Chapter 3
Programs

3.1 General Program Requirements

This chapter contains the basic requirements for FHA multifamily mortgage insurance programs for which lenders can submit Pre-Applications and Applications for Firm Commitment under MAP.

The following requirements apply to FHA multifamily mortgage insurance programs governed by this Guide:

A. **Regulatory Agreement**. All borrowers must execute a HUD Regulatory Agreement governing the operation of the project. The Regulatory Agreement is recorded at Initial Endorsement.

B. **Single Asset Mortgagor Entity**. The mortgaged property must be the only asset of the borrower entity, and there may not be more than one borrower entity. Natural persons, foreign entities or Tenants-in-Common ownership structures (including entities such as Maryland Statutory Trusts and Delaware Statutory Trusts) are not permitted as mortgagor entities, though they may hold “upper-tier” interests (i.e., they may have an ownership stake, such as a partnership interest, in the Single Asset Mortgagor Entity). Additional information on eligible foreign nationals and entities may be found in Chapter 8. Waiver authority is reserved for the Director, Office of Multifamily Production HQ but requests for waivers are discouraged as they are unlikely to be approved. In the unusual circumstance that a waiver request is submitted for review, approval must be obtained prior to a Multifamily Regional Center or Satellite Office accepting an application for mortgage insurance that does not conform to these prohibitions.

C. **Non-recourse**. The HUD mortgage note will contain a non-recourse provision as to the mortgagor entity. Notwithstanding this provision, certain parties may be held personally liable to the extent of losses arising from certain “bad acts” and malfeasance, as set forth in the Regulatory Agreement. Such parties will be identified in the Firm Commitment.

D. **Interest rate.** The interest rate on a HUD insured loan is negotiated between the borrower and the mortgagee (and if applicable, the Ginnie Mae investor) and must be locked in by the time of Initial Endorsement. Payment of discounts by the mortgagor to buy down an interest rate is acceptable during negotiations prior to Initial Endorsement. Any change in the

mortgage amount due to a change in interest rate must be reflected in an amendment to the Firm Commitment before Initial Endorsement. This action may require re-underwriting with the issuance of an amended Firm Commitment. The Mortgage Note, HUD-94001M, provides for the same or different interest rates for the construction and permanent financing periods.

E. **Amortization plan**. All HUD insured mortgages must amortize through a level annuity monthly payment plan (LAMP), with equal monthly payments of principal and interest. Variations are not permissible. This restriction does not prevent separate tranches within one promissory note (e.g. An A and B pieces).

F. **Loan Terms**. The maximum loan term is the lesser of any limits included under the applicable Section of the Act, 40 years for new construction/substantial rehabilitation, 35 years for Section 223(f) purchase/refinancing, or 75% of the remaining economic life of the property.

G. **Prepayment Restrictions**. The Section 223(f) program limits prepayment during the first five years of the loan. (Refer to Section 3.7.I. for detailed requirements for prepayment restrictions concerning Section 223(f) loans.) For other Sections of the Act, HUD permits but does not impose prepayment restrictions on insured loans. Prepayment restriction provisions may not include HUD consent as a condition to prepayment of the loan by the borrower.

H. **HUD application fee**. Under MAP (and the Section 213 program), HUD requires a fee of $3 per thousand dollars of the requested mortgage amount for review of the Firm Commitment application. The application fee (also known as “exam fee”) is considered earned at HUD acceptance of the application for processing and is nonrefundable. For market rate new construction or substantial rehabilitation transactions, one half of the application fee is due with the submission of the pre-application, and the other half is due with the application for Firm Commitment. For affordable new construction or substantial rehabilitation proposals and for any refinancing or acquisition transactions, the entire amount is paid at the Firm Commitment stage, regardless of whether or not a Pre-Application is filed with HUD (see Chapter 3.1.L for definition of affordable.)

See Section 3.1.JJ for application fees for projects located in Opportunity Zones.

For Section 223(a)(7) transactions processed under MAP, the application fee is $1.50 per thousand dollars of the requested mortgage amount.

For Traditional Application Processing (TAP) loans, the application fee is $5 per thousand dollars of the requested mortgage amount for market rate transactions and $3 per thousand

dollars of requested mortgage amount if the transaction meets HUD's definition as Affordable housing or is a Section 213 loan processed under TAP rather than under MAP.

I. **HUD inspection fee.** The HUD inspection fee is $5 per thousand of the mortgage amounts for new construction and $5 per thousand of the total of all improvement costs (line G50 on Form HUD 92264) for substantial rehabilitation. The inspection fee is no longer calculated on Builder Sponsor Profit Risk Allowance (BSPRA) and Sponsor's Profit Risk Allowance (SPRA). There is no inspection fee for Section 223(a)(7) projects (even if there are repairs). For loans insured pursuant to Section 207/223(f), the inspection fee is the following:

1. $30 per unit where the repairs/improvements are greater than $100,000 in total but $3,000 or less per unit.
2. The greater of $30 per unit or 1% of the cost of repairs or $1,500, where the repairs/improvements are more than $3,000 per unit.
3. $1,500 where the total repairs/improvements are less than $100,000, which may be decreased by the Regional Center or Satellite Office, if the lender elects to take responsibility for the inspection.

J. **Mortgage insurance premium.** The mortgage insurance premiums are established by the Firm Commitment and may not be changed after initial endorsement. The annual mortgage insurance premiums (MIP) are based on a percentage of the mortgage amount and may vary, depending on the insurance program and the MIP rates as most recently posted in the Federal Register. For New Construction or Substantial Rehabilitation, the initial annual capitalized MIP is collected at Initial Endorsement. The capitalized MIP is based on the loan amount times the number of months of construction, rounded up for partial years. Any MIP premium due for a partial year of construction is paid at the anniversary of the Initial Endorsement. All MIP payments collected between Initial and Final Endorsement are reconciled at Final Endorsement.

For Section 223(f) and Section 223(a)(7) loans the upfront capitalized MIP is payable at Initial Endorsement. This upfront capitalized MIP is the same for all market rate acquisition or refinancing transactions, and equals 1% for Section 223(f) loans and ½% (50 basis points) for Section 223(a)(7) loans.

The standard upfront and annual MIP's are reduced for any project qualifying as Affordable, Broadly Affordable or Green and Energy Efficient Housing, as defined in the Federal Register published on March 31, 2016 (24 CFR Part 266) as follows:

- 25 basis points for Broadly Affordable
- 35 basis points for Affordable
- 25 basis points for Green and Energy Efficient Housing

These categories are more fully described in Appendix 3. The Federal Register Notice is available in the link below:

https://www.regulations.gov/document?D=HUD-2016-0007-0001

K. **Lender fees and charges.** For programs other than Section 223(a)(7), the maximum financing and placement fees the lender may charge is limited to a total of 3.5% of the mortgage amount. This 3.5% maximum may consist of any combination of origination, financing, and permanent placement fees, as long as it also includes the lender's legal fee. In bond transactions, financing and placement fees up to 5.5% are permissible. Third party costs (e.g., appraisal, market study, CNA, and other organization costs) may be included as mortgageable soft costs in the mortgage calculations and are not included in the limitation on lender fees. See Section 11.5 for additional provisions regarding loan fees and charges.

The lender is prohibited from advancing fees on behalf of the borrower for payment of discount fees. Waivers of this provision must be granted in writing and submitted to Multifamily Production Headquarters and reviewed per HUD's regulatory requirements (See 24 CFR 200.41).

L. **Definition of Affordable Housing.** Affordable housing for FHA multifamily mortgage insurance programs is defined as projects meeting both of the following requirements:

1. Rent and income restrictions must be imposed, monitored and enforced by a governmental agency for at least 15 years after Final Endorsement, and either of two standards of affordability must be met. These are:

   (a) a Regulatory Agreement must be recorded and require the project to meet at least one of the following LIHTC restrictions, including income averaging as applicable:
   i. 20% of units at 50% of area median income (AMI),
   ii. 40% of units at 60% of AMI,
   or

   (b) a Project-Based Section 8 contract for at least 90% of the units.

2. Projects need not use LIHTCs to qualify for affordable underwriting so long as they meet the above requirements.

3. Note that the definition of Affordable in this section is separate and distinct from the definition of Affordable and Broadly Affordable used to determine eligibility for a

reduced MIP (See 3.1.J) or application fees for projects located in Opportunity Zones (See 3.1.JJ).

M. **Fair Housing and Equal Opportunity**. Borrowers, management agents, contractors and subcontractors must comply with HUD Fair Housing and Equal Opportunity requirements. (See 24 CFR 5.105 (a)(1)). Such requirements include selection of occupants, employment, and project accessibility (See 24 CFR Part 100 and subsequent Sections), regardless of race, color, national origin, religion, sex, disability or familial status which are all Fair Housing Act protected classes. Discrimination by age is also prohibited and the Equal Access Rule (24 CFR 5.105(a)(2)) provides for non-discrimination based on actual or perceived sexual orientation, gender identity or marital status. Project accessibility requirements apply to most multifamily properties. For a complete description of project accessibility requirements see Chapter 5 and Appendix 5B.

Affirmative Fair Housing Marketing requirements are addressed in Section 10.9 of this Guide. Also see "Affirmative Fair Housing Marketing to Fair Housing Act Protected Classes" (24 CFR Part 108 and 200.600). Projects with federal financial assistance are required to comply with the accessibility requirements of Section 504 of the Rehabilitation Act and projects that are a program or activity of a State or local government or contain public accommodations are required to comply with Titles II or III of the Americans with Disabilities Act.

Fair Housing and civil rights violations may result in enforcement actions including but not limited to Limited Denial of Participation.

N. **Previous Participation.** Individuals and entities in control of a project are subject to a previous participation review as set forth in 24 C.F.R. Part 200, as the same may be amended from time to time, and must submit information regarding previous participation in governmental housing transactions either via the electronic Active Partner Participation System (APPS) or on Form HUD-2530, or any successor system or form, for approval for participation in any mortgage insurance program. Invitation Letters or Firm Commitments may be issued conditioned on Previous Participation approval, assuming no critical findings and that any flags can be resolved without being presented to the Multifamily Participation Review Committee.

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

P. **Bridge or Gap Financing**. Bridge financing is a short-term loan that is secured by the property or by a pledge of an interest in the borrowing entity, pending the start of a long-term permanent loan. Bridge loans that are secured by the property (as distinguished from bridge loan used to fund equity during construction and which is secured by ownership interests),

are acceptable only in instances of Insurance upon Completion and before the start of the FHA-insured permanent financing. Bridge financing is permitted so long as the bridge loan is repaid no later than the time of permanent loan closing (or as otherwise specified in Chapter 14 for Tax Credit projects) or converted in whole or in part to Secondary Financing within the allowed limits for the FHA program. Bridge loan or other debt intended to increase the FHA-insured mortgage or circumvent outstanding program requirements will not be recognized as existing indebtedness in the cost basis. Gap financing is a loan that may be secured by a subordinate lien behind the permanent first mortgage to provide additional capital funds for the project; it must meet the Guide's requirements for secondary financing. See Chapter 14 for a detailed discussion of the use of bridge financing in relation to the LIHTC program.

Q. **Secondary Financing.** FHA insured mortgages must be first liens. Secondary liens are permitted in the case of FHA insured second mortgages (supplemental loans and operating loss loans) and under certain conditions. Chapter 8 contains the requirements for secondary financing, as does Chapter 14 regarding secondary financing for LIHTC transactions.

R. **Statutory Loan Limits**. The statutory loan limits for each FHA multifamily insurance program are issued annually in the Federal Register, and are used to determine the maximum per unit loan amount to complete Criterion 4 of the Form HUD 92264-A. The Regional Director may grant exceptions to the maximum mortgage limits for certain Multifamily Housing Programs by (1) up to 170 percent, (equivalent to a 270 percent multiplier) in geographical areas where cost levels so require or (2) up to 215 percent in High Cost Areas, (equivalent to a 315 percent multiplier) where necessary on a project-by-project basis.. When Criteria 4 is relevant to sizing the mortgage, the calculated statutory limit may be adjusted for project costs not attributable to residential use as described in Chapter 5.12.D.3 or 5.12.D.4. When refinancing a previously insured property, the loan amount determined by Criterion 4 shall not be less than the Criterion 4 amount determined for the previously insured loan (assuming no demolition or reduction of improvements since endorsement of the previously insured loan.)

S. **Tax Increment Financing**. Tax Increment Financing or TIF, is a public financing method that is used as a subsidy for redevelopment, infrastructure, and other community-improvement projects. States create districts to administer the program for communities to benefit from the TIF. TIF structures vary by municipality, state, or local authority. They may use future increases in taxes to subsidize current improvements. Some States sell bonds backed by a project development's future taxes, while the bond money helps pay the developer's construction costs.

