ☐ Yes

   ☐ No (Document):

2. The market study provides evidence that there is market for the proposed project at the number of units/beds and rents estimated by the appraiser for the project?

   ☐ Yes

   ☐ No (Document):

B. HUD-92273 analysis:

1. One HUD-92273 analysis was completed by the Lender's appraiser for each unit breakdown?

   ☐ Yes

   ☐ No (Document)

2. A minimum of three comparables were used in each of the HUD-92273 analysis?

   ☐ Yes

   ☐ No (Document)

3. Comparables used in the HUD-92273 analysis were competitive with the project?

   ☐ Yes

   ☐ No (Document)

4. All amenities and services (for Section 232) were identified and properly adjusted in the analysis?

   ☐ Yes

   ☐ No (Document)

5. Narrative explanations were given for amenity and service (Section 232) adjustments?

   ☐ Yes

   ☐ No

6. The HUD-92273 analysis completed by the Lender's appraiser conforms to the instructions listed in the MAP Guidebook?

   ☐ Yes (Document)

   ☐ No (Document)

C. HUD-92274 analysis:

1. A minimum of three market comparables were used in the HUD-92274 analysis?

   ☐ Yes

   ☐ No (Document)

2. For Section 232 mortgages a market expense analysis was completed by the Lender's appraiser reflecting typical long term operations of the type of facility proposed in the HUD-923013-NHICF, i.e., SNF, ICF, BCF or ALF?

   ☐ Yes

   ☐ No (Document)

3. For Section 232 mortgages the breakout of expenses in the Lender's appraiser's expense analysis corresponds to expenses categorized on HUD-92264-HCF?

   ☐ Yes

   ☐ No (Document)

4. The HUD-92274 analysis or comparable expense analysis for Section 232 mortgages conforms to the instructions as stated in the MAP Guidebook?

   ☐ Yes (Document)

   ☐ No (Document)

D. The narrative supporting the occupancy percentage estimated from the market for the project appears:

☐ Acceptable

☐ Unacceptable (Document)

E. The project's site is found acceptable, having no environmental or legal issues according to standards listed in the MAP Guidebook?

☐ Yes

☐ No (Document):

F. From a review of appraisal exhibits the following was found to be:

1. Proposed rents and estimated rental income and their compliance to requirements found in Section 7.6 of the Guide:

   ☐ Acceptable

   ☐ Unacceptable

2. Total operating expenses and compliance to requirements found in Section 7.7 of the Guide:

   ☐ Acceptable

   ☐ Unacceptable

Comments/Recommendations:

Review Appraiser's Certification:

I certify that, to the best of my knowledge and belief:

1. **The facts and data reported by the reviewer and used in the review process are true and correct.**
2. **The analysis, opinions, and conclusions in this review report are limited only by the assumptions and limiting conditions stated in this review report and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.**
3. **I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.**

4. **I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.**
5. **My engagement in this assignment was not contingent upon developing or reporting predetermined results.**
6. **My compensation is not contingent on an action or event resulting from the analyses, opinions, or conclusions in this review or from its use.**
7. **My analyses, opinions, and conclusions were developed and this review report was prepared in conformity with the *Uniform Standards of Professional Appraisal Practice*.**
8. **I did personally inspect the subject property of the work under review.**
9. **The following persons provided significant real or personal property appraisal or appraisal review assistance to the person signing this certification.**

_____

_____

_____

HUD Appraiser's Signature_____Date_____

License Number/State_____

Concurrence:

Team Leader's Signature/Date_____Date_____

HUD Valuation Report - Technical Review of Multifamily Accelerated Processing - Firm Application Stage - Section 220, 221 and 232	7C.2

HUD Multifamily Hub: _____
Team Leader: _____
Reviewer: _____
Date Received for Review: _____
Date of Pre-Application Review: _____
Review Report Completion Date: _____

Section of the Act:

Project Name: _____
Mortgagee: _____
Mortgagor: _____
Appraiser/Market Analyst: _____

A. Appraisal:

1. Lender's appraiser meets all qualifications as listed in Section 7.3 of the MAP Guidebook?

   ☐ Yes

   ☐ No (Document):

2. The appraisal conforms to all requirements as listed in Section 7.4 of the MAP Guidebook?

   ☐ Yes

   ☐ No (Document):

B. HUD-92264 or HUD-92264-HCF analysis:

1. A HUD-92264 or HUD-92264-HCF form was completed and included in the appraisal and found to be acceptable?

   ☐ Yes

   ☐ No (Document)

2. Completed HUD forms 92273, 92274 (comparable analysis for Section 232) and 92264-A support conclusions found on Lender's appraiser's completed HUD-92264 or HUD-92264-HCF.

   ☐ Yes

   ☐ No (Document)

3. Narratives were included in the appraisal supporting all conclusions and estimates stated in the Lender's appraiser's HUD-92264 or HUD-92264-HCF and supporting HUD forms and analysis?

   ☐ Yes

   ☐ No (Document)

4. A HUD-92264-T and Subsidy Layering Review was completed if the project's financing included tax-exempt bonds or Low Income Housing Tax Credits or HOME funds, if applicable?

   ☐ Yes

   ☐ No (Document)

5. Section J of the HUD-92264 or HUD-92264-HCF was completed by the Lender's appraiser to determine the "Warranted Price of Land for new construction or in accordance with instructions found in the MAP Guidebook?

   ☐ Yes

   ☐ No

6. The estimate of "As Is" value was determined in accordance with instructions found in the MAP Guidebook?

   ☐ Yes

   ☐ No

   ☐ N/A

7. Are the estimated income, the total operation expenses, the total estimated replacement cost, and the maximum insurable mortgage acceptable?

   ☐ Yes (Document)

   ☐ No (Document)

C. Has the HUD-4128 been completed and has the Lender's environmental report been updated from submission at pre-application?

   ☐ Yes

   ☐ No (Document)

D. Operating Deficit:

1. Did the Lender's appraiser estimate an Operating Deficit Period?

   ☐ Yes

   ☐ No (Document)

2. If an Operating Deficit Period was required did the Lender's appraiser calculate the estimated Operating Deficit based on instructions stated in Section 7.14 of the MAP Guidebook and is the calculation acceptable?

   ☐ Yes

   ☐ No (Document)

Comments/Recommendations

Review Appraiser's Certification:

I certify that, to the best of my knowledge and belief:

1. **The facts and data reported by the reviewer and used in the review process are true and correct.**
2. **The analysis, opinions, and conclusions in this review report are limited only by the assumptions and limiting conditions stated in this review report and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.**
3. **I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.**
4. **I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.**
5. **My engagement in this assignment was not contingent upon developing or reporting predetermined results.**
6. **My compensation is not contingent on an action or event resulting from the analyses, opinions, or conclusions in this review or from its use.**
7. **My analyses, opinions, and conclusions were developed and this review report was prepared in conformity with the *Uniform Standards of Professional Appraisal Practice*.**
8. **I did personally inspect the subject property of the work under review.**

9. **The following persons provided significant real or personal property appraisal or appraisal review assistance to the person signing this certification.**

_____

_____

_____

HUD Appraiser's Signature_____ Date_____

License Number/State_____

Concurrence:

Team Leaders Signature/Date_____Date_____

HUD Valuation Report - Technical Review of Multifamily Accelerated Processing - Firm Application Stage - Section 223(f) and 232/223(f)	7C.3

HUD Multifamily Hub: _____
Team Leader: _____
Reviewer: _____
Date Received for Review: _____
Date of Site Visit: _____
Review Report Completion Date:_____

Section of the Act:

Project Name: _____
Mortgagee: _____
Mortgagor: _____
Appraiser/Market Analyst: _____

A. Appraisal:

1. Lender's appraiser meets all qualifications as listed in Section 7.3 of the MAP Guidebook?

   ☐ Yes

   ☐ No (Document):

2. The appraisal conforms to all requirements as listed in Section 7.4 of the MAP Guidebook?

   ☐ Yes

   ☐ No (Document):

3. The subject site was inspected and found to be:

   ☐ Acceptable

   ☐ Unacceptable (Document):

4. The proposed list of critical and non-critical repairs were found to be:

   ☐ Acceptable

   ☐ Unacceptable (Document):

5. The Lender's Underwriting Summary was reviewed for justifications of discrepancies between Lender's appraiser's conclusions:

   ☐ Acceptable

   ☐ Unacceptable (Document):

6. The Lender's Underwriting Summary was reviewed to determine if the Lender's underwriter carried out a "due diligent" review of the Lender's appraisal:

   ☐ Yes

   ☐ No

B. HUD-92264 or HUD-92264-HCF analysis:

1. A HUD-92264 or HUD-92264-HCF form was completed and included in the appraisal and found to be acceptable?

   ☐ Yes

   ☐ No (Document)

2. Completed HUD forms 92273, 92274 (comparable analysis for Section 232) and 92264-A support conclusions found on Lender's appraiser's completed HUD-92264 or HUD-92264-HCF.

   ☐ Yes

   ☐ No (Document)

3. Narratives were included in the appraisal supporting all conclusions and estimates stated in the Lender's appraiser's HUD-92264 or HUD-92264-HCF and supporting HUD forms and analysis?

   ☐ Yes

   ☐ No (Document)

C. HUD-92273 Analysis:

1. One HUD-92273 analysis was completed by the Lender's appraiser for each unit breakdown?

   ☐ Yes

   ☐ No (Document)

2. A minimum of three comparables were used in the HUD-92273 analysis and were competitive with the project?

   ☐ Yes

   ☐ No (Document)

3. All amenities and services (for Section 232) were identified and properly adjusted according to guidelines provided in the MAP Guidebook?

☐ Yes

☐ No (Document)

4. Narrative explanations were given for amenity and service (Section 232) adjustments?

☐ Yes

☐ No (Document)

5. The HUD-92273 analysis completed by the Lender's appraiser conforms to the instructions listed in the MAP Guidebook?

☐ Yes (Document)

☐ No (Document)

D. HUD-92274 Analysis:

1. A minimum of three comparables were used in the HUD-92274 analysis and it conforms to Section 7.7 of the MAP Guidebook?

☐ Yes

☐ No (Document)

2. For Section 232 mortgages a market expense analysis was completed by the Lender's appraiser reflecting typical long term operations of the type of facility proposed in the HUD-923013-NHICF, i.e., SNF, ICF, BCF or ALF?

☐ Yes

☐ No (Document)

E. A HUD-92264-T and Subsidy Layering Review was completed if the project's financing included tax-exempt bonds or Low Income Housing Tax Credits or HOME funds?

☐ Yes

☐ No (Document)

F. Was the Environmental Report and Phase I Environmental Assessment submitted, and were there matters of serious concern outstanding?

☐ Yes

☐ No (Document)

Comments/Recommendations

Review Appraiser's Certification:

I certify that, to the best of my knowledge and belief:

1. **The facts and data reported by the reviewer and used in the review process are true and correct.**
2. **The analysis, opinions, and conclusions in this review report are limited only by the assumptions and limiting conditions stated in this review report and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.**
3. **I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.**
4. **I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.**
5. **My engagement in this assignment was not contingent upon developing or reporting predetermined results.**
6. **My compensation is not contingent on an action or event resulting from the analyses, opinions, or conclusions in this review or from its use.**

7. **My analyses, opinions, and conclusions were developed and this review report was prepared in conformity with the *Uniform Standards of Professional Appraisal Practice*.**
8. **I did personally inspect the subject property of the work under review.**
9. **The following persons provided significant real or personal property appraisal or appraisal review assistance to the person signing this certification.**

_____

_____

_____

HUD Appraiser's Signature _____ Date_____

License Number/State _____

Concurrence:

Team Leader's Signature/Date_____Date_____

Appendix 8

Mortgage Credit Underwriting and Processing Requirements

Table of Contents

Appendix	Title
8A	HUD Mortgage Credit Review of Lender's Underwriter's Processing
8B	Table of Basic Statutory Mortgage Limits - National Housing Act
8C	Payoff Letter for Existing Mortgage

HUD Mortgage Credit Review of Lender's Underwriter's Processing 8A

HUD Office Name _____

Application Submission Date _____

Project Name _____

Project Location (City, State) _____

MAP Lender Name _____

Mortgagor Name _____

☐ Pre-Applications ☐ Firm Commitment Application

A. Pre-Application

1. Review of Lender's Underwriter's estimate of the replacement cost:

   If unacceptable, state reasons:

2. Review of Lender's Underwriter's estimate of the insurance mortgage amount:

   If unacceptable, indicate reasons:

3. Acceptability of any nonprofit sponsors/mortgagors:

If unacceptable, indicate reasons:

B. Firm Commitment.

1. HUD programs previous participation (HUD-2530) reviews:

   Listing of unacceptable principals:

2. General review of the Lender's Underwriter's report and the HUD Form-2264-A, comments:

   If report unacceptable, state reasons:

3. Acceptability of the sponsor, mortgagor and its key principals, and the contractor:

   If unacceptable, state reasons:

4. Acceptability of the maximum mortgage amount:

If unacceptable, state reasons:

5. Acceptability of the financial requirements for settlement:

If unacceptable, state reasons:

6. Verifications of sources of funds to meet cash requirements:

I have reviewed the subject project and hereby make the following recommendations(s):

Reviewer:

Name of Reviewer: _____

Signature and Date of Review _____ Date _____

Concurrence:

Name of Team Leader _____

Signature and Date of Concurrence _____ Date _____

Table of Basic Statutory Mortgage Limits - National Housing Act 8B

Sections 207 - 213 - 220 - 223(f) - 234

No. Bedrooms	Non-Elevator Basic Limit	Elevator Basic Limit
0	$38,025	$43,875
1	$42,120	$49,140
2	$50,310	$60,255
3	$62,010	$75,465
4+	$70,200	$85,328

Section 221(d)(3) – Nonprofit/Cooperative

No. Bedrooms	Non-Elevator Basic Limit	Elevator Basic Limit
0	$42,048	$44,250
1	$48,481	$50,724
2	$58,469	$61,680
3	$74,840	$79,793
4+	$83,375	$87,588

Section 221(d)(4)

No. Bedrooms	Non-Elevator Basic Limit	Elevator Basic Limit
0	$37,843	$40,876
1	$42,954	$46,859
2	$51,920	$56,979
3	$65,169	$73,710
4+	$73,846	$80,913

Section 231

No. Bedrooms	Non-Elevator Basic Limit	Elevator Basic Limit
0	$35,978	$40,876
1	$40,220	$46,859
2	$48,029	$56,979
3	$57,798	$73,710
4+	$67,950	$80,913

Section 207 - Mobile Homes

Per Space	Basic Limit
	$11,250

Payoff Letter for Existing Mortgage

8C

Name and Address

Gentleman:

Subject: Name and Address of Project Your Account No. _____

This office has received an application for FHA mortgage insurance for the subject project. We are advised that your firm is the mortgagee. Please provide us with the following information:

Date of Mortgage _____

Original Amount $_____

Monthly Payment Amount $_____

Next Payment Due $_____

Present Mortgage Balance $_____

As of (Date) _____

Other Amounts Due: Interest $_____ Penalties $_____

Total Payoff Balance (Excluding Forgiven Indebtedness, Rebates, etc.) $_____

Balance of Escrow, Reserves, etc. (Itemize) $_____

$_____

$_____

Is Debt Current: Yes ____ No _____ Satisfactory _____ Unsatisfactory _____

Other known Indebtedness against property (explain)_____

_____

_____

Remarks _____

_____

_____

Date _____ Signature _____

Title _____

Information provided will be used solely for our evaluation and will otherwise be held in confidence. We are enclosing a stamped, self-addressed envelope. Please replay at your earliest convenience.

