



# MULTIFAMILY ACCELERATED PROCESSING (MAP) Guide

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Office of the Assistant Secretary for Housing–  
FHA Commissioner

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# Chapter 1 Introduction

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## 1.1 Multifamily Accelerated Processing Guide

**A.** Multifamily Accelerated Processing (MAP) is designed to establish uniform national standards for approved Lenders to prepare, process and submit loan applications for Federal Housing Administration (FHA) multifamily mortgage insurance. The MAP Guide provides - in one volume with appendices - guidance for HUD staff, Lenders, third party consultants, Borrowers, and other industry participants. Topics include mortgage insurance program descriptions, Borrower and Lender eligibility requirements, application requirements, underwriting standards for all technical disciplines and construction loan administration requirements. The MAP Guide applies only to FHA multifamily mortgage insurance programs. Except to the extent Lender monitoring or enforcement activities overlap, Section 232 and other programs administered by the Office of Healthcare Programs are not addressed by the MAP Guide.

**B.** The Guide has been updated to reflect various organizational, policy and processing changes implemented since the last edition was published in 2016. Examples include electronic submission of data in a standardized format, the consolidation of HUD Field Offices to Regional Centers and Satellite Offices, workload sharing, “risk-based” underwriting, instructions for underwriting energy conservation measures and savings, and updates to architecture, cost and construction administration procedures including data entry for the CNA e-Tool.

**C.** Statutory authority for the implementation of MAP is contained in the basic insuring authority for each of the programs covered in the MAP Guide, e.g. National Housing Act, 12 U.S.C. §§ 220, 221(d)(4), 231, 241(a), 223(a)(7), and 223(f). Additionally, Section 211 of the National Housing Act and Section 7(d) of the Department of HUD Act authorize the Secretary to make such rules and regulations as may be necessary to carry out the provisions of the National Housing Act. The FHA requirements listed in HUD regulations covering each MAP eligible program are included and more fully explained in this MAP Guide.

## 1.2 Purposes of MAP

**A.** The goal of MAP is to provide a consistent, expedited mortgage insurance application process at each HUD Multifamily Regional Center or Satellite Office. HUD no longer accepts new applications for the covered programs, either for Pre-application review or for Firm Commitment review, under local “fast-track” processing. All MAP eligible projects must be submitted using MAP processing unless a waiver is granted to process under Traditional Application Processing (TAP). Such waiver approval authority is retained by HUD Headquarters’ Director of Multifamily Production.

**B.** Review of applications for TAP processing require more work and responsibility by HUD staff, and accordingly, a higher application fee may be charged. Projects not eligible for MAP, and which may be submitted under TAP, are:

1. Applications submitted by FHA approved multifamily Lenders who are not approved to submit MAP applications,

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2. Applications where there is an identity of interest between the Lender and the Borrower or affiliates of either, or
3. Applications for mortgage insurance under Programs or Sections of the Act not covered by MAP (e.g., Cooperatives under Section 213).

C. Some MAP approved Lenders (MAP Lenders) only originate loans and do not close or service them. After obtaining a Firm Commitment for mortgage insurance under MAP, the originating Lender may sell or transfer the Firm Commitment to another MAP Lender, so long as the MAP Lender closing the loan does not have an identity of interest with the Borrower on the loan. The second MAP Lender will close the loan, oversee the construction loan administration, if applicable, and service the loan in accordance with HUD requirements. At the Pre-application submission, the originating MAP Lender should inform the Regional Center or Satellite Office if it does not intend to service the loan or administer the construction loan. The originating MAP Lender must identify which MAP Lender will be responsible for those functions as soon as the closing/servicing MAP Lender is identified. The second MAP Lender must identify its construction loan administrator before or at initial endorsement. A Loan Servicer who receives a transferred MAP loan for servicing must be FHA approved for multifamily housing and have an approved Construction Loan Administrator, unless the loan is a refinancing with no repair escrow. The servicing Lender generally is, but is not required to be, a MAP approved Lender. See also [Chapter 19, Section 19.2.4](#) of the MAP Guide for assignments post initial endorsement but prior to final endorsement.

D. MAP and the MAP Guide are intended to:

1. Increase HUD's reliance upon the Lender's due diligence and increase the MAP Lender's accountability for its due diligence and underwriting.
2. Establish a uniform process that significantly reduces the amount of HUD review time.
3. Strike a careful balance between expedited processing and ensuring an acceptable level of risk management for HUD's multifamily mortgage insurance programs.
4. Have in one volume, the MAP Guide, the basic information required for loan origination by the Lender and for review by HUD staff.
5. Bring Handbook and Notice instructions current and maintain up-to-date instructions through amendments to the MAP Guide.
6. Provide the Lender with predictable and consistent underwriting guidelines, thus facilitating efficient processing and better service for Borrowers.

## 1.3 Brief Summary of MAP

### 1.3.1 Lender Qualifications and Monitoring

A. By permitting a MAP Lender to prepare much of the documentation for an application for mortgage insurance, HUD places confidence in the Lender's integrity and competence. A Lender wishing to submit a MAP application must be:

1. An FHA approved Lender. See the FHA Single Family Housing Policy Handbook (4000.1).

2. Approved by the Multifamily Asset and Counterparty Oversight Division (COB, formerly Lender Qualification and Monitoring Division or LQMD) at HUD Headquarters. See [Chapter 2](#) of the MAP Guide.
3. Subject to Quality Assurance Enforcement Actions. See [Chapter 15](#) of the MAP Guide.

### **1.3.2 Programs Covered by MAP**

A. MAP may be used for the following programs, identified by section of the National Housing Act:

1. 220 - new construction or substantial rehabilitation of mixed-use projects in urban renewal areas;
2. 221(d)(4) - new construction or substantial rehabilitation of apartments;
3. 223(a)(7) - refinancing of FHA insured mortgages;
4. 223(f) - refinancing or purchase of existing apartments;
5. 231 - new construction or substantial rehabilitation of housing for the elderly; and
6. 241(a) - Supplemental Loan program for rehabilitation or additions to projects which have an FHA insured first mortgage.

### **1.3.3 Application Processing**

A. Application processing instructions are described in [Chapter 4](#). All periods longer than two weeks are described in calendar days, and periods of two weeks or less, in business days.

B. HUD has certain responsibilities which it does not assign to the Lender, including responsibility for the environmental clearance in the HUD Environmental Review Online System (HEROS), approval of the Borrower's Affirmative Fair Housing Marketing Plan (AFHMP), and issuing the commitment for mortgage insurance. Although HUD does not assign environmental clearance to the Lender, the Lender must prepare information for HUD's review as discussed in [Chapter 9](#).

### **1.3.4 Construction Responsibilities**

A. Under MAP, HUD must approve the initial and final draws.

B. HUD will contract, or perform or otherwise provide, for inspection duties and will provide copies of the Trip Report to the MAP Lender. Generally, HUD will rely on one inspection per month; however, the Multifamily Regional Director has discretion to require additional inspections based on fact specific circumstances.

C. The MAP Lender will prepare and approve the interim draws during construction.

D. HUD must approve the construction amount for each item in the initial and final advance, and for each Change Order during construction.

### **1.3.5 Servicing**

A. MAP makes no changes in procedures for servicing or asset management, except for servicing Lenders with prior approval for delegated responsibility for repair escrow administration. See [Section 1.2](#) above

for guidance on MAP approved Lenders who only originate and transfer loans to another FHA approved Lender for servicing.

## 1.4 Regulations, Policies, and the MAP Guide

**A.** All applicable HUD Handbooks, Notices, and Forms remain in effect and will be used for traditional HUD processing of mortgage loan applications. For applications under MAP, the Guide incorporates the majority of Handbook, Notice and Mortgagee Letter requirements and includes in the Appendix the forms that are required for most applications. If there is a conflict between the Guide and the Handbooks or instructions for various HUD forms, the Guide will take precedence. Lenders with questions should address them to the Regional Center or Satellite Office processing the application. Where the Guide is silent on a matter, the Lender should consult the following MAP website: [https://www.hud.gov/program\\_offices/housing/mfh/map/maphome](https://www.hud.gov/program_offices/housing/mfh/map/maphome) or the Regional Center or Satellite Office that is processing the application.

**B.** Consistent with their level of approval, the Lender must be familiar with the basic programmatic requirements and regulations of the insurance programs set forth in Title 24 of the Code of Federal Regulations, including but not limited to Part 200.

**C.** The Lender is encouraged to contact a Regional Center or Satellite Office if any issues are not addressed in the Guide or if any clarifications are needed. See [Chapter 11](#) on Underwriting for waiver procedures. The Multifamily Regional Director may waive non-regulatory or non-statutory provisions of the Guide, although [Chapter 11](#) specifies several requirements that may not be waived without prior approval of HUD Headquarters (HQ). If the Regional Center intends to waive any of the environmental requirements in [Chapter 9, Section 9.3](#) that are not regulatory in nature, the Regional Office must obtain advice of the Departmental and/or Housing Environmental Officer, or the applicable Regional or Field Environmental Officer (REO/FEO) in whose district the project is located, before the waiver is granted. Regulatory provisions may be waived only with approval of the Assistant Secretary for Housing - FHA Commissioner. Statutory provisions may not be waived.

**D.** The Lender is also encouraged to communicate early with the Borrower to ensure that the Borrower, the proposed Management Agent, and/or the Project have not been referred to HUD's Departmental Enforcement Center (DEC), as such referrals may require additional time to resolve and create impediments to a timely closing.

**E.** Any waiver of this Guide granted by the Multifamily Regional Director must be documented in the Regional Center or Satellite Office docket, along with the Lender's request and supporting documentation for the approval. The form HUD-2 must be submitted electronically to the HUD HQ Office of Multifamily Housing Production's SharePoint site in accordance with outstanding instructions. No hard copies need to be submitted to HQ; Multifamily Field Office staff and Office of General Counsel (OGC) may rely on electronic signatures or scanned copies. HQ will periodically review waivers to determine if changes to the Guide or to the regulations are warranted.

**F.** HUD made technical and substantive changes when it adopted new and updated FHA multifamily loan closing documents. The term "directives" was subsumed within the term "Program Obligations." "Program Obligations" refer to:

1. All applicable statutes and any regulations issued by the Secretary that apply to the Project, including all amendments to such statutes and regulations, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and
2. All current requirements in HUD handbooks and guides, notices, and mortgagee letters that apply to the Project, and all future updates, changes and amendments thereto, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and provided that such future updates, changes and amendments shall be applicable to the Project only to the extent that they interpret, clarify and implement terms in the applicable closing document rather than add or delete provisions from such document. Handbooks, guides, notices, and mortgagee letters are available on HUD's official website:

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/administration/hudclips/](http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/)

## 1.5 Workload Management

**A. Applications.** Applications for mortgage insurance should be submitted to the Regional Center or Satellite Office having jurisdiction for the area where the property is located (the “originating” office). The Regional Center or Satellite Office Director is responsible for workload management within their Regional Center or Satellite Office, including:

1. Delegation and staff assignments,
2. Participation in Workload Sharing,
3. Establishing priority of application processing,
4. Meeting standard processing times, and
5. Loan Committee.

**B. Workload Sharing.** Depending on staff capacity and programmatic expertise, a Regional Center Director may transfer processing assignments to other Multifamily Regional Centers or Satellite Offices (“processing” offices) through Workload Sharing. Workload Sharing occurs outside of the geographic service area identified in existing published delegations of authority. The originating Multifamily Regional Director will retain Commitment Authority and closing responsibility. The processing office will assist as requested, following protocols of the originating office and counsel. A Regional Center Director may re-delegate processing responsibilities to designated Multifamily staff in processing offices unless specifically restricted by the Guide, statute or regulation or by existing published delegations of authority.

**C. Washington Docket.** At the “initial”/“final” endorsement and closing, the Regional Center’s Closing Coordinator or other appropriate designated staff should assemble a set of original documents (or as HUD allows, copies) for the Washington Docket, in accordance with the local Regional Center’s requirements and procedures. If originals of recorded documents are unavailable because of filing or recording procedures, a wholly legible copy should be collected (certified true and correct by the recorder or by the title company). Note that the Phase I Environmental Site Assessment is a program requirement and a supporting document for the HEROS environmental review. It should remain with the HEROS summary report in the Washington Docket as a part of the permanent, historical file.

**D. Initial Endorsement Diligence Review.** The Regional Center Director and program staff will review the Lender’s request for initial endorsement and closing and supporting materials in accordance with Program Obligations. Applications participating in Workload Sharing will follow closing requirements and protocols of the originating office and counsel; the processing office will provide such support as requested.

## Chapter 2 Lender Qualifications and Practices

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### 2.1 Introduction

**A.** The MAP program requires that Lenders and Underwriters be skilled in underwriting multifamily housing loans and in preparing applications for FHA multifamily mortgage insurance. To ensure that goal is met, MAP Lenders and MAP Underwriters must be approved by the Counterparty Oversight Branch (“COB”) within the Multifamily Asset and Counterparty Oversight Division.

**B.** Approval of a MAP Lender or Underwriter by COB is on a nationwide basis and the MAP Lender and its approved Underwriter may process MAP loans regardless of which HUD area office will review the MAP application. MAP approval does not expire, but by accepting the opportunity to participate in the MAP program, the MAP Lender and Underwriter agree that their MAP loans will be subject to post-endorsement review by COB and that, if they fail to meet HUD standards for underwriting loans, their MAP designation may be terminated in accordance with the Quality Assurance and Enforcement Actions in [Chapter 15](#).

**C.** Approval by COB as a MAP Lender is a prerequisite to participation in the MAP program, but MAP approval does not obviate the need to have an experienced team process each application. The MAP Lender is responsible for ensuring that all third party contractors meet the requirements outlined in the MAP Guide, including the USPAP appraiser competency provision and jurisdictional certification requirements, and that third party contractors do not have any Identity of Interest with the Borrower/Sponsor or any affiliated entity. If the HUD office has concerns regarding the MAP Lender’s, its Underwriter’s or its third-party contractor’s past performance or capabilities, the office should consult with COB for additional monitoring or for a potential enforcement action.

**D.** As a condition of approval of any new MAP Lender, the Lender’s first three loan transactions will be subject to the processing restrictions described at D.1-4, below. Further, COB will review the first three loan transactions after Firm Commitments have been issued, although the transactions may continue to be processed for Initial Endorsement during COB’s review. Section 223(a)(7) refinancing transactions may only be credited towards one of the three loan transactions that must be reviewed by COB. Based on the results of its review of the first three transactions, COB may extend the review process and the processing restrictions described at D.1-4, below, to additional applications for all MAP programs, to additional applications just for specific programs or it may release any application processing restrictions. A new MAP Lender may not submit additional applications for insurance until COB has completed its first three loan transaction reviews. For its first three MAP applications, and such additional applications as COB may require, the following limitations on the new Lender’s MAP privileges will apply:

1. For all MAP lending programs:
  - a. A Concept Meeting will be required for all new applications.
  - b. The Lender’s ability to process MAP loans over a certain amount or for properties over a certain number of units may be restricted, with the specific loan and unit limits determined by COB based on a review of the Lender’s application.



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- c. A HUD appraiser must review and approve the full appraisals (and market studies, as applicable) for any new applications.
  2. For the 223(f) and 223(a)(7) programs:
    - a. The Lender may not manage critical and non-critical repair escrow releases without a site inspection and approval of escrow disbursements by HUD staff.
    - b. The Lender may not process 223(f) or 223(a)(7) loans which require greater than Level 1 repairs and/or alterations.
    - c. HUD staff must inspect a property if a CNA is found to be deficient.
    - d. The Lender must report quarterly on its administration of a non-critical repair escrow.
  3. For the 221(d)(4) and 220 programs:
    - a. Two-step processing will be required for all new construction and substantial rehabilitation applications and direct-to-Firm applications may not be submitted.
    - b. The Lender may be required to submit full schematics and working drawings during pre-application processing based on the results of HUD's review during the concept meeting.
  4. For the Low-Income Housing Tax Credit program:
    - a. The Lender may not participate in expedited processing of tax credit applications but must submit to standard application processing for both 223(f) and 221(d)(4) loans.
- E.** An originating MAP Lender may sell or transfer a MAP application only upon receipt of a Firm Commitment. The application and Firm Commitment may be sold only to another MAP Lender in good standing and not currently subject to any Probation or Suspension sanctions, and within the limits on MAP Lenders with Identities of Interest with the Borrower (or affiliates of both). For further guidance on the sale of a Firm Commitment by a MAP Lender, see [Chapter 1, Section 1.2](#) of this Guide.

## 2.2 HUD Approval of Lenders

**A.** The Lender must prepare the application for approval as a MAP Lender, although there is no prescribed form of this application. The application should be submitted to COB electronically in PDF format. Upon receipt of all the information specified in [Section 2.7](#), COB will process the application within 30 days.

**B.** COB must approve each MAP Lender in writing. The names of approved MAP Lenders will be posted on the HUD website at: <https://www.hud.gov/sites/dfiles/Housing/documents/aprvlend.pdf>

**C.** COB may disapprove a Lender application on the grounds that: a) it fails to meet the standards set forth in [Section 2.3](#); b) it fails to provide sufficient information required by [Section 2.7](#); or c) there are specified deficiencies that must be corrected. A Lender will not be granted MAP approval if the Lender uses contract Underwriters exclusively. MAP Underwriters must be full time salaried employees and must already be employed by the Lender at the time of approval. An appeal of COB's decision to disapprove an application, or to impose specific conditions of approval, may be made to the Deputy Assistant Secretary (DAS) for Multifamily Housing.



D. If the MAP Lender's approval has been terminated, the Lender may not apply for reinstatement for 12 months after termination. See [Chapter 15, Section 15.10.G](#).

E. MAP Lenders that fail to maintain a minimum level of MAP activity, defined as failing to submit either a pre-application package or a Firm Commitment application at least once every 12 months, will be terminated from the MAP program for inactivity, in accordance with 24 CFR 200.1520(b).

## 2.3 Lender Standards

A. A MAP Lender must demonstrate that it is an FHA-approved mortgagee pursuant to 24 CFR Part 202, that it is financially sound, it has on-staff principal employees with the necessary multifamily underwriting experience required by this Guide and its record with FHA-insured or conventional multifamily loans has been satisfactory. Further requirements are as follows:

1. A Lender must be an FHA mortgagee as a result of its approval by the Office of Lender Activities and Program Compliance, Lender Approval and Recertification Division.
2. The Lender must not be subject to judgments, administrative claims, litigation or current lawsuits that would seriously affect its ability to do business; the Lender may not unlawfully discriminate. The Lender must be, and must remain, continuously in compliance with 24 CFR 200.30, 24 CFR part 5 and 24 CFR part 200, subparts I, J, and M, regarding nondiscrimination and equal opportunity, and it may not have outstanding violations under said authorities unless it is under an agreement or order to come into compliance. The Lender must identify staff persons with the level of training and experience required pursuant to [Section 2.10](#). Multifamily underwriting experience on staff is a key to MAP approval and the Lender's Underwriters must have worked regularly in the multifamily lending business and have underwritten the required number of loans which have been funded.
3. The Lender's application must identify experienced staff who have the authority to underwrite loan applications and sign the narrative summary in a loan application. The applicant must also identify whose signatures may bind the Lender for its responsibilities under MAP.
4. FHA multifamily experience is not specifically required for initial approval as a MAP Lender, but if the Lender lacks FHA experience, additional emphasis will be placed on recent comparable conventional multifamily permanent and construction lending experience that is consistent with MAP lending. For any loan processed under MAP, the Lender must thoroughly understand MAP program requirements.
5. A Lender may be rejected for MAP qualification due to a recent history of early defaults, foreclosures or assignments of FHA-insured, or defaults or foreclosures of non-FHA insured, loans. The reason for any assignments, defaults or foreclosures will be evaluated by COB, including whether it was due to inadequate servicing or poor-quality underwriting. COB will review any loan the applicant has underwritten and endorsed within the previous five years that has defaulted and been assigned to HUD to determine whether the Lender was at fault in its origination and underwriting of the defaulted loan and if there has been a pattern of poor Lender performance.
6. If the Lender has worked with HUD's Offices in the previous two years, COB will contact those offices to ascertain their experience with the applicant and their responses will be included in the Lender's file. A pattern of unsatisfactory applications at one or more HUD Offices may be grounds for rejection of the Lender's MAP application.

## 2.4 Loan Consultants, Correspondents, or Mortgage Brokers

**A.** It is common practice for MAP Lenders to use loan consultants, loan correspondents or mortgage brokers to increase origination capacity. A consultant or a correspondent represents the MAP Lender and seeks to identify and screen transactions which the Lender can finance using the MAP program. A mortgage broker represents the Borrower/Sponsor and seeks to identify an appropriate financing source for their loan transaction.

**B.** The term loan consultant, loan correspondent or mortgage broker, as used here, applies to an individual or outside company who is actively engaged in the mortgage origination business and acts as an intermediary with or on behalf of the MAP Lender but who is not a MAP-approved Lender themselves and is not an employee of a MAP Lender or of an affiliate of the Lender. Under MAP, the consultant's, correspondent's, or mortgage broker's sole role is to refer new business to a MAP Lender including information supplied by the proposed Borrower/Sponsor. Aside from referring a Borrower/Sponsor for a MAP loan, a consultant, correspondent, or mortgage broker may not have any additional role in underwriting the transaction or in respect to the MAP Lender.

**C.** The consultant's, correspondent's or mortgage broker's fee must be paid solely from the Lender's fees and must be disclosed in the MAP Lender's underwriting narrative. The consultant, correspondent or mortgage broker may not have any Identity of Interest with the Borrower/Sponsor or any affiliated entity, and acting as an intermediary with or on behalf of the MAP Lender may not represent any Conflict of Interest with their existing relationship with the Borrower/Sponsor. Consultants or correspondents must agree to comply with the MAP Guide's prohibitions on illegal inducements, kickbacks, and side agreements with the Borrower/Sponsor. For consultants or correspondents to represent a MAP Lender, there must be a signed written agreement acknowledging the requirements and prohibitions of this section and of the MAP Guide and certifying their compliance to the MAP Lender.

**D.** HUD will only accept application packages from, correspond with or rely on information submitted by an approved MAP Lender, will only communicate with employees of the MAP Lender and will only accept documents signed by authorized signatories of the MAP Lender. MAP Lenders are expected and authorized to hire third party contractors to prepare specialized reports related to any of the technical disciplines, as required by the MAP Guide. However, the involvement of a consultant, correspondent, or a mortgage broker in any of these functions, including in the selection of third-party contractors, is not permitted by the MAP program.

## 2.5 Underwriting and Construction Administration

### 2.5.1 Underwriter Responsibilities

**A.** The MAP Underwriter performs the mortgage credit and real estate underwriting functions and must be a full-time employee of the MAP Lender. The MAP Lender is responsible for underwriting the loan which necessarily requires that the Lender oversee and recommend to HUD for approval the conclusions and recommendations of the third-party reports, except as modified, explained and justified in the

Lender's underwriting. The Underwriter or the Construction Loan Administrator is responsible for management of the Lender's responsibilities during the construction period.

**B.** The duties and responsibilities associated with MAP application underwriting are as follows:

1. Make a determination of the acceptability of the General Contractor, Supervisory Architect, Management Agent, the Sponsor and the Borrower and its principals through a thorough review of their ownership structure and an analysis of their experience, credit, character, financial condition and motivation for ownership (e.g., are they a merchant builder, plan to hold for long term, refinancing balloon debt, etc.), the availability of assets for closing and the adequacy of property income to meet loan obligations.
2. Use trade references, bank references, credit data and construction experience resume in analyzing the construction capability of the General Contractor, including its financial stability and its ability to complete the project in light of its responsibility for other projects in progress.
3. Identify and analyze all risks associated with the proposed financing and determine the recommended maximum mortgage amount and other key terms of the loan.
4. Engage all third-party consultants and analysts, provide oversight and effective supervision of their work to ensure their deliverables meet MAP Guide requirements and support the underwriting recommendation. The Underwriter must assure that third party contractors do not have any Identity of Interest with the Borrower/Sponsor or any affiliated entity at the time they are providing the services. The Underwriter will oversee the assembly of the loan application and will recommend loan approval to HUD.

## 2.5.2 Construction Administrator Duties

**A.** The duties and responsibilities associated with the Construction Loan Administrator during the construction period (if applicable) are:

1. Determine the initial distribution of mortgage proceeds into various accounts and maintain a record of their control and disbursement.
2. Determine construction costs (as approved by the HUD inspector), Architect fees and carrying charges payable under requests for advances of mortgage proceeds or prepare written reasons for modifications, as necessary.
3. Recommend approval of construction change orders and recommend release of both on-site and off-site escrow funds or cite special requirements or conditions of approval, as necessary.
4. Protect HUD's interests by assisting with and overseeing the resolution of construction disputes, delays, costs overruns and any related problems.

## 2.5.3 Underwriting and Construction— HUD's Role

**A.** HUD's role during application underwriting is to:

1. Review the Lender's mortgage credit analysis of the acceptability of the Sponsor, the Borrower and its principals, and of the contractor.

2. Perform the Active Partner Performance System (APPS) Electronic form HUD-2530 Property Submission review or successor previous participation review process.
  3. Confirm the maximum mortgage amount, loan conditions, loan settlement requirements and other key terms of the loan.
  4. Confirm the project's financial feasibility and the acceptability of the market and the valuation conclusions.
  5. Review initial and final closing documents for compliance and acceptability.
  6. Perform the environmental review.
  7. Review and approve the Lender's construction period analysis and construction costs.
- B.** HUD's role during the construction period (if applicable) is to:
1. Review and approve the Lender's proposed initial distribution of mortgage proceeds.
  2. Conduct construction inspections.
  3. Require the Lender to ensure resolution of construction problems and disputes.
  4. Approve construction change orders.
  5. Review the Borrower's cost certification based on HUD's allowed costs.
  6. Confirm the final maximum insurable mortgage.
  7. Review and approve the final distribution of mortgage proceeds.

## 2.5.4 Electronic Communications

**A.** HUD will post information on its web site and will transmit messages to Lenders and to the lending community by electronic mail, often with attached documents, Mortgage Letters or Housing Notices. Lender requests or information required to be submitted by Lenders to HUD must be submitted electronically, including MAP Lender and Underwriter approval requests which are submitted to COB.

## 2.6 Identity of Interest, Conflicts of Interest

### 2.6.1 Introduction

**A.** The Code of Federal Regulations at 24 CFR 200.1530(b)(6) refers to Identity of Interest (IOI) violations as defined in this Chapter. For purposes of this section, an IOI is defined as a financial or family relationship between a MAP Lender and another party related to the MAP loan transaction. All IOIs must first be reviewed and approved in writing by COB. IOIs are prohibited unless explicitly permitted pursuant to this section or approved in writing by COB. A prohibited IOI is referred to in this section as a "Conflict of Interest." Conflicts of Interest are unacceptable in the MAP program because they:

1. Undermine the independence and integrity of the MAP Lender's underwriting, risk assessment, credit analysis and/or loan closing procedures;

2. Obscure the lines between the MAP Lender's fiduciary responsibilities to the project's equity investor and its responsibilities to HUD;
3. Represent an unfair competitive advantage for the MAP Lender; and/or;
4. Represent an unfair business practice with the Borrower or any of its affiliates, which may be due to a lack of disclosure or skewing of arm's length incentives.

**B.** HUD considers certain prohibited payments and promises by a MAP Lender to be a violation of 24 C.F.R. 200.1530(b)(7), which prohibits:

*Payment by, or receipt of a payment by, a MAP Lender of any kickback or other consideration, directly or indirectly, which would affect the Lender's independent evaluation, or represent a conflict of interest, in connection with any FHA-insured mortgage transaction.*

**C.** Certain payments and promises could further violate the Lender's Certificate (form HUD-92434M) and the Request for Endorsement form (HUD-92455M, Certificate of Lender) provision, as follows:

*Lender has not made or offered, and shall not make or offer, any guarantees, pledges, reservations of sums to become due, or other inducements to any entity or person to make loans or advances which Lender would be prohibited from making under the terms of this Section.*

**D.** MAP Lenders that violate the prohibition against IOIs may be subject to enforcement action by the Department, including, but not limited to, sanctions under 24 CFR part 200, subpart Y (MAP Lender Quality Assurance Enforcement) and part 25 (Mortgagee Review Board).

**E.** Prohibited Conflicts of Interest, and acceptable IOI relationships and permissible exceptions, are detailed in this section; examples are provided in [Appendix 2, Section A.2.1.1](#). IOI relationships that could be a Conflict of Interest must be disclosed and reported to COB which will provide determinations to written requests for IOI approvals pursuant to this section. Because determining whether an IOI is acceptable is inherently complex and may lead to an enforcement action, MAP Lenders and other participants must obtain written approval from COB prior to proceeding when there is any question of an IOI.

## 2.6.2 Definitions

**A.** The following definitions shall apply to this Chapter:

1. **Borrower:** Includes, but is not limited to, the GP, LP or managers and members of an LLC of the borrowing entity, its principals and affiliates.
2. **Borrower's Counsel:** Includes, but is not limited to, any attorney or support staff employees who are a partner, member, or employee of the law firm, and applies to firms and solo practitioners.
3. **Borrower's Team:** Includes the Borrower, Borrower's counsel, General Contractor, subcontractor, Architect, seller of the land, seller of the property, a third-party consultant providing reports supporting the transaction, any affiliates of the Borrower's Team or any parties related to the Borrower's Team.
4. **Family Relationship/Family Members:** Includes spouses, parents, siblings, brothers, stepbrothers, sisters, stepsisters, sons, stepsons, daughters, stepdaughters, legally adopted sons or daughters, foster children, grandparents, grandchildren, aunts, uncles, mothers-in-law, fathers-in-law, brothers-in-law and sisters-in-law.

5. **Financial Interest/Financial Relationship:** Includes any current or contingent ownership, equity or security interest in real or personal property or in a business, as well as any indebtedness, compensated employment and fiduciary relationship.
6. **Gift:** Includes any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value, including services as well as gifts of training, transportation, local travel, lodgings, and meals. Gifts can be provided in-kind, by payment in advance, or by reimbursement after the expense has occurred.
7. **MAP Lender:** Includes the Lender’s officers, directors, partners, principals, stockholders, affiliates, affiliate’s officers, affiliate’s principals or any contract employees working on a particular affiliate’s or principal’s MAP application and, unless otherwise specified, includes the FHA-approved MAP Lender, its parent company, subsidiaries, affiliates and any other related entities, and any officers, directors, partners, members or employees of the MAP Lender, its affiliates and other related parties.
8. **Prohibited Source:** Means any person who: a) is seeking official action by HUD, b) does business or seeks to do business with HUD, c) conducts activities regulated by HUD; d) has interests that may be substantially affected by performance or nonperformance of the HUD employee’s official duties, or e) is an organization a majority of whose members are described in (a) through (d) and also includes any people who have a family relationship with the prohibited sources.

## 2.6.3 Identity of Interest - General

**A.** The MAP Lender is responsible for conducting appropriate, commercially reasonable due diligence to identify IOIs and to ensure that no Conflicts of Interest exist. Because the guidance in this chapter is necessarily general, the Lender is responsible for obtaining prior written approval from COB when there are questions as to whether an IOI is prohibited in any specific situation.

**B.** In some cases, the MAP Lender is a Supervised Mortgagee, as defined in the HUD Single Family Handbook, or is a publicly owned company (or a wholly owned subsidiary of a publicly owned company) subject to oversight by the U.S. Securities and Exchange Commission. Such entities are actively regulated by other federal agencies and thus HUD’s risk in IOI situations is partially mitigated. Due to the size and number of shares and employees, it may be impractical for such entities to provide certainty that there is no IOI. Accordingly, for purposes of determining whether a prohibited Conflict of Interest exists, Supervised Mortgagees or publicly-owned MAP Lenders may define in their QC Plan the MAP Lender as the applicable operating entity responsible for origination and servicing of “agency business”, which would include both FHA and GSE loans. The QC Plan must describe the due diligence process used to ensure shareholder or employee IOIs are sufficiently remote such that they will not undermine, or give the appearance of undermining, the MAP Lender’s or Borrower’s Team member’s integrity and independence in the underwriting, risk analysis, credit review and loan closing process.

**C.** Generally, MAP Lenders which are Supervised Mortgagees or publicly owned companies can assume that counterparties in MAP transactions with less than a 5% shareholder interest in the Borrower entity, or depositories with less than \$500,000 in an account, would not have a Conflict of Interest with the Lender.

**D.** Lenders are expected to perform commercially reasonable and appropriate due diligence in evaluating Borrower Team members’ potential IOIs. Generally, certifications by Borrower’s counsel, Design Architects and other professional advisors (including the MAP Lender’s third-party professionals) and the



principals of their firms, that they have no equity interest in the Borrower or in the MAP transaction or project, may be relied upon. Similarly, certifications by non-IOI General Contractors may be relied upon as applying to principals of their firms and sub-contractors.

**E.** Borrower Team members subject to Previous Participation review are assumed to be subject to IOI disclosure and prohibitions, as are entities or persons with an equity or other financial interest in the Borrower such that their role in the transaction may provide material control or influence over the development, operations or management of the project.

**F.** Further IOI examples can be found in [Appendix 2, Section A.2.2.1](#).

## **2.6.4 Specific Business Conflicts**

### **2.6.4.1 Lender Owned FHA-Insured Properties**

**A.** MAP Lenders with an equity or ownership interest in a property, either directly or through an affiliate, would have an IOI if they refinanced the property's existing loan with a new FHA insured mortgage. This is not necessarily prohibited, so long as the MAP Lender complies with the requirements of this Chapter of the MAP Guide (for example, if the MAP Lender is affiliated with a tax credit equity investor or syndicator which will have a 99% ownership interest in the property), discloses to COB the relationship in writing prior to submitting the Firm Commitment application, and the loan terms and interest rate are commercially competitive at the time of the refinancing.

### **2.6.4.2 Secondary Financing Relationships**

**A.** Secondary financing includes, but is not limited to:

1. Loans secured by the project or made to the Borrower entity in addition to a first mortgage;
2. Loans made to and/or secured by upper tier ownership interests in the Borrower entity (i.e., persons or entities with any ownership interest in the property's Single Asset Mortgagor Entity); and
3. Other forms of mezzanine financing associated with the project proposed for the MAP loan transaction.

**B.** Any proposed secondary financing relationship between the Borrower and the MAP Lender on a MAP financed project constitutes an IOI and, unless explicitly allowed in published program guidance, must be disclosed in writing to HUD and the MAP Lender must receive written approval of the IOI from COB before submitting an application. Such approval will not be unreasonably withheld provided the relationship is fully disclosed and the parties demonstrate to HUD's satisfaction that the relationship will not undermine the integrity and independence of the MAP Lender's underwriting, credit review and loan closing process. These situations will require additional scrutiny by HUD and by the MAP Lender to ensure an appropriate property valuation and compliance with MAP program requirements. In cases where a secondary financing IOI occurs during or after processing, it must be disclosed in the manner provided in this section as soon as it is anticipated.

### 2.6.4.3 Bridge Loans and Balance Sheet Loans

A. An IOI is created in cases where a temporary bridge loan is made by the MAP Lender to the Borrower, as well as in cases where a loan on the MAP Lender's balance sheet will be refinanced using an FHA insured loan. Existing or potential bridge or balance sheet loans require disclosure of IOIs at the earlier of the Concept Meeting or at submission of the loan application. Generally, such IOIs will be approved if HUD determines, based on the facts and circumstances submitted in writing by the MAP Lender, that the relationship does not:

1. Undermine the integrity and independence of the Lender's underwriting;
2. Circumvent program requirements; or
3. Undermine program intent (for example by facilitating cash out on either a Section 223(a)(7) or a Section 223(f) loan greater than 80% LTV).

### 2.6.4.4 Lenders with Tax Credit Equity Affiliates

A. With prior written approval from COB, certain MAP Lenders with tax credit equity syndicator or investor affiliates, which would otherwise represent a prohibited IOI relationship, may originate MAP loans. Approval of such requests shall be conditioned on:

1. The MAP Lender must be a Supervised Mortgagee, as defined in the HUD Single Family Handbook.
2. Except where HUD has agreed to a "Pre-Approval of Special Limited Partners as Interim Replacement GP/MM for LIHTC Transactions", the equity syndicator or investor must remain in a purely passive role throughout the term of the FHA-insured loan, including after the tax credit compliance period ends.
3. The MAP loan must be processed, underwritten, and approved by the MAP Lender's staff without involvement by the affiliated equity syndicator's or investor's staff.
4. Effective firewalls must be maintained between the affiliated equity syndicator or investor and the MAP Lender. The affiliated equity syndicator or investor must not improperly influence the MAP division's staff in its role as MAP Lender, nor may the MAP Lender act to influence the affiliated equity syndicator or investor.
5. The MAP division and the affiliated equity syndicator or investor must each provide HUD with a project-specific certification that contains the MAP Guide's prescribed IOI certification contained in [Section 2.6.4.6.A.8](#), below.
6. The MAP Lender and the Borrower must certify that the affiliated equity syndicator or investor did not seek, and shall not provide, any inducement to the Borrower to close the MAP loan with the MAP Lender.

B. MAP Lenders that are not Supervised Mortgagees may still invest in tax credit transactions through their equity syndicator or investor affiliates, subject to compliance with [Section 2.6.4.4.A.2-6](#) above, and compliance and certification that, after the project's placed-in-service date, the affiliated equity syndicator or investor will hold no more than a 25 percent ownership interest in the Borrower entity.



### 2.6.4.5 Lender’s Consultants, Correspondents, or Mortgage Brokers and IOI

A. MAP Lenders may engage business using a mortgage broker, loan consultant or loan correspondent, subject to the restrictions and requirements contained in [Section 2.6.4](#), above. Brokers, consultants and correspondents may not have any IOI with the Borrower or Sponsor or any of their affiliated entities. Although the broker’s, consultant’s or correspondent’s fee will be paid from the MAP Lender’s fees, this does not create an IOI relationship between the broker, consultant or correspondent and the Lender.

### 2.6.4.6 Other Lender Conflicts

A. MAP Lenders may occasionally seek to invest in a project financed under MAP by a separate “Underwriting MAP Lender”. If the Borrower has an IOI relationship with a MAP Lender, that “IOI MAP Lender” cannot assist in underwriting, purchasing, or servicing the loan until after Final Endorsement. The arrangement to assign the loan after Final Endorsement is subject to full disclosure before processing begins, including certification and approval by HUD and the adoption of appropriate procedures in each MAP Lenders’ QC Plans. The Conflict of Interest risk may be mitigated by meeting the following requirements:

1. The IOI relationship must be fully disclosed as a planned business practice in both MAP Lenders’ QC Plans. With each application, the Underwriting MAP Lender must include a certification that includes the applicable criminal penalty warning. The warning must certify that the IOI MAP Lender had no involvement in the underwriting process and that the referring entity had a “firewall” such that only employees of the owner/ equity investor affiliate of the IOI Map Lender provided information to the Underwriting MAP Lender.
2. The Underwriting MAP Lender must have made no specific written or oral obligation to assign the loan to the IOI Map Lender after Final Endorsement and must retain the right to assign, or refuse to assign, the loan to any servicer or to hold the loan.
3. The IOI Map Lender must have made no written or oral obligation to purchase the loan from the Underwriting MAP Lender after Final Endorsement and must retain the right to sell, or refuse to sell, the loan.
4. Any dealings between the IOI MAP Lender and the Underwriting MAP Lender must be arm’s length and independent at all times, including after issuance of a Firm Commitment. The IOI MAP Lender may not advise or assist the Underwriting MAP Lender in processing the loan or with making any underwriting decisions.
5. The IOI MAP Lender may not receive a mortgage broker’s, consultant’s or correspondent’s referral fee from the mortgage proceeds.
6. HUD will only accept application packages, correspondence and information related to the loan that are submitted by the Underwriting MAP Lender.
7. The IOI MAP Lender may not hire or interact with third-party contractors, except that its equity affiliate may respond to inquiries from the Underwriting MAP Lender’s third parties. Such interactions must be isolated by the firewall described in the Lenders’ QC Plans.
8. Third-Party contractors may not have any IOI with the Borrower or the Underwriting MAP Lender at the time they are providing their services.

9. Both Lenders must have appropriate and acceptable QC practices that provide for an effective firewall and must provide for objective and independent loan origination and underwriting processes. Such practices and procedures must be defined in each MAP Lenders' QC Plan and be approved by COB.

#### **2.6.4.7 Prohibited Practices - Inducements**

**A.** A MAP Lender may not have arrangements with Borrowers for the purpose of securing the Borrower's business that may undermine the MAP Lender's integrity in the underwriting and credit review process or provide an unfair competitive advantage to the MAP Lender. The following are examples of prohibited inducements in which the MAP Lender may not:

1. Provide "kickbacks" such as financial rewards, payments or fee rebates, free or discounted professional services (except for a reduced loan origination fee) or other remuneration to a Borrower;
2. Provide loans or advances of funds to affiliates of either the MAP Lender or the Borrower for the purpose of meeting requirements for cash or financial capacity related to the MAP transaction;
3. Condition the provision of, or provide more desirable terms for, other banking products including tax credit equity investments by affiliated entities in exchange for engagement to process the MAP loan;
4. Pay the Borrower's costs for third-party reports;
5. Pay application fees; or
6. Offer to refund application fees on unsuccessful loan applications.

**B.** The preceding list of prohibited inducements is not intended to be exhaustive. Any similar payment made by MAP Lender to the Borrower to secure loan origination business is prohibited. The prohibition on inducements does not prevent a MAP Lender from paying for updated third-party reports provided the transaction was already submitted for a Firm Commitment application that was delayed in processing due to no fault of the Borrower. The Lender must provide to COB and the Director of Multifamily Production a written notice and detailed explanation of any transaction in which such funds are greater than \$10,000.

#### **2.6.4.8 Prohibited Practices - Gifts**

**A.** A prohibited IOI can be created when the MAP Lender, Borrower, or other parties to a MAP loan transaction solicit or accept gifts from prohibited sources based on their business relationship. Gifts less than \$200 per year to an individual recipient are presumed not to constitute a prohibited IOI. A gift may not be conditioned on an agreement or obligation to do business related to a MAP transaction. Gifts given based on an existing business relationship outside of the MAP transaction, or incidental to commercially reasonable and customary marketing practices that are typical of FHA MAP Lenders, are not prohibited unless the value, amount or circumstances undermine, or give the appearance of undermining, the integrity and independence of the underwriting and credit review process. The MAP Lender's QC Plan must address their policy on this topic.

#### **2.6.4.9 Prohibited Practices - Charitable Donations**

**A.** Occasionally, MAP Lenders will make charitable donations to causes that may create a potential Conflict of Interest. HUD does not prohibit charitable contributions by MAP Lenders or Borrowers,

although they can result in a Conflict of Interest for MAP purposes. Any donation given by any party in a MAP transaction conditioned upon an agreement or obligation related to a MAP loan creates a prohibited IOI whether or not such condition is in writing. In situations where HUD becomes aware of such contributions that may constitute a Conflict of Interest, enforcement will be pursued if HUD determines the gifts were intended for the purpose of competing for a potential MAP loan.

**B.** The six primary factors to be considered by HUD in determining whether charitable donations may represent a prohibited IOI are:

1. Whether the donor disclosed such charitable donations to HUD in advance of submitting the MAP application. The donor may provide documentation of monetary value, history of donations to a particular charity, history of donations to a variety of similar charities or other information it deems relevant to show that the donation is not based on, and would not influence, the origination or underwriting of the MAP loan;
2. The timing of the donation;
3. The monetary value or amount of the donation;
4. Any implicit or explicit understanding that the contribution is a condition of engagement of the Lender to process the MAP loan;
5. The Lender's history of philanthropic contributions; and
6. The specific roles and relationships between the parties involved.

## **2.6.5 Disclosing Identities of Interest**

### **2.6.5.1 In General**

**A.** Disclosure is required where there is an actual IOI, the appearance of an IOI or the potential for an IOI between the MAP Lender and the Borrower's Team or any other party to the MAP transaction. All questions and supporting documentation, including any additional information requested by the HUD production office, must be submitted to COB for review.

### **2.6.5.2 IOI Discovered Before Processing**

**A.** If an IOI is identified and a MAP Lender has not started processing, the MAP Lender must disclose the IOI to COB and request written approval of the IOI before continuing. Alternatively, the MAP Lender may undertake one of the following measures:

1. Remove the IOI party from the transaction and process the application using MAP; or
2. Immediately transfer the application to a new MAP Lender. The new MAP Lender may not assign the pre-application submission, the Firm Commitment application, the mortgage insurance commitment or the insured loan back to the IOI MAP Lender prior to Final Endorsement.

### **2.6.5.3 IOI Discovered During Processing**

**A.** If an IOI becomes apparent during processing, a MAP Lender must immediately stop processing, disclose the IOI to COB and attempt to obtain HUD's written approval of the IOI before continuing.

Alternatively, the MAP Lender may transfer the application to a new MAP Lender which may be required by the HUD production office to reprocess all or some stages of the transaction. At no time prior to Final Endorsement may the new MAP Lender assign the pre-application submission, the Firm Commitment application, the mortgage insurance commitment, or the insured loan back to the IOI MAP Lender.

#### **2.6.5.4 IOI Discovered After Firm Commitment**

A. IOIs discovered after issuance of a Firm Commitment may reflect either a lack of transparency, absence of due diligence or negligence on the part of the MAP Lender. The MAP Lender and other involved parties may be referred to investigative or enforcement authorities and the HUD production office must refer such transactions to COB for review of the loan underwriting to determine if it may have been impacted by the IOI relationship.

### **2.6.6 Certification**

A. The MAP Lender must certify and agree that it:

1. Does not have outstanding loans or advances to the Borrower's Team or to any of the Sponsors, the General Contractor or the Architect for any purpose directly or indirectly related to the MAP transaction without prior written approval of HUD;
2. Will not make any loans or advances to the aforementioned parties for any purpose directly or indirectly related to the MAP transaction without prior written approval of HUD; and
3. Has not made or offered, and shall not make or offer, any guarantees, pledges, reservations of sums to become due or other inducements to any entity or person associated with the MAP transaction.

B. In the following circumstances, certification is not required: a) loan advances made in accordance with Program Obligations; b) notes given to evidence additional financing charges owed by Borrower to the MAP Lender as authorized in the MAP Guide and as disclosed pursuant to the Lender's Certificate (form HUD-92434M or later designation) or the Certificate of Lender contained in the Request for Endorsement of Credit Instrument (form HUD-92455M or later designation), as applicable; or c) Lender advances made pursuant to the Security Instrument (form HUD-94000M or later designation).

### **2.6.7 Syndicator or Investor Influence**

A. The affiliated tax credit equity syndicator or investor must not improperly influence the MAP Lender which is underwriting a MAP loan on a tax credit project. The MAP Lender and the affiliated tax credit equity syndicator or investor must each provide the HUD production office a project specific representation and warranty on each application submitted for a tax credit project. The representation and warranty should be consistent with instructions provided in [Appendix 2, Section A.2.3](#) and must contain the referenced criminal warning language.

## 2.7 New MAP Lender Application Package

A. A new Lender's MAP application should be submitted to COB electronically in PDF format. There is no specific required application form for approval as a MAP Lender, but the information submitted must include the following exhibits:

1. Exhibit A: Provide the name of applicant, address, employer identification number, contact person or persons, telephone and fax number, e-mail address, branch offices for multifamily business with address, telephone and e-mail address, and the FHA Mortgagee ID Number.
2. Exhibit B: List the names and titles of those who are authorized to bind the Lender in matters involving an application, underwriting and origination of insured mortgages under MAP
3. Exhibit C: Describe the type of FHA-Mortgagee (e.g., supervised or non-supervised), type of legal structure (e.g., general corporation, limited liability corporation, partnership, Housing Finance Agency or other), whether the Lender is a subsidiary of another company, and if so, identification of the parent company.
4. Exhibit D: Provide a copy of most recent financial statements submitted to HUD's Office of Lender Activities and Program Compliance, Lender Approval and Recertification Division (not applicable to supervised mortgagees).
5. Exhibit E: Describe in the narrative the applicant's method of operation in multifamily lending. This will include whether it: a) services loans; b) is an originator that sells commitments or loans to others; c) originates and holds loans in its portfolio; d) purchases loans from others; and, e) has experience in construction loan administration. Also include the number, location and staffing of branch offices it operates and any other information the applicant deems relevant in providing a clear description of its business.
6. Exhibit F: Describe the experience of the Lender in multifamily loan origination, for both conventional, GSE and FHA-insured loans. List the FHA-insured loans for which the Lender has received Firm Commitments in the last 5 years, the number, name, location, original amount, HUD Office where processed and whether the loan is in default has been assigned, or an election to assign the loan to FHA has been filed, or the Lender has elected to foreclose on the loan. The extent of conventional lending may be summarized rather than listing each conventional mortgage originated in the last 5 years. It is important to summarize the extent of conventional multifamily experience, the extent to which construction loan administration was involved and the number and percentage of defaults and foreclosures. List any FHA or conventional loan that was sold since origination and is serviced by another Lender and report on whether the sold loan is in default, foreclosure or has been assigned to FHA. Default for these purposes means a loan whose payment is more than 60 days overdue.
7. Exhibit G: Explain in detail any elections to assign FHA loans for insurance benefits for any Initial Endorsements that occurred after May 1, 1995.
8. Exhibit H: Provide resumes of the staff who will be responsible for the submission of MAP loan applications demonstrating that the staff have the required multifamily experience.