TIF may or may not be recognized as a source of funds, equity, additional income, or a loan in FHA-insured underwriting. The MAP Lender must:

1. **1.** Disclose a proposed or existing TIF Commitment at the Concept Meeting.
2. **2.** Determine the amount and terms of the TIF and whether or not the specific work in the TIF Commitment is included in the improvements for FHA-insured mortgage; and
3. **3.** Document that none of the TIF proceeds are used to support FHA-insured mortgage proceeds, or provide complete analysis and documentation demonstrating that the TIF funds and any tax benefits are irrevocably committed.

T. **Commercial Space**. Commercial facilities may be included in a mixed-use project, subject to programmatic space, income and vacancy and collection loss limitations. See Chapter 7 for further guidance.

U. **Military Impacted Areas**. HUD generally will not insure mortgages in designated military impacted areas unless HUD determines that demand from nonmilitary households is sufficient to sustain occupancy in both the insured project and the market as a whole. Section 238(c) of the National Housing Act authorizes the provision of insurance in military impacted areas upon certain findings by the Department of Defense (DOD) and HUD HQ. In such areas, borrowers should be encouraged to contact DOD for other potential programs administered by DOD which could provide alternative sources of financing for the proposed project. Section 238(c) loans are not eligible for MAP but may be processed under TAP.

V. **Student Housing**. Insured projects cannot be designed solely for student occupancy, although students and families are eligible occupants of insured family housing projects. Insured loans on projects in college areas must be underwritten at rents that are comparable to family housing in the area. Loans cannot be underwritten with rental rates assuming multiple student occupants in a unit that would result in a processing rent higher than a typical family apartment, nor may an appraisal use sales and capitalization rates generated by comparable student housing properties.

W. **Real Estate Requirements.** The insured mortgage must be on real estate:

1. Held in fee simple, or
2. Under a lease with a term of at least (i) ninety-nine years which is renewable, (ii) 50 years from the date the mortgage is executed, or (iii) for a period of not less than 10 years more than the loan maturity date, dependent upon the SOA.

X. **Transient Housing/Hotel Services Prohibition**. Section 513 of the National Housing Act prohibits the use of the insurance programs for transient or hotel purposes. Leases for less than 30 days are prohibited, and occupants cannot be provided with hotel services such as maid service, furnishing and laundering of linens, room service and bellboys. This also applies to any commercial space funded by the mortgage.

Y. **Sustaining Occupancy**. Sustaining occupancy is a level or percentage of occupancy of tenant units by rent paying tenants consistent with signed leases such that the monthly rents paid are sufficient to pay all operating expenses for the month (actual or prorated annual costs as applicable) plus monthly debt service composed of principal, interest and mortgage insurance premium. Any subordinate debt requiring current payment must be included in the sum of debt service. This is equivalent to a debt service coverage ratio of 1.0, a ratio also referred to as "breakeven." When this level of occupancy is sustained for a period of consecutive months it is referred to as "sustaining occupancy". The standard number of months for achieving sustaining occupancy in HUD new construction and/or substantial rehabilitation projects is 6 months. HUD may vary the number of months of sustaining occupancy required to address specific project risk for individual cases or cases with identified risk conditions.

Z. **Operating Deficit**. An operating deficit escrow (also known as the Initial Operating Deficit Escrow or IOD for construction loans) is required on all applications for new construction and many applications for substantial rehabilitation to provide funding for operating expenses and debt service when net income is not available during the initial lease up and stabilization period. A debt service escrow may also be required for Section 223(f) proposals where analysis requires it. This escrow is not mortgageable and unused portions will be returned to the borrower. See Chapters 7.14 and 8.14 for more detail.

AA. **Short-Term Lease Premiums**. Projects offering leases with terms of less than 30 days are not eligible for HUD-insured financing under any circumstances. Treatment of income from short-term leases of at least 30 days, e.g., furnished units, corporate or business short-term leases, may be considered to the extent that it is present in the local market. The actual number of furnished or corporate/business units generally may not exceed 10% of the units. Any higher percentage must be approved by Asset Management at the time of underwriting. In the case of any such approval, no more than 10% of the units may be underwritten at rents higher than for unfurnished units of the same unit type (i.e. number of bedrooms, unit size and configuration).

BB. **Replacement Reserve.** A Reserve for Replacements Escrow account is required for all insured mortgages. The escrow may be funded by an initial deposit at endorsement and by monthly deposits to the Replacement Reserve as determined in the financial schedule developed by the lender in the CNA e-Tool and approved by HUD. The purpose of the Escrow is to set-aside funds to pay for timely replacement of capitalized physical assets. See Appendix 5G for the minimum annual replacement reserve requirements for all program types and for guidance on completing a Capital Needs Assessment (CNA). Handbook 4350.4, Chapter 2 Servicing Manual, details the lender's responsibility for managing funds held for the project and describes the liquidity, draws and investment requirements.

CC. **Developer Fees.** In cost controlled mortgages for FHA New Construction and Substantial Rehabilitation Programs (other than Section 231 Substantial Rehabilitation and Section 241(a)), Builder Sponsor Profit and Risk Allowance (BSPRA, or SPRA) is allowed. BSPRA is a mortgageable cost but not a source of cash. For affordable programs (such as Low-Income Housing Tax Credits, RAD, and Section 202 refinancing), a Developer Fee may be mortgageable as long as BSPRA or SPRA is not also included. In no event may a non-mortgageable Developer Fee be included as part of a market rate transaction, with or without BSPRA. A summary of Developer Fee calculations limits for various FHA and assisted programs is included in Appendix 3B.

DD. **Scattered Sites.** FHA insured multifamily properties may be traditional multifamily structures on one site, or may be detached, semi-detached, or row houses. Each property must consist of five or more dwelling units. Group homes are not eligible.

The site may consist of two or more noncontiguous parcels of land when the parcels comprise one marketable, manageable real estate entity and each parcel (or combination of contiguous parcels) has at least 5 units. (The regulations, 24 CFR 200.73(c), prohibit sites with less than 5 units.). Contiguous in this context means adjacent, or next to one another. Two parcels separated by a driveway or road may still be contiguous for purposes of establishing one “single” site.

The following factors should be considered in underwriting, and determining whether a scattered site property is one marketable, manageable real estate entity:

1. Degree of Separation. Generally, a greater distance would be acceptable in a rural area than an urban one, but two sites funded by one FHA insured multifamily mortgage separated by more than 15 or 20 miles in exurban areas or 10 to 15 minutes in travel time in metropolitan locations, or in any event located in different market areas or different jurisdictions (township, city, county), would be considered unacceptable.
2. Physical condition, construction type, and age. If individual sites vary in these criteria, it is more difficult to make the case that they comprise a single entity, and to evaluate the collateral (e.g. requiring separate CNA and Appraisal analyses, which are then combined.) If an underwriter cannot rely on a single CNA and appraisal to analyze a property, then the property is not a single mortgageable real estate asset.
3. Occupancy type and turnover history.
4. Unit configuration and project layouts including single family homes in a “checkerboard” configuration. Projects consisting only of single-family homes whether located on one or multiple sites are strongly discouraged.
5. Expense volatility, particularly for single family structures or more widely disbursed properties. Risk in such cases must be mitigated by high-end expense estimates, and in some cases shorter amortization periods.

6. Homeowners Associations (HOA) – An insured project operating within and governed by an HOA may be subject to terms and conditions that may be detrimental to the operation of the insured project, especially when such agreements limit or regulate maintenance or repairs and alterations. In addition, sites subject to different HOA Associations are not acceptable.

   HUD has and will continue to provide greater flexibility to RAD and affordable transactions (as well as refinancing Section 202 PRAC projects) with significant outside funding sources. However, the factors outlined above should be carefully considered in any transaction involving scattered sites.

EE. **Condominiums**. A project built and platted as condominiums, but now operating as a rental project, may be refinanced under Section 223(f) if the condominium regime is held by a single owner with no individual unit ownership and the property meets other program guidelines, including the minimum occupancy standards.

Condominium ownership regimes may be recorded if the property is otherwise operated as a rental project with a single ownership entity owning all the apartments. Separate condominium units may be established for commercial use and for housing use which must include all the residential apartments. The insured loan must be secured by a mortgage on the rental apartments and mortgageable commercial space. Joint use and maintenance agreements and easements between the insured portion and any separately demised condominium portion must be defined, and all condominium fees and expenses must be equitably allocated.

The Regional Center or Satellite Office Director may consider a waiver for a condominium building with a limited number of individually owned units (i.e., 10% or less of total units) if all such units are located in a separate building or in a separate section of a single building apart from the rental units. HUD will not consider a waiver if any ownership units are interspersed with the rental units.

FF. **Environmental Review.** HUD has responsibilities to comply with HUD's environmental requirements described in MAP Guide Chapter 9. These include regulatory requirements in 24 CFR Parts 50, 51, 55 and 35, and program requirements. Potential issues are to be identified at time of concept meeting and in the lender's narrative or preapplication stage (or application if straight to Firm.) Lenders must submit an environmental report to HUD using the HUD Environmental Review Online System (HEROS) system for all projects submitted under MAP and TAP. Chapter 9, Environmental Review, projects must comply with the other regulatory and programmatic requirements described in MAP Guide Chapter 9, except

where exempt. Chapter 9 provides further details about submission content and timing requirements.

GG. **Underwritten Vacancy and Collection Loss**. Underwritten vacancy and collection loss rates shall not be less than the minimum levels shown in Appendix 3A. Higher vacancy and collection loss rates may be determined based on the appraised or actual loss rates at the subject property (see Chapter 7.)

HH. **Borrower's Certifications.** All certifications executed by the borrower, in addition to certifications submitted by the Lender in support of MAP applications should contain the following language:

> I hereby certify under penalty of perjury that all of the information I have provided on this form and in any accompanying documentation is true and accurate. I acknowledge that if I knowingly have made any false, fictitious, or fraudulent statement, representation, or certification on this form or on any accompanying documents, I may be subject to criminal, civil, and/or administrative sanctions, including fines, penalties, and/or imprisonment under applicable federal law, including but not limited to 12 U.S.C. § 1833a; 18 U.S.C. §§1001, 1006, 1010, 1012, and 1014; 12 U.S.C. §1708 and 1735f-14; and 31 U.S.C. §§3729 and 3802."

II. **Waivers**. There are various references in the MAP Guide to HUD's waiver authority. Regulatory Waivers must be approved at the Assistant Secretary level, and certain waivers are reserved to HUD Headquarters. Regional Center Directors retain waiver authority for other provisions of the MAP Guide. While HUD may consider waiver requests within delegated authority, they will not be approved except for good cause, and Lenders should not assume approval.

JJ**.** **Opportunity Zones.** The 2017 Tax Cuts and Jobs Act (P.L. 115–97, Dec 22, 2017) created an investment vehicle known as Qualified Opportunity Funds, which invest capital gains into projects located in Opportunity Zones. Opportunity Zones are census tracts that are low-income communities as defined in Section 1400Z(c) of the Act. HUD has reduced application fees (also known as "exam" fees) for FHA multifamily mortgage insurance pursuant to the Section 221(d)(4), Section 220, and Section 223(f) for properties located in a qualified opportunity zone. Application fees are reduced from 0.3% of mortgage amount to 0.2% except for properties which are Broadly Affordable (see HUD's Federal Register Notice dated March 31, 2016, 81 FR 18473) in which cases the application fee is reduced to .1% of mortgage amount. The referenced Federal Register Notice may be found at:

https://www.regulations.gov/document?D=HUD-2016-0007-0001

3.2 New Construction/Substantial Rehabilitation Program Requirements

Sections 220, 221(d)(4), 231 and 241(a) of the National Housing Act provide FHA multifamily mortgage insurance for the new construction or substantial rehabilitation of multifamily rental apartment properties. Section 213 is available for the new construction and Section 213(i) is used for substantial rehabilitation of Cooperatives; these transactions are processed under Traditional Application Processing (TAP).

The following requirements apply to *all* FHA New Construction/Substantial Rehabilitation multifamily mortgage insurance programs:

A. Properties must have 5 or more residential units with individual full kitchens and baths for each unit. (Section 231 requires at least 8 units.) Group Homes are not eligible for FHA multifamily mortgage insurance. SRO properties will be considered only if they have existing Project based Section 8 contracts in place.

B. HUD can insure both the construction and permanent loan periods (Insurance of Advances) or just the permanent loan period (Insurance Upon Completion). Davis-Bacon wage requirements apply to new construction and substantial rehabilitation transactions for both Insurance of Advances and Insurance Upon Completion.