Sincerely,

Appendix 12

Insurance Closings

Table of Contents

Appendix Number	Title	Page
12A	Closing Lists	12-2
12B.1	Owner-Architect Agreement	12-21
12B.2	Amendment to AIA Document B181, Standard Form of Agreement Between Owner and Architect for Housing Services	12-23
12C	Certification of Architectural/Engineering Fees	12-26
12D	Specimen – Third Party Obligee Certification	12-27
12E	Initial Endorsement Document Review – Architectural and Cost	12-28
12F	Initial Endorsement Document Review – Mortgage Credit	12-37
12G	Initial Endorsement Document Review – Valuation	12-46
12H	Initial Endorsement Document Review – Housing Programs	12-51
12I	Secondary Financing Rider	12-54

Closing Lists

12A

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SECTION 221 d 4 INITIAL

PROJECT NAME: _____

FHA PROJECT NUMBER: _____

The HUD closing attorney will obtain THREE copies of all closing documents unless otherwise noted below. These will be Originals (O) or Certified Copies (C) as indicated below.

Documents:

___ 1. Attendance List

___ 2. Commitment (form HUD-92432), Amendment or Assignment, if any 3

___ 3. Mortgagor's Organizational Documents ..... C & 2

- ___ a. Corporate Mortgagor
  - (i) Articles of Incorporation
  - (ii) Code of Regulations
  - (iii) Certificate of Good Standing dated within 30 days of closing
  - (iv) Incumbency Certificate
  - (v) Resolution who can sign closing documents
- ___ b. Partnership Mortgagor
  - (i) Partnership Agreement
  - (ii) Certificate of Partnership
  - (iii) Full Force & Effect Certificate dated within 30 days of closing
  - (iv) Resolution who can sign closing documents
- ___ c. Limited Liability Company Mortgagor
  - (i) Articles of Organization
  - (ii) Operating Agreement
  - (iii) Certificate of Continued Existence dated within 30 days of closing
  - (iv) Resolution who can sign closing documents

___ 4. Mortgagor General Partner(s)' Organizational Documents (same as Exhibit 3), if applicable ..... C & 2

___ 5. Regulatory Agreement..... O & 2

___ 6. Mortgage Note 3

___ 7. Mortgage Deed 3

___ 8. Security Agreement 3

a. Financing Statement (UCC-1)
b. Financing Statement (UCC-1)

___ 9. 1992 ALTA Title Insurance Loan Policy 3
a. ALTA Form 8.1 Environmental Endorsement
b. ALTA Form 9 Comprehensive Endorsement
c. Copies of all exception documents
Note: 1999 Minimum Standard Detail Requirements (MSDR) for (ALTA)/(ACSM) Land Title Surveys for multifamily projects insured by FHA are also acceptable.

___ 10. Survey Plat dated within 120 days of closing..... 3

___ 11. Surveyor's Report dated within 120 days of closing (HUD-2457) ..... O & 2

___ 12. Evidence of Zoning Compliance ..... O & 2

___ 13. Building Permit(s) 3

___ 14. Notice of Commencement dated within 30 days of closing, if applicable..... 3

___ 15. Assurance of Utility Services Letters ..... 0 & 2

___ a. Water ___ d. Sanitary Sewer
___ b. Electricity ___ e. Storm Sewer
___ c. Gas ___ f. Telephone

___ 16. Building Loan Agreement (Form HUD-92441) ..... O & 2
a. Exhibit A Property Description
b. Exhibit B Contractor's and/or Mortgagor's Cost Breakdown (Form HUD-92328)

___ 17. Construction Contract:..... O & 2
a. Lump Sum (Form HUD-92442) or
b. Cost Plus (Form HUD-92442-A) and
c. Incentive Payment (Form HUD 92443)
d. Identity of Interest Amendment (Chapter ___)
e. Exhibit A Contractor's and/or Mortgagor's Cost Breakdown (Form HUD 92328)

___ 18. Contractor's Certification of Labor Standards and Prevailing Wage Standards ... O & 2

___ 19. Assurance of Completion for On-Site Improvements: ..... O & 2
a. Performance Bond-Dual Obligee (Form FHA-2452) and
b. Payment Bond (Form HUD-92452-A)
c. Facsimile from surety main office confirming power of attorney, or
d. Completion Assurance Agreement (Form HUD-92450)

___ 20. Owner-Architect Agreement HUD Amendment (AIA Document B181) and 3

___ 21. Certification of Architectural/ Engineering Fees ..... O & 2

___ 22. Mortgagor's and Architect's Certificate of Payment (Form HUD-92403-1).....O & 2

___ 23. Assurance of Completion of Off-Site Improvements, if Applicable: ..... O & 2
a. Escrow Agreement for Off-Site Facilities with Schedule "A", (Form FHA-2446) and
b. Off-Site Bond (Form FHA 2479), if required
c. Building Permit, if required

___ 24. Assurance of Funds to meet Operating Deficit (Form FHA-2476 or HUD-92476A), if applicable ..... O & 2

___ 25. Mortgagee's Certificate (Form FHA-2434) ..... O & 2

___ 26. Mortgagor's Certificate (Form FHA-2433) ..... O & 2

___ 27. Mortgagor's Oath (Form FHA-2478) ..... O & 2

___ 28. Equal Employment Opportunity Certification (FORM HUD 92010)..... O & 2

___ 29. Title VI Assurance of Compliance (Form HUD-4190)..... O & 2

___ 30. Mortgagor's Byrd Amendment Certificate..... O & 2

___ 31. Mortgagee's Byrd Amendment Certificate ..... O & 2

___ 32. Mortgagor's Low Income Housing Tax Credit Program Certification..... O & 2

___ 33. Mortgagor's Attorney's Opinion ..... O & 2
a. Exhibit A - legal description
b. Exhibit B - Mortgagor Certification
c. Exhibit C - Good Standing Certificate

___ 34. Agreement and Certification (Form HUD-3305) ..... O & 2
Agreement and Certification Form HUD-3306 (if appropriate)

___ 35. Application for Insurance of Advance of Mortgage ..... O & 4
a. Proceeds (Form HUD-92403) and Contractor's
b. Requisition (HUD-92448), if applicable

___ 36. Permanent Lender's Assurance of Permanent Financing (Chapter ____) ..... O & 2

___ 37. All Special Conditions of Firm Commitment (Form HUD-92432) ..... O & 2

___ ( ) Previous Participation Certificate (Form FHA-2530)
___ ( )
___ ( )
___ ( )
___ ( )
___ ( )
___ ( )
___ ( )

___ 38. Inspection fee check, if applicable

___ 39. Mortgage Insurance Premium (MIP) check

___ 40. State and local requirements ..... O

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SECTION 221d4 FINAL

PROJECT NAME: _____

FHA PROJECT NUMBER: _____

The HUD closing attorney will obtain THREE copies of all closing documents unless otherwise noted below. These will be Originals (O) or Certified Copies (C) as indicated below.

Documents:
Copies:

___ 1. Attendance List 3

___ 2. Increased Note, if applicable 3

___ 3. Increased Mortgage, if applicable 3

___ 4. a. Consolidation Agreement, or 3
b. New Note and New Mortgage for Total Amount, if applicable

___ 5. Modification Agreement, if applicable 3

___ 6. Mortgagor's Attorney's Opinion as to increase, if any ..... O & 2
a. Exhibit A - legal description
b. Exhibit B - Mortgagor Certification
c. Exhibit C - Good Standing Certificate

___ 7. Title Insurance Policy Final Endorsement 3

___ 8. As-Built Survey dated within 120 days of closing 3

___ 9 Surveyor's report (HUD-2457) dated within 120 days of closing ..... O & 2

___ 10. Certificate of Occupancy 3

___ 11. Mortgagee's letter indicating all payments are current, if applicable ..... O & 2

___ 12. Application for Insurance of Advance of Mortgage Proceeds (Form HUD-92403) ..... O & 4

___ 13. Contractor's Requisition (Form FHA-2448)with Contractor's Prevailing Wage Certificate ..... O & 2

___ 14. Request for Final Endorsement of Credit Instrument (Form HUD-92023) ..... O & 2

___ 15. Escrow Deposit Agreement, if applicable (Form HUD-2456) ..... O & 2

___ 16. All Special Conditions of Maximum Insurable Mortgage (Form-92580) ..... O & 2

___ ( )
___ ( )
___ ( )
___ ( )
___ ( )
___ ( )
___ ( )
___ ( )

___ 17. Note Endorsement Panel 3

___ 18. Mortgage Insurance Premium (MIP) check for mortgage increase only, if applicable . 3

___ 19. Special state and local requirements 3

___ 20. Security Agreement and UCC-1, if not obtained at initial closing 3

___ 21. 2 ½ % Latent Defects Guarantee (if initial assurance was in cash) 3

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SECTION 232 INITIAL

PROJECT NAME: _____

FHA PROJECT NUMBER: _____

The HUD closing attorney will obtain THREE copies of all closing documents unless otherwise noted below. These will be Originals (O) or Certified Copies (C) as indicated below.

Documents:
Copies:

___ 1. Attendance List

___ 2. Commitment (form HUD-92432), Amendment or Assignment, if any 3

___ 3. Mortgagor's Organizational Documents ..... C & 2

___ a. Corporate Mortgagor
(i) Articles of Incorporation
(ii) Code of Regulations
(iii) Certificate of Good Standing dated within 30 days of closing
(iv) Incumbency Certificate
(v) Resolution who can sign closing documents

___ b. Partnership Mortgagor
(i) Partnership Agreement
(ii) Certificate of Partnership
(iii) Full Force & Effect Certificate dated within 30 days of closing
(iv) Resolution who can sign closing documents

___ c. Limited Liability Company Mortgagor
(i) Articles of Organization
(ii) Operating Agreement
(iii Certificate of Continued Existence dated within 30 days of closing
(iv) Resolution who can sign closing documents

___ 4. Mortgagor General Partner(s)' Organizational Documents, if applicable..... C & 2

___ 5. Lessee Operator's Organizational Documents, if applicable ..... C & 2

___ 6. Certificate of Need..... 3

___ 7. Regulatory Agreement and Addendum (Mortgagor) ..... O & 2

___ 8. Mortgage Note 3

___ 9. Mortgage Deed and Addendum..... 3

___ 10. Security Agreement and Addendum..... 3
a. Financing Statement (UCC-1)
b. Financing Statement (UCC-2)

___ 11. Lease to Operator, if applicable..... 3

___ 12. Regulatory Agreement (Form HUD-92466-NHL) and Addendum (Operator/Lessee), if applicable ..... O & 2

___ 13. 1992 ALTA Title Insurance Loan Policy 3
- a. ALTA Form 8.1 Environmental Endorsement
- b. ALTA Form 9 Comprehensive Endorsement
- c. Copies of all exception documents

___ 14. Survey Plat dated within 120 days of closing..... 3

___ 15. Surveyor's Report dated within 120 days of closing (HUD-2457)..... O & 2

___ 16. Evidence of Zoning Compliance ..... O & 2

___ 17. Building Permit(s) 3

___ 18. Notice of Commencement 3

___ 19. Assurance of Utility Services Letters dated within 30 days of closing..... O & 2
- ___ a. Water ___ d. Sanitary Sewer
- ___ b. Electricity ___ e. Storm Sewer
- ___ c. Gas ___ f. Telephone

___ 20. Building Loan Agreement (Form HUD-92441) ..... O & 2
- a. Exhibit A Property Description
- b. Exhibit B Contractor's and/or Mortgagor's Cost Breakdown (Form HUD-92328)

___ 21. Construction Contract:..... O & 2
- a. Lump Sum (Form HUD-92442) or
- b. Cost Plus (Form HUD-92442-A) and
- c. Incentive Payment (Form HUD 92443)
- d. Identity of Interest Amendment
- e. Exhibit A Contractor's and/or Mortgagor's Cost Breakdown (Form HUD 92328)

___ 22. Contractor's Certification of Labor Standards and Prevailing Wage Standards ... O & 2

___ 23. Assurance of Completion for On-Site Improvements: ..... O & 2
- a. Performance Bond-Dual Obligee (Form FHA-2452) and
- b. Payment Bond (Form HUD-92452-A)
- c. Facsimile from surety main office confirming power of attorney, or
- d. Completion Assurance Agreement (Form HUD-92450)

___ 24. Owner-Architect Agreement (AIA Document B181) and HUD Amendment (App. __) 3

___ 25. Certification of Architectural/ Engineering Fees (Chapter) ..... O & 2

___ 26. Mortgagor's and Architect's Certificate of Payment (Form HUD-92403-1).....O & 2

___ 7. Assurance of Completion of Off-Site Improvements, if Applicable ..... O & 2
   a. Escrow Agreement for Off-Site Facilities (Form FHA-2446) with Schedule "A", and
   b. Off-Site Bond (Form FHA 2479), if required
   c. Building Permit, if required

___ 28. Assurance of Funds to meet Operating Deficit (Form FHA-2476 or HUD-92476A), if applicable ..... O & 2

___ 29. Escrow for Non-realty Equipment, if applicable ..... O & 2

___ 30. Mortgagee's Certificate (Form FHA-2434) ..... O & 2

___ 31. Mortgagor's Certificate (Form FHA-2433) ..... O & 2

___ 32. Mortgagor's Oath (Form FHA-2478) ..... O & 2

___ 33. Equal Employment Opportunity Certification (Form HUD-92010) ..... O & 2

___ 34. Title VI Assurance of Compliance (Form HUD-4190) ..... O & 2

___ 35. Mortgagor's Byrd Amendment Certificate ..... O & 2

___ 36. Mortgagee's Byrd Amendment Certificate ..... O & 2

___ 37. Lessee's Byrd Amendment Certificate, if applicable ..... O & 2

___ 38. Guaranty Agreement, if applicable ..... O & 2

___ 39. Mortgagor's Sinking Fund, if applicable ..... O & 2

___ 40. Mortgagor's Attorney's Opinion ..... O & 2
   a. Exhibit A - legal description
   b. Exhibit B - Mortgagor Certification
   c. Exhibit C - Good Standing Certificate

___ 41. Agreement and Certification (Form HUD-3305) ..... O & 2

___ 42. Application for Insurance of Advance of Mortgage Proceeds (Form HUD-92403) and Contractor's Requisition (HUD-92448), if applicable ..... O & 4

___ 43. Permanent Lender's Assurance of Permanent Financing (HB 4470.1, REV-2, Section 5-1) ..... O & 2

___ 44. All Special Conditions of Firm Commitment (Form HUD-92432) ..... O & 2

___ ( ) Previous Participation Certificate (Form FHA-2530)
___ ( )

___ ( )
___ ( )
___ ( )
___ ( )

___ 45. Inspection fee check, if applicable ..... O

___ 46. Mortgage Insurance Premium (MIP) check ..... O

___ 47. Special state and local requirements..... O

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SECTION 232 FINAL

PROJECT NAME: _____

FHA PROJECT NUMBER: _____

The HUD closing attorney will obtain THREE copies of all closing documents unless otherwise noted below. These will be Originals (O) or Certified Copies (C) as indicated below.

