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## Chapter 10 Management Analysis

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### 10.1 Introduction

- A. Management agents that operate insured multifamily properties play a key role in providing quality housing. While it is the ultimate responsibility of the project owner/mortgagor to select and oversee the management agent of an insured property, the establishment of an effective relationship among HUD, the owner, and the management agent is critical to the success of the property over the life of the mortgage. The management agreement and related documents must be submitted with the Firm Commitment application or can be submitted at the pre-application stage if the management agent has been identified at that stage.
- B. The lender must review whether the proposed management agent demonstrates the qualifications, capability and experience to assure that the property will be managed in a prudent, efficient, and cost-effective manner and in accordance with all HUD requirements. Documentation submitted by the lender in support of the choice of management agent must demonstrate that the agent:
1. Is eligible for approval and is in good standing with HUD. HUD may condition its participation eligibility approval of the management agent upon the resolution of referrals with HUD's Departmental Enforcement Center (DEC) that relate to the management agent, particularly as those referrals may relate to the Project;
  2. Demonstrates effective management experience and acceptable operating procedures commensurate with the type of project;
  3. Has adequate fidelity bond coverage;
  4. Is in compliance with all state and local laws, regulations and requirements; and
  5. Is able to positively and effectively communicate and cooperate with legitimate resident associations.

### 10.2 Exhibits Required for Firm Commitment

- A. Exhibits.
1. Evidence of Previous Participation Review. Participants are permitted to submit to HUD their Previous Participation Review submission package for electronic review (currently via Active Partners Performance System ("APPS")) or by paper (currently form HUD-

2530) as early as the pre-application processing stage for all principals and affiliates of the management agent.

2. HUD-9832, Management Entity Profile for the Agent. This form provides detailed information regarding the organization, operation, and experience of the proposed management agent. The management plan should provide a narrative overview and should include any pertinent leasing or management strategies that are not covered in Form HUD-9832.
3. HUD-9839 A, B, or C - Owner's/Management Agent's Certification, as appropriate. This certification is subject to 18 U.S.C. Sec. 1001, which applies to anyone who makes false, fictitious, or fraudulent statements/ false certifications. The agent and owner must certify that (1) HUD requirements and contract obligations will be complied with, and that an acceptable Management Agreement will be executed, and (2) no payments have been made to the owner in return for awarding the management contract to the agent, and that no such payments will be made in the future.
4. Proposed Staffing for the Project. Information is required regarding the job-titles, duties, and salaries of all employees of the management agent who will work at the project which will be reviewed to determine if the number, salaries, and duties of the proposed staff is reasonable and adequate for the size and type of the proposed project. If there is a non-customary situation or arrangement, resulting in the need for more or less staff than usual, an explanation of this must be provided.
5. Resident Complaints Resolution Procedure. Provide a description of the procedure used by the agent to resolve resident complaints, as well as examples of how the system has been implemented and maintained.
6. Management Agreement, if Applicable. Projects with identity-of-interest management agents or independent fee management agents must execute a Management Agreement. An agreement is recommended, but not required, for owner-managed projects or projects managed by a project administrator.
7. Marketing, Leasing, and (if applicable) Relocation Plan.
  - a. All projects which require absorption of units at economic rents to achieve break-even occupancy must submit a detailed marketing and leasing plan and budget that has been reviewed and confirmed by the proposed management agent. The plan must discuss when marketing efforts will begin, when the leasing office and model units will be opened, 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.
  - b. For substantial rehabilitation projects involving temporary relocation or displacement of existing residents, the plan must address details of timing, funding and management of the relocation process.
  - c. The lender's underwriter, the field office team leader and the Asset Management staff should review the marketing plan. Although not required, the lender may retain a

third-party property management or leasing consultant to review such plans for large or complex deals or where the proposed property manager is not fully experienced.

8. Affirmative Fair Housing Marketing Plan, Form HUD-935.2A, if applicable. See Section 10.9 for more detail on when the plan applies and the regulatory reference.
9. Additional Information Required by the Field Office. It may be necessary to provide the field office with additional information so that a determination of the acceptability of the proposed management agent can be made.