C. New Construction transactions finance improvements where no construction work has been done to the site prior to Initial Endorsement. See Chapter 5 and 9 for additional information and exceptions.

D. Substantial Rehabilitation transactions finance repairs and rehabilitation of existing properties that are or have been previously occupied. (Conversions of a non-residential to residential use are also included and may be financed as substantial rehabilitation). Projects in which construction of above ground improvements was started but not completed or inhabited are not eligible. The definition of substantial rehabilitation is based on a per unit threshold for the cost of rehabilitation. See Chapter 5.1.D.

E. **Cost Certification.** The borrower must submit a cost certification prepared by an independent CPA upon completion of construction or substantial rehabilitation. The mortgage amount that is

finally endorsed for insurance after completion of construction can be reduced based upon HUD review of the cost certified amounts. General contractors or subcontractors are required to submit a cost certification if a cost-plus construction contract is used or there is an identity of interest with the borrower. See Chapter 13 for project cost certification procedures and Chapter 14.2 for exemption of certain Tax Credit projects.

F. **Federal Labor Standards.** The general contractor and all subcontractors for FHA-insured new construction or substantial rehabilitation transactions are required to comply with federal wage and reporting requirements under the Davis-Bacon Act and the Copeland Act. Davis-Bacon requires the payment of prevailing wage rates and regulations under the Copeland Act require the submission of weekly certified payroll reports. Prevailing wage schedules may be obtained from the Regional Center or Satellite Office. There are limited exceptions to this requirement. Davis-Bacon Wage requirements do not apply for Section 241(a) in which the underlying first mortgage is a Section 223(f) loan (or a Section 223(a)(7) loan) or for Section 241(a) loans for projects with a Secretary-held mortgage if the project did not originally have an FHA-insured loan that was subject to Davis-Bacon. Additionally, Davis-Bacon Wage rates do not apply to off-site improvements, nor do they apply to any site demolition or improvements completed prior to the creation of a federal nexus, defined as the submission of either a pre-application or firm commitment application to HUD.

G. **Assurance of Completion.** The general contractor shall provide an assurance of completion of construction in the form of a Combined Performance Payment Bond or cash or a Letter of Credit in an amount approved by HUD. See Section 8.14.N for the specific requirements.

H. **Absorption Period.** The absorption period used in estimating market demand for proposed newly constructed or substantially rehabilitated units should not exceed 18 months from delivery of the first units. The absorption period should be supported by the MAP Underwriter and fully explained in the Lenders Narrative. Larger projects may phase in additional units under a separate application for mortgage insurance. An exception to the 18-month limitation on the absorption period may be considered by the Regional Center or Satellite Office Director for large high-rise buildings which will be evaluated based on their own merit and will require a larger initial operating deposit.

I. Marketing and Leasing Plan. All projects that require absorption of units at economic rents to achieve break-even occupancy must submit a detailed marketing and leasing plan, and a budget reviewed and confirmed by the proposed property management company. The plan must discuss when marketing efforts will begin, when the leasing office and model units will open, how the leasing office will be staffed, and the project's marketing and advertising strategy. The plan must address timing of the construction progress schedule with respect to egress and ingress into the project, landscaping and access to amenities. These items are in addition to those required by the Affirmative Fair Housing Marketing Plan.

J. **Working Capital Escrow.** The Working Capital Escrow is designed to cover accruals of taxes, insurance, and interest above the amounts capitalized in the mortgage in the case of construction delay. The escrow may also be used to pay for construction contingencies for cost overruns and change orders, and other miscellaneous expenses which are not included in the mortgage and required for new construction and substantial rehabilitation proposals. For new construction the Working Capital Escrow is 4% of the mortgage amount with 2% set aside specifically as a construction contingency to cover construction cost overruns and change orders and the other 2% to cover excess soft costs or costs of putting the project in operation. For substantial rehabilitation, the Working Capital Escrow is 2% (a construction contingency is permitted in the construction costs of substantial rehabilitation projects). Substantial rehabilitation projects with Section 8 rental assistance for 90% or more of units (with or without LIHTC restrictions) do not require a Working Capital Escrow when the Lender demonstrates there will be sufficient income generated by the property during the rehab period to cover items typically funded by the Working Capital Escrow and when interim income is not being used as a source of financing.

K. **Furniture, Fixture and Equipment (FF&E) in Cost Basis.** Reasonable costs of Furniture, Fixture and Equipment may be included in mortgageable project costs and in the Reserves for Replacement for new construction and substantial rehabilitation proposals. See Chapter 5, Section 5.11.D.4.i for FF&E examples and guidance. All funded FF&E will be subject to FHA MAP Lender’s security instruments.

L. **Elderly Developments.** New construction or substantial rehabilitation of apartments specifically designed with occupancy restricted to the elderly age 62 and over should be processed under Section 231. Age restricted projects are not eligible under Section 220. Age restricted Multifamily projects may be considered under other Sections of the Act (e.g., Section 221(d)(4) or 223(f)) so long as they comply with the provisions of Section 3.11.

M. **Occupancy Preference**. Sponsoring nonprofit organizations such as labor unions, professional groups, religious organizations, and fraternal or civic organizations, may give preference to their members, provided membership in the organization is open without regard to race, color, national origin, sex, sexual orientation, gender identity, marital status, familial status, age, disability or religion. However, sponsors cannot restrict occupancy solely to their members. Preferences may also be given to other groups such as veterans, homeless persons, victims of domestic violence, etc.

Residency preferences require HUD approval (24 CFR 5.655(c)(1)(iii) and may be used only under conditions specified in the Affirmative Fair Housing Marketing Plan instructions and 24 CFR 5.655(c)(1), so that they may not create a disparate impact in selection against protected classes. In no case may special preference be given to children of current residents since the demographics of housing markets and labor pools change. Similarly, projects

(regardless of ownership) may target occupancy to various demographic groups (such as “workforce housing”) so long as there is sufficient and sustainable market and Affirmative Fair Housing Marketing Plans and other management plan exhibits demonstrate the property will not discriminate against any particular race, color, national origin , religion, sex, disability, familial status, sexual orientation and gender identity and age. Additionally, if an owner adopts a preference for working families, an applicant shall be given the benefit of the working family preference if the head and spouse, or sole member, is age 62 or older, or is a person with disabilities. See 24 CFR 5.655 (c)(2).

N. **Builder and Sponsor’s Profit and Risk Allowance (BSPRA) and Sponsor’s Profit and Risk Allowance (SPRA)** are allowed (but not required) for new construction and substantial rehabilitation applications under Sections 221(d)(4) and220 for profit motivated and limited distribution borrowers. BSPRA and SPRA are allowed for new construction Section 231 applications, but not under Section 231 substantial rehabilitation. Non-profit borrowers are eligible for a developer’s fee, or they may apply as a for-profit entity for purposes of applying for FHA mortgage insurance, as provided in Chapter 8.

1. The BSPRA allowance will be credited against the borrower’s required equity contribution. To use BSPRA, there must be an identity of interest between the borrower and general contractor and there must be no paid builder’s 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 (including third party report fees) and audit expenses (total of lines 50, 63 and 67 in Section G. of Form HUD-92264), exclusive of land. For substantial rehabilitation projects, BSPRA is 10% of the above costs exclusive of the as is value of the existing structure.

2. SPRA may be included in replacement cost where no identity of interest exists between the general contractor and borrower, or where there is an Identity of Interest, but the borrower and general contractor have agreed to a general contractor profit instead of BSPRA. SPRA is 10% of the total estimated cost of: architect's fees, carrying and financing charges, legal, organizational, and audit expenses.

O. **Energy Efficiency**. New construction projects must comply with the International Energy Conservation Code (IECC) for buildings up to three stories, or in the case of buildings over three stories, American Society of Heating, Refrigeration and Air-conditioning Engineers, ASHRAE Standard 90.1 as adopted by HUD (see Chapter 6.A.1.) Substantial rehabilitation projects must conform to these energy codes except where compliance is not feasible due to required preservation of historic buildings or elements of historic buildings. Incentives for

improved building performance (i.e. reduced utility consumption) are available as described in Chapter 6.A.2 and 6.J.

P. **Cost vs. Value.** Most FHA multifamily new construction and substantial rehabilitation programs are based on cost rather than value when sizing the mortgages (in Criterion 3 of Form HUD-92264A). Exceptions are Sections 231 substantial rehabilitation program and the 241(a) programs, which are both values based by statute. For substantial rehabilitation under all Sections of the Act, the "as is" value of the project is a component of the cost. "As is" value of a substantial rehabilitation project will be the lessor of the value "as is", reflecting actual occupancy and any restrictions on NOI, or the purchase price at closing if it is an arms-length acquisition transaction.

3.3 Section 221(d)(4) Mortgage Insurance for Rental Housing - New Construction and Substantial Rehabilitation

Section 221(d)(4) insures mortgages for the new construction or substantial rehabilitation of rental housing. In addition to the general requirements in Sections 3.1 and 3.2, the requirements in this section apply to the Section 221(d)(4) program:

Maximum Loan Ratios and Debt Service Coverage Ratios. The following loan ratios and percentages control the loan amount and are the mortgage criteria detailed on the Form HUD-92264-A, Supplement to Project Analysis. The lowest mortgage criterion controls the loan amount.

Section 221(d)(4)

New Construction and Substantial Rehabilitation

Criterion 1:

Loan Amount Requested in the Application. The requested application amount may be amended when appropriate, e.g. when a higher mortgage is supportable due to a reduction in the interest rate.

Criterion 3:

Amount Based on Replacement Cost: The applicable percentage of the estimated replacement cost for new construction or the applicable percentage of the estimated replacement cost for substantial rehabilitation (which includes the "as is" value of the property before substantial rehabilitation) is:

a. 90% - for projects with 90% or greater rental assistance;

b. 87% - for projects that meet the definition of Affordable Housing and for which the achievable Tax Credit rents are at least 10% below market rents; or

c. 85% - for market rate projects or Tax Credit projects without a significant rent advantage (i.e., the achievable rents are at least 10% below market.)

Criterion 4:

Amount Based on Limitations per Family Unit: Where percentages are required, enter the same percentage applied under Criterion 3. See Chapter 8 for complete details and the MF Housing website:https://www.hud.gov/program_offices/administration/hudclips/notices/hsg on information for per family unit limitations and the High Cost Percentage by jurisdiction.

Criterion 5:

Amount Based on Debt Service Coverage Ratio (DSCR) (ratios are rounded for presentation purposes):

a. 90% (1.11 DSCR) – for projects with 90% or greater rental assistance;

b. 87% (1.15 DSCR) – for projects that meet the definition of Affordable Housing and for which the achievable Tax Credit rents are at least 10% below market rents; or

c. 85% (1.176 DSCR) - for market rate projects or Tax Credit projects without a significant rent advantage (i.e., the achievable rents are at least 10% below market.)

3.4 Section 220 Mortgage Insurance for Rental Housing for Urban Renewal and Concentrated Development Areas – New Construction and Substantial Rehabilitation

Section 220 insures mortgages for the new construction or substantial rehabilitation of mixed-use housing projects in urban renewal areas, code enforcement areas and other areas where local governments have undertaken designated revitalization activities.

In addition to the general requirements in Sections 3.1 and 3.2, the following requirements apply to Section 220:

A. Eligible Areas. The property must be located in either a concentrated development area approved by the Multifamily Regional Center or Satellite Office, or 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. Opportunity Zones.
3. An approved urban renewal area under Title I of the Housing Act of 1949.
4. Disaster urban renewal projects assisted under Section III of the Housing Act of 1949 as amended.
5. An area of concentrated code enforcement being carried out under Section 117 of the Housing Act of 1949.

The Multifamily Regional Center or Satellite Office will consider proposals in concentrated development areas 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. Locally developed strategies may be informal, but must:

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, and

c. Provide sufficient resources to produce substantial long-term improvements in the area within a reasonable amount of time, considering the severity of the area’s problems.

B. Commercial Facilities. Commercial space may be included if it will serve the needs of the project residents and other residents of the area. Commercial space is limited to 25% of total net rentable area and commercial income to 30% of effective gross project income.

   See Chapter 7 for requirements where commercial facilities are included in a project.

C. Maximum Loan Ratios and DSCRs. The controlling mortgage criteria for Section 220 loans are the same as for the Section 221(d)(4) program, detailed above.

D. Builder/Sponsor Profit and Risk Allowance (BSPRA). See definition of BSPRA in Section 3.2.N.

E. Sponsor Profit and Risk Allowance (SPRA). See definition of SPRA in Section 3.2.N.

F. Elderly Developments. Apartments specifically designed for the elderly, limited to elderly occupancy, and/or seeking to use the Fair Housing Act's housing for older persons exemption are not permitted under Section 220.