Documents:
Copies:

___ 1. Attendance List

___ 2. Increased Note, if applicable 3

___ 3. Increased Mortgage, if applicable 3

___ 4. a. Consolidation Agreement, or..... 3
b. New Note and New Mortgage for Total Amount, if applicable

___ 5. Modification Agreement, if applicable..... 3

___ 6. Mortgagor's Attorney's Opinion as to increase, if applicable ..... O & 2
a. Exhibit A - legal description
b. Exhibit B - Mortgagor Certification
c. Exhibit C - Good Standing Certificate

___ 7. Operating License..... 3

___ 8. Title Insurance Policy Final Endorsement..... 3

___ 9. As-Built Survey dated within 120 days of closing

___ 10. Surveyor's report (HUD-2457) dated within 120 days of closing ..... O & 2

___ 11. Certificate of Occupancy 3

___ 12. Mortgagee's letter indicating all payments are current, if applicable ..... O & 2

___ 13. Application for Insurance of Advance of Mortgage Proceeds
(Form HUD-92403) ..... O & 4

___ 14. Contractor's Requisition with Contractor's Prevailing Wage Certificate
(Form FHA-2448) ..... O & 2

___ 15. Request for Final Endorsement of Credit Instrument if applicable
(Form HUD-92023) ..... O & 2

___ 16. Escrow Deposit Agreement (Form HUD-2456) ..... O & 2

___ 17. All Special Conditions of Maximum Insurable mortgage (FORM HUD-92580) ..... O & 2

___ ( )
___ ( )
___ ( )
___ ( )
___ ( )
___ ( )
___ ( )
___ ( )

___ 18. Note Endorsement Panel 3

___ 19. Mortgage Insurance Premium (MIP) check for mortgage increase only,
if applicable ..... O

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SECTION 223f

PROJECT NAME: _____

FHA PROJECT NUMBER: _____

The HUD closing attorney will obtain THREE copies of all closing documents unless otherwise noted below. These will be Originals (O) or Certified Copies (C) as indicated below

Documents:
Copies:

___ 1. Attendance List

___ 2. Commitment, Amendment or Assignment, if any 3

___ 3. Mortgagor's Organizational Documents ..... C & 2
- ___ a. Corporate Mortgagor
  - (i) Articles of Incorporation
  - (ii) Code of Regulations
  - (iii) Certificate of Good Standing dated within 30 days of closing
  - (iv) Incumbency Certificate
  - (v) Resolution who can sign closing documents
- ___ b. Partnership Mortgagor
  - (i) Partnership Agreement
  - (ii) Certificate of Partnership
  - (iii) Full Force & Effect Certificate dated within 30 days of closing
  - (iv) Resolution who can sign closing documents
- ___ c. Limited Liability Company Mortgagor
  - (i) Articles of Organization
  - (ii) Operating Agreement
  - (iii) Certificate of Continued Existence dated within 30 days of closing
  - (iv) Resolution who can sign closing documents

___ 4. Mortgagor General Partner(s)' Organizational Documents, if applicable..... C & 2

___ 5. Regulatory Agreement..... O & 2

___ 6. Mortgage Note 3

___ 7. Mortgage Deed 3

___ 8. Security Agreement 3
- a. Financing Statement (UCC-1)
- b. Financing Statement (UCC-2)
- c. Financing Statement (UCC-2)

___ 9. 1992 ALTA Title Insurance Loan Policy 3
- a. ALTA Form 8.1 Environmental Endorsement
- b. ALTA Form 9 Comprehensive Endorsement
- c. Copies of all exception documents

___ 10. Survey Plat dated within 120 days of closing..... 3

___ 11. Surveyor's Report dated within 120 days of closing (HUD-2457)..... O & 2

___ 12. Evidence of Zoning Compliance ..... O & 2

___ 13. Evidence of Compliance with local housing and building Codes 3

___ 14. Mortgagor's Oath (Form FHA-2478) ..... O & 2

___ 15. Equal Employment Opportunity Certification (Form HUD-92010) ..... O & 2

___ 16. Title VI Assurance of Compliance (Form HUD-4190) ..... O & 2

___ 17. Mortgagor's Byrd Amendment Certificate ..... O & 2

___ 18. Mortgagee's Byrd Amendment Certificate ..... O & 2

___ 19. Mortgagor's Low Income Housing Tax Credit Program Certification ..... O & 2

___ 20. Mortgagor's Attorney's Opinion ..... O & 2
a. Exhibit A - legal description
b. Exhibit B - Mortgagor Certification
c. Exhibit C - Good Standing Certificate

___ 21. Agreement and Certification(Form HUD-3305) ..... O & 2

___ 22. Mortgagee's Current Payment Letter, if applicable ..... O & 2

___ 23. Request for Endorsement of Credit Instrument,
Certificate of Mortgagee, Mortgagor (Form FHA-2455) ..... O & 2

___ 24. Permanent Lender's Assurance of Permanent Financing ..... O & 2

___ 25. Escrow Agreement for Non-Critical Repairs (Form HUD-92476.1),
if applicable ..... O & 2

___ 26. All Special Conditions of Firm Commitment Form HUD-92432) ..... O & 2
___ ( ) Previous Participation Certificate (Form FHA-2530)
___ ( ) Short Form Cost Certification (Form FHA-2205
___ ( ) Certified Closing Statement
___ ( ) Certification Regarding Tenants' Security Deposits

___ 27. Inspection fee check, if applicable ..... O

___ 28. Mortgage Insurance Premium (MIP) check ..... O

___ 29. Secondary financing and UCC1 3

___ 30. Patent Defects Guarantee

___ 31. State and/or Local Requirements

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SECTION 232/223 f

PROJECT NAME: _____

FHA PROJECT NUMBER: _____

The HUD closing attorney will obtain THREE copies of all closing documents unless otherwise noted below. These will be Originals (O) or Certified Copies (C) as indicated below.

Documents:
Copies:

___ 1. Attendance List

___ 2. Commitment, Amendment or Assignment, if any 3

___ 3. Mortgagor's Organizational Documents ..... C & 2

___ a. Corporate Mortgagor
(i) Articles of Incorporation
(ii) Code of Regulations
(iii) Certificate of Good Standing dated within 30 days of closing

___ b. Partnership Mortgagor
(i) Partnership Agreement
(ii) Certificate of Partnership
(iii Full Force & Effect Certificate dated within 30 days of closing
(iv) Resolution who can sign all closing documents

___ c. Limited Liability Company Mortgagor
(i) Articles of Organization
(ii) Operating Agreement
(iii Certificate of Continued Existence dated within 30 days of closing
(iv) Resolution who can sign closing documents

___ 4. Mortgagor General Partner(s)' Organizational Documents, if applicable..... C & 2

___ 5. Lessee Operator's Organizational Documents, if applicable 3

___ 6. Regulatory Agreement and Addendum (Mortgagor) ..... O & 2

___ 7. Regulatory Agreement and Addendum (Operator/Lessee),if applicable ..... O & 2

___ 8. Mortgage Note 3

___ 9. Mortgage Deed and Addendum 3

___ 10. Security Agreement and Addendum 3
a. Financing Statement (UCC-1) and Addendum
b. Financing Statement (UCC-2) and Addendum
c. Financing Statement (UCC-2) and Addendum

___ 11. Lease to Operator, if applicable 3

___ 12. Nursing Home License 3

___ 13. 1992 ALTA Title Insurance Loan Policy 3

___ 14. Survey Plat dated within 120 days of closing..... 3

___ 15. Surveyor's Report dated within 120 days of closing (HUD-2457) .....O & 2

___ 16. Evidence of Zoning Compliance ..... O & 2

___ 17. Evidence of Compliance with local housing and building Codes 3

___ 18. Mortgagor's Oath (Form FHA-2478) ..... O & 2

___ 19. Equal Employment Opportunity Certification (Form HUD-92010) ..... O & 2

___ 20. Title VI Assurance of Compliance (Form HUD-41901)..... O & 2

___ 21. Mortgagor's Byrd Amendment Certificate..... O & 2

___ 22. Mortgagee's Byrd Amendment Certificate ..... O & 2

___ 23. Operator/Lessee's Byrd Amendment Certificate, if applicable..... O & 2

___ 24. Mortgagor's Low Income Housing Tax Credit Program Certification ..... O & 2

___ 25. Mortgagor's Attorney's Opinion ..... O & 2
   a. Exhibit A - legal description
   b. Exhibit B - Mortgagor Certification
   c. Exhibit C - Good Standing Certificate

___ 26. Agreement and Certification (Form HUD-3305) ..... O & 2

___ 27. Mortgagee's Current Payment Letter ..... O & 2

___ 28. Mortgagor's Sinking Fund, if applicable ..... O & 2

___ 29. Request for Endorsement of Credit Instrument,
Certificate of Mortgagee, Mortgagor (Form FHA-2455)..... O & 2

___ 30. Lender letter regarding permanent financing ..... O & 2

___ 31. All Special Conditions of Firm Commitment (Form HUD-92432) ..... O & 2
   ___ ( ) Previous Participation Certificate (Form FHA-2530)
   ___ ( ) Short Form Cost Certification (Form FHA-2205
   ___ ( ) Certified Closing Statement
   ___ ( ) Certification Regarding Tenants' Security Deposits

___ 32. Inspection fee check, if applicable ..... O

___ 33. Mortgage Insurance Premium (MIP) check ..... O

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

TAX-EXEMPT BONDS AND/OR LIHTC SUPPLEMENTAL INITIAL

PROJECT NAME: _____

FHA PROJECT NUMBER: _____

The HUD closing attorney will obtain THREE copies of all closing documents unless otherwise noted below. These will be Originals (O) or Certified Copies (C) as indicated below.

Documents:
Copies:

TAX-EXEMPT BONDS
SUPPLEMENTAL INITIAL CLOSING REQUIREMENTS

___ 1. Mortgagor's Attorney's Opinion 3

___ 2. Mortgagee's Attorney's Opinion 3

___ 3. Bond Counsel Opinion 3

___ 4. Land Use Restriction or Tax Regulatory Agreement

LOW-INCOME HOUSING TAX CREDITS
SUPPLEMENTAL INITIAL CLOSING REQUIREMENTS

___ 1. Mortgagor's Attorney's Opinion 3

___ 2. Special Deed Covenant 3

Owner-Architect Agreement

12B.1

A. The Owner-Architect Agreement must be on AIA Document B181 Standard Form Of Agreement Between Owner and Architect for Housing Services.

B. Architect is any architect, engineer or designer that:

1. Is registered to provide the proposed project services in the State in which the project is located.

2. Serves as a prime architect, i.e., provides directly to the Owner any or all of the basic architectural services.

C. Multiple Prime Architects exist when the owner contracts directly with two or more architects to provide the basic architectural services.

1. Require separate Owner-Architect Agreements for each prime architect. Each must clearly define the specific services covered and fees.

   a. Modify the standard services, where applicable, in Article 10, or at the applicable Article.

   b. Basic fees must be a lump sum, i.e., fixed price.

2. Separate design and supervisory architects are acceptable. Where a separate architect is employed for construction phase services, the Owner-Architect Agreement for the supervisory architect must be submitted 15 days before initial closing. A separate Owner-Architect Agreements for the supervisory and design architect(s) must be shown in the construction contract for the respective services.

D. Supervisory Architect may not have an identity of interest, as defined in Appendix ____ with the mortgagor or contractor. The HUD addendum to the Owner-Architect Agreement, Appendix ___, must be included as a contract rider and no identities of interest may be listed.

E. Owner Furnished Services for land surveys, geotechnical reports, lead-based paint hazard testing, and similar specialty engineering and laboratory services that are not basic architectural services need not be contracted through use of AIA Document B181.

F. Fee Claims.

1. The mortgagor must certify that there are no unpaid fees or claims for architectural, engineering, testing, or related services performed for the project by other than those identified on the certification and in the amount shown.

2. Article 9.6 of the 1994 version of the Owner-Architect Agreement supersedes any agreement or arrangement between the mortgagor and architect(s) of record predating contract execution, and must not be voided.

G. Fee Payment must be made as follows:

1. Design and design related services must be paid before or at initial closing. If the fee for such services is in dispute at the time of initial closing, the mortgagor may post a cash escrow with the mortgagee in the full amount of any disputed claim or in such lesser amount acceptable to the Field Office Manager. The full amount to be set aside in the cash escrow will equal the lessor of (1) the amount claimed by the design architect or (2) the amount set out in the commitment for architectural services.

2. Supervisory services payment must be based upon the monthly work progress, and may not exceed a rate equal to the percentage of project completion.

3. The Owner-Architect Agreement must separately identify the fee for design and supervisory services, where both are provided by the same entity.

H. Mortgagor's and Architect's Certificate, Form HUD-92403-1, must be executed at or before initial endorsement for each prime design professional. Draws in the Application for Insurance of Advance of Mortgage Proceeds, Form HUD-92403, exceeding the amount certified on Form HUD-92403-1 will not be approved.

I. If anything other than “non applicable” is inserted into sections 11.3, 11.5.1, or 11.5.2 of the owner-architect agreement, language must be added that the architect agrees that neither mortgage proceeds nor project funds (other than surplus cash) can be a source of payment and that the architect will not assert a lien against the project for non-payment.

Amendment to AIA Document B181, Standard Form of Agreement Between Owner and Architect for Housing Services

12B.2

The provisions of this Amendment supersede and void all inconsistent provisions between the Amendment and the Agreement.

1. Definition of terms used in this Amendment.

   a. Agreement. AIA Document B181, Standard Form of Agreement Between Owner and Architect for Housing Services.

   b. HUD. The U. S. Department of Housing and Urban Development.

   c. Owner. The Mortgagor/Owner.

   d. Subcontractor. Any Project subcontractor, materials supplier, equipment lessor or industrialized housing manufacturer/supplier.

2. The Owner and the Architect represent that they are familiar with HUD requirements, including the Minimum Property Standards, Fair Housing Accessibility Guidelines, Uniform Federal Accessibility Standards, and architectural requirements of this Guide (See Chapter _____), as set forth in publications given to then by HUD for this Project and will perform all services in accordance with the applicable requirements of HUD.

3. No portion of the Architect's services and responsibilities or the Owner's responsibilities shall be assigned, transferred or delegated to anyone not acceptable to HUD.

4. The Architect shall advise HUD as well as the owner of any omissions, substitutions, defects, and deficiencies observed in the work of the Contractor.