### **10.3 Lender Review of Management Documents**

As part of the Firm Commitment application package, the lender must provide documentation to demonstrate the acceptability of the proposed management agent, with the Management Entity Profile of particular importance. The lender must review the qualifications of the proposed agent to assess its ability to manage the project effectively and in compliance with HUD requirements, and must consider each of the following factors:

#### **A. Past and Current Management**

1. The lender must review the proposed agent's past experience and current performance with respect to the following indicators:
  - a. Experience with projects similar in size and configuration to the subject
  - b. Billing practices
  - c. Controlling operating expenses
  - d. Vacancy rates
  - e. Resident turnover
  - f. Rent collection and accounts receivable
  - g. Physical security
  - h. Physical condition and maintenance
  - i. Financial reporting
  - j. Resident relations
  - k. Resident income certification, record keeping and reporting if an affordable or subsidized project
  - l. Appropriate applicant outreach and affirmative marketing in accordance with a HUD-approved AFHMP
  - m. Tenant selection in accordance with Fair Housing principles
2. If problems are identified with any of these indicators, the lender must assess whether the agent has adequately improved its procedures to prevent the recurrence of such problems

or whether management initiatives by the agent and owner are sufficient to correct the problems and their causes.

B. Ability to Manage Troubled Projects.

If the property has physical, financial or social problems that require special expertise or skills to manage effectively, the lender must determine whether the agent has the necessary skills and expertise and whether the agent's proposed remedies for these problems are appropriate. Agents proposed for these projects should have prior experience successfully addressing similar issues.

C. Management Qualifications.

The proposed management agent should have at least one senior staff person who drafts the agent's policies and supervises project operations with the following qualifications:

1. A professional designation in housing management from a national organization that provides such accreditation; and
2. A minimum of 3 years of experience in directing and overseeing the management of at least three multifamily projects serving a similar resident clientele and comparable to the proposed property in scale, complexity, tenant profile and regulatory compliance.

The lender may accept a proposed agent without the experience requirements listed in this section if the agent is satisfactorily managing other insured or subsidized projects and has consistently done so for a reasonable period of time determined by FHA.

D. Past Performance with Identity-of-Interest Contractors.

If the management agent purchases goods or services from identity-of-interest companies and has previously managed insured projects, the lender must assess the agent's past use of such companies and whether this use resulted in costs to the project that exceed the prices paid in arms-length transactions. The review should especially consider:

1. Goods and services purchased through any "pass-through" arrangements described in item 11(b) of the Management Entity Profile.
2. Evidence that the agent has compared prices and that the use of any identity-of-interest companies or pass-through arrangements has been more advantageous to the project than purchasing through arms-length transactions would have been.
3. Evidence that the management agent followed HUD contracting and hiring guidelines.

E. The lender can utilize the following additional sources to determine the capability and expertise of the proposed management agent:

1. Management Entity Profile. The lender can use the information listed on the form to solicit opinions from HUD offices that have worked with this agent.
2. Performance Evaluations for the proposed agent and projects which the agent has managed or is currently managing if those projects are under Flexible Subsidy contracts or Workout Agreements.

3. Monthly and Annual Financial Statements of the Project including the Independent Public Auditor (IPA) Internal Controls Questionnaire.
4. Additional documentation that the lender may review includes:
  - a. HUD/mortgagee on-site review reports;
  - b. Correspondence;
  - c. Resident complaint files;
  - d. Previous management reviews;
  - e. Previous REAC inspections/scores, and
  - f. Reviews from federal, state or local government agencies of the management agent's past experience with properties using affordable housing or subsidy programs, if applicable.

#### **10.4 HUD Asset Management Review**

Asset Management Firm Commitment reviews will be assigned by the Chief, Account Executive Branch.

The Account Executive will review the various management documents and application exhibits and advise the HUD Underwriter of their conclusions and recommendations.

The HUD Underwriter will provide the Account Executive with the data necessary for Asset Management to rate the asset once a Firm Commitment is issued.