3.5 Section 231 Mortgage Insurance for Rental Housing for Elderly Persons – New Construction and Substantial Rehabilitation

Section 231 insures mortgages for construction and substantial rehabilitation of rental housing for elderly persons (aged 62 or older) and/or persons with disabilities. A project must comprise 8 or more new or substantially rehabilitated units designed for occupancy by elderly persons and may include family units for occupancy for persons who qualify as disabled.

A. Definitions/Explanations of Terms:

   1. Elderly Person. A person aged 62 or older. For Section 231 occupancy, other than for units designed for the use and occupancy of disabled persons and their families for up to 25% of the units, all persons living in a unit must be age 62 or over.

   2. Disabled Person. A person who has a physical or mental impairment that substantially limits one or more major life activities.

B. Room Layout, Design and Special Amenities. Particular attention is to be given to room lay out and unit design to assure they are consistent with the needs of the elderly or individuals with disabilities. (See 24 CFR 100.205)

C. BSPRA or SPRA allowances are eligible under Section 231 new construction transactions so long as there is no Developer Fee. These allowances are not available for Section 231 substantial rehabilitation transactions, which may be constrained by value. See Section 3.2.N. for an explanation of these allowances.

D. Maximum Loan Ratios and DSCRs. The controlling mortgage criteria for Section 231 loans are the same as for the Section 221(d)(4) program, detailed above, with the exception of criterion 3 for substantial rehabilitation loans, which is controlled by the applicable percentage of "as rehabilitated" value (not cost).

3.6 Section 241(a) Mortgage Insurance for Supplemental Loans for Multifamily Projects

A. Eligibility. Section 241(a) is now a MAP-eligible program. It provides secondary financing for improvements or additions to properties with a HUD-insured first mortgage that need repairs, substantial rehabilitation, or additional units. Deferred developer fees carried over from a LIHTC transaction are considered ineligible costs under the 241(a) loan program.

1. Projects with HUD-held debt (as opposed to FHA-insured), or Risk Share financing are not eligible to apply for Section 241(a) loans.

2. Improvements consisting of repairs, alterations, or additions to, or substantial rehabilitation of existing structures may be financed with a Supplemental Loan.

3. Construction of additional units, or expansion of the footprint of the existing building, is allowed, so long as the number of units in the new addition is equal to or less than the existing building. Such work may be completed on the existing parcel secured by the first mortgage, or a contiguous or nearby parcel acquired and included in an amendment to the existing first mortgage security documents.

4. A cross-default provision should be placed in the Section 241(a) mortgage loan documents such that a default under a "prior recorded insured mortgage" will trigger a default under the Section 241(a) mortgage. However, a default under the Section 241(a) loan should not trigger a default under the first mortgage.

B. Term. The Section 241(a) loan should generally be coterminous with the underlying FHA-insured first mortgage if that loan has more than 25 years remaining on its term. If less than 25 years remain on the term of the first mortgage, HUD will consider an amortization period of up to 40 years regardless of the underlying first mortgage's amortization period so long as the term is no greater than 75% of the project's remaining economic life. Notwithstanding the above, the Regional office has discretion to grant a waiver to permit the second mortgage term to exceed the term of the first mortgage loan in the event that the increase in term will reduce overall risk to the transaction and will otherwise meet program obligations.

C. Equity requirement and controlling mortgage criteria. The owner is required to contribute at least 10% of the total development cost of the transaction. Existing reserve for replacement deposits in excess of the Initial Deposit requirement concluded in the CNA and underwriting may be used to meet the equity requirement. Similarly, land equity from adjacent or nearby parcels added and incorporated into the existing first mortgage security and additional cash contributions can be used to meet the 10% equity contribution requirement. Residual Receipt account funds (e.g., from surplus Section 8 funding) cannot be used to meet equity requirements. Imputed equity representing the difference between the "as is" value of the project and the existing indebtedness is not available to meet the equity requirements. The HUD Form 92264 and 92264A should recognize only the cost of the addition or improvements but, should include all (i.e. the existing and proposed) project Net Operating Income (NOI) in Criterion 5 of Form HUD 92264A. A supplemental analysis comparing the historical and proposed NOI should be included as an attachment to the HUD-92264.

Criterion 3: Loan to Value / Cost.

A Section 241(a) supplemental loan is limited by statute to 90% of the HUD-estimated value of the improvements, additions or equipment, regardless of the Section of the Act insuring the underlying first mortgage. The cost of the repairs and transaction costs (including the acquisition price of an adjacent or nearby land parcel) will be recognized as the value, so long as any additional land purchased or contributed is no more than the fair market value. Regardless of the Section of the Act of the underlying first mortgage, neither BSPRA nor SPRA may be recognized. The cost of the transaction can and should include builder's profit (regardless of whether there is an Identity of interest.)

Criterion 4: Statutory Limits.

The Supplemental Loan, when added to the outstanding balance of the mortgage covering the project or facility, may not exceed the maximum statutory limitation applicable to the building and unit type for the Section of the Act under which the existing first mortgage is insured.

Criterion 5: Debt Service Coverage Ratio.

The maximum loan amount under this criterion is debt service (in combination with the first mortgage payments) supported by 90% of projected NOI.

D. CNAs Plans and Specifications, and Cost Estimate requirements. A CNA is required for the entire property, including both existing units and any proposed addition. The portion of the property already existing and not proposed for substantial rehabilitation should be evaluated in the same manner as for existing buildings in a refinance application to identify and define any existing critical or non-critical repair needs as well as future needs. These identified critical and non-critical repairs should be included in the loan amount and the approved construction scope of work. Such repairs should be documented with plans and

specifications consistent with the applicable classification of work as described in Chapter 5. (See Chapter 5.11 for architectural review of Section 241(a) loans.)

If the proposed construction includes substantial rehabilitation of the existing property or a portion thereof, then for that portion of the property the CNA will only identify future needs. Similarly, for any portion of the property, which is an addition, the CNA will only identify future needs. Future needs for any substantial rehabilitation portion of the property and additions are based on proposed drawings and specifications while future needs for other portions of the property are based on inspected conditions. The cost of all future capital needs is used to size the Reserve for Replacement escrow.

Plans, Specifications, and Architecture and Cost Analysis reports for portions of the property that are substantial rehabilitation or additions must be completed consistent with requirements for Section 221(d)(4) or other new construction or substantial rehabilitation loan programs as described in Chapter 5.11.

The Section 241(a) loan combined with the original first mortgage shall be considered one project and the CNA must produce one Reserve for Replacement schedule and budget for future capital needs inclusive of the existing improvements as well as any proposed substantial rehabilitation or addition.

E. Davis-Bacon Act applicability. (See Chapter 3.2 Section F for Davis-Bacon Wage applicability.) (See Chapter 19 for closing guidance.)

F. Insurance of Advances or Insurance upon Completion. Either approach is acceptable. Construction advances for any Supplemental Loan may be insured; the minimum amount of advance that may be insured is $200,000. Mortgageable contingency and construction draw retainage are subject to the same requirements as other New Construction / Substantial Rehabilitation programs.

G. Environmental Review. A HEROS environmental review per the requirements of Chapter 9 is required for Section 241(a) loans. Chapter 9.2 provides guidance in determining whether the correct level of review is Categorically Excluded, or Environmental Assessment is required.

H. Working Capital and Operating Deficit Reserves. The working capital and operating deficit reserves requirements are the same as those of the Section 221(d)(4) program. The lender can recommend, and HUD may approve, waiving the requirements when appropriate on specific cases. A default under the first mortgage will constitute a default under the Section 241(a) loan.

I. Management Exhibits – Management exhibits identified in Section 3 of the application exhibits are not required if the Management Agent’s operations have not materially, negatively changed since approval of the HUD-insured first mortgage. If operations have materially, negatively changed, Management Agent documentation is required.

J. Multiple Lenders. A new Section 241(a) insured loan may be originated by the first FHA lienholder or a new lender. The lender processing the Section 241(a) FHA insured loan shall create one Reserve for Replacement Account (RfR) incorporating both escrow account requirements into a single reserve account. If the holder of the first lien is not the same entity as the proposed secondary debt lender (See Se. 3.6.A.4), the two lenders shall designate one as the depository holder of the CNA e-tool and the RfR accounts. This decision shall be determined before the Section 241(a) application is submitted to HUD. The designated lender shall maintain the updated CNA e-tool report and Reserve for Replacement Account incorporating both loans. The processing 241(a) lender must agree and certify to obtain an updated CNA e-tool report, funding for a new Reserve for Replacement Account and other pertinent information required by the Section 241(a) insured loan. If different from the first lien holder, Section 241(a) processing lender shall submit the updated information to the first lien holder for review and approval based on HUD's program requirements. The designated lender, if different that the Section 241(a) lender shall submit a written acceptance of the updated CNA report and Reserve for Replacement Account at the time of the insured Section 241(a) application submission. The designated lender shall have the authority over all the Reserve for Replacement accounts and CNA e-tool reimbursements and future requirements once Initial Endorsement has occurred and all other terms and conditions of the FHA Firm Commitment have been satisfied.

K. MIP premium. Section 241(a) may apply for reduced initial and annual MIP premiums based on Green and Energy Efficient Housing qualifications. Both the existing improvements and the proposed improvements must be evaluated as one property for energy performance analysis and as a whole achieve the selected Green Certification. Upon qualification, the reduced initial and annual MIP will apply only to the secondary loan processed under Section 241(a) transaction. See Chapter 6 and particularly Chapter 6.8.

3.7 Section 207/223(f) Mortgage Insurance for Purchase or Refinancing of Existing Multifamily Rental Housing

A. General Requirements

Section 207/223(f) insures mortgages for the purchase or refinancing of existing rental housing that may have been financed originally with conventional mortgages, equity, or with a HUD-insured loan. The use of Section 223(f) for Cooperative Multifamily Housing is described in Chapter 17. Properties requiring substantial rehabilitation are not eligible for this program. HUD requires completion of critical-life safety repairs before endorsement of the mortgage. Critical-accessibility repairs must be completed as soon as possible although such repairs can be deferred until after endorsement when earlier completion is not possible. Non-critical repairs may be deferred until after endorsement. See Chapter 5.1 for the definition of substantial rehabilitation and detailed requirements concerning repairs. The property must contain at least 5 residential units.

B. Eligible Properties.

1. Applications for refinancing of property with certificates of occupancy issued 3 or more years prior to application are eligible and will be underwritten consistent with the loan sizing ratios described in 3.7.J below. Applications for these properties must document a pattern of stable occupancy at not less than 85% and stable operating results. Deficit reserves are generally not required but may be imposed where extensive repairs, re-pricing of units or market instability require mitigation of such risks.

2. Newly built or substantially rehabilitated properties (certificates of occupancy less than 3 years prior to application) will be accepted as soon as properties achieve the applicable programmatic debt service coverage ratio (DSCR) for not less than one full month. However, and notwithstanding this allowance, MAP lenders should be careful to submit only those applications for mortgage insurance that will meet the underwriting requirements set forth below such that endorsement can reasonably take place no more than sixty days after issuance of the firm commitment. All projects submitted to HUD for mortgage insurance within three years of issuance of the final Certificate of Occupancy must meet the following underwriting conditions, in addition to those currently set forth in the MAP Guide as part of an application for mortgage insurance.

    a. The project must evidence a minimum debt service coverage ratio (DSCR) consistent with the requirements for Criterion 5 as stated in Chapter 3.7.J below for a period of three consecutive months prior to loan endorsement.

    b. An income and expense statement commencing with initial occupancy to application submission, as well as a projection of income and expense for the succeeding twelve months.

    c. A current rent roll evidencing existing, achieved rents as well rents that were used to underwrite the existing first mortgage.

    d. A leasing history of the project commencing from initial occupancy to application submission, as well as the lease-up projection used to underwrite the existing first mortgage.

    e. Rent concessions, other discounts and short-term leases (less than 12 months) that are offered by the owner to induce a prospective tenant to enter into a lease must be disclosed and discussed in the Lender's Narrative.

    f. HUD will underwrite to actual revenue collected less normalized operating expenses in order to determine when and if the required programmatic DSCR has been achieved.

g. A request for cash out is permitted subject to the maximum loan to value ratio for Criterion 10 described in 3.7.J below. However, 50% of the available cash must be held by the lender as a debt service reserve until such time as the property achieves the applicable minimum debt service coverage for six consecutive months.