5. The Architect shall issue Certificates of Payment and Certificates of Substantial Completion in the form prescribed by HUD.

6. The Architect shall furnish copies of all Architect's Supplemental Instructions to the owner, Mortgagee and HUD.

7. If the project for which the drawings and specifications prepared by the Architect has not been completed and there is a default or foreclosure, the Mortgagee or HUD may use the drawings and specifications to complete construction of the project without additional cost.

8. The Agreement shall not be terminated without 5 days prior written notice to the Mortgagee and HUD.

9. The Owner and the Architect recognize the interest of the Mortgagee and HUD and that any action or determination by either the Owner or the Architect is subject to acceptance or rejection by the Mortgagee and by HUD.

10. The Owner and the Architect shall recognize as a valid reason for termination, any request by HUD for termination because of inadequate performance, undue delay or misrepresentation which may make the further services of the Architect unacceptable to HUD.

11. The Architect administering the Construction Contract may not have an identity of interest with the Owner, Contractor, and/or any Project subcontractor. An identity of interest is construed to exist where:

    a. The Architect has any financial interest in the Project other than the fee for professional service.

    b. The Architect advances any funds to the Owner, Contractor and/or any subcontractor; and/or the Contractor and/or any subcontractor advance any funds to the Architect.

    c. The Architect has any financial interest in the Owner, Contractor and/or any subcontractor; or the Owner, Contractor and/or any subcontractor has any financial interest in the Architect.

    d. Any officer, director, stockholder or partner of the Architect has any financial interest in the owner, Contractor and/or any subcontractor; or any officer, director, stockholder or partner of the Owner, Contractor and/or any subcontractor has any financial interest in the Architect.

    e. Any officer, director, stockholder or partner of the Architect is also an officer, director, stockholder or partner of the Owner, Contractor, and/or any subcontractor; or any officer, director, stockholder or partner of the Owner, Contractor and/or subcontractor is also an officer, director, stockholder, or partner of the Architect.

    f. The Owner, Contractor and/or any subcontractor, or any officer, director, stockholder or partner of such Owner, Contractor and/or subcontractor provides any of the required architectural services; or where the Owner, Contractor and/or any subcontractor, or any officer, director, stockholder or partner of such Owner, Contractor and/or subcontractor, while not directly providing an architectural service, acts as a consultant to the Architect.

    g. Any family relationships between the officers, directors, stockholders, or partners of the Architect and officers, directors, stockholders or partners of the Owner, Contractor, and/or any subcontractor; or between the officers, directors, stockholders or partners of the Owner, Contractor, and/or any subcontractor and officers, directors, stockholders, or partners of the Architect that could cause or result in control or influence over prices paid to the Architect and/or performance by the Architect.

h. Any side deal, agreement, contract or undertaking, thereby altering, amending, or canceling any of the required closing documents, except as approved by HUD.

12. All identities of interest known to exist between the Architect and the Owner, Contractor and/or any subcontractor are listed herein. The Architect and owner shall each inform HUD in writing within 5 working days of its knowledge of any identity of interest that develops after execution of this Agreement.

    List All Identities of Interest:

    _____
    _____
    _____
    _____
    _____
    _____
    _____

_____	_____
OWNER	ARCHITECT
_____	_____
_____	_____
DATE _____	DATE _____

WARNING: Title 18 U.S.C. 1001, provides in part that whoever knowingly and willfully makes or uses a document containing any false, fictitious, or fraudulent statement or entry, in any matter in the jurisdiction of any department or agency of the United States, shall be fined not more than $10,000 or imprisoned for not more than 5 years or both.

Certification of Architectural/Engineering Fees 12C

TO: Assistant Secretary-Federal Housing Commissioner
C/O _____
_____

Dear

The undersigned hereby certifies that all architectural, engineering, drafting, land surveyor, testing, laboratory and related services fees and fee balances for the analysis of the property, preparation of reports, and for the project design and preparation of plans and specifications have been fully paid, except as listed below. The undersigned further certifies that there are no other disputed or undisputed claims for such services.

FIRM _____
SERVICE_____
FEE _____
BALANCE _____

FIRM _____
SERVICE_____
FEE _____
BALANCE _____

FIRM _____
SERVICE_____
FEE _____
BALANCE _____

FIRM _____
SERVICE_____
FEE _____
BALANCE _____

Date _____ _____
MORTGAGOR

Attested By: _____ _____
Title

WARNING: Title 18 U.S.C. 1001, provides in part that whoever knowingly and willfully makes or uses a document containing any false, fictitious, or fraudulent statement or entry, in any matter in the jurisdiction of any department or agency of the United States, shall be fined not more than $10,000 or imprisoned for not more than 5 years or both.

Specimen – Third Party Obligee Certification

12D

(Hub Director)

_____
_____
_____

Dear:

The undersigned hereby certifies that under an agreement dated _____ between the undersigned and _____ a discount or other financing charge of $ _____ in addition to the initial service charge will be paid by _____. The undersigned does not now have and will not later assert, any claim against the mortgagor, mortgaged property, mortgage proceeds, any reserve or deposit made with the undersigned or another required by HUD in connection with the mortgage transaction, or against the rents or other income from the mortgaged property for payment of any part of such discount.

Date _____ _____
Mortgagee

Attest_____ By_____

_____
Title

The undersigned does not now have and will not later assert, any claim against the mortgagor, mortgaged property, mortgage proceeds, any reserve or deposit made with the undersigned or another required by HUD in connection with the mortgage transaction, or against the rents or other income from the mortgaged property for payment of any part of such discount.

Signed _____

Attest _____ Date _____

Initial Endorsement Document Review – Architectural and Cost 12E

PROJECT NAME: _____

PROJECT NUMBER: _____

Answer each question. Check "N/A" only where the document/question is not applicable to the project.

PART I, ARCHITECTURAL ANALYST REVIEW

	Yes	No	N/A
1. Request for Permission to commence Construction Prior to Initial Endorsement for Mortgage Insurance, Form FHA-2415, was executed.	__	__	__
If, yes			
a. Construction started and has been continuous.	__	__	__
If yes, construction started _____			
If no, comment: _____			
b. Additive or deductive change orders are in process or known to be proposed.	__	__	__
If yes, comment: _____			
c. No known problems, e.g.: nonpayment for work or material; liens; latent conditions; errors in the survey, drawings or specifications; wet site, strike, materials shortage, or other conditions delaying continued work; municipal stop order, other sanctions or requirements for additional work; contractor or subcontractor disputes, etc.	__	__	__
If yes, comment: _____			
d. Comments: _____			
2. Building Permits are for the proposed improvements, acceptable, unconditional, and current.	__	__	__
If no, comment: _____			
	Yes	No	N/A

3. Jurisdictional authority has given its stamp or permit, where applicable, for: storm water disposal, private water supply and sewage treatment/disposal facilities. __ __ __

   If no, comment: _____

   _____

4. Assurance of Utilities __ __ __

   a. Water service letter is unconditional and reasonable in its currency.

      If no, comment: _____

      _____

   b. Sanitary sewer service letter is unconditional and is reasonable in its currency. __ __ __

      If no, comment: _____

      _____

   c. Electric service letter is unconditional and is reasonable in its currency. __ __ __

      If no, comment: _____

      _____

   d. Gas service letter is unconditional and is reasonable in its currency. __ __ __

      If no, comment: _____

      _____

   e. District heat letter is unconditional and is reasonable in its currency. __ __ __

      If no, comment: _____

      _____

   f. Telephone service letter is unconditional and is reasonable in its currency. __ __ __

      If no, comment: _____

      _____

   g. Cable TV letter is unconditional and is reasonable in its currency. __ __ __

      If no, comment: _____

      _____

5. Survey, Surveyor's Certificate and Title Policy.

   a. The title policy/endorsement matches the legal description on the survey. __ __ __

      If no, comment: _____

      _____

   b. Easements, encroachments and other title policy/endorsement Schedule B identified exceptions are consistent with and between the plat for recordation/survey, surveyor's certificate, site plan and other drawings. __ __ __

Yes **No** **N/A**

If no, comment: _____

_____

c. Easements across other sites for project driveways, drainage outfalls, etc., are acceptably reflected in plats for recordation, and covered by maintenance agreements where used jointly with others. __ __ __

If yes, identify: _____

_____

If no, comment: _____

_____

d. The Surveyor's Certificate is dated and is acceptable. __ __ __

If no, comment: _____

_____

e. The last Survey revision date is _____ and the survey is acceptable. __ __ __

If no, comment: _____

_____

f. Air rights map applies. __ __ __

If yes:

1) It provides vertical ways to grade for vertical transportation, emergency exits, utilities, trash chutes, etc.

If no, comment:_____

_____

2) It provides necessary easements for exterior and interior ingress and egress, emergency exit discharge, services, maintenance, etc. __ __ __

If no, comment: _____

_____

3) Maintenance agreements cover all facilities jointly used with others. __ __ __

If yes, identify: _____

_____

If no, comment: _____

_____

6. Construction Documents.

a. The drawings and specifications, including drawing dates and revision dates, conform with those accepted for firm commitment. __ __ __

If no:

1) Revisions are minor, dictated by issues arising after firm, and don't affect construction costs or project value. __ __ __

Yes **No** **N/A**

Yes **No** **N/A**

If no, comment: _____

_____

2) Revised sheets and pages have been inserted in the drawings and specifications and are acceptable. __ __ __

If no, comment: _____

_____

3) Addenda and attachments required for changes from the firm commitment drawings and specifications are included in the project manual. __ __ __

If yes, they are numbered _____

and dated _____

If no, comment: _____

_____

4) Reprocessing is required, due to changes from the drawings and specifications upon which the commitment was issued. __ __ __

If yes, comment: _____

_____

5) Comments: _____

_____

_____

_____

b. The Master Set and Sets 2 and 3 are signed and initialed per Handbook 4460.1 REV-1. __ __ __

If no, comment: _____

_____

c. The correct wage decision is incorporated in the project manual. __ __ __

If no, the following are required: _____

_____

d. The wage rate is a special determination. __ __ __

If yes, expiration date is: _____

7. Construction Contract

a. Drawing sheets, specification pages, and if applicable, addenda numbers and pages, are properly identified. __ __ __

If no, the corrected list/index is attached.

b. The design architect(s) and supervisory architect are correctly listed. __ __ __

If no, comment: _____

_____

Yes **No** **N/A**

c. The amendment to the construction contract for Identities of Interest Between the Contractor, Owner and Architect is attached. __ __ __

If no, comment: _____

_____

d. The amendment to the construction contract for Payment for Components Stored Offsite, if applicable, is attached. __ __ __

If no, comment: _____

_____

8. Offsite work is involved. __ __ __

If yes:

a. The municipal jurisdiction's installation assurance letter is unconditional and reasonable in its currency. __ __ __

If no, comment: _____

_____

If N/A, completion assurance is required for the following:

_____

_____

b. Construction contract(s) is/are acceptable. __ __ __

If yes, identify the contract(s) and work:

_____

_____

If no, comment: _____

_____

c. Drawings and specifications are:

1) Included in the construction documents for on-site work and are acceptably segregated by contract limit lines and divisions of the specifications. __ __ __

If no, comment: _____

_____

2) Included in separate drawings and specifications from on-site work. __ __ __

If yes, identify: _____

_____

_____

3) Comment: _____

_____

_____

Yes **No** **N/A**

9. Owner/Architect Agreement(s)

a. The prime architect(s) is/are:

DESIGN _____

_____

_____

SUP _____

_____

_____

b. There is an agreement, B-181, for each prime architect. __ __ __

If no, comment: _____

_____

c. The HUD amendment to the B-181 is referenced in Article 10 of, and attached to each Owner/Architect Agreement. __ __ __

If no, comment: _____

_____

d. Each B-181 identifies the specific services to be performed by the applicable prime architect. __ __ __

If no, comment: _____

_____

e. Article 10 is acceptable for each B-181, and all referenced appendices, addenda, etc., are attached. __ __ __

If no, comment: _____

_____

f. Addendum to Owner-Arch Agreement and/or Construction Contract show(s) an identity of interest for Supervisory Arch. __ __ __

If yes, comment: _____

_____

g. Comment: _____

_____

10. Special Conditions of the Commitment, numbered _____, are considered in this review. Required documents have been submitted and found acceptable for them all.

a. Special Conditions numbered _____ have not been satisfied.

Comment: _____

_____

Yes **No** **N/A**

b. The following documents must be submitted:

_____

_____

11. The list(s) of major movable equipment is/are acceptable, where applicable to Sect 221d SRO, 2311 232, and 242 projects. __ __ __

    If no, comment: _____

    _____

12. Comment: _____

    _____

    _____

PART II, COST ANALYST REVIEW

13. Two copies of the property insurance requirements are attached and acceptable. __ __ __

    If no, comment: _____

    _____

14. Agreement and Certification.

    a. The amounts shown on the Agreement and Certification are correct. __ __ __

    If no, the following are the correct amounts:

    _____

    _____

    b. The contract, including dollar amounts for general overhead and profit has been approved for each identity of interest subcontractor listed in the Certification and Agreement and the Amendment to the Construction Contract. __ __ __

    If no, comment: _____

    _____

15. Construction Contract.

    a. A signed approved cost breakdown, Form HUD-2328, is attached as Exhibit A to the Construction Contract. __ __ __

    If no, comment: _____

    _____

    b. The Inventory and Cost Breakdown for Stored Components, if applicable, is acceptable and attached to Form HUD-2328, Exhibit A to the Construction Contract. __ __ __

    If no, comment: _____

    _____

	Yes	No	N/A
c. The construction contract price is correct.	__	__	__

If no, the correct amount is _____

d. The contract completion date is correct, and if an early start, reflects Form FHA-2415 modification requirements. __ __ __

If no, the completion date should be _____

e. The contract addendum lists identities of interest indicating the need for pre-approval of subcontractor contracts for general overhead and profit. __ __ __

If yes, comment: _____

_____

16. Progress Schedule agrees with the Contract time and is acceptable. __ __ __

If no, comment: _____

_____

17. Assurance of completion for offsite work not done by municipality is required. __ __ __

If yes, for the following contracts and costs.

_____ $_____

_____ $_____

_____ $_____

18. The Mortgagor's and Architect's Certificate(s) is/are consistent with the B-181(s) for prime architects, and Other A&E Fees are reasonable. __ __ __

If no, comment: _____

_____

19. Special Conditions of the Commitment numbered_____, are considered in this review. Required documents have been submitted and found acceptable for them all. __ __ __

If no:

a. Special Conditions numbered _____have not been satisfied.
Comment: _____

_____

b. The following documents must be submitted;

_____

_____

20. Major Movable Equipment is involved (applicable only to 221d SRO, 231, 232 & 242 projects) __ __ __

If yes:

a. The instrument evidencing acquisition of equipment is acceptable. __ __ __

Yes **No** **N/A**

If no, comment: _____

_____

b. Listed chattel and values are acceptable for the Financial Statement and Security Agreement (UCC) __ __ __

If no, comment: _____

_____

c. Listed chattel and values are acceptable for the Chattel Mortgage. __ __ __

If no, comment: _____

_____

21. Comments:

_____

_____

_____

_____

_____	_____
ARCHITECTURAL ANALYST	DATE
_____	_____
COST ANALYST	DATE
_____	_____
CHIEF ARCHITECTURE AND COST	DATE

Initial Endorsement Document Review – Mortgage Credit 12F

PROJECT NAME: _____

PROJECT NUMBER: _____

Answer each question. Check "N/A" only where the document/question is not applicable to the project.