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9. Exhibit I: Describe experience in construction loan administration, if the applicant intends to perform this function. Identify those persons authorized to sign advances, construction change orders and escrow releases.
10. Exhibit J: Provide a detailed description of the following:
  - a. Lawsuits/claims/judgments filed or issued in the last 5 years against the applicant, its officers or principals, or its Chief or Deputy Underwriter(s) which:
    - 1) Concern equal employment or Lender discrimination prohibited by law, or
    - 2) Are a result of, or might significantly affect, its multifamily lending business.
  - b. Any criminal matters or civil complaints that impugn the character or compromise the integrity of the applicant, its officers or principals, or its Chief or Deputy Underwriter(s).
11. Exhibit K: The Lender must represent that it will certify with each pre-application submission and application for mortgage insurance that it is in compliance with the provisions of the MAP Guide concerning Identities of Interest and conflicts of interest among participants in a loan transaction.
12. Exhibit L: The Lender must state that it will open its files and records on all FHA applications for monitoring by COB, the Departmental Enforcement Center and the Office of Inspector General.
13. Exhibit M: The Lender must submit a Quality Control plan for underwriting insured mortgages processed under MAP and when applicable, for construction loan administration for such insured mortgages.
14. Exhibit N: Provide a copy of the Letter of Approval evidencing approval as an FHA Approved Mortgagee.

## 2.8 Limitations and Notices

- A.** There are no additional capital requirements for MAP Lenders beyond the minimum net worth and liquidity requirements in 24 CFR Part 202.5(n)(3).
- B.** There is no fee charged by HUD for applying to be a MAP Lender.
- C.** MAP Lenders must promptly notify MCOB if there has been a change in approved signatories. MAP Lenders at all times must maintain staff with the level of experience and qualifications required by this Guide. Other than Underwriters, Chief Underwriters and Deputy Chief Underwriters, COB will not approve or disapprove of other individuals working for MAP Lenders.
- D.** MAP Lenders must notify COB if there has been a change of address of their home office for multifamily business, electronic mail address or telephone number. If there is a change in ownership or in the controlling interest in a MAP Lender, or if the Lender has a material change in its way of doing business, the Lender must re-apply for MAP Lender status. If a sale/acquisition, merger or license transfer of a MAP Lender is planned, the acquiring Lender must notify COB at least 30 days before the transaction is consummated and must submit for COB's review a description of: a) the transaction; b) its effect on the Lender's participation in the MAP program; c) the Lender's MAP staffing plan; d) any changes to its MAP operating procedures; e) an updated QC plan; and, f) a combined production tracking report for all MAP transactions in process. If there is a change in the MAP Lender's name or in the name the Lender does



business as (DBA) with no other substantive changes proposed, the Lender must notify COB of the change and must provide a certification that there has been no change in ownership, principal staff or in the Lender's QC Plan and procedures. Lenders must notify COB if they withdraw as MAP Lenders, even if temporarily.

## 2.9 Quality Control, Records and Monitoring

**A.** All new and existing MAP Lenders must have a QC Plan that contains the information required by this Chapter and by [Appendix 2, Section A.2.1](#). The QC Plan must be updated annually.

**B.** MAP Lenders must make their files and records available to HUD or HUD's authorized contractors for such monitoring of MAP processed loans as HUD determines. Lenders must retain the loan origination and underwriting files for 7 years after Final Endorsement (even if the loan has been sold).

**C.** MAP Lenders are subject to, and must cooperate with, monitoring and periodic on-site reviews by COB or its representatives to verify that the Lender:

1. Adheres to all statutory, regulatory and MAP Guide requirements;
2. Has made underwriting decisions that are consistent with the requirements of the MAP Guide;
3. Has undertaken technical processing that is consistent with the requirements of the MAP Guide;
4. Has complied with the conditions of a Firm Commitment and the requirements for Initial or Final Endorsement; and
5. Has complied with the requirements for construction loan administration in the MAP Guide.

**D.** Additional information on the role, authority and procedures of COB is found in [Chapter 15](#).

## 2.10 Underwriters – HUD Approval

**A.** Any applications submitted to HUD must be underwritten by a MAP-approved Underwriter who has been approved and certified either by HUD or by a HUD-approved Chief Underwriter who is employed by a MAP Lender. The process for approving and certifying MAP Underwriters by HUD or by Chief Underwriters is outlined below.

**B.** COB will approve MAP Underwriters for: a) Low Volume MAP Lenders (with less than a 4 year trailing average of \$100,000,000 in firm commitments annually) that choose not to have their Underwriters approved by a Chief Underwriter; b) new MAP Lenders with less than 4 years MAP underwriting experience (or until COB has determined that they have gained sufficient experience); and, c) MAP Lenders with suspension or termination enforcement actions within the previous 4 years. All other MAP Lenders must approve their MAP underwriting staff pursuant to the Chief Underwriter process described below.

**C.** COB may reject or condition approval authority for MAP Underwriters, provided that the basis for decision are described in writing. Lenders may appeal rejections or conditions to approval to the DAS for Multifamily Housing.

## 2.10.1 MAP Underwriters

**A.** A MAP Underwriter must be a full-time salaried employee of the MAP Lender and may not be hired or retained only for a specific loan application. Underwriter compensation may not be based solely on loan production volume, nor may the Underwriter be compensated in a way that may be construed as a means of discouraging prudent risk management. MAP Underwriters may not hold a significant equity position in, or be a principal of, the MAP Lender or any of the Lender’s affiliates, although Employee Stock Ownership Plans and similar forms of compensation are permitted.

**B.** Applicants for MAP Underwriter designation may range from trainees to veteran executives with years of experience, but all are expected to have recent experience and to document that they have met the minimum education and experience requirements expected of Underwriter trainees. The applicant must demonstrate competence and the following qualifications:

1. The applicant must have knowledge and skills in a variety of financial areas, including:
  - a. General experience in banking, accounting, finance, commercial lending and in multifamily mortgage financing;
  - b. The ability to analyze corporate and personal financial statements including, but not limited to, balance sheets, income statements, statements of changes in financial position and to evaluate the credit acceptability of individuals, partnerships, corporations and other entities;
  - c. A broad knowledge of lending practices for permanent mortgages, construction loans and the financial structures of individuals, partnerships, and other business entities; and
  - d. Demonstrate recent, like-kind underwriting experience. Recent experience is defined as actual underwriting experience obtained by underwriting funded multifamily permanent loans within the previous 5 years. Like-kind experience is defined as underwriting with comparable duties and responsibilities as required under the MAP program.
2. Application for HUD approval of MAP Underwriters (who will not otherwise be approved under the procedures contained in [Section 2.11](#), below): The request for approval should be submitted electronically in PDF format to COB by a senior officer of the MAP Lender with signatory authority and include the following exhibits:
  - a. Resume of the Underwriter that demonstrates the specific qualifications, education, and level of experience.
  - b. Documentation of successful completion of relevant education and training courses.
  - c. List of loans (MAP and otherwise) processed and underwritten by the Underwriter that reached Firm Commitment (or its equivalent under other loan programs), certified and signed by a senior officer of the MAP Lender with authorized signatory designation and by the Underwriter applicant. The list must contain the following warning code:

“Warning: Federal law provides that anyone who submits (or causes to submit) a document containing any false, fictitious, misleading, or fraudulent statement/certification or entry may be criminally prosecuted and may incur civil administrative liability. Penalties upon conviction can include a fine and imprisonment, as provided pursuant to applicable law, which includes, but is not limited to, 18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802, 24 C.F.R. Parts 25, 28 and 30, and



2 C.F.R. Parts 180 and 2424. The signatory certifies that the information provided herein is true and accurate.”

- d. Additional supporting documentation as may be requested by COB.

## 2.10.2 Chief Underwriters

**A.** MAP Lenders that are responsible for approving their MAP Underwriters pursuant to this Chapter must designate an employee as a Chief Underwriter who has been approved by COB. As a condition of approval, all new MAP Lenders must have a designated Chief Underwriter who meets this Section’s requirements. . The designated Chief Underwriter will have responsibility for approving MAP Underwriters and Deputy Chief Underwriters and must certify that they are qualified in accordance with MAP Guide requirements. If the Chief Underwriter is absent or is no longer employed by the MAP Lender, and there is no Deputy Chief Underwriter available to perform these functions, the Lender may not submit new applications until COB has approved a new Chief Underwriter to perform them.

**B.** Ongoing eligibility to approve Underwriters will be determined by COB, by confirming the following: a) the MAP Lender is in good standing; b) the Chief and Deputy Chief Underwriters are in good standing; c) the Chief Underwriter or Deputy has co-signed each application submitted by a designated Underwriter; and, d) the Chief Underwriter confirms in his/her annual Certification that the MAP Lender’s QC Plan and underwriting staff are in compliance as defined herein.

1. The proposed Chief Underwriter must:

- a. Be approved in writing by COB.
- b. Be in good standing with the Department and in full MAP compliance, defined as not having been subjected to MAP disciplinary actions (probation, suspension, or termination) over the previous 5 years.
- c. Have evidence of 10 years prior underwriting experience, which need not be continuous, but must total 10 years. The experience must include a minimum of 5 years FHA/MAP underwriting experience, with the remaining experience to be comprised of Fannie Mae, Freddie Mac, HFA Risk Sharing or equivalent experience underwriting construction and/or permanent loans on multifamily properties. The proposed Chief Underwriter’s application must include a list of FHA loans the applicant has underwritten and the name(s) of the processing MAP Lender. The applicant may request that 1-year’s equivalent experience be granted for evidence of each 10 acceptably processed Firm Commitment applications, for up to 5 years of the required experience.
- d. Demonstrate experience in the training, development, and oversight of MAP Underwriter trainees. The application should include specific training experience with a list of all personnel they have trained.
- e. May not hold a significant equity position in, or be a principal of, the MAP Lender or any of the Lender’s affiliates, although Employee Stock Ownership Plans and similar forms of compensation are permitted.

2. The roles and responsibilities of Chief Underwriters include:

- a. Creation and oversight of the MAP Lender’s training and development program for underwriting personnel.

- b. Approval of MAP Underwriters.
  - c. Confirmation of the MAP Lender's compliance with statutory, regulatory and programmatic underwriting processes, requirements and standards.
  - d. Establishment and oversight of the MAP Lender's quality control process.
  - e. Review, approval and cosigning of all HUD mortgage insurance applications. All application submissions must be cosigned by the Chief Underwriter, who may delegate responsibilities to the Deputy Chief Underwriter, but otherwise remains responsible for the submission.
  - f. Implementation of COB recommended improvements, including any findings and observations from COB's review of the MAP Lender or of its loans.
3. MAP Underwriter Approval Process and Certification.
- a. The MAP Lender and its Chief Underwriter must provide a certification that the MAP Underwriter or the Underwriter Trainee has complied with all experience and training requirements detailed in this Chapter and must evaluate the prospective Underwriter to ensure the following:
    - 1) The Underwriter has completed and complied with the MAP Lender's approved training plan.
    - 2) The Chief Underwriter has extensively reviewed the Underwriter Trainee's underwriting during the training period to ensure that it complies with MAP requirements and accurately identifies and addresses the risks associated with the proposed loan.
    - 3) The Chief Underwriter has reviewed and ensured that the loan documentation submitted to HUD during the training period was complete and that the submission did not require significant revision to correct errors or omissions by HUD staff.
  - b. The MAP Lender and Chief Underwriter must notify COB and certify that the Underwriter or the Underwriter Trainee has satisfactorily completed the designation criteria and has been approved and designated to underwrite loans. The designee is not authorized to begin underwriting until COB is in receipt of and acknowledges the MAP Lender's notification and certification.
  - c. Although HUD will rely upon the designation and certification by the MAP Lender, HUD reserves the right, with due cause and based on written notification, to deny or rescind such approval and otherwise hold the MAP Chief Underwriter accountable under any of the following circumstances:
    - 1) Evidence that the Underwriter Trainee's work product during the training period was unsatisfactory.
    - 2) Prior incidences of poor underwriting that display a lack of knowledge or failure to exercise prudent judgment or risk management.
    - 3) Listing of the Underwriter Trainee on HUD's LDP, suspension or debarment list.
    - 4) For other good cause as determined by HUD.
  - d. QC reviews prepared by the MAP Lender must include confirmation that the Chief Underwriter and the Underwriter(s) are approved and have satisfactorily completed all designation criteria, including, without limitation, the MAP Lender's approved training and approval requirements. During the QC process, the reviewer will ensure that each loan reviewed was underwritten by an

approved and designated Underwriter, and, if the Underwriter was approved within the previous 4 years, the QC review should include a review of the Underwriter's approval package.

### 2.10.3 Deputy Chief Underwriters

A. The MAP Lender's Deputy Chief Underwriter may perform all functions delegated to the Chief Underwriter, but the Chief Underwriter remains responsible for all actions of the Deputy Chief Underwriter. With notice to and approval by COB, the Deputy Chief Underwriter may also act as an interim Chief Underwriter to maintain business continuity in emergency situations. The MAP Lender must obtain COB's approval if the Deputy Chief Underwriter will act as the Chief Underwriter for more than 3 months. High Volume MAP Lenders (with more than a 4-year trailing average of \$100,000,000 in firm commitments annually) may designate more than one Deputy Chief Underwriter.

1. The proposed Deputy Chief Underwriter must:
  - a. Be approved in writing by COB.
  - b. Be in good standing with the Department and in full MAP compliance, defined as free of MAP disciplinary actions (probation, suspension or termination), during the previous 5 years.
  - c. Provide evidence of 5 years prior underwriting experience including a minimum of 3 years of FHA/MAP underwriting, with the remaining experience comprised of Fannie Mae, Freddie Mac, HFA Risk Sharing or equivalent experience underwriting permanent loans on multifamily properties. The experience need not be continuous but must total 5 years. The proposed Deputy Chief Underwriter's application must include a list of FHA loans underwritten and the name(s) of the processing Lender. The Underwriter may request that 1-year's equivalent experience be granted for evidence of each 10 acceptably processed Firm Commitment applications.
  - d. Not hold a significant equity position in, or be a principal of, the MAP Lender or any of the Lender's affiliates, although Employee Stock Ownership Plans and similar forms of compensation are permissible.

## 2.11 Underwriter Trainees

A. A MAP Lender may train its in-house staff to be new MAP Underwriters for approval either by COB or by the Lender's Chief Underwriter under the procedures in [Section 2.10](#), above. The Lender must establish a written development plan for Underwriter trainees that includes a combination of commercial/multifamily training courses and on the job experience.

1. The Underwriter trainee must have successfully completed at least 3 underwriting, finance, appraisal or environmental courses that demonstrate basic understanding of multifamily underwriting concepts, one of which must be a multifamily/ commercial appraisal course. These courses may be obtained through the American Bankers Association, Institute of Real Estate Management, National Association of the Review Appraisers & Mortgage Underwriters, the Mortgage Bankers Association of America (MBA), the Appraisal Institute or any other acceptable training institution such as colleges and universities. Suggested courses include *Commercial Underwriting*, *Understand Your Construction Borrower*, *Analyzing Financial Statements*, *Commercial Real Estate Financing and Valuation*, *Appraisal:*

*Concepts and Applications, Appraisal Principles, Appraisal Procedures, Basic Income Capitalization, Advanced Income Capitalization, and Uniform Standards of Professional Appraisal Practice (USPAP).*

Education used to meet Underwriter approval requirements must be comprehensive enough to provide substantive background. In-depth specialized technical training provided by recognized training institutions, trade associations or private firms will be considered so long as the content and duration of the class is analogous to a college-level class. One-day seminars or participation in industry conferences are appropriate (and expected) for continuing education, but these are not sufficient to meet the requirement for one of the 3 courses. Lenders or training providers may submit a course syllabus to COB if there is a question as to the sufficiency of a specific course to meet the requirement.

2. In addition to the training courses, HUD requires on-the-job training of a minimum of 3 years continuous work experience in multifamily mortgage lending. The Underwriter trainee must work on a minimum of 3 MAP applications that reach Firm Commitment. Section 223(a)(7) refinancing transactions may only be credited towards one of the three minimum MAP applications. Only one Underwriter trainee may assist the MAP-approved Underwriter in completion of any MAP application, which should document that the trainee was supervised by only one MAP-approved Underwriter mentor.
3. An Underwriter trainee may assist the MAP Underwriter in completion of the underwriting and both the MAP approved Underwriter and the trainee must sign the Narrative Summary and the processing forms.
4. The MAP-approved Underwriter must accept responsibility for all aspects of the loan underwriting as evidenced by the signed Narrative Summary and processing forms.
5. The Underwriter trainee must be a full-time salaried employee of the MAP Lender and may not be hired or retained only for a specific loan application.
6. The Underwriter trainee may not hold a significant equity position in, or be a principal of, the MAP Lender or any of the Lender's affiliates, although Employee Stock Ownership Plans and similar forms of compensation are permissible.
7. The trainee's contribution to the underwriting, and the specific tasks performed by the trainee, must be stated in the Narrative Summary.
8. Work completed by an Underwriter trainee must be under the direct supervision of a MAP approved Underwriter and it is unacceptable for the MAP Underwriter to merely sign a form or document prepared by a trainee without providing proper supervision. The mentor Underwriter must add a paragraph in the Underwriter Certification to certify that he/ she has directly supervised the Underwriter trainee in completion of the specific tasks in the Narrative Summary and the processing forms.
9. For new MAP Underwriters who must be approved by COB, a written request for approval of the trainee as a MAP Underwriter should be submitted electronically in PDF format by a senior officer of the MAP Lender with signatory authority to COB and include the following exhibits:
  - a. A written development plan established for the Underwriter trainee.
  - b. A resume of the Underwriter trainee that demonstrates the specific qualifications, education and the level of experience outlined above.

- c. A list of MAP loans processed and underwritten by the trainee that reached Firm Commitment, certified and signed by a senior officer with authorized signatory designation and by the Underwriter trainee. The list must contain the following warning:

“Warning: Federal law provides that anyone who submits (or causes to submit) a document containing any false, fictitious, misleading, or fraudulent statement/certification or entry may be criminally prosecuted and may incur civil administrative liability. Penalties upon conviction can include a fine and imprisonment, as provided pursuant to applicable law, which includes, but is not limited to, 18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802, 24 C.F.R. Parts 25, 28 and 30, and 2 C.F.R. Parts 180 and 2424. The signatory certifies that the information provided herein is true and accurate.”

- d. An electronic submission of complete documentation of each MAP application on which the Underwriter trainee worked (a hard copy is not required and should not be submitted). The documentation, signed by the trainee and co-signed by the mentor Underwriter, must include:

- 1) A copy of Narrative Summary that clearly identifies the specific tasks performed by the Underwriter trainee;
- 2) A copy of completed form HUD-92264-A and other forms and / or exhibits for the type of mortgage proposed that require a mortgage credit analysis (refer to [Chapter 8](#) and [Appendix 4](#));
- 3) A copy of the Master form HUD-92264; and,
- 4) An IOI Certification, as required by [Section 2.6](#), signed and dated by the Underwriter trainee only.

10. Underwriter candidates who have successfully completed the MBA’s 6-month FHA Multifamily underwriting course will receive credit toward the experience and education requirements. Completion of that course will:

- a. Fully satisfy the requirement to complete 3 courses;
- b. Satisfy half of the 3 transactions requirement; and,
- c. Satisfy half of the 3 years of experience requirement.

**B.** By satisfying half of the MAP Underwriter requirements in #2 and #3, above, the candidate may elect to utilize the course completion to fulfill either two transactions/one year, or one transaction/two years of the requirements. The applicant should submit evidence of completion of the MBA MAP Underwriter course and indicate how they wish to utilize the course completion toward the minimum transaction requirements.

## 2.12 MAP Underwriter Transfers

**A.** MAP Underwriters in good standing may transfer to another approved MAP Lender.

**B.** A written request for transfer approval should be submitted electronically in PDF format to COB, on behalf of the transferring MAP Underwriter, by a senior officer with signatory authority for the MAP Lender to which the MAP Underwriter has or intends to transfer and include the following exhibits:

1. Resume of the Underwriter that demonstrates the specific qualifications, education, and the level of experience.
2. Evidence of prior MAP Underwriter approval.
3. A list of MAP loans processed and underwritten by the Underwriter that reached Firm Commitment, certified and signed by the Underwriter applicant. The list must contain the following warning:

“Warning: Federal law provides that anyone who submits (or causes to submit) a document containing any false, fictitious, misleading, or fraudulent statement/certification or entry may be criminally prosecuted and may incur civil administrative liability. Penalties upon conviction can include a fine and imprisonment, as provided pursuant to applicable law, which includes, but is not limited to, 18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802, 24 C.F.R. Parts 25, 28 and 30, and 2 C.F.R. Parts 180 and 2424. The signatory certifies that the information provided herein is true and accurate.”
4. A detailed list of all prior MAP loan defaults, assignments or claims with which the Underwriter was associated, including a detailed explanation of the circumstances of each default, assignment, or claim, and any applicable mitigants.
5. Approved Chief Underwriters are delegated the authority to approve MAP Underwriter transfers by certifying to COB that the transferee is qualified in accordance with items in [Section 2.12.B.1-4](#) above.

## Chapter 3 Programs

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### 3.1 General Program Requirements

A. 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.

B. The requirements below apply to FHA multifamily mortgage insurance programs governed by this Guide.

#### 3.1.1 Regulatory Agreement

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

#### 3.1.2 Single Asset Mortgagor Entity

A. 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 headquarters 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.

#### 3.1.3 Non-Recourse

A. 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.

#### 3.1.4 Interest Rate

A. 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, form HUD-



94001M, provides for the same or different interest rates for the construction and permanent financing periods.

### **3.1.5 Amortization Plan**

A. 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).

### **3.1.6 Loan Terms**

A. 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.

### **3.1.7 Prepayment Restrictions**

A. The Section 223(f) program limits prepayment during the first five years of the loan. (Refer to [Section 3.7.10](#) 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.

### **3.1.8 HUD Application Fee**

A. 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 [Section 3.1.12](#) for definition of affordable).

B. See [Section 3.1.36](#) for application fees for projects located in Opportunity Zones.

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

D. 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 the 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.



### 3.1.9 HUD inspection Fee

A. 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 and Sponsor Profit Risk Allowance (BSPRA) and Sponsor 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.

### 3.1.10 Mortgage Insurance Premium

A. The mortgage insurance premiums (MIP) are established by the Firm Commitment and may not be changed after initial endorsement. The annual MIP is 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 the mortgage amount times the annual MIP percentage rate for each year of construction with any portion of a year rounded up to one year. Any MIP 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.

B. 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.

C. The standard upfront and annual MIPs 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:

1. 25 basis points for Broadly Affordable
2. 35 basis points for Affordable
3. 25 basis points for Green and Energy Efficient Housing

D. 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>

### 3.1.11 Lender Fees and Charges

A. 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, Capital Needs Assessment (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 [Chapter 11, Section 11.5](#) for additional provisions regarding loan fees and charges.

**B.** 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).

### 3.1.12 Definition of Affordable Housing

**A.** Affordable housing for FHA multifamily mortgage insurance programs is defined as projects meeting either the minimum affordability requirement for Low Income Housing Tax Credits (LIHTC) or the requirements for project-based Section 8.

**B.** To qualify under the LIHTC affordability requirement, rent and income restrictions must be imposed, monitored and enforced by a governmental agency for at least 15 years after Final Endorsement by means of a recorded Regulatory Agreement requiring the project to meet either of the LIHTC restrictions, including income averaging as applicable: 20% of units at 50% of area median income (AMI); or 40% of units at 60% of AMI.

**C.** Projects need not use LIHTCs to qualify for affordable underwriting so long as they meet the requirements for LIHTC affordability.

**D.** To qualify as affordable based on project-based Section 8, the project must have a Housing Assistance Payment contract covering 90% of the units with a minimum remaining term of 15 years.

**E.** 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 [Section 3.1.10](#)) or application fees for projects located in Opportunity Zones (See [Section 3.1.36](#)).

### 3.1.13 Fair Housing and Equal Opportunity

**A.** 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 5, Section A.5.2](#).

**B.** Affirmative Fair Housing Marketing requirements are addressed in [Chapter 10, 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.

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

### **3.1.14 Previous Participation**

A. 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.

### **3.1.15 HUD's Fiscal Procedures**

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

### **3.1.16 Bridge or Gap Financing**

A. 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 a 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 as long as the bridge loan is repaid no later than the time of permanent loan closing 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.

### **3.1.17 Secondary Financing**

A. 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.

### **3.1.18 Statutory Loan Limits**

A. 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, Section 5.12.2.B.3.c](#) or [Section 5.12.2.B.3.d](#). 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).

### **3.1.19 Tax Increment Financing**

**A.** Tax Increment Financing (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.

**B.** 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. Disclose a proposed or existing TIF Commitment at the Concept Meeting;
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. 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.

### **3.1.20 Commercial Space**

**A.** 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.

### **3.1.21 Military Impacted Areas**

**A.** 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.

### 3.1.22 Student Housing

A. 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.

### 3.1.23 Real Estate Requirements

A. The insured mortgage must be on real property held in one of two forms of estate:

1. A fee simple estate, or
2. 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 Section of Act (SOA).

### 3.1.24 Transient Housing/Hotel Services Prohibition

A. 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.

### 3.1.25 Sustaining Occupancy

A. 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 MIP. Any subordinate debt requiring current payment must be included in the sum of debt service. This is equivalent to a debt service coverage ratio (DSCR) 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.

### 3.1.26 Operating Deficit

A. An operating deficit escrow (also known as the Initial Operating Deficit Escrow (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 [Chapter 7, Section 7.14](#) and [Chapter 8, Section 8.14](#) for more detail.

### 3.1.27 Short-Term Lease Premiums

A. 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).

### 3.1.28 Replacement Reserve

A. A Reserve for Replacement (RfR) 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 5, Section A.5.7](#) for the minimum annual replacement reserve requirements for all program types and for guidance on completing a CNA. HUD Handbook 4350.4, Chapter 2 Servicing Manual, details the Lender's responsibility for managing funds held for the project and describes liquidity, draws, and investment requirements.

### 3.1.29 Developer Fees

A. In cost-controlled mortgages for FHA New Construction and Substantial Rehabilitation Programs (other than Section 231 Substantial Rehabilitation and Section 241(a)), BSPRA is allowed. BSPRA is a mortgageable cost but not a source of cash. For affordable programs (such as Low-Income Housing Tax Credits, Rental Assistance Demonstration (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 3, Section A.3.2](#).

### 3.1.30 Scattered Sites

A. 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 properties.

B. 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.

C. Certain 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 political 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.** Combinations of sites with and without age restrictions, or properties with and without unique tenant populations, e.g., students or military personnel are not single marketable, manageable real estate entities.
4. **Unit configuration and project layouts.** This includes 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.** This is particularly important for single family structures or more widely disbursed properties. In such cases, risk 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.
7. **Flexibility for Affordable Housing.** HUD has and will continue to provide greater flexibility to RAD and affordable transactions (as well as refinancing Section 202 Project Rental Assistance Contract (PRAC) projects) with significant outside funding sources. However, the factors outlined above should be carefully considered in any transaction involving scattered sites.

### 3.1.31 Condominiums

**A.** A project built and platted as a condominium complex, but that is 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.

**B.** 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.

C. 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.

### **3.1.32 Environmental Review**

A. 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 Commitment.) 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. Projects must comply with the other regulatory and programmatic requirements described in MAP Guide [Chapter 9, Environmental Review](#). [Chapter 9](#) provides further details about submission content and timing requirements.

### **3.1.33 Underwritten Vacancy and Collection Loss**

A. Underwritten vacancy and collection loss rates shall not be less than the minimum levels shown in [Appendix 3, Section A.3.1](#). Higher vacancy and collection loss rates may be determined based on the appraised or actual loss rates at the subject property (see [Chapter 7](#).)

### **3.1.34 Borrower's Certifications**

A. 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."

### **3.1.35 Waivers**

A. 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.

### **3.1.36 Opportunity Zones**

A. 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

A. 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 new construction and Section 213(i) is used for substantial rehabilitation of Cooperatives; these transactions are processed under TAP.

B. The requirements in the subsections below apply to *all* FHA New Construction/Substantial Rehabilitation multifamily mortgage insurance programs.

### 3.2.1 Properties

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. Single Room Occupancy (SRO) properties will be considered only if they have existing Project based Section 8 contracts in place.

### 3.2.2 Insurance for Construction and Permanent Loan Periods

A. 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.

### 3.2.3 New Construction Transactions

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

### 3.2.4 Substantial Rehabilitation Transactions

A. 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, Section 5.1.4](#).

### **3.2.5 Cost Certification**

A. The Borrower must submit a cost certification prepared by an independent Certified Public Accountant (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, Section 13.1](#) and [Section 13.1.B](#) for cost certification exceptions for Low Income Housing Tax Credit projects.

### **3.2.6 Federal Labor Standards**

A. 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 appropriate HUD Regional Center or Satellite Office. There are limited exceptions to this requirement. Davis-Bacon Wage requirements do not apply for Section 241(a) loans 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.

### **3.2.7 Assurance of Completion**

A. 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 [Chapter 8, Section 8.14.C.13](#) for the specific requirements.

### **3.2.8 Absorption Period**

A. 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 Lender's 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.

### 3.2.9 Marketing and Leasing Plan

A. 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.

### 3.2.10 Working Capital Escrow

A. 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 more than 90% of the units 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.

### 3.2.11 Furniture, Fixture, and Equipment in Cost Basis

A. Reasonable costs of Furniture, Fixture, and Equipment (FF&E) may be included in mortgageable project costs and in the Reserves for Replacement for new construction and substantial rehabilitation proposals. See [Chapter 5, Section 5.12.3.A.8](#) for FF&E examples and guidance. All funded FF&E will be subject to FHA MAP Lender's security instruments.

### 3.2.12 Elderly Developments

A. 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)) as long as they comply with the provisions of [Section 3.11](#).

### 3.2.13 Occupancy Preference

A. 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.

**B.** 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).

### **3.2.14 Builder and Sponsor Profit and Risk Allowance (BSPRA)**

**A.** BSPRA and SPRA are allowed (but not required) for new construction and substantial rehabilitation applications under Sections 221(d)(4) and 220 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.

### **3.2.15 Energy Efficiency**

**A.** New construction projects must comply with the International Energy Conservation Code (IECC) for buildings of 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, Section 6.1.1](#)). 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, Section 6.1.2](#).

### 3.2.16 Cost vs. Value

A. 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-92264-A). Exceptions are the Sections 231 substantial rehabilitation and the 241(a) programs, which are both values based, per 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 lesser of the value “as is”, reflecting actual occupancy and any restrictions on net operating income (NOI), or the purchase price at closing, if it is an arms-length acquisition transaction.

## 3.3 Section 221(d)(4)–New Construction and Substantial Rehabilitation

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

B. Maximum Loan Ratios and DSCR. The loan ratios and percentages shown in the subsections below 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.

### 3.3.1 Criterion 1

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

### 3.3.2 Criterion 3

A. **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:

1. 90% for projects with 90% or greater rental assistance;
2. 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
3. 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.).

### 3.3.3 Criterion 4

**A. 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](https://www.hud.gov/program_offices/administration/hudclips/notices/hsg) to locate HUD's notice of Annual Revisions to Base City High Cost Percentages providing information for per family unit limitations and the High Cost Percentage by jurisdiction.

### 3.3.4 Criterion 5

**A. Amount Based on DSCR.** The applicable DSCR ratios are as follows (ratios are rounded for presentation purposes):

1. 90% (1.11 DSCR) for projects with 90% or greater rental assistance;
2. 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
3. 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 Redevelopment Areas

**A.** 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.

**B.** In addition to the general requirements in [Section 3.1](#) and [Section 3.2](#), the following requirements apply to Section 220.

### 3.4.1 Eligible Areas

**A.** The property must be located in either a concentrated development area approved by the applicable HUD 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 do all of the following:

- 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.

### **3.4.2 Commercial Facilities**

A. 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.

B. See [Chapter 7](#) for requirements where commercial facilities are included in a project.

### **3.4.3 Maximum Loan Ratios and DSCRs**

A. The controlling mortgage criteria for Section 220 loans are the same as for the Section 221(d)(4) program, detailed above in [Section 3.3](#).

### **3.4.4 Builder and Sponsor Profit and Risk Allowance (BSPRA)**

A. See definition of BSPRA in [Section 3.2.14](#).

### **3.4.5 Sponsor Profit and Risk Allowance (SPRA)**

A. See definition of SPRA in [Section 3.2.14](#).

### **3.4.6 Age Restriction Prohibited**

A. 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**

A. 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.



### 3.5.1 Definitions

**A. 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.

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

### 3.5.2 Design and Amenities

**A.** Particular attention is to be given to room layout and unit design to assure they are consistent with the needs of the elderly or individuals with disabilities. (See 24 CFR 100.205)

### 3.5.3 BSPRA or SPRA allowances

**A.** BSPRA or SPRA allowances are eligible under Section 231 new construction transactions as 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 3.2.14](#) for an explanation of these allowances.

### 3.5.4 Maximum Loan Ratios and DCRs

**A.** The controlling mortgage criteria for Section 231 loans are the same as for the Section 221(d)(4) program, detailed above in [Section 3.3](#), 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

### 3.6.1 Eligibility

**A.** 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.

## 3.6.2 Term

A. The Section 241(a) loan generally should 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.

## 3.6.3 Equity Requirement and Controlling Mortgage Criteria

A. The owner is required to contribute at least 10% of the total development cost of the transaction. Existing RfR 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. HUD forms HUD-92264 and HUD-92264-A should recognize only the cost of the addition or improvements but, should include all (i.e. the existing and proposed) NOI in Criterion 5 of form HUD-92264-A. A supplemental analysis comparing the historical and proposed NOI should be included as an attachment to the form HUD-92264.

### 3.6.3.1 Criterion 3—Loan to Value/Cost

A. 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, as 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.)

### 3.6.3.2 Criterion 4—Statutory Limits

A. 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.

### 3.6.3.3 Criterion 5—Debt Service Coverage Ratio (DSCR)

A. The maximum loan amount under this criterion is limited by debt service (i.e., combined supplemental and first mortgage payments) supported by 90% of projected NOI, a combined DSCR of 111%.

### 3.6.4 CNAs, Plans and Cost Estimates

A. 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, Section 5.11](#) for architectural review of Section 241(a) loans.)

B. 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.

C. Similarly, for any portion of the property that 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 RfR escrow.

D. 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, Section 5.11](#).

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

### 3.6.5 Davis-Bacon Act Applicability

A. (See [Section 3.2.6](#) for Davis-Bacon Wage applicability.) (See [Chapter 19](#) for closing guidance.)

### 3.6.6 Insurance of Advances or Insurance upon Completion

A. For Section 241(a) mortgage insurance for Supplemental loans, either the insurance of advances or the Insurance upon completion 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.

### 3.6.7 Environmental Review

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

### 3.6.8 Working Capital and Operating Deficit Reserves

A. 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.

### 3.6.9 Management Exhibits

A. Management exhibits identified in Section 3 of the application exhibits are not required if the Management Agent's operations have not materially changed in a negative manner since approval of the HUD-insured first mortgage. If operations have materially, negatively changed, Management Agent documentation is required.

### 3.6.10 Multiple Lenders

A. 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 RfR Account 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 [Section 3.6.1.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 RfR 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 RfR Account, and other pertinent information required by the Section 241(a) insured loan. If different from the first lien holder, the 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 than the Section 241(a) Lender, shall submit a written acceptance of the updated CNA report and RfR Account at the time of the insured Section 241(a) application submission. The designated Lender shall have the authority over all the RfR accounts and reimbursements and future requirements once Initial Endorsement has occurred and all other terms and conditions of the FHA Firm Commitment have been satisfied.

### 3.6.11 MIP

A. Applicants for Section 241(a) mortgage insurance for Supplement loans may apply for reduced initial and annual MIP 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, Section 6.8](#).

## 3.7 Section 207/223(f) Refinance or Acquisition

### 3.7.1 General Requirements

A. 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, Section 5.1](#) for the definition of substantial rehabilitation and detailed requirements concerning repairs. The property must contain at least 5 residential units.

### 3.7.2 Eligible Properties

A. 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 [Section 3.7.11](#) 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.

B. Newly built or substantially rehabilitated properties (with certificates of occupancy less than 3 years prior to application) will be accepted as soon as properties achieve the applicable programmatic 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.

1. The project must evidence a minimum DSCR consistent with the requirements for Criterion 5, as stated in [Section 3.7.11](#) below, for a period of three consecutive months prior to loan endorsement.
2. 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, must be submitted.
3. A current rent roll evidencing existing, achieved rents as well rents that were used to underwrite the existing first mortgage must be submitted.
4. 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, must be submitted.
5. 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.
6. 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.

7. A request for cash out is permitted, subject to the maximum loan to value (LTV) ratio for Criterion 10 described in [Section 3.7.11](#) 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.

### 3.7.3 Ineligible properties

- A. Manufactured home parks and group homes are not eligible under this Section.
- B. Properties whose required repairs are so extensive that they meet the threshold for substantial rehabilitation are not eligible under this Section.
- C. Projects providing meal services are not eligible, 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 as long as they are offered on an optional basis.

### 3.7.4 Additional Section 223(f) Requirements

- A. 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.
  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 3.1.12](#) 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).

### 3.7.5 Repairs

- A. 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, Section 5.3](#) and [Section 5.10](#) concerning repairs and alterations in Section 223(f) transactions.
- B. Non-critical repairs, approved by HUD, may be completed after endorsement. These repairs, 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 must be established at closing. The 20% portion of the escrow above the 100% of the deferred repair cost is non-



mortgageable and may be reduced to 10% for affordable and Section 223(a)(7) transactions. See [Chapter 5, Section 5.3](#) and [Section 5.10](#) concerning repairs and alterations in Section 223(f) transactions.

C. 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 as 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 [Chapter 9, Section 9.1.3.C](#) for information on environmental reporting.

### **3.7.6 Accessibility Requirements**

A. 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.”

### **3.7.7 Age Restricted Projects**

A. 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.

### **3.7.8 Defaults, Claims, or Enforcement Referrals**

A. HUD does not prohibit applications for mortgage insurance for projects that have previously experienced default, assignment, or were formerly HUD-held loans. However, HUD 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.

### **3.7.9 Labor Standards**

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



### 3.7.10 Prepayment Provisions and Prohibition

**A.** 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.

**B.** 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.

### 3.7.11 Maximum Loan and Debt Service Coverage Ratios (DSCR)

**A.** 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.

#### 3.7.11.1 Section 223(f) Refinance and Acquisition Processing

**A. Criterion 1.** Loan Amount Requested on Application. The requested application amount may be amended when appropriate.

**B. Criterion 3. Amount Based on Value:** The applicable percentage of the estimated value of the property after completion of repairs and improvements for loan applications are as follows:

1. 90% for Section 202 & 202/8 direct loans and for projects with 90% or greater rental assistance.
2. 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.
3. 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).

**C. Criterion 4.** For 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](https://www.hud.gov/program_offices/administration/hudclips/notices/hsg) on information for per family unit limitations and the High Cost Percentage by jurisdiction.

**D. Criterion 5.** Amount based on DSCR (ratios are rounded for presentation purposes) must be as follows:

1. 90% of NOI (1.11 DSCR) for projects with 90% or greater rental assistance;
2. 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
3. 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.)

**E. Criterion 7 – Acquisition Applications.** For amount based on total cost of acquisition, per Section 223(f), the following percentages apply to Line 7d. (i.e. formula to compute the loan closing charges) and Line 7h:

1. 90% for projects with 90% or greater rental assistance;
2. 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
3. 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.)

**F. Criterion 10.** For this criterion, the limit is the greater of 80% of LTV or the cost to refinance.

### **3.7.12 For Cash Out/Equity Out Proceeds When Repairs are Deferred**

**A.** 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, Section 8.11.1.A.2.c](#) for exceptions and [Chapter 12, Section 12.17.1.3](#) for detailed escrow release instructions.)

### **3.7.13 Capitalization Rates and Determination of Value**

**A.** 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 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.

### **3.7.14 Statutory Loan Limits**

**A.** 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 to increase the amount of available equity on a cash-out transaction controlled by Criterion 10.

### **3.7.15 Cost Not Attributable to Dwelling Space**

A. 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, Section 5.12.2.B.3.d.](#))

### **3.7.16 Reserve for Replacements (RfR)**

A. An Initial Deposit and/or Annual Deposits must be made to the RfR account in accordance with the CNA and underwriting conclusions. For projects with a recently completed CNA, see [Chapter 5, Section 5.10.4.](#)

### **3.7.17 Secondary Financing**

A. 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.)

### **3.7.18 Commercial Space**

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

### **3.7.19 Real Estate Requirements**

A. 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.

### **3.7.20 Mortgage Term**

A. 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.

### **3.7.21 Firm Commitment Processing Only**

A. Lenders should participate in a concept meeting with the HUD 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.

## 3.7.22 Market Study

A. 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. HUD 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](#).

## 3.7.23 Bond Financing Costs

### 3.7.23.1 Discounts and/or Costs of Issuance

A. 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.

### 3.7.23.2 Defeasance Costs Associated with Underlying Bond Financing

A. 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

A. 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:

### 3.8.1 Eligibility

A. Only currently FHA insured loans are eligible for Section 223(a)(7) refinancing. HUD held loans are not eligible unless subject to a Mark-to-Market Debt Restructuring under the Multifamily Assisted Housing Reform and Affordability Act of 1997 (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.

### 3.8.2 Terms

A. 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 as long as the CNA shows that 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.

### 3.8.3 Controlling Mortgage Criteria

A. 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 NOI (95% for projects with greater than 90% Project-Based Rental Assistance with a term in excess of 15 years after endorsement).

### 3.8.4 Lender Fees

A. 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, as 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 MBS (including Ginnie Mae securities), as long as the amount does not exceed 10% of the proposed FHA insured loan amount.

### **3.8.5 Borrower Fees**

A. 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 RfR deposits (for HUD held or FHA insured mortgages) are not available for application fees or other transaction costs.

### **3.8.6 CNA**

A. A complete CNA is required in accordance with [Appendix 5, Section A.5.7](#). For projects with a recently completed CNA, see [Chapter 5, Section 5.10.3.B](#).

### **3.8.7 Other Issues**

A. 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, Section 9.1.3.A](#)) or compliance with Davis-Bacon Wages, are not eligible for Section 223(a)(7) refinancing.

B. 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.

C. 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 form HUD-9807 will be accepted in lieu of the actual request for prepayment approval.

## **3.9 Property Insurance Requirements**

### **3.9.1 Insurance During Construction**

A. Public Liability Insurance on a Commercial General Liability form with limits of not less than \$1 Million 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, is required during construction. Such Commercial General Liability Insurance must be endorsed to include owners' and Contractors' protective coverage.

B. 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 is required during construction. Such insurance must include coverage for employer's owned, non-owned and/or hired vehicles, where applicable.

C. For properties in a Special Flood Hazard Area (SFHA) on a Federal Emergency Management Agency (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.

D. 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 form HUD-92329, or equivalent.

## **3.9.2 Permanent Insurance**

A. Upon acceptance of the project, or any portion thereof from the Contractor, the Lender must provide a certified duplicate copy of the types of insurance coverage listed in this subsection. 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. In general, however, once the project is completed and accepted, the Lender must provide a certified duplicate copy of insurance coverage as described below.

### **3.9.2.1 Public Liability Insurance**

A. Property liability insurance is required to be 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. This must include independent Contractor's coverage, where applicable.

### **3.9.2.2 Vehicle Liability Insurance**

A. 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.

### **3.9.2.3 Flood insurance**

A. For properties in a 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:

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

### 3.9.2.4 Casualty Insurance

**A.** Also known as “fire and extended coverage” casualty insurance protects Borrowers (as well as 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.

1. **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 5, Section A.5.7](#)).
2. **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 the form HUD-92447, section 5(a)).
3. **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:
  - a. 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.
  - b. 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.

4. **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.

### 3.9.3 Other Insurance Requirements

A. 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

### 3.10.1 Purpose

A. 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).

### 3.10.2 Underwriting Ratios for Large Loans

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

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

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<b>Property Is:</b>	<b>Debt Service Coverage Limits</b>	<b>Loan To Cost Limits</b>
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.). Section 3.6

For refinancing under Section 223(f) on loans at or above \$75M:

<b>Property Is:</b>	<b>Debt Service Coverage Limits</b>	<b>Loan to Value (without/with cash out*)</b>
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-92264-A.

### 3.10.3 Increased Reserves for Large Loans

**A.** 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, Section 8.14.C.6](#). When loan amounts equal or exceed \$75 million, minimum operating deficit reserve amounts are as follows:

<b>Loan size</b>	<b>Reserve amount shall be the greater of</b>
> \$75M	12 months amortizing debt service plus MIP or the amount calculated per MAP Guide <a href="#">Chapter 7, Section 7.14</a>
> \$100M	12 months amortizing debt service plus MIP, or the amount calculated per MAP Guide <a href="#">Chapter 7, Section 7.14</a> or such amount identified through HUD analysis of the risks and the mitigants appropriate to the particular loan application

**B.** 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 MIP) 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.

**C.** 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 LTVs, 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.

### 3.10.4 Extended Lease-Up Period

A. 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. HUD Regional Office Directors may waive the 18-month absorption period restriction only in cases where there is an unusually strong market that 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.

### 3.10.5 Higher Net Worth and Liquidity

A. 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 Age and Family Status Restrictions

### 3.11.1 Restrictions Authorized by Statute

A. Age and family status discrimination in housing is prohibited except as certain restrictions are authorized by statute. 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.

#### 3.11.1.1 Restrictions Allowed by HUD Statutory Authority

A. Properties proposing to restrict occupancy to certain populations pursuant to specific HUD statutory authorities 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.

B. 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.

C. 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 the Lender submits with the application the contract or agreement permitting the use and the proposed occupancy regime will continue in accordance with existing agreements in place prior to October 1, 1991.

### **3.11.1.2 Housing for Persons Age 55+ (55+ Exemption)**

A. The Fair Housing Act authorizes certain properties to restrict occupancy to families composed only of adults with a household head aged 55 or older, referred to here as the 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 affordable 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. 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:

1. At least 80 percent of the occupied units are occupied by at least one person who is 55 years of age or older;
2. 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
3. The housing facility or community complies with the rules issued by HUD for verification of occupancy.

B. The law at 42 U.S.C. § 3607(B)(2)(C)(i)-(iii), as implemented at 24 C.F.R. part 100 addresses 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 [Section 3.11.1.2.A.2](#) above is addressed at 24 C.F.R. § 100.306; and the verification requirements outlined in [Section 3.11.1.2.A.3](#) above are addressed at 24 C.F.R. § 100.307.

C. Eligible 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.

**D.** 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) for more information on this issue. 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 generally will not be considered one manageable entity and thus not eligible for mortgage insurance.

### **3.11.1.3 Housing Restricted to Persons Age 62+**

**A.** 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. 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.

### **3.11.1.4 Other Fair Housing Act Exemptions**

**A.** 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 [Section 3.11.1](#).

## **3.11.2 Age Restriction in Certain Projects and Programs**

**A.** There are additional FHA mortgage insurance requirements for restriction of tenant age and family status applicable to specific project types. This section lists additional requirements for each of the kinds of projects listed.

### **3.11.2.1 Market Rate Projects**

**A.** Except for projects applying under Section 231 or Section 220, market rate applications for age-restricted projects under all Sections of the Act must have all unit heads of household 62 years or older and cannot exclude non-elderly family members including children. Section 231 allows age restrictions detailed at [Section 3.11.2.3](#) below while age restrictions in any form are prohibited in Section 220. For purposes of this section, market rate projects are those that do not meet the definition of affordable stated in [Section 3.1.12](#).

### **3.11.2.2 Affordable Projects and 55+ Exemption**

**A.** Projects availing themselves of the 55+ Exemption under the Fair Housing Act may be eligible for FHA mortgage insurance if all of the following are true:



1. The project is an affordable property (as defined in [Section 3.1.12](#));
2. The project is pursuing FHA mortgage insurance for refinancing or acquisition of existing housing under Section 223(f) or 223(a)(7);
3. 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
4. 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).
5. Properties with project-based Section 8 rental assistance and other federal assistance have programmatic terms that limit eligibility and thus such projects may not avail themselves of the 55+ Exemption.

**B.** These potentially eligible properties must operate in full compliance with the 55+ Exemption in the Fair Housing Act to impose age restrictions and exclude children. 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 3, Section A.3.3](#) 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.

**C.** 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.

**D.** 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.

**E.** 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.

**F.** 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:

1. Old Section 202 Prepaid;
2. Refinance of Prepaid Section 202.



### 3.11.2.3 Section 231 Projects, both Market Rate and Affordable projects

A. 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 persons with disabilities. FHA may approve transactions in which up to 25% of the units are available to non-elderly disabled families. See [Section 3.11.1.3](#) 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.

## 3.11.3 Limitations on Services and Fees

### 3.11.3.1 Services

A. Projects with extensive resident service packages or that are 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):

1. 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.
2. 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.
3. Projects in which the Borrower is required to obtain a Certificate of Need or comparable documentation from the state or municipality.
4. Elderly housing developments that provide “continuous protective oversight” services for residents in the manner defined under Section 232.
5. Residential accommodations, including any of the following:
  - 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.
6. Mandatory resident meal requirements.
7. Other resident services made a mandatory condition of occupancy.
8. Non-shelter and optional services included in the underwriting of NOI.

B. 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.

### 3.11.3.2 Meals Service Exceptions

A. 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 the all of the following are true:

1. 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;
3. Income and expenses from the meal service are not included in the underwriting of NOI, and
4. 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.

### 3.11.3.3 Prohibition on Founder's Fees

A. "Founders' Fees," "admission fees," or similar types of initial occupancy or entry payments are prohibited.

### 3.11.3.4 Guest Suites

A. 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 (form HUD-92466M) and Borrower's Oath (form 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:

1. Rental charges for the unit may not be imposed, nor may the project derive any income from the guest suite.
2. 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.
3. 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.
4. Guest units are not available to the public.

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5. Only project residents are permitted to reserve the guest unit; the project does not independently rent the guest suite.
6. Residents are limited to two reservations within a one year period, and up to a maximum of seven reservation days per resident.
7. The number of guest suites are no more than two percent of the total number of units in the project.

## 3.12 Tenant Relocation

### 3.12.1 Relocation-General

**A.** 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.

**B.** 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 [Section 3.12.2](#) below. HUD mortgage insurance as well as LIHTC 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.

**C.** Section 104(d) of the Housing and Community Development Act of 1974 applies only to properties with HOME Investment Partnership Program (HOME) or Community Development Block Grant (CDBG) funding and prescribes requirements when relocation is necessary at a property receiving assistance from these sources.