C. Ineligible properties.

1. Manufactured home parks and group homes 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.
3. Properties with meal services or other features typical of or unique to Retirement Service Centers. Although, there is a potential exception to allow otherwise prohibited services for refinancing Section 202 properties or FHA-insured properties with Project-Based rental assistance so long as they are offered on an optional basis, projects with mandatory meal service are not eligible.

C. In addition to the general requirements in Section 3.1, the following requirements apply to Section 223(f) when used for acquisition or refinancing:

1. Any property acquired by the borrower before the date of the mortgage insurance application shall be treated as a refinance transaction.
2. Any property acquired by the borrower after the date of the mortgage insurance application shall be treated as a purchase; and
3. In a purchase transaction, any identity of interest, however minor an interest, between seller and purchaser requires the application to be processed as a refinance. (Acquisitions to facilitate Affordable transactions as defined in Section 3.1.L of the MAP Guide are an exception to this requirement.)
4. Borrowers with no experience operating multifamily rental housing will not be considered for acquisition financing under Section 223(f) unless there are significant mitigants (e.g. the principals have clean credit, strong diversified financial capacity, a conservative valuation and the property will be managed by an experienced HUD third party management agent.

D. Repairs.
1. Critical-life safety repairs must be performed prior to endorsement. Critical-accessibility repairs must be completed as soon as possible but may be deferred to after endorsement when completion prior to endorsement is not possible. See Chapter 5.3 and 5.10 concerning repairs and alterations in Section 223(f) transactions.

2. Non-critical repairs approved by HUD may be completed after endorsement. These repairs, and together with any deferred critical-accessibility remedies, must be described with work write-ups sufficiently detailed to facilitate inspections, schedules for completion of repairs, credible bids on work items greater than $35,000, and a financial escrow equal to 120% of the cost of deferred repairs which escrow must be established at closing. The 20% portion of the escrow above the 100% of deferred repair cost is non-mortgageable and may be reduced to 10% for affordable and Section 223(a)(7) transactions. See Chapter 5.3 and 5.10 concerning repairs and alterations in Section 223(f) transactions.

3. Construction of additional units is not permitted under the Section 223(f) program. Ancillary improvements such as community buildings and leasing offices or amenities such as swimming pools or other, similar revenue-enhancing improvements are permitted, so long as the total size of improvements do not exceed a gross floor area of 5,000 square feet. Additionally, if new improvements are proposed, refer to Section 9.1.C.3 for information on environmental reporting.

E. Failure to meet requirements for accessibility for persons with disabilities. Any property available for first occupancy after March 13, 1991, that does not comply with the Fair Housing Act design and construction requirements, must, as a condition of insurance, be modified/retrofitted to comply with Fair Housing Act accessibility guidelines. Similar, but distinct requirements exist for any property now or ever federally assisted (per Section 504 of the National Rehabilitation Act of 1973). The Americans with Disabilities Act may also apply to portions of a property. HUD may approve the modifications/retrofits to be completed after endorsement with appropriate financial escrows at closing, and the work must be performed in accordance with instructions in Section 5B “Accessibility for Persons with Disabilities.”

F. Elderly or Age Restricted developments. Projects with existing elderly occupancy or age restrictions are eligible for refinancing under Section 223(f) as long as the property meets the requirements of Section 3.11 and does not contain the features of the Section 232 program.

G. Prior Defaults/Claims or Departmental Enforcement Center Referrals. HUD does not prohibit applications for mortgage insurance for projects that have previously experienced default, assignment or were formerly HUD-held loans, but will not accept any application from a borrower/principal who has had a previous loan or other financial relationship with HUD and not proven to be a good business partner, or for a property which has proven to be unsuccessful or infeasible in the past, especially if any inherent negative attributes remain uncorrected. The lender should accept such applications only after they have documented the

economic, physical, operational or management changes that have occurred thereby justifying an application for new insurance. A concept meeting prior to submission is required to address the history of the loan and of the borrower/principal including past Regulatory Agreement compliance. Similarly, the lender should ensure that the borrower, the proposed management agent, and/or the Project have not been referred to HUD's Departmental Enforcement Center (DEC), or if such a referral has been made, that all issues have been or will be resolved.

H. Labor standards. Davis-Bacon prevailing wage requirements do not apply to Section 207/223(f).

I. 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 borrower enters into an agreement with HUD to maintain the property as rental housing for the remainder of the specified 5-year term;
2. HUD determines that the conversion of the property to a cooperative or condominium ownership is sponsored by a bona fide resident organization representing the majority of households in the project;
3. HUD determines that continuation of the property as rental housing is unnecessary to assure adequate rental housing for low- and moderate-income residents of the community; or
4. HUD determines that continuation of the property as rental housing would have an undesirable and deleterious effect on the community.

The statutorily imposed prepayment restriction is not intended to prohibit refinancing under Section 223(a)(7) though the terms of a Ginnie Mae or other mortgage backed security or bond financing may restrict prepayment. A Section 223(f) Use Agreement is required for a refinancing of an existing Section 207 insured loan pursuant to Section 223(f)/ 223(a)(7) if the mortgage is aged less than five years from the Final Endorsement date.

J. Maximum Loan Ratios and Debt Service Coverage Ratios. The following loan ratios and percentages control the loan amount and are detailed on the Form HUD-92264-A, Supplement to Project Analysis, mortgage criteria. The lowest mortgage criterion controls the loan amount**.**

Criterion 1:

Loan Amount Requested on Application. The requested application amount may be amended when appropriate.

Criterion 3:

Amount Based on Value: The applicable percentage of the estimated value of the property after completion of repairs and improvements.

a. 90% - for projects with 90% or greater rental assistance
b. 87% - for projects that meet the definition of Affordable Housing and for which the achievable Tax Credit rents are at least 10% below market rents; or
c. 85% - for market rate projects or Tax Credit projects without a significant rent advantage (i.e. the achievable rents are not at least 10% below market.)

Criterion 4:

Amount Based on Limitations per Family Unit: Where percentages are required, enter the same percentage applied under Criterion 3. See Chapter 8 for complete details and the MF Housing website:
https://www.hud.gov/program_offices/administration/hudclips/notices/hsg on information for per family unit limitations and the High Cost Percentage by jurisdiction.

Criterion 5:

Amount Based on DSCR (ratios are rounded for presentation purposes):

a. 90% of NOI (1.11 DSCR) - for projects with 90% or greater rental assistance
b. 87% of NOI (1.15 DSCR) - for projects that meet the definition of Affordable Housing and for which the achievable Tax Credit rents are at least 10% below market rents; or
c. 85% of NOI (1.176 DSCR) - for market rate projects or Tax Credit projects without a significant rent advantage (i.e. the achievable rents are at least 10% below market.)

Criterion 7: Acquisition Applications

Amount Based on Total Cost of Acquisition Section 223(f). The following percentages apply to Line 7d. (i.e. formula to compute the loan closing charges) and Line 7h:

a. 90% - for projects with 90% or greater rental assistance

b. 87% - for projects that meet the definition of Affordable Housing and for which the achievable Tax Credit rents are at least 10% below market rents; or
c. 85% - for market rate projects or Tax Credit projects without a significant rent advantage (i.e. the achievable rents are at least 10% below market.)

Criterion 10: The greater of 80% of LTV, or the Cost to Refinance.

K. Cash Out/Equity Out Proceeds When Repairs Are Deferred. Fifty percent (50%) of any cash out proceeds after funding mortgageable transaction costs and the assurance of completion requirements must be held in an escrow by the lender until the deferred repairs are completed and HUD approves the release of funds remaining in the Repair Escrow. (See Chapter 8.11.A.2.c for exceptions and 12.17.A.3 for detailed escrow release instructions).

L. Capitalization Rates and Determination of Value - Capitalization rates represent the blended or weighted cost of capital to the investor and the various methods of calculating capitalization rates utilize the mortgage constant to represent the debt portion of the cost of capital. Capitalization rates should generally exceed the mortgage constant in nearly all cases, and the MAP Underwriter should compare the mortgage constant to the capitalization rate as a test of reasonableness. A capitalization rate that is less than this mortgage constant may indicate a market that is over-heated or that that the capitalization rate data in the appraisal is flawed. Regardless, a capitalization rate that is less than the mortgage constant may indicate the need for a more in-depth review.

M. Statutory Loan Limits. When approved by the Regional Director, the statutory loan limits may be increased for Section 223(f) projects up to the maximum permitted factors (270% or 315%, as applicable).. But in no event will the statutory loan limits be increased in order to increase the amount of available equity on a cash out transaction controlled by Criterion 10.

N. Cost Not Attributable to Dwelling Space. A calculation for cost not attributable for dwelling space may be included in the determination of final loan amount for purposes of Criterion 4 for Section 223(f) projects. (See Chapter 5.12.D.4)

O. Reserve for Replacements (RfR). An Initial Deposit and/or Annual Deposits must be made to the Reserve for Replacements in accordance with the CNA and underwriting conclusions. For projects with a recently completed CNA, (See Chapter 5.10.D.)

P. Secondary Financing. HUD permits secured secondary financing on Section 223(f) loans up to total debt of 92.5% Loan-to-Value, or as otherwise specified for affordable housing projects. (See Chapter 8 and Chapter 14 for details.)

Q. Commercial Space. Commercial space is limited to 25% of total net rentable area and commercial income to 20% of effective gross project income.

R. Real Estate Requirements. The mortgage must be on real estate held:

1. In fee simple; or
2. Under a leasehold estate approved by HUD for not less than ninety-nine years which is renewable or with a minimum term of 50 years from the date the mortgage is executed. Both the land and the improvements may be subject to the leasehold, so long as Office of General Counsel determines there is adequate security for the loan.

S. Mortgage Term. The maximum term of the mortgage is 35 years or 75% of the remaining economic life of the property, whichever is less, provided that the term may not be less than 10 years.

T. Firm Commitment Processing Only. Lenders should participate in a concept meeting with the Regional Center or Satellite Office prior to application submission if there are concerns about marketability, environment, competing proposals or for particularly complex financing structures or projects with less than three years operating history, significant cash out or for loans over $75M.

U. Market Study. Section 223(f) applications typically do not require a market study separate from that contained in the appraisal. However, in volatile or declining markets, the lender should consider and may be required to obtain a market study to support the underwriting conclusions of market demand for the property over the loan term. Regional Center or Satellite Office staff should consult with Economic Market Analysis Division (EMAD) in such cases. Requirements for market studies are contained in Chapter 7.

V. 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 to whom they will be paid.
2. Permanent Placement Fee. This fee must include all permanent placement expenses, including lender's legal fees, except discounts. Where Ginnie Mae 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 permitted permanent placement fee.

3. Determine if the discounts, financing fees and costs of issuance are reasonable and generally 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. 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% of the mortgage amount. Any cost beyond the 5.5% must be paid from sources outside the mortgage.

   b. The maximum financing fee the mortgagee may retain for its own account is 3.5% to cover the costs of origination, permanent placement, processing, underwriting, closing and delivery (including the mortgagee's legal fees), escrow monitoring, etc. The remaining 2% (or such greater percentage as may result from the lender reducing its maximum retained 3.5% fee) may be used to offset the bond fees.

   c. Discounts. In a refinancing or purchase transaction, discount fees 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.

W. Defeasance costs associated with underlying bond financing, yield maintenance, swap termination fees, or costs to satisfy similar derivative instruments will only be recognized in the eligible cost basis up to 10% of the requested FHA loan amount. Defeasance costs greater than 10% of the proposed FHA insured loan amount may only be paid from equity-out when the loan amount is less than or equal to 80% LTV.

3.8 Section 223(a)(7) Refinancing of Existing Insured Mortgages

The Section 223(a)(7) program is more fully described in Chapter 18 of this Guide. The program was included as a MAP Program in July 2010 and provides for streamlined refinancing of currently insured FHA loans. Accordingly, some requirements of MAP processing for other multifamily programs are not required. The following is a summary of the program features:

Eligibility: Only currently FHA insured loans are eligible. HUD held loans are not eligible unless subject to a Mark-to-Market Debt Restructuring under MAHRAA. Risk Share loans are not eligible (by statute). Properties that need substantial repairs or propose new construction (e.g. of additional units or other permanent structures) are not eligible.

Terms: Most transactions are processed with a lower interest rate, and re-amortized either within the remaining term or with an extension up to 12 years, including any previous extensions granted. Exceptions are detailed in Chapter 18; however, Lenders should ensure compliance with this section by reviewing the loan history in HUD's database if the most recent financing was through Section 223(a)(7). Extended amortizations may reduce risk to the Department by lowering debt service requirements so long as the CNA evidences the physical condition supports the extended term of the mortgage. In every case, the loan term cannot exceed 75% of the remaining economic life of the property.