	Yes	No	N/A
1. Request for Permission to Commence construction prior to Initial Endorsement for Mortgage Insurance, Form FHA-2415, was executed.	__	__	__
If yes:			
a. Release of liens by the contractor and subcontractors are acceptable.	__	__	__
If no, comment: _____			
b. The commitment date for the start of principal payment has been modified to reflect the early start of construction.	__	__	__
If no, comment: _____			
c. Provisions have been made to escrow funds for additive change orders approved during the early start of construction but not yet completed and/or paid.	__	__	__
If no, comment: _____			
d. Mortgagor/Contractor Agreement to recognize interest costs relating to early start submitted.	__	__	__
If no, comment: _____			
2. The request for an initial advance is acceptable and funds requested under the construction contract, including any for work under an early start, are supported by a Contractor's Requisition, Form HUD-92448.	__	__	__
If no, comment: _____			
3. 2530 Clearances.			
a. The mortgagor entity has been cleared pursuant to Form FHA-2530 procedures.	__	__	__
If no, comment and steps taken: _____			

b. Individuals or entities shown in the corporate charter, partnership agreement or incumbency certificate have been cleared pursuant to Form FHA-2530 procedures. __ __ __

If no:

The following need clearance:

_____

_____

Actions taken:

_____

_____

c. Individuals or entities shown on the contractor's certification have been approved pursuant to Form FHA-2530 procedures. __ __ __

If no:

The following need clearance:

_____

_____

d. All architects and attorneys who have an identity of interest have been cleared pursuant to Form FHA 2530 procedures. __ __ __

If no:

The following need clearance:

_____

_____

e. All identified packagers, consultants, project managers and management agents have been cleared pursuant to 2530 procedures. __ __ __

If no:

The following need clearance:

_____

_____

4.Partnership Agreement:

a. Credit check, financial review and 2530 clearance are acceptable for each principal partner. __ __ __

Yes **No** **N/A**

If no, comment: _____

_____

b. Rights and duties of each partner are acceptable. __ __ __

If no, comment: _____

_____

c. Capital investment made/maintained for each partner is acceptable. __ __ __

If no, comment: _____

_____

d. Partnership term equals or exceeds mortgage term. __ __ __

If no, partnership term must be: _____

e. Mortgagor is a single asset mortgagor. __ __ __

If no, comment: _____

_____

f. Partnership Agreement is consistent with the Regulatory Agreement. __ __ __

If no, comment: _____

_____

g. The partnership agreement improperly provides for the mortgagor to indemnify partners and officers against lawsuits. __ __ __

If yes, comment: _____

_____

h. Comments:

_____

_____

_____

5. Corporate Mortgagor.

a. Credit check, financial review and 2530 clearance are acceptable for each principal investor. __ __ __

If no, comment: _____

_____

b. Mortgagor is a single asset mortgagor. __ __ __

If no, comment: _____

_____

c. The articles of incorporation and bylaws are consistent with the Regulatory Agreement and other documents. __ __ __

If no, comment: _____

_____

Yes **No** **N/A**

d. The articles of incorporation and/or by-laws improperly provide for the mortgagor to indemnify board members against suits. __ __ __

If yes, comment: _____

_____

6. The Agreement and certification is acceptable. __ __ __

If no, comment: _____

_____

7. The amount shown in the Regulatory Agreement for the Reserve Fund for Replacements is correct. __ __ __

If no, the correct amount is _____

8. Construction Contract.

a. The time for construction is correct. __ __ __

If no, comment: _____

_____

b. The amount shown for liquidated damages is correct. __ __ __

If no, the correct amount is _____

c. The contract price agrees with the 2328. __ __ __

If no, the correct amount is _____

d. The cash upset amount is correct. __ __ __

If no, the correct amount is _____

e. The Construction Contract Incentive Payment in Article 3 is acceptable in language, amount and computation. __ __ __

If no, comment: _____

_____

f. The Note amount is approved, if payment is by other than cash. __ __ __

If no, the correct amount is _____

g. Assurance of completion amount shown in Article 6 is correct. __ __ __

If no, the correct amount is _____

h. The Cost Breakdown (Form HUD-2328) has been confirmed correct by Arch/Cost. __ __ __

If no, comment: _____

_____

i. The filing period for monthly advances is acceptable. __ __ __

If no, comment: _____

_____

Yes **No** **N/A**

j. The Amendment to the construction contract for identities of interest is attached and acceptable. __ __ __

If no, comment: _____

_____

9. Advances for Components Stored Offsite are involved. __ __ __

If yes:

a. Corporate surety bonds are 100 percent each for performance and payment and are acceptable. __ __ __

If no, comment: _____

_____

b. The Inventory and Cost Breakdown for Stored Components is attached to Form HUD-2328, Exhibit A to the Construction contract. __ __ __

If no, comment: _____

_____

c. The construction contract includes the addendum for offsite storage. __ __ __

If no, comment: _____

_____

10. Assurance of Completion for on-site work.

a. The performance and payment bond(s) are for100 percent each. __ __ __

If no, comment: _____

_____

b. The bonding company, _____

_____,

is acceptable to write a policy in the stated amount.

If no, maximum policy amount is _____

c. Completion Assurance Agreement is correct. __ __ __

If no, the correct amount is _____

d. Personal Undertaking, Form FHA-2459, is acceptable and in the correct amount. __ __ __

If no, comment: _____

_____

e. Comment: _____

_____

_____

_____

11. The Assurance of Completion for offsite work is acceptable. __ __ __

Yes **No** **N/A**

If yes, in form of:

_____

_____

If no, comment: _____

_____

12. Owner-Architect Agreement fees and FormHUD-92403-1 agree for each design architect. __ __ __

    If no, comment: _____

    _____

13. The Certificate of Architectural/Engineering Fees agrees with prime architect contract fees and other A&E fee claims. __ __ __

    If no, comment: _____

    _____

14. Mortgage Note or Rider.

    a. The interest rate is the same as shown on the commitment. __ __ __

       If no, the correct rate is _____

    b. The Mortgage amount is correct. __ __ __

       If no, the correct amount is _____

    c. The P&I is correct. __ __ __

       If no, the correct amount is _____

    d. The Commencement of Amortization date is correct. __ __ __

       If no, the correct date is _____

    e. The ending date for amortization is correct. __ __ __

       If no, the correct date is _____

    f. The Special Provisions are consistent with other reviewed documents and financing criteria. __ __ __

       If no, comment: _____

       _____

    g. Comments:

       _____

       _____

15. Mortgage or Mortgage Modification Agreement.

    a. The interest rate is the same as shown on the commitment. __ __ __

       If no, the correct rate is _____

    b. The Mortgage amount is correct. __ __ __

       If no, the correct amount is _____

	Yes	No	N/A
c. The P&I is correct.	__	__	__

If no, the correct amount is _____

d. The Commencement of Amortization date is correct. __ __ __

If no, the correct date is _____

e. The ending date for amortization is correct. __ __ __

If no, the correct date is _____

f. The Special Provisions are consistent with other reviewed documents and program financing criteria. __ __ __

If no, comment:

g. Comments:

_____

_____

_____

16. Title Policy or Endorsement.

a. Policy amount is _____ which equals or exceeds the mortgage. __ __ __

If no, comment: _____

_____

b. The title company, _____ is acceptable for a policy in that amount. __ __ __

If no, comment: _____

_____

17. The Building Loan Agreement is acceptable. __ __ __

If no, the following changes are required:

_____

_____

18. The Mortgagee's Certificate is acceptable as to fees, discounts, notes, and other terms, and agrees with firm commitment processing. __ __ __

If no, the following changes are required:

_____

_____

19. The Sponsor's Certification, Form FHA-3437, for231 NP or 232 NP proposals is acceptable __ __ __

If no, comment: _____

_____

	Yes	No	N/A
20. The Guaranty Agreement, for 12-Month Debt Service Escrow for B&C Independent Living Units is acceptable.	__	__	__

If no, comment: _____

_____

21. The Financial Requirements For Closing, Form FHA 2283, is attached. __ __ __

If no, comment: _____

_____

22. Special Conditions of the Commitment numbered_____ are considered in this review. Required documents have been submitted and found acceptable for them all. __ __ __

If no:

a. Special Conditions numbered _____have not been satisfied.

b. The following documents must be submitted:

_____

_____

c. The following actions have been taken:

_____

_____

23. Mortgagor's Sinking Fund Agreement for Section232 projects, where medicaid reimbursement based on depreciation plus interest is acceptable. __ __ __

If no, comment: _____

_____

24. Major/Minor Movable Equipment is involved (applicable only to Section 221d SRO, 231, 232and 242 projects). __ __ __

If yes:

a. Provisions for mortgagor to finance major and minor movable equipment are acceptable. __ __ __

If no, comment: _____

_____

b. The instrument evidencing acquisition of major equipment is acceptable. __ __ __

If no, comment: _____

_____

c. The Financial Statement and Security Agreement (UCC) are acceptable. __ __ __

If no, comment: _____

_____

	Yes	No	N/A
d. The Chattel Mortgage is acceptable.	__	__	__

If no, comment: _____

_____

25. Evidence that the mortgagor is able to finance its required minimum financial investment is acceptable. __ __ __

    If no, comment: _____

    _____

    _____

    Mortgage Credit Examiner

    _____

    Date

    Note: The Hub Director is responsible for securing corrected initial draw documents directly from the mortgagee.

Initial Endorsement Document Review – Valuation 12G

PROJECT NAME: _____

PROJECT NUMBER: _____

Answer each question. Check "N/A" only where the document/question is not applicable to the project.

	Yes	No	N/A
1. Environmental assessment has been approved, copy attached, and all exceptions cleared. If no, comment: _____	__	__	__
2. Survey and Surveyor's Certificate.	__	__	__
a. The property surveyed is the same as that which was appraised. If no, comment: _____			
b. A difference in site area affects net value. If yes, comment: _____	__	__	__
c. Review of the Survey and Surveyor's Certificate reveals encroachments not previously considered If yes, comment: _____	__	__	__
d. Encroachments are acceptable and do not affect value and marketability. If no, comment: _____	__	__	__
The following encroachments must be removed prior to closing: _____			
f. Flood hazard elevations shown on the survey are consistent with environmental assessment clearance assumptions. If no, comment: _____	__	__	__
g. Reprocessing is required because of Survey or Surveyor's Certificate identified issues. If yes, comment: _____	__	__	__
	Yes	No	N/A

3. Maintenance agreements have been considered in project operating expense. __ __ __
   a. If no, processing is required.
   b. Comment:

   _____

   _____

4. Zoning Compliance is unconditional and is reasonable in its currency. __ __ __
   If no, comment: _____

   _____

5. The lease and is acceptable (leasehold projects only). __ __ __
   If no, the following changes must be made:

   _____

   _____

6. Special Conditions of the Commitment, numbered _____, are considered in this review. Required documents have been submitted and found Acceptable for them all. __ __ __
   If no:
   a. Special Conditions numbered _____have not been satisfied.
      Comment: _____

      _____

   b. The following documents must be submitted:

      _____

      _____

7. Owner's certification listing all federal/state/local government insurance, loan, grant or subsidy programs in which the project/owner will participate and any grants or below-market loans to be received from non-governmental sources is on file (required for all projects). __ __ __
   a. If no, comment:

      _____

      _____

   b. If yes, certification is consistent with valuation processing and deed covenant restrictions. __ __ __
      If no, comment: _____

      _____

8. Owner's Sources and Uses of Funds Statement is on file listing: all funds available; all purposes for which funds will be disbursed; and dates any investor contributions are due. __ __ __

Yes **No** **N/A**

If no, comment: _____

_____

9. Deed covenants or other closing documents include low-income occupancy and/or rent restrictions. __ __ __

   a. If yes:

      The basis is: tax credits or tax-exempt bonds (Section 142 d) or tax-exempt bonds (State or local) or local rent restrictions (identify which).

      Comment: _____

      _____

      The deed covenant, and/or other closing document, low-income occupancy and/or rent restrictions are consistent with the IRS tax credit allocation certification, IRS tax-exempt ruling, etc., as applicable, and the assumptions used in valuation processing.

   b. If local rent restrictions, then project assistance is provided in the form of: tax exempt bands or CDGB or land write down. __ __ __

      If yes, identify which:

      _____

      _____

      If no, comment: _____

      _____

      Certification for providing the assistance is included and consistent with the restrictions. __ __ __

      If yes, identify form of assistance certification:

      _____

      _____

      If no, comment: _____

      _____

   c. More than 40 percent of units are subject to low- income occupancy and/or rent restrictions under tax exempt bond or tax credit financing provisions. __ __ __

      If yes, project is assisted by project based Section 8 subsidy or comparable long-term state/local subsidy.

      The basis is: tax credits or tax-exempt bonds (Section 142 d) or tax-exempt bonds (State or local) or local rent restrictions (identify which).

      Comment: _____

      _____

Yes **No** **N/A**

The deed covenant, and/or other closing document, low-income occupancy and/or rent restrictions are consistent with the IRS tax credit allocation certification, IRS tax-exempt ruling, etc., as applicable, and the assumptions used in valuation processing. __ __ __

If no, comment: _____

_____

b. If local rent restrictions, then project assistance is provided in the form of: tax exempt bands or CDGB or land write down. __ __ __

If yes, identify which:

_____

_____

If no, comment: _____

_____

Certification for providing the assistance is included and consistent with the restrictions. __ __ __

If yes, identify form of assistance certification:

_____

_____

If no, comment: _____

_____

c. More than 40 percent of units are subject to low- income occupancy and/or rent restrictions under tax-exempt bond or tax credit financing provisions. __ __ __

If yes, project is assisted by project based Section 8 subsidy or comparable long-term state/local subsidy, or Headquarters approval letter is on file. __ __ __

If yes, identify which:

_____

_____

If no, comment: _____

_____

10. Title Policy/Endorsement Schedule B Items and/or other identified title exceptions have been considered in project value and marketability or have no effect on them. __ __ __

If no:

Yes **No** **N/A**

a. Reprocessing is required, if the following items/exceptions are not removed:

_____

_____

Comment: _____

_____

b. The following items/exceptions must be removed under any circumstances:

_____

_____

Comment: _____

11. Comments:

_____

_____

_____

_____

_____	_____
APPRAISER	CHIEF APPRAISER
_____	_____
Date	Date

Initial Endorsement Document Review – Housing Programs 12H

PROJECT NAME: _____

PROJECTNUMBER: _____

Answer each question. Check N/A only where the document/question is not applicable to the project.