**D.** However, even when neither of the statutes described in paragraphs B and C above 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 [Section 3.12.3](#) below.

**E.** 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 3, Section A.3.5](#). 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:

1. 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.

2. The relocation plan must detail the schedule of proposed repairs to specifically identify 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.
3. Based on these expectations, the relocation consultant should describe how tenant relocation will be implemented including addressing unique or special needs of tenants, estimating 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.
4. 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.
5. 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.
6. The relocation plan must identify whether there is any federal financial assistance involved in the project. If yes, then [Section 3.12.2](#) 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.

### 3.12.2 Projects with Federal Assistance

**A.** 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](https://www.hud.gov/program_offices/administration/hudclips/handbooks/cpd/13780) .

**B.** 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/>

C. 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/>

D. 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 for 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.

### 3.12.3 Projects with No Federal Assistance

A. 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:

1. Timely completion of construction;
2. Resident health and safety; and
3. Sustained project occupancy and income.

B. 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 will result in any of the following:

1. Requires packing, moving, or storing resident's furniture or personal items in order to perform the work;
2. 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);
3. Creates odors, dust, debris, noise, or other hazard that negatively impacts the sanitary condition of the unit or health and safety of the resident;
4. Involves shutting down the heating, ventilation, and air conditioning (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;
5. Disrupts the electrical service to the unit for more than a short-term of 2 hours or less;
6. Prevents safe ingress and egress without proper alternative routes at any point during construction;
7. 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.

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**C.** 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, Section 5.1](#) and [Section 5.2](#)].

**D.** When tenants are displaced and must find or prepare meals or lodging outside their units, the owner must provide reimbursement of costs.

1. 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.
  - a. 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.
  - b. 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.
2. 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.
3. 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.
4. 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.

**E.** 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 [Section 3.12.2](#).

**F.** 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.

### **3.12.4 Relocation Costs on HUD Forms**

**A.** 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](#)).

**B.** The owner's or the relocation consultant's estimated cost of relocation should be reviewed by the Lender, consistent with this [Section 3.12](#) and [Appendix 3, Section A.3.5](#) and then reported on HUD insured mortgage application forms.

**C.** For substantial rehabilitation applications, relocation costs are included in the replacement cost buildup reported for Criterion 3 of the form HUD-92264-A by showing the total of relocation costs, including any relocation consultant fees on the form 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).

**D.** Relocation costs should be reported on the form 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.

**E.** Relocation costs should be reported on the form HUD-92264-A for other loan sizing Criteria as applicable to the Project:

1. Criterion 7, line c. Other Fees
2. Criterion 9, line d. Expense of Relocating Occupants
3. Criterion 10, line c. Other Fees



## Chapter 4 Application Processing

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### 4.1 Introduction/General

A. Only an approved MAP Lender and Underwriter may submit an application for insurance using MAP. Lenders should contact the MF Regional Center’s Workload Distribution Lead to discuss the submission of an application for insurance using MAP.

#### 4.1.1 Approval of Lender's Reviewers

A. The Lender is responsible for assigning a MAP-approved Underwriter, who is then responsible for selection and management of their third-party consultants. If a Regional Center or Satellite Office has concerns about an Underwriter or a proposed third-party consultant, they should contact the Multifamily Asset Counterparty Oversight Division before responding to the Lender.

B. The Lender must advise HUD who the Construction Loan Administrator will be, if applicable, prior to the Firm Commitment stage, if the closing and servicing Lender has been identified, or as soon as identified.

### 4.2 Stages of Application

#### 4.2.1 Refinancing Applications (Sections 223(f), 223(a)(7))

##### 4.2.1.1 Concept Meetings

A. Concept meetings (or conference calls) with the MF Regional Center or Satellite Office are optional and generally not needed for refinancing transactions. They are recommended for projects in volatile markets, Large Loan requests (per [Chapter 3, Section 3.10](#)), questions about the scope of repairs, significant cash out (e.g. \$20M or exceeding 50% of the loan amount), if there are concerns about marketability, environment, competing proposals, or if there are other unusual risk factors. Upon the Lender’s request, a concept meeting will be scheduled either in person or by teleconference as soon as workload permits, generally within two weeks. Site visits by the appropriate HUD staff may be conducted if practicable. Please refer to [Appendix 4](#) for concept meeting exhibits.

##### 4.2.1.2 HUD Response

A. HUD will respond by written letter or by email within 5 business days of the concept meeting. Consideration will be given as to the effect on other insured projects in the subject’s market area that are already in the pipeline or in portfolio, Borrower experience and overall feasibility based on the exhibits and information presented. Depending on the completeness and quality of the submission, HUD may recommend that the Lender submit an application, request additional information, specify conditions or recommendations to consider, and/or identify specific risks or weaknesses of the proposed project that should be addressed. The written response to the concept meeting does not represent a commitment

from HUD, which should be clearly stated in the response. Based on the preliminary information submitted, HUD may encourage an application submission but not approve it after review of the actual application.

### **4.2.1.3 Firm Commitment Application Submissions**

A. Firm Commitment application submissions will be reviewed for completeness, then processed, reviewed and underwritten. It will then either be recommended for approval or approval with conditions, returned to the Lender for modifications, or rejected.

B. Loan Approval is completed either by the National Loan Committee, Regional Center/Satellite Office Loan Committee, or Regional Director signature authority. Loan Committee requirements are specified in administrative memoranda to HUD staff.

### **4.2.1.4 Firm Commitment Issuance**

A. The MAP Lender may prepare a draft Firm Commitment for the project for inclusion in the application to expedite HUD processing.

### **4.2.1.5 Firm Commitment Acceptance and Rate Lock**

A. Firm Commitments may be extended up to no more than 180 days from the date of issuance, plus a discretionary 60 calendar days for good cause to be approved by HUD HQ. At the expiration of all permitted extensions, a reopening fee is required. The reopening fee for refinance and new construction/substantial rehabilitation programs is \$.50 per \$1,000 of the loan amount and the reopening request must be received within 90 days of the expiration of the Firm Commitment, plus all extensions. In addition to updated third party reports, all mortgage credit documentation, including financial statements, credit reports and an updated HUD 92013-SUPP are required. The Lender's narrative should confirm that no substantive changes have occurred in the underwriting or the development team as a result of the extension of time. The new commitment, if issued, will remain in effect for 180 calendar days.

### **4.2.1.6 Closing**

A. A Closing Coordinator will be assigned to the transaction to facilitate communication between the Lender and HUD housing and Office of General Counsel (OGC) staff and to provide instructions and guidance on the closing process.

## **4.2.2 New Construction and Substantial Rehabilitation Programs**

### **4.2.2.1 Concept Meetings**

A. Concept meetings (or conference calls) with the MF Regional Center or Satellite Office are strongly encouraged for market rate new construction or substantial rehabilitation transactions (unless waived by the Regional Director) and optional for affordable transactions. Concept meetings are required for projects intended to be submitted under the LIHTC New Pilot Program. The process for concept meetings is the same as for refinancing transactions. Lenders may submit applications for market rate deals

without a concept meeting; however the application fee will be considered “earned” at acceptance of the application for processing and will not be refunded if the application is rejected or not approved under terms acceptable to the Lender and Borrower.

#### **4.2.2.2 Pre-Application Stage**

**A.** The Pre-Application stage for new construction or substantial rehabilitation is designed to permit HUD to review the feasibility of a proposed project prior to the Lender, Borrower, and HUD spending the time and expense involved in Firm Commitment processing. Pre-Application submissions will be reviewed for completeness, processed, reviewed and underwritten, and either recommended to be approved, approved with conditions, returned to the Lender for modifications, or rejected.

**B.** The Lender may request to skip the Pre-Application stage to go directly to the Firm Commitment application. Lenders should consider such requests only for projects in strong markets, where the Lender and Borrower acknowledge in writing the risk of a rejection and that the application fee is nonrefundable, so long as there are no environmental issues, and the Lender, Borrower, and development team members have previous positive experience with FHA Multifamily financing.

#### **4.2.2.3 Invitation Letters**

**A.** If an invitation letter is issued, the Lender must advise HUD in writing within 30 calendar days if it plans to submit a Firm Commitment application. If it fails to notify HUD, the invitation letter will expire, and the Lender will be required to repeat the Pre-Application process. Letters of invitation are issued and effective for 120 calendar days.

**B.** The application for a Firm Commitment must be submitted within 120 days of the date of the letter of invitation. The Regional Director may or may not authorize one extension up to 90 days. The HUD Underwriter will review the Lender’s extension request.

**C.** If there is a justifiable request by the Lender for an extension of time beyond the time period allowed (210 total days), the Regional Director must request approval for a further extension from the Director of the Office of Multifamily Production in HQ, stating the additional time requested, the Regional Director’s recommendation and the reasons for the extension.

#### **4.2.2.4 Firm Commitment**

**A.** Firm commitments are issued upon application review and approval by the National Loan Committee, Regional Center Loan Committee, or Regional Director signature authority. Loan Committee requirements are specified in administrative memoranda to HUD staff.

**B.** Firm Commitments may be extended up to no more than 180 days from date of issuance, plus a discretionary 60 calendar days for good cause to be approved by HUD HQ. Guidance related to expired commitments and reopening fees for new construction and substantial rehabilitation programs is identical to the guidance for refinancing programs found in [Section 4.2.1.5](#) of the MAP Guide.

#### **4.2.2.5 Closing**

**A.** Initial Endorsement (also known as Closing) consummates the Firm Commitment.

B. A Closing Coordinator will be assigned to the transaction to facilitate communication between the Lender, HUD housing, and OGC staff to provide instructions and guidance on the closing process.

#### **4.2.2.6 Construction Period**

A. A Pre-Construction Conference is required prior to Initial Endorsement (see [Chapter 12](#)).

B. For new construction and substantial rehabilitation projects, the HUD construction administration period begins at Initial Endorsement and extends to Final Endorsement.

C. The Borrower and General Contractor must certify actual construction cost consistent with [Chapter 13](#) prior to Final Endorsement.

D. Final Endorsement represents HUD's insuring of the final loan amount and resolution of all outstanding program obligations.

### **4.2.3 Appeals**

A. Lenders have the right to appeal HUD decisions regarding the issuance of an Invitation for Firm Application or Firm Commitment with which they do not agree. There is no appeal process for the concept meeting recommendation. Other parties (Borrowers, third parties) do not have a formal right to appeal. Appeals must be filed in writing and delivered electronically and by hard copy to the Regional Director. The appeal must explicitly address the basis for the appeal and disagreement and include supporting documentation and background information. It should also include a copy of relevant previous correspondence and reports.

B. The Regional Director will assign the appeal for review to staff not involved in the original decision. The Regional Director will issue a written response to the Lender within 30 days of receipt of the appeal, or such other period of time as practicable. If the original decision being appealed was a result of a Regional Center Loan Committee which the Regional Director participated in, the Regional Director will either hear the appeal or may request it be treated as a second level appeal and referred to HUD Headquarters.

C. If the Lender is not satisfied with the appeal decision, they have the right to a second level appeal, which should be addressed to the Director of Multifamily Production in HUD Headquarters. The Director will assign the appeal for review to technical support or other staff not involved in the original decision. The Director will issue a written response to the Lender within 30 days of receipt of the appeal, or such other period of time as practicable.

## **4.3 Lender Processing**

### **4.3.1 General Requirements**

A. Borrower Engagement letters are expected as a prudent business practice, but not regulated by HUD. Only one MAP Lender may be engaged at a time. If Borrower changes MAP Lenders prior to or after submission of an application, the Borrower must disclose the processing history, and the MAP Lender submitting the application must address it in the Underwriter Narrative Executive Summary.

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**B.** Lenders must have a written contract (engagement letter) with Third Party reviewers; HUD recommends extension clauses as part of the contract.

**C.** Electronic submission of applications material, the Standard Underwriting Narrative and the LIHTC Summary Report (LIHTC transactions only), are required. Application checklists are in [Appendix 4](#). HUD will continue moving to complete electronic submission and processing through a web-based portal.

**D.** MAP Lenders are required to comply with the procedures and management controls specified in their Quality Control Plans.

**E.** Pre-Approval of Principals with Large Concentrations of FHA Insured Debt. The Lender must perform a thorough mortgage credit and creditworthiness review, and obtain HUD approval, before submission of an application in cases where principals have greater than \$500,000,000 of outstanding FHA insured debt. Borrowers previously approved for amounts between \$250,000,000 and \$500,000,000 must continue to obtain HUD approval upon expiration of any existing decision memo or when approval authority is exhausted, whichever first occurs. Please refer to [Chapter 8, Section 8.8](#) for additional information.

**F.** Lenders may produce their own copies of HUD forms, as long as the recreated forms have the correct Office Management and Budget (OMB) numbers, HUD form numbers, OMB expiration dates, approval numbers, form titles, and are identical in content and order of the line items on the MAP Form. All forms must be completed subject to their respective instructions. See HUDClips:

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/administration/hudclips/forms](http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/forms)

**G.** A complete application submission includes one original, one additional hard copy and one electronic copy. The additional hard copy should be in a separately bound mortgage credit file, along with the rest of the application containing the exhibits that do not contain sensitive personal and Privacy Act protected information. A standardized underwriting narrative and more structured application checklist are now required as well.

## 4.3.2 Processing

**A.** The Lender's MAP approved Underwriter is responsible for oversight and performance of the following tasks:

1. Data collection;
2. Due diligence;
3. Loan Processing;
4. Mortgage Credit review;
5. Underwriting;
6. Obtaining internal loan approval (from the Lender's loan committee or other process);
7. Submission of the loan application to the appropriate Regional Center or Satellite Office and the application fee to Pay.gov. See [Appendix 4](#) for pay.gov instructions;
8. Responding to HUD deficiency letters and requests for information;
9. Follow-up to get the loan to closing; and

10. Coordination with construction loan administration, cost certification, and servicing.

## 4.4 HUD Processing

### 4.4.1 General Requirements

**A.** Under the direction of the MF Regional Director, the HUD Underwriter or third-party contract Underwriter for HUD is responsible for management of the application processing, review, underwriting, loan approval and closing processes, as well as coordination of turn over to Asset Management at closing.

**B.** HUD review is a risk-based, underwriting approach. Technical compliance and processing must be correct and documented, but the primary purpose of HUD's review is to determine if the loan application is an acceptable risk to the FHA insurance fund.

**C.** The HUD Underwriter will review all application exhibits and determine what technical reviews are necessary, if any, given the level of complexity and risk of the transaction and program type, and perform or arrange for the underwriting and mortgage credit analysis.

**D.** Risk-based processing and the single Underwriter model will allow qualified Underwriters to review architectural/cost exhibits, appraisals, and market analyses and solicit the assistance of appropriate HUD technical specialists to perform additional reviews as necessary depending on the level of risk and complexity of each individual transaction. A Construction Analyst may be called upon to advise the Underwriter in his or her review, or to perform a limited review or full review, as determined by the Production team. The level of review by the HUD Construction Analyst may vary but the work required from the Lender's third-party provider has not changed. The MAP Lender and third-party provider are responsible for determining the acceptability of the physical improvements, providing conclusions essential for underwriting determinations to minimize mortgage risk, and ensuring compliance with MAP Guide instructions and guidance. Similarly, the HUD Appraiser may be called upon to act in an advisory role or perform limited or full reviews as deemed appropriate by the HUD Production team.

**E.** HUD has certain responsibilities which it does not assign to the Lender, including responsibility for the environmental clearance, approval of the owner's Affirmative Fair Housing Marketing Plan, Previous Participation review, and issuing the commitment for mortgage insurance.

**F.** HUD staff must perform a site visit for all applications in which an Environmental Report is required. Environmental approval is documented by HUD in the HUD Environmental Review Online System (HEROS). The Lender must submit an environmental report to HUD using the HEROS system for all projects submitted under MAP. The environmental review in HEROS must also be certified by the Production Division Director as part of the Firm Commitment approval. The site visit is typically performed by a HUD Appraiser, Construction Loan Analyst, Senior Underwriter, or other experienced HUD staff or managers with training and experience in environmental review requirements after review of the third party and Lender's environmental analysis. HUD Regional and Headquarters Environmental Officers may be called on to assist if and as questions arise.

**G.** Applications that the Regional Center or Satellite Office determine to be unacceptable will be returned to the Lender and HUD will retain the application fee if the transaction completed screening and entered underwriting and technical review. If it is clear at the screening stage the transaction is not approvable,

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it will be rejected at that stage. Lenders repeatedly submitting premature, materially deficient, or otherwise unacceptable applications should be referred to the Multifamily Asset Counterparty Oversight Division.

**H. Review of MAP Lender Team Members.** HUD must check the Limited Denial of Participation List and the Consolidated List of Suspended and Debarred Contractors for all proposed Lender team members, and review the proposed MAP Lender and Underwriter, and third-party resumes. If there is a concern with past performance, the Regional Director will consult with the Multifamily Asset Counterparty Oversight Division for guidance on how to proceed. If appropriate, adverse findings or conclusions should be communicated to the Lender within 10 business days.

## 4.4.2 Processing

**A.** Under the direction of the MF Regional Director, Production Division Director, and Underwriter Branch Chief, the HUD Underwriter is responsible for the oversight and performance of the following tasks:

1. Concept meetings and follow-up communication;
2. Reviewing of proposed MAP Lender and Underwriters;
3. Working with the Workload Distribution Lead for the Region and other appropriate officials in managing workload assignments for new applications;
4. Acknowledging receipt of the application;
5. Ensuring the screening of applications for completeness, and fiscal controls for new application submissions;
6. Using the New Early Warning System (NEWS) to determine what level of Underwriter and technical specialist review is required given the complexity and risk factors associated the transaction;
7. If during underwriting and technical review, HUD staff determines the application to be deficient, advising the Lender who will have 5 business days to correct the defects or deficiencies. If the defects/deficiencies cannot be corrected within the 5 business days, or such other time frame as the Regional Director deems appropriate, HUD will preliminarily reject the application and stop processing;
8. Performing technical reviews of Lender underwriting and third-party reports, or arranging for HUD technical specialist reviews for higher risk or more complex transactions when needed;
9. Consulting with and obtaining reviews from Asset Management, Legal, Labor Relations, Economic and Market Analysis Division (EMAD), Fair Housing and Equal Opportunity (FHEO), and other HUD staff as appropriate depending on the program requirements and particular transaction features; recommending transactions for loan approval (or rejection);
10. Determining whether there are any open referrals to HUD's Departmental Enforcement Center (DEC) relating to the Project, the Borrower and/or the proposed Management Agent; and working with the DEC to resolve the open DEC referrals either prior to, or in tandem with, closing;
11. Preparing and issuing Pre-application Invitation letters and Firm Commitments;
12. Coordinating the closing process with the Closing Coordinators, OGC, the Lender, and Borrower's team; and



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13. Coordinating with Asset Management in turnover of files, briefing about conditions of the Firm Commitment, and providing information necessary for Asset Management's risk rating of the transaction.

### **4.4.3 Construction Period Responsibilities**

- A.** Under MAP, HUD must approve the initial and final construction draws.
- B.** HUD will perform, contract, or otherwise provide for inspection duties and will provide copies of the Trip Report to the MAP Lender.
- C.** The MAP Lender will prepare and approve the documents required for the interim draws during construction.
- D.** HUD must approve the construction amount for each item in the initial and final advance and for each Change Order during construction.

### **4.4.4 Servicing**

**A.** MAP makes no changes in procedures for servicing or asset management, except for servicing Lenders with prior approval for delegated responsibility for repair escrow administration. See [Chapter 1, Section 1.2.C](#) for guidance on MAP-approved Lenders who only originate loans and transfer loans to another FHA-approved Lender for servicing.

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## Chapter 5 Architectural and Construction Analysis

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### 5.1 Eligible Construction Activities

**A.** Construction activities eligible for the FHA insured mortgage programs include new construction, substantial rehabilitation, alteration, and repairs.

**B.** The construction activity with the largest scope of work is new construction, which is erecting new buildings with all the necessary site work. Substantial rehabilitation of an existing property involves significant work and describes construction activities that exceed the Aggregate Cost limit defined in this Chapter. Work on existing structures that is less than substantial rehabilitation is categorized as repairs and alterations partly as defined by the International Existing Buildings Code (IEBC 2015, Chapter 2 Definitions and Chapter 5 Classification of Work).

**C.** The MAP Guide categorizes construction activities in terms of the costs and the Class of Work for two purposes. The first purpose is to determine eligible construction activities under each program, i.e., by the Section of the National Housing Act. The second is to identify what methods and professional services are appropriate for the design, documentation, supervision, administration, and inspection of the proposed work.

#### 5.1.1 New Construction

**A.** New construction involves building entirely new structures with necessary site preparation. Eligible work activities include constructing detached, semidetached, row, walkup, or elevator-type residential multifamily buildings and accessory structures on the property's improved site as well as any necessary offsite work.

#### 5.1.2 Substantial Rehabilitation

**A.** Substantial rehabilitation is work on existing buildings(s) including any additions for which the Aggregate Cost of construction (the Aggregate Cost) exceeds the Aggregate Cost Limit amount defined as follows:

1. Aggregate Cost means the total costs of all the proposed construction work at the property, including General Contractor fees and Project Architect fees. The Aggregate Cost will also include the amounts spent from the contingency reserve and assurance of completion escrows<sup>1</sup> at the end of construction, as well as any cost increases through change orders.
  - a. For LIHTC transactions, 100% of the contingency and assurance of completion amounts should be assumed to be expended and included in the upfront estimate of the Aggregate Cost.<sup>2</sup>
  - b. The final Aggregate Cost at the completion of all construction, which must include all actual amounts spent from the contingency reserve and assurance of completion escrows as well as any

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<sup>1</sup> Construction contingency reserve escrow and assurance of completion escrow as required per Chapter 8.

<sup>2</sup> See Chapter 5.6.2.6 and its related Footnote for further explanation.

cost increases incurred from change orders, must not exceed the Aggregate Cost Limit<sup>3</sup> for any applications for refinance or acquisition programs (i.e. Section 223(a)(7) and Section 223(f)).

2. Aggregate Cost Limit is calculated in dollars as follows:
  - a. **Aggregate Cost Limit Calculation.** Aggregate Cost Limit = [Base per Dwelling Unit Limit] X [High Cost Percentage multiplier] X [Number of Dwelling Units]
  - b. **Base per Dwelling Unit Limit.** HUD set the Base per Dwelling Unit Limit (Base Limit) at \$15,000 per unit in 2016 and has annually adjusted it for inflation based on the percentage change published by the Bureau of Labor Statistics of the Department of Labor or other inflation cost index.
  - c. **High Cost Percentage.** HUD annually calculates and publishes the High Cost Percentage (HCP) multipliers for designated cities based on the industry-standard construction cost index. These published HCP multipliers are used to calculate the threshold for substantial rehabilitation specific to the project's location.
  - d. **Number of Dwelling Units.** The total number of dwelling units should be the count of units at the property upon completion of all proposed construction work, given that the work may include addition and/or deletion of units at the property. The number should include non-rental units and commercial spaces in live/work type units.
  - e. **High Cost Areas Multiplier.** The higher limit HCP multiplier for the identified High Cost Areas (315%) is used only to determine the maximum mortgage amount as an exception granted by HUD. This higher limit multiplier for High Cost Areas may not be used in the calculation to define the substantial rehabilitation threshold as described above.
  - f. **Annual Revision of Base Limits.** The revised Base Limits and HCPs are both published in Housing Notices titled "Annual Revisions to Base City High Cost Percentage, High Cost Area and Per Unit Substantial Rehabilitation Threshold" for the year and can be located on HUD Website: [https://www.hud.gov/program\\_offices/administration/hudclips/notices/hsg](https://www.hud.gov/program_offices/administration/hudclips/notices/hsg)

### 5.1.3 Class of Work

A. Class of work defines and categorizes construction work on existing properties that is less than substantial rehabilitation. HUD has quoted language from the International Existing Building Code (IEBC) to define classes of work in the context only of this MAP Guide for the purpose of matching appropriate construction documentation and oversight to differing levels of work.<sup>4</sup> The levels of work defined from the least to the most significant in scope and complexity are as follows:

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<sup>3</sup> Given that the actual expenses spent from any contingency escrow or assurance of completion escrow will not be known until the end of construction, whether the level of work and the cost contemplated for the property are appropriate for 221(d)(4) Sub-rehab or 223(f) should be determined conservatively and not aggressively close to the cost threshold limit. The Lenders should take caution that at termination of the Repair Escrow when all the additional costs incurred during construction including change orders result in the final Aggregate Cost exceeding the Aggregate Cost Limit, the Lender will be subject to enforcement action by HUD.

<sup>4</sup> The IEBC is cited only as a quoted source acknowledging copyright and for no other purpose.

1. Repair means “the reconstruction or renewal of any part of an existing building for the purpose of its maintenance or to correct damage.” [IEBC, Section 202 General Definitions] Repairs to site features (not buildings but otherwise similarly defined) are included in this class of work.
  - a. “Repairs,...include the patching or restoration or replacement of damaged materials, elements, equipment or fixtures for the purpose of maintaining such existing components in good or sound condition with respect to existing loads or performance requirements.” [IEBC, Section 502.1]
  - b. Repairs also include related work, which is defined as “work on non-damaged components...necessary for the required repair of damaged components.” [IEBC Section 502.3]
  - c. In addition, installation of items not previously present in a building or on a site but necessary to address safety, security, accessibility or communications needs are considered “Repairs” when such installation and related work do not require alterations. Examples of such installation include but are not limited to 1) smoke detectors added to bedrooms; 2) signage or pavement markings added to identify accessible paths; 3) panic bars added to exit doors, etc.
2. Level 1 Alterations: “...include the removal and replacement or the covering of existing materials, elements, equipment, or fixtures using new materials, elements, equipment, or fixtures that serve the same purpose.” [IEBC Section 503.1]. Examples include removing and replacing an existing flooring or wall finish, etc.
3. Level 2 Alterations: “...include the reconfiguration of space, the addition or elimination of any [exterior] door or window, the reconfiguration or extension of any system, or the installation of any additional equipment.” [IEBC Section 504.1]

Examples include 1) adding or demolishing interior walls (partition or loadbearing) to reconfigure dwelling unit layout; 2) adding another bathroom inside a unit; 3) relocating the kitchen within a unit; 4) adding a new air conditioning system that was not previously present to the existing buildings and/or units; 5) adding an elevator to the building, etc.
4. Level 3 Alterations: “...apply where the work area consisting of all reconfigured spaces exceeds 50% of the building area.” [IEBC Section 505.1]

## 5.1.4 Defining Construction Activities

**A.** “New construction” and “substantial rehabilitation” describe the scope of work proposed for an entire property and invoke requirements that apply to the whole loan transaction.

**B.** For work less than substantial rehabilitation, the scope of work must be itemized as individual work tasks, each described and labeled with a Class of Work. For example, in a single building, there may be some work items identified as “Repairs” and others that are “Level 2 Alterations.” In other cases, a property with multiple buildings may need “Level 1 Alterations” in some buildings while other buildings need “Level 3 Alterations.” The total scope of work in such properties is composed of many work items, each labeled with the appropriate Class of Work.

**C.** Therefore, a Class of Work (i.e., Repair, Level 1, 2 or 3 Alterations) describes an individual work item or a group of closely related work items. Class of Work is not applied to the property as a whole or used to label an entire loan transaction. The following steps are required for properly labeling work items with Class of Work:

1. Describe the proposed work as distinct, separate work items, where each item describes a set of construction activities that are similar or related in character and scope.
  - a. For example, the construction activities of removing aged windows, installing new flashing, inserting new window units, patching up siding and repainting may all be described as “replacement of existing windows” as a single work item.
  - b. An individual work item should not be too broad or include multiple Classes of Work, such as using “kitchen remodeling” to describe replacing the cabinets (Level 1 Alteration) as well as reconfiguring the space by removing existing walls and extending the countertop space to increase the kitchen area (Level 2 Alterations).
  - c. An individual work item must be distinct and described in sufficient detail for accurate estimation and inspection during construction.
2. Each work item listed in Critical or Non-Critical Repairs (per [Appendix 5, Section A.5.7.2](#)) describes an individual task (commonly referred to as a “repair item”) and should be labeled with the applicable Class of Work, i.e., as a Repair, Level 1, 2, or 3 Alteration.
  - a. For example, “replacement of existing windows” with windows of the same size in the existing openings should be classified as Level 1 Alteration.
  - b. In the case of the “kitchen remodeling” example cited above, such work should be described in two separate work items, such as: 1) “relocate partition walls to modify existing kitchen layout” as one work item labeled Level 2 Alteration; and, 2) “replace existing kitchen cabinets” as a separate Level 1 Alteration.
3. Professional services and documentation required are to be based on the Class of Work of individual work items.
4. The Lender will review and confirm for HUD the Class of Work for each work item recommended by the Needs Assessor.

### 5.1.5 Eligible Construction by Program

**A.** Sections 220, 221, and 231: New construction and substantial rehabilitation are permitted. Class of Work does not apply to these programs.

**B.** Section 241(a): New Construction, Substantial Rehabilitation, Repairs, and all Levels of Alteration activities are permitted.

**C.** Section 223(f): Repairs and Level 1, Level 2 and Level 3 Alterations are permitted, provided that the Aggregate Cost of all such repairs and alterations does not exceed the Aggregate Cost Limit for substantial rehabilitation described in [Section 5.1.2](#).

1. The Lender must ensure that the cost of repairs and alterations in refinance or acquisition transactions does not exceed the program eligibility limit notwithstanding any unforeseen circumstance, change in cost, or estimating error;
2. Additions (defined here as any expansion of a building footprint with conditioned space) are not permitted to dwelling spaces and residential buildings. Adding a patio or a balcony is considered a Level 2 Alteration, given that they are not conditioned spaces;

3. Additions to accessory buildings or additions of minor accessory structures (e.g., carports, storage sheds, swimming pools) may be deemed Level 2 or 3 Alterations, subject to the approval of the Director of the Regional Center/Satellite Office;
  4. Construction of a new accessory building (e.g., community building, gym) is permitted as a Level 3 Alteration. New accessory buildings may not exceed a gross floor area of 5,000 square feet.
- D.** Section 223(a)(7): The intent of the 223(a)(7) program is to provide a simple, quick refinance option for existing insured properties to improve cash flow by lowering the interest rate or extending the amortization period, reducing the risk of default and improving overall financial performance. Therefore, all proposed work for 223(a)(7) must be limited to the following:
1. Construction activities must not exceed the definition of “routine maintenance” per CPD Notice 2016-02;
  2. Activities must not exceed the Class of Work level of Repairs;
  3. The total cost of repairs and routine maintenance must not exceed \$1,500 per unit, excluding the cost to remedy accessibility deficiencies;
  4. Any accessibility related repairs must not exceed the Class of Work level of Repairs;
  5. See [Chapter 9, Section 9.1.3.C.1](#) for environmental review requirements.

## 5.2 Consultant Due Diligence Responsibilities

**A.** The Lender and the Borrower are required to retain competent third party consultants with skills, training, and experience appropriate to the scale and scope of the physical characteristics of the property; the nature of architectural and engineering documents required; the kinds of construction solutions existing or proposed; and the due diligence typical of multifamily real estate transactions. In this context, the term “due diligence” is used as a general term for the range of professional examinations, studies, inquiries, research, investigations, reporting, and documentation needed to determine the physical condition, utility, and suitability of sites and buildings existing or proposed for multifamily properties.

### 5.2.1 General

**A.** HUD requires both the Lender and the Borrower to retain professional consultants with qualifications appropriate for the due diligence required for each loan application. In general, these due diligence requirements are:

1. The preparation of a Capital Needs Assessment (CNA) by a Needs Assessor;
2. The preparation of construction documents (plans and specifications) by a Project Architect for new construction, substantial rehabilitation, and significant alterations at existing properties;
3. The review of construction documents and cost estimates for compliance and acceptability by a Construction Analyst;
4. For certain utility conservation incentive programs, the evaluation of utility consumption and energy conservation measures (ECMs) by an energy professional (see MAP Guide [Chapter 6, Section 6.4](#));

5. Occasional specialized reports as needed (e.g., structural engineers for seismic analysis); and,
6. The preparation of HEROS Environmental Report and the Phase I Environmental Site Assessment (and Phase II Environmental Site Assessments if needed) required by HUD (see MAP Guide [Chapter 9, Section 9.2.4](#) for qualifications of environmental professionals).

## 5.2.2 Qualifications for Lender’s Consultants

### 5.2.2.1 Needs Assessor Qualifications

**A.** The Lender must select a Needs Assessor with education, professional credentials, and field experience appropriate to the assessment assignment considering the age, size, type of building systems, construction methods, and location of the property. The Needs Assessor must be knowledgeable and experienced with local building standards and construction methods, relevant national and international building codes and standards (e.g., International Existing Building Code, International Energy Conservation Code), and specific statutory and regulatory requirements for multifamily housing (e.g., Federal Fair Housing Act Accessibility Guidelines, Uniform Federal Accessibility Standards and the 2010 ADA Standards). In no event should the qualifications of the Needs Assessor, and any related consultants employed to prepare the CNA, be less than as described in ASTM E2018-15 Standard Guide for Property Condition Assessments: Baseline Property Condition Assessment Process. The Needs Assessor (and any other consultants, specialists, or trades contractors engaged for purposes of the needs assessment) may not have any identity-of-interest with the Lender or the Borrower or its principals, and may not have any personal or business relationship with the Borrower (or its principals) that would create a conflict of interest.

### 5.2.2.2 Needs Assessor Responsibilities

- A.** The Needs Assessor prepares the CNA for existing improvements in refinance and acquisition transactions. The Needs Assessor identifies and describes all deficiencies and proposed improvements at the property. All CNAs must be reported using the method prescribed by HUD, which is the CNA e-Tool.
- B.** CNAs must be prepared by an independent third party hired and paid by the Lender<sup>5</sup>.
- C.** For existing properties, except for substantial rehabilitation, the Needs Assessor must conduct onsite physical inspections, including a representative sampling of units, and prepare the CNA in compliance with the instructions at [Appendix 5, Section A.5.7](#).
- D.** The Needs Assessor may prepare dimensioned sketches or diagrams when needed to illustrate particular repairs and alterations. However, drawings required to describe dimensioned remedies for accessibility deficiencies must be done by a registered Architect who may be an employee of, or consultant to, the Needs Assessor’s firm.

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<sup>5</sup> The owner may hire and pay the third party when CNAs are required for Asset Management oversight of properties with no insured mortgage, such as budget-based rent increase events where no servicing Lender is involved.



E. When a Project Architect and/or a General Contractor are engaged, the Needs Assessor needs to engage with these professionals to accurately reflect the scope of work and costs in the CNA e-Tool (see [Section 5.3.3.4](#)).

F. If the proposed application is for a green Mortgage Insurance Premium (MIP) rate or proposes adjustments to underwritten operating expenses resulting from reduced utility consumption, the Needs Assessor must report utility costs rates, estimated utility use of components, and sustainable utility-conserving future replacement alternatives for the project in the CNA e-Tool consistent with [Chapter 6](#).

### 5.2.2.3 Construction Analysts Qualifications

A. The Lender must hire a qualified Construction Analyst with experience in multifamily construction to review the drawings and specifications prepared by the Project Architect and any related contracts for design and construction services. The analyst must be knowledgeable and experienced with local building standards and construction methods, relevant national and international building codes and standards (e.g., International Existing Building Code, International Energy Conservation Code) and specific statutory and regulatory requirements for multifamily housing (e.g., Federal Fair Housing Act Accessibility Guidelines, Uniform Federal Accessibility Standards, and the 2010 ADA Standards for Accessible Design). In all cases, the Lender must ensure that the work experience of the Construction Analyst is consistent with the scale, scope, materials, methods, and technologies existing or proposed at the property.

B. The Lender's Construction Analyst may be a licensed or registered Architect or professional engineer but must, at a minimum, have a degree (BS or BA) in architecture, civil or structural engineering or construction with five years of experience in design, construction, or development of multifamily buildings. Alternatively, any person who is a construction contract administrator with a current certification (CCCA) by the Construction Specifications Institute (CSI) and who has administered construction of not less than three multifamily properties with an aggregate construction cost not less than \$30 million may serve as a Construction Analyst.

### 5.2.2.4 Construction Analyst Responsibilities

A. The Construction Analyst must:

1. Visit the site and its environs, investing time and attention sufficient to support a knowledgeable and professional review of the due diligence requirements and products, as well as the design, specification and construction documents prepared;
2. Evaluate the design of proposed and/or existing buildings and the construction materials, methods, or technologies employed in the buildings;
3. Review the agreements and contracts between the Borrower, design professionals, and contractors to ensure that the proposed services are sufficient and clearly defined and that the Borrower's right and power to assign the agreement(s) to or for the benefit of the Lender is not impaired.
4. Evaluate the professional qualifications and experience of the Borrower's design and construction team members and any due diligence professionals or contractors retained by the Borrower to ensure conformance to HUD requirements and relevance of qualifications and experience to the anticipated scope of work;

5. Determine that the Borrower's and Project Architect's due diligence concerning physical attributes of the site or existing buildings is sufficient to expose and quantify such costs and risks as reasonably may be expected, based on observed conditions, and identify any unmet due diligence needs;
6. Evaluate architectural design, specification, construction contract, and cost and scheduling documents for proposed projects and ensure internal consistency, accuracy, reasonableness, and conformance to HUD requirements, including specifically: the Minimum Property Standards; local codes and the HUD minimum energy conservation code when this code exceeds local codes; accessibility requirements for persons with disabilities (see [Appendix 5, Section A.5.2](#)); and HUD standards for architectural drawings and specifications (see [Appendix 5, Section A.5.5](#));
7. Review the Project Architect's certification stating that the project design complies with the Minimum Property Standards, all applicable local codes and ordinances, accessibility requirements, and HUD standards (See [Appendix 5, Section A.5.8](#));
8. Prepare complete cost analysis and review and confirm the reasonableness of Borrower's costs for design, specification, construction, contract administration and supervision (and any related due diligence or other professional services) for the construction, alteration or repair of multifamily structures (See [Appendix 5, Section A.5.9](#));
9. Evaluate the professional liability and errors and omissions insurance for the Project Architect and Borrower's other design or due diligence professionals by comparing the risks covered and the dollar amount of loss coverage to the scale and cost of construction and/or evident risks, offering an opinion of the adequacy of such coverage and confirming that such insurance will be maintained through any warranty inspection period following endorsement;
10. Maintain a dated log of all contacts, messages, and conversations with the Project Architect and the Borrower's design team referencing all documents and versions thereof in the log;
11. Ensure that all relevant parties are informed of HUD requirements and communications and coordinate responses thereto;
12. Prepare or review the schedule of anticipated future capital needs and corresponding estimates of costs, assuring that all repairs and replacements likely necessary during the CNA Estimate Period are included in the analysis of future needs. (See [Appendix 5, Section A.5.7](#));
13. Review and confirm as part of the CNA the accuracy of estimates of replacement cost (new) for each structure (CNA e-Tool Property Insurance Schedule Report, the automated form HUD- 92329).
14. Identify, review, and describe to HUD any identities of interest among any members of the design, construction and/or due diligence team or between any such member and any principal of the Borrower or between any such member and the Lender;
15. If the proposed application is for a green MIP rate, then all the reviews, determinations, and evaluation by the Construction Analyst, as described above, also apply to the requirements and mandated qualifications and procedures described in [Chapter 6](#) for energy and water conservation measures<sup>6</sup>; and,

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<sup>6</sup> The Construction Analyst must review energy related reports, documentation and exhibits to ensure that HUD's program requirements for Green MIP are met and properly documented for HUD's review.

16. Provide advice and assistance on design, construction, and physical due diligence issues to Borrowers, consultants, contractors, and others.

**B.** Construction analysts must apply the specific standards or criteria enumerated in the Appendices to [Chapter 5](#). The Construction Analyst is not required to review structural design details and calculations.

## **5.2.3 Owner’s Consultant Qualifications and Duties**

### **5.2.3.1 Project Architect Qualifications**

**A.** The Borrower must engage an architectural professional with building design and construction expertise to prepare construction documents and to supervise construction as appropriate for the proposed construction activity. Such professional services must be provided by a licensed or registered Architect or a professional engineer who must be the principal lead professional with overall responsibility for the design development and the execution of the design in construction. This professional is referred to as the Project Architect in the MAP Guide and must meet the qualifications described in this section. Failure of the Borrower to engage a Project Architect acceptable to the Lender and HUD is a basis for rejection of the application:

1. The Project Architect must be licensed or registered by the State in which the project is located.
2. The Project Architect must have substantial experience in the design and construction of multifamily properties comparable in scale and scope to the proposed property and must be in good standing professionally and legally.
3. For green MIP rate applications, the Project Architect must meet additional experience and qualifications requirements (see [Chapter 6](#)) when acting as an energy professional.
4. The Project Architect and any other consultants providing professional services for the project must be covered by an insurance policy (or policies) of professional liability, errors, and omissions.
5. The insurance must be of an amount consistent with the risk of loss based on the scope, scale, and the total cost of the project. The amount of any payable claim shall be actual damages subject to the policy limit and shall not be limited to the fee for the service provided.
6. The professional liability insurance policy must be maintained through the twelve-month warranty inspection period that follows final endorsement. The professional liability insurance carrier must have and maintain a rating that is acceptable to HUD (A.M. Best Financial Strength Rating [FSR] of B+ or better).
7. At initial closing, each design professional must provide their current certificate of liability insurance that must substantially conform to the sample Certificate of Professional Liability Insurance contained in [Appendix 5, Section A.5.8.3](#).

### **5.2.3.2 Project Architect Duties and Responsibilities**

**A.** The level of professional services and required documentation are determined first by the program for which the application is made and then the Classes of Work as applicable. Required services and documentation are:

1. New Construction and Substantial Rehabilitation

- a. The scope of services shall provide all architectural, structural, mechanical, electrical, civil, landscape, and interior design and consulting services (Design Services) necessary to prepare drawings, specifications and other documents setting forth in detail the requirements for construction of the project.
  - b. When basic design services (e.g., civil, mechanical, electrical engineering services) are provided by professionals outside of the Project Architect's firm, they should be contracted with the Project Architect as consultants to the Architect and not directly to the owner. In general, no additional Owner-Architect Agreement besides the one with the Project Architect is allowed for the design. A separate civil engineering services under a separate Owner-Architect Agreement (i.e., AIA B108) may be allowed on a case-by-case basis when warranted (e.g., when civil engineering is engaged much earlier in the predevelopment phase).
  - c. The scope of services shall also provide for the administration of the construction contract (Construction Administration), including conducting the monthly job site meetings with meeting agendas and official recordings of the meeting minutes.
  - d. There may be separate agreements for design and construction administration services if the same Project Architect is not employed for each (e.g., when the Project Architect has an identity of interest with the Borrower). When there is a separate agreement for the administration of the construction contract, it must be submitted for approval before initial endorsement. Where separate agreements are made, those sections not applicable shall be deleted.
  - e. The Project Architect may have an identity of interest with the owner or General Contractor, but in that event, may not administer the construction contract. Identity of interest is defined in the HUD Amendment (form HUD-92408-M).
2. Section 223(f) Transactions with High Costs and/or Complex Alterations:
- a. When the services of a Project Architect are required because the Aggregate Cost of the work is equal to or greater than \$15,000 per unit, or because Level 2 or Level 3 Alterations are proposed (See [Section 5.3.3.1](#)), the Project Architect must meet the same licensing and insurance requirements as for substantial rehabilitation, including the provision of a certificate of liability insurance that must substantially conform to the sample Certificate of Professional Liability Insurance. (See [Appendix 5, Section A.5.8.3](#)). The Project Architect's responsibilities and liabilities apply to all alterations and repairs included in the scope of work.
3. Section 223(f) Transaction with Green MIP:
- a. Refinance or acquisition applications for a green MIP rate require a Project Architect when the owner proposes to obtain a green certification to qualify for the green MIP. The Project Architect must fulfill additional responsibilities described in [Chapter 6, Section 6.6.3.A.6](#) and [Section 6.6.3.A.7](#).

### 5.2.3.3 Owner-Architect Agreement for Services

A. The agreement between the Architect and the owner for services must be in the form of the American Institute of Architects (AIA) Contract Documents. The owner must submit the executed contract at the time of the Firm Commitment application.

1. For new construction and substantial rehabilitation projects, the agreement must be the AIA Document B108 Standard Form of Agreement between Owner and Architect for Housing Services and must include the HUD Amendment to AIA Document B108 (form HUD-92408-M).
  - a. In general, the document should not be altered except for the deletion of the binding arbitration and mediation provisions. The only allowable dispute resolution is litigation in a court of competent jurisdiction. Any modifications that delete or reduce the basic design and construction administration services of the Project Architect are prohibited. Further, there must be no changes that reduce, delegate, or leave a gap in the basic responsibilities of the parties involved.
  - b. In uncommon circumstances where it becomes necessary to describe special approved arrangements, the modifications must be noted by striking out any inapplicable language and inserting additional provisions in Article 12. Any proposed modifications will require additional review in consultation with the Office of General Counsel of HUD prior to approval.
  - c. There may be separate agreements for design and for supervisory services.
  - d. If there is one agreement for both design and supervisory services, a specific dollar amount must be indicated for each service.
  - e. Where the Project Architect's basic fee exceeds that which may be paid from mortgage proceeds or where the Owner-Architect Agreement provides for reimbursable expenses (note that reimbursable expenses may not be paid from mortgage proceeds or any excess contingency), the person/entity responsible for such extra fees must be identified in the HUD Amendment.
  - f. HUD shall not be incorporated into any specific provision of the Agreement, and the inclusion of the HUD Amendment in Article 12 (enumeration of Special Terms and Conditions) is sufficient to incorporate HUD requirements. No modification of the HUD Amendment is permitted.
2. In Section 223(f) transactions, the required professional design services are typically of limited scope. Accordingly, the Owner-Architect Agreement shall be the AIA Document B104, Standard Abbreviated Form of Agreement Between Owner and Architect. AIA B108 is allowable when the scope is extensive.
  - a. The agreement must accurately describe the specific services to be provided and include all services that are necessary to the project, including adequate construction administration duties.
  - b. The Architect's fee must be a fixed sum for the services provided. No other method of stating compensation is acceptable. Separate fee amounts for design and construction services must be stated. When the Architect has no identity of interest with the Sponsor or mortgagor, the design and supervision fees are mortgageable costs and should be included in form HUD- 92264-A for the loan amount calculation.
  - c. The AIA B104 form may not be altered in general, except for the deletion of the binding arbitration and mediation provisions. There is no standard HUD amendment prescribed for the AIA B104.
3. The Project Architect may be a principal or an employee of the Borrower, or of an affiliate of the Borrower, provided that the requirements for professional qualifications, licensing or registration, and professional liability insurance are met and that the construction documents produced are not diminished by comparison with what would otherwise be required in the AIA Contract.

- a. The Owner-Architect agreement is still required in such cases as the design professional must be identified separately from the Sponsor or mortgagor entities or affiliates, but the Lender must require construction administration services by a separate, unaffiliated qualified professional. In that event, a separate AIA B 104 would be executed to retain third party construction administration services during the construction phase.
- b. No Architect's fee payable to the affiliated principal or employee shall be a mortgageable cost.

### **5.2.3.4 Project Architect as Owner's Representative**

**A.** The owner must identify a representative (Owner's Representative) in the Owner-Architect Agreement and meet the following requirements:

1. Owner's Representative must be a member of the Borrower's entity, typically a general partner or managing member and may not be a third-party consultant. A prohibited third-party consultant includes a construction manager hired to act on behalf of the owner;
2. For Non-profit entities, the Owner's Representative may be an executive officer or a member of the Board of Directors;
3. When a Public Housing Authority is the owner entity or the principal thereof, the governing board or commissioner must designate a qualified individual through a passed resolution providing appropriate authority;
4. The owner must give the Representative the authority to make decisions in a timely manner. The owner's Representative must be actively engaged during design and construction such as attending job site meetings and must have the authority to approve construction draw requests on behalf of the owner.

### **5.2.4 Other Technical Specialists**

**A.** The Borrower, the Project Architect, or the Lender may require the services of other technical specialists. These specialists may include sanitary, environmental, geotechnical, civil or structural engineers, etc. When engaged for services, a principal of the technical specialist firm must be a licensed or registered professional, must sign any resulting report or opinion, and when applicable, must affix his/her professional seal.

**B.** If utility consumption benchmarking or performance evaluation is required, the owner must hire a qualified energy professional who meets the requirements in [Chapter 6, Section 6.4.8](#).

### **5.2.5 HUD Approval of Qualifications**

**A.** The Lender should disclose the identity and qualifications of both the Borrower's and its own architectural and construction consultants, Needs Assessors, energy professionals or other technical specialists at times consistent with efficient completion of due diligence and design work, but in no event later than the application for Firm Commitment. HUD reserves the right to examine credentials and experience and to reject individuals HUD deems unqualified for a particular assignment. Accordingly, the risk of relying on due diligence or design products prepared by unqualified consultants is borne by the Lender and the Borrower.



## 5.3 Requirements by Construction Activity and Program

**A.** HUD requires professional services, due diligence, and oversight suitable for the program and scope of work for each project. The Lender and Borrower must employ appropriate levels of professional services for the proposed work to ensure proper design and documentation, as well as successful completion of the work. The type of professional services and their responsibilities are determined by 1) the program (Section of the Act) for which the application is submitted; 2) the Aggregate Cost of the work; and, 3) the Classes of Work proposed (see MAP Guide [Section 5.1](#)). Both the Lender and the owner must engage qualified professionals for due diligence acceptable to HUD. See [Section 5.2](#) for qualifications and responsibilities and [Chapter 6, Section 6.4.8](#) and [Section 6.6.3.A.7](#) for green MIP applications.