Controlling Mortgage Criteria: The loan is limited to the lesser of the original principal balance, the existing indebtedness plus transaction costs, and that which can be supported by 90% of Net Operating Income (NOI)(95% for projects with greater than 90% Project-Based Rental Assistance with a term in excess of 15 years after endorsement).

Lender Fees: See Chapter 18 for more detail. The one exception to the prohibition on inducements is the payment of prepayment penalties on an existing FHA insured loan from lender's profit. The lender may pay such prepayment penalties on behalf of the borrower, so long as disclosed to and approved in advance by HUD. Prepayment penalties payable by lenders may include the cost of defeasance or penalties associated with bond financing, or defeasance of other mortgage-backed securities (including Ginnie Mae securities), so long as the amount does not exceed 10% of the proposed FHA insured loan amount.

Borrower Fees: Lenders cannot pay application or due diligence fees on behalf of the borrower, or other payments as an inducement. To do so would be considered a kick-back, and a basis for enforcement action. This broad prohibition applies to affiliates of either the lender or the borrower and includes any payment or contribution from the lender directly to the borrower or in support of their borrower's interests. Other than to pay for CNA costs, existing Reserve for Replacement deposits (for HUD held or FHA insured mortgages) are not available for application fees or other transaction costs.

CNA: A complete CNA is required in accordance with Appendix 5G. For projects with a recently completed CNA see Chapter 5.10.D.

Other Issues: Projects in which the repairs or rehabilitation is extensive enough to require an Environmental review above categorical exclusion not subject to the laws and authorities (CENST) (See Chapter 9.1.C.1) or compliance with Davis-Bacon Wages, are not eligible for Section 223(a)(7) refinancing.

An officer of the lender who is an approved signatory must sign the application. Site visits and an approved MAP underwriter are generally not required, though the physical condition or other issues in specific transactions may require such a site visit and underwriter review.

Prepayment approval must be requested by the servicing mortgagee at the time of the application. When the refinancing is being performed by a different firm than currently services the loan, a letter accompanying the Firm Commitment application and signed by the borrower to the Servicing lender notifying them of their borrower's intent to refinance and requesting their filing of the HUD form 9807 will be accepted in lieu of the actual request for prepayment approval.

3.9 Property Insurance Requirements

A. Insurance During Construction.

1. Public Liability Insurance on a Commercial General Liability form with limits of not less than $1Million per occurrence, $2 Million in the aggregate to protect the mortgagor during the construction phase from claims involving bodily injury and/or death and damage to the property of others. Such Commercial General Liability Insurance must be endorsed to include owners' and contractors' protective coverage.
2. Vehicle Liability Insurance with limits based on the State or the District of Columbia's minimum required liability coverage or not less than $300,000 for one person and $500,000 for more than one person, whichever is greater to protect the mortgagor for claims for bodily injury and/or death, and not less than $100,000 against claims for damage to property of others arising from the owner's operation of vehicles. Such insurance must include coverage for employer's owned, non-owned and/or hired vehicles, where applicable.
3. For properties in a Special Flood Hazard Area (SFHA) on a FEMA Flood Insurance Rate Map, flood insurance is required during construction when the property becomes insurable, and upon completion, in the amount required per Section 102(a) of by the Flood Disaster Protection Act of 1973 (42 USC 4012a(a)). For each improved structure located in a SFHA, HUD insurance requirements may go beyond the statutory minimum.

HUD requires flood insurance in an amount at least equal to the greater of:

1. The maximum flood insurance available for that type of property under the National Flood Insurance Program (NFIP); or
2. An amount equal to the replacement cost of the bottom two stories above grade, as determined by HUD form 92329, or equivalent.

B. Permanent Insurance. Upon acceptance of the project, or any portion thereof from the contractor, the lender must provide a certified duplicate copy of the following insurance coverage. In some instances, continuation of the insurance obtained for the construction period, with proper endorsements thereto, will be acceptable. In any event, the lender must assure that there is no gap period in insurance protection during the transition from the Insurance During Construction to the Permanent Insurance.

1. Public Liability Insurance on a Commercial General Liability form with not less than $1 Million per occurrence and $2 Million in the aggregate, to protect the mortgagor from claims involving bodily injury and/or death and property damage that may arise from the mortgagor's operations, including any use or occupancy of its facilities, grounds and structures, and must include independent contractors coverage, where applicable.
2. Vehicle Liability Insurance. If the mortgagor owns a vehicle in the operation of the project, including non-owned and/or hired vehicles operated for the benefit of the mortgagor, the mortgagor must maintain Vehicle Liability Insurance. Such insurance must provide for limits of liability based on the State or the District of Columbia's minimum required liability coverage amounts or not less than $300,000 for one person and $500,000 for more than one person, whichever is greater, to protect the mortgagor from claims for bodily injury and/or death, and not less than $100,000 against claims for damage to property of others.
3. For properties in a Special Flood Hazard Area (SFHA) on a FEMA Flood Insurance Rate Map, flood insurance is required during construction when the property becomes insurable, and upon completion, in the amount required per Section 102(a) of the Flood Disaster Protection Act of 1973 (42 USC 4012a(a)). For each improved structure located in a SFHA, HUD insurance requirements may go beyond the statutory minimum.

   HUD requires flood insurance in an amount at least equal to the greater of:

   a. The maximum flood insurance available for that type of property under the National Flood Insurance Program (NFIP); or
   b. An amount equal to the replacement cost of the bottom two stories above grade, as determined by UD form 92329, or equivalent.

4. Casualty Insurance.

   Also known as "fire and extended coverage" is insurance to protect borrowers (and lenders and HUD) from losses caused by fire, storm, wind and similar accidents or

natural hazards. The borrower must maintain extended coverage on the property, in accordance with terms and conditions established by the Commissioner, as required by 24 CFR 200.86.

a. Insurable Values. The amount of damages covered, and the amount of coverage needed are both based on the replacement cost of individual buildings not including land or site improvements, meaning the actual current cost of replacing the building, not value or depreciated original cost. For each building this sum is known as its "insurable value." The dollar amount payable in any casualty event will not exceed the actual cost of damages calculated on a building by building basis and for each building will not exceed the insurable value for that building. For this reason, methods of estimating insurable value that prorate gross cost among dissimilar buildings may under (or over) state actual replacement cost resulting in a risk of loss not covered by insurance. Most states regulate casualty insurance coverage and prohibit "over insurance" because it is an inducement to arson and insurance fraud. For HUD programs, replacement cost (insurable value) must be estimated for each structure in a property and is reported on the CNA report. (See Chapter 5 and Appendix 5G).

b. Minimum Coverage Amount. Provided that any co-insurance requirement is met (see below), the borrower must provide casualty insurance with a face amount that is the lower of: 80% of insurable improvements; or the balance of the insured mortgage(s). (See FHA form 92447, section 5(a)).

c. Limitations of Borrower's Obligation to Share Cost of Damages. HUD's minimum coverage requirements protect borrowers by limiting their obligation to share the costs of damages when a casualty occurs and by assuring that the insurance proceeds are sufficient to pay the commensurate portion of the principal amount of any insured mortgage(s) when a damaged building cannot be restored.

Typically, insurers require borrowers to share the cost of damages by one (or both) of two methods: deductibles, and co-insurance requirements. HUD limits borrowers' exposure as follows:

i. Deductibles may not exceed the greater of $50,000 or 1% of the insurable value for any particular building up to a maximum amount of $250,000.

ii. The borrower must purchase casualty insurance in an amount that equals or exceeds any applicable co-insurance requirement. This limitation prevents borrowers from purchasing insurance policies that require borrowers to pay a share of damages on partial claims (i.e. claims for less than total losses). A co-insurance requirement is expressed as a ratio or percentage that the maximum insured loss for any casualty event bears to the aggregate of insurable values for a property. The maximum insured loss is also commonly called the "face amount" of the insurance policy and is the

insurer's maximum obligation for damages from any casualty event. Recognizing that total losses are quite rare, especially for multi-building properties, borrowers often seek to reduce premium costs by reducing the face amount of insurance purchased. A co-insurance clause requires borrowers to share in any loss if the face amount of insurance purchased is less than the co-insurance requirement. A co-insurance requirement typically, but not always, imposed by insurers is 80%, meaning the face amount of insurance purchased should equal or exceed 80% of insurable values. With this co-insurance requirement, if a borrower purchases a face amount of insurance which is 65% of insurable values then the insurer's obligation to pay any claim will be limited to 65% of the claim, leaving 35% (plus any deductible) to be paid by the borrower. If the borrower purchases a face amount equal to or exceeding the co-insurance requirement, then the insurer is obligated to pay 100% of any claim (less any deductible) up to the face amount of the policy.

d. Exceptions. In some circumstances such as large properties with multiple buildings and properties included in a portfolio with multiple tiers of casualty loss coverage, a waiver of the 80% of insurable values minimum may be considered provided that the lender demonstrates the adequacy of coverage in light of possible casualty events and that the borrower is not obligated to share in losses arising from partial claims.

C. Other Insurance Requirements. Both HUD and the lender must be named as additional insured on the policies of insurance, with the standard lender clause reading: "loss payable to the mortgagee, its successors and assigns." All insurance carriers or providers that issue policies of insurance on a HUD insured project must have and must maintain during the policy period a rating that is acceptable to HUD (A.M. Best Financial Strength Rating [FSR] of B+ or better). Further detail of ongoing requirements for insurance coverage after Endorsement may be found in the Asset Management Handbook (HUD HB 4350.1). The amount of property insurance required is further discussed in the Asset Management Handbook.

3.10 Large Loan Risk Mitigation Policies

A. Purpose.

This section addresses the greater single-point risk of loss created by very large loans and defines the underwriting standards for large multifamily loans, primarily those above $75 million. Except where otherwise stated, these policies do not apply to loans below $75 million or to loan applications under Section 223(a)(7).

B. Underwriting and Reserve Standards for Large Loans.

1. The following DSCR, Loan to Value Ratio (LTVR) and Loan to Cost Ratio (LTCR) underwriting standards shall be applied as loan sizes increase:

New Construction/Sub Rehab under Sections 220, 221(d)(4), 231, 241(a) on loans at or above $75M:

Property Is:	Debt Service Coverage Limits	Loan To Cost Limits
Market Rate & LIHTC with no rent advantage	1.30	75%
Affordable	1.25	80%
=> 90% Rent Assisted	1.15	87%

Section 241(a) loans are limited by statute to 90% (see Chapter 3.6.)

Refinancing under Section 223(f) on loans at or above $75M:

Property Is:	Debt Service Coverage Limits	Loan to Value (without/with cash out*)
Market Rate & LIHTC with no rent advantage	1.30	75%/70%
Affordable	1.25	80%/70%
=> 90% Rent Assisted	1.15	87%/80%

* Note: Loan amount with cash out is determined at Criterion 10 of the Form HUD 92264A.

2. New construction/substantial rehabilitation projects need an appropriately sized operating deficit reserve to help assure success of these projects during their early, most vulnerable stages of rent-up. The amount of an operating deficit reserve for loans less than $75 million is described at Chapter 8.14.F. When loan amounts equal or exceed $75 million, minimum operating deficit reserve amounts are as follows:

Loan size	***Reserve amount shall be the greater of***
> $75M	12 months amortizing debt service plus MIP or the amount calculated per MAP Guide Chapter 7.14.
> $100M	12 months amortizing debt service plus MIP, or the amount calculated per MPA Guide Chapter 7.14, or such amount identified through HUD analysis of the risks and the mitigants appropriate to the particular loan application.

3. For large loans (=> $75 million) under Section 223(f) for properties with certificates of occupancy issued less than 3 years prior to application, a debt service reserve is required which shall be the greater of 12 months debt service (principal, interest and mortgage insurance premium) or 50% of any excess loan proceeds (cash out). The debt service reserve will be released upon 6 consecutive months of operating results meeting or exceeding the underwritten debt service coverage requirement, including any such months prior to endorsement. If prior to endorsement 6 consecutive months of underwritten debt service coverage have been achieved, no operating deficit reserve is required.

4. For loans greater than $100 million, HUD's analysis of the risks and the mitigants appropriate to the loan application may require adjustment of the required DSCR, LTCR or LTVRs, and/or the minimum operating deficit or debt service reserve requirements. Lenders should detail appropriate risk mitigants for such transactions, which will be reviewed on a case-by-case basis.

5. A Large loan is often associated with large property size measured in number of units, which may indicate a lengthy lease-up or absorption period. The absorption period for estimating market demand is up to a maximum of 18 months. Regional Office Directors may waive the 18-month absorption period restriction only in cases where there is an unusually strong market which will support initial rent-up to sustaining occupancy beyond 18 months and where the borrower has clearly demonstrated successful experience with developing such projects in the recent past. Such projects may require larger operating deficit or debt service reserves.