	Yes	No	N/A
1. The commitment issuance and expiration dates are_____ and _____ respectively.			
a. The commitment has been extended If yes, the new expiration date is: _____	__	__	__
b. The commitment has been reopened If yes, the new expiration date is: _____	__	__	__
c. The commitment has been amended. If yes, the amendment dates are: _____	__	__	__
2. The Commitment has been assigned. If yes:	__	__	__
a. The new mortgagee is an approved mortgagee and the assignment is acceptable. If no, comment: _____ _____	__	__	__
b. Current mortgagee: _____ Mortgagee number: _____			
c. Previous mortgagee: _____ Mortgagee number: _____			
3. Special conditions of the Firm Commitment are No. _____ thru _____ inclusively.			
a. Architectural, Cost, Valuation, and Mortgage Credit reviews address Nos. _____, _____, _____ and _____ respectively.			
b. This review considers special conditions Nos. _____. Documents have been submitted and found acceptable for them all. If no:	__	__	__

Yes	No	N/A

c. Special conditions numbered _____have not been satisfied.

Comment: _____

_____

d. The following documents must be submitted:

_____

_____

e. The following actions have been taken:

_____

_____

4. Request For Permission to Commence Construction Prior to Initial Endorsement for Mortgage Insurance, Form FHA 2415, was executed.

If yes: __ __ __

a. Copies were furnished to Arch and MC, and construction started.

If no, comment:

_____

_____

b. All known issues arising from the early start have been reconciled. __ __ __

If no, comment: _____

_____

5. EO 12372 Clearance, if applicable, has been received.

6. Chronology of Mortgage Transactions, Form FHA 260, is attached. __ __ __

If no, comment: _____

_____

7. Checks in the amount of $ _____ for_____, and $ _____ for _____ _____ must be collected at closing.

8. Owner's certification listing all Federal/State/local government insurance, loan, grant or subsidy programs in which the project/owner will participate and any grants or below market loans to be received from non-government sources is signed and on file (required for all projects). __ __ __

If no, comment: _____

_____

9. The following documents, if applicable, have been signed and returned by the PHA/Owner:

	Yes	No	N/A
a. Annual Contributions Contract (ACC).	__	__	__

If no, comment: _____

_____

b. Agreement to Enter into a Housing Assistance Payment Contract (AHAP). __ __ __

If no, comment: _____

_____

c. Housing Assistance Payment Contract (HAP). __ __ __

If no, comment: _____

_____

d. Low-Income Housing Credit Allocation

Certification, IRS Form 8609, HQ review, Exhibits 1-7, and owner's statement agreeing to notify HUD of any changes. __ __ __

If no, comment: _____

_____

e. Owner's Certification That Project Will Not Participate in the Low Income Housing Tax Credit (LIHTC) Program. __ __ __

If no, comment: _____

_____

f. IRS tax exemption ruling. __ __ __

If no, comment: _____

_____

g. Other.

_____

_____

_____

10. COMMENTS:

_____

_____

_____

PROGRAM REVIEWER _____

SUPERVISOR _____

DATE _____

Secondary Financing Rider 12I

THIS RIDER is attached to and made a part of the foregoing note(s) (herein, the "Junior Note") and mortgage(s) or deed(s) of trust (herein, the "Junior Mortgage") between _____, referred to herein as the "Mortgagor," and _____, referred to herein as the "Junior Lender" (Collectively, the "Junior Loan Documents"). The terms and conditions of the Rider supersede the terms of the Junior Loan Documents, and, should there be any conflict or inconsistency between this Rider and the Junior Loan Documents, the terms and conditions of this Rider shall prevail. By acceptance of delivery and recordation of the Junior Loan Documents, the Junior Lender agrees to the following provisions. By execution of the Junior Loan Documents, the Mortgagor agrees to the following provisions:

1. The Junior Loan Documents are specifically subordinate to that certain note and mortgage/deed of trust between the Mortgagor and _____ (herein, the "Senior Mortgagee") dated _____ and recorded _____ in the real property records of _____ County, _____.

2. The Junior Note may not mature, and may not bear a maturity date, prior to the date on which the Senior Mortgage matures. The term of the Junior Mortgage may be extended if the Junior Note matures, there are no surplus cash funds available for repayment and the Senior Mortgage has not been retired in full or HUD grants a deferment of amortization or forbearance that results in an extended maturity of the Senior mortgage.

3. The Junior Mortgage may be assumed when a sale or transfer of the physical assets occurs under the following conditions:

   a. Not more than 70 percent of the net proceeds of the sale or transfer is applied to the reduction of the loan.

   b. For these instructions, net proceeds are the funds available to the original mortgagor after:

      i. Correcting any monetary or covenant default on the first mortgage, and

      ii. Making required contributions to any reserve funds and needed improvements to the property as evidenced by HUD's annual inspection reports.

4. If HUD approves a sale of the project pursuant to HUD guidelines for transfers of physical assets, then Junior Mortgagee will agree to such transfer of the ownership of the project.

5. The Junior Note and Junior Mortgage automatically terminate if HUD acquires title to the project by a deed in lieu of foreclosure.

6. All work performed with the proceeds of the Junior Mortgage must be cost certified and must confirm will Davis-Bacon requirements.

7. The Junior Mortgage is subject to and subordinate to the Senior Mortgage, the HUD Regulatory Agreement between HUD and the Mortgagor and the Building Loan Agreement between the Mortgagor and the Senior Mortgagee.

8. Proceeds of the Junior Loan may only be used to cover allowable project costs or an anticipated operating shortfall.

9. Payment Only From Surplus Cash. Check the appropriate alternative below:

   a. _____ [For junior loans secured by a lien against the project] As long as the Secretary of Housing and Urban Development, or his/her successors or assigns, is the insurer or holder of the Senior Mortgage, any payments due from project income under the Junior Loan Documents, or any prepayments made, shall be payable only form surplus cash of the project, as that term is defined in the Regulatory Agreement dated _____, 20 __, between the Secretary and the Mortgagor, and subject to the availability of such surplus cash in accordance with the provision of said Regulatory Agreement. The restriction on payment imposed by this paragraph shall not excuse any default caused by the failure of the maker to pay the indebtedness evidence by the Junior Note.

   b. _____ [For junior loans NOT secured by a lien against the project] As long as the Secretary of Housing and Urban Development, or his/her successors or assigns, is the insurer or holder of the Senior Mortgage, any payment due from project income under the Junior Loan Documents, or any prepayments made, shall be payable only from surplus cash of the project, as that term is defined in the Regulatory Agreement dated _____, 20 __, between the Secretary and Mortgagor, and subject to the availability of such surplus cash in accordance with the provisions of said Regulatory Agreement. The restrictions on payment imposed by this paragraph shall not excuse any default caused by the failure of the maker to pay the indebtedness evidenced by the Junior Note. Junior Lender has no claim and will not later assert any claim for payment against the mortgaged property, the mortgage proceeds, any reserve or deposit made with the Senior Mortgagee or another required by the Secretary in connection with the mortgage transaction, or against the rents or other income from the mortgaged property. The Mortgagor cannot issue a surplus cash not to the principals as evidence of an obligation for payment of the Junior Loan.

10. Mortgagor has obtained the prior written consent of the Senior Mortgagee to the existence of the Junior Loan.

11. To the extent that the Junior Note provides for payment of principal and interest, such principal and interest shall be due and payable on the maturity date of the Senior Mortgage, provided that if the Senior Mortgage is prepaid in full, the holder of the Junior Note, at its option and without notice, may declare the whole principal sum or any balance thereof, together with interest thereon, immediately due and payable. Interest due pursuant to the terms of the Junior Note that is not paid in accordance therewith shall not create any default in the terms of the Junior Note, but shall accrue and be payable in full at the date of maturity of the Senior Mortgage.

12. The Junior Note is non-negotiable and may not be sold, transferred, assigned, or pledged by the Junior Mortgagee except with the prior written approval of HUD.

13. The Junior Mortgagee certifies that the Junior Loan Documents represent a *bona fide* transaction and that it fully understands all of HUD's requirements for such secondary financing, and that not prepayment of principal or interest shall be accepted without evidence that the Federal Housing Commissioner has authorized such prepayment. If an unauthorized prepayment is accepted, the funds shall be held by the Junior Mortgagee in trust for the project.

Appendix 13

Construction Period

Table of Contents

Appendix	Title
13A	Instructions for Approval of Initial / Interim Advances
13B	Contractor's Monthly Requisition and Related Matters
13C	Amendment to the Construction Contract for Payment for Components Stored Offsite
13D	Problems Before Final Closing

Instructions for Approval of Initial / Interim Advances 13A

A. Approving Initial/Interim Advances

1. Before advancing any insured mortgage proceeds, disburse other available funding sources in the following order:

   a. All funds from the cash escrow established by the mortgagor for onsite construction, fees, carrying charges, and financing (front money escrow).

   b. Grant/loan proceeds furnished by a national, regional, or local community service organization or a private source.

   c. Grant/loan proceeds furnished by a government agency or instrumentality unless a prorata disbursement arrangement has been previously approved by the Hub Director.

2. The amount approved for a requested item cannot exceed the amount claimed by the mortgagor.

3. The Lender states on Form HUD-92403 the cumulative total of all advances made to the mortgagor, including the advance under consideration. Reconcile any discrepancies before recommending approval of the advance.

4. Lender-approved disbursement amounts shall not exceed the sum of the amounts approved:

   a. For mortgage insurance;

   b. For funding from the mortgagor's cash escrow; and

   c. For funding from available grant/loan proceeds.

B. Architect's Fees

1. The Architect's cash fee is in the Standard Form of Agreement Between Owner and Architect for Housing Services, AIA Document B181.

2. If there is one agreement for both design and supervisory services, a specific dollar amount must be indicated for each service.

3. There may be separate agreements for design and for supervisory services.

4. The Architect's design cash fee may be released with the initial advance.

5. Design services provided by others as detailed in the B181 must be supported by contracts approved by HUD during commitment processing before any funds may be advanced.

6. The Mortgagor's and Architect's Certificate, Form HUD-92403.01, must accompany any request or partial request for advance of the design fee.

7. The Architect's supervisory cash fee is advanced based on a percentage of completion method. The maximum amount that may be approved is computed by multiplying the Architect's supervisory cash fee by the percentage of work completed and approved on Form HUD-92448, then deducting the total of installments previously paid.

8. There is no "holdback" applied to the disbursements approved from the Architect's Cash Fee.

C. For Insurance of Advances, the Carrying Charges, Financing, Legal, and Audit Expense must not exceed their allocations in the Building Loan Agreement. Approve items due or already paid by the mortgagor which are supported by bills or paid receipts. Do not approve costs for interest, taxes and insurance incurred during early start period.

Note: At cost certification, certify to the actual cost without regard to release limitations imposed by the Building Loan Agreement during the Construction period.

1. Interest is to be advanced only when and as earned. The Lender must specify on Form HUD-92403, the period(s) for which interest is requested and the amount for each period.

   a. At initial closing, verify as to whether a 360 or 365-day (or 366, if leap year) factor is to be used in calculating interest. Check each interest request for accuracy based on the factor indicated, and the annual interest rate approved at initial endorsement.

   b. The Lender is prohibited from drawing down interest and refunding a portion of the money to the mortgagor. Such practice constitutes a kickback and is not acceptable to HUD and will be treated as a direct mortgage reduction.

2. Taxes. In approving amounts for this line item:

   a. Do not allow amounts which accrued before initial endorsement.

   b. Approve invoices which are payable during construction, even if a portion of the billing period will be after an allowable cutoff date. Necessary adjustments will be made at the time of cost certification.

3. Insurance. Allow amounts for fire, windstorm, extended coverage, liability, and other risk insurance customarily insured against in the community.

   a. Do not allow amounts which accrued before initial endorsement.

   b. Do not approve invoices/receipts for workmen's compensation and/or public liability insurance which are included in the cost estimate.

4. Mortgage Insurance Premium may not exceed the amount due for 1 year.

5. Initial service charge and permanent lender fees are limited to:

   a. The actual amount paid or the amount stipulated in the Mortgagee's Certificate, Form HUD-2434, whichever is less.

   b. The initial service fee cannot exceed 2 percent.

   c. The combined amount may not exceed 3.5 percent of the mortgage.

      Note: If the 3.5 percent included in processing exceeds the financing fee charges by the mortgagee, identify the excess as restricted funds.

6. Legal fees may be allowed for:

   a. Counsel to create the mortgagor entity; however, do not allow the cost of legal services to create tax shelters, trusts, etc.

   b. Costs associated with counsel's review of initial and final closing documents.

   c. Normal interim activities in creating a project.

   d. Documented costs for items in paragraphs 6.a, b, and c above which are due and payable before or at final closing may be approved in the initial advance, provided the limitation in paragraph 6.e below is not exceeded.

   e. Seventy-five percent may be disbursed at initial closing or during construction. The remaining 25 percent may not be released before final endorsement.

      NOTE: Do not allow legal expenses connected with land acquisition, title and recording charges and/or obtaining zoning as they are reflected in the land value. Amounts included in Form HUD-92264 for legal and audit expenses are not blanket allowances, but ordinarily set an upper limit on allowable amounts. Non-typical fees must be borne by the mortgagor, unless in an exceptionally complex case, a higher fee is proven by the mortgagor to be necessary and reasonable. Detailed invoices and/or other documentation is required as to the reasonableness, purpose, necessity, and proper classification of all items in the category.

7. Organizational Fees:

   a. The amount included in the replacement cost estimate for organizational fees is an allowance to reimburse the mortgagor for costs incurred to:

      (1) Initiate a project;

      (2) Organize the mortgagor entity;

(3) Organize its planning, financing and construction, and

(4) Control and manage construction through endorsement

(5) Third Party costs (Appraiser etc.)

b. Release based upon the following:

(1) Disburse 65 percent at initial closing.

(2) Disburse 15 percent during construction based upon a percentage of completion.

(3) Disburse the remaining 20 percent at final endorsement.

Note: Lender's Third Party Costs, reflected in Organization Costs are exempted from the 65% rule. The rule only applies to the mortgagor's organizational costs.

c. This allowance may not be used to subordinate the cash requirements for closing.

d. At cost certification allow only the amount included in Section G of Form HUD-92264 for organizational fees, unless fully supporting documentation is submitted by the mortgagor which justifies the need for and reasonableness of the additional expenditure. Any costs incurred in excess of this allowance are not eligible for recognition in processing a mortgage increase or the equity computation on Form HUD-2580, Maximum Insurable Mortgage.

8. Audit fees associated with obtaining an accountant's opinion of the mortgagor's cost certification cannot be advanced until final endorsement.

9. Title and Recording. Approve amounts typically incurred for:

a. Title search and policy at the time of initial endorsement;

b. Recording fees at initial endorsement;

c. Mortgage and stamp taxes;

d. Survey recording fees;

e. Updating title policy during construction;

f. Final title policy and recording charges; and

g. Legal fees incurred with any of the above.