### 5.3.1 General

**A. Accessibility Repairs.** When proposed repairs and alterations remedy accessibility violations, the necessity of a registered Architect must be determined independently of Class of Work. In general, remedies that require simple installations or replacements of components (e.g., replacing existing non-compliant doorknobs with lever-type or installing audio-visual fire alarms) do not require an Architect. However, remedies involving mandated dimensions for spaces or floor area clearances require code compliant design described in drawings and specifications (plans and specs) by a registered Architect for code evaluation, precise construction, and inspection. See [Appendix 5, Section A.5.2](#) on applying accessibility standards.

**B. Tenant Relocation.**<sup>7</sup> Lenders must evaluate the level of disruptions to tenants during construction. When the degree and duration of disruption are such that the residents need to be displaced to ensure health and safety, a relocation plan is required. See the MAP Guide [Chapter 3, Section 3.2](#) and [Appendix 3, Section A.3.5](#) for instructions for acceptable relocation plans.

**C. Trades Bids.** Repairs, Level 1 and some Level 2 Alterations typically do not require a General Contractor. Regardless of Critical or Non-Critical Repair designation, any closely related work items with an estimated Aggregate Cost of \$35,000 or greater should be based on bid(s) by a qualified licensed trade(s) contractor with the intent for the Borrower to employ the trade contractor whose bid amount is selected. The Borrower should execute the contract prior to closing.

**D. Detailed Construction Schedule.** Successful construction management depends on project planning and scheduling in detail consistent with the level of construction activity and/or classification of work. General Contractors are expected to provide project planning and scheduling. A detailed construction schedule must describe the necessary sequence or order of tasks, dependencies among tasks, milestones, and other important details involved for project scheduling. Typically, such a schedule is not a simple calendar but a graph or a table illustrating the elapsed time and sequence of the tasks (i.e., Gantt chart or critical path schedules).

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<sup>7</sup> This applies to Section 221(d)(4) Substantial Rehabilitation as well as Section 223(f) transactions.



## 5.3.2 Sections 220, 221, and 231

### 5.3.2.1 Scope of Work

- A. A Project Architect responsible for the full scope of work at the property is required. The Project Architect must fulfill all roles and responsibilities as described in MAP Guide [Section 5.2.3.1](#).
- B. The Project Architect's drawings and specifications (plans and specs) must describe the entire scope of work involved for design permits and construction and must conform to HUD requirements for format and content of drawings and specifications (see [Appendix 5, Section A.5.5](#)).
- C. Lender's Construction Analyst is required to provide Architectural and Cost Analysis Reports and must fulfill all roles and responsibilities as described in MAP Guide [Section 5.2.2.2](#).
- D. The Lender's Construction Analyst may prepare the CNA e-Tool for submission based on the proposed plans and specs by the Project Architect.
- E. The use of CNA e-Tool is limited to scheduling and financing the future repairs and replacement of components (Reserve for Replacement (RfR)) only. No construction work should be described in the CNA e-Tool as Critical or Non-Critical Repairs.

### 5.3.2.2 Construction Costs

- A. Report costs on HUD forms for processing as described in MAP Guide [Section 5.7](#).
- B. The costs of future replacement of components described in the CNA e-Tool should be based on the hard costs of the General Contractor's estimate/bid. All anticipated soft costs (e.g., General Contractor's general requirements, overhead, profit) should be excluded in the CNA e-Tool's estimate of components costs.

### 5.3.2.3 Schedule

- A. A detailed construction schedule is required. (See [Section 5.3.1.D](#) above.)
- B. HUD's Construction Progress Schedule (form HUD-5372) is not an acceptable form nor an acceptable substitute for such a detailed construction schedule described in [Section 5.3.1.D](#). Form HUD-5372 is used to evaluate percentage of completion and the related costs and may not be used as a detailed construction schedule.

## 5.3.3 Section 223(f) with Repairs and Alterations

### 5.3.3.1 When Project Architects are Required

- A. The Borrower must hire a Project Architect to define work at the property when one of the following conditions is true of the property:
  1. The Aggregate Cost (before General Contractor fees or allowances) of all the identified repairs and alterations equals or exceeds \$15,000 per unit.

- a. This amount of \$15,000 Aggregate Costs per unit used here as a threshold is different from the dollar per unit maximum cost that defines the boundary between Section 223(f) transactions and Section 221(d)(4) Substantial Rehabilitation. This threshold is not adjusted by the High Cost Factor or the annual inflation adjustment.
  - b. Costs exceeding this threshold are evidence that the proposed repairs and alterations are sufficiently complex that the services of a Project Architect are required to ensure the clarity and accuracy of design and specification documents necessary to guide and evaluate all construction.
  - c. Remedies for accessibility deficiencies, if any, must be included in both the cost of repairs and alterations and the design documents.
  - d. HUD may waive the requirement to hire a Project Architect when the Aggregate Cost of all repairs and alterations exceeds \$15,000 per unit but work is limited to repairs and Level 1 Alterations.
2. When the Aggregate Cost of repairs and alterations is less than \$15,000 per unit but the proposed work includes Level 2 or Level 3 Alterations, a Project Architect must be retained to prepare drawings and specifications for the Level 2 or Level 3 Alterations provided as follows:
- a. Work proposed outside the work area where Level 2 or Level 3 Alterations will occur may be excluded from the Project Architect's scope of work; and
  - b. When there are only Level 2 alterations proposed (no Level 3 Alterations), and the Level 2 alterations are nominal (e.g., enlarging a closet in a few units with no accessibility ramifications), the services of a Project Architect are not required.

### 5.3.3.2 When General Contractors are Required

**A.** The Borrower must hire a General Contractor to conduct all the work defined by the Project Architect and provide coordination as a single point of control for costs, scheduling, and conformance of the work to plans and specifications when one or more of the following conditions are true:

1. The Aggregate Cost of repairs and alterations exceed \$15,000 per unit, excluding General Contractor fees;
2. The proposed work includes Level 3 Alterations; or
3. More than three licensed trade contractors are to be employed for the work.

**B.** HUD may waive the requirement to hire a General Contractor when:

1. The Aggregate Cost of all repairs and alterations exceeds \$15,000 per unit but work is limited primarily to Repairs and Level 1 Alterations; or,
2. The owner has substantial experience and proven ability planning and staging construction tasks, coordinating trades, and supplying general requirements.

### 5.3.3.3 Licensed Trades

**A.** When a General Contractor is not retained, the work items documented by the Architect (e.g., remedies for accessibility deficiencies, limited Level 2 Alterations) must be executed by qualified licensed trades (e.g., a plumber, electrician, framer, tile-setter licensed in the local jurisdiction). Similarly, repairs and

Level 1 Alterations described as individual work items (or a group of closely related items) with an estimated cost of \$35,000 or greater must be performed by qualified licensed trades contractor(s).

#### **5.3.3.4 Scope of Work**

- A.** All proposed work must be itemized as individual work items and descriptively listed as Critical and Non-Critical Repairs in the CNA e-Tool by the Needs Assessor preparing the CNA.
- B.** If and when engaged, the Architect must accurately describe the relevant repairs and alterations in drawings and specifications (plans and specs).
- C.** The Needs Assessor must ensure that all of the work described in the Architect’s plans and specs are accurately summarized and described as separate work items in the Critical and Non-Critical Repairs lists in the CNA e-Tool with appropriate details and characterization:<sup>8</sup>
  - 1. The Needs Assessor should identify and reference specific sheets, pages, schedules or specifications that address the repair work item identified in the CNA e-Tool. This referencing should be done by entering the relevant sheet/page numbers and/or schedules as the first words in the "Comments" box on the "Recommendations Screen" in the e-Tool.
  - 2. The comment should direct the Lender and the HUD Reviewer to the location or section of the Architect’s plans and specs where the listed work item is described, dimensioned, or otherwise detailed.
- D.** New LIHTC 223(f) transactions typically follow a development process significantly different from other HUD Section 223(f) refinancing/acquisition processes and HUD waives the required use of a Needs Assessor and the CNA e-Tool to describe Critical and Non-Critical Repairs. Instead, LIHTC 223(f) transactions should follow construction documentation procedures similar to substantial rehabilitation (see [Section 5.6](#)).

#### **5.3.3.5 Construction Costs**

- A.** Costs of the work items (estimates) must be provided in the CNA e-Tool, except for LIHTC transactions.
- B.** When a General Contractor is hired, the costs in the CNA e-Tool should reflect the price proposal (bid) and the bids uploaded as attachments.
- C.** The Lender must ensure that the Needs Assessor has reviewed the General Contractor’s cost estimate with the assessor’s own independent cost estimate.

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<sup>8</sup> For example, the architect’s plans show new replacement windows on the building elevations drawings indicating location and style, along with a schedule that describe types, sizes and installation details, and in specifications prescribe material and thermal performance requirements. The Needs Assessor should show it as a work item in the Non-Critical Repairs list describing it as window replacement, and indicate Class of Work, location, type and quantity. The needs assessor may choose to list the replacement as multiple work items, distinguished by sizes, types or other significant distinction such as location and material.

**D.** When a Project Architect and/or the General Contractor are involved, form HUD-2328 is not to be used to report the costs by the General Contractor for 223(f) transactions<sup>9</sup>. Instead of the HUD -2328, costs may be organized and reported in the CNA e-Tool as follows:

1. The contractor's price proposal (bid) should be captured in the CNA lists of repairs and alterations. The contractor's bid should be expressed as a certain dollar amount per appropriate unit of measure of the associated Alternative of the Component to be repaired or replaced.<sup>10</sup>
2. Only the hard costs should be reflected in the CNA e-Tool Repairs lists. Soft costs, if any, should be separately itemized and reported. Soft costs include any architectural fees, General Contractors overhead, profit and general requirements, etc. See [Appendix 5, Section A.5.12](#) for the **223(f) Repairs & Alterations Cost Worksheet**<sup>11</sup> that properly organizes and reports the summary of costs.
3. The total cost of repairs and alterations that includes both the hard and soft costs should be reported on form HUD-92264-A, lines 7b and 10b.
4. No fees payable to identity of interest contractors are mortgageable. Justified and itemized general requirements are mortgageable.

### 5.3.3.6 Schedule

**A.** When a General Contractor is retained, the General Contractor must submit a detailed construction schedule as described in [Section 5.3.1.D](#) above. The Needs Assessor must review the schedule and enter the number for "months to complete" for each work item in the CNA e-Tool. The number entered indicates the number of months from the initial closing until scheduled completion of the particular work item. The months elapsed is not necessarily the minimum duration of the construction for that particular item.

**B.** For all other transactions, the Needs Assessor and Lender, in working with the owner, must develop a construction timeline that reflects the planned completion of the work items and enter in the CNA e-Tool as "Months to Complete." The timeline should ensure that all the proposed work (repairs and alterations) be completed as soon as possible and within 12 months of closing.

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<sup>9</sup> The form HUD-2328 was designed to work with a full set of Project Architect prepared plans and specifications which would detail the location and extent of the work. By contrast, the CNA e-Tool relies on a different schema originating from the standard outline for CNAs established by ASTM 2018-08 and then expanded by Mortgagee Letter 2016-26 and the 2016 MAP Guide as the Estimated Useful Life Table. The two different schemes for categorizing construction work are not compatible. In addition, the form HUD-2328 does not contemplate the completion of any Critical repairs prior to endorsement. For this reason, the use of the form HUD-2328 in conjunction with the CNA e-Tool is unworkable.

<sup>10</sup>In many cases recommended alternatives are most appropriately expressed with "each" as the unit of measure and the bid price for each times the quantity will equal the bid total for the item.

<sup>11</sup> The worksheet provides a printable summary of costs best suited to assure that program cost limiting thresholds are correctly applied and that a common report of scope of work and related costs exists for all parties, including HUD reviewers and inspectors. A sample worksheet summary of cost is provided in [Appendix 5, Section A.5.12](#). Editable spreadsheet will be provided for download at HUD MAP Guide Website.

## 5.3.4 Section 223(a)(7) with Repairs and Alterations

### 5.3.4.1 Scope of Work

- A. Scope of work is limited per [Section 5.1.5](#).
- B. All scope of work must be described and listed as Critical and Non-Critical Repairs in CNA e-Tool by the Needs Assessor preparing the CNA.
- C. When the Critical Repairs include accessibility repairs, the Needs Assessor must assess and recommend to the Lender whether an Architect is required per [Section 5.3.1.A](#). The Needs Assessor may provide architectural services when the person is a registered Architect.
- D. The plans and specs, when produced to address accessibility remedies, must be submitted with the CNA e-Tool as attachments.

### 5.3.4.2 Construction Costs

- A. Costs of the work items must be provided in the CNA e-Tool.

### 5.3.4.3 Schedule

- A. A construction schedule must be provided in the CNA e-Tool indicated as “Months to Complete” for each work item.

## 5.4 Architectural and Other Building Standards

- A. Projects that are built, substantially rehabilitated, acquired or re-financed with FHA mortgage insurance must meet the standards described in the Appendices to this Chapter, as outlined below:
  1. [Appendix 5, Section A.5.1](#). Property Standards and Survey Criteria
  2. [Appendix 5, Section A.5.2](#). Accessibility for Persons with Disabilities
  3. [Appendix 5, Section A.5.3](#). Seismic Resistance and Fire Protection
  4. [Appendix 5, Section A.5.5](#). Firm Commitment Drawings and Specifications
  5. [Appendix 5, Section A.5.7](#). Capital Needs Assessments

## 5.5 Construction Contracts

### 5.5.1 New Construction and Substantial Rehabilitation

- A. New construction and substantial rehabilitation projects require a General Contractor and the services of a Project Architect (See [Section 5.3](#) above.) The contracts between the parties must be coordinated using the following forms:

1. Owner and General Contractor
  - a. The construction contract between the owner and General Contractor shall be form HUD-92442M Construction Contract for Insured Advances:
    - 1) Form HUD-92442M, Construction Contract Lump Sum (Article 4 Option 2), may be used when there is no identity of interest between the Borrower and the contractor.
    - 2) Form HUD- 92442M, Construction Contract Cost Plus (Article 4 Option 1), may be used in any case, and shall be used when an identity of interest exists between the Borrower and contractor. A Builder's Profit will not apply.
  - b. Form HUD-92554M Supplementary Conditions to the Contract for Construction must be attached.
  - c. AIA Document A201-2017 General Conditions of the Contract for Construction must be attached.
  - d. HUD does not specify a form of construction contract for Insurance Upon Completion projects. However, some form of binding contract must be executed and submitted to HUD for review and approval.
2. In addition, the Building and Loan Agreement between the Borrower and the Lender (form HUD-92441M) must be used.

## 5.5.2 Section 223(f) Transactions

- A.** The use of contracts depends on the required professional services (see [Section 5.3](#) above). Whenever an Architect and/or General Contractor is engaged, the contracts must be in writing using the forms acceptable to HUD as follows:
1. The Owner and General Contractor agreement shall be AIA A104, and;
  2. Other AIA forms for change orders, requisitions of funds, and related processes referenced in these paired agreements should be used consistent with the terms of the agreements.

## 5.6 Streamlined Processing

### 5.6.1 Eligibility for Streamlined Processing<sup>12</sup>

- A.** Streamlined processing means that less than 100% complete plans and specifications (construction documents) may be submitted with the application for Firm Commitment.
1. Proposed final project drawings and specifications must be submitted for HUD's review and comment/approval at least thirty calendar days prior to initial endorsement.

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<sup>12</sup> Streamlined processing of architectural design, specification, construction, and cost estimation exhibits serves two purposes. The first is to expand the use of HUD mortgage insurance programs for projects with Low Income Housing Tax Credits (LIHTC). The second is to expedite applications for Borrower development teams with clearly demonstrated capacity and experience with HUD-insured construction projects.

2. Any HUD comments on the proposed final drawings and specifications must be resolved and permit-ready drawings and specifications<sup>13</sup> must be delivered not less than ten calendar days prior to initial endorsement.

**B.** All LIHTC project applications are eligible for streamlined processing of design and construction documents.

**C.** Other applicants requesting streamlined processing should describe and discuss their qualifications with the Multifamily (MF) Regional Center/Satellite Office for approval.

1. HUD will discuss and determine eligibility for streamline processing at the concept meeting or pre-application stage.
2. To be considered qualified, the Borrower/Sponsor, the Project Architect, the General Contractor and due diligence providers must each have successful prior HUD project experience comparable in scope and scale to the scope of work proposed in the application.
3. Applicants for Section 223(f) without LIHTCs and with repairs and alterations requiring a Project Architect may request a concept meeting if they consider deferred submission of final plans and specifications necessary.

**D.** Factors Limiting Streamline Processing for Non-LIHTC Applications.

1. Lenders and MF Regional Center/Satellite Offices should determine that the project will achieve initial closing within sixty calendar days after issuance of a Firm Commitment conditioned upon final plan submission.
2. Lenders and MF Regional Center/Satellite Offices should consider the complexity of the proposed design and construction when determining whether to permit the deferred submission of final drawings and specifications. Complex issues unsuited to streamlined processing include, but are not limited to:
  - a. Any claim of exemption from the design and construction requirements of the Fair Housing Act based on site impracticality (terrain unsuited to accessible paths and building entrances);
  - b. Projects where costs not attributable to residential use must be calculated because Criteria 4 of the form HUD-92264A, Statutory Limitations of cost per family unit, is material to the calculation of the maximum mortgage amount;
  - c. Projects with complex mixed-use, commercial use, or use of new, complex construction technology; and
  - d. Projects with complex environmental remediation issues or issues that cannot be resolved without the final set of plans and specifications (e.g., noise, historic preservation).

## 5.6.2 Section 223(f) with new LIHTC Applications

**A.** New LIHTC 223(f) transactions have a largely, if not fully, developed scope of work for repairs and alterations early in the development. Accordingly, a separate CNA should not be needed to evaluate

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<sup>13</sup> "Permit ready" means approved by the Building Code Official with jurisdiction, subject only to the payment of required permit fees and charges.



property conditions or to define the scope of work for repairs and alterations and HUD will waive the required use of Needs Assessors and the CNA e-Tool to describe Critical and Non-Critical Repairs. Applicants for Section 223(f) insured loans with new tax credits should follow the following construction documentation procedures:

1. The construction scope of work should be defined by the Project Architect in a full set of construction drawings and specifications as prescribed for substantial rehabilitation, provided that the Architect's Agreement will be the AIA B104 and the Architect's Certificate shall be in the form of [Appendix 5, Section A.5.8.2](#).
2. A General Contractor should be engaged and should estimate costs using form HUD-2328. The general contract should be the AIA A104.
3. The Project Architect should provide to HUD a written summary documenting the inspection procedure employed at the property and identifying conditions or systems determined to require correction, repair, replacement, or improvement, similar to what is described in [Section 5.9.2.A.2](#) for Joint Inspection Report.
  - a. This written summary is in lieu of a Needs Assessor inspecting and reporting on the property.
  - b. The report should specifically identify any conditions that fail to meet the applicable accessibility requirements at the property for persons with disabilities under relevant statutes: Section 504 of the Rehabilitation Act, the design and construction requirements of the Fair Housing Act, and the Americans with Disabilities Act both Title II and Title III.
  - c. A comparable document prepared for the application for tax credits or for the tax credit investor may be acceptable.
4. The CNA e-Tool should only describe future repairs and replacements for purposes of establishing the appropriate Reserve for Replacement (RfR) Schedule, including any initial deposit to the RfR and annual deposits to the RfR Escrow. The characterization of future needs should be based on project conditions, assuming completion of all work described in the Architect's plans and specifications.
5. The Lender must employ a Cost Analyst to review the plans and specifications and the General Contractor's cost estimates (and likely also to prepare the CNA e-Tool for future needs). The cost review should be completed using the same methods, procedures, and forms as applicable to substantial rehabilitation applications, including form HUD-92326 and form HUD-92331-B.
6. When reviewing costs of repairs and alterations, the Lender should ensure that the sum of hard costs, the General Contractor's soft costs and the Project Architect's supervision fee, and any contingency or assurance of completion, do not exceed the cost threshold for substantial rehabilitation. Any contingency or assurance of completion amounts must be included into the Aggregate Cost calculation per [Section 5.1.2](#).<sup>14</sup>
7. All other construction documents should be submitted separately, consistent with procedures for substantial rehabilitation.

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<sup>14</sup> This restraint should be imposed at the time of application for Firm Commitment because LIHTC investors customarily require that contingencies or assurance of completion funds are fully used, first for necessary change orders, and then for betterment change orders. There is no expectation that funds will be returned to the Borrower.

8. Attachments to Firm Commitments should be consistent with the practice for insured substantial rehabilitation and in compliance with the specific instructions provided in this Section.

### 5.6.3 Documentation at Firm Commitment

A. The Firm Commitment may be conditioned on the timely receipt and satisfactory review of complete and final plans, specifications, and cost estimates, provided that the Lender's submission of less than 100% of the drawings, specifications (i.e., schematic/line/working drawings) and cost estimates provide the following detail:

1. The static footprint of the building or buildings together with proposed site improvements on the surveyed site plan as well as any proposed easements and/or off-site improvements with survey detail, consistent with the requirements for surveys described in [Appendix 5, Section A.5.1](#);
2. The gross building and net residential square footage for the project;
3. Dimensioned unit layouts for each unit type for new construction or substantial rehabilitation or for reconfigured spaces in Section 223(f);
4. Dimensioned floor plans and elevations for each building type;
5. Sufficient design detail to determine the Davis-Bacon wage rate classification for new construction and substantial rehabilitation;
6. Sufficient design detail to determine compliance with accessibility requirements in [Appendix 5, Section A.5.2](#);
7. Sufficient design detail (wall cross-section details) to determine structural framing and exterior wall finishes for new construction and substantial rehabilitation and other repairs and alterations, when applicable;
8. A summary interior finish schedule identifying proposed interior finishes for units, including kitchens and baths, as well as for building common spaces and accessory structures;
9. Sufficient design detail to determine building mechanical systems;
10. Sufficient design detail to determine the scope of site development and off-site construction;
11. A written cost estimate (form HUD-2328) from the General Contractor, if any;
12. The Lender's Construction Analyst's cost estimate (HUD-92326);
13. The Lender's review and comparison of the General Contractor's cost estimate with the Lender Construction Analyst's estimate on form HUD-92331;
14. For new construction and substantial rehabilitation (a) the proposed but unsigned owner-contractor agreement for construction (form HUD-92442M) indicating any selected options (e.g., incentive payments) or special conditions and the Supplemental Conditions (form HUD-92554M). For Section 223(f), the AIA A104 agreement is used if General Contractor is used;
15. Project Architect's or Needs Assessor's CNA reviewed by the Lender's Construction Analyst with the Lender's financial plan for funding future capital needs, all in accordance with [Appendix 5, Section A.5.7](#). Such CNA may be based on less than 100% complete construction documents and be amended at the time the 100% set is submitted;

16. For applications in pursuit of Green MIP rate, plans and specs at the level of completion that the chosen Green Certification standard keeper is able to verify achievement(s) of required milestones and be on track to achieve the actual Certification within the required timeline; and
17. For substantial rehabilitation, the Project Architect's detailed inspection report and work write-up.

## 5.6.4 Requirements for Issuing a Firm Commitment

A. HUD requires that the following are completed prior to issuing a Firm Commitment:

1. An assessment that the estimated project cost based on the Borrower's or General Contractor's estimate of costs and the Lender's cost estimate and the Lender's comparison of these estimates is reasonable and in line with comparable HUD project data and is likely accurate within a deviation of plus or minus 5%.
2. An assessment that the Borrower's and General Contractor's financial capacity to complete the proposed construction is not materially diminished by an increase in cost of up to 5%.
3. An assessment that the proposed General Contractor is acceptable pursuant to existing requirements (sufficient working capital, experience, etc.).
4. An assessment that the plans and specifications are in compliance with all applicable requirements on a preliminary basis, with appropriately qualified certifications executed.
5. The Phase I (ASTM Practice E 1527-13 or most current) environmental site assessment and the HEROS Environmental Report must contain no significant unresolved environmental issues (see [Chapter 9](#)).

## 5.6.5 Modifications to the Firm Commitment

A. A modification must be made to the Firm Commitment for those projects determined to be eligible for deferred submission of final drawings, specifications, and cost estimates. Below is a sample special condition to be added to the Firm Commitment.

*"As an accommodation to the Borrower, this commitment has been issued and based upon preliminary drawings, instead of the final drawings, specifications and cost estimates. At least 30 days prior to the scheduled date for Initial Endorsement [Endorsement, if pursuant to 223(f)], HUD must receive the final drawings, specifications and the Lender's architectural/cost review report for review and approval to ensure consistency of design and cost. In the event that there is a net cumulative construction cost change of more than 5%, or a change in design concept, this commitment shall be subject to and conditioned upon the further approval of HUD, to be evidenced in writing. Based on such review this commitment may be terminated and voided by HUD, or additional conditions may be imposed, at HUD's option."*

## 5.6.6 Risks Related to Deferred Document Submission

A. All risks related to deferred submission of construction documents are borne by the Lender and the Borrower. HUD will not refund application fees in the event that the Borrower is unable to provide acceptable construction documents

## 5.7 New Construction Processing through Firm Commitment

### 5.7.1 Concept Meeting

A. When a concept meeting is scheduled, its purpose with respect to design and construction topics is to establish feasibility and to identify key issues. For this reason, the Lender should provide the following:

1. The name, address, contact information, and resume or summary of experience of the Project Architect and any other design professional(s), due diligence providers and the General Contractor if known. Of particular importance is the development team's previous experience with HUD mortgage insurance programs for new construction.
2. Maps and photographs illustrating the location, boundaries, conditions, and features of the site, noting, in particular, the location and size of public utility lines available to serve the site, means of access and egress, and proximate properties. Such survey of the site should identify key issues presented by the site and its environs, such as, but not limited to the following:
  - a. Terrain, rock, or steep slopes that may require detailed exploration, unusual site costs or result in any claim of site impracticality exemption from the design and construction accessibility requirements of the Fair Housing Act.
  - b. Absence or unavailability of public utilities, required offsite work, unusual public permitting or development entitlement processes or costs.
  - c. Insufficient or deficient access to the site due to limitations on existing streets and grades or lack thereof and/ or adverse traffic patterns or conditions.
  - d. Flood plain or flood hazard areas and the location of recognized environmental conditions that indicate the presence of contamination as defined by ASTM E 1527, or protected sites or artifacts.
3. The Borrower's summary design program or concept prepared after inspection of the site and preliminary review of existing or proposed zoning, subdivision, and building code requirements. The summary should characterize the contemplated number, size, and kind of buildings and dwelling units and should include a conceptual site plan and sketch plans of typical units and buildings.
4. The Lender description of existing or ongoing needs for site due diligence and provide a plan or description of how due diligence tasks will be completed, including appropriate sequencing, coordination of studies, and the identity of prospective providers. The Lender should include a discussion of environmental issues and plans to address them.
5. The Lender's identification of any other contemplated sources of funding that would trigger design and/or construction requirements and describe such requirements (e.g., any Federal assistance, such as HOME, will trigger Section 504 and UFAS; state or local assistance, including LIHTCs, may trigger a state or local agency plan for compliance with Title II of the Americans with Disabilities Act).
6. The Lender's statement of whether streamlined processing of design and construction documents is proposed and, if proposed, the reasons such processing is both needed (e.g., use of LIHTCs is expected) and realistic (e.g., development team is experienced with HUD-insured mortgage programs for

construction, has successfully executed physically similar projects, and the site and/or environs present no complex challenges or prospective delays).

## 5.7.2 Pre-Application

**A.** The Lender's Underwriter must have visited and inspected the site, and the Lender must submit the following Pre-application exhibits to HUD:

1. Form HUD-92013, Application for Project Mortgage Insurance;
2. Location map with property clearly defined;
3. Sketch plan of the site showing overall dimensions of main building(s), major site elements (e.g., parking lots, points of access and egress, pedestrian access, and accessible entrances and paths) and location of existing utilities (e.g., water, sewer, electric, gas) in the streets adjacent to the site:
  - a. Contour lines and elevations are not required in the sketch site plan. However, the Lender must state whether any contours or elevations observed are likely to result in a claim of exemption of any proposed building or facility from the design and construction requirements for accessibility of the Fair Housing Act by reason of site impracticality (See Fair Housing Design Manual 1.38);
  - b. If so, the Lender must confirm that it has advised the Borrower, the design professional(s) and the General Contractor of the site feasibility methodology described in the Fair Housing Act Design Manual. Similarly, the Lender must describe whether and how any design and construction requirements triggered by other sources of funding (e.g., UFAS or the 2010 ADA Standards for Accessible Design) will be met:
4. Sketch plans of building(s) that show:
  - a. Ground floor plan showing common areas and dimensions;
  - b. Building floor plans showing unit types, placement, and dimensions;
  - c. Unit floor plans of all unit types;
  - d. Building elevations;
  - e. Residential and gross building area for each building or building type;
  - f. Typical wall sections showing footing, foundation, and wall and floor structure, with notes indicating the basic materials to be used in the structure, floor, and exterior finishes; and
  - g. Anticipated interior finish schedule indicating kind and quality of finishes proposed for units, including kitchens and baths, as well as building common spaces and accessory structures.

**B.** The Lender must address any physical due diligence issues identified and ongoing due diligence needed to complete analysis of the site and its environs. If not addressed at a concept meeting, the Lender should provide a description of the studies completed or anticipated and the identity of those preparing the studies. Completed or proposed due diligence should include investigation of the physical requirements that may be imposed by any other sources of funding anticipated for the project.

**C.** See [Chapter 9](#) for environmental review requirements.

### 5.7.3 Firm Commitment Application

A. The Lender's Construction Analyst must have visited and inspected the site and its environs, investing time and attention to detail sufficient to allow the analyst to appreciate due diligence needs and to knowledgeably evaluate prepared due diligence and all design and construction documents. The Lender must submit the following exhibits for review, provided that, if the application is approved for streamlined processing, the following exhibits may be submitted as substantially completed drafts and resubmitted as proposed final drafts at least 30 days prior to an initial endorsement (See [Section 5.6](#) above):

1. Form HUD-92013, Application for Project Mortgage Insurance.
2. Owner-Architect Agreement, AIA Document B108 (and HUD Amendment to the B108), fully defining the services and fees for each prime design professional with which the Borrower/owner contracts directly. The Project Architect shall have the authority and duty to coordinate all the consultants and their work involved in the basic design services of the Architect.
3. Completed Surveyor's Report, form HUD-1073M, with responses to all questions and the completed HUD certification. See [Appendix 5, Section A.5.1](#).
4. Engineering and specialty reports (e.g., geotechnical, structural).
5. Municipal and utility company letters of confirmation for the provision of services and/or offsite improvements.
6. Any documents necessary to establish:
  - a. Site ingress and egress, utility services and other general acceptability criteria in MPS 4910.1, [Chapter 2](#); and
  - b. Binding or signature-ready drafts of proposed joint use, access and maintenance agreements where common use easements (e.g., common driveways) exist or are proposed. When proposed, easements should be platted, and agreements drafted for review in preparation for recording.
7. Certification from Project Architect substantially in the form of [Appendix 5, Section A.5.8.1](#).
8. Drawings and Specifications. One legible full-sized printed set (hard copy) of drawings and one set of specifications for review that conform to the specific format and requirements described in [Appendix 5, Section A.5.5](#).
9. Description of all work essential to the project but outside the boundaries of the property (see [Appendix 5, Section A.5.5](#)).
10. The General Contractor's Cost Breakdown, form HUD-2328.
11. The Lender's CNA based on construction plans and specifications of the improvements to be built. A qualified energy professional must be engaged to complete section "a" below, as required for green MIP applications (See [Chapter 6](#). The Lender's Construction Analyst or the Project Architect may complete the remaining three sections "b," "c," and "d." The Project Architect should verify the accuracy of the information reflected in these sections according to the latest plans and specifications developed by the Project Architect. The CNA must be completed and submitted using the CNA e-Tool in accordance with [Appendix 5, Section A.5.7](#) and includes:



- a. For green MIP applications, a HUD Custom Statement of Energy Design Intent (SEDI) from EPA's Portfolio Manager based on projected utility consumption for the entire property to be built, including the entire site and all the buildings. The projected utility consumption data resulting from the Energy Modeling should be reported to Portfolio Manager and the HUD Custom SEDI obtained. The resulting HUD Custom SEDI must show an energy score not less than the prescribed minimum per applicable program requirements. (See [Chapter 6](#).) Note that the HUD Custom SEDI minimum score is a requirement in addition to, and not in lieu of, the obligation to prepare plans and specifications meeting the requirements of the applicable version of the International Energy Conservation Code or the ASHRAE standard 90.1. See [Chapter 6](#) for more details.
  - b. A completed physical inventory of the property to be built, (that is, description of the site, buildings, units, utility types and rates, components and alternatives in the CNA e-Tool).
  - c. An estimate of replacement cost, as new, for each structure (form HUD-92329, Schedule of Insurable Values, automated in the CNA e-Tool). The Aggregate Costs should be consistent with the Lender's Construction Analyst's estimate of costs for structures including general requirements, contractor's overhead and profit, and bonding.
  - d. The Lender's financial plan for funding future capital replacement needs based on actual expected replacements with appropriate adjustments for inflation and other variables as described in [Appendix 5, Section A.5.7](#). The financial plan will define the schedule of annual deposits to the RfR escrow.
12. The Lender's Construction Analyst's detailed cost estimate package (Cost Report) composed of the following:
- a. Detailed cost estimate to be reported on form HUD-92326.
  - b. A comparison of the General Contractor's trade line item cost estimate (form HUD-2328) with the Lender's Construction Analyst's estimate (form HUD-92326) with comments and explanations described on form HUD-92331-B).
  - c. Form HUD-2328, signed and dated by the Lender's Construction Analyst in-the FHA: Processing Analyst's box. The Lender's Underwriter must sign and date form HUD-2328 in the FHA: Chief Cost Branch or Cost Analyst's box.
13. Form HUD-92264, signed and dated by the Lender's Construction Analyst submitted by the Lender as both "Cost Processor" and "Architectural Processor." If different analysts execute the architectural and the cost reviews, then each must sign as appropriate.
14. The Lender's Construction Analyst's review and disclosure of identities of interest and application of the 50%-75% Rule (See [Chapter 13, Section 13.14.13](#) and [Section 13.15](#) for instructions on this Rule.), which should
- a. Identify and describe any identity of interest relationships between or among the Borrower, any of the Borrower's design professionals, the General Contractor, any subcontractors, material suppliers, equipment lessors, or manufacturers of industrialized housing.
  - b. Identify by analysis of form HUD-2328 any single subcontractor that executes 50% or more of the total construction or any three subcontractors who in the aggregate execute 75% or more of the total construction measured by dollar value.



15. The proposed but unsigned owner-contractor agreement for construction (form HUD-92442M) indicating any selected options (e.g., incentive payments) or special conditions and the Supplementary Conditions (form HUD-92554M) reviewed and included in the Lender's Construction Analyst's report.
16. Review report prepared by Lender's Construction Analyst who must state that all exhibits are acceptable without conditions, and that all deficiencies have been acceptably corrected, except that in the case of an application approved for streamlined processing, this statement may allow for the contingency that final plans and specifications have not been completed and that final cost estimates may vary by up to 5% from the costs estimated in the Firm Commitment application. The report should address the following:
  - a. Completeness of construction documents;
  - b. Conformance to local building codes and HUD standards, including the HUD minimum energy codes when these exceed local code requirements;
  - c. Accessibility for persons with disabilities. Refer to the Fair Housing Act design and construction requirements for accessibility found at 24 CFR 100.205. If the property is federally assisted, refer also to the Uniform Federal Accessibility Standard (UFAS). For any public space at the property (e.g., leasing office, commercial space), refer to Title III of the Americans with Disabilities Act (See [Appendix 5, Section A.5.2](#));
  - d. Site design:
    - 1) Placement of buildings, roads, walks and parking on the site;
    - 2) Identification and review of offsite construction;
    - 3) Site erosion and storm drainage; and
    - 4) Soil borings report;
  - e. Building design and building circulation:
    - 1) Adequacy of elevators;
    - 2) Number and placement of stairs;
    - 3) Adequacy of lobbies and corridors;
    - 4) Adequacy of fire egress;
    - 5) Typical dwelling units: Adequacy of room sizes and circulation within units;
    - 6) Fire safety: Provision of adequate fire safety measures, e.g., fire sprinklers, firewalls, fire doors (if required);
    - 7) Structural adequacy: Review of building structure and structural details including measures implemented to address identified hazards such as seismic risk, coastal high wind and/or flood zones;
    - 8) Mechanical, electrical and plumbing adequacy: Review of mechanical and electrical and plumbing plans; and

- 9) Energy efficiency. Review utility combination for energy efficiency and determine acceptability of utility combination. Review and submit the Capital Needs Assessment in the CNA e-Tool per [Appendix 5, Section A.5.7](#) and confirm that the HUD Custom SEDI shows an energy score of 60 or better. See [Appendix 5, Section A.5.4](#) for applicable International Energy Conservation Code and ASHRAE standards for new construction.
  - f. Submit copies of the Lender's Construction Analyst's project files and logs only if requested by the HUD Office.
  - g. Standard certification by Lender's Construction Analyst(s) (see [Chapter 11, Section 11.2](#)).
17. See [Chapter 9](#) for environmental review requirements.

## 5.7.4 Special Considerations for Industrialized Housing

- A.** The Lender must contact the Production Chief of the MF Regional Center or Satellite Office to approve the use of industrialized (aka "modular") housing.
- B.** Architectural and engineering services are required for off-site construction of housing (modules or panels) and the fees for such services must be included in the cost of each manufactured unit.
- C.** The Lender's Construction Analyst must determine the acceptability of such services by examining the drawings and specifications. In addition, architectural services are required for onsite construction including site work and a prepared foundation for the installation on site of modules or panels constructed off-site. These services are provided by the Project Architect.
- D.** The exhibits for off-site work shall be equal in quality to the typical construction documents prepared by Architects engaged in designing the type of housing proposed and should include the working drawings and specifications for the typical industrialized housing unit, along with an assembly or installation plan and manufacturer's warranty document, which must cover not only off-site construction but also transit and delivery and the efficacy of the onsite assembly or installation plan.
- E.** Additional professional services may be required to provide a complete set of construction documents. These services must be determined by the Lender's Construction Analyst for each project based on the percentage of the construction documents for the project that may be provided by the housing manufacturer. Usually, the Project Architect will integrate the manufacturer's drawings into his/her set of drawings and specifications, adapting them to the particular project.
- F.** The manufacturer shall provide complete professional design services for the modules or panels to be used. If these services in combination with those of the Project Architect meet in all respects the qualifications and quality required, the construction documents shall be acceptable.
- G.** In most states, plans and specifications for industrialized or manufactured housing are pre-approved by an authorized state office, agency or building code official with plans for particular models evidenced by a plan approval number. Inspections and or certifications of factory-based construction typically are managed by states by periodic factory inspections evidenced by stamps and/or numbered approvals. It is the responsibility of the Project Architect, reviewed by the Lender's Construction Analyst, to determine that any and all plan approvals have been obtained.
- H.** Owner Architect Agreement, AIA Document B108, is required only to cover the services provided by the Project Architect and is not required for professional services provided by the housing manufacturer.

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

J. The logistics of construction with modules constructed off site require detailed consideration as part of construction planning and should be well understood as early as the concept meeting. In urban areas, large modules trucked to a construction site must negotiate narrow streets, power lines, trees, and related obstacles and often cannot be stored in quantity. Cranes and heavy lift equipment may also be required and may confront similar constricted access challenges. These logistic requirements may impose additional costs and scheduling problems and may limit feasibility.

K. In addition, modular manufacturers typically require a minimum payment or deposit to initiate or complete work on a modular unit off-site. Such fees are credited to the owner or General Contractor upon delivery of the modular units. But until units are delivered, these payments or deposits are not reimbursable as part of an insured advance. Only the costs of modular units delivered, accepted by the General Contractor, and installed or stored on site or in an acceptable, owner-controlled location proximate to the construction site and covered by the owner's or General Contractor's builder's risk insurance may be included in an insured advance.

L. Davis-Bacon wage rates will apply only to the onsite construction work.

M. Loan terms for industrialized housing must be based on proper assessment of the economic life of the project as determined by the appraiser (see [Chapter 7](#)), given the construction quality and material used.

## 5.8 New Construction Processing through Initial Endorsement

### 5.8.1 Plans and Specifications Revisions

A. Except for projects submitted as streamlined applications, drawings and specifications may be amended by addendum when the change(s) will have no effect on cost or value (final drawings and specifications are finalized after Firm Commitment in streamline processing). The Lender's Construction Analyst must review the addenda for acceptability as follows:

1. Addenda must clearly state or show the change with specific reference to the location of the item on the drawings or in the specifications.
2. Amendments shall be clearly noted and dated.
3. Addenda are not to be used to correct errors noted during Firm Commitment processing.

### 5.8.2 Major Changes

A. Firm Commitment reprocessing is required for major changes adding or deleting work representing a net change of more than 5% of estimated total construction costs, or physical changes that alter underwritten income and expense so as to change the approved mortgage amount by a sum greater than 5% of total construction cost. Drawings and specifications affected must have sheets and pages revised and replaced.

### 5.8.3 Construction Documents

A. The Lender shall submit the following construction documents to HUD for review and approval prior to initial endorsement:

1. Final, signature-ready drafts of the Building Loan Agreement, form HUD-92441M, the Construction Contract, form HUD-92442M and the Supplementary Conditions to the construction contract (form HUD-92554M).
  - a. Ensure the correct identification of drawings and specifications on contract forms.
    - 1) Project name, HUD project number, and Project Architect's name.
    - 2) Drawings and specifications by sheets, pages, and date or by index with date of last revision of sheet and page.
    - 3) Addenda, if any, by number and date.
  - b. Ensure compliance with any architectural requirement or condition.
2. Survey and Surveyor's Report, form HUD-91073M, which must be reviewed:
  - a. For compliance with Survey Instructions and Certificate.
  - b. To confirm that the legal description and survey property boundaries agree.
  - c. To confirm consistency of the approved plans and site plan with the survey and the description of any easements, joint use and access agreements, dedications of land for public rights of way, and state or local subdivision requirements.
  - d. The Survey (plat) shall be full-sized hard copy.
3. Contractor's Estimated Progress Schedule. Article 3.10.1 of the AIA General Conditions requires the General Contractor to prepare and submit an "estimated progress schedule for the work" to the Borrower and Project Architect. (See instructions for how to prepare the progress schedule in [Section 5.3.1.D](#)).
  - a. The Borrower or Project Architect must submit a copy to the Lender's Construction Analyst at least 30 days before initial endorsement, and a final copy must be provided with the permit-ready drawings not later than 10 days prior to endorsement.
  - b. The Lender's Construction Analyst must review the schedule to ensure it relates to all the construction activities required by the construction documents, including dates for the stages of construction.
  - c. Copies of the approved schedule are distributed with other construction documents at initial endorsement and used to monitor construction progress.
4. Drawings and Specifications. Submit three sets and confirm that:
  - a. Master Sets No. 1, 2 and 3 are the same as accepted and identified in the Firm Commitment. (For projects approved for streamlined processing, the Lender must confirm that the final plans and specifications are acceptable, complete and consistent with Firm Commitment exhibits.) Indicate the total number of pages in the drawings and specifications. HUD may, at its discretion, eliminate the requirement for set No. 2 (HUD review set).

- b. Cover and last drawing sheets, and the first and last specification pages of all sets, are signed by representatives of the Project Architect, Architect administering the contract, owner, contractor, Lender, and bonding company, if any.
  - c. Master Set is bound and signed as described above on the cover sheet and last sheet of the drawings and the first and last pages of the specifications. Signatories must initial opposite any “last minute” revisions not covered by Firm Commitment or addendum. The master set must be identified as such.
  - d. Lender’s signatory is an individual or individuals who are authorized to sign at closing, and who must sign and initial the plans and specifications (see [Appendix 5, Section A.5.5](#)). HUD will accept only the Lender’s authorized signatory, who must be identified as such for HUD by the Lender.
5. Drawings and Specifications. The Lender must retain one set and confirm that the:
- a. Lender set is the same as the set that was accepted and identified in the Firm Commitment (or approved after Firm Commitment per streamline processing). Indicate the total number of pages in the drawings and specifications.
  - b. Cover sheets are signed by representatives of the Project Architect, Architect administering contract, owner, contractor, Lender, and bonding company, if any.
  - c. Lender set is signed by signatories on the cover sheet and the last sheet of the drawings and the first and last pages of the specifications. Signatories must initial opposite any “last minute” minor revisions not covered by Firm Commitment or addendum or as approved per streamline processing.

#### **5.8.4 Recommendation for Initial Endorsement**

**A.** If construction documents are correct, the HUD senior Underwriter will recommend initial endorsement. In the event of errors or inconsistencies, the construction documents will be returned to the Lender for correction and resubmission.

#### **5.8.5 Distribution of Drawings and Specifications**

- A.** After initial endorsement, the Lender shall distribute the drawings and specifications as follows:
1. Set No. 1, The Master Set, is the legal contract document. The Lender shall deliver the Master Set to the HUD office (Regional or Satellite office) that will oversee the construction. Prior to closing, HUD will inform the Lender which HUD office will receive the set. HUD will:
    - a. Retain this set until the last guarantee inspection.
      - 1) Add a copy of each change order, form HUD-92437.
      - 2) Add a copy of each Architect’s supplemental instruction.
    - b. Use this set for processing change orders, review of inspection reports and similar functions.
    - c. Package the specifications in a tightly-rolled bundle with drawings on the outside, attach a memo indicating the HUD project number, and send it to the Regional Federal Records Center one year after completion of construction.

2. Set No. 2 is the Contractor's Set.
    - a. This set is to be delivered to the Contractor to be kept on site.
    - b. This set will be the Contractor's "record set," where the Contractor will record any updates during construction as "as-built."
  3. Set No. 3 is the HUD Inspector's Set.
    - a. The HUD inspector will use this set for inspection of the project.
    - b. The HUD inspector will conform this set to the contractor's "record set." (The Contractor is required to maintain at the site a record set for the owner.)
    - c. The HUD inspector will return this set to the HUD office upon completion of construction. This set will be the HUD "as-built" set.
    - d. Use this set for guarantee inspections.
    - e. HUD Inspector will send the "as-built" set to the HUD Regional Center/Satellite Office Director, one year after completion of construction, for use in loan servicing.
- B. Drawings and specifications to be maintained by the Lender (the "Lender Set"):**
1. In addition to the prescribed sets above, the Lender must maintain an additional set for a period of three years after final endorsement.
    - a. Add a copy of each change order, form HUD-92437.
    - b. Add a copy of each Architect's supplemental instruction(s).
    - c. The Lender may choose to keep electronic copies of the above documents. It is recommended that the Lender also maintain copies of HUD Trip Reports and other related documents distributed during the construction period.
  2. If the originating Lender will not administer the construction contract, the construction administering Lender must forward copies of each change order and Architect's supplemental instruction to the originating Lender for inclusion in the Lender Set.

## 5.8.6 Early Start of Construction

**A.** Construction work to be performed after receipt by HUD of the initial application but before initial endorsement constitutes an early start of construction. An early start of construction is prohibited in general but may be allowed only with the prior approval of the Director of the MF Regional Center/Satellite Office on a case-by-case basis.

**B.** Examples of permissible early start construction include minor clearing, grading, demolition, environmental remediation, and other preliminary site work that are not substantial in scope. In some cases, site improvements or grading work on a neighboring site might result in necessary adjustments to surface drainage or grades on the subject site, which may be deemed permissible. Similarly, utilities serving multiple proximate parcels might require installation of a main across the subject site and such work also may be permissible. Any requests for approval of early construction must be submitted during the review stage of the application. No work shall proceed without either a HEROS environmental review

or a determination that one is not necessary and the Borrower obtaining and evidencing all state or local approvals or permits requisite for that work.

C. The following are mandatory conditions for approval of an early start of construction:

1. **Firm Commitment.** There must be a valid outstanding Firm Commitment, including:
  - a. Site control and/or ownership of the land that will ensure the right to legally access the site for purposes of construction.
  - b. HUD-approved set of contract drawings and specifications on file. See [Appendix 5, Section A.5.5](#) for required Firm Commitment contract drawings and specifications.
  - c. Required construction contract and other construction documents, including, but not limited to:
    - 1) Construction contract, form HUD-92442M;
    - 2) Supplementary conditions of the contract for construction, form HUD-92554M;
    - 3) Applicable Davis-Bacon wage decision (supplied by HUD Labor Standards and Enforcement);
2. **Assurance of Completion for Onsite and Off-Site Work.** The early start may not hamper the ability of the Borrower to obtain a good and marketable title policy when the loan goes to initial closing.
3. **Valid Basis for Early Start.** The MF Regional Center/Satellite Office Director must document the file including the reason for granting an early start, after determining the following:
  - a. An immediate closing is not practical.
  - b. There is reasonable evidence and assurance that closing will occur in the near future.
  - c. There is a compelling need to start construction before the anticipated closing date.
  - d. An early start of construction will not be detrimental to HUD's interests.
  - e. HUD has no insurance obligation or liability whatsoever for costs incurred during an early start if the project does not reach initial endorsement.
4. The contractor, Borrower and Lender must execute form HUD-92415, Request for Permission to Commence Construction Prior to Initial Endorsement for Mortgage Insurance, without change. The MF Regional Center/Satellite Office Director must sign form HUD-92415.
5. The costs involved for the early start work must be included and reflected as relevant in the line items of the contractor's cost estimate (form HUD-2328). A table showing the cost breakdown of the early start items separately from the rest of the cost estimate should be attached to form HUD-92415 and be made part of form HUD-92264 Section O, Remarks.
6. Preconstruction conference must be held before the start of any construction (see [Chapter 12, Section 12.2](#)).
7. Violations of early start criteria must be referred to the MF Regional Center/Satellite Office Director for a determination as to whether the project may proceed to initial endorsement.



## 5.9 Substantial Rehabilitation Processing through Initial Endorsement

A. All of the previous instructions for standard processing of applications for new construction ([Section 5.7](#) and [Section 5.8](#) of this Chapter) apply to substantial rehabilitation projects except as modified here.