6. For large loans the Principals of the borrowing entity must have, in aggregate, net worth equal to at least 20% of the loan amount and liquidity equal to at least 7.5% of the loan amount. This requirement may be waived for sponsors of subsidized affordable housing properties.

3.11 Elderly and Age Restriction

A. General Eligibility

1. In order to be eligible for FHA mortgage insurance, properties proposing to restrict occupancy to elderly families or elderly persons must comply with one of the following three occupancy categories:

   a. Occupancy Restricted by Statutory Authority

   Properties proposing to restrict occupancy to certain populations pursuant to specific statutory authority may be eligible for FHA mortgage insurance. This category

includes, without limitation, properties operating under programs in which, pursuant to statutory authority, HUD has approved restricting occupancy to a “mixed use” population including elderly and non-elderly disabled families. Section 231 is one such program. This category also includes, without limitation, properties restricting occupancy in accordance with statutory authority provided under Sections 221 or 236 of the National Housing Act or Section 8 of the United States Housing Act of 1937. Several of these programs authorize properties to restrict occupancy to households in which at least one person is 62 years old and which may include children under the age of 18. This is FHA’s long-standing definition of elderly families and has been referred to in previous FHA guidance as “62+ HOH”. A property operating under this design may not discriminate against familial status in its admission and occupancy policies. However, if a program has statutory authorization for a specific kind of occupancy restriction, an exemption from the Fair Housing Act’s familial status provisions is not needed to operate the property in accordance with that program.

FHA mortgage insurance is compatible with projects having an elderly preference combined with project-based Section 8 rental assistance permitting non-elderly families with children under the age of 18. In these cases, the Fair Housing Act’s housing for older persons exemption (which permits the exclusion of families with children) is not implicated because the Section 8 statute and regulations require the inclusion of families with children.

If the project allows a “mixed population”, including elderly and non-elderly disabled persons, has been operating continuously since prior to October 1, 1991 (the effective date of Title Viii, Subtitle A of “Cranston-Gonzalez National Affordable Housing Act”, Pub. L. 101-625) and is subject to a project-based Section 8 contract, a regulatory agreement, or a use agreement executed in accordance with statutory authority, the project would meet the MAP Guide requirement. No waiver would be required as long as 1) the lender submits with the application the contract or agreement permitting the use and, 2) the proposed occupancy regime will continue in accordance with existing agreements in place prior to October 1, 1991.

b. Housing Primarily for Persons age 55 and older. (55+ Exemption)

HUD does not permit projects with occupancy restricted to age 55 and older under any market rate multifamily programs or under any New Construction or Substantial Rehabilitation programs. Existing properties that restrict occupancy to households in which at least one person is at least 55 years old may be eligible for FHA mortgage insurance for refinancing or acquisition financing if they qualify for an exemption from the familial status provisions of the Fair Housing Act and the program complies with all requirements set forth at Section 3.1.O.2.b below. To qualify as housing

"intended and operated for occupancy by persons 55 years of age or older," the housing provider must meet all three of the following criteria:

i) at least 80 percent of the occupied units are occupied by at least one person who is 55 years of age or older;
ii) the housing community or facility publishes and adheres to policies and procedures that demonstrate the intent to serve persons 55 years of age and older; and
iii) the housing facility or community complies with the rules issued by HUD for verification of occupancy.

42 U.S.C. § 3607(B)(2)(C)(i)-(iii). HUD's implementing regulations at 24 C.F.R. part 100 address these three requirements in greater detail: the 80 percent minimum occupancy requirement outlined in (i), above is addressed at 24 C.F.R. § 100.305; the assessment of intent outlined in (ii), above is addressed at 24 C.F.R. § 100.306; and the verification requirements outlined in (iii) above are addressed at 24 C.F.R. § 100.307.

Applicable properties must have complied with the Fair Housing Act's conversion rules, including the rule covering properties intending to convert from non-exempt to exempt housing after May 3, 2000. In these projects, the owner/borrower of an existing property must apply neutral admission policies (admitting head of household-age-eligible families with children) until the 80 percent threshold of the exemption is satisfied. For properties constructed after May 3, 2000, the new construction rules dictate that such properties may exclude families with children until 25 percent of its units are occupied. Once the 25 percent threshold is reached, at least 80 percent of the occupied units must have a resident who is 55 years of age or older. If the property does not meet the 80 percent requirement once the 25 percent occupation threshold is reached, the owner/borrower may not thereafter exclude or otherwise discriminate against familial status.

The Fair Housing Act prohibits "dual purpose housing facilities." A housing facility or community may not avail itself of the 55 and older exemption if it designates some units, sections or buildings for persons age 55 and older, while designating other units, sections or buildings for families with children. *See* 54 Fed. Reg. 3232, 3252 (January 23, 1989). Furthermore, properties applying for purposes of FHA mortgage insurance must be "one marketable, manageable real estate entity". Any property proposing one FHA insured loan, with separate management agreements and procedures for a portion of the units or buildings restricting occupancy to persons age 55 or older and another portion to other occupancy regimes will generally <u>not</u> be considered one manageable entity and thus not eligible for mortgage insurance.

c. <u>Housing restricted to persons age 62 and older.</u>

Properties proposing to restrict occupancy exclusively to persons 62 years of age or older may be eligible for FHA mortgage insurance, but only under the Section 231

program, pursuant to Section 3.1.O.2.c below. Although housing intended for, and solely occupied by, persons 62 years of age or older is a recognized exemption from the familial status provisions of the Fair Housing Act, 42 U.S.C. § 3607(b)(2)(B), it is FHA's policy to allow this restriction on occupancy only for Section 231 transactions.

Note: Age-related restrictions that are not eligible for FHA mortgage insurance programs. The Fair Housing Act recognizes another exemption from its familial status provisions, namely for housing "provided under any State or Federal program that the Secretary determines is specifically designed and operated to assist elderly persons (as defined in the State or Federal program)" 42 U.S.C. § 3607(b)(2)(A). Although this is a recognized exemption to the Fair Housing Act's familial status protections, it has not heretofore been necessary to rely on this exemption in the context of MAP multifamily insurance processing. Therefore, FHA policy requires a property to fit into one of the other three categories described in this section 3.1.O.1.

2. Additional FHA mortgage insurance requirements applicable to specific project types. This section lists additional requirements relating to proposed age-restrictions for each of the kinds of projects listed.

   a. <u>Market Rate Projects other than those applying under Section 231.</u> For purposes of this section, market rate projects are those applying for New Construction or Substantial Rehabilitation or Acquisition or Refinancing (including Section 213 Cooperative projects), that do not meet the criteria stated in Section 3.1.L. for Affordable projects. Except for projects applying under Section 231, market rate applications for age-restricted projects must have all unit head of household 62 years or older and cannot exclude non-elderly family members including children.

   b. <u>"Affordable" Projects seeking to use the 55+ Exemption under the Fair Housing Act to restrict housing.</u> Projects availing themselves of the 55+ Exemption may be eligible for FHA mortgage insurance if: (i) the project is an affordable property (as defined in Section 3.1.L); (ii) the project is pursuing FHA mortgage insurance for refinancing or acquisition of existing housing under Section 223(f) or 223(a)(7); (iii) the project is already availing itself of the 55+ Exemption for at least the previous three years and is not using FHA mortgage insurance to facilitate transition into the use of the 55+ Exemption; and (iv) there is no statutory or regulatory restriction limiting eligibility to another category of persons (for example persons or heads of household who are age 62 or older). Project-based Section 8 rental assistance and other assistance have programmatic terms that limit eligibility and thus such projects may not avail themselves of the 55+ Exemption. As a condition of approving FHA mortgage insurance for such projects, the project may be required to document (i) restrictions requiring housing primarily for persons 55 and older, such as through use agreements (LURA or other regulatory agreement) and/or bond documents; (ii)

preference points allocated for applications containing such restrictions under qualified allocation plans; or (iii) other affordable properties with externally-imposed restrictions consistent with the 55+ Exemption (e.g., zoning laws, local bonds, and affordable housing trust funds providing preference points for applications containing such restrictions).

These potentially eligible properties must operate in full compliance with the 55+ Exemption in the Fair Housing Act in order to impose age restrictions and exclude children.

Multifamily HUD staff should consult with Office of General Counsel prior to accepting an application for FHA mortgage insurance for properties operating under the following programs and seeking to take advantage of the 55+ Exemption:

- Old Section 202 Prepaid
- Refinance of Prepaid Section 202

Such properties may or may not be eligible to receive new FHA financing.

3. Section 231 Projects, including both Market Rate and Affordable projects. Section 231 projects have statutory authority to serve persons who are 62 years old or older as well as statutory authority to serve non-elderly and disabled families. FHA may approve transactions in which up to 25% of the units are available to non-elderly disabled families. See Section 3.1.O.1.a above. Section 231 projects do not require a specific exemption from the Fair Housing Act because they are statutorily required to provide housing restricted to persons who are 62 and over.

4. Certifications.

   To be eligible for FHA mortgage insurance, a project operating under the 55+ Exemption must provide a Certification of Compliance with the Fair Housing Act by the borrower. A sample template is included in Appendix 3C of this guide. In support of the certification, the borrower must provide the governing age restriction documents and management documents indicating the property complies with the 55+ Exemption. Governing age restriction documents include use agreements, bond documents, tax credit qualified allocation plan and application documents, and zoning documents, as applicable. Management documents include leases, occupancy policies, marketing plans, and affirmative fair housing marketing plans, as applicable. Though such management documents may be sufficient to establish eligibility, processing staff should encourage applicants to provide documents such as use agreements, relevant zoning documents, or bond documents, whenever available. *See* 24 C.F.R. § 100.306 for examples of other relevant documents to be considered.

If an FHA-financing-eligible property certifies as a 55 or older property, it is important for processing staff to verify when the property began operating as such. The regulations, at 24 C.F.R. § 100.305(e), specify that properties had the opportunity to establish eligibility for this exemption until May 3, 2000. After this date, existing projects could avail themselves of this exemption only if they met the criteria defined in the certification through neutral admission policies.

5. HUD Review Requirements.

HUD processing staff should review the certification to determine whether it is consistent with the age restriction and management documents submitted by the property. Further, processing staff should review the certification, age restriction, and management documents to ensure that the project is not operating as a "dual purpose" property in contravention of the Fair Housing Act.

FHA MAP Lender applications and underwriting must document, and HUD processing staff must verify, the property's compliance with the Fair Housing Act by requesting and then analyzing the governing age restriction and management documents to determine whether the documents clearly impose a 55 or older restriction that is compatible with the 55+ Exemption.

6. Services. Projects with extensive resident service packages or otherwise specifically designed for elderly occupancy such that all or a portion of the units would be eligible under Section 232 of the National Housing Act are not eligible for MAP insurance programs. The following are typical Section 232 project characteristics that are not eligible for multifamily mortgage insurance or MAP processing (whether elderly or non-elderly):

i. Projects such as nursing homes, intermediate care facilities, board and care homes, assisted living facilities and day care in eligible health care facilities as defined under Section 232, or projects that contain comparable characteristics.
ii. Projects in which any percentage of the units must be licensed or regulated by the state or municipality in which the facility is located, other than a standard rental housing occupancy or operating license.
iii. Projects in which the borrower is required to obtain a Certificate of Need or comparable documentation from the state or municipality.
iv. Elderly housing developments that provide "continuous protective oversight" services for residents in the manner defined under Section 232.
v. Residential accommodations, including a) programmatic restrictions on the number of bedrooms per unit from efficiency through 3-bedroom units, b) non-self-contained units, i.e., a bathroom shared by different residents, or c) a kitchenette or less than what would constitute standard, full kitchen equipment.

vi. Mandatory resident meal requirements.
vii. Other resident services made a mandatory condition of occupancy.
viii. Non-shelter and optional services included in the underwriting of net operating income.

The prohibition on services and licensure discussed in this sub-section does not apply to formerly or currently HUD-held or FHA insured multifamily projects which received Assisted Living Conversion Program Grants for less than 75% of the units.