** Do not fully disburse these funds at initial endorsement. Ensure that sufficient funds are maintained in the account to cover title and recording costs required at final endorsement. This may require the approval of an amount less than that requested in the initial draw.

** Do not disburse funds for title and recording cost associated with acquisition of the land or property.

** Legal, organizational, title, recording costs and taxes incurred in connection with the site purchase may be added to the cost of the land in establishing the latest arms' length purchase price.

10. Developer's fee is provided in the estimated replacement cost of a Section 220, 221, and 232 project involving nonprofit mortgagors. Part or all of the fee may be used to pay for transactional costs associated with developing the project including but not limited to:

    a. Reduction of the estimated closing costs of the project;

    b. Staff salaries;

    c. Nonprofit working capital deposit;

    d. Relocation expenses;

    e. Operating deficit escrow;

    f. Financing fees over and above the 3.5 percent included in the estimated replacement cost of the project;

    g. Environment studies; and

    h. Housing Consultant services provided by either in-house staff or contractor.

11. Pre-marketing Allowance. A pre-marketing allowance computed as $1,500 per bed/unit is included in the replacement cost for Section 232 projects. This pre-marketing budget allows the mortgagor to pay rent, hire marketing staff, and buy promotional services, consultants, and supplies. To obtain release of the pre-marketing funds, the mortgagor must submit a schedule of marketing and lease-up activities prior to initial endorsement. HUD must approve the pre-marketing schedule including the start of lease-up activities.

12. Tap fees, soil testing and other fees. Approved disbursement must be fully supported and is not to exceed the amount estimated in the general contractor's or mortgagor's list of other fees for requested items. Approve disbursement only for items actually due.

13. The contingency reserve is included in the replacement cost of substantial rehabilitation projects.

    a. Use the contingency reserve for:

(1) Unforeseen costs of necessary changes approved by the HUD Office.

(2) Unanticipated soft costs associated with extension of time change orders approved by the HUD Office.

b. Changes classified as betterments by Architectural and Cost staff are ineligible for funding.

14. Third-Party Lender Expenses: Fees to be paid for third-party review costs of the Lender including but not limited to Architectural reviews, Cost reviews, appraisals, and market studies.

15. At initial endorsement, HUD fees for examination and inspection.

16. Sums allocated to acquisition cost of land or existing building.

D. Allocation of Cash Available to the Mortgagor:

1. Allocation of cash available to the mortgagor listed on line 42 of Form HUD-2283, Financial Requirements for Closing (excess mortgage proceeds) may be allocated to the following items:

a. New Construction.

(1) HUD's estimate of the "as-is" value of land or the actual latest arms' length purchase price, whichever is less. The latest arms' length purchase price may include the following costs incurred in connection with the site purchase:

(a) Legal fees associated with negotiations for acquisition of land, zoning, examination of title on the purchase or defense of title after purchase.

(b) Prepaid special assessments.

(c) Interest on bridge loans to purchase property after the date of submission of the initial application for mortgage insurance.

(d) Taxes.

(e) Cost of improvements made to the project site by the sponsor/mortgagor.

(2) Cash escrow to cover offsite construction cost.

(3) Cost of any demolition reflected in the Fair Market Value of Land. Payment is approved as demolition progresses.

(4) Construction and/or permanent loan discounts required to be paid at initial closing.

(5) Escrow to cover interest shortfall escrow, working capital deposit, initial operating deposit, nonrealty items and any permanent loan discounts not required to be paid at initial closing.

(6) Remaining balance may be used to fund any approved change orders or held until final endorsement.

b. Rehabilitation of Existing Construction.

(1) HUD's estimate of the "as-is" value by market comparison or the mortgagor's acquisition cost/existing indebtedness, whichever is less.

(2) Items a(1) through (6) above.

E. Restricted Excess Mortgage Proceeds:

1. Restricted excess mortgage proceeds are those excess mortgage proceeds determined not to be available to the mortgagor during construction, i.e., difference by which the HUD estimate exceeds contract amounts.

a. These funds cannot be used to satisfy any escrow requirements and must be held until final endorsement.

b. Identify these funds in an unused column of Form HUD-92451 as restricted funds.

F. Lender Duties for Processing Form HUD-92403. The Lender must review and approve Form HUD-92403 conducting the following major responsibilities:

1. Reconcile any discrepancies between the cumulative total for all advances, including the advance under consideration, and conclusions reached in the processing before recommending the advance for approval.

a. Enter any required adjustments in Column B and note, "No Adjustment Necessary, Except As Indicated," or "No Adjustment Necessary," as appropriate.

b. Enter the approved amount in the "Certificate of Mortgage Insurance" on the face of the form, and where the request is reduced, explain the disallowance on the form's reverse side.

2. Determine monthly that advances are proportionate to construction progress.

a. Require the Lender's underwriter to advise you where advances for "soft costs", i.e., financing and carrying charges, are in excess of work progress as shown by the most current Progress Schedule accepted by the HUD and the percentage of project completion reflected on Form HUD-92448.

b. Take action where the mortgage is not in balance due to the fault of the contractor.

3. Secure approval from HUD for any advance requesting release of any portion of the contractor's 10 percent holdback.

4. Maintain a record of approved disbursements on Form HUD-92451, Financial Record of Mortgage Loan Transaction.

G. Certificate of Mortgage Insurance: (Prepare when the advance is eligible for approval.)

1. The approved sum is the total for the Contractor's Requisition and other eligible line items.

2. The total approved for any item must not exceed the amount allocated to the item unless the Lender submits a written request to HUD for permission to reallocate funds between line items.

3. The sum approved for mortgage insurance is the amount approved for advance less any funds remaining in the front money escrow and any grant/loan proceeds.

4. For interim advances, the Lender is to prepare this Certificate and sign for HUD, to increase the amount of mortgage insurance.

5. After signing Form HUD-92403 in the space for the Authorized HUD Official, and signing Form HUD-92448 for the Director of Housing Development, the Lender sends a copy of Forms HUD-92403, HUD-92448, HUD-92451, and supporting documentation to HUD.

H. HUD Monitoring of Interim Draws. HUD mortgage credit staff will monitor interim draws. If a problem is encountered during an interim draw, HUD mortgage credit staff will bring the problem to the Hub Director's attention in order to:

1. Modify the next draw, or

2. Withdraw the Lender's authority to approve advances.

I. Disbursement of Grant/Loan Proceeds. Grant/loan proceeds may come either from a governmental source, i.e., Federal, State, or local government agency or instrumentality, or a nongovernmental source, e.g., a foundation.

1. General For Governmental/Nongovernmental Source Funds. The proceeds are used to fund a front money cash escrow (Part A of the "Total Requirements for Settlement", Form HUD-92264-A) at initial closing, whether the funding source is a governmental or nongovernmental entity. See paragraph 2 below for additional options to a cash escrow available to governmental source entities only.

   a. Disbursement priority of grant/loan proceeds in relation to mortgage proceeds and other escrows is discussed in paragraph [A].

b. Disbursement procedures from the cash escrow is discussed in paragraph [D].

c. Release of grant/loan proceeds may not be targeted to the completion of specific onsite improvements.

2. Additional Options For Governmental Source Funds. Where the grant/loan proceeds come from a governmental source, the mortgagor may use instead of a cash escrow:

a. An unconditional irrevocable letter of credit issued by a banking institution, or

b. An agreement entered into by HUD, the Lender, the mortgagor and the governmental entity for a pro rata disbursement of the loan/grant proceeds.

(1) Pro Rata Agreement for Governmental Source Funds. See Chapter 8.

Contractor's Monthly Requisition and Related Matters 13B

A. Contractor's Monthly Requisition must be made on Form HUD-92448. The Contractor's Prevailing Wage Certificate on the form's reverse side must be signed. The HUD Inspector reviews for acceptability. If acceptable, forward to Lender's mortgage credit analyst for further processing.

1. Eligible items for inclusion on Form HUD-92448.

   a. Acceptably completed onsite work, i.e. in full compliance with contract documents;

   b. Materials acceptably stored onsite itemized by quantity and cost with supporting invoices;

   c. Components acceptably stored offsite, where provisions are made at initial closing in accordance with Chapter 12, and requirements of Paragraph B below are met.

   d. The Architect determines amounts due by job site observation of acceptable work. (The HUD Inspector makes the determination if there is no Architect.)

   e. The HUD Inspector:

      (1) Checks the Architect's determination using Form HUD-2328, Schedule of Values, and trade item cost breakdowns (guides) to assure that amounts are reasonable for acceptable work and that funds remain for unacceptable and incomplete work;

      (2) Spot checks the count of stored onsite items, determines that storage is acceptable, and assures that amounts are reasonable for approval;

      (3) Checks the invoice and certificate for stored onsite items, and approves payment after assuring that funds remain for transportation to the site and erection.

2. Ineligible items for inclusion on Form HUD-92448.

   a. Noncompliant work and work supported or dependent upon noncompliant work. Work changes completed in anticipation of future change order approvals are noncompliant work.

   b. Additive change orders. Refer all change orders to HUD for processing and payment.

   c. Offsite work. See Paragraph C below for the contractor's requisition of payment, and release of funds to the mortgagor for acceptably completed offsite work.

3. Modification of Contractor's Requested Amount.

Where there is disagreement with the requisition, the HUD Representative may modify the contractor's requested amount by:

a. Entering trade item modification(s) on Form HUD-92448;

b. Explaining the modification(s) in the HUD Representative's Trip Report, Form HUD-95379.

c. Completion of Form HUD-92448, Items (1) through (13) are made by the Lender.

4. Supporting Documentation.

a. In order to help the HUD Inspector reconcile differences with contractor claims, the contractor will submit receipts, bills of lading for onsite deliveries, billings for onsite work, evidence of onsite payrolls, etc.

b. Surveys may be submitted with each contractor's requisition for improvements not previously shown on a survey, especially regarding:

(1) Where the siting of structures or setting of finished floor elevations are questioned;

(2) Location of materials stored onsite.

c. A survey is required for the next to last advance.

B. Components Stored Offsite.

1. Eligible Building Components. Only "building components" qualify for insurance of advances when stored offsite.

a. An "eligible building component" is a manufactured or pre-assembled building element which, by reason of bulk, size or weight, vulnerability to weather conditions or lack of space at the site, is impractical to store at the site.

b. Eligible building components comprise, but are not limited to:

(1) Precast concrete floor, wall, and roof panels;

(2) Assembled bath and/or kitchen core units;

(3) Fully fabricated structural steel beams and columns.

c. Items that are not eligible "building components" are (but not limited to): kitchen appliances, carpeting, wood roof trusses, etc.

2. Basic Requirements for insured advances.

a. The Lender must have agreed to the necessary provisions at initial closing. See Chapter 12.

b. The Construction Contract must include the rider "Amendment to the Construction Contract for Components Stored Offsite." See Forms Appendix.

c. Payments are limited to the invoice value of the components.

d. The contractor and its surety bear full responsibility for fraudulent claims for payment and fraudulent disposition of such payments. Safeguards are to protect against premature payments, against materials that do not meet contract requirements and against losses not covered by insurance.

e. The construction contract must be secured by a 100 percent performance and payment bond.

f. Components must be stored at a location approved by the Lender and HUD.

3. Lender's Responsibilities.

a. File Uniform Commercial Code (UCC)-1, financing statements with the proper office in the proper jurisdiction.

b. Make whatever additional filings are necessary to maintain a first lien on the components until they are incorporated into the building(s).

c. Release the financing statement filings as appropriate.

d. Unconditionally certify by letter to HUD that the security instrument(s) is (are) a "first lien" on the components covered by the instrument(s). The Lender's certification must be supported by an opinion from the Lender's counsel.

e. In the event of default under the mortgage, either assign its security interest to HUD or acquire title through foreclosure to the components intended for use or incorporation into the building(s) and convey title to HUD.

4. General Contractors' Responsibilities.

a. All direct and indirect costs associated with the storage and transportation of components stored offsite;

b. Obtaining a risk of loss insurance policy which covers the components. Evidence of this policy must be submitted to the Lender prior to approval of any advance for components stored offsite;

c. Assurance that there is a valid security agreement that is a first lien on the components.

5. Contractor's Requisition. All requests for payment for components stored offsite must be submitted on Form HUD-92448, Contractor's Requisition, accompanied by the following:

   a. A statement from the mortgagor's Architect certifying that:

      (1) He/she has visited the storage site and inspected the components for which payment has been requested;

      (2) The components are in good condition and they comply with the contract requirements;

      (3) The components are properly stored and protected;

      (4) The components are segregated, in an easily identified manner from other materials stored at the same site and are marked for identification;

   b. A bill of sale accompanied by an itemized invoice transferring title of the components to the mortgagor;

   c. A copy of the security agreement provided to the mortgagee by the mortgagor;

   d. A copy of the financing statement or statements filed by the Lender in accordance with the Uniform Commercial Code;

   e. A warrantee from the Lender that the security instruments represent a first lien on the building components;

   f. An opinion from the Lender's attorney that he/she has reviewed the security agreement and associated documents relative to the building components and that the security agreement creates a valid security interest in the collateral and that when the financing statement or statements is (are) duly filed, the secured party will have a first lien.

C. Offsite Construction. Separate from work done under the Construction Contract for the project. Where offsite work is completed by the mortgagor, rather than by a municipality or utility company, a separate construction contract is required, even if completed by the project contractor. Offsite work must also be funded from sources outside the mortgage, except that an escrow for its completion may be funded from available excess mortgage proceeds.

   1. Completion Monitoring is performed by the HUD Representative and reported on the Trip Report, Form HUD-95379. See HUD Procedures.

   2. Contractor's Requisition is by letter to the mortgagor. Do not use Form HUD-92448 to reflect the value of acceptably completed offsite work, even if completed by the project contractor. Request for Approval of Advance of Escrowed Funds, Form HUD-92464, is used.

3. Construction Changes for offsite work must be requested by letter. Form HUD-92437, Request for Construction Changes, may be used as a guide, but the form itself must not be used for offsite change orders.

Amendment to the Construction Contract for Payment for Components Stored Offsite

13C

A. The undersigned as Contractor and as Owner will abide by the following conditions to induce the Commissioner to release mortgage proceeds for the payment of components stored offsite.

1. The components stored offsite that will be recognized for payment under Article 3.B(3) of the contract are those listed and approved by HUD as an appendix to the Contractor's and/or Mortgagor's Cost Breakdown, Form HUD-2328, attached to the Contract as Exhibit "A". The appendix must provide an inventory of the "stored components" and a breakdown of the line item of which the stored components are a part. The breakdown must state:

   a. Cost of Components (Invoice Value),

   b. Cost of transportation form the offsite storage location to the construction site,

   c. Cost of Installation, and

   d. Costs of any other items included in the line item.