### 5.9.1 Concept Meeting

A. The concept meeting is an important opportunity to describe and determine the expected scope of work for existing properties, which may range from significant rehabilitation to more limited repairs and alterations.

B. A key result of the concept meeting should be consensus on the methods and the professionals that will be used to evaluate the existing buildings and define the scope of work. The Lender and Project Architect must describe a process consistent with [Appendix 5, Section A.5.7](#) and a timeline for evaluating the existing buildings and developing the scope of work and supporting due diligence.

C. [Appendix 5, Section A.5.3](#) defines a step-by-step process for determining whether seismic conditions warrant further analyses of existing buildings in accordance with the most recent standards of the American Society of Civil Engineers (ASCE). The threshold is easily determined, requires no onsite analysis or observation of buildings or sites and should be provided at the concept meeting to indicate whether seismic analyses are required. (The CNA e-Tool requires a determination of these same threshold values.)

D. The Lender should describe the existing or expected due diligence analyses including lead-based paint inspection for buildings constructed prior to January 1, 1978, buildings with asbestos materials and any other known or reasonably anticipated hazards. See [Chapter 9](#) for other environmental review requirements.

### 5.9.2 Pre-Application

A. The Lender's exhibits for pre-application are the same as those for new construction with these additional items or considerations:

1. **Due diligence and draft scope of work summary.** The Lender should submit a draft Scope of Work Summary prepared by the Project Architect in developing detailed plans, specifications and cost estimates based on conclusions from the Concept Meeting, the Project Architect's own detailed inspection and due diligence of the property.
  - a. The draft Scope of Work Summary should describe the overall anticipated scope of work and identify other due diligence professionals engaged and describe their qualifications.
  - b. The composition of the due diligence team should be based on the condition of the property and address foreseeable issues based on the Borrower's objectives and the proposed improvements (scope of work).
  - c. The results of any more advanced due diligence agreed upon at the Concept Meeting (e.g., a joint inspection by the design team) should inform the pre-application.

- d. The summary descriptions of the proposed improvements should include sketch plans. The final Scope of Work Summary should be submitted at the Firm Commitment Application per [Section 5.9.3.A.3](#) below.
2. **Joint inspection and report.** The purpose and the requirements of the joint inspection are as follows:
  - a. To establish a common understanding of the existing physical condition of the property and the necessary improvements to be addressed in the scope of work. All involved parties should agree on the methods and procedures necessary to adequately evaluate the physical needs, such as intrusive testing and various professionals to be employed for further assessments and developing the scope of work.
  - b. The Lender is responsible for arranging the joint inspection and reporting the findings.
    - 1) At a minimum, the Borrower, the Lender's Underwriter or a representative, the lender's Construction Analyst and the Project Architect must attend.
    - 2) HUD staff may attend depending on the availability and the complexity anticipated.
    - 3) The local Building Code Official should be encouraged to attend, particularly for the older properties that were built in compliance with outdated building code. The official should be asked to provide guidance on any improvements required to meet the current code and safety standards particular to the jurisdiction.
    - 4) The Lender is responsible for documenting the inspection with notes, annotated photographs and summary of conclusions in writing and distributed to all involved parties.
  - c. The joint inspection should be scheduled as early as feasible and may follow the concept meeting. If not scheduled prior to the pre-application, it must be scheduled promptly following the pre-application and before the execution of further due diligence or design work.
  - d. Except for LIHTC projects, a decision on any request for streamlined processing should be made only after the joint inspection, or subject to the completion of the joint inspection.
3. **Requests for streamlined processing.** Given the more contingent and variable circumstances typical of work with existing buildings (by contrast with new construction), any Borrower or lender request for streamlined processing for substantial rehabilitation (other than LIHTC projects) must include documentation demonstrating prior experience and capacity in properties of similar scale, condition, and building technologies employed. This demonstration should be made for each participant: Sponsor, Project Architect and design consultants, Needs Assessor and any due diligence consultants, General Contractor, and the Lender's Construction Analyst.
4. **Sketch plans of existing building(s).** The Project Architect should provide "as-is" sketch plans of existing buildings with the pre-application.
5. **Year built.** The Lender should determine the year built for each building and whether each building was built for first occupancy after March 13, 1991, using dates of occupancy permits and building permits when any doubt exists. (If a CNA is prepared as part of due diligence, the CNA e-Tool will require the Needs Assessor to obtain and supply this information.) If first occupied after March 13, 1991, each such building must conform to the design and construction requirements of the Fair Housing Act (42 USC 3604(f)(3)(C), and 24 CFR 100.205). See [Appendix 5, Section A.5.2](#).

6. **Federal Assistance.** The Lender must determine whether the property is proposed to be or ever has been Federally assisted. The CNA e-Tool requires this information. If so, the property must conform to the Uniform Federal Accessibility Standards and the requirements of 24 CFR 8.23, 8.26, 8.31, and 8.32. See [Appendix 5, Section A.5.2](#).
7. **Lead Based Paint.** The Lender should provide lead-based paint (LBP) test reports for projects constructed prior to January 1, 1978, and asbestos report. Delivery of these due diligence items may be deferred until Firm Application if consistent with and scheduled as part of an agreed work plan for due diligence.
8. **Environmental Review.** See [Chapter 9](#) for environmental review requirements.

### 5.9.3 Firm Commitment Application

A. The Lender shall submit final drawings, specifications and costs analyses and unsigned contract agreements similar to applications for new construction except as follows:

1. **Form of Drawings and Specifications Matched to Scope of Work.** The Borrower's architectural, engineering, and cost exhibits for substantial rehabilitation must be based on due diligence studies and examination of existing conditions. Because existing conditions vary widely, the extent and form of drawings and specifications (plans and specs) will also vary. For substantial rehabilitation, plans and specs should be prepared and submitted in the same manner as for new construction.
2. **Lender Construction Analyst's Review Reports.** The Construction Analyst should specifically determine whether the scope of work documented in the plans and specs adequately addresses the existing conditions and deficiencies including life safety deficiencies and accessibility violations. All the proposed work must be described adequately with a level of detail that describes measurable quantities, specified quality or performance standards, precise locations of work, and is both actionable and amenable to inspection of completed work.
3. **Final Scope of Work Summary.**<sup>15</sup> The Construction Analyst must prepare a final Scope of Work Summary that concisely and descriptively itemizes all the improvements that the Project Architect has designed and proposed to do as prescribed in the final plans and specs.
4. **Building and Unit Areas and Counts.** Building and unit area and unit count breakdowns by buildings as well as the project totals should be recorded as a schedule (table) of buildings and units in the drawings prepared by the Project Architect in accordance with [Appendix 5, Section A.5.5](#). These counts and areas should also be entered in the CNA e-Tool. An approved CNA prepared in the CNA e-Tool creates a permanent electronic record of this information and should be inclusive of all the proposed improvements.
5. **Operation and Maintenance Plans.** For projects that contain lead-based paint (LBP), asbestos, or have ongoing risks such as radon that may require permanent installation of ventilation, detection, or alarm devices, the Borrower or Project Architect is responsible for engaging the services of qualified abatement contractor(s) to prepare a scope of work for the abatement or mitigation. Where the scope of abatement work consists of permanent enclosure or encapsulation or ongoing monitoring, but not removal, a qualified consultant or abatement contractor(s) must also prepare, separate from the

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<sup>15</sup> Previously referred to as "Detailed Work Write-Up".

scope of abatement work, an Operations and Maintenance (O&M) Plan. The O&M Plan must describe ongoing maintenance procedures to be followed for as long as the hazard remains in place. All abatement work and ongoing maintenance activities for radon, LBP, asbestos, and/or any other hazards shall conform to the requirements described in [Chapter 9](#). At the time the CNA is submitted in the CNA e-Tool, any O&M plans should be attached with the submission. A condition shall be attached to the Firm Commitment requiring that the Borrower operate and maintain the property consistent with the referenced O&M plan(s) for the duration of the insured mortgage.

6. **Davis-Bacon Wage Standards and the CNA e-Tool.** For substantial rehabilitation, the future replacement costs of the components and systems estimated in the CNA e-Tool for the purposes of financial planning are not subject to wage decisions. On the other hand, the summation of costs in the standard trade breakdown in General Contractors estimate (form HUD-2328) should be based on the contractor's use of the prevailing wage decision. The Lender's Construction Analyst's detailed estimate (form HUD-92326) and comparison of estimates (form HUD-92331-B), together with the architectural and cost portions of form HUD-92264 signed by the Construction Analyst, should also reflect the use of the prevailing wage decision. These forms should be part of the Construction Analyst's cost analysis report.
7. **Project Architect's Certification.** For applications proposing substantial rehabilitation, the Project Architect's certification ([Appendix 5, Section A.5.8.1](#)) should be submitted.
8. **Construction documents, certifications, and studies.** The construction documents (plans and specs), Project Architect's certification, due diligence, engineering, and related studies, if any, and the Lender Construction Analyst's cost package is submitted in the same manner as for new construction.
9. **Historic Preservation.** Consultation with the State Historic Preservation Officer (SHPO) is required as part of HUD's determination of whether the property is a historic property or is in a designated historic district, and whether there will be adverse effects to a historic property. The SHPO consultation must be completed no later than the submission of an application for Firm Commitment. (See [Chapter 9](#)).
10. **Environmental Review.** See [Chapter 9](#) for environmental review requirements.

## 5.9.4 Firm Commitment to Initial Endorsement

A. After Firm Commitment and not later than 30 days prior to the initial endorsement, the Lender must assemble the final, printed plans, drawings, specifications, construction schedule, and contract forms. Even if such documents were electronically submitted, they must still be printed and signed in the requisite number of counterparts as described in [Section 5.8](#) and confirmed as sufficient, authentic and final documents for contract purposes.

## 5.10 Standard Processing for Section 223(a)(7) and 223(f)

A. The previous instructions in this Chapter apply to projects insured pursuant to Section 223(a)(7) and 223(f) for repairs and alterations, except as modified below.

## 5.10.1 Architectural Standards

A. Eligible properties are existing buildings, and the criteria for acceptance are **not** the same as for proposed construction. See Appendices 5A and 5B for architectural standards for existing buildings.

## 5.10.2 Concept Meetings

A. Neither concept meetings nor pre-applications are needed for 223(a)(7) applications and are not required for 223(f) applications, and the Firm Commitment applications may be submitted directly to HUD for review.

1. A concept meeting may be advisable for 223(f) applications with Level 2 and/or Level 3 Alterations that are significant and approach the threshold definition of substantial rehabilitation (See [Section 5.1.2](#)). In that event, the purpose of the concept meeting is to determine the scope of work, or to establish agreed upon due diligence that will develop the scope of work.
2. A concept meeting is also advisable for Section 223(f) applications receiving new tax credits.
3. Section 223(f) applications with repairs and alterations intended to achieve a green building certification should be presented in a concept meeting, in which event a purpose of the concept meeting is to confirm the appropriate choice of a green building certification and achieve mutual understanding of the requirements for certification.

## 5.10.3 Capital Needs Assessment

A. Except for properties receiving new tax credits, a CNA based on existing conditions is required for all applications submitted under Sections 223(a)(7) and 223(f). The Lender must retain a qualified Needs Assessor who must complete the assessment in accordance with [Appendix 5, Section A.5.7](#) not earlier than 180 days prior to the application for Firm Commitment. The CNA prepared for properties receiving new tax credits should be prepared to describe future replacement needs consistent with the procedure described in [Section 5.6.2.A.4](#).

B. A previously completed CNA may be accepted if:

1. It is dated not more than three years prior to the date of application for Firm Commitment;
2. The MF Regional Center/Satellite Office Director approves the use of the existing CNA for purposes of the application;
3. The CNA contents and scope conform to the requirements of Appendices 5B and 5G and the CNA is prepared in the CNA e-Tool; and
4. The mortgagor and Lender are required to provide a new CNA not later than 10 years after the date of the CNA accepted with the application.

B. If the date of the CNA is more than 180 days from the submission date of an acceptable Firm Commitment application, HUD will return the CNA to the Lender and the Lender must order an updated CNA. The Needs Assessor must re-inspect the subject property, updating any structure and/or site conditions observed, and submit the new CNA in the CNA e-Tool.

## 5.10.4 Lender's Review of Costs

**A.** Lender should ensure that each repair and alteration work items listed in the CNA e-Tool is identified by Class of Work and properly cross-referenced with any plans and specs, as relevant.

**B.** When a General Contractor is engaged, the Lender should verify that the costs of repairs and alterations as reported in the CNA e-Tool's lists of Critical and Non-Critical repairs are hard costs only<sup>16</sup> and consistent with any bids obtained or if applicable, General Contractor's AIA A104.

**C.** Report costs (both the hard costs and soft costs) in accordance with [Section 5.3.3.5](#) using the Lender's 223(f) Repairs & Alterations Cost Worksheet (Cost Worksheet) when a Project Architect and/or General Contractor is involved.

**D.** No totals from the Cost Worksheet should be transferred to form HUD-92264, Section G. However, the Lender should ensure that their appraiser is provided with the Cost Worksheet and the lists of repairs and alterations so that the appraisal may establish value based on the assumption that repairs and alterations are completed. If the appraiser concludes that repairs and alterations have a material impact on income (Section C), on amenities and services (Section D), or on expenses (Section E) then these impacts should be reflected in the relevant section and explained in Remarks (Section O). The CNA e-Tool report entitled "Property Insurance Schedule" (the automated HUD Form 92329) describes the estimated replacement cost for all improvements assuming the improvements are reconstructed at current construction pricing. This figure should be entered in line 72 of Section G. The appraiser's valuation of the land should be entered in line 73a and the total entered in line 74.

**E.** Similarly, on form HUD-92013, the description of the property (Section C), available utilities (Section D), income (Section E), equipment and services (Section F,) and expense (Section I) should assume the completion of repairs and alterations. In Section G, the sum of hard and soft costs of repairs and alterations should be entered in line 20. If a refinance, the amount required to pay-off existing liens should be entered in Section G, line 23 and the line item renamed "Existing Debt". If an acquisition, the contract price should be entered in Section G, line 46 and the line item renamed, Purchase Price. These entries plus other costs (MIP, financing fees, due diligence fees, relocation, etc., on lines existing in Section G of form HUD-92013) will be summed in Section J, Line 1.

**F.** The referenced HUD Forms (92264; 92264A; 92013) are not attachments to the CNA in the CNA e-Tool.

## 5.10.5 Certification

**A.** By submitting the CNA through the CNA e-Tool, the Lender certifies that it has selected a qualified Needs Assessor with no conflicts of interest in the transaction and has reviewed the assessment for completeness, accuracy, reasonableness, and conformance to HUD requirements. (See [Appendix 5, Section A.5.7](#) for certification language.)

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<sup>16</sup> Soft costs should not be apportioned to individual repair work items. They are separately recorded. This is because the cost of any component, either installed for the first time or replaced as other than a "One Time Repair," will be scheduled for replacement in the future at the end of its Estimated Useful Life. Adding soft cost to that component perpetuates the one-time soft cost in each future replacement.



## 5.10.6 Firm Commitment

**A. Application Exhibits.** Required architectural/engineering/cost related exhibits as listed in [Appendix 5, Section A.5.4.3](#) must be submitted at the time of Firm Commitment Application.

**B. Attachments to Firm Commitments.** For Section 223(f) applications with no new tax credits, the scope of work for any repairs and alterations may be described by attaching to the Firm Commitment the printed results of the Lender's 223(f) Repairs & Alterations Cost Worksheet along with the printed lists of repairs and alterations from the approved CNA e-Tool. When a detailed construction schedule is required, it too should be attached. If plans and specifications and AIA contracts exist, they should be referenced but not attached.

**C. Title Surveys and Reports.** For specific survey requirements, see [Appendix 5, Section A.5.1.11](#).

## 5.10.7 Time for Completion of Repairs

**A. [Appendix 5, Section A.5.7](#)** requires that all repairs and alterations be identified as either critical or non-critical. Critical repairs are further identified as either Life Safety or Accessibility. The "Life Safety" repairs address any hazards to life and health, while the "Accessibility" repairs are to correct accessibility deficiencies. While these are not mutually exclusive, only one designation may be applied to each repair or alteration. All other repairs and alterations are Non-Critical repairs.

**B.** Life Safety Critical repairs must be completed prior to Endorsement.

**C.** Accessibility Critical repairs must be completed prior to endorsement. When completion prior to endorsement is not possible due to an extensive scope, the repairs must be done as soon as possible within twelve months of closing. The time required to complete each repair must be identified as a number of months, no greater than twelve. The months identified must reasonably demonstrate "as soon as possible" and should be supported with reasons considering the difficulty and the scale of the work, external factors such as the weather, labor market, and logistics, such as scheduling.

**D.** For any Accessibility repairs that are proposed to exceed twelve months, a corrective action plan must be referred to HUD headquarters to the attention of the Director of Technical Support in the Office of Multifamily Housing Production, who will determine whether the proposed corrective action plan is acceptable.

**E.** Non-Critical repairs must be scheduled to begin promptly after closing and timely completed within twelve months of the endorsement. The MF Regional Center/Satellite Office Director may approve an extended period not to exceed six additional months for unusual circumstances (e.g., work constrained by weather conditions or work requiring temporary relocation of elderly or disabled tenants). A program of repairs and alterations, which, because of scale or quantity, is reasonably expected to require more than a year to complete should be reconsidered as substantial rehabilitation.

## 5.10.8 Escrow Agreement for Deferred Repairs

**A.** The costs of the deferred repairs (including materials, labor, permits, profits, etc., trended to the start of repairs) must be estimated and withheld in cash from mortgage proceeds and placed in escrow. In this context, deferred repairs include all immediate repairs identified in the CNA that are proposed for



completion after endorsement, including both Non-Critical repairs and any accessibility remedies that cannot be completed prior to endorsement. A letter of credit may not be substituted for this escrow.

**B.** An additional cash amount (or letter of credit, at the option of the Lender) of not less than 20 percent of the repair cost estimate will also be placed in escrow as an assurance of completion of deferred repairs, provided however, that;

1. For Section 223(a)(7) transactions and Section 223(f) for affordable properties, the additional amount shall be 10% of the repair cost; and,
2. For Section 223(f) applications, the additional deposit may be reduced to 10% of the cost for any repairs and alterations where:
  - a. a design professional has prepared construction drawings, and the Borrower has engaged a non-identity of interest General Contractor to execute the work; and
  - b. the contract provides for the withholding of retainage in the amount of 10% of the value of work completed.

**C.** The Lender may release funds from the mortgage proceeds portion of the escrow in proportion to the cost of work completed consistent with HUD's instructions for disbursements from repair escrows. See [Chapter 12, Section 12.17](#).

**D.** Funds remaining in the escrow may be released to the Borrower when:

1. All repairs have been satisfactorily completed as determined by HUD or Lender when delegated to an approved Lender;
2. Evidence of clear title has been provided to HUD; and,
3. In cases where the cost of repairs and alterations included in the Repairs Escrow exceeds \$400,000, the Borrower (or the General Contractor in cases where a construction contract was executed) has provided latent defects assurance in the form of an escrow in cash or letter of credit or surety bond (at the option of the Lender) equal to 2½% (or a greater percentage, as warranted) of the repair cost, to be maintained for fifteen months from completion of repairs. See paragraphs 8 and 9 of form HUD-92476.1M for further details.

**E.** Except in the case of existing insured projects, where the current balance in the RfR)escrow may exceed the initial deposit otherwise required to provide a balanced financial plan for future capital replacement needs, funds deposited in the RfR escrow account at or after endorsement shall not be used for the completion of any immediate repairs and alterations.

**F.** See form HUD-92476.1M, Escrow Agreement for Deferred Repairs, as well as [Chapter 8, Section 8.11.1.A.2.c](#) and [Chapter 12, Section 12.17.1](#) for greater detail on repair escrows.

**G.** If proposed repairs or alterations require occupancy or cash flow disruption, the Lender should estimate such losses by month and add the aggregate total to an operating deficit escrow, not the repair escrow.

**H.** In cases where completion of repairs is deferred and the mortgage amount exceeds the costs of refinancing and all required costs, including repairs ("cash-out transactions"), the Lender shall withhold 50% of the excess proceeds until all repairs and alterations are completed in a manner acceptable to the

Lender and HUD. The withheld funds will be added to the repair escrow. (See [Chapter 8](#) for more detailed description of the calculation of surplus cash withheld and escrow release instructions).

## 5.10.9 Completion of Repairs and Alterations

A. If the Borrower has not completed the required scope of work consistently with the repair schedule set in the Escrow Agreement (as adjusted for any HUD-approved extensions), the Lender shall complete the work using the remaining escrowed funds including assurance of completion amounts. The Lender will provide HUD a new repair schedule. In addition, the Lender will provide the Borrower with a breakdown of these repairs and the cost(s) of completion (including administrative expenses). Funds remaining in the escrow account after completion of the repair work will be returned to the Borrower, less reasonable administrative costs incurred in completing the repairs.

B. In cases where all or a portion of the costs of repairs and alterations support the size of the loan amount and actual costs are less than estimated, the maximum insurable loan amount must be recalculated and this recalculated figure compared to the endorsed loan amount. When the recalculated maximum insurable loan amount is less than the endorsed amount, the Borrower must use the excess proceeds for one or more of the following purposes:

1. Additional repairs approved by HUD and the Lender; and/or
2. Prepayment of the mortgage in amounts equal to the scheduled monthly principal payments, with any remainder going to the RfR.

## 5.11 Processing Section 241(a) Supplemental Loans

### 5.11.1 Supplemental Loan for New Construction

A. [Section 5.3.2](#) requirements and instructions apply to Section 241(a) applications involving new construction, except as modified below:

1. A CNA of the existing improvements at the property is required to identify deficiencies and repair needs as may exist in the existing improvements for which repairs and alterations must be included in the proposed scope of work. However, a single CNA e-Tool for the entire property must produce one RfR schedule of all the components, inclusive of future replacements at the existing improvements as well as for any proposed new structures and additions.

B. Processing requirements for new construction as described in [Section 5.7](#) and [Section 5.8](#) apply.

### 5.11.2 Supplemental Loan for Existing Structures

A. Section 241(a) applications involving substantial rehabilitation as defined in [Section 5.1.2](#) are required to meet the following:

1. For the buildings and other structures undergoing substantial rehabilitation at the property, the requirements in [Section 5.3.2](#) apply regarding required professional services, documentation, and oversight.

2. Processing requirements for substantial rehabilitation as described in [Section 5.7](#), [Section 5.8](#), and [Section 5.9](#) apply.
  3. When certain existing buildings and improvements are not included in the substantial rehabilitation scope of work, a CNA for those existing structures is required. Any identified deficiencies and immediate repair needs must be included in the plans and specs produced by the Project Architect for the substantial rehabilitation work.
  4. The structures to be built or substantially rehabilitated are included in the CNA based only on future needs planning, derived from plans and specs.
  5. 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 (RfR) schedule and budget inclusive of the existing improvements, as well as the proposed improvements.
- B.** Section 241(a) applications involving repairs and alterations require the following:
1. Section 241(a) applications with a scope of work less than substantial rehabilitation must follow the requirements described in [Section 5.3.3](#) and the following:
    - a. The CNA should identify and categorize repair needs in the same manner as Section 223(f) applications.
    - b. The identified repairs must be remedied in the proposed scope of work in the Section 241(a) application and the cost of such repairs may be included in the Section 241(a) loan amount.
    - c. The Section 241(a) loan combined with the original first mortgage shall be considered one project and the CNA must produce one RfR schedule and budget inclusive of the existing improvements as well as the proposed improvements.
    - d. Processing requirements for Section 223(f) as described in [Section 5.10](#) apply.

## 5.12 Cost Estimating for Lenders

**A.** Evaluating the estimates of construction cost prepared by the Borrower, Project Architect, General Contractor, Needs Assessor, and/or Construction Analyst is a critical element of the Lender's underwriting task. It is the Lender's responsibility to ensure that the Borrower and third-party professionals have developed and described costs in accordance with [Chapter 5](#). For new construction and substantial rehabilitation projects under Sections 220, 221(d)(4), and 241(a) supplemental loans, replacement cost is one of the criteria used to determine the insured mortgage amount. In value-based programs, Section 231 and Section 223(f), replacement cost is a significant consideration in valuation, (except for properties 10 or more years old). Cost estimating consists of estimates of the construction costs for proposed improvements and/or repair and alteration costs for existing improvements.

### 5.12.1 Estimation Method

**A.** For new construction and substantial rehabilitation, the cost estimating method should be similar to that used by General Contractors. For new construction and substantial rehabilitation, data should be

organized by trade division using the Construction Specification Institute (CSI) Format,<sup>17</sup> then adjusted to reflect cost differences due to time, location, and price fluctuations. The cost estimate may be prepared using a quantity takeoff or a square-foot and per-unit cost approach using established data and making adjustments. The Lender's Construction Analyst must develop form HUD-92326 cost estimates independently and compare with the General Contractor's HUD -2328 costs using the HUD -92331-B.

**B.** For repairs and alterations less than substantial rehabilitation, Needs Assessors and Lender Construction Analysts should develop and document costs in the CNA e-Tool, estimating costs for each repair item and component replaced or added new.

**C.** Replacement cost and insurable values for each building are calculated for casualty insurance purposes. Insurable values by building must be estimated assuming the task of reconstructing the building if it is destroyed, i.e. for the cost of replacing the building as if new (not restoring the structure as it was originally built using obsolete methods and materials). Accordingly, for all existing structures, replacement cost as if new (notwithstanding its condition) should be estimated for each building on a "per square foot" basis. This figure should be entered in the CNA e-Tool on the Buildings screen. For new construction, estimated costs are "as if new" and so total estimated costs of buildings, (not site improvements) including soft costs and fees should be converted to a "per square foot" figure for each building and entered in the CNA on the Buildings screen. (See [Appendix 5, Section A.5.7.5](#)).

**D.** The data source(s) used to prepare cost estimates must be documented. Acceptable cost data may come from completed comparable projects, benchmark amounts taken from actual project costs, and published data from construction cost data publishers. The CNA e-Tool requires that replacement cost estimates briefly describe data sources/methods.

**E.** The Lender's Construction Analyst should use detailed plans and specifications supplied by the Project Architect as a basis for the cost estimate. Estimates must reflect the general level of construction costs in the locality where construction takes place. Costs must be projected to the midpoint of the estimated construction period. Davis-Bacon labor wage rates must be used for new construction and substantial rehabilitation. It is the Lender's responsibility to obtain current Davis-Bacon wage rates from HUD and to ensure that the project design team and General Contractor are provided with the relevant and most recent, applicable wage decisions. For new construction and substantial rehabilitation, the cost estimate is tabulated on form HUD-92326, and totals are reported in Sections G, M, and O of form HUD-92264.

## 5.12.2 Cost Categories

**A.** The cost estimate consists of the following items:

1. Structures and Land Improvements include:

- a. Costs of all residential buildings, including footings and foundations.
- b. Garages, including all covered parking, from individual carports to complete parking structures. For new construction and substantial rehabilitation, include free-standing garage structures with other accessory buildings on the Accessory Structures line on form HUD-92326. Garages are reported separately in Line G.39 on form HUD-92264, except when the garage space is an integral portion of a larger structure; in which case individual trade costs should be reported for the entire

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<sup>17</sup> HUD forms reflect the sixteen-division CSI format (pre-2004).

structure and not separately for the parking element. Similarly, costs should not be separated when accessory uses or commercial space is included as part of a larger dwelling structure.

- c. Surface parking, including carports, which are treated as site improvements in the CNA e-Tool. In a building designed exclusively for parking (or if parking is a use of space in a larger building with other uses), all enclosed (garage) parking is treated as a common space even if spaces can be or are assigned to particular tenants or units. In some building configurations (e.g., attached townhouses) garages may be part of a dwelling unit and available only to a resident of that unit. Such garages are called “in unit” garages and the square foot area of such “in unit” garages is included in the area of the unit. “In unit” garages are not common space. Replacement cost is estimated for each building including all the uses of space in the building.
- d. Onsite land improvements that make up the following trade line items on form HUD-92326: Earthwork, Site Utilities, Roads and Walks, Site Improvements, Lawns and Planting, and Unusual Site Conditions. In the CNA e-Tool onsite land improvements are identified as the need category “site systems.”
- e. In new construction and sometimes in substantial rehabilitation, unusual land improvements required to address conditions not typical to most construction in the locality (e.g., excessive excavation, rock excavation, cuts and fills, special foundations, high water table, problem soils, environmental remediation work or installations). These items are taken from the Unusual Site Conditions trade line item on form HUD-92326 and are reported separately in Line G.36a of form HUD-92264. They must be itemized separately because of their possible impact on site value. The Lender’s Construction Analyst should consult with the Lender’s Underwriter and appraiser to define and quantify the need for unusual land or site improvements.
- f. Short extensions or connections of roads, walks, and utilities from project site boundaries to adjacent offsite public improvements are considered onsite land improvements.

**B. Supplemental Cost Estimates include:**

1. **Demolition.** Demolition, which is defined as onsite work to remove the existing structure, footings, foundations, and utilities to prepare a site for new construction.
  - a. Include the removal and disposal of debris and fill and compaction of excavations. Include General Contractors' and subcontractor’s overhead and profit in the estimate.
  - b. Report on form HUD-92326, under “demolition,” and form HUD-92264, Section O. Appraiser will report Demolition costs in Section J of form HUD-92264.
  - c. Demolition should not be included in the construction contract.
  - d. “Demolition” in this context does not include interior demolition within existing structures undergoing substantial rehabilitation.
2. **Offsite.** Offsite work is work not adjacent to project boundaries including utilities, walks, curbs, gutters, streets, drainage structures, landscaping, etc., that extend away from the project site. These improvements are not included in the construction contract. Report on form HUD-92326 and Section M of form HUD-92264.
3. **Cost Not Attributable.** Cost Not Attributable to dwelling use is the construction cost estimate of certain project amenities not directly used for residential dwelling and is calculated only for

properties where Criterion 4 is the determining criterion. This cost is calculated by the cost analyst and used by the appraiser to increase the maximum mortgage amount under Criterion 4 of form HUD-92264-A (Statutory maximum insurable mortgage amount per dwelling unit). Criterion 4 is typically not material in determining the maximum insurable mortgage, and the calculation is material only when project costs are likely to exceed the statutory limit and when a portion of those costs are not attributable to dwelling units.

- a. Cost Not Attributable must be included within the estimate of total structures and land improvements, and the costs must be itemized and reported separately on form HUD-92326 and Section M of form HUD-92264. The reason to estimate cost-not-attributable is to isolate construction costs for (A) all improvements and for (B) selected improvements not related to or necessary for the dwellings (non-residential use). In each case, the total is without general requirements and fees.
- b. The percentage of (B) divided by (A) is the percentage of costs not attributable. Such a percentage should be calculated for both residential buildings/spaces and commercial buildings/spaces in the project, and neither number may exceed a fixed maximum of 15%. The two are added together to obtain the project percentage of cost-not-attributable.
- c. This figure is used to allocate a proportionate share of all other mortgageable costs (fees, construction period interest and finance charges, etc.) between dwelling use and costs not attributable to dwelling use. The total of all Costs Not Attributable times the maximum percentage loan-to-cost ratio is added to the maximum statutory limit calculated for the number of units by type. The sum is the maximum mortgage amount per Criteria 4. (See [Appendix 5, Section A.5.10](#)).
- d. Cost Not Attributable to dwelling use for Section 223(f) Statutory Limit Constrained deals may be used to adjust the statutory limits (Criteria 4 of the form HUD-92264A) for all Section 223(f) insured loans applications. See [Appendix 5, Section A.5.11](#) for calculating Cost Not Attributable for Section 223(f)s.

### 5.12.3 Allowances and Fees

A. Allowances and fees are reported on forms HUD-92326 and HUD-92264 as lump-sum dollar amounts but should be supported with itemized cost schedules attached to these forms. Allowances and fees include:

1. **General Requirements (Job Overhead).** Covers project-specific overhead and construction staging expenses. Include:
  - a. Supervision and jobsite engineering;
  - b. Onsite job office expenses directly related to the project including clerical wages;
  - c. Temporary buildings, tool sheds, shops, and toilets,
  - d. Temporary heat, water, light and power for construction;
  - e. Temporary walkways, fences, roads, siding and docking facilities, sidewalk and street rental;
  - f. Construction equipment rental not included in trade item costs;
  - g. Cleanup and disposal of construction debris not included in trade or sub-contract costs;



- h. Medical and first aid supplies and temporary facilities;
  - i. Security guard wages and related costs;
  - j. Theft and vandalism insurance. (does not include Builders Risk Insurance);
  - k. Builders Risk Insurance. Builders Risk Insurance is separate from any theft and vandalism insurance policy provided by the General Contractor. While Builders Risk Insurance may be placed by either the General Contractor or the Borrower, it is common industry practice for the contractor to place the policy, with the contractor named as Insured, and the Borrower named as "Other Insured." Regardless of which party is responsible for payment, the Borrower must always be named as an Insured party, as per Builder's Risk Insurance requirements in form HUD-92447, Property Insurance Requirements.
  - l. When the contractor pays for the policy, the premium may be included in the General Requirements or the contractor's Other Fees. When the Borrower pays for the policy, the insurance premium is included under Insurance online G-55, Insurance, of Form HUD92264.
  - m. Salaries for site visits by owners, partners, or officers of the general contracting firm are included in General Overhead, except for payment for work done on the job by these individuals in a trade capacity, as laborers or supervisors.
2. **General Overhead.** Covers contractor's home office or principal office and general business expenses. The amount is fixed at up to two percent of the sum of Total Land Improvements, Total Structures, and General Requirements.
3. **Builder's Profit or Fee.** Builder's Profit or Fee is calculated as a percentage of the sum of Total Land Improvements, Total Structures, and General Requirements. The percentage amount is determined by the nature and location of the project and market conditions and should be compared to the amount of the fee negotiated between the Borrower and contractor for reasonableness. When the General Contractor is an independent third party (no identity of interest with the Borrower or Sponsor), the Builder's Profit or Fee is an actual cost that must be paid to the General Contractor. This applies to all non-identity of interest General Contractors participating in any of HUD's mortgage insurance programs. When the General Contractor has an identity of interest with the Borrower, see paragraphs "d" and "e" below.
4. **Development fees in Value Based Programs - Sections 231 Substantial Rehabilitation and 223(f).** Except for certain affordable housing transactions, development fees payable to affiliates of the Borrower (i.e., identity of interest participants) are not mortgageable costs and should not be included in the cost estimate. A reasonable and customary general contractor fees and costs payable to unaffiliated third parties are eligible. (See [Appendix 3, Section A.3.2](#) for treatment of fees in certain affordable housing transactions.).
5. **Architect's Fees.** The source of this cost is the Owner-Architect Agreement, (see [Section 5.3.4](#)). If there are multiple prime agreements (e.g., separate Design Architect and Supervisory Architect), total all fees in line G 45 of form HUD-92264 and itemize in Section O, Remarks. The Lender's Construction Analyst should copy the fee amounts, unaltered, to the cost estimate. The Construction Analyst should document Architect's fees and compare with existing fee data to determine reasonableness. The Construction Analyst should inform the Lender's Underwriter if fees are significantly different from the data range, but the fees should not be altered on the cost estimate without a prior meeting



between the Lender, Lender's Construction Analyst, Borrower, and Project Architect. For new construction and substantial rehabilitation applications, fees should be documented as a percentage of the sum of Total Land Improvements, Total Structures, General Requirements, General Overhead, and Builder's Profit. The Architect's Fee usually consists of a design fee to cover the cost of the preparation of all construction documents (working drawings and specifications) up to the start of construction; it typically represents 75 to 80 percent of the total fee. The Architectural Supervision fee covers the cost of the Project Architect's construction inspections, reports, and preparation of change order requests; it typically represents 20 to 25% of the total fee.

6. **Bond Premium.** This covers the cost of Payment/Performance Bonds used to ensure completion of construction in event of a default by the General Contractor. The bonding or surety company determines the premium or cost based on its perception of risk in light of the contractor's financial capacity and performance history and the nature of the work. The Letter of Credit Fee can be mortgaged if the Developer is using a letter of credit for assurance of completion instead of bond.
7. **Other Fees.** Costs of various required items and services can vary greatly among jurisdictions and localities. Other Fees can be paid either by the Borrower or the General Contractor. The Borrower should submit an itemized list of all project-related Other Fees as an aid to the Construction Analyst. Other Fees paid by the General Contractor should be entered in form HUD-2328. Owner's Other Fees entered into form HUD-92264, Section G include the General Contractor's Other Fees amounts. Other Fees include:
  - a. Site and topographic surveys;
  - b. Subsurface exploration (test borings);
  - c. Soil tests, concrete tests, and other construction testing;
  - d. Fees for utility taps and connections;
  - e. Impact fees for public infrastructure;
  - f. Building permits and licenses;
  - g. General Contractor's cost certification audit fee (if required). NOTE: The Borrower's cost certification audit fee is not to be included in Other Fees since it is recorded separately in Line G.66 of form HUD-92264; and
  - h. Builders Risk Insurance, which may be included with general Requirements or Contractor's other fees (only if paid for by General Contractor).
8. **Furniture, Fixtures, and Equipment (FF&E).** This category includes substantial indoor and outdoor furniture and equipment (e.g., trash dumpsters, pool or recreational equipment, permanent lobby or reception area furnishings, golf carts). It may not include titled vehicles, minor items of relatively insignificant cost such as furniture accessories, rental unit furnishings, hand tools and hand power tools, or expendable items. An itemized schedule of FF&E with cost for each item will be submitted with the cost documents and reviewed by the Lender's Construction Analyst for acceptability. Costs may include only delivery and placement of the item. The dollar amount of FF&E will be reported in line G.60 of form HUD-92264; "AMPO percent (nonprofit only)" will be lined out and substituted with "FF&E".

## 5.12.4 Builder's and Sponsor's Profit and Risk Allowance (BSPRA)

**A.** BSPRA is a presumed profit for development and construction of a multifamily project. It is unique to applications for new construction or substantial rehabilitation under HUD's "cost-based" programs (Sections 220 and 221(d)(4)) when an identity of interest exists between the Borrower and the General Contractor.

**B.** BSPRA is always 10% of replacement cost, not including land but is itself not an actual cost or fee to be paid to the identity of interest General Contractor and/or development entity (Sponsor). It is used to calculate the mortgage amount in Criterion 3 on the form HUD-92264-A.

**C.** Its effect is to allow the identity of interest Borrower/Developer/contractor to contribute its presumed builder/Developer profit (BSPRA) as equity whenever the mortgage amount is limited by Criterion 3. In a balanced summation of sources (loan proceeds, equity, etc.) and uses (costs of land, development, construction, capitalized interest, etc.) this imputed profit or BSPRA is added both to uses and sources.

1. When Criterion 3 prevails, the mortgage amount will be a fixed percentage of costs.
2. The "B" in BSPRA refers to the presumed fee of the builder or General Contractor.
3. The "S" refers to development cost of the Sponsor/Borrower outside the general contract and is called SPRA. The appraiser calculates the BSPRA amount and enters it in line G 68 of form HUD-92264.

**D.** Use of BSPRA is not mandatory. A Borrower may pay an affiliated General Contractor an actual builder's fee or profit provided that:

1. The amounts of the fee are reasonable and customary;
2. The form of the construction contract is cost plus fixed fee; the mortgagor and General Contractor cost certify; and,
3. The amount of the fee is funded in the construction escrow established at initial endorsement. When BSPRA is used, the Lender should:
  - a. Calculate an equivalent builder's profit (the "B" portion of BSPRA) and an equivalent subtotal; and
  - b. On the Builder's Profit line of form HUD-92326 and in Line G 44 of form HUD-92264, enter the word "BSPRA". The equivalent builder's profit calculated above is not included in the Total for All Improvements (bottom of form HUD-92326 and Line G.50 of form HUD-92264).

## 5.12.5 Construction Time

**A.** For substantial rehabilitation and new construction, report the construction time in months in Line G.52 of form HUD-92264.

**B.** This figure will be used to estimate the amount of capitalized interest and carrying costs during the construction period.

## 5.13 CNAs are Required for All Applications

**A.** For new construction and substantial rehabilitation, the Lender's Construction Analyst may prepare the CNA based on the Project Architect's proposed plans and specifications assuming construction completion (that is, the CNA will estimate only future repairs and replacements and not immediate construction). In other applications, the CNA is prepared by the Needs Assessor based on existing conditions. In either instance, it is the Lender's responsibility to ensure that the estimated remaining useful life of components and the costs of future replacements and any immediate repairs are estimated consistent with [Chapter 5](#) and its appendices. The Lender's Underwriter will develop a financial plan for funding future capital needs by using the "Financial Factors" screen (see [Appendix 5, Section A.5.7](#)). Based on the financial factors, the CNA e-Tool will generate a schedule of annual deposits to the RfR escrow. In accordance with [Appendix 5, Section A.5.7](#), the Lender must adjust the financial factors so as to plan funding sufficient to pay estimated future capital needs. The Borrower's schedule of deposits to the RFR will be based on actual expected capital needs, not on a percentage of construction cost or mortgage amount.

**B.** Whether prepared based on conditions at an existing property or for a property to be built, the CNA e-Tool will generate an estimated replacement cost for each structure, which should be used as the Schedule of Insurable Values, (HUD Form 92329). In the case of CNAs based on construction to be completed, the Lender's Construction Analyst should ensure that the replacement cost per square foot entered on the "Buildings" screen of the CNA e-Tool is consistent with cost estimates for each identified building.

## 5.14 Firm Commitment Cost Package

### 5.14.1 Detailed Cost Estimate

**A.** As part of the Firm Commitment application, the Lender's Construction Analyst will prepare a detailed cost estimate and all required reports and recommendations as described below. For streamlined processing, these same documents will be prepared in draft consistent with the draft drawings and specifications. However, these documents must be corrected as needed and submitted in final form based on the final drawings and specifications no later than 30 days prior to initial endorsement.

**B. Required Forms:**

1. **Form HUD-92326.** Used for preparation of detailed construction cost estimate for new construction and substantial rehabilitation projects.
2. **Form HUD-92331-B.** Used to make a detailed comparison of trade line items between Estimators' cost estimate (form HUD-92326) and Contractor's trade payment breakdown (form HUD-2328) for new construction and substantial rehabilitation projects.
3. **Form HUD-92329.** Property Insurance Schedule, prepared in the CNA e-Tool, used to determine the Insurable Value for each project structure and the aggregate sum for all structures for all applications. Form HUD-92447, Property Insurance Requirements, will be prepared by HUD and provided to the Lender at closing.
4. **Form HUD-92264.** Project Income Analysis and Appraisal.

- a. **Section G.** Estimated Replacement Cost, Line 36a through 52 is used to summarize Total Structures, Land Improvements, General Requirements, and Fees from form HUD-92326, and also records estimated construction time. This section is primarily used for substantial rehabilitation and new construction.
- b. **Section M.** This is used to summarize Cost Not Attributable to Dwelling Use (lines 10 through 15), and Offsite Requirements (lines 16 and 17).
- c. **Section O.** The "Remarks" Is used to explain Unusual Land Improvements, Other Fees, itemization of professional fees (e.g., engineers), the overall difference between Lender's and Borrower's cost estimates, and other cost items.

**C.** For new construction and substantial rehabilitation proposals, prepare detailed cost estimate on form HUD-92326 using instructions in [Section 5.11](#); sign form on the "Estimate Prepared by" line and certify. Refer to standard certification in [Chapter 11, Section 11.2](#).

**D.** Resolve differences in Lender's and contractor's construction cost estimates. Before the Firm Commitment application can be submitted for HUD review, the construction cost estimates prepared by the General Contractor and the Lender's Construction Analyst must be reconciled. The Lender's Construction Analyst is responsible for resolving major differences between the two estimates. When the two estimates are generally consistent, the Lender may use the contractor's cost figures as shown on form HUD-2328 as its cost estimate. The Lender's Construction Analyst will use the following review procedure for new construction and substantial rehabilitation applications:

1. Prepare trade line-item comparison of Lender's and contractor's cost estimates using form HUD-92331-B.
  - a. Enter costs from forms HUD-92326 and HUD-2328. For multiple-structure type projects, a separate form HUD -2328 must be submitted for each structure type, and a master form HUD-2328 for the entire project.
  - b. Calculate and list line item percentage differences.
2. Review trade line item differences and note all variations beyond normal ranges. The range of trade line item differences varies from trade to trade. Major trades (e.g., engineers, carpentry) should have a smaller range difference than minor trades (e.g., sheet metal). The Construction Analyst should judge the variations based on established data.
3. The Construction Analyst should be alert for a pattern of front-end loading in trade items, where the contractor inflates costs for trade items needed early in the job schedule in order to secure more mortgage proceeds early. Such a pattern may indicate inadequate working capital or risky business practices by the contractor. Advances of funds from loan proceeds should always accurately reflect the cost of work completed, and payment should follow, never precede, the completion of work or portions thereof for which payment is requested.
4. Meet with the contractor to discuss and resolve all questionable trade line item differences. The resolution process may result in either the estimator or the contractor, or both, recalculating costs of various trade line items based on discussions.
  - a. If differences are resolved, accept costs in form HUD-2328 and use as Lender's Cost Estimate in form HUD-92264.

- b. When dealing with suspected front-end loading, require rigorous documentation of early trade items that are higher than normal.
  - c. If differences cannot be resolved, do not accept costs in form HUD-2328.
  - d. Use the Construction Analyst's cost estimate as to the Lender's cost estimate.
  - e. Inform the Lender's Underwriter that the contractor's form HUD-2328 is unacceptable.
  - f. Advise the Lender's Underwriter to meet with the Borrower and the contractor for further attempts at resolution.
- E.** Prepare cost portions of form HUD-92264, using instructions in [Section 5.12](#). Sign the form in the "Cost Processor" box and certify (see standard certification in [Chapter 11, Section 11.2](#)).
- F.** Complete the property insurance schedule, form HUD-92329, based on CNA e-Tool replacement cost per building. Common equipment that serves the entire property or portions thereof (e.g., a boiler and cooling tower assembly) should be included with the cost of the building where it is located and not prorated among the buildings served by the equipment.
- G.** Prior approval of identity-of-interest subcontractors' proposed costs including overhead and profit is required.
1. Identity of interest is a relationship that exists giving the Borrower or General Contractor apparent control or influence over a subcontractor, equipment lessor, material supplier, or manufacturer of industrialized housing. (See General Contractor's cost certification instructions in [Chapter 13, Cost Certification](#), for definition of relationships).
  2. When subcontractors, material suppliers, or equipment lessors have an identity of interest with a Borrower or General Contractor, the Lender must approve the subcontract amounts, including specific amounts for subcontractor general overhead and profit.
  3. Approval is required before work begins under the subcontract. Failure to secure prior approval will result in the disallowance of the total general overhead and profit of the subcontractor at cost certification.
  4. Request for approval (with the subcontracts, agreements, or leases) is submitted to the Lender's Construction Analyst, whose recommendations must include:
    - a. Acceptability of the documents.
    - b. Reasonableness of guaranteed maximum prices for the subcontract work.
    - c. Appropriateness of general overhead and profit dollar amounts.
  5. Mandatory conditions for approval include the following:
    - a. **Subcontracts.** There are general requirements for the use of subcontracts.
      - 1) There must be a separate subcontract for each trade.
      - 2) They must clearly identify the scope of work.
      - 3) They must be on a cost-plus fixed fee basis, which includes:
        - a) Guaranteed maximum dollar amount for work.

- b) Specific dollar amount for general overhead and profit.
- 4) Disapprove “paper conduit” arrangements where work is to be done by General Contractor personnel or other subcontractors, suppliers or lessors.
- b. **Subcontract prices.** For this criterion, recent reliable data is a better test than whether higher bids were submitted.
  - 1) The total price must not exceed the amount shown for the trade item on the accepted form HUD-2328.
  - 2) Total price must not exceed reasonable prices taken from available data.
  - 3) The Lender’s cost analyst must resolve disagreements in trade prices with the subcontractor.
- c. **Overhead and Profit.** The amounts for general overhead and profit shall be no higher than the typical prices for the specific trade.
- d. **Subcontractor entity.** The burden of proof of 1, 2, and 3 below is on the subcontractor.
  - 1) The firm must operate and have documented the experience as a subcontractor for the specific field covered in the subcontract.
  - 2) The firm must control labor, materials, and equipment typical for the trade.
  - 3) The firm must do significant business in its specific field with Borrowers and General Contractors having no identity of interest.
- 6. If a total of all identity of interest subcontracts, purchases and leases are less than ½ of 1 percent of the mortgage amount, the requirements for each identity of interest subcontractor to cost certify may be waived by the MF Regional Center/Satellite office Director upon notification by the Lender.
- 7. The Lender’s Cost Analyst must prepare a letter of approval or disapproval to the Borrower or General Contractor. The letter must address all mandatory conditions.
  - a. Approval will indicate any conditions, including whether or not subcontractor must cost certify.
  - b. Disapproval will state the reason for disapproval and indicate any cost certification requirements.

## 5.14.2 Substantial Rehabilitation Costs

- A. The detailed cost estimate should include and evaluate the following:
  - 1. Interior demolition and removal of floors, walls, roofs, doors and windows, finishes, cabinets, appliances, plumbing, HVAC, and electrical, including boilers and central air conditioning. Also includes abatement of asbestos and lead-based paint. Enter the amount in Special Construction trade line in form HUD-92326. If individual trades include removal (e.g., remove and replace cabinets), removal costs may be included in the trade line item.
  - 2. Site preparation demolition is not part of the Construction Contract and should be estimated and recorded in the same way as for new construction.
  - 3. Allowances and Fees for substantial rehabilitation, especially General Requirements and Architect’s Fees, are calculated the same way as for new construction, but they should reflect the risk and

responsibility inherent in rehabilitation and consider the location of the project. It is recommended that the Construction Analyst keep separate data for this item.