The HUD Underwriter, Account Executive, and Closing Coordinator will coordinate as needed and appropriate to ensure that Firm Commitment special conditions are met, and timely review of closing documents, turnover of files, and post-closing monitoring.

#### **10.5 Review of Previous Participation**

- A. APPS was developed to automate the previous participation review process (currently paper Form HUD-2530). If the management agent makes a submission in APPS, select Property submission reason as: "Application for Mortgage Insurance" with role as "Management Agent." Use of the APPS system requires that all participants must register in the Business Partner Registration System (BPRS).

- B. While performing a previous participation review, HUD staff will check for all non-compliance issues based on previous participation records and other relevant information in HUD database or from other sources. In addition:
  - 1. Notwithstanding the issuance of the Commitment, previous participation approval of the management agent must be obtained prior to and as a condition of Initial Endorsement.
  - 2. Firm Commitments may only be issued with a condition when the commitment processing is otherwise completed, and all principals of the management agent are determined to be acceptable.

## **10.6 Bonding Requirements for Agents**

The lender must determine that the agent has adequate bonding to provide a basic level of protection for the multifamily project assets.

- A. The management agent must certify in the Management Certification that it carries fidelity bond or employee dishonesty coverage for:
  - 1. All principals of the management entity; and
  - 2. All persons who participate directly or indirectly in the management and maintenance of the project and its assets, accounts, and records.
- B. The fidelity bond or coverage must name the mortgagee and HUD as additional loss payees.
- C. Coverage may be through one or more bonds, and one bond may cover more than one project, including projects whose mortgages are not insured or held by HUD. The agent's principals and supervisory and front-line staff may be covered under the same bond.
- D. Each project must be bonded for at least the value of two months' gross potential income for the project. If a bond covers more than one project, this minimum must be computed using the project with the highest gross potential income.

## **10.7 Management Agreement Requirements**

- A. Applicability. Projects with identity-of-interest agents or independent fee agents must execute a Management Agreement. An Agreement is recommended, but not required, for owner-managed projects or projects managed by a project administrator.
- B. Required contents. The owner and agent may negotiate their own form of agreement provided that it contains language which meets the following requirements:
  - 1. Scope of services. All management agreements must describe the services the agent is responsible for performing and for which the management fee will be paid.

2. Required clauses. All management agreements must contain the following required provisions, in addition to the language from the Regulatory Agreement, form HUD-92466M (see sections 17. Books Maintained by Management Agents, and 21. Management, or any successor provisions), and the requirements in the Project Owner's Management Agent's Certification form HUD-9839-B (see paragraphs 1.b, 8 and 9, or any successor provisions).
  - a. Management fees will be computed and paid according to HUD requirements.
  - b. HUD may require the owner to terminate the agreement:
    - i. Immediately without penalty if an event of default occurs under the Security Instrument, Note or Regulatory Agreement; or
    - ii. Upon 30 days written notice, for failure to comply with the provisions of the Management Certification or for other good cause; or
    - iii. When HUD takes over the property as Mortgagee in Possession.

**NOTE:** The management agreement must always give the owner the ability to terminate the contract for cause, with no more than a 30-day notice period.

  - c. If HUD terminates the agreement pursuant to its authority under the loan documents (HUD-92466M, Regulatory Agreement provision 21), the owner will promptly make arrangements for obtaining an alternative management agent that is satisfactory to HUD.
  - d. HUD's rights and requirements will prevail in the event of any conflicts with the terms of the management agreement.
  - e. The management agent must turn over to the owner all of the project's cash, accounts, deposits, investments, and records immediately, but in no event no longer than 30 days after the date the management agreement is terminated.

C. Length/term of the Agreement. The length/term of the Management Agreement will be negotiated between the owner and the management agent. However, HUD will require a minimum one-year term. HUD may also impose a maximum term on the Management Agreement if the agent was approved by HUD on a conditional basis.

1. The Agreement may provide for a fixed term or an open-ended term (e.g., automatically renewable or "to remain in effect until cancelled by HUD, the owner, or the agent").
2. If the length /term of the Agreement changes before initial endorsement, the owner/agent must submit a new Management Certification.