7. Meals Service Exceptions.

a. Refinancing HUD insured or HUD assisted properties under Sections 221(d)(4) and 223(f). By final rule published in 56 FR 42798, central kitchens and the provision of food services in elderly housing projects are prohibited under any rental housing section of the National Housing Act, including Sections 223(f) and 221(d)(4). The Regional Center or Satellite Office Director may approve refinancing transactions for properties, with meal services, in refinanced Section 202 and 202/8 direct loan properties, or properties with Project-Based rental assistance which are currently insured under other Sections of the Act, if and only if:

i. Meals were provided before September 30, 1991 (the effective date of the regulation) and have been continuously provided since that date, 2. Meals are provided on an optional basis, or with no more than one mandatory meal per day,
ii. Income and expenses from the meal service are not included in the underwriting of net operating income, and
iii. The cost of the meals program is self-sustained by the revenue it generates based on HUD’s review of the project’s financial statements.

b. Non-shelter spaces including formal dining areas with meal services for projects other than those with Project-Based rental assistance and a current Section 202 or HUD-insured loan are not eligible for multifamily mortgage insurance, even if they are provided to residents on an optional basis.

8. Prohibition on Founder’s Fees. "Founders' Fees," "admission fees," or similar types of initial occupancy or entry payments are prohibited.

9. Guest Suites.
In certain circumstances, multifamily projects may set aside a unit or create a limited number of non-income units as an amenity for residents. The non-income units provide

accommodations for the resident's guests or relatives. These non-income guest units are typically located in LIHTC, senior and senior cooperative projects, although they may be located in market rate projects as well. Non-income units are permissible only to the extent their use is consistent with the National Housing Act's prohibition against use of FHA-insured multifamily projects for transient or hotel use. Borrowers are legally bound to comply with these statutory requirements via execution of their Regulatory Agreement (HUD-92466M) and Borrower's Oath (HUD-92478M). In assessing whether the non-income units comply with the prohibition on transient or hotel accommodations, HUD will take the following factors into consideration:

- Rental charges for the unit may not be imposed, nor may the project derive any income from the guest suite.
- The project may not provide cleaning, linens or customary hotel services; however, a one-time cleaning and laundering fee may be charged to the resident that reserves the guest suite.
- Guests are not responsible or directly charged for any fees for the use of the guest suite, and its use is limited to friends and family of residents.
- Guest units are not available to the public.
- Only project residents are permitted to reserve the guest unit; the project does not independently rent the guest suite.
- Residents are limited to two (2) reservations within a one (1) year period, and up to a maximum of seven (7) reservation days per resident.
- The number of guest suites are no more than two (2) percent of the total number of units in the project.

3.12 Tenant Relocation

A. Relocation-General

1. Substantial rehabilitation of occupied properties pursuant to Section 220, 221(d)(4), and 231 and acquisition or refinancing of a property pursuant to Section 223(f) with repairs and alterations may result in permanent displacement or temporary relocation of tenants. When tenants of housing are permanently displaced or temporarily relocated, owners and lenders must address relocation with a relocation plan.
2. Statutes, regulations, and guidebooks provide specific requirements and instructions for managing the permanent displacement and temporary relocation of tenants in projects receiving federal financial assistance as referenced in Chapter 3.12.B below. HUD mortgage insurance as well as Low Income Housing Tax Credits (LIHTCs) are not forms of federal financial assistance for purposes of the Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended (42 U.S.C. 5601

et. seq.) (URA) and use of either or both of these two federal programs does not trigger the URA.

3. Section 104(d) of the Housing and Community Development Act of 1974 applies only to properties with HOME or CDBG funding and prescribes requirements when relocation is necessary at a property receiving assistance from these sources.
4. However, even when neither of these statutes apply, mortgage insurance programs financing rehabilitation or renovation activities that displace residents require the preparation and implementation of a plan for temporary relocation consistent with Chapter 3.12.C below.
5. When construction is proposed at an occupied property, lenders must assure that relocation needs are identified, and appropriate plans described and implemented consistent with either 3.12.B. or 3.12.C, as applicable and with Appendix 3E. Notwithstanding whether an application concerns housing with federal financial assistance or using HOME or CDBG funds, relocation plans must address certain common concerns. These include the following:

    a. Special expertise is required. A relocation consultant should be retained to assist in preparing a relocation plan, including preparation of appropriate notices or letters to tenants, identifying units and tenants who will be displaced and assessing specific needs of displaced tenants whose health, age or physical condition does not permit exposure to anticipated construction activity or temporary hazards arising from such activity (e.g. dust, chemicals, noise, obstructed access, etc.) even if the activity does not occur in the dwelling unit occupied by the tenant or tenants for whom special assistance may be necessary to manage activities of daily living outside their unit.
    b. The relocation plan must detail the schedule of proposed repairs identifying specifically the buildings and units where construction activities will cause displacement including the names of occupants by unit number as well as the expected date displacement will occur and its likely duration.
    c. Based on these expectations the relocation consultant should describe how tenant relocation will be implemented including addressing unique or special needs of tenants and estimate the costs of relocation associated with each household displaced, and aggregating such costs by month consistent with a monthly draw schedule for relocation costs during construction.
    d. The relocation plan should describe the tenant relocation expenses that will be paid and or the services or facilities that the owner will provide and the means, method and timeline for such payments or provision of services or facilities.
    e. The relocation plan should provide the text and timing of notices or letters that will be provided to tenants and the frequency and method for visiting with and/or informing tenants of the expected cause and timing of displacement, the expenses

that will be paid and the services that will be provided, the methods for affected tenants to respond and who tenants may contact to address questions or problems.

f. The relocation plan must identify whether there is any federal financial assistance involved in the project. If yes, then Chapter 3.12.B applies and either or both the URA or Section 104(d) of the Housing and Community Development Act of 1974 (42 U.S.C Section 5304(d)) (Section 104(d)) also apply. The relocation plan must adhere to these specific statutory and regulatory requirements and clearly show how these requirements are met.

B. Projects with Federal Assistance

1. Where federal financial assistance is received or anticipated in any phase of acquisition, demolition, or rehabilitation of a property, the permanent displacement or temporary relocation of tenants must comply with the URA. Likewise, if HOME or CDBG funds are used in any phase of the demolition or conversion of a lower-income dwelling unit, as defined in 24 CFR part 42, then Section 104(d) shall apply. Minimum requirements and instructions for managing displacement, giving notice to owners and/or tenants of properties acquired with Federal financial assistance, and providing relocation compensation or assistance are described in regulations at 49 CFR part 24, and in HUD Community Planning and Development Handbook 1378 which may be found at:

   https://www.hud.gov/program_offices/administration/hudclips/handbooks/cpd/13780.

2. The URA establishes the minimum Federal requirements for the acquisition of real property for Federally funded programs and projects, and for the temporary relocation or permanent displacement of persons who must move from a property as a direct result of acquisition, rehabilitation, or demolition for a Federally funded program or project. Insured mortgage applications that contemplate or rely on federal financial assistance such as Section 8 Housing Assistance Payments (HAP) may trigger the applicability of the URA, and if HOME or CDBG funds have been or will be invested in the property, the applicability of both the URA and Section 104(d). HUD's Office of Community Planning and Development (CPD) has overall responsibility for HUD compliance with the referenced statutes. Assistance in these cases may be obtained from CPD's Regional Relocation Specialists (RRS). A list of these specialist is available in the "Contacts" section of HUD's Acquisition and Relocation web-site at

   https://www.hudexchange.info/programs/relocation/contacts/

   Additional information and guidance on URA and Section 104(d) matters is available on HUD's Acquisition and Relocation website at:

https://www.hudexchange.info/programs/relocation/

3. Most relocation of tenants caused by construction activities is temporary. Appendix A to 49 CFR Part 24 provides guidance for temporary relocation and includes requirements that temporarily displaced tenants must be reimbursed reasonable out-of-pocket expenses incurred in connection with a temporary move. These expenses may include moving expenses and increased housing costs during the temporary relocation. Relocation is considered temporary when the displacement activity is completed, and the tenant(s) reoccupy their original or a comparable unit at the same property within a one-year period.

C. Projects With No Federal Assistance

1. Displacement of tenants from properties that do not receive federal financial assistance and have no HOME or CDBG funding also requires planning and preparation to assure a) timely completion of construction; b) resident health and safety; and c) sustained project occupancy and income.

2. Displacement in existing and occupied properties occurs when construction activity prevents tenants from preparing two or more consecutive meals or sleeping in their units during their normal period of rest or otherwise prevents occupancy of their units for 8 consecutive hours. (Persons with special needs and/or frail elderly are considered displaced if they are obligated to vacate their units for any period of time.) Owners must offer displaced tenants temporary relocation assistance. In general, temporary relocation will be required when the scope of work:

   a. Requires packing, moving or storing resident's furniture or personal items in order to perform the work;
   b. Prevents full use of the kitchen or the bathroom(s) by the resident (e.g. replacing the kitchen cabinets and countertops, tub surrounds and plumbing fixtures, flooring replacement);
   c. Creates odors, dust, debris, noise or other hazard that negatively impacts the sanitary condition of the unit or health and safety of the resident;
   d. Involves shutting down the HVAC equipment that prevents maintaining the interior temperature of the unit between a range of 65 - 75 degrees Fahrenheit for more than a period of 2 hours;
   e. Disrupts the electrical service to the unit for more than a short-term of 2 hours or less;
   f. Prevents safe ingress and egress without proper alternative routes at any point during construction;
   g. Provided however, that if any of these disruptions are confined to periods of time when tenants customarily are or plan to be (and actually are) voluntarily absent

from their units (e.g. at work, out of town, etc.) then the disruption is not a cause displacement.

3. Temporary resident relocation is not required for projects undergoing simple repairs and minor renovations [i.e. 223(a)(7)s and 223(f) applications with classification of construction work limited to repairs as described in MAP Guide Chapter 5.1 and 5.2].

4. When tenants are displaced and must find or prepare meals or lodging outside their units, the owner must provide reimbursement of costs. For this purpose, owners must pay any displaced tenant the Federal travel per-diem (meals or lodging as applicable) for the period or periods of displacement. The meals per-diem shall be for each person in the tenant household. The lodging per-diem shall be for lodging room or rooms with sleeping capacity consistent with the number of persons, marital status, and the gender and age of persons in the household without requirement of adding additional beds or equipment not regularly provided in the room(s) by the lodging vendor. The per-diem rates shall be those established for the locality in which the property is located and shall be paid to tenants without requiring receipts or evidence of actual cost and notwithstanding whether tenants obtained food service or lodging from a commercial vendor. If tenants' personal property must be packed and/or moved, owners must pay the actual costs of such services including insurance against loss of or damage to personal property. Owners must identify displaced tenants who are elderly, disabled or special needs individuals and must provide additional services such as help locating or identifying alternative housing, transportation assistance, day care or similar services appropriate to their condition and apart from the per-diems for meals or lodging except to the extent that meals or lodging are included in day care or similar services. Notwithstanding the forgoing, tenants are not required to accept owner-designated or recommended facilities. Without abridging any per-diem compensation due to them tenants may select lodging and meals at their discretion provided that such discretion is exercised in writing and in advance of the scheduled displacement date(s) by such notices and at such intervals as shall be described in the approved relocation plan and provided further that any tenant having exercised such discretion may not disrupt the relocation schedule by failing to vacate on the agreed date and for the agreed period.

5. Applications requiring permanent displacement of elderly or disabled residents from a non-assisted property will not be accepted, provided that HUD will accept such applications if the owner proposes to meet the relocation requirements applicable to projects receiving Federal financial assistance as described in 3.12.B.

6. Owners are not obligated to provide assistance (i.e. permanent relocation assistance) to tenants choosing to permanently relocate from a property in lieu of remaining as residents with temporary relocation benefits.

D. Relocation Costs on HUD Forms

1. Relocation costs are mortgageable costs but are not construction costs and are not included in the estimated costs of improvements. They are not included in any calculation of cost thresholds that define Substantial Rehabilitation or define levels of construction documentation required for Section 223(f) applications that propose repairs and alterations (See Chapter 5).

2. The owner's or the relocation consultant's estimated cost of relocation should be reviewed by the lender consistent with this Chapter 3.12 and Appendix 3E.1 and then reported on HUD insured mortgage application forms.

3. For substantial rehabilitation applications, relocation costs are included in the replacement cost buildup reported for Criterion 3 of the HUD 2264A by showing the total of relocation costs, including any relocation consultant fees on the HUD 92264 in Section G, line 69, "Consultant Fee (non-profit only)" relabeled to indicate inclusion of relocation costs (notwithstanding non-profit or for-profit status).

4. Relocation costs should be reported onn the HUD 92013: Section G, Line 43 Relocation Expenses or if in 223(f) transactions Section G is not used, then the lender must identify Relocation Costs in the proposed Sources and Uses for the transaction.

5. On the HUD 2264A for other loan sizing Criteria as applicable to the Project:
   a. Criterion 7, line c. Other Fees
   b. Criterion 9, line d. Expense of Relocating Occupants
   c. Criterion 10, line c. Other Fees