4. Rehabilitation time is determined the same way as construction time for new construction, but the data used must take into account the time required for interior demolition, as repair and rehabilitation cannot begin until such demolition is complete.
5. Rehabilitation Cost Not Attributable to dwelling use includes an “as-is” value for non-attributable items in addition to a value for actual work performed. Calculate by using the format in [Appendix 5, Section A.5.10.2](#). The Construction Analyst completes steps 1, 2, and 3; steps 4 through 8 are completed by the appraiser.
6. The contingency reserve amount is based on available data for the type and condition of structure. Calculate as percentage of the sum of structures, land improvements, and general requirements. Percentage ranges from 10 to 15%, depending on the condition of the project, extent of rehabilitation, and experience and financial capacity of the Borrower and contractor. Enter amount in line G.71 and in Section O of form HUD-92264. Subject to Lender and HUD approval, the Borrower may elect to apply any funds remaining in the substantial rehabilitation construction contingency account after completion of the approved rehabilitation, to:
  - a. further improvements, betterments or upgrades to the property, provided however, that these additional improvements will not be considered as the basis for a request for an increased mortgage amount;
  - b. an initial deposit to the RfR account; or
  - c. reducing the mortgage balance.

### 5.14.3 Refinance/Acquisition Costs

**A.** For Section 223(f) acquisition/refinance loans or Section 223(a)(7) refinance applications the Lender must determine that:

1. The CNA describes, quantifies and estimates immediate repairs and future needs consistent with [Chapter 5](#) and [Appendix 5, Section A.5.7](#) and that replacement costs data sources are identified;
2. The assessed remaining useful lives of components and estimated useful lives for alternatives are justified whenever the entered values depart from the Standard Estimated Useful Life Table; and
3. The warning flags obtained from validation of the needs assessment in the CNA e-Tool are either removed by amending the needs assessment or explained in a flag comment.

**B.** The cost portions of form HUD-92264 should be completed based on the replacement cost of buildings as reported in the CNA e-Tool.

1. The Lender must review the Needs Assessor’s “Repair, Replace Add New Recommendations” and determine that life safety and accessibility repairs have been identified with a “yes” in the appropriate indicator and that the recommended timing, cost, and other action are appropriate and consistent with observed conditions.



2. The Lenders should review any immediate repairs for Section 223(a)(7) applications to ensure that repairs are limited and do not exceed routine maintenance, except for needed remedies for accessibility deficiencies.

## 5.15 HUD Procedures

### 5.15.1 HUD Underwriting Assignment

**A.** All applications will be assigned to a Senior Underwriter or underwriting team by the Production Chief. The underwriting team will complete an early warning system (EWS) review of each application and identify which applications can be assigned to and reviewed by a single Underwriter and which may require the assistance of the Technical Branch Chief and/or a HUD Construction Analyst (Architect, cost analyst).

1. In general, all new construction and substantial rehabilitation applications should be reviewed by a HUD Construction Analyst.
2. In addition, refinance and acquisition applications with combinations of repairs and alterations exceeding \$15,000 per unit in cost and/or including Level 2 and Level 3 alterations should be reviewed by a HUD Construction Analyst.
3. Applications for Section 223(f) for properties less than 10 years old and for Section 223(a)(7) should not require the assistance of a Construction Analyst unless the CNA contains a corrective action plan for accessibility deficiencies, or the HUD Underwriter observes that such a plan is required but not submitted.
4. Section 223(f) applications for properties older than 10 years with repairs and Level 1 Alterations will require the Underwriter to determine whether any issues are observed that might require a technical review.

**B.** When engaged to complete a technical review or consider a particular Lender exhibit, the HUD Construction Analyst should not redo or correct the Lender's work. Instead, the review should be summarized in writing for the HUD Underwriter.

1. Review the Lender deliverables for completeness.
2. Examine the review report and the A/E and cost exhibits and recommend either acceptance, acceptance assuming specified modifications or rejection of the A/E and cost portion of the Firm Commitment submission; report to the Underwriter on the form(s) at [Appendix 5, Section A.5.6](#) and following as appropriate for the application stage and program.

**C.** Any application for an existing property proposing repairs and alterations in any combination that results in uncertainty about program eligibility (refinance/acquisition vs. substantial rehabilitation) should be reviewed by the HUD Construction Analyst, who shall review the immediate repairs identified in the CNA e-Tool.

**D.** The costs of all repairs should be totaled and compared to the cost per unit threshold ([Section 5.1.4](#)) adjusted for the applicable High Cost Percentage. If the total cost of immediate repairs exceeds the threshold, the application must be for substantial rehabilitation.

## 5.15.2 CNA e-Tool and HUD Underwriting

A. The review functions of the CNA e-Tool are available only to authorized HUD staff. Use of the CNA e-Tool should be consistent with the single Underwriter approach and requires that completed work be presented to senior managers before a CNA is approved as part of an underwriting decision on an application for mortgage insurance. Each user will be assigned at least one of three possible roles:

1. **Assigner.** Assigners generally will include the Production Chief, and Branch Chiefs and may include Senior Underwriters. Assigners should have dual roles, i.e., Assigners typically will also have a reviewer role. Assigners receive compiled reports on all CNAs submitted to HUD including information on the program for which application is made or the purpose of the CNA, the name and location of the subject property and the status of the CNA (submitted, under review, ready for decision, returned and approved.). Assigners will also receive a compiled workload report indicating the number of CNAs assigned to each reviewer and certain information useful to assess relative workloads. Using these reports, Assigners will assign submitted CNAs to staff for review. Assigners also have the responsibility to open CNAs made “ready for decision” by their staff, and to modify or edit the reviewer’s comments. If an Assigner desires a Reviewer to modify comments or reconsider issues or seeks additional review from technical staff on a CNA made ready for decision, the Assigner can return the CNA to the reviewer with instructions, or identify a different Reviewer and reassign the CNA. If satisfied that the review is complete and the CNA acceptable the Assigner can approve the CNA, or if comments or identified issues require a Lender response, the Assigner or the Reviewer may “return” the CNA to the Lender. When the Lender addresses comments and resubmits the CNA, the process is repeated until the Assigner is satisfied that all CNA and other underwriting requirements have been addressed and a Firm Commitment can be issued, whereupon the Assigner “approves” the CNA. Attachments and reports from the approved CNA may be printed for use as attachments to the Firm Commitment as needed. The approved CNA, including all attachments, is recorded permanently in the CNA e-Tool database and can be retrieved for comparative purposes and/or for use in asset management functions. Approval of a CNA should be closely associated with the conclusion of underwriting and the issuance of a Firm Commitment. But circumstances may require a change, typically an amendment to the Firm Commitment. The Assigner may enable a change to an approved CNA by selecting “Undo Approval” which action restores the CNA to an “Under Review” status whereupon the reviewer or the assigner can return the CNA to the Lender so the Lender can make the necessary changes.
2. **Reviewer.** Reviewers receive assignments from Assigners. Generally, reviewers are Underwriters and HUD construction analysts. When opening the CNA e-Tool, reviewers see a list of all CNAs assigned to them and may open any one of these and complete or continue a review. Reviewers may search for other CNAs not assigned to them but may only read, not write, to such files. Reviewers analyze the assigned CNA, enter comments both general and specific and upon completion of review indicate that the CNA is “ready for decision.” A Reviewer may “reassign” to another reviewer a CNA assigned to him which enables staff to share work or solicit assistance. If a reviewer identifies issues or deficiencies in the CNA, the reviewer can enter comments and return the CNA to the Lender. When satisfied that the CNA addresses all relevant and material issues, the reviewer changes the CNA status to “ready for decision” whereupon the assigner is able to consider the reviewer’s work, modify the reviewer’s comments and either assign it back to the same or another reviewer for further work, return it to the Lender for the Lender to address comments, or approve the CNA.

3. **Viewer.** A viewer is any staff person who regularly needs to see CNAs but not act on them.

**B.** The CNA e-Tool supports work-sharing across all HUD offices geographically and among different program offices, e.g., Office of Multifamily Production, Office of Recapitalization, and Office of Asset Management and Portfolio Oversight. Any HUD staff provided access to and a role in the CNA e-Tool can use the Tool to read CNAs selected by search or to review CNAs assigned to them for review.

### 5.15.3 Instructions and Training for Users

**A.** Detailed instructions for users are available at the CNA e-Tool homepage at:

[https://www.hud.gov/program\\_offices/housing/mfh/cna](https://www.hud.gov/program_offices/housing/mfh/cna)

An extensive library of training resources, references, bulletins and announcements concerning preparation of CNAs and use of the CNA e-Tool may be found at this website.

### 5.15.4 Consultation and Review Timeliness

**A.** Timely consultation and review by other, appropriately experienced, HUD staff may expedite applications and avoid delays at closing. In particular, survey issues, proposed easements, and joint use and access agreements that impact design, construction or operating expense estimates should be reviewed by Regional Counsel before final underwriting is completed.

## Chapter 6 Energy and Water Conservation

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### 6.1 Purpose and Summary Requirements

A. Conservation of energy and water at multifamily properties reduces property operating costs and increases physical durability. Conservation is achieved by good design and engineering, superior products, careful construction, conscientious maintenance and property management practices, and incentives that change utility consumption behavior of tenants and employees. This chapter describes the minimum energy efficiency requirements for FHA-insured properties, available incentives for energy and water conservation and the requirements for obtaining these incentives.

#### 6.1.1 New Construction and Substantial Rehabilitation Standards

A. All buildings proposed for new construction or substantial rehabilitation with FHA-insured mortgage proceeds must meet or exceed the International Energy Conservation Code (IECC version 2009) or, if greater than 3 stories above grade, the American Society of Heating, Refrigerating and Air Conditioning Engineers Standard 90.1 (ASHRAE 90.1 version 2007) or such later versions of these standards as HUD adopts. These HUD minimum standards do not over-ride or replace existing state or local requirements when such state or local requirements exceed the HUD minimum standards.

#### 6.1.2 Incentives for Improved Building Performance

A. Owners of existing buildings may use reduced, underwritten operating expenses by documenting estimated reductions in energy and water consumption and costs (See [Section 6.9](#)). Also, as detailed in HUD's annual Federal Register publication of mortgage insurance premium (MIP) rates, Lenders may qualify for a green MIP rate for loans on properties that obtain a green building certification and demonstrate continuing energy efficiency performance (See [Section 6.3](#) and [Section 6.4](#)).

### 6.2 Statutes and Regulations

A. The Energy Independence and Security Act of 2007 (EISA) requires HUD (and USDA) to adopt energy conservation standards. Section 481 of EISA amended section 109 of the Cranston-Gonzalez National Affordable Housing Act of 1990 (Cranston-Gonzalez) (42 U.S.C. 12709), establishing procedures for setting minimum energy standards for certain HUD programs, including HUD-FHA multifamily mortgage insurance programs for new construction and substantial rehabilitation. On May 6, 2015, HUD and USDA jointly adopted the IECC 2009 and ASHRAE 90.1 2007 codes by Federal Register notice (80 FR 25901).

B. On March 31, 2016, HUD published revised mortgage insurance premiums in the Federal Register (81 FR, page 18473, the "MIP Notice"). Section D of the MIP Notice outlined an MIP rate category for loans on properties that obtain a recognized green building certification and maintain performance thereafter as evidenced by annual submission of an ENERGY STAR® Score of not less than 75. The MIP Notice authorizes HUD to recognize additional green building certifications.

## 6.3 Green Building Certifications Specifications Recognized for Green MIP

A. Multiple organizations sponsor and maintain green building certifications. These organizations, (sometimes also referred to as “standard-keepers”), and their certification programs vary widely in the types of projects that can be certified, the jurisdictions in which the certification is available, and the methods used to verify green building features and compliance. It is the responsibility of the Lender and Borrower, acting in concert with the Project Architect, to select a certification appropriate for their proposed project, and to ensure that the property will meet continuing performance requirements including annual whole building data reporting.

### 6.3.1 New Construction and Substantial Rehabilitation Certifications

A. The following green building certifications are accepted for the purpose of earning green MIP rates for new construction and substantial rehabilitation projects or for such projects recently completed and proposed for refinancing or acquisition:

B. Enterprise Green Communities Criteria; LEED-Home, LEED Home Midrise and LEED-New Construction; ENERGY STAR® New Construction Single Family (covers 1 and 2 family structures and townhouses); ENERGY STAR® New Construction Multifamily; ENERGY STAR® Multifamily Hi-Rise; EarthCraft House and EarthCraft Multifamily; Earth Advantage New Homes; Greenpoint Rated New Home; National Green Building Standard; Passive Building Certification from Passive House Institute US or International Passive Housing Association; and Living Building Challenge from the International Living Future Institute.

### 6.3.2 Certifications for Existing Buildings

A. The following green building certifications qualify for green MIP rates for acquisition or refinancing of existing properties: Enterprise Green Communities Criteria; EarthCraft House and EarthCraft Multifamily; Greenpoint Rated Existing Home-Whole Building Label; and National Green Building Standard. If a building is occupied for the period necessary for benchmarking and is benchmarked (See [Section 6.6.3](#)), then an existing building certification may be used even if HUD defines the proposed scope of work as substantial rehabilitation.

B. For existing but newly constructed buildings, ENERGY STAR® Existing Building Certification will qualify for green MIP in limited circumstances (See [Section 6.6.2](#)).

### 6.3.3 Certifications Not Recognized by HUD

A. HUD may accept other national or multistate green building certifications to qualify for green MIP rates for applications proposing new construction or improvements to existing buildings provided that the Project Architect certifies to HUD that the procedures and requirements of the proposed certification meet all of the following requirements:

1. **Minimum Performance Improvement for Non-Recognized Certifications.** For new construction and substantial rehabilitation (of properties with no benchmarked recent history) the certification must require designed building performance that achieves not less than a 25% reduction in estimated energy use (not energy costs) by comparison with the energy use estimated for the same structures if built to the HUD minimum codes (See [Section 6.1.1](#)). For existing buildings (with a benchmarked recent history, see [Section 6.6.3](#)) the certification must require a reduction in energy use (not energy cost) of not less than 15% by comparison with the benchmarked energy use.
2. **Independent Verification of Design & Construction.** The proposed certification requires independent verification of energy conservation measures and sustainable products and methods. Such verification should occur at appropriate, identified milestones during design and during the progress of construction. (Appropriate milestones include: review of final drawings and specifications prior to application for firm commitment; on-site inspections of the building envelop and rough mechanical installation prior to drywall or closing of wall cavities; and a final inspection or commissioning after construction completion). The standard-keeper must designate or approve the verifier(s). The independent verifier may have no identity of interest with the Sponsor, the Borrower, the Lender, the Project Architect, the General Contractor or any subcontractor or engaged trades.
3. **Documentation of Procedures, Findings, Award of Certification.** The standard-keeper for any national or multi-state green building certification must require from the verifier and furnish to the Project Architect and/or Borrower timely written documentation of results or conclusions at each milestone of practice or achievement that is necessary for certification including the final award (or denial) of the certification after construction completion.
4. **Architect's Certification.** The identity of the standard keeper, the name of the proposed national or multi-state green building certification, the selected level or grade of achievement (e.g., silver, gold, platinum, etc.) as well as the Project Architect's certification, must accompany the mortgage insurance application. (See Project Architect's Certification, [Appendix 5, Section A.5.8.1](#) for new construction or substantial rehabilitation or [Appendix 5, Section A.5.8.2](#) for refinance or acquisition of existing properties).

## 6.4 General Requirements for Green MIP

A. Applications proposing a green MIP rate are subject to requirements over and above those for all other insured mortgages, including the following for applications under all Sections of the Act.

### 6.4.1 Continuing Performance Required under Green MIP

A. All Borrowers with loans endorsed at green MIP rates and secured by properties of 20 or more units must annually demonstrate continuing performance by delivering to HUD an ENERGY STAR® Statement of Energy Performance (SEP) showing an ENERGY STAR® Score of not less than 75. (See [Section 6.4.5](#) on planning for future data collection for purposes of demonstrating continuing performance.) It is the property owner's obligation to maintain, repair, and replace components as necessary to retain this minimum performance score for the life of the insured mortgage.



## 6.4.2 ENERGY STAR® Appliances and High-Performance Components

A. The Capital Needs Assessment (CNA) prepared in the CNA e-Tool must specify all appliances and heating and air conditioning systems as ENERGY STAR® as and when replaced, and for lighting, electrical and mechanical equipment, and building envelope components with no available ENERGY STAR® label, the Capital Needs Assessment must specify high performance and/or sustainable replacements.

## 6.4.3 HUD Forms – Borrower’s Certifications

A. Form HUD-91070M, titled “Consolidated Certification-Borrower,” evidences the applicant’s commitment to achieve and/or deliver an indicated green building certification. The executed form must be submitted with the Application for Firm Commitment, and among other purposes, identifies the specific green building certification the property has or will obtain. Lender requests to switch the identified green building certification after submitting an application for Firm Commitment will result in HUD returning the application pending Lender submission of a fully revised set of plans and specifications consistent with the newly selected certification. HUD will not consider changes in the selection of green building certification after the issuance of a Firm Commitment. At endorsement, form HUD-91070M, titled “Consolidated Certification-Borrower,” states the Borrower’s commitment to deliver a named green building certification and to demonstrate continuing performance with an ENERGY STAR® Score of 75 or more in each year of the mortgage term.

## 6.4.4 Regulatory Agreement Rider 5 Required for Green MIP

A. Form HUD-92466-R-5 (Rider 5) is a rider to the Regulatory Agreement that the Borrower must execute at initial endorsement. Rider 5 obligates the Borrower to complete all construction as well as any and all tests, evidence, or assurances as may be necessary to perfect and obtain the selected green building certification. In addition, Rider 5 specifies the Borrower’s on-going energy performance obligations during the life of the insured mortgage.

B. The Office of Asset Management and Portfolio Oversight (OAMPO) provides instructions to Borrowers and Lenders on how to comply with green MIP continuing performance requirements in Mortgagee Letter 2020-1 (ML 2020-1). Borrower’s failure to deliver a correctly prepared and verified Statement of Energy Performance (SEP) and/or failure to maintain a minimum ENERGY STAR® Score of 75 (or in the event of a change in the calibration of the Score, failure to maintain the expected Energy Use Intensity Score [EUI Score] equivalent to a score of 75 at the time of application), after notice and opportunity to cure will result in sanctions consistent with ML 2020-1. The EUI Score is energy use, expressed in British Thermal Units (BTUs) per square foot per annum. The EUI is reported on the SEP in addition to the ENERGY STAR® Score.

## 6.4.5 Data Collection Plan

A. Because the Borrower is obligated to demonstrate continuing performance through the maturity of the green MIP mortgage using EPA’s Portfolio Manager, a web-based utility benchmarking application, it is essential that the Borrower prepare a plan for collecting valid energy consumption data for each month and correctly entering this data in Portfolio Manager. The most valid and convenient solution is to obtain



100% whole building data from the utility provider(s) or to install energy consumption monitoring technology that collects monthly data from all meters on the property (Whole building data means recording of all energy consumption on site, both owner and tenant paid). The data collection plan should identify and describe the method(s) to be used and describe exactly how data will be collected and recorded, what persons or officers will be responsible and how the data will be entered in Portfolio Manager. The data collection plan should be prepared by the energy professional in consultation with the Borrower and the property manager and must conform to the instructions in numbers 1 and 2 as follows:

- 1. Instructions for Preparing an SEP to Evidence Continuing Performance.** The SEP must be verified by a qualified energy professional evidenced by the energy professional's signature on the SEP. Verification means that the energy professional has reviewed the data entered in Portfolio Manager, compared these entries to the Borrower's documentation of energy consumption reported for each utility meter on the property, and compared the utilities and meters currently reported to prior SEP or project records, and confirmed the accuracy of data entered. Note that a verified SEP is not the same as an application for ENERGY STAR® Certification and does not require a site visit nor the seal and signature of a registered Architect or professional engineer. (In some cases, the energy professional may need to visit a site to resolve conflicting information and to assure that all existing utility meters and/or uses of energy are reported.) Firms providing energy consumption monitoring services may serve as energy professionals for purposes of verifying a Borrower's continuing performance.
- 2. Sampling of Tenant Meters Not Permitted.** For purposes of demonstrating continuing performance, extrapolation of energy use data from a sample of units at a property is not acceptable. Owners applying for green MIP rates must propose and implement a plan to obtain 100% whole building utility data for all utilities, whether from the utility providers, or through the installation of energy consumption monitoring technology capable of measuring, recording and reporting energy consumption for all meters, including metered tenant spaces.

## 6.4.6 Real-Time Consumption Monitoring, Smart Home Tools

A. In addition to providing utility consumption data needed for continuing compliance, hardware and software that delivers valid, real-time energy use data to owners and tenants allows users to make informed choices, change behavior, and reduce their utility costs. (Studies have shown that tenants with real-time feedback on utility consumption reduce usage by an average of 10%). Applicants are encouraged to augment their data collection plan with such technology.

## 6.4.7 Design and Construction Team Qualifications

A. When planning project development, the Developer/Sponsor should pay attention to high-performance building experience and qualifications when assembling the project team. When preparing an application for a green MIP mortgage, the Lender also should give attention to the experience and qualifications of key firms and personnel. The Lender should also note that some green building certifications specify additional qualifications for members of the design team.

## 6.4.8 Energy Professionals Qualifications

**A.** Energy professionals must be persons with not less than three years work experience evaluating utility consumption in multifamily buildings and employing energy modeling and benchmarking software, including specifically EPA's Portfolio Manager and related ENERGY STAR® resources and products. Energy professionals must have professional certifications or credentials appropriate for analyzing multifamily properties and must remain current with new energy monitoring, measurement methods, and technologies.

1. **Expected Tasks for Energy Professionals.** The energy professional's primary tasks include: a) benchmarking existing buildings including obtaining and/or reviewing and consolidating raw consumption data (monthly bills, utility-provider supplied data); b) managing use of EPA Portfolio Manager software and assuring correct data entry; c) conducting site inspections and energy audits per ASHRAE Level II or III standards and conducting field tests, e.g., blower door tests for detecting air infiltration and air handling leaks; d) selecting appropriate energy modeling software and e) correctly modeling various design assumptions, e.g., a building built to current code, the same building with energy conservation features that exceed the current code; f) advising the Project Architect of building components most likely to improve performance; g) preparing the Borrower's data collection plan; h) reviewing and entering data to Portfolio Manager and verifying resulting Statements of Energy Performance to support Borrower's annual demonstration of continuing performance; and i) estimating the local utility providers average price per unit of use for each utility at a site (see [Section 6.9.3](#) for obstacles to estimating utility price per unit of use).
2. **Specialization of Energy Professional's Experience and Qualifications.** The qualifications and experience of the energy professional(s) on a green MIP application must be appropriate to the subject building types.

RESNET Home Energy Raters, utilizing the software and products for RESNET Home Energy Ratings, are acceptable for single homes, townhouses and or multi-unit structures up to three stories with no common space (assuming site energy is included). These building types (buildings up to three stories), as described at [Section 6.1.1](#), must comply with the International Energy Conservation Code.

Generally, software and products used by RESNET Home Energy Raters do not accommodate appropriate analysis of the most common multifamily building types, as the appropriate methods and software used to analyze energy use in houses, townhouses, and small buildings differ substantially from those necessary for larger buildings. Further, buildings of four or more stories must comply with ASHRAE Standard 90.1, and RESNET Home Energy Raters generally do not work with ASHRAE 90.1. Therefore, RESNET Home Energy Ratings are not acceptable for the more common building and property types found in multifamily mortgage applications, where larger buildings including common spaces and all site improvements must be considered.

3. **Professional Certifications Required for Energy Professionals.** Registered Architects or licensed professional engineers (PE) may serve as energy professionals provided that they have demonstrated the requisite experience. Other professional certifications for qualified energy professionals include one or more of the following: a) American Energy Engineers Association's Certified Energy Manager (CEM) or Certified Energy Auditor (CEA) designations; b) American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) High Performance Building Design Professional (HPBDP) designation; c) Building Performance Institute (BPI) Multifamily Building Analyst (MFBA)

designation; or d) for townhouses and buildings up to three stories with no common space, a Residential Energy Services Network (RESNET) Home Energy Rating System (HERS) Rater. When building energy modeling is employed the lead modeler or energy professional must hold a professional certification specific to simulation modeling: ASHRAE Building Energy Modeling Professional (BEMP) or Association of Energy Engineers Building Energy Simulation Analyst (BESA).

## 6.4.9 Energy Modeling and Modeling Software

A. Modeling or simulation of expected building performance is a common technique for estimating and comparing utility use results achievable with alternative designs or construction methods. Certifications that allow performance-based options require modeling to verify expected results. Many green building certifications allow the designer a choice of a “prescriptive” option for meeting certification requirements or a “performance” option. Prescriptive in this context means a fixed “recipe” of building parts and components each with an individual qualitative metric or specification, e.g., fiberglass batt insulation rated R-30. By contrast a performance standard allows the design professional flexibility to create a unique “recipe” provided the whole building design is modeled to estimate overall performance. Prescriptive options do not require modeling. The energy professional and the Project Architect are responsible for selection and proper use of appropriate, industry recognized energy modeling software. In general, selected modeling software must simulate the actual buildings, common spaces, accessory structures and site improvements proposed (See [Section 6.4.8](#) above). For buildings over three stories or containing common spaces, the modeling must be completed in accordance with the requirements of ASHRAE 90.1 Appendix G. For buildings up to three stories with no common space, the HERS Resnet rating system may be used, provided that other specialized modeling software or methods, (e.g., for site lighting, clubhouse and pool, etc) are used to document all energy use apart from the residential buildings. In a property with buildings of both kinds, the energy professional may use ASHRAE 90.1 Appendix G or a combination of both methodologies provided that all energy use for the entire property is included in results. Plans and specifications for construction should be at least 80% complete and include all design elements that impact energy use. All factors other than design variations must be held constant from one modeled iteration to the next. Modeling for an existing property must incorporate as-built design as modified by proposed repairs and alterations, and for any buildings, units or spaces unchanged, the model should incorporate benchmarked consumption. Recognized software and modeling standards are described in [Appendix 6](#).

## 6.4.10 Change Orders Modifying Energy Measures

A. For properties where construction is proposed to achieve green building certification, change orders that modify construction (including repairs and alterations to existing buildings) by reducing the proposed level of performance or reducing the approved level of certification may only be approved if HUD determines that the change is a necessary change order. In no event may a change order result in construction that will fail to achieve the approved green building certification.

## 6.5 Requirements for Section 223(a)(7) Applications

A. Green MIP rates are available to 223(a)(7) applicants only when the existing mortgage has a green MIP rate, or when the property is previously certified by one of the green building certifications named above

([Section 6.3.1](#) and [Section 6.3.2](#)). In either circumstance, the qualifying certification must have been earned not more than 15 years prior to the date of application. The Borrower must demonstrate continuing performance as described in [Section 6.5.1](#), [Section 6.5.2](#), and [Section 6.5.3](#) below:

### **6.5.1 Existing Green MIP Mortgages**

A. If the existing mortgage is green MIP then all Statements of Energy Performance for all prior years must have been correctly prepared, timely submitted and have a score of 75 or higher.

### **6.5.2 Proving Continuing Performance Under ENERGY STAR® Existing Building Certification**

A. Whether the existing insured mortgage is Green MIP or not, an ENERGY STAR® for Existing Building Certification must be provided with the application to establish continuing performance and to demonstrate that 100% whole building data is available. The Existing Building Certification should be based on a performance period ending less than six months before the date of loan application. The Existing Building Certification requires 100% whole building data. No sampling of units is permitted. The application for the Existing Building recognition must be signed and sealed by a Registered Architect or Professional Engineer as required by EPA.

### **6.5.3 Delivery of ENERGY STAR® Existing Building Certification**

A. The Existing Building Certification must be delivered with the application. It may not be deferred. The Firm Commitment may not be conditioned upon receipt or future delivery of the Existing Building Certification. A single exception is permitted if the Existing Building Certification cannot be obtained because the Borrower is unable to provide consumption data for twelve consecutive, whole months for every meter on the property, including any and all tenant meters. In this circumstance, the application must include a Statement of Energy Performance consistent with the benchmarking procedures described at [Section 6.6.3.A.2](#) indicating that the property likely will achieve the minimum ENERGY STAR® Score after 100% whole building data is available. In addition, the Borrower must include as non-critical repairs the installation of energy consumption monitoring technology (as described at [Section 6.4.5.A.2](#)) to provide 100% whole building consumption data collection. If the Existing Building Certification is deferred, it must be delivered not more than 15 months after the completion of the non-critical repairs.

### **6.5.4 Recording Baseline Data - CNA**

A. Section 223(a)(7) applications qualify for green MIP only if previously certified and construction activity in such applications is limited to repairs not exceeding aggregate cost per unit as defined in [Chapter 5](#) (See [Chapter 5, Section 5.1.5.D](#)). Accordingly, the needs assessor or energy professional is not required to enter utility consumption data for each component identified in the CNA. However, the needs assessor or energy professional must download the HUD Custom SEP (an excel spreadsheet) and attach it to the CNA in the CNA e-Tool. This will automatically record the actual (or expected) ENERGY STAR® Score as well as the related Energy Use Intensity (BTUs per square foot). In the event that EPA revises or recalibrates the multifamily ENERGY STAR® Score resulting in a property reporting an annual continuing

performance less than the minimum 75, the Energy Use Intensity reported with the application will become the minimum performance requirement.

## 6.6 Green MIP Requirements for Section 223(f) Applications

A. Existing properties proposed for 223(f) financing may qualify for green MIP in one of two ways. The first is by providing a previously earned certification recognized by HUD (See [Section 6.3.1](#) or [Section 6.3.2](#)) earned not more than 15 years prior to the date of the loan application. The second is by committing to obtain a certification (either a HUD recognized certification or a non-recognized certification per [Section 6.3.3](#)) after completing repairs and alterations sufficient to earn the selected certification.

### 6.6.1 Properties with Previously Earned Certifications

A. An existing property with a HUD recognized certification earned within 15 years of the date of application may qualify for a green MIP rate provided that the Borrower evidences continuing performance in the same manner as prescribed for Section 223(a)(7) loans (See [Section 6.5.1](#), [Section 6.5.2](#), and [Section 6.5.3](#)). Baseline data for these properties should be recorded by downloading the HUD Custom SEP and attaching it to the CNA prepared for the property in the CNA e-Tool.

B. Some recently built properties may not have achieved and sustained occupancy for a time-period sufficient to permit benchmarking consistent with [Section 6.6.3.A.2](#) below. These recently built projects may qualify for green MIP rates if the owner delivers with the application one of the certifications named in [Section 6.3.1](#) (for new construction or substantial rehab) and has complied with the general requirements described at [Section 6.4.1](#) through [Section 6.4.5](#) (data collection plan, Rider 5, etc.) In addition, any recently built project must have been equipped with ENERGY STAR® appliances and conform to other requirements for new construction or substantial rehabilitation as described in [Section 6.7.1](#). Recording baseline data for recently built projects with no benchmarked results is accomplished by downloading a HUD Custom SEDI (Statement of Energy Design Intent) based on the as-built drawings and specifications and attaching it to the CNA in the CNA e-Tool.

### 6.6.2 Newly Built Properties with No Prior Certification

A. Recently built properties without a HUD recognized green building certification will not qualify for green MIP. Owners and Developers contemplating a possible future FHA-insured mortgage refinancing with a green MIP rate for a prospective new development should select and implement a HUD recognized green building certification appropriate for new construction before beginning the prospective development.

However, to allow Lenders and Borrowers time to plan projects, the ENERGY STAR® for Existing Buildings Certification will qualify for green MIP for Section 223(f) applications filed within two years after publication of this MAP Guide provided the application is consistent with the general provisions of [Section 6.4](#) as well as the following additional conditions:

1. The Certificate of Occupancy must be issued within three years of the date of mortgage application.



2. Properties that have achieved at least 12 months of occupancy meeting the minimum occupancy for the ENERGY STAR® for Existing Buildings Certification must deliver the Certification with the application for firm commitment.
3. If a property lacks the 12 consecutive months of minimum occupancy, a Statement of Energy Design Intent (SEDI) based on the as-built drawings and specifications of the property and signed by the Project Architect may qualify provided that the owner commits to deliver the ENERGY STAR® for Existing Building Certification within three months after the 12 consecutive months at or above the minimum occupancy is achieved. Repairs or alterations are not permitted as a means of achieving a prospective Certification.
4. The minimum ENERGY STAR® Score required for use of the ENERGY STAR® for Existing Building Certification is 90.
5. Baseline data will be recorded by attaching the HUD Custom SEP, or SEDI as applicable, to the Capital Needs Assessment prepared for the property.

### 6.6.3 Existing Properties with No Prior HUD Recognized Green Building Certification

A. Properties not recently built (See [Section 6.6.2](#), above) and without a prior HUD recognized green building certification (a certification named in [Section 6.3.1](#) or [Section 6.3.2](#) earned within 15 years of the date of application) may qualify by committing to obtain one of the certifications available for existing buildings ([Section 6.3.2](#)) or an unrecognized certification appropriate for renovations of existing buildings and selected consistent with [Section 6.3.3](#). The owner must propose repairs and alterations consistent with and sufficient to achieve the selected certification. In addition, Borrowers must meet the following requirements:

1. **Existing Properties-Selection and Achievement of Green Building Certification.** The Project Architect must assure the Lender and HUD that the green building certification selected is appropriate for the building(s) composing the property and for the level of construction activity proposed and must certify that the Borrower's proposed repairs and alterations when completed will reasonably achieve the requirements of the designated green building certification. The Borrower is responsible for achieving the selected certification and maintaining performance for the life of the mortgage.
2. **Energy Due Diligence-Benchmarking.** All owners of existing properties proposing repairs and alterations in order to obtain a green building certification must benchmark their property to establish the annual energy utility consumption against which the expected result of proposed improvements is measured. (Note that [Section 6.4.5](#) specifies an annual benchmarking procedure to demonstrate continuing performance by green MIP properties during the mortgage term and that procedure does not permit sampling. By contrast, this paragraph requires a one-time benchmarking procedure required for candidate properties which procedure does contemplate sampling.) While sampling is permitted to benchmark energy use prior to certification, Lenders/Borrowers able to obtain and use 100% whole building data for establishing the benchmark must do so because this is a conclusive demonstration of the ability to meet the future, continuing performance requirement. Whole building, whole property data means 100% of all meters on the property or at the building and/or all fuels delivered to the property or the building.

The Borrower must retain a qualified, third-party, energy professional who must benchmark energy consumption for twelve whole, consecutive months, or consecutive utility billing periods consistent with a 12-month period, with the last month ending not more than six months prior to firm commitment application. Physical occupancy for each month must be at least 85%.

If 100% whole-building data is not available, a sampling regimen consistent with the requirements for ASHRAE Level II Energy Audits may be used, provided that tenant usage must be determined based on a sample of not less than 25% of units. If whole building data is available for some but not all buildings in a property, then the sampling requirements may be applied to the buildings lacking whole building data. Similarly, if some (but not all) utility providers serving the property provide whole building data, then sampling may be used to estimate usage for the utility where 100% whole building data is not available. For any sample, the applicant must demonstrate how the sample is representative and clearly identify sampled units and buildings. Actual usage must be documented with copies of source material, i.e., utility bills or statements from the utility provider. If sampling is used, the documentation must identify the unit and the time period for which usage is reported. If a utility provides whole building data, the utility's documentation must show the name and address of the property and/or building and a count of tenant meters and owner meters by building or by site utility use as applicable.

The benchmarked results and documentation should be reported in the energy professional's ASHRAE Energy Audit, which should summarize aggregate, annual consumption for each energy source and organize supporting documentation so that a Lender or HUD Underwriter can quickly verify the accuracy of the information. When a sample is used, the method of extrapolating the sample results to the whole must be shown. When the data collection and extrapolation of any sampled data is complete, the energy professional should enter monthly usage in the Borrower's EPA Portfolio Manager account. A Statement of Energy Performance (not the HUD Custom SEP) representing the benchmarked results should be included in the ASHRAE Energy Audit. The ASHRAE Energy Audit should be attached to the CNA prepared in the CNA e-Tool.

3. **Energy Due Diligence-Energy Audits.** The Borrower's energy professional must conduct an energy audit for the property in accordance with the standard of work for an ASHRAE Level II Energy Audit. Key features of Level II audits include: a) benchmarking existing use; b) identifying specific components, assemblies, appliances, equipment or systems that use, move or transmit energy; c) allocating benchmarked usage to these same items; d) recommending specific repairs, replacements and alterations to these items likely to reduce energy consumption; e) estimating per item and total cost of such items together with the per item and total reduction in energy use and cost resulting from the recommendation. In addition, a Level II Energy Audit should calculate the number of years required for the estimated annual energy savings to equal or exceed the cost of the recommendation for each item (the payback period). Level III audits provide an investment grade report that adds the following: a) whole building computer simulation (modeling) calibrated with field data; b) modeling of conservation measures and corresponding changes in energy consumption; and c) bid-level construction cost estimating. Accordingly, for Section 223(f) applications where a General Contractor is retained to estimate total costs and complete construction, an ASHRAE Level II Energy Audit is required, but if no General Contractor is retained, a Level III audit is required to provide bid-level construction cost estimating for energy conservation measures.
4. **Energy Due Diligence-Capital Needs Assessment.** The Capital Needs Assessment prepared in the CNA e-Tool for a green MIP application for an existing building must indicate that an ASHRAE Energy



Audit has been prepared and must identify the energy professional as a participant. (Note that many due diligence providers may qualify as both needs assessors and energy professionals.) In addition, energy usage for each item or component named in the Energy Audit should be entered for each component and alternative. If a component (e.g., windows) does not use, but rather transmits, energy then the usage entered for the existing component is “0” and the usage entered for each alternative for that component is either a negative number (indicating expected energy saved relative to the existing component) or a positive number (indicating additional expected energy use). The CNA e-Tool will calculate the Total Cost of Operation (TCO) per item for each component and alternative. Also, it will compare the TCO of a component to each of its alternatives, allowing the user to see and demonstrate the relative life cycle cost. At a future date, the CNA e-Tool will also calculate and display net energy dollar savings for each recommended action (e.g., recommended replacement of 52 existing refrigerators with new ENERGY STAR® refrigerators saves \$XX in energy costs per year.) In the meantime, such dollar savings (increases) should be provided in the ASHRAE Energy Audit.

5. **Demonstrating Ability to Achieve and Maintain Minimum ENERGY STAR® Score.** In addition to obtaining green building certification, a green MIP property must achieve and maintain an ENERGY STAR® Score of 75 or better. To demonstrate a high probability that this score will be achieved, the energy professional must calculate the estimated, annual, whole building, whole property energy use expected upon completion of all proposed repairs and alterations. If the selected green building certification allows a performance-based method for compliance, and the performance option is used for purposes of certification, then modeling or simulated results should be reported (See [Section 6.4.9](#)). The energy professional must then enter these estimated results in EPA’s Portfolio Manager to obtain a Statement of Energy Design Intent (SEDI) displaying an ENERGY STAR® Score that must equal or exceed the required minimum score of 75. The energy professional must download a HUD Custom SEDI, an excel spreadsheet, which should be attached to the CNA in the CNA e-Tool. This attachment records the expected ENERGY STAR® Score. It also records the expected Energy Use Intensity (i.e., BTUs per square foot) against which continuing performance will be measured in the event that EPA at a future time recalibrates or revises its multifamily ENERGY STAR® Score.
6. **Project Architect Required.** Borrowers applying for green MIP under Section 223(f) with a proposed (not already earned) green building certification must retain a Project Architect (or Professional Engineer) whose green MIP responsibilities include the same responsibilities as described for construction at [Section 6.7.2](#). In addition, the Project Architect must certify the acceptability of any national or multi-state green building certification selected by the Borrower but not recognized by HUD (See [Section 6.3.3](#)). An Architect may not serve as both Project Architect representing the Borrower, and green building certification verifier or validator representing the standard-keeper of the green building certification.
7. **Green MIP - HUD Repair Escrow Administration.** For green MIP applications, HUD will not delegate repair escrow administration to Lenders. HUD will administer the repair escrow, approve any and all changes to the scope of work, and conduct periodic inspections of the work in progress.
8. **Delivery of Green Building Certification - Extension of Repair Escrow.** HUD may approve, if necessary to achieve the designated green building certification, an extended completion period of up to fifteen months. The green building certification must be earned and delivered prior to the release of the Borrower’s assurance of completion and any hold-back of surplus loan proceeds.

## 6.7 Green MIP Requirements for Sections 220, 221(d)(4), 231-New Construction, Sub-Rehab

A. All new construction and/or substantial rehabilitation applicants can qualify for green MIP by obtaining a HUD recognized green building certification (See [Section 6.3.1](#)) or an alternative national or multi-state certification consistent with [Section 6.3.3](#). The selected green building certification must be earned and delivered prior to Final Endorsement consistent with the Project Architect's Certification (See [Appendix 5, Section 5.8.1](#)).

### 6.7.1 ENERGY STAR® Appliances and Systems Required

A. All new construction or substantial rehabilitation applications for green MIP rates must specify installation of ENERGY STAR® appliances and central air conditioning systems (if applicable). Other electrical and mechanical equipment (motors, fans, pumps, etc.) should be high performing, energy efficient products. For water-consuming appliances and components, EPA WaterSense labeled products must be specified.

### 6.7.2 Project Architect's Green MIP Responsibilities

A. In addition to the general responsibilities of the Project Architect (See [Chapter 5](#)), in green MIP projects the Architect has these additional responsibilities: a) assure that the selected green building certification is applicable to the contemplated design and scope of construction work; b) coordinate with the green building certification standard-keeper or its designated verifier to assure that the plans and specifications meet all certification requirements, including any requisite verifying proofs, exhibits or procedures; c) when a performance based compliance method is used, select or approve the selection of appropriate building performance modeling software and complete or supervise completion of performance models comparing designed performance to any designated baseline code or benchmarked prior performance using in each modeled design the same assumptions concerning climate, degree days, set temperatures, owner/tenant behavior, etc.; d) prepare or coordinate with an energy professional to prepare an estimate of expected utility consumption based on the assumed completion of the project as designed and operating at stabilized occupancy by the intended tenant profile; e) enter or work with an energy professional to enter estimated utility consumption in Portfolio Manager and obtain a HUD Custom Statement of Energy Design Intent evidencing that the project as designed will achieve and maintain an ENERGY STAR® Score not less than 75; f) coordinate with the Contractor(s) to prepare a detailed construction schedule that includes all milestones for completion and inspections required by the green building certification procedures; g) coordinate with the verifier, the Contractor(s) and the HUD Inspector to assure that all certification inspections, and any resulting corrective actions are timely completed consistent with the detailed construction schedule; h) coordinate with the verifier, the Contractor(s) and the HUD Inspector, to assure that any and all tests, commissioning or similar routines required to perfect the green building certification are completed. (See [Appendix 5, Section A.5.8.1](#).)

### 6.7.3 Recording Baseline Data-CNA

A. The Lender's cost analyst will prepare a CNA in the CNA e-Tool reporting future repair and replacement needs only. No utility consumption data for individual components is required. The cost analyst should

obtain the HUD Custom SEDI (an excel spreadsheet) and attach it to the CNA in the CNA e-Tool. This will automatically record the expected ENERGY STAR® Score as well as the related Energy Use Intensity (BTUs per square foot). In the event that EPA revises or recalibrates the multifamily ENERGY STAR® Score resulting in a property reporting an annual continuing performance less than the minimum 75, the Energy Use Intensity reported with the application will become the minimum performance requirement.

## 6.8 Green MIP Requirements for Section 241(a)

A. Section 241(a) Supplemental Loan proceeds may be used for eligible construction costs including repairs and alterations to existing buildings or site improvements, additions to existing buildings or site improvements, as well as construction of new buildings and site improvements. Regardless, a supplemental loan is secured by the entire premises subject to the lien of the first mortgage, and all requirements of both liens apply to the entire premises. Therefore, if green MIP is proposed for a supplemental loan, the entire property must obtain a green building certification. Two green building certifications may be necessary to achieve certification if both renovations of existing, and construction of new buildings, are proposed in a supplemental loan (few, if any, green building certifications contemplate both activities in a single certification). In the event two certifications are proposed, one for existing buildings, the other for new buildings, the property may be characterized as two phases to the extent needed for certification, provided that no exception exists to the requirement that the Borrower be a single asset entity. After completion of construction and delivery of the certifications, continuing performance will be demonstrated with a single Statement of Energy Performance (SEP) prepared for the entire property. One or two certifications, as applicable, must be delivered prior to Final Endorsement of the supplemental loan.

## 6.9 Underwriting Owner's Utility Cost as Part of Operating Expenses

A. For most existing buildings, utility costs are underwritten as part of expected operating expenses based on three years of operating history. But for applications where savings result from utility conservation measures included in the Repair Escrow, these savings may reduce the estimated operating budget for the relevant utility. (Properties with less than three years of operating history are not eligible for underwriting of reduced utility costs as compared to proven annual utility costs.) While substantial rehabilitation involves existing buildings, the estimation of utility cost as a portion of forecasted operating expense is not based on three prior years of expense history, unless the existing building is fully occupied for the three years prior to application and either will remain occupied during construction, or the majority of existing tenants will resume occupancy after temporary relocation. When an application for a stabilized, operating property proposes green building certification, then 100% of projected savings may offset historic expense, but if no new certification is proposed then only 75% of projected savings may be underwritten. In all other cases of substantial rehabilitation, and in new construction proposals, utility costs included in forecasted operating expense must be derived as follows: a) for green MIP applications, from the modeled or simulated utility consumption calculated for the proposed project; and b) for applications with no green building certification, utility costs may be estimated by comparison to other recently built, non-green-building-certified properties in the same utility pricing market.

## 6.9.1 Methods for Underwriting Owner's Utility Costs Changes

A. For existing properties with energy conservation measures included in the Repair Escrow, underwritten utility expenses based on the prior three years of operating history may be adjusted based on the utility cost results of the repairs and alterations as documented in an ASHRAE Level II Energy Audit. The savings (or possible increases) estimated must be for specific utilities or fuels and for the specific uses of these utilities or fuels. For example, forecasted reductions and/or increases in electric consumption must be detailed for each repair, replace, or add-new action that impacts electric usage. When the net of these itemized increases or decreases in usage is converted to dollar costs given the local per unit cost of the utility, only these net costs may be used to offset (or increase) historic costs for electric power. (See [Section 6.9.3](#) below on obstacles to determining utility price per unit of use.) In cases where the alterations and repairs alter the mix and use of owner-paid fuels or utilities, (e.g., gas heat replaces electric heat; or solar hot water replaces or supplements an existing fuel for water heating), the altered and/or substituted mix and cost of fuels must be shown in the calculation of utility cost used to adjust comparable historic costs. It is not sufficient merely to claim a net change and adjust the aggregate historic utility cost. The specific change derived from each repair, replace, or add-new action must be shown.

## 6.9.2 Underwriting Owner Utility Operating Expense for New Projects

A. Green MIP applications for new construction and most substantial rehabilitation projects have no history of utility use as a benchmark. The energy professional should determine local utility rates and forecast utility operating expense based the simulated or estimated utility consumption for each owner-paid fuel or utility used on the site. Consumption should be estimated in the unit of measure used by the local utility provider to price the fuel, power or water and cost per unit of measure should be the local price per unit of the utility used.

## 6.9.3 CAUTION: Changed Energy Use Not Proportionate to Resulting Change in Cost

A. A complicating factor when estimating the utility cost results of repairs and alterations, or forecasting utility costs for a new development, is the variability of pricing methods and fixed and variable costs used by utility providers. For example, many providers charge a minimum monthly amount regardless of usage, and other usage-based or flat-fee capital cost surcharges, and usage-based price schedules may include bundled service discounts, volume discounts or surcharges, multiple pricing tiers and peak demand period pricing. It is the responsibility of the energy professional to investigate and determine the appropriate average price per unit of use for each utility used at a property. Therefore, changes in utility consumption often DO NOT result in proportional changes in costs. It is the Lender's responsibility to assure that appropriate expertise and attention are given to estimating utility prices.

## Chapter 7 Valuation & Market Analysis

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### 7.1 Introduction

**A.** This chapter provides guidance on HUD's Valuation and Market Study requirements for Third-Party MAP Appraisers and Market Analysts, MAP Lenders and Underwriters, and HUD staff involved in reviewing appraisals.

**B.** A Valuation Analysis evaluates the existing or proposed project as collateral and security for a long-term mortgage. Depending on program requirements, this includes an estimation of the market value of the land and/or the property as well as an analysis of the project's market need, location, residential and commercial rent and other income, and operating expenses.

**C.** The Valuation Analysis develops conclusions with respect to feasibility; suitability of improvements; extent, quality, and duration of earning capacity; and other factors that have a bearing on the economic soundness of the project. The objective of the appraisal and market study, if applicable, is to establish value for use in underwriting the supportable loan amount and to determine if the project will meet the market demand at rents that will pay operating expenses, service debt, and provide for sufficient deposits to any reserve accounts.

**D.** The Department has statutory authority (12 USC 1708(g)) to prescribe standards for the appraisal of all projects to be insured by the Federal Housing Administration. Such appraisals shall be performed in accordance with uniform standards, by individuals who have demonstrated competence and whose professional conduct is subject to effective supervision. Under the MAP Program, HUD relies on the MAP Approved Lender to provide such supervision through the underwriting, loan approval, quality control, and compliance program and protocols. Additionally, the Department requires a Uniform Standards of Professional Appraisal Practice (USPAP)-Compliant appraisal review by a HUD Review Appraiser (HRA) for medium- to high-risk transactions.

**E.** The Multifamily Regional Center Director has authority to rely on the Lender's appraisal review without a HUD staff appraiser review. Exercise of such authority may be appropriate for low-risk (minimal Level 1 repairs or alterations) and some medium-risk transactions in which the application is complete, reliable, and not particularly complicated. In all cases, a qualified HUD employee must review each appraisal for compliance with USPAP and HUD requirements.