D. Management Fee: The Agreement must include all specifics of the management agent compensation and how the management fee will be calculated, including any incentive management fees to be paid from surplus cash. HUD will review the fee for adequacy and reasonableness for a project of the size and complexity as what is proposed. The management fee must be equivalent to, and be no less than, a market rate fee that would be charged by a replacement, third party management agent, if the replacement agent were to assume responsibility for management of the property.

## **10.8 Approval of Proposed Management Agent**

- A. The lender will recommend approval to the Hub Satellite office of the proposed agent if the agent has demonstrated capacity to effectively manage the property within HUD requirements, the management agent has shown adequate fidelity bond coverage and the Previous Participation Certification is approved. In some instances, the lender may find it necessary to recommend conditional approval if there are areas of the agent's procedures that are considered weak or that need to be changed. All conditional approvals will be discussed with the proposed agent and any agreements/conditions that are imposed will be shown both in the letter approving the agent, and in the Firm Commitment.
- B. The lender must provide a report regarding its review and recommendation which includes the following information:
  - 1. Name of the proposed management agent.
  - 2. Composition of the proposed management agent.
  - 3. Narrative of the agent's experience and capacity to operate the subject property, with particular emphasis on its past experience and capacity to manage affordable or subsidized properties, if applicable.
  - 4. Demonstration that adequate fidelity bond coverage is in effect and that the proposed management agreement meets HUD's requirements.
  - 5. A recommendation to approve the proposed management agent.
- C. The Hub/Satellite office may disapprove a proposed management agent based on the decision of the Review Committee to deny or withhold approval for the proposed agent's participation. The Committee may base its disapproval on the lack of the management agent's capacity to effectively manage the project within HUD requirements and to adequately meet the requirements of this Chapter. To proceed with a Firm Commitment review, the owner must then propose an alternative management agent (and supply all required documentation). The owner may appeal the decision of the Previous Participation Committee under 24 CFR, Part 200.222.
- D. HUD will review the lender's report and the management entity profile and make the final determination to accept or reject the proposed management agent.

## **10.9 Affirmative Fair Housing Marketing**

The Affirmative Fair Housing Marketing Requirements (24 CFR 200.600, Subpart M) apply to all insured new construction and substantial rehabilitation projects. Each applicant for insurance must submit an Affirmative Fair Housing Marketing Plan (AFHMP) or Form HUD-935.2A. The plan must describe an affirmative program to attract residents regardless of race, color, religion, sex, disability, familial status, or national origin to the housing for initial rental. The plan must show use of a marketing area with a diverse population and targeted outreach to demographic

groups in the diverse area that are least likely to apply for the housing. The affirmative advertising program shall use majority and minority media and organizations and target those groups within the market area that would not ordinarily apply without concerted outreach. The plan should include information on the applicant's nondiscriminatory hiring policy, its training program on nondiscrimination for its rental staff, and the display of the Department's Equal Housing Opportunity logo type and slogan. The Hub Satellite Office has the responsibility to review the Plan and must review approve the Plan prior to Initial Endorsement. This does not change the timing of the Plan's submission; it is still required with firm application or pre-application submission. The HUD approved AFHMP must be closely followed by the owner and management agent and must be regularly updated in accordance with HUD requirements.

Applications under Section 223(f), while covered by the nondiscrimination provisions of the Fair Housing Act and Executive Order 11063, are exempt from the submission of a written plan. However, a Section 223(f) applicant is required to maintain records of its affirmative marketing efforts.

## **10.10 Management Agent Responsibility for Escrow Administration**

Management Agents must cooperate with the lender and with the Hub/Satellite office staff in administration of the Initial Operating Deficit (IOD) escrow, including any disbursements permitted and the release of any escrow balance remaining. The terms and procedures for release of the IOD are addressed in Section 12.15.D.2.

Management Agents must cooperate with the lender and with the Hub/Satellite office staff in administration of the Reserve for Replacements account (per the reserve schedule and deposit requirements included in the Firm Commitment) and in the requirement to obtain a new Capital Needs Assessment (CNA) every 10 years during the loan term. See Appendix 5 for more details on PCNAs.