2. The Contractor is responsible for:

   a. All direct and indirect costs associated with the storage and transportation of components stored offsite.

   b. Obtaining a risk of loss insurance policy which covers the components during storage, in transit and until installed at the project site. The policy must name the Mortgagor, the Mortgagee and the Commissioner as their interest may appear. Evidence of the existence of this insurance must be submitted to HUD prior to the approval of any advance for components stored offsite.

   c. Assuring to the satisfaction of HUD proper identification and segregation of components while in storage and protection of components while in storage and transportation.

   d. Securing from the mortgagor or mortgagee all necessary security agreements, copies of financing statement, and documentation pertaining to first lien warranties, and submitting them with the request for payment.

   e. Providing corporate surety bonds for on-site improvements on Form FHA 2452 for payment and performance bonds, each equaling 100 percent of the HUD estimate of construction or rehabilitation cost.

3. All requests for payment for components stored offsite must be submitted by the Contractor on Form HUD-92448, Contractor's Requisition, accompanied by the following:

   a. A statement from the Architect certifying that:

      (1) He/she has visited the storage site and inspected the components for which payment has been requested,

      (2) The components are in good condition and they comply with the contract requirement,

      (3) The components are properly stored and protected,

      (4) The components are segregated, in an easily identified manner from other materials stored at the same site and are marked for identification.

   b. A bill of sale accompanied by an itemized invoice transferring title of the components to the mortgagor.

   c. A copy of the security agreement provided to the mortgagee by the mortgagor.

   d. A copy of the financing statement filled by the mortgagee in accordance with the Uniform Commercial Code.

   e. A warranty from the mortgagee that the security instruments requested a first lien on the building components.

   f. An opinion from the mortgagee's attorney that he/she has reviewed the security agreement and associated documents relative to the components for which advance are sought and that the security agreement creates a valid security interest in the collateral and that when the financing statement is duly filed, the secured party will have first lien.

4. Restrictions.

   a. Payments for components stored offsite shall be limited to the cost of components (Invoice Value) identified in the HUD approved appendix to the Contractor's and/or Mortgagor's Cost Breakdown, Form HUD-2238, attached to the Contract as Exhibit "A," and shall be subject to a 10 percent holdback.

   b. In no case shall a payment be approved for components stored offsite to a contractor whose performance, in the judgment of the HUD Field Office Manager, is marked by serious deviations from the contract documents.

   c. At no time may the outstanding amount of insured advances for components stored offsite exceed 50 percent of the total estimated construction costs a specified in the construction contract.

   d. The minimum amount for any single advance is $10,000.

OWNER	CONTRACTOR
_____	_____
_____	_____
DATE: _____	DATE: _____

Problems Before Final Closing 13D

A. General.

1. Additional attention must be given to projects that are experiencing difficulties that may lead to default before reaching final closing. Diagnose problems and take immediate measures during critical periods of project construction to avoid foreclosure or assignment, and to avoid serious hardship to mortgagors, contractors and mortgagees.

2. Prompt action must be taken to correct problems as they arise. Where requested relief cannot be granted for statutory, regulatory or administrative reasons. However, a prompt and final disapproval must be given.

B. Problems leading to default include:

1. Construction problems due to:

   a. Work stoppage,

   b. Contractor abandonment of job,

   c. A change in the contractor, owner or architect during construction,

   d. Construction defects untreated for 30 days, and

   e. Extended periods of bad weather, strikes, etc.

2. Financing problems due to:

   a. Contractor's inability to complete because of underfinancing.

   b. Overruns in carrying charges due to circumstances beyond the contractor's and mortgagor's control.

   c. Overruns in construction hard costs caused by:

      (1) Mandatory changes,

      (2) Voluntary changes, and

      (3) Price escalation.

3. Inadequate income due to:

   a. Underestimated operating expenses,

   b. Overestimated rents and long-term occupancy levels, and

   c. Inadequate or lack of operating deficit.

C. Defaults during construction. HUD staff will consider alternative measures that can be offered to avoid foreclosure and hardship to all concerned parties regardless of the cause.

1. Request field counsel to provide legal guidance and participate in meetings to discuss the consequences of default and possible preventive measures.

2. Telephone Lender.

   a. Speak to a responsible official and obtain an opinion on the cause of default, methods of cure and probability of cure.

   b. Advise the Lender:

      (1) To preserve its rights against the surety by giving prompt oral and written notification of the contractor's lack of performance or default, and by demanding performance under the contract of surety (see paragraph 3. below), and

      (2) To consult with its attorney and to secure HUD approval before entering into any formal or informal agreement with the surety.

3. Notification of Surety. Lender must send a notice to the bonding company with a copy to the general contractor for all conditions affecting the bonding company's interests. The notice should be sent to the bonding company's principal office, and its regional or branch office, attention: Claims Department.

   a. Conditions requiring notification, include:

      (1) A sustained work stoppage,

      (2) Nonpayment of subcontractors, suppliers, workmen, etc., and

      (3) Failure to maintain satisfactory progress.

   b. Conditions that require obtaining surety's approval in advance include:

      (1) Approving a change order or aggregate of change orders that exceed 10 percent of the contract price, and

      (2) Extension of the bond by surety where there is a compelling reason why the contractor cannot remedy a latent defect before the bond's expiration date.

   c. The mortgagor is responsible for requesting surety's performance, the Lender must act to protect its and HUD's interests, and HUD must take the final action to protect its interests under conditions in paragraph a. above.

4. Advise the mortgagor of the contractor's violation, and/or lack of performance by the architect or mortgagor, and give 30 days for correction.

5. Assess the situation by considering:

a. Percentage of construction complete,

b. Occupancy (including current estimates of income, expenses and occupancy projections),

c. Type of assurance of completion (bonds, cash escrow),

d. Status of escrow deposits,

e. Undrawn amount of letters of credit (including working capital), and

f. Any other pertinent information.

6. HUD staff should meet to assess available options and prepare a position to present to interested parties. The meeting should include the Hub Director, Field Counsel, and a representative from Asset Management. Separate meetings by staff with one or more of the non-HUD parties may be helpful before holding a general meeting with all interested parties.

7. Convene a general meeting of all interested parties with either a direct or indirect interest in the project to explain the consequences of default. Hold such a meeting even where there is no possibility of HUD granting a mortgage increase or other form of relief.

   a. Emphasize that all non-HUD participants must make a meaningful contribution before HUD will assume any additional risk. Such contributions include:

      (1) Infusion of new capital through adding partners, syndication or other investments, and/or

      (2) Concessions by the Lender to avoid a loss (e.g., deferral or forgiveness of interest, taking a partial assignment of the partnership interest, etc.).

   b. State firmly and unequivocally that the non-HUD parties must work out the remedy if the default is to be cured.

   c. Clarify that unless a written firm proposal for a workout is developed, assignment or foreclosure of the mortgage will be the consequence.

   d. Address the remedies covered in paragraph D below, as appropriate.

8. Extension of Lender's election period to assign a loan for insurance benefits should not be granted where a workout proposal is not developed. Thirty days should be the maximum extension in most cases.

D. Remedies to avoid/cure defaults.

1. Call on the Bonding Company to perform, where applicable.

   a. Request field counsel to communicate with surety where it fails to perform to terms of the bond, and

b. Where surety refuses to honor its obligations after communications by field counsel, request the Department of Treasury to initiate procedures for removal of the surety from the Treasury Circular 570. List the surety, contractor, and project; describe the particulars, including nature of the problem, length of delays and actions taken by mortgagor, mortgagee and HUD to secure surety's performance; and attach a copy of the bond(s). Mail to:

U.S. Department of Treasury
Surety Bond Branch
Financial Management Service
Washington, D.C. 20227

c. Distribute copies of the letter to the Washington Docket, Field Office Docket and Director, Office of Business Products.

2. Lender or Title Company control payments through issuance of two- or three-party checks to assure that disbursed mortgage proceeds are applied for the intended purpose and not diverted to other uses.

   a. All money drawn for construction must actually be paid to subcontractors, suppliers, and workers on the job.

   b. Money drawn for specified purposes, e.g., architect's fees, insurance premiums, taxes, etc., must not be diverted to other uses.

3. Transfer construction funds to soft cost expenses, i.e., keep the mortgage in balance. The liquidated damages clause in the construction contract provides a source of funds for overruns in interest, taxes, MIP and insurance (soft costs) that are due to construction delays which are the general contractor's fault.

   a. Authorize the transfer of funds from the construction contract for payment of soft cost overruns, where it becomes apparent that the scheduled date for completion cannot be met due to the fault of the contractor. The amount of transferred funds must be reflected on subsequent Forms HUD-92448, as a decrease to item 7, Sum of Cost Breakdown Items Plus Inventories of Materials.

      (1) The transfer of funds will get the attention of the contractor, surety (if any), mortgagor and mortgagee, as well as address any financial necessity.

      (2) Notify the contractor, surety (if any), mortgagor and mortgagee by certified mail of the amount and the reason for the transfer.

      (3) Require written acknowledgement of the notification from the mortgagee and surety, if any.

   b. Computation for funds transfer from the construction budget. When the amount originally allocated to interest on Form HUD-92451, Financial Record of Mortgage Loan Transaction is exhausted or near exhaustion, request the Architect and HUD representative to estimate the earliest date of construction completion. Use this date to:

(1) Set an assumed completion date.

(2) Compute the minimum liquidated damages for the period between the completion date specified in the construction contract, as adjusted by approved change orders, and the assumed completion date.

(3) Transfer the computed amount from Column J, Construction, to Column G, Carrying Charges and Financing, on Form HUD-92451.

(a) Allocate full amount to interest, initially.

(b) Only use funds for MIP, taxes and insurance after funds for these line items, and the working capital escrow have been exhausted.

4. Use of contractor's holdback, subject to provisions of paragraph 2 above.

5. Infusion of new money. See paragraph C.7.a.

6. Release assurance of completion cash escrow where used in place of a performance and completion bond for the construction contract.

   a. The Hub Director may authorize such release, where:

      (1) The project is nearly complete,

      (2) Project completion and final closing may not be attainable with the remaining mortgage proceeds alone or in combination with the mortgagor's other available assets, and

      (3) Release of the funds will offer an excellent chance for project completion and final closing with clear title.

   b. The entire escrow may be released under such circumstances except for 2-1/2 percent of the contract, which amount is needed to fund the latent defects escrow, subject to:

      (1) The Lender must take steps to assure that all required payments by the contractor have been made or will be met to preclude uncovered liens, and

      (2) Disbursement of such funds and mortgagor's additional contributions must be under strict control of the mortgagee or a title company.

   c. Distribute the Hub Director's written authorization for release of the funds as follows: original to the Washington Docket with copies to the Field Office Docket, Closing Attorney, and Mortgage Credit Control File.

7. Deferment of principal payments where the project is complete and ready for occupancy but cannot go to final closing.

8. Mortgage increase may be provided as discussed in MAP Section 14.22, where economically feasible. Where the contractor is changed because the original contractor

becomes bankrupt, abandons the job, or the contract is terminated due to inadequate contractor performance, any mortgage increase must also be processed in accordance with the following:

a. Reprocess the project.

(1) Use rents, expenses, and occupancy ratios current as of the date of reprocessing.

(2) Take into account the new builder's cost to complete, amounts expended to date, and any increase in carrying charges, financing, etc., due to increased mortgage amount and/or extra construction time over the original estimate.

b. Mortgage increase conditions.

(1) The mortgagor provides any required front money.

(2) Any recovery from the original contractor or surety must be applied first to reduction of the mortgage on a mandatory basis,

(3) The balance of the net recovery after legal expense, if any, may be used to indemnify the mortgagor, Lender, and others, and

(4) A legal document providing for paragraphs 2) and 3) above must be included as a rider to the Regulatory Agreement and Mortgagee's Certificate at final closing, where such recovery has not been made before and considered in the cost certification.

9. Reanalyze the Cost Certification for inclusion of all allowable costs where final closing has not occurred.

10. Working capital deposit balance.

11. A Section 223(d) Operating Loss Loan where eligible.

E. Default report before final closing, Form HUD-58047. Report monthly on the default and describe the plan for curing it.

1. If default cannot be promptly cured, provide a current estimate of income, expenses and occupancy projections.

2. Report distribution:

a. Director, Office of Business Products, and Director, Office of Asset Management and Office of Quality Assurance, within two weeks of default.

b. Asset Management staff for use with the Multifamily Default Status Report, Form HUD-92426.

F. Decision to foreclose where the contractor becomes bankrupt, abandons the job, or the contractor is terminated due to inadequate contractor performance. Encourage the Lender to consider foreclosure and tender of the unfinished property to HUD, where the Hub Director

agrees in writing that it would be advantageous to the insurance fund, e.g., instances where interruption of construction occurs at an early stage and market and/or economic conditions have worsened to preclude attaining project viability. Consider surety's position in reaching this determination.

1. Lender tenders unfinished property. Where the Hub Director agrees in writing that accepting conveyance of such unfinished property would be more advantage to the insurance fund than pursuing project completion:

    a. Promptly convey the decision to all interested parties.

    b. Request field counsel to maintain close communication with the Lender's and mortgagor's counsel and seek advice from the Office of General Counsel as necessary.

2. Estimate completion cost for the unfinished project to support a subsequent damages claim against the surety for damages due to contractor's failure to perform.

3. Document distribution. Original documents, including the Hub Director's authorization to accept the unfinished project, in the Washington Docket with one copy to the Field Office Docket, Field Counsel and Mortgage Credit Control File.

G. Recovery of mortgage proceeds. In the event of a mortgage insurance claim before final closing instruct the Lender's to establish communications with the Office of the FHA Comptroller regarding the surcharge of insurance benefits.

H. Tax-exempt bond funded project default before final closing. See MAP Chapter 12 for additional information and riders included in the Note and Mortgagee's Certificate in regards to a default.

1. Prepayment lock-out and/or penalty override. Consider exercising HUD authority to override Lender's prepayment lock-out and/or penalty provisions only where:

    a. The project mortgagor has defaulted and HUD has received notice of such default, in accordance with 24 CFR Section 207.256,

    b. HUD determines that the project is experiencing a net income deficiency that is attributable to more than management inadequacy or lack of owner interest, and that the deficiency's magnitude leaves the mortgagor unable to make required debt service payments, pay all project operating expenses and fund all required HUD reserves,

    c. HUD finds that there is a reasonable likelihood that the mortgagor can arrange to refinance the defaulted loan at a lower interest rate or otherwise reduce the debt service payments through partial prepayment, and

    d. HUD determines that refinancing the defaulted loan at a lower rate or partial prepayment is necessary to restore the project to a financially viable condition and to avoid an insurance claim.

2. Deadline extension for filing claim intentions. Lender must request a three-month extension of the election notice filing deadline in the event of a default within the term of

the prepayment lock-out and/or penalty. See MAP Chapter 12 and the Mortgagee's Certificate.

a. Analyze the project's financial condition and assess the feasibility of arranging a successful refinancing.

b. Recommend that the Hub Director grant the 3-month extension or a shorter extension of the election notice filing deadline, based upon positive conclusions reached by the analysis in paragraph a. above.

c. Do not consider additional extensions of the election notice filing deadline, unless specifically requested by the Lender.

I. Grant/loan project with a pro rata disbursement agreement that defaults before completion of construction. The governmental entity must disburse the remaining funds where the request for funds remains in the same ratio as previously authorized.