- 1. Low-Risk Transactions.** These include, for example, most Section 223(f) projects with minimal (Level 1 or less) repairs or alterations.
- 2. Medium-Risk Transactions.** These include, for example, 223(f) projects where significant repairs may be required, RAD or Tax Credit projects as well as Substantial Rehabilitation projects where there is minimal tenant displacement. This does not include projects that meet the criteria for large loan underwriting. New Construction projects may be included where the Lender's Underwriter is experienced, and the market is well established.
- 3. High-Risk Transactions.** These include, for example, most New Construction Projects and projects that meet large loan underwriting criteria as set forth in [Chapter 3, Section 3.10](#). Also includes transactions with leasehold (versus fee simple) ownership interests.

## 7.2 Selection of Appraisers and Market Analysts

**A.** The Lender is responsible for the selection and approval of appraisers and market analysts who are familiar with MAP guidelines. Lenders must ensure that each selected appraiser and market analyst is qualified to appraise or perform market analyses for multifamily properties by reviewing their education, quality and frequency of multifamily appraisal experience, sample appraisals and market studies, professional affiliations, and state licenses or certifications. The ability to complete various HUD forms related to the appraisal (e.g., forms HUD-92264, 92273, 92274, etc.) is also a requirement. The Lender may assist the appraiser in the preparation of these forms, but the appraiser must sign them. Form HUD-92264-A is an underwriting form prepared by the MAP Lender's Underwriter and is not a required appraisal exhibit.

**B.** The appraiser or the market analyst must be independent of, and may not be affiliated with, the loan originator, broker, Developer, Borrower, MAP Lender, or any individual or institution involved in any other financial role in the application. The Underwriter shall not act as the appraiser or market analyst.

**C.** The MAP Lender's responsibility for supervision of the appraisal and market study (and any other third-party reports) requires that the third-party appraiser be selected by the MAP Lender's Underwriter. The appraisal must be ordered and paid for by the MAP Lender, and not by the originator, broker, Developer, or Borrower. The appraisal must identify HUD as an intended user of the report. Appraisals prepared by any entity not engaged and paid for by the Lender are not acceptable and will not meet HUD's appraisal requirements.

**D.** The market study should be ordered and paid for by the Lender. However, a market study that has been prepared for the Borrower by a third-party market analyst and meets all other market study requirements of the Guide, including timeliness, is acceptable. The Lender is responsible for the review and acceptance of all market studies submitted with the application.

**E.** In accordance with the Fair Housing Act, there shall be no discrimination on the basis of race, color, national origin, religion, sex, disability, or familial status in the selection of an appraiser or market analyst. Discrimination by age is also prohibited by the Age Discrimination Act of 1975. The Equal Access Rule (24 CFR 5.105(a)(2)) provides for non-discrimination based upon actual or perceived sexual orientation, gender identity, or marital status.

**F.** HUD reserves the right to examine the credentials of all appraisers and market analysts hired by the Lender, and to reject any individuals that it considers unqualified. HUD staff with concerns about a third party's capability, competence, or experience should contact the Counterparty Oversight Branch (COB) through their supervisory chain. HUD will not reject any third-party contractor without having first issued warning letters to the Lender highlighting the areas of non-compliance in their submitted reports. Third-party contractors will be afforded the right of appeal and due process in defending their work, consistent with COB procedures.

**G.** HUD does not formally approve appraisers or appraisal firms as being "MAP Approved." Rather, the MAP Lender is responsible for ensuring the professionalism and competence of its contracted appraiser as well as the quality of the ultimate appraisal product submitted as a component of the Lender's application.



H. The most current appraiser Certification required by USPAP must be signed by the appraiser. In addition, the appraiser must include a certification that the racial/ethnic composition of the neighborhood surrounding the project in no way affected the appraisal determination.

## 7.3 Appraiser and Market Analyst Qualifications

### 7.3.1 Appraiser Qualifications

A. Each third-party appraiser must meet the following minimum qualification requirements:

1. Be a Certified General Appraiser under the appraiser certification requirements of the state in which the subject project is located;
2. Be currently active and regularly engaged in the appraisal of multifamily properties;
3. Meet all requirements of the Competency Rule described in USPAP, which applies to each certified appraiser who signs the report. If any of the persons involved in preparing the report is a trainee acting as an assistant, this must be disclosed in the report;
4. Have at least three years of income project appraisal experience; and
5. Be knowledgeable concerning current real estate market conditions and financing trends in the geographic market area where the subject project is located and be experienced in appraising multifamily properties with the complexity and characteristics similar to those of the subject project. If the subject contains commercial space, Low Income Housing Tax Credits (LIHTC), or other subsidies, the appraiser must have acceptable prior experience in the appraisal of comparable properties.

B. The above requirements apply to each Certified General Appraiser signing the report. It is not permissible for an appraiser who is not certified in the appropriate jurisdiction to circumvent certification requirements by having a locally certified appraiser co-sign the report. Appraisers who are not certified in the appropriate jurisdiction may not perform the required project inspections of the subject or comparable properties. The appraiser must disclose any of the persons involved in preparing the report who are not certified general appraisers and are acting as an analyst, assistant, or trainee.

C. Temporary certifications are permissible; however, the above competency requirements still apply. The appraiser is responsible for checking the accuracy of all information obtained from local sources and must indicate the names of all individuals who provided material assistance in preparing the appraisal. A temporary certification must be obtained prior to beginning the assignment. The Lender may select appraisers with a temporary certification who have documented how they will achieve competence in the subject area in accordance with USPAP.

### 7.3.2 Market Analyst Qualifications

A. Each Market Analyst must meet the following minimum qualification requirements:

1. Have at least 3 years of experience in performing market studies for income-producing properties;
2. Be currently active and regularly engaged in performing market studies for multifamily properties;



3. Be knowledgeable concerning real estate market conditions and financing trends in the geographic market area where the project is located; and
  4. Be experienced in performing market studies for multifamily properties with the complexity and characteristics similar to those of the subject project. If the subject contains commercial space, LIHTC, or other subsidies, the market analyst must have acceptable prior experience with comparable properties.
- B.** COB will investigate any Regional Center or Satellite Office complaints that a Lender is contracting unqualified or unlicensed appraisers or market analysts.

## 7.4 Valuation Reviews of Third-Party Reports

- A.** Certain underwriting functions may be transferred to HUD staff who are in locations that are distant from the project under review. These functions may include, but are not limited to, appraisal and market study review.
- B.** Third Party Appraisers and Market Analysts working on MAP transactions should assume that HUD staff who are performing reviews may not always be able to physically inspect the subject and comparables, and that the market information used to verify and determine the validity of conclusions may be purchased from national data sources such as, but not limited to, CoStar and REIS. (Note: In all cases, the project will be physically inspected by a qualified HUD staff member for purposes of an environmental review.)
- C.** Project locations that are outside the urbanized areas covered by these national data sources are affected by market forces for which there will be little property-specific information available to HUD staff. HUD staff will not typically have the same level of knowledge of a particular project or location as the professional who has done the extensive research and analysis necessary to develop credible conclusions. The review function would not be efficient or sensible if it involved the same level of time required to develop and prepare an appraisal report/study. However, reviewers must take the time needed to make contacts with market participants to develop as much knowledge as possible to reach reliable conclusions about the work under review.
- D.** Third-party report providers and MAP Underwriters must ensure the application and supporting material contain sufficient information for remotely located HUD staff to make an informed decision. For projects in a location that are not adequately covered by national data sources, the reports must reference the local sources and contrast them with recognized national sources. The goal is to assure that the reviewer can fully understand the nuances of the local market.

## 7.5 Content and Format of the Market Study

### 7.5.1 Purpose and Focus of the Study

- A.** The purpose of the market study is to assure that there is enough sustainable demand for additional units without adversely impacting the existing supply, so as to maintain a balanced overall market. The

focus of the market study is on the overall demand within a defined market area, and of the proposed project's ability to capture and sustain a share of the total (incremental demand). The primary and secondary market areas analyzed by the Lender's market analyst may be narrower in scope than the market analysis prepared by the HUD Economic and Market Analysis Division (EMAD), which analyzes the broader Metropolitan Statistical Area (MSA), county, or smaller submarket area as appropriate. The market analyst must, however, also discuss the larger MSA or county. The study must estimate the number of renter households with sufficient incomes to afford the type of housing at the rents proposed at present, as well as any expected changes in rental housing demand in the foreseeable future (typically the next 3 to 5 years). The study must also identify and discuss any risks associated with longer-term changes in rental housing demand (during the term of the mortgage). In addition, the study must estimate the number of units that the market could reasonably absorb over a specified forecast period, which is typically 3 years, taking into consideration competitive units in the existing inventory, units currently under construction, and units in the planning pipeline, as well as the gross and contract rents of those units.

**B.** For projects designed for the elderly, families, and persons aged 62 and over, the study must define the age restrictions, the anticipated household configuration, and any anticipated household services. The study must also estimate the number of elderly households with sufficient incomes to afford the type of housing and services (if any) under study, any expected change in the number of such households, the proportion of those households that would need and demand such housing, and the number of units that the market could reasonably absorb and sustain over the forecast period.

**C.** The market study and appraisal should be completed by two separate entities in order to preserve independent analysis and conclusions. Any alternative, such as two individuals from the same firm completing separate reports, must be documented/supported by the MAP Lender, approved by HUD at the concept meeting, and documented in the encouragement letter issued by HUD.

**D.** No market study, other than that which would be provided in the appraisal, is required for projects with 90% or more project-based rental assistance.

## 7.5.2 Effective Date

**A.** The effective date of completion of the market study for purposes of a pre-application submission must be within 120 days prior to the submission of the pre-application package. The date for submission of the market study for a firm commitment application must be within 180 days prior to the issuance of the Firm Commitment. The date of the market study can be the date of the site inspection or the date the analyst completes his/her research on active and proposed competitive properties (the effective date), but not to exceed 30 days from the date of the site inspection in either case (these dates should be noted by the analyst in the market study). The effective date is defined as the date that the opinion applies and may or may not be the same as the date of inspection. Expired reports must be updated as necessary by analyzing all relevant data. In cases where a Firm Commitment is delayed and the market has remained stable, HUD may, at its discretion, consider waivers to allow the Lender's Underwriter to resurvey the data and provide an update letter referencing any changes or impact to the conclusion contained in the report.

**B.** Assuming a two-stage application process, the Lender must either submit an updated market study or a Limited Scope Update to the original market study with the submission of the firm commitment application. A Limited Scope Update report requires revisiting the demographic and competitive

environment (including supply), a recalculation of Net Demand and Effective Demand, and a discussion of subject property's proposed rents in the current competitive environment. It should also include any material changes in the primary market area including unemployment rates, adjustments to the labor force, and any large layoffs or employment losses that may have occurred since the original market study. It does not require updating all contextual information included in the original market study and can typically be conducted as a desktop analysis.

### **7.5.3 Forecast Period for Market Study**

A. The Forecast period for the Net Demand Analysis should be a three-year period starting at the effective date. Extenuating circumstances may require construction and lease up to stretch to a fourth year due to the regulatory environment or the nature of construction in the subject market (e.g., dense markets, high rises in central business districts). If the demand period exceeds three years, demand should be adjusted to match the specific term of the Forecast period. The longer demand periods must include an estimate of new supply beyond three years.

### **7.5.4 Project Rents Used in Market Study**

A. The rents as determined by the appraisal are to be compared to those concluded in the final market study. Variations in rents between the market analyst and appraiser may have only a minor impact on effective demand indicators but may have a significant impact on the market analyst's opinion about absorption, since absorption is contingent on a specific rent level. The impact of this must be reflected in the final report. The market analyst must evaluate the rents for the subject and discuss the appropriateness of the rents based on current market conditions and an evaluation of the subject site and product offered, including suggested changes. Rents analyzed in the market study must be compared with the independent analysis completed by the appraiser and reconciled by the Lender.

### **7.5.5 HUD as an Intended User**

A. All studies should designate HUD as an intended user, along with the Lender and Sponsor/Developer.

### **7.5.6 Executive Summary**

A. All market studies must contain an Executive Summary with a concise summary of the data, analyses, and conclusions, including the following:

1. A description of the site and the immediate surrounding area;
2. A summary of the project, including the proposed targeted population;
3. Summary statements describing the condition of the economic, demographic, and competitive environment;
4. A statement of key conclusions reached by the analyst, including but not limited to the Net Demand and Effective Demand for the subject and forecast average annual change in the number of households for a specified period of time;

5. A summary of competitive advantages and disadvantages, and issues that will affect the project's marketability, performance, and lease-up, as well as points that will mitigate or reduce any negative attributes;
6. The number of units currently under construction or in the development pipeline;
7. A statement of the analyst's opinion of market feasibility of the project; and
8. Recommendations and/or suggested modifications to the proposed project, if appropriate.

### **7.5.7 Description of the Proposed Project**

- A. The market study must include a thorough description of the proposed project, including:
  1. The number of units by type and size with information on the number of bedrooms and bathrooms, structure type, square footage, etc. Actual (paint to paint) size should be noted as well as the size in published brochures or other media.
  2. The proposed contract, utility allowance, and resulting gross rents by unit type. (Gross rent is defined as the cost of renting the unit, including the cost of resident-paid utilities.)
  3. Description of any income or rent restrictions imposed on the project by the use of public financing and/or subsidies (e.g., LIHTC, tax-exempt bonds, or subordinate loans). Identify any project-based rental subsidies to be offered, specify the number of subsidized units, the type and form of the assistance, and rent levels compared to market rents.
  4. Utility policy describing which costs are paid by the tenant and which costs are paid by the owner/landlord.
  5. The unit features, project amenities and services, and associated cost.
  6. For rehabilitation projects, provide:
    - a. A description of the proposed scope of rehabilitation including a breakdown of hard and soft costs, if available.
    - b. An estimate of total construction cost and cost per unit.
    - c. Identification of the existing unit mix and rents including any existing housing subsidies. Current and proposed rents should be compared.
    - d. Current and historical (if available) occupancy information.
    - e. An analysis of the current rent roll (if available) to determine if existing tenants will remain income-qualified and/or able to afford the proposed rents.
  7. The project location, in terms of:
    - a. Characteristics of the neighborhood in relation to schools, transportation, shopping, employment centers, social and community services, etc., to include a study of the adequacy of the public facilities that will service the site. The report must include a map showing the site and important neighborhood facilities and amenities.
    - b. Any other locational considerations relevant to the market and marketability of the proposed project.

- c. A conclusion concerning the suitability/appropriateness of the site for the proposed use.
8. Other Characteristics, if any, of the proposal that will have a specific bearing on its market prospects and overall marketability.

## 7.5.8 Primary Market Area

**A.** The Primary Market Area (PMA) is the geographic area in which units with similar characteristics (e.g., number of bedrooms and rents) are in equal competition. The location of the competing projects and the expected origin of the majority of the residents must be discussed. The size of the PMA for general occupancy rental housing can vary significantly depending on the extent and location of comparable and competitive products within a specific area and geography. In some cases, both a primary and secondary market area must be defined. When defining the boundary of a market area, the analyst should consider the locations of comparable and competitive rental developments (existing, under construction, and developments in planning) and commuting times from employment. Data on place of work or residence, population from the Decennial Census, American Community Survey (ACS), private data services, and local sources will aid in this determination.

**B.** The market area analysis must include the following:

1. A legible map of the PMA, showing delineated boundaries, location of the subject, major highways and thoroughfares, geographic features like rivers and lakes, and political divisions such as state lines and city limits. The map must have a title, bar scale, north arrow, and legend.
2. A description of the geographic boundaries of the PMA and a justification for the delineation, including a discussion of the location of competitive housing, relevant services and amenities, and concentrations of employment opportunities.

## 7.5.9 Economic Context

**A.** The market study must include a thorough description of the current and forecast economic characteristics and conditions of the PMA, county, "micropolitan", or metropolitan area (whichever are applicable). The description is necessary to provide background and justification for the subsequent demographic analysis and estimates of demand for additional rental housing. Current economic conditions and employment characteristics must be discussed, including:

1. Identification of growth sectors in the economy and emerging trends, including a detailed discussion of the sectors in the economy that have a major impact on the local housing market, such as military facilities, colleges and universities, federal and state government, major employers, or tourism.
2. A study of recent trends in employment, including unemployment statistics and new job creation or loss, with a detailed discussion of historical nonfarm and resident employment levels and changes.
3. Any anticipated changes in employment as a result of expected closings, openings, expansions, or cutbacks by leading employers, with a particular emphasis on how this would affect the rental market during the forecast period, including any seasonal employment markets.
4. Information on the types of jobs being created and lost, including data on pay scales and how these wage levels relate to the affordability of the proposed rental units.
5. A list of major employers in the PMA, the type of businesses, and the number employed.

6. In relevant markets (such as resort areas), comment on the availability of affordable housing for employees of businesses and industries that draw from the PMA.
7. A forecast of employment for the specified forecast period and how this forecast supports demand for additional new rental housing.

### **7.5.10 Demographic Analysis**

**A.** The market study must include a thorough description of the current and forecast demographic characteristics and conditions of the PMA with a comparison to the secondary market, including a detailed explanation of all significant trends and changes addressing:

1. Recent trends in population and household growth from the most recent decennial census, current estimates, and growth projections over the next 5 years covering such subjects as population change, migration, net natural change, household growth or decline, and changes in the average household size.
2. For senior communities, current and projected senior household base with 55+ and/or 62+ householders.
3. A thorough discussion of past building trends in comparison to household trends.
4. Characteristics of the current household base, including family type, current and change in tenure, age distribution and household type, and rent burden.
5. Current income characteristics of the population and income by tenure.
6. For senior communities, tenure breakdown, income characteristics, and rent burden of senior households.

### **7.5.11 Current Housing Market Conditions**

**A.** The market study must include a comprehensive description of the current conditions of the rental market in the PMA, and of the sales market, if relevant. This description should include a summary statement on the current condition of the overall rental market and of the rent levels in the market of comparable projects, looking at both market-rate communities and affordable units/communities. If appropriate to analyze, subsidized communities in which tenants are not responsible for all rent being charged should be discussed separately from market-rate/affordable communities.

**B.** The analyses should include the following:

1. An estimate of the current competitive rental inventory of professionally managed units in the PMA, with data on the number of units by structure type, number of bedrooms, rent levels, year built, and location.
2. A thorough discussion of recent market trends analyzing the following:
  - a. Current vacancy levels and recent trends in occupancy/vacancy in existing rental projects. Occupancy levels should be reported for market-rate as well as affordable communities, and/or age-restricted communities, if applicable.

- b. Absorption experience of recently completed rental developments, including estimates at a project level of per unit per month absorption rates, with particular emphasis on comparable and competitive projects that have entered the market within the past 24 months.
  - c. Current effective rents for comparable and competitive projects, reflecting incentives and utility policies. Include a discussion of rent trends in this inventory during the past 24 to 36 months. The description should identify any services included in base rents or offered at a premium. Where relevant, the report should include information on the extent of rent concessions or similar incentives, particularly in projects in initial occupancy, and must address the impact of concessions on rent levels and whether the quoted rents are overstated due to concessions or other factors.
  - d. Estimated current overall rental vacancy rate and vacancy rate for units similar to those in the proposed project. Significant seasonal variations in vacancy rates, if applicable, should be discussed.
  - e. Discussion of any vacancy or absorption problems in the market, particularly in the segments of the market most relevant to the subject project.
  - f. The impact, if any, of the single family and condominium market conditions, including an analysis of the cost to rent versus to own, and the impact of foreclosures and of the shadow inventory of single family and condominium units.
3. The report must include a map showing locations of existing competing rental projects, projects currently under construction, and those in the planning and development process.
  4. If appropriate, analyze inventory, occupancy levels, and waiting list of deeply subsidized communities in the PMA.
  5. If appropriate in markets without a significant inventory of professionally managed rental units, provide an overview discussion of the scattered-site rental market that might compete with the subject property, including type of structure, units available, and rents.

### **7.5.12 Rental Units in the Pipeline**

- A.** The market study must include separate estimates of the numbers of rental units currently under construction and in the planning and development process that are likely to enter the housing market during the specified forecast period. These estimates should include all rental developments known, not solely those determined by the analyst to be comparable and competitive. The description of the pipeline activity should clearly identify any significant characteristics of specific developments with rent restrictions or rent limits, such as LIHTC or age-restricted occupancy. The report should provide:
1. An estimate of the number of projects currently under construction, the total number of units, the numbers by bedroom size (number of bedrooms) by rent range, structure type, and amenities (if available).
  2. An estimate of the number of projects in planning stages that are likely to be developed, including but not limited to those with building permits or firm financial commitments, with details on the number of units by bedroom size, rents, locations, and stage of development.



3. A list of LIHTC projects in or near the market area that are not yet placed in service, giving as much known detail as possible on estimated placed-in-service dates, unit mix, and income levels to be served.
4. For senior proposals, a list of all existing and anticipated senior projects within or near the market area, including characteristics such as type of age restriction (55+ or 62+), number of units by bedroom size, income restrictions (if applicable), location, rents, and any features, amenities, etc. included with the rents. For future projects, include as much known detail as possible on estimated placed-in-service dates.
5. A map locating all proposed communities.

## 7.5.13 Demand Estimate and Analysis

### 7.5.13.1 Net Demand Analysis

A. The market study must include an estimate of future demand for the specified forecast period, typically 36 months. The estimate of demand must be based on a calculation of incremental demand (i.e. demand for additional new units) and must address the following factors:

1. Renter household growth during the forecast period.
2. Recent trends in tenure broken down by homeownership and rental that may increase/decrease the demand for rental units (e.g., households shifting from renter to owner tenure.)
3. Replacement of existing rental units lost from the inventory due to demolition, conversion, shifting of owner units into the rental market, and by other means.
4. The effect of any current excess vacant supply, based on an estimate of the balanced market vacancy rate, which is typically assumed at five percent.
5. Reconciliation of the number of units in the proposed project with the demand estimate for the PMA, taking into consideration current housing market conditions, available vacancy, and forecast additions to the supply (planned and under construction).
6. The impact of demand on occupancy levels. Analysts must comment on the potential impact of the net demand conclusion on future occupancy levels in the market by the end of the forecast period, especially if net demand indicates supply and demand are concluded to be out of balance.

### 7.5.13.2 Effective Demand

A. The estimate of "effective demand" is the pool of households with sufficient income and/or applicable household size that would be expected to demand such housing during the forecast period, including the income levels and rent- to-income ratio(s) assumed in the study. Evaluation of Effective Demand includes an analysis of Capture Rate and Penetration Rate:

1. Renter Capture Rate is defined as the percentage of qualified potential renter households in the PMA that the property must capture to fill the units and achieve stabilized occupancy. Qualified Renter Households is defined as households that meet any applicable age and household size restrictions and are within any limiting income eligibility band, such as LIHTC Income Limits, and who have sufficient minimum income to pay the proposed rent without being rent overburdened. The Renter Capture

Rate is calculated by dividing the total number of units at the property by the total number of renter households that meet the applicable age and any income band requirements.

2. Penetration Rate is defined as the percentage of Qualified Renter Households in the PMA that the property and similar existing and proposed competing properties must capture to fill all units and achieve stabilized occupancy. The Penetration Rate is calculated by dividing the total number of units in the competitive inventory (including the subject property, current competitive properties, and proposed relevant competitive properties) by the total number of renter households that meet the applicable age and income eligibility band requirements.
3. For communities with subsidized units, affordability and penetration rate sensitivity analyses should be conducted both with and without project-based rental assistance.
4. The capture and penetration rate analysis must be completed for each unit type at the subject property.

### **7.5.13.3 Evaluation of Net Demand and Effective Demand**

A. The evaluation of Net Demand and Effective Demand should take into consideration:

1. The current and anticipated supply/demand conditions in the overall rental market;
2. The potential depth of the market of income-eligible households in comparison to the number of units at the proposed rents; and
3. The marketability of the proposed units considering the project's amenities, rents, and location relative to comparable and competitive projects and other available housing options.

### **7.5.13.4 Demand for LIHTC Projects**

A. Provide an estimate of demand, including capture and penetration rates, based on potential income-eligible residents. An income-eligible resident is one whose income does not exceed the maximum permitted by the affordability restrictions, but who has sufficient minimum income to pay the proposed rent without being excessively rent-burdened. Households are considered "rent-burdened" if they pay more than 30 percent of their household income in gross rent, and "severely rent-burdened" if they pay more than 50 percent. The market study must describe what basis is used for rent-burdened (e.g., 30 percent, or some other percent, but in all cases less than 50 percent.) To make these determinations, consider the following information and guidance:

1. The market study should specify the applicable LIHTC maximum rents, market rents, and impact on achievable rents and project-based subsidy rents.
2. When the proposed rents are set at the LIHTC maximums, the market of income-qualified residents for the restricted units may be comprised of a relatively narrow band of income-eligible renters whose incomes do not exceed the maximum but are sufficiently high to pay the rent without being rent-burdened. This can result in problems with the market feasibility of the project. Depending on income and rental market conditions in the area, there may not be a sufficient number of potential renters who meet the income limit and are also able to afford the restricted rent. In many markets, LIHTC project rents need to be set below the maximum permitted.

3. Some LIHTC projects include additional types of assistance (such as Section 8 rental assistance or various forms of subordinate financing) which further reduce the tenant-paid rents and thus expand the pool of potential income-eligible residents. The market study must identify the estimated number of households who are eligible but are not excessively rent-burdened when paying gross rent (including utilities).
  4. The determination of demand and capture/penetration rates should take into consideration:
    - a. the current and anticipated supply/demand conditions in the overall rental market,
    - b. the potential depth of the market of income-eligible households in comparison to the number of units at the proposed rents, and
    - c. the marketability of the proposed units, taking into account the project's amenities, rents, and location relative to comparable and competitive projects and other available housing options.
- B.** The Regional Center/Satellite office staff should consult with EMAD in assessing the determination of eligible income band, capture rate, and absorption rate contained in the market study. Projects with insufficient demand for the units at the proposed rents should be rejected.

## 7.5.14 Findings and Conclusions

- A.** Provide a Project Evaluation. Evaluate the subject property within the context of the site, economic, demographic, and competitive characteristics. Comment on the strengths and weaknesses of the proposed project in terms of location, project size, unit breakdown, unit sizes, amenities, features, and rents.
- B.** Address the absorption rate, which is defined as a projection of the pace of unit lease up as units become available for occupancy. The study should also include an estimate of the absorption period needed for the project to reach a balanced market occupancy rate (e.g., 5% or the market's typical stabilized occupancy level based on current market data and the *Net and Effective Demand* estimates.)
- C.** The market study must include an assessment of the impact the proposed project will have on existing rental developments. Specifically, the study must address the impact on existing insured properties and show whether sufficient demand will be derived from new renter households, the shifting of households into the rental market, or the replacement of lost or sub-standard units. It must be demonstrated quantitatively that the number of units under construction and the proposed supply, including the subject, will not create over-supplied or overall soft market conditions. Even if the subject does not directly compete with existing insured or uninsured properties, an oversupply of units could spill over into all segments of the market.
- D.** For age-restricted properties, the market analyst must describe the intended occupancy regime. The MAP Lender's Underwriter narrative must ensure that the analysis and owner's intent based on their representations comply with FHA program guidance and Fair Housing law.
- E.** When projects have a commercial component, the market analyst shall acknowledge and describe the presence of any commercial space. The description should include information on: traffic counts; trends in commercial vacancy rates and commercial rents in the submarket in which the subject site is located; inventory of competitive centers in the immediate vicinity of the subject site; representative sample of rents presently available in the market; pipeline of commercial properties; evaluation of expenditures

compared to supply to determine gaps in the market for retail; an opinion on commercial development opportunities on the subject site; and an opinion on achievable rent levels for such space. This level of detail is likely not necessary for commercial space under 5,000 square feet. A more detailed analysis will be completed by the MAP Appraiser. See [Section 7.7.14](#).

## 7.5.15 Guidance for Income-Restricted Projects

### A. According to USPAP Advisory Opinion 14:

“Subsidized housing may be defined as single- or multifamily residential real estate targeted for ownership or occupancy by low- or moderate-income households as a result of public programs and other financial tools that assist or subsidize the Developer, purchaser, or resident in exchange for restrictions on use and occupancy.” While HUD provides the primary definition of income and asset eligibility standards for low- and moderate-income households, other federal, state, and local agencies define income eligibility standards for specific programs and developments under their jurisdictions.

The competency required of appraisers and market analysts to appraise or prepare market studies for subsidized housing extends beyond typical multifamily residential experience and requires an understanding of the various programs and definitions involved in the particular subsidy program applicable to the development. Practitioners should be capable of analyzing the impact of a particular subsidy program in both the general market and the local subsidized housing submarket. Political changes may affect these requirements and therefore must be fully understood.

## 7.5.16 Data, Estimates, and Forecasts

A. The study should document the methods and techniques used to develop all estimates and forecasts and provide relevant and current citations on the sources of all data, estimates, and forecasts. Conclusions in the study must be consistent with the facts presented; findings and recommendations should be based on a reasonable forecast of market supply/demand conditions and sound assumptions regarding capture rates, absorption, achievable rents, income affordability, and similar factors. To the extent possible, the qualitative and quantitative estimates of demand for additional rental units should address the changes in renter households by household size, not just in total. Although data for all household sizes may be used, a study of the trend of change by household size may derive a more representative and accurate demand estimate consistent with the characteristics of the target market.

## 7.6 Appraisal Requirements

A. The Development of the appraisal must comply with USPAP Standards Rule 1, the Scope of Work Rule, and assignment conditions outlined throughout this MAP Guide. The report shall be in a narrative format, comply with USPAP Standards Rule 2, and contain all of the information necessary for loan underwriting and for the reviewer to easily understand the reasoning employed by the appraiser. Standard Rule 2 does not dictate the form, format, or style of real property appraisal reports. The form, format, and style of a report are functions of the needs of the client and intended users. The substantive content of a report determines its compliance.

## 7.6.1 Effective Date

**A.** For pre-applications, all appraisals must have an effective date within 120 calendar days before the date of the pre-application package. For Firm Commitments, the effective date of the appraisal must be within 180 calendar days prior to the issuance of the Firm Commitment. The MF Regional Center/Satellite Office may require an updated appraisal prior to an amendment, re-issuance, or an extension of the Firm Commitment (e.g., if there is a material change in the terms of the mortgage or in the market conditions and market data upon which the Firm Commitment was based.) Expired reports may be amended or updated as needed by re-surveying all relevant data. HUD defines the effective date as the most current date that the appraiser inspected the subject and comparables and developed estimates of rents and expenses. Updated appraisals can be submitted if the appraiser re-inspects the exterior of the subject project, re-surveys the rental comparables, and reviews the market for any additional sales comparables. USPAP Advisory Opinion 3 should be followed for guidance on completing and reporting appraisal updates. Lenders should provide for updates in their response to the invitation letter in case of processing delays prior to issuance of the Firm Commitment. The Regional Center/Satellite Office has the authority to waive the 180-day requirement or decrease the amount of time until expiration of the report depending on market conditions.

**B.** HUD recognizes that occasionally there may be situations where the Inspection Date and Effective Date may differ, but there should not be a significant difference between the Inspection Date and the Effective Date. While in the course of preparing the appraisal report, new market information may become available that has a material effect on the results of the appraisal. This should be noted in the appraisal report. If there are questions, the Regional/Satellite Office (rather than HUD HQ) should be consulted.

## 7.6.2 Brevity

**A.** The appraisal report should be clear and concise. The appraiser should reference in the body of the report conclusions derived by the analysis of large tables of data, and the actual data should be included as an addendum. Appraisals must be submitted as an electronically signed and searchable PDF file.

## 7.6.3 Complex or Unusual Appraisal Assignments

**A.** When an appraisal assignment involves a subject with property rights issues or other unusual circumstances, third-party appraisers must be sure to comply with USPAP Standards Rule 1-1(a), "In developing a real property appraisal, an appraiser must be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal." When these issues occur, the Lender and appraiser (if identified) should consult with the Regional Center/Satellite Office at a concept meeting before the appraisal assignment begins.

## 7.6.4 HUD Forms to Include in the Report

**A.** Form HUD-92264 and supporting forms HUD-92273, HUD-92274, and HUD-92264T (if applicable) must also be prepared and included in the report.

## 7.6.5 USPAP Jurisdictional Exception Rule

A. The USPAP Jurisdictional Exception rule is not generally applicable in HUD appraisal assignments. Nevertheless, the USPAP Jurisdictional Exception Rule clearly states that if an applicable law or administrative rule such as the MAP Guide or a HUD Notice preclude compliance with any part of USPAP, then that part of USPAP becomes void for that assignment.

## 7.6.6 Occupancy Percentage

A. Unless otherwise noted, the occupancy used in the valuation of properties for acquisition or refinance should be based on the occupancy that is prevalent for the subject's area. This is reflected in Criterion 3 on form HUD 92264-A. The Underwriters may need to use more conservative (lower occupancy/higher vacancy) rates to comply with FHA program guidance in sizing the debt-service constrained mortgage comparisons. The estimate of occupancy should consider the historical performance of the subject and the vacancy and collection loss typical for the subject's market area to determine the occupancy percentage. The appraiser should ignore unsustainable market conditions and short-term spikes in the occupancy rate due to seasonal changes and short-term demand for specialized employment (e.g., disaster relief workers.)

## 7.6.7 Sections 220, 221(d)(4), and 231

A. Sections 220, 221(d)(4), and 231 (new construction only) do not call for an "as complete" value conclusion. The Department considers valuation work for these assignments to be an appraisal that is developed and reported in compliance with USPAP Standards 1 and 2.

1. By statute, FHA Multifamily new construction programs are replacement cost-limited mortgages and require a valuation of the land, a debt service analysis, and a cost approach to value. An estimate of the market value after completion is not required or relevant. The appraiser must fully examine the proposed construction costs of the subject project at the Firm Application stage. The MAP Lender's Appraiser must present, analyze, and support the cost approach based on the plans, specifications, and development costs using either a subscription cost service, the lender's third-party cost analyst, or a direct comparative analysis of recently completed similar developments. Substantial Rehabilitation projects require an estimate of the "As Is" value of the project (as opposed to only the land) by use of the income and direct sales comparison approaches to value when possible. Unoccupied or "shell" structures may be appraised using the sales comparison approach and/or cost approach.

NOTE: The Section 231 Sub Rehab Program is an exception – those projects require calculation of both a cost and an "as completed value" limited mortgage amount.

For apartments that are occupied, the primary method to determining value is the Income Approach. The value should be what the typical purchaser would pay for the income stream currently associated with the subject based on its actual condition and occupancy restrictions. The as-is value must not be based on after-rehab projected income or any advantages that will accrue as a part of the transaction.

NOTE: See special instructions for Cost Certification as it relates to As Is Valuation in [Chapter 13, Section 13.21](#).



2. The appraiser and the MAP Underwriter must assure that there is a sufficient narrative and exhibits to allow a reliable underwriting decision to be reached. This should include, but is not limited to, location maps, photographs of the subject, rent and expense comparables, site and floor plans, along with thorough explanations of all adjustments.

## **7.6.8 Section 223(f)**

**A.** For Section 223(f), calculate all three approaches to value for subjects that have an actual age of less than ten years. The appraisal for the 223(f) refinancing should assume market value for purposes of developing Criterion 3 and should further assume that any proposed repairs/improvements have been completed, as rents, expenses, and value must reflect completion of any proposed repairs or improvements. Not all repairs/improvements will result in an increase in value. Structural repairs, utility line improvements, or other repairs that do not directly result in an increase in market share or would not result in a resident's willingness to pay an increased rental amount likely will not increase value. Any proposed rental increase must be demonstrated by market data.

### **7.6.8.1 Value for Rent Controlled Properties**

**A.** The appraisal should use market rents for purposes of developing Criterion 3 except in cases where rent control or a legislative restriction exists that limits the maximum rents in perpetuity and where such limits survive foreclosure. In these limited cases, the controlled or legislatively limited rents should be used to develop Criterion 3.

### **7.6.8.2 Cost/ Summation Approach**

**A.** The cost or summation approach must consider all applicable forms of depreciation, functional, and external obsolescence. The cost/summation approach shall not automatically set the upper limit of value for these programs. The appraiser should provide a final reconciliation of the three approaches to value, and consider the basic principle of substitution in that no prudent purchaser would pay more for a project than the cost to acquire a similar site and construct improvements of equal desirability and utility. This approach may be eliminated at the discretion of the appraiser for subjects that are ten or more years old.

### **7.6.8.3 Sales Comparison Approach**

**A.** In multifamily housing, the entire project as a whole typically does not offer a convenient basis for comparison with other entire projects due to differences in size, composition, areas, units, and rooms. In such cases, acceptable units of comparison are price per living unit, price per room, and price per square foot of gross building area (GBA). Adjustments to the sales should reflect market conditions and be supported through appropriate analysis. A comparative adjustment for a Net Operating Income (NOI) differential in the Sales Comparison Approach (more commonly known as an NOI adjustment) is not permitted under any circumstances.

### **7.6.8.4 Income Approach**

**A.** The annual net operating income remaining after the payment of expenses is considered to be the primary source of value to the project. The preferred method of capitalizing the NOI into a value estimate is Direct Capitalization. Note that the overall capitalization rate verified from Actual Sales is preferable to



those used in the Sales Comparison Approach or developed by the Band of Investment Model or Investor Surveys, especially in the cases where rent restrictions are factored into Criterion 3 due to legislative restrictions on rent that survive foreclosure. There are several acceptable techniques for deriving capitalization rates. All of the following should be employed and thoroughly discussed:

1. **Comparable Sales.** Rate Extraction based on recent (preferably within the past year) comparable sales is the most preferred. Pending sales are also encouraged if reliable information is available. These must include ALL of the market comparables used in the Sales Comparison Approach or an explanation must be provided. Comparables should be similar to the subject in location, design, quality of construction, and similar risk factors associated with ownership. They should also be similar in the type of expenses, specifically noting variances in deposits to reserves for replacement.
2. **Band of Investment Model.** Band of Investment is based on the premise that most properties are purchased with a combination of debt and equity. The overall capitalization rate derived by this model must satisfy the market-indicated requirements of both investment positions. Lenders anticipate obtaining a competitive interest rate commensurate with the perceived risk of the investment, and they expect the loan principal to be repaid through periodic payments. The property investors expect a competitive return through the equity capitalization rate commensurate with the perceived risk.
3. **Published Surveys.** These are to be discussed as supporting information.

## 7.6.9 Reconciliation of the Approaches to Value

A. Reconciliation involves the data, analyses, and value indications from each of the approaches to value that were developed. It also includes the information comprising the appraisal problem and the underlying analyses of the apartment market, the property's location, and the property itself. All approaches must be internally consistent in order to achieve a reliable estimate of market value. The result of the reconciliation should be a well-reasoned value opinion that discusses conflicting issues and inconsistencies that were revealed by the research conducted and explains them such that a logical and credible conclusion is reached.

### 7.6.10 Section 231 Substantial Rehabilitation

A. For Section 231 Substantial Rehabilitation cases, follow the instructions for Section 223(f). Substantial rehabilitation under Section 231 differs from Sections 220 and 221(d)(4) in that a market value based on the completion of the rehabilitation is required.

### 7.6.11 Remaining Economic Life (REL)

A. HUD Multifamily Housing programs allow for long term amortization periods. The HUD Underwriter must determine the REL and the remaining useful/physical life based on review and reconciliation of the appraisal, capital needs assessment (CNA), recommendations from the appraisal review, and their own observation. This estimate is not a strictly formulaic calculation. REL is defined as the estimated period during which improvements will continue to contribute to project value and an estimate of the number of years remaining in the economic life of the structure or structural components as of the date of the appraisal. For new construction and substantial rehabilitation projects, the maximum mortgage term is

the lesser of 40 years, or 75 percent of the REL. For existing properties, the maximum mortgage term is the lesser of 35 years, or 75 percent of the REL.

**B.** When used in this section, the words and terms below are defined as follows:

1. **Physical Life.** The period from the time of completion (as new or after substantial rehabilitation) of a structure until it is no longer fit or safe for use, or when maintaining the building in a safe, usable manner is no longer practicable. Because a building is subject to physical deterioration and obsolescence, its period of usefulness is limited. As a building deteriorates or becomes obsolete, its ability to serve useful purposes decreases and eventually ends. This may occur gradually or rapidly.
2. **Economic Life.** The period over which improvements to real property contribute to property value. Economic life can never be longer than the physical life but may be shorter. Both Physical and Economic life will be affected by the underlying construction quality, market incentives, level of maintenance/updating to correct physical deterioration, and/or functional obsolescence.
3. **Functional Obsolescence.** Reduction in the usefulness or desirability of the improvements to real property due to the presence of outmoded features, such as lack of closet space or the number of bathrooms commensurate with the number of bedrooms. Such features are often not curable and may or may not be relevant in evaluating the REL.
4. **Effective Age.** The apparent age of the improvements to the real property, which may vary from its actual or chronological age. The effective age is determined by the appraiser assuming the required repairs to be made as specified in the CNA are a condition of refinancing, and based on the following factors:
  - a. Workmanship, durability of construction, and the rate with which natural forces cause physical deterioration;
  - b. The physical condition and probable cost of maintenance and repair, the maintenance policy of owners and occupants, and the use or abuse to which structures are subjected;
  - c. The economic background of the community or region and the need for accommodations of the type represented;
  - d. The relationship between the property and the immediate environment, the architectural design, style, and utility from a functional point of view, and the likelihood of obsolescence as attributable to new inventions, new materials, and changes in tastes; and
  - e. The trends and rate of change of characteristics of the neighborhood and their effect on land values.

**C.** Remaining Economic Life is the Economic Life less the Effective Age. The effective age is determined by the appraiser based on the actual condition of the subject considering all applicable forms of depreciation. The appraiser should assume the required repairs to be made as specified in the CNA are a condition of refinancing, and consider the type and quality of construction, maintenance factors, and any other relevant market and economic factors that might influence the long-term success of the project. The following are examples that illustrate the implementation of these concepts:

1. An older structure with functional obsolescence remains competitive in an area characterized by chronic high costs and a shortage of moderately priced apartments.

Such structure could be a market-rate project in a particularly desirable location, or a former affordable housing project. The MAP Appraiser's market analysis indicates that there is sustained demand in the market area that likely will allow the project to remain competitive for a long term. This can cause the effective age to be lower, with a commensurate increase in REL.

2. A structure that is sound and in good physical condition with many years of physical life remaining may have reached the end of its economic life - if its remaining years of physical usefulness will not provide a competitive return on investment.

Low rise apartment projects in a given market area are no longer consistent with emerging trends or investment patterns, e.g., changes resulting from construction of a new transit system or facility stimulate demand for higher density commercial and residential uses.

- D. The presence or prevalence in a market area of persons or families of any race, color, national origin, religion, sex, disability, or familial status, (which are all are Fair Housing Act protected classes) shall never be considered when conducting an appraisal.

### **7.6.12 Confidentiality Rule of USPAP**

A. HUD is the regulatory enforcement agency identified in the Confidentiality Rule of USPAP. Appraisers will be required to present their entire work file and fully disclose the identity and source of confidential information should the Department determine a review of the appraiser's work file is in order. (Note that, per USPAP, disclosure to enforcement agencies does not constitute a violation of the Confidentiality Rule.)

### **7.6.13 Appraiser's Certification**

A. Include an appraiser's Certification with the format in [Chapter 11, Section 11.2.3](#) of the MAP Guide as well as the most current USPAP certification.

### **7.6.14 Inspection of the Subject and Comparables**

A. The primary appraiser designated by the Lender and accepted by HUD must physically inspect the subject (both exterior and interior) and all of the comparables used as part of the analysis. The primary appraiser must also sign the Certification within the appraisal report and the supporting HUD forms.

1. The primary appraiser must inspect at least one of each bedroom/unit type. The total number of units inspected must equal or exceed 5% of the total number of units for projects of up to 200-units, or 4% of the total number of units for projects greater than 200-units. If the characteristics and/or condition of the subject indicate that a higher level of inspection is necessary, it is the appraiser's responsibility to expand the scope of the work as may be necessitated by the observations made by the primary appraiser during the inspection of the subject. This is especially important where the improvements are high-rise structures and individual units within the building demonstrate varying degrees of light and view qualities. If there are hazardous conditions or other factors that preclude a thorough inspection of the interior, the appraiser must clearly indicate these circumstances in the appraisal report.
2. For large projects exceeding 500 units, the Lender may permit a lesser percentage but reasonable number of units to be inspected by the appraiser. In addition, the appraiser may employ assistants to inspect individual units so as to encourage a thorough inspection. The names and qualifications of

these assistants must be disclosed in the appraisal report. The assistants are not required to sign the report.

3. The primary appraiser must inspect all of the comparables used in deriving an estimate of value, including land comparables (if applicable), improved comparables sales, expense comparables, and rental comparables. The appraiser must verify the condition of the comparables with management or other personnel familiar with the project, whose contact information must also be documented in the appraisal report.

### 7.6.15 Required Appraisal Report Exhibits

A. The following exhibits are required with all submissions: photographs (subject, and all comparables including rentals), regional map, location map, satellite scans (if available from Google, Bing, etc.), flood hazard map, survey (if available), floor plans (for each type of unit being offered - if available), site plan, zoning map, tax map, land sales comparable map, rental comparable map, and improved sales comparable map.

### 7.6.16 Market Analysis

A. The appraisal must also contain, depending on the complexity of the project and prevailing market conditions, a Level B or C Market Analysis of the local market with an emphasis on multifamily housing to determine the ability of an existing project to continue usage as multifamily housing. In the case of proposed construction or substantial rehabilitation, the purpose is to determine overall feasibility and demand for new housing units. The following is a brief outline of a Level C analysis:

1. **Location.** This includes a general description, specific analyses of site linkages and urban growth determinants, and detailed competitive location rating.
2. **Demand Analysis.** This includes a discussion of general evidence of sales/leasing activity, general city/area growth trends, market absorption, demand and need forecast based on population, employment and income, and a demand forecast of the subject market segment.
3. **Competitive Supply Analysis.** This includes vacancy rates for comparables and from market surveys (secondary data), field research on all competitive and proposed properties, building permit analysis, identification of proposed sites, and a detailed competitive amenities rating.

B. The detailed requirements for performing a Level B or C analysis can be found in “Market Analysis for Real Estate” published by the Appraisal Institute. In general, a stable market evidenced by recent sales, and balanced supply and demand, is an indication that a lower level “B” analysis will be sufficient. If there is uncertainty in determining the level of analysis, the Lender and appraiser should jointly consult with the Regional Center or Satellite Office.

## 7.7 Estimating Project Income

### 7.7.1 Rental Estimates

A. The appraiser must estimate the annual gross income of the subject project including estimates of income from market comparables, rental concessions, and an assessment of the general health of the rental market. The gross income estimate assumes a full occupancy level and reflects rent levels current as of the appraisal date or date of the market study. Also consider the effect that any proposed repairs to the project will have on rents, expenses, and net income; however, not all repairs will increase rents, occupancy, or net income, and/or decrease expenses.

#### 7.7.1.1 Rent Comparables

A. Market rent by comparison shall be estimated by the appraiser and documented on form HUD-92273 or form HUD-92273-S8 if the appraisal is also being used as a Rent Comparability Study (RCS). A separate form HUD-92273 is to be prepared for each type and size of rental unit in the subject project (if significantly different).

B. Market rents attributed to the subject property should not be speculative. If rents are based on levels achievable assuming that proposed repairs are completed, then those units that have had repairs completed and are leased are most reflective of market or near market rent levels. The rent comparables and units selected for comparison must be as similar as possible to the subject project and units as to location, structural type, number of bedrooms, and average unit size. In order to ensure they are truly comparable and competitive with the subject project, appraisers should generally not use rent comparables located outside of the subject's market area, instead they should be from areas similar to the subject and should be fully explained in the report. Market-rate units from partially assisted projects can be used as rental comparables in the absence of better rental data.

### 7.7.2 Adjustments

A. Consistent adjustments for significant differences between the comparables and the subject units shall be derived from the market, applied to the subject rent estimate, and fully explained. Rental adjustments are always made to the comparables reflecting differences with the subject project.

### 7.7.3 Final Rent Estimate

A. The appraiser should select the final rent estimate based on the comparables that are the most similar to the subject in location, size, style, and desirability. In situations where the appraiser gives the greatest weight to the highest or lowest comparables, the appraiser must explain and substantiate with market data why the chosen comparables are the most reliable. Often the best comparables are those that require the least amount of adjustment. Just as the most appropriate rent comparable must receive more weight, the general health of the rental market must be recognized before relying upon one or two optimistic indicators.

## 7.7.4 LIHTC and/or Bond Financed Projects

A. On LIHTC and/or bond financed projects, form HUD-92264T must be completed to determine the appropriate processing rents.

## 7.7.5 Trending of Rents

A. Rental estimates shall be made as of the appraisal or market study date and may not be trended to a future date. Since rent estimates are made based on street rents currently being obtained by the comparables, no time adjustment is needed for an estimate as of the appraisal or market study date. Estimate Gross Potential Income (GPI) based on in-place rents at the subject property as evidenced by current rent rolls. However, rents may be adjusted based upon improvements to be made as part of the refinancing when these improvements will increase marketability.

## 7.7.6 Equipment Included in Rent

A. Equipment included in the subject rent such as ranges, refrigerators, microwave ovens, air conditioning equipment, and laundry facilities must be identified. Services included in the subject rent frequently include heat, air conditioning, water, and trash removal, and must also be identified. Comparable project equipment and services must correspond to the same items of equipment and services provided in the subject proposal and the adjustment process must reconcile any differences. This approach also applies to the analysis of expenses.

## 7.7.7 Occupancy/Vacancy and Collection Losses

A. The appraiser must establish a factor for vacancy and collection loss when determining the effective gross annual income for the residential units. The factor must consider both historical and current data (applicable for existing properties) of the subject project, the rental comparables, and any anticipated changes in the market. The factor selected must reflect long-term occupancy rates that are expected to continue. The estimate of occupancy should be based on the actual occupancy of the subject without regard to programmatic constraints imposed on the maximum underwritten occupancy when calculating debt service coverage. The estimate of occupancy must take into account the vacancy and collection (bad debt) loss typical for the subject's market area and, if applicable, be consistent with the subject's historical performance.

B. In most cases the appraiser should use income from actual operations and market conditions in determining value. In sizing the loan for purposes of debt service, the underwritten vacancy rates will be the greater of the minimums below and the vacancy loss rates for the subject property. However, the following minimums may be used to develop market value if deemed appropriate by the appraiser.

### Minimum Vacancy and Collection

#### Loss Rate

3%

5%

#### Property Type

- Properties with HAP contracts covering 90% or more of the units
- Properties meeting at least the minimum LIHTC set aside requirements (20% of the units set aside for tenants earning no more than 50% of median income; 40% of the units set aside for tenants earning no more than 60% of median income; or

**Minimum Vacancy  
and Collection****Loss Rate**

7%

**Property Type**

with income averaging, 40% of the units at an average income of no more than 60% of the area median income); and

- Attainable tax credit rents at least 10% below market.
- LIHTC properties with any percentage of units set aside but without a 10% discount to market; or
- Other properties that do not meet the requirement for a 5% or 3% minimum vacancy

**7.7.8 Project Rent Concessions**

A. Rent concessions in comparable projects must be included in the analysis and an appropriate adjustment made to the subject rent based on the comparable units. The adjustments must reflect the actual impact on gross annual income resulting from the comparable rental concession.

**7.7.9 Occupancy**

A. When the occupancy rate in a comparable project is significantly less than the long-term occupancy rate estimated for the subject, a downward adjustment should be made to the comparable's rent. If other factors such as condition have an effect on occupancy, care should be taken to avoid excessive and duplicative adjustments for interdependent factors. The appraiser must note the actual market-derived commercial vacancy/occupancy rate in the appraisal report. However, the appraised value of the commercial space component for acquisition/refinance, or the underwritten net operating income for new construction/substantial rehabilitation projects, must assume either the lesser of what is indicated by the market or the occupancy limitations of the specific program.

**7.7.10 Utilities/Services**

A. All of the items for consideration under this heading refer to the cost of the services of water, sewer, gas, and electricity that may be included in the rent. In some cases, even though both the subject and the comparable units have the same service included in the rent, an adjustment may still be warranted to bring the comparable in line with the subject, due to size, equipment, utility rate, type of utility, etc. If included in the comparable rent, but not in the subject, enter a negative adjustment reflecting that portion of the comparables rent attributable to the inclusion of the service. If excluded from the comparable rent, but included in the subject rent, enter a positive adjustment reflecting the estimated increase in rental value attributable to including the service in the subject's rent.

**7.7.11 Project Location, Amenities, and Other Factors**

A. Consider the subject location relative to distance from shopping, recreational, social, medical and employment centers, neighborhood desirability, transportation, special hazards, and nuisances.

1. "Other" items that may be considered include, but are not limited to, the following:
  - a. Livability – reflect good or poor unit design and configuration, including room sizes, layout, adequacy of closets, lighting, elevators, and laundry facilities, etc.



- b. Condition of improvements – reflect lack of maintenance, soundproofing, etc.
  - c. Parking – reflect parking rates, adequacy of parking for visitors, proximity of parking to the units, inclusion/exclusion of parking space with unit rental, etc.
  - d. Project density – consider open space or crowding of units, if the degree of either is such that it would affect the level of attainable rental.
  - e. Unit location – reflect features of location of a unit within the project, such as view, proximity to swimming pool, tennis, or other recreational facility, and/or other similar factors.
2. Generally, only high-rise elevator comparables are to be compared with a subject elevator high-rise proposal. Mid-floor level rents of the comparables are compared with the mid-floor level of the subject project. Rent adjustments for heights of the comparables above and below the mid-floor level of the subject also must be made, as indicated by the market.

## **7.7.12 Other Income**

### **7.7.12.1 Ancillary Income**

A. The appraiser may consider other income based upon the operating history of the project only where these sources of income are common in the market. Other income might include, but is not limited to, recurring and reliable sources such as laundry facilities, parking, equipment rental, and vending machines. The appraiser may consider the net amount of this other income based on the actual (historical) amount received. Any projections of other income must be supported by market information and should not automatically assume a direct relationship to residential occupancy. This analysis must be discussed in the appraisal report

### **7.7.12.2 Resale/Submetering of Utilities**

A. This type of income may be recognized so long as it is legally acceptable, is typical for the market, and is transferable.

### **7.7.12.3 Resale of Internet and Media Services**

A. Income from the resale of internet and media services must be both legally acceptable and typical for the market. The MAP Appraiser and Underwriter must address the issue of competition with other service providers as well how this service is provided, specifically taking into account changing technology. Contracts between service providers must be assessed for risk due to factors such as transferability upon the sale of the project, long-term financial strength of the service provider, the length of the contract, and the upfront cost of procuring a contract. For 223(f) or existing 231 projects, there must be clear market-derived indications that having this service results in an increase in a project's value.

### **7.7.12.4 Cell Tower Income**

A. This is a form of commercial income. Its inclusion in the estimate of value is discouraged unless there is an established long-term lease with a reliable lessee. If cell tower income is to be recognized for either underwriting or valuation purposes, the MAP Appraiser and MAP Underwriter should address the risk

associated with present and future competition as well as technological changes, and a higher capitalization rate may be used if income is recognized for valuation purposes.

### 7.7.12.5 Short-Term Lease Premiums

A. Projects with lease terms that are less than 30 days are not eligible for HUD-insured financing under any circumstances and should be distinguished from Corporate Leases defined below. Income from other short-term leases may be considered to the extent that it exists in the local market. There must be a thorough discussion of the prevalence of short-term leases in both the appraisal and underwriting summary. The amount of the premium is the difference between the rent for a unit with a term that is typical for the market (generally one year) and the rent for a short-term lease. This premium is resident-related and is treated as ancillary income. Units with short term leases do not require a separate form HUD-92273, but the rental amount must be based on market information.

### 7.7.12.6 Corporate Leases

A. Corporations and businesses are eligible residential residents in insured projects so long as the lease term equals or exceeds 30 days, although compliance with the policy on Short-Term Lease Premiums above is required and the number of units subject to the leases cannot exceed 10% of the units. For underwriting and valuation purposes, the percentage of total gross income obtained from corporate leases shall not exceed 10%. Requests to waive this guidance will rarely, if ever, be approved.

### 7.7.12.7 Pool and Pet Fees

A. These fees may be recognized based on operating history and prevailing market conditions. For existing projects (223(f) and occupied substantial rehabilitation) the greatest weight should be given to operating history. For new construction cases, any projected income from these fees must be supported by hard data and a thorough discussion of competing and comparable properties.

### 7.7.12.8 Ineligible Income

A. Ineligible income should be noted and discussed in both the narrative appraisal report and the remarks section of form HUD-92264. There is no prohibition on this category of income, but it cannot be included in the income calculation for the purposes of determining value or the maximum insurable mortgage. Ineligible income includes the following:

1. **Interest Income.** The appraiser must not include in the calculation of income any interest income, including interest on reserves.
2. **Ineligible Fee Income.** Non-recurring and non-regular income that is not reliable may not be included in the calculation of income. Examples may include, but are not limited to, forfeited security deposits, or forfeited rent. Reliance on a forfeited security deposit or forfeited rent may be common due to management practices in a project or market but will not be recognized by HUD/ FHA for either the valuation or underwriting.
3. **Furnished Units.** Furnished units must be underwritten at the same rental rate as unfurnished units. This applies to all units, including those having corporate and short-term leases. For valuation purposes, furnished units can be valued based on the prevailing market conditions.

4. Non-Shelter Services/Elderly Developments: Refer to [Chapter 3, Section 3.11.3](#).

### 7.7.12.9 Commercial Income

A. Where commercial facilities are included in a mixed-use project, a separate analysis must be made of the effect that the commercial operation will have on the project. The appraiser must calculate income, vacancy and collection loss, operating expenses, and replacement reserves attributable to commercial space separately from the residential space. Project-paid tenant improvements must be accounted for as a leasing expense, and if applicable, a separate commercial-space operating deficit must be calculated in addition to the required residential operating deficit.

B. The term "Commercial" is applied to any space or facility permitted and acceptable for "Nonresidential Use" from which income is derived or anticipated. Income from residents for the use of facilities such as community rooms and parking are not considered commercial even though fees may be collected. This income is considered ancillary income and is treated separately from commercial income. However, income from non-residents related to parking or other community facilities must be treated as commercial income and is subject to the restrictions on the underwritten occupancy rate as noted in [Chapter 3](#).

C. The space occupied by parking and community facilities is not included in the calculation for allowable commercial space. Non-tenant parking income from commercial parking spaces reserved for use by motorists who are not project residents or are not parking to use the on-site commercial tenant's facilities must be included in the Commercial Space and Income limitations. The income and space attributable to parking spaces reserved for non-residential or non-commercial tenants must be included in the limitations, based on applying the percentage of the total spaces that are reserved for non-tenant use. For existing properties that provide parking for a monthly fee and are to be acquired, refinanced, or will undergo substantial rehabilitation, the Lender must identify the percentage of monthly parkers who are non-tenants so as to include these in the commercial income limitations. The maximum occupancy factor to be applied to the parking income attributable to parkers who are not associated with either the project's residential or commercial tenants shall be the lower of:

1. The amount indicated by the market and by the historic performance of the subject; or
2. 50 percent.

**NOTE: For proposed construction, or where new commercial parking facilities are to be constructed, the demand for this parking must be addressed in the appraisal and Underwriter's narrative. If the Borrower operates a parking facility that provides parking for residential or commercial tenants of the project, the Lender must determine underwritten parking income based on an analysis of the past 3 years of operation and the trailing 12-month period prior to application. If the parking facility is operated by a third party, the Lender may use the amount of income collected under the contract if it is a fixed monthly payment. Parking contracts that specify a percentage rent in addition to or in place of a fixed rent are not permitted without a waiver.**

D. A separate analysis must be performed for each type of space using form HUD-92273 or a similar format to summarize appropriate adjustments to comparable data. These studies can be incorporated as a separate section in the overall residential market study submitted at the pre-application or firm stages, depending on the program requirements, and must also comply with [Appendix 7, Section A.7.1](#). Care must

be taken in reviewing the allowable square footage and income percentage attributable to the commercial/office space since these requirements vary by program. See the table below.

#### Commercial Space and Income Limitations

SOA	Maximum Allowable Percentage of Total Net Rentable Area	Maximum Allowable Percentage of Effective Gross Income
221(d)(4) and 231	25%	15%
220	25%	30%
223(f)	25%	20%

**E.** For all programs except Section 223(f), the maximum underwritten commercial occupancy rate shall be the lesser of: a) that indicated by the market, or b) 80 percent. For Section 223(f), the maximum underwritten commercial occupancy rate shall be the lesser of: a) that indicated by the market, b) the actual occupancy rate of the subject, or c) 90 percent. For special instructions related to the maximum underwritten occupancy rate for non-tenant parking income, see [Section 7.7.12.9.C](#) above.

### 7.7.13 Limited Waiver of Commercial Income and Space Limits

**A.** Regional Center Directors may issue waivers of the commercial income limits in [Section 7.7.12.9](#), so long as the amount does not reflect a property that is primarily commercial rather than residential. New construction and substantial rehabilitation projects with commercial income greater than 20% of the effective income should, if located in a Section 220 eligible location, use the Section 220 program rather than a waiver of the 221(d)(4) limit. The Regional Center Director's approval must document that the project's commercial component will contribute to meeting the Department's Strategic Plan Goals, including promoting sustainable communities or supporting transit-oriented development. If the Lender requests a waiver of the commercial income limits, HUD may require that the request be supplemented by a complete credit analysis of all existing or pre-leased commercial tenants. Waivers may be granted where there are clear mitigating circumstances that justify such a waiver. Examples include, but are not limited to:

1. A long-term lease with a credit-worthy tenant, such as a government agency or a large, well-established business;
2. A multi-tenant commercial space where most of the tenants have a long history of occupancy (5 or more years) and full occupancy of this space is not needed to provide a break-even cash flow for the project; or
3. There is substantial Borrower equity and/or local government funds that mitigate risk.
4. Existing Section 223(f) projects with an established history of commercial income exceeding the 20% limitation, but less than or equal to 30%.

**B.** Regional Center Directors may issue waivers to exceed the commercial space limits in [Section 7.7.12.9](#). In order to justify a request to waive the commercial space limitation, the owner must demonstrate:

1. that the additional space will not negatively impact on the use of the project by its residential tenants and will not create a nuisance to the surrounding community, so as to create a situation where the project is no longer residential in nature;

2. there is ample market support to assure occupancy of the space within the projected absorption period; and
3. any issues involving easements, liability insurance, parking and zoning must be resolved prior to granting the waiver.

### 7.7.14 Commercial Space Valuation

**A.** Unlike the valuation of the residential portion of a mixed-use project, the appraiser must value the commercial portion of the project by applying the programmatic income and space limitations used to establish the commercial NOI for calculating debt service coverage (see [Chapter 3](#)). The appraiser must:

1. Conduct a complete analysis of at least three commercial income and expense comparables and provide a photograph, the tenant's name, type and address of business, square feet, rent, vacancy, any concessions, and major lease terms for each comparable.
2. Provide data to support the subject's commercial vacancy rate in relation to the market commercial vacancy rate and review the rollover risk and cost of resident improvements to re-lease space. Use a vacancy factor of not less than 10% for Section 223(f), and 20% for Section 221(d) and Section 220 new construction or substantial rehabilitation, to obtain effective gross commercial income for underwriting purposes.
3. Provide the term, commencement date, expiration date, and name of the tenant, square footage, and calculation of gross rents, expenses, reimbursement of expenses, cancellation clauses, and renewal clauses for each lease.
4. Include as project operating expense all commercial expenses payable by the project owner. The analysis of all commercial income and expenses must be reflected on form HUD-92264 with all the supporting data attached to the form.

## 7.8 Project Operating Expenses, NOI

### 7.8.1 Purpose

**A.** The appraiser shall determine the costs to maintain, operate, and repair the project and to defray the costs of ownership. An accurate analysis of operating expenses is essential to determining a realistic estimate of net income before debt, depreciation, or the Borrower's other non-operating costs. This net income is commonly known as net operating income (NOI).

**B.** Appraisers must use form HUD-92274 (Operating Expense Analysis Worksheet) to develop project expense estimates to be included in Section E of form HUD-92264 (Project Income Analysis and Appraisal). Form HUD-92274 must be included in the processing file as supporting documentation for form HUD-92264.

**C.** Market expenses attributed to the subject should not be speculative and should bear some reasonable relationship to the project operating history, understanding that some savings in operating expense line items may be gained when proposed repairs are completed. An example of savings might be reduced utility expenses based on the installation of certain energy-efficient features. Reduced real estate taxes

based on a new assessment classification would also be justification for estimating operating expenses lower than indicated by the project-specific operating history.

## 7.8.2 Sources of Expense Data

**A.** For new construction projects, operating expenses must be estimated on the basis of comparable projects.

**B.** For existing projects, for both valuation and debt service, operating expenses must be adjusted on the basis of comparable projects but will primarily be based on the past 3 years of operating experience for the subject project. In addition, the Lenders should provide trailing 12 months of income and expenses for the appraiser to compare to the historical statements.

1. The most current year project financial statement must have a third-party CPA or IPA review. Owner certified financial statements may be submitted for the years prior to the last full Fiscal Year. Any owner-certified financial statement or owner-certified balance sheet and operating statement must include the following acknowledgment:

“WARNING: 18 U.S.C. 1001 provides, among other things, that whoever knowingly and willingly makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter within jurisdiction of any department or agency of the United States, shall be fined under that title or imprisoned for not more than five years, or both.”

2. For refinance transactions where the project may not have been under the current ownership for the 3-year period, financial statements for the entire 3 years may not be available. This is particularly true for bankruptcies or the acquisition of defaulted properties. Also, in purchase transactions, not all the required information may be available for reasons beyond the purchaser’s control. In these situations:

- a. The Borrower must submit a statement through the Lender that explains why all the required records cannot be obtained.
- b. The Lender must also certify that they have evaluated the Borrower’s statement and agree that the information is not available.

3. The Regional Center Director may waive the requirement for past 3-year period financial statements. However, the Borrower must submit the project financial statements that are available including an owner-certified year-to-date balance sheet and operating statement.

**C.** All projects must be analyzed as independent operations and must not reflect shared expenses from nearby projects under the same management, including shared insurance premiums. If the nearby project should be subject to foreclosure, the subject project would be adversely affected, thereby constituting an unacceptable underwriting risk. For the same reason, estimated expenses must reflect typical long-term operation and must not reflect a specific Sponsor or Management Entity whose operation would not be typical.

## 7.8.3 General

**A.** Operating expenses are periodic expenses needed to maintain the project and to continue the production of effective gross income, and represent the totality of all expense items as recognized under

Generally Accepted Accounting Principles (GAAP), except to the extent modified by HUD Program Obligations. Operating expenses must include the annual amounts deposited to the Reserve for Replacement. Operating expenses shall not include interest charges, or charges or allowances for depreciation of real or personal property, or amortization of financing expense, or payments to any officer or director of the corporation, unless such payments are for services which are necessary to the operation of the project. For appraisal purposes, an operating statement that conforms to the above definition of operating expenses may differ from statements prepared for accounting purposes. Current or historic statements must be prepared on a cash basis. It is important to verify the accounting basis for the operating statement since project operating expenses for appraisal purposes must be reported on a cash basis. Typical categories of expenses are as follows:

1. **Fixed Expenses.** Fixed expenses are those that generally do not vary with occupancy and have to be paid regardless of whether the project is occupied or vacant, and generally do not fluctuate greatly from year to year. Real estate taxes and insurance costs are typically included as fixed expenses.
2. **Variable Expenses.** Variable expenses are operating expenses that vary with the level of occupancy or the intensity of project operation. Operating expenses for large properties frequently list many types of expense variables, but typical broad categories include the following:
  - a. Management charges
  - b. Utilities – electricity, gas, water, sewer charges
  - c. Heating, ventilation, and air conditioning (HVAC)
  - d. General payroll and security
  - e. Cleaning expenses
  - f. Maintenance and repairs
  - g. Decorating
  - h. Grounds maintenance
  - i. Exterminating
  - j. Trash removal
  - k. Miscellaneous (supplies, etc.).
3. **Reserve for Replacements.** This reserve category provides for the periodic replacement of the building components that wear out more rapidly than the building shell itself and must be replaced periodically during the building's economic life. These components may include but are not limited to roof covering, carpeting, plumbing fixtures, appliances, and HVAC. The estimate of the reserve for replacements should be based on reserves that are typically collected for comparable properties in the subject's market area, without regard to FHA programmatic requirements used for determining the required replacement reserves when calculating debt service coverage. The appraiser must document the research conducted to make this determination. The MAP Lender's underwriting narrative must address any variance between the market reserve cost used on the appraisal and the FHA-required deposits included in the underwriting.
4. **Total Operating Expenses.** Total operating expenses for residential properties are the sum of the fixed expenses and variable expenses updated to the appraisal date, plus the reserve for replacements.



5. **Commercial Facilities.** Where commercial facilities are included in the subject project, a separate analysis must be made to determine the effect that the commercial operation will have on the project expense estimate.

## 7.8.4 Estimate of Operating Expenses by Units of Comparison

**A.** Items of expense shown under each comparable and the expense items applicable to the subject proposal must be expressed as suitable unit of comparison—such as expense per unit per annum (PUPA), and expense per square foot of net rentable area per annum (PSFPA), or percent of effective gross income. The expense comparables and units selected must be as similar as possible to the subject project and units as they relate to the subject location, structural type, number of bedrooms, and average unit size.

**B.** For consistency purposes, expense components must be expressed in the same units of comparison so that the expenses for the subject proposal can be totaled. In cases where the unit of comparison for a specific component is different from the basic unit of comparison for the other expense items, this different unit of comparison must be explained in the expense narrative. The dollar amount of the expense item can afterwards be converted to the same unit of comparison selected for the other expense components. Additional documentation must be submitted, as needed, for all component estimates that are not self-explanatory.

## 7.8.5 Expense Comparables

**A.** All HUD-insured properties used as expense comparables must be identified and disclosed in the appraiser's form HUD-92274 (Operating Expense Analysis Worksheet) and in the appraisal, except as noted below.

1. **General Requirements.** All comparables (confidential and disclosed) must be representative of the physical and location-specific characteristics of the subject project. Appraisers must always present the best comparables available for their analysis and must refrain from repeatedly using the same disclosed comparable merely to meet the disclosure requirement.
2. **Confidential Expense Data.** The appraiser may include confidential expense comparables in the expense analysis; however, the analysis must include at least one fully identified and disclosed expense comparable to serve as a benchmark. Confidential expense data sources must be disclosed to a HUD review appraiser upon request (and are subject to confidentiality requirements similarly imposed on licensed HUD review appraisers). Appraisers may only use confidential expense comparables that are supportive and consistent with the fully disclosed comparables used in the analysis. When submitting confidential expense comparables, the appraiser must redact only the minimum amount of information necessary to protect the confidentiality of their client. The city, state, and general market area within the city must be disclosed unless this information would clearly identify the comparable and thus breach the appraiser's confidentiality requirement. The project description, unit mix, and the physical characteristics of the comparables' units must be disclosed. It is unacceptable for the appraiser to base conclusions on confidential expense comparables that are not supported by the fully disclosed comparables used in the analysis.
3. **Review of Insured Expense Comparables.** The HRA will compare the FASS or OPIIS systems file for the insured expense comparables used by the appraiser to confirm the data. In order to accomplish this, the HRA will combine the following accounts: Acct. No. 6263T (Administrative Expenses,

subtracting Acct. No. 6203 (Conventions and Meetings) and Acct. No. 6370 (Bad Debts)), Acct. No. 6400T (Utility Expenses), Acct. No. 6500T (Operating and Maintenance Expenses), and Acct. No. 6700T (Taxes and Insurance).

## 7.8.6 Expense Adjustments

**A.** Project expenses must be expressed in the same units of comparison in order to ensure accurate adjustments and correct reporting of expense estimates. Consistent adjustments for significant differences between the comparables and the subject units shall be derived from the market and applied to the subject expense estimate.

**B.** The appraiser must enter the dollar amounts attributable to significant differences between the subject proposal and each of the expense comparables, such as for physical characteristics, equipment, services provided, the level of management furnished to residents, and any differences in rates between tax and utility jurisdictions. The appraiser must also correlate the comparable expense for each component which is applicable to the subject project.

## 7.8.7 Updating Procedures

**A.** Appraisers must not trend expenses to reflect a time adjustment from the effective date of the most recent expense comparable to the anticipated date of project occupancy following construction and initial endorsement. Instead, expense estimates must be effective as of the date of the appraisal and must reflect the same year of operation.

**B.** The appraiser may use a factor expressed as a percentage to adjust expense comparables up to the same date as the most current expense comparable in order to make a more creditable comparison. However, if all of the expense comparables have data from the same operating year, no adjustment for updating is necessary.

**C.** Adjusting expense data is a two-stage process, as follows:

1. First, the oldest comparables are updated to the date of the most recent comparable, so that all comparable data is representative of the same effective time period. Second, after updating the comparables to the same effective time period, the line items are correlated, and the subject's expense estimate is updated to the date of the appraisal.
  - a. The most current comparable is entered in the first column on form HUD-92274. This comparable serves as the benchmark for updating the remaining comparables.
  - b. The effective date of the operating expense data is always the beginning date of the operating year. For example, the beginning date of a financial statement dated January 1<sup>st</sup> to December 31<sup>st</sup> is January 1<sup>st</sup> of that year. If the financial statement fiscal year ends June 30, 2000, the beginning date is July 1, 1999.
  - c. Other than the first comparable being the most recent, the remaining comparables do not necessarily need to be in chronological order.
  - d. The appraiser must enter the comparables' itemized expenses as reported on audited, reviewed, or certified financial statements. Per unit expenses or per square foot expenses are treated similarly:

- 1) The actual expense amount must be entered in the first column, without any adjustments.
- 2) Once the adjusted per unit expenses are determined for each comparable, the subject project's expenses are then correlated from the array.
- 3) Once the correlated line item expenses for the subject project are determined, they are added and updated to the date of the appraisal.
- 4) The correlated subject expenses are updated based upon the beginning date of the expense period of the most recent (the benchmark) comparable. HUD may request from the appraiser the names and addresses of any confidential expense comparables used in the expense analysis, pursuant to the Confidentiality sub-section of the Ethics Rule, along with Standards 3.1.e and 3.2.f of the USPAP. If the appraiser still refuses to provide this information, the HRA may request additional non-confidential comparables.

### **7.8.8 Consistent Expense Line Items**

A. The expense line items included in Section E. of form HUD-92264 should be consistent with the individual line items as updated on form HUD-92274.

### **7.8.9 Underwritten NOI and Program Guidance**

A. Underwriters should use the following general guidance. Underwriters should stress-test assumptions that raise risks and evaluate worst case scenarios.

1. Projects must have an average physical occupancy rate of at least 85%. For market rate properties, the maximum underwritten economic occupancy rate is 93%. For affordable properties, refer to the [Section 7.6.6](#).
2. Projects must demonstrate a pattern of stable physical occupancy (i.e., the average occupancy standards noted above), for a period of six months prior to submission of the Firm Commitment application, and maintain that average occupancy through to the date of Initial/Final Endorsement. Continued occupancy consistent with the underwriting conclusions must be documented with an updated rent roll no more than 30 days prior to closing. (For newly built projects, i.e., certificates of occupancy issued less than three years prior to application, see [Chapter 3, Section 3.7.2.B](#).)
3. The Borrower must submit an updated, certified rent roll detailing the occupancy level at the project. The rent roll must be dated no more than 30 days prior to endorsement. If HUD determines that the updated rent roll shows a significant change in occupancy from that submitted at the time of application and that was assumed in the loan approval, then any Commitment issued shall be of no force or effect and may be cancelled by HUD or amended.
4. Operating Expenses will be stabilized based on the previous three-year operating history where available. Operating expenses, as evidenced by the three-year operating history may require adjustment if capital expenditures (normally considered a reserve for replacement item) have been paid out of the operating budget. Additionally, adjustments to management fee may be made provided a new management contract is executed that reflects a different percentage of gross collection. Adjustments to real estate taxes may be permissible if there is an anticipated tax reduction based on reassessment or reclassification. Annual deposit for the reserve for replacement will be based on the estimate made by the Needs Assessor in the capital needs assessment. (For newly built projects, i.e.,

certificates of occupancy issued less than three years prior to application, see [Chapter 3, Section 3.7.2.B.](#))

5. **Exceptions:** Set forth below are exceptions to developing NOI for underwriting Criterion 5 (debt service):
- a. For projects with units assisted under a Section 8 HAP contract subject to mark-down to market or having short terms, the Underwriter should size the debt service mortgage at the lower of either:
    - 1) Market rents as estimated by the third-party appraiser, or
    - 2) Section 8 HAP rents.
  - b. For projects with Section 8 HAP contracts at above-market rents for a long term, the Underwriter may amortize the additional debt supportable with the above-market portion of rent (per the Criterion 5, debt service approach) based on two tranches, an A and B piece.
    - 1) The A piece will be determined by underwriting to the market rent levels over the entire term of the mortgage.
    - 2) The B piece will be underwritten as the difference between the market rents and the higher Section 8 rents over the remaining term of the HAP Contract.
  - c. For Criterion 5 in the first refinance of a 202 direct loan, the Underwriter may use the Section 8 HAP rents (even if they exceed the market) as well as actual project expenses, as evidenced by the three-year operating history as stabilized. This assumes that these projects are not subject to restructuring under Mark-to-Market and that no equity will be extracted in the transaction based on above market rents.
  - d. For a second refinance of projects which previously had Section 202 direct loans, the Underwriter will use the two-tranche method described above. These projects are no longer exempt from mark-to-market under MAHRA at the next HAP contract renewal.
  - e. Tax Increment Financing (TIF) income may be underwritten as a second tranche for the term of the TIF, only to the extent the offset request NOI is guaranteed or refinanced to obtain anticipated benefits and the TIF would unquestionably not result in a default. The underwritten narrative must provide a complete explanation of the TIF and stress test analysis.
  - f. For (LIHTC) Projects, debt service rents will be the lower of market or tax credit restricted/achievable rents unless there is a Section 8 HAP contract that covers the LIHTC rental units. In the case where there is a long-term Section 8 contract in place with rents comparable to market the Section 8 rents will be used. If the HAP has less than 15 years remaining, no renewals are necessary, but the Lender must underwrite to the lesser of Section 8, market, or LIHTC achievable rents or see [Section 7.8.9.A.5.b](#) (above) for Section 8 rents that exceed market.
  - g. When an application for a stabilized, operating property proposes green building certification, then 100% of projected energy/utility savings may offset historic expense, but if energy saving repairs and alterations are proposed without a green building certification, then only 75% of projected savings may be underwritten. Refer to [Chapter 6](#) of the MAP guide or underwriting guidance for projects with energy savings.

## 7.9 Site Analysis

A. Key analyses for consideration of site acceptability for a proposed project are described in this section.

### 7.9.1 Analysis of Location

A. The analysis of location involves a determination of the desirability and utility of the site, probable future neighborhood trends, the pattern of project and neighborhood improvements, and rents in the area.

### 7.9.2 Specific Location

A. Consider the specific site in relation to neighborhood and city-wide physical, social, and economic influences, limitations of use imposed by zoning or deed restrictions, development trends, stability, decay and rehabilitation, availability of utilities, services, and appropriateness of the intended use. Review and analyze the various influences which affect its market and income potential, including a review of the crime rate in the area, its impact on the project and how the impact, if any, can be addressed through design or staffing. Race, color, national origin, religion, sex, disability, and familial status, which are all Fair Housing Act protected classes, shall never be taken into account when conducting an appraisal. No decisions should be made based on pre-conceived notions about characteristics of the area based on the demographics in lieu of statistics. (For further guidance, consult USPAP Advisory Opinion 16, “Fair Housing Laws and Appraisal Report Content”).

### 7.9.3 Civic, Social, and Commercial Centers

A. Consider the sufficiency of community facilities as they relate to the needs of residents of the proposed project. A location for a multifamily project must be adequately served by elementary and secondary schools, neighborhood shopping centers, transportation, churches, playgrounds, parks, libraries, hospitals, and theaters and other appropriate services.

#### 7.9.3.1 Schools

A. Accessibility to schools will be judged by the transportation time required, rather than by walking distance alone. Thus, if school bus service will be provided and the time involved is reasonable, the location may be acceptable even if schools are not within walking distance. School capacity is the responsibility of the community and a project that is otherwise feasible will not be rejected because the local schools are considered overcrowded, unless it can be proven that marketability is adversely affected.

#### 7.9.3.2 Neighborhood Shopping

A. The convenience of shopping should be judged on the basis of time rather than distance. The importance of grocery, drugstore, and other neighborhood shopping facilities to be within a reasonable walking distance will be heightened based on the number of residents who do not have private transportation.

### 7.9.3.3 Religious and Recreation Centers

A. Ready access to religious and recreation centers is desirable. Projects designed for large families have a greater need for playgrounds and active recreation areas. Adequate on-site provisions for playgrounds and other recreation amenities must be incorporated into the proposal where adequate facilities are not in close proximity to the project site and available for use by occupants.

## 7.9.4 Transportation

A. Convenient transportation to places of employment, major shopping districts, and civic and social centers is a prerequisite to site acceptability. In those communities where local public transportation is the principal means of commuting by the prospective residents, the location of a project designed for such occupancy shall be within a reasonable walking distance to mass transit.

## 7.9.5 Special Hazards and Nuisances

A. Such conditions include unusual topography, subsidence, flooding, unstable soils, unusual traffic hazards and noise, danger from fire and explosion, exposure to airport noise and low-flying airplanes, smoke, chemical fumes, noxious odors, stagnant ponds or marshes, and sewage disposal failure. Any of these, or similar conditions, if serious and infeasible to overcome, will cause a specific location to be ineligible for mortgage insurance.

## 7.9.6 Parking Facilities

A. The Lender and the third-party reports must consider the impact that parking requirements for the project will have on parking facilities in the neighborhood and on all-night parking, including the availability of other off-street parking, if the project site lacks adequate parking for residents. The loan proposal must estimate the number of parking spaces that would be required and whether or not the proposed parking facilities will meet the estimated need of the residents and their guests. The Lender and the third-party reports must consider convenient access to reliable public transportation, because it may in some cases mitigate parking availability concerns.

## 7.9.7 Site Suitability

A. The site must be adequate in size, shape, exposure, and contour for the proposed project. Building height limitation, project unit size and numbers, necessary on-site parking, and play areas must be considered.

## 7.9.8 Land/Site Valuation

A. The site value of land in new construction is to be estimated using all applicable approaches to value, as if the project were unrestricted and market rate.

B. The “As Is” value in substantial rehabilitation cases is to be estimated using all applicable approaches to value based on the current operation of the project.

C. For both [Section 7.9.8.A](#) and [Section 7.9.8.B](#) above, no consideration will be given to:



1. Any additional value that may be attributable to subsidies available to the project or any LIHTCs or other tax benefits the project will receive; or
2. Any value reduction due to any NOI or value limitations caused by regulatory agreements or affordability restrictions imposed by any subsidy program or tax regulation. This valuation methodology permits Sponsors to acquire a project at its market value for new construction or rehabilitation of affordable housing. The value attributable to the presence of LIHTCs diminishes over time and is not always freely transferable, and thus should not be taken into consideration.

NOTE: See special instructions for Cost Certification as it relates to As Is Valuation in [Chapter 13, Section 13.21](#).

**D.** The site value of land in new construction or the “As Is” value will be noted in the MAP appraiser’s narrative report and in the Remarks section of form HUD-92264. For the purpose of developing the cost build-up in Section G of form HUD-92264, the lesser of market value or the acquisition cost will be entered in Section G. Line 74 (Total Estimated Replacement Cost of the Project) is to be entered in Criterion 3 of form HUD-92264-A.

**E.** For underwriting purposes, where sites/projects are sold by a public body to the Developer for a specific re-use purpose, the value of land fully improved is the lesser of:

1. The amount determined by comparison with other sites possessing the improvements and amenities that the subject site will have upon completion.
2. The dollar amount paid by the purchaser under the purchase contract with the public body, plus an estimate of any additional costs imposed by its terms or by the insurance program. Such costs are those to be borne by the purchaser under the purchase contract, including real estate taxes and special assessments accruing from date of purchase to date of commitment, legal fees incident to the land/project purchase, re-zoning costs, installation of certain designated off-site improvements, razing structures and clearance of the site (after allowance for any income to the purchaser), and environmental abatement. This is not a complete list of items covered but serves as a guide to the acceptability of costs required by the purchase contract.
3. The actual values are noted in the MAP Appraiser’s narrative and in the Remarks Section of the 92264.
4. In the case of non-LIHTC developments that otherwise meet the definition of affordable per [Chapter 3, Section 3.1.12](#) of the MAP Guide, all or a portion of the residual land value assignable to the affordable units in the transaction may be included in Criterion 3, as long as the land value is constrained by a valuation consistent with an affordable development (as opposed to a market-rate site valuation). For purposes of clarification, the site value used for affordable housing may be lower than the corresponding value if all of the units were operated at market. The units that are restricted to rents below area market rents (established in the appraisal) would not contribute the same value to the underlying land as the market rate units. In some cases, the value may pose a negative impact for each unit restricted as the amount of rent generated would likely not cover expenses. Thus, the impact of the rents in this case must be thoroughly analyzed.
5. The appraised value of the land may be included in Criterion 3 in the event that the public entity maintains ownership in the transaction, and the project meets the definition of affordable per MAP Guide [Chapter 3, Section 3.1.12](#).



F. HUD’s estimated value of land or project “as is” for cost certification may include all of the items in [Section 7.9.8.E.2](#) above with the exceptions of: the installation of off-site improvements and the cost of razing structures and clearing the site (less income received). This is intended to avoid duplication of costs that might be reflected in the estimated value of land “as is” and also allows for the Sponsor to include them as separate items in cost certification which includes both off-site costs and demolition. The dollar amount of the land purchase contract plus a breakdown of the estimate of additional costs must be fully itemized and documented.

**NOTE: Cost Certification instructions (enforced by Statute) dictate that, in substantial rehabilitation cases, the lesser of the “as is” value of the land and improvements (before repair or rehabilitation) or the purchase price of the land and improvements is used in the cost build up for Criterion 3 of form HUD 92264A. Consequently, when mortgage proceeds will be used to fund the acquisition of the project, the “as is” value estimation will be used as a test of the reasonableness of the acquisition price.**

G. When the acquisition price is less than the “as is” value of the land and improvements (as accepted by HUD), and mortgage proceeds will be used to fund the acquisition of the project, the acquisition price will be used in the cost build up for Criterion 3, forming the cost basis for the Firm Commitment

H. When the acquisition price exceeds the “as is” value of the land and improvements (as accepted by HUD), then the acquisition price must be reduced to the “as is” value and will, subsequently, comprise the basis of the cost build up for the Firm Commitment.

I. When mortgage proceeds will not be used to fund the acquisition of the project, the “as is” market value of the project will be used in the cost build up for Criterion 3, forming the cost basis for the Firm Commitment. This is particularly significant when below-market rent restrictions are in place (such as in the case of LIHTC-limited rents or Section 8 rent subsidy) and the use of market rents in valuing the project will result in a premium over these rent restrictions.

## 7.9.9 Warehousing of “Excess” Land Area

A. Warehousing of “excess” land area is not encouraged, but where un-avoidable it may be permitted but may not be funded with insured mortgage proceeds.

## 7.10 Pre-Application for 220, 221(d), and 231

### 7.10.1 Lender’s Responsibilities

A. Based upon the market study prepared by the market analyst and the rental income and expense estimates prepared by the appraiser, the Lender is responsible for making the following determinations before submitting the application:

1. Determine the current occupancy levels, market absorption rates, and market demand for the number and type of units proposed.
2. Analyze site for acceptability.

3. Determine market rents reflecting amenities, services, and equipment offered, and estimate project income.
  4. Estimate total operating expenses. HUD's Environmental Review Online System (HEROS) reports, including the Phase I ESA, should be consulted to determine if additional carrying costs are to be included in the operating expense summary.
  5. Estimate mortgage amount based on form HUD-92264-A, Criteria 5, and Debt Service Ratio.
  6. Make a determination of feasibility or non-feasibility of the Sponsor's proposal.
  7. Evaluate the market study and appraisal report. The Lender will either accept their conclusions for use in underwriting or may revise them for underwriting purposes. Any such revisions must be explained and justified. The Lender may adjust the appraised value downwards but may not adjust it upwards. Once accepted by the Lender and submitted to HUD as part of the Lender's application, the Lender assumes the validity of the findings and conclusions of the appraisal.
- B.** The HEROS report, including a Phase I ESA, must be prepared in accordance with [Chapter 9](#) and the Lender should advise the market analyst and the appraiser of any conditions which might affect the marketability or value of the project.
- C.** The appraiser or market analyst must prepare the market study in accordance with the requirements of this Chapter.
- D.** The appraiser must determine project rents, estimated rental income, operating expenses, and the warranted price of land or "as is" value (of land and buildings for substantial rehabilitation cases). The Lender must ensure that forms HUD-92273 (Estimate of Market Rent by Comparison) and HUD-92274 (Operating Expense Analysis Worksheet) are prepared. For substantial rehabilitation projects, the appraiser must estimate the rents and expenses based on the assumption that all proposed substantial rehabilitation to the project has been completed and is used as the basis for NOI in the debt service criterion. However, pre-rehabilitation rents and operating expenses must be used for purposes of developing the cost build up and determining as-is value.
- E.** The Lender must consider cost information from various sources, including the Sponsor, appraiser, and cost consultant (including soft-cost and land cost information) to calculate the total replacement cost, and will compare its estimate of total replacement cost with the costs estimated by the Borrower.
- F.** The Lender must ensure that forms HUD-92264, HUD92264-A, and supporting forms are completed.
- G.** The Lender must compare the calculations on form HUD-92013 with those proposed by the Borrower and either accept the Borrower's proposal, recommend its modification, or reject it and advise the Borrower that the project is infeasible.

## 7.11 Firm Commitment for 220, 221(d), and 231 (New Construction)

### 7.11.1 Lender's Responsibilities

A. Contract for an appraisal establishing the replacement cost for the project utilizing the cost approaches in accordance with requirements found in [Section 7.6](#). The appraiser will update the rental and expense analyses provided in the Pre-Application.

B. The appraiser is also required to determine the "warranted price of the land" for new construction projects and the "as is" value of the project for substantial rehabilitation projects. In addition, for Section 231 substantial rehabilitation projects, the appraiser must also determine the "value fully improved" of the project site.

C. The Lender must forward or otherwise coordinate sharing information prepared by its cost analyst, and any soft cost and land cost information provided by the Sponsor, with the appraiser for assistance in the calculation of the total replacement cost.

D. In accordance with USPAP Standard 2-3, "When a signing appraiser(s) has relied on work done by appraisers and others who do not sign the certification, the signing appraiser is responsible for the decision to rely on their work. The signing appraiser(s) is required to have a reasonable basis for believing that those individuals performing the work are competent. The signing appraiser(s) also must have no reason to doubt that the work of those individuals is credible."

E. The Lender must assure that all applicable sections of the Rental Housing Project Income Analysis and Appraisal, form HUD-92264, are completed in accordance with current policy, for the type of project proposed.

F. Form HUD-92664 items to be calculated by the appraiser include:

1. Market rents and estimated income,
2. Estimated total operating expenses,
3. Total estimated replacement cost of the project,
4. "Warranted Price of the Land" for new construction projects and the "As Is" value of the land and building for substantial rehabilitation projects,
5. Estimate of operating deficit and replacement reserve,
6. Estimate of REL, and
7. Estimate of Interest during Construction (line 53 in section G of form HUD-92264), to be calculated as the greater of a or b below:
  - a. **By formula.** The amount of the mortgage multiplied by 0.5, multiplied by construction interest rate and multiplied by construction years. (Construction Years is the construction time in months from line 52 in section G of form HUD-92264 plus 2 months, then divided by 12).

- b. **Lender's estimate (optional).** The Lender's estimate of interest during construction must be documented with a pro-forma draw schedule or its equivalent, subject to USPAP Standard.
- 8. The Lender must also provide written explanations in the Underwriter's narrative of any major changes to the pre-application invitation letter. Any inconsistency between the data reported on a form HUD-92264 prepared by the appraiser and the Lender's form HUD-92264 must be explained in the Underwriting.

## 7.11.2 HUD Review

A. HUD's HRAs and Underwriters may suggest modifications to elements of the appraisal and methodology of the appraisal conclusions internally or may return the application to the Lender for modification. See [Chapter 11, Section 11.3](#) for review by Multifamily Regional Center/Satellite Office staff.

## 7.12 Firm Commitment for 223(f)

### 7.12.1 Lender's Responsibilities

- A. The Underwriting Narrative must demonstrate that the MAP Underwriter performed adequate due diligence in reviewing the appraisal, which shall include a thorough discussion comparing the appraiser's market analysis to the conclusions from the market study (in cases where a separate market study is required.) There must also be a full discussion by the Underwriter of the approaches to value and the appraiser's reconciliation and value conclusion.
- B. The Lender must state any reasons for disagreement with the appraisal report. The underwriting summary should contain a thorough discussion of any differences between the value conclusions made by the appraiser and those conclusions used in underwriting the loan. The appraiser's value conclusions may be adjusted downwards by the Underwriter but may not be adjusted upwards.
- C. The appraiser must complete an appraisal of the project establishing market value utilizing the cost, income, and comparable sale approaches. The Cost Approach may be eliminated at the discretion of the appraiser for subjects that are ten or more years old, although an estimate of the land value must still be provided.
- D. The appraiser should participate in the inspection of the project with the capital needs assessor where practicable.
- E. The appraiser must consider the eligibility of the project, confirm the project occupancy level, and verify the owner's rent roll during the inspection. When the appraiser has established that the owner's rent roll is correct, the actual occupancy based on the owner's rent roll must be entered in the Remarks section of form HUD-92264. The appraiser must also determine whether the apartments are furnished or unfurnished.
- F. The appraiser must analyze the project for acceptability.
- G. The Lender must confirm that the HEROS report, including the Phase I ESA, is prepared in accordance with [Chapter 9](#) of the MAP Guide and with all appropriate directives.

**H.** The Lender must assure that the appraiser completed forms HUD-92273 (Estimate of Market Rents) and HUD-92274 (Operating Expense Analysis Worksheet). This is based on the determination made by the appraiser of the project's income and operating expenses including a review of the operating history of the project (rent roll and financial statements).

**I.** The Lender must assure that all applicable sections of the Rental Housing Project Income Analysis and Appraisal (form HUD-92264) are completed in accordance with current policy, for the type of project proposed. Form HUD-92264 items to be calculated by the appraiser include:

1. Market rents and estimated income,
2. Estimated total operating expenses,
3. Total estimated replacement cost,
4. "Warranted Price of the Land",
5. Market value of the project,
6. Estimate of operating deficit as necessary and replacement reserve,
7. Estimated and actual occupancy rate, and
8. REL.

**J.** The data provided in the Lender's form HUD-92013 and Lender's form HUD-92264 must be consistent, and any inconsistency between the data reported on a form HUD-92264 prepared by the appraiser and the Lender's form HUD-92264 must be explained in the Underwriting Summary.

## **7.13 Substantial Rehabilitation for 220, 221(d)(4), and 231**

### **7.13.1 General**

**A.** In general, a substantial rehabilitation project is processed in accordance with the instructions found in [Section 7.10](#) and [Section 7.11](#) above, except as noted below.

### **7.13.2 Completing Form HUD-92264**

**A.** Form HUD-92264 must be completed in accordance with basic valuation instructions for Sections 221(d)(4) and 220 processing, with the following modifications:

1. Development of the "As Is" value must be in accordance with the pertinent requirements of Standards 1 and 2 and the applicable approaches to value. A supplemental form HUD-92264 is not required.
2. The forms HUD-92273 and HUD-92274 analysis used to support the income and expenses on form HUD-92264 must reflect the "as completed" project conditions that will exist after substantial rehabilitation has taken place.
3. A value for the land without improvements must be estimated and entered using the analysis grid in Section H of form HUD-92264.

4. The “as is” value and the value of the land without improvements must be entered in Section “O” (Remarks) of form HUD-92264.

### 7.13.3 Applicable Approaches for "As Is" Value

A. The estimate of “As Is” value of the land and building before rehabilitation should be estimated by the direct market comparison approach and the income approach to value. The “As Is” value by the residual approach is not mandatory but can be used in cases where there is a lack of market sales. This estimate of value assumes an arm’s length transaction between the subject and a typical purchaser of the subject in its current state with respect to condition and income, including the current presence of a subsidized income stream. To determine value based upon the income approach, the appraiser should use the lesser of market rent or the income derived from any rental assistance contract, as applicable, to avoid inappropriately inflating income and thereby the estimate of value. Moreover, the estimate does not assume any advantages or disadvantages associated with the current sale or refinancing of the subject that would involve issuance of tax credits or other development advantages.

**NOTE: See special instructions for Cost Certification as it relates to As Is Valuation in [Chapter 13, Section 13.21](#).**

### 7.13.4 Valuation for 220 and 221(d)(4)

A. Determine the market value of the project "As Is". Complete the Location and Description of the Project, Information concerning Land or Project, Estimate of Income, Equipment and Services Provided in Rent, Estimate of Annual Expenses, Income Computations, Income Approach to Value, and Sales Comparison Approach to Value within the report. If the project involves rehabilitation and new construction with additional land to be added, also complete a land appraisal for that portion of the land to be added for the new construction portion of the development proposal.

B. Use the Replacement Cost by Formula, Rehab Projects, with or without Builder and Sponsor's Profit and Risk Allowance (BSPRA), to find the total project cost (summation estimate) using the "As Is" market value of the project, and the rehabilitation cost estimate furnished by the cost analyst, plus carrying charges and financing.

C. Complete form HUD-92264. In Section G, the "As Is" market value of the project before rehabilitation will be shown on the line titled "As Is" value of project except as noted below.

D. Instructions for limiting the “As Is” value of project before rehabilitation, when that project is acquired as a leasehold estate, are found in Ground Leases, [Section 7.15](#).

E. To find the project mortgage amount for Section 220 and Section 221, use the lowest of Criteria 1, 3, 4, or 5 on form HUD-92264-A. Estimate the "As Is" value of the project before rehabilitation, add the total for all improvements plus soft costs to the As-Is Value to obtain the sum of the above costs. Then multiply the sum of the project costs listed above by the applicable percentage based upon Criterion 3 to obtain the maximum project mortgage amount.

**NOTE: Cost Certification instructions (set by Statute) dictate that, in substantial rehabilitation cases, the lesser of the “as is” value of the land and improvements (before repair or rehabilitation) or the purchase price of the land and improvements is used in the cost build up for Criterion 3 of**

**form HUD 92264A. Consequently, when mortgage proceeds will be used to fund the acquisition of the project, the “as is” value estimation will be used as a test of the reasonableness of the acquisition price.**

**F.** When the acquisition price is less than the “as is” value of the land and improvements (as accepted by HUD) and mortgage proceeds will be used to fund the acquisition of the project, the acquisition price will be used in the cost build up for Criterion 3, forming the cost basis for the Firm Commitment

**G.** When the acquisition price exceeds the “as is” value of the land and improvements (as accepted by HUD), then the acquisition price must be reduced to the “as is” value and will, subsequently, comprise the basis of the cost build up for the Firm Commitment.

**H.** When mortgage proceeds will **not** be used to fund the acquisition of the project, the “as is” market value of the project will be used in the cost build up for Criterion 3, forming the cost basis for the Firm Commitment. This is particularly significant when below-market rent restrictions are in place (such as in the case of LIHTC-limited rents or Section 8 rent subsidy) and the use of market rents in valuing the project will result in a premium over these rent restrictions. (See [Section 7.13.3](#), defining how rents are derived as the basis for the “as is” value)

### **7.13.5 Valuation for Section 231 Substantial Rehabilitation**

**A.** Section 231 substantial rehabilitation cases require two value estimates: 1) a value subject to the completion of rehabilitation using all applicable approaches, which shall be used in Criterion 3 of form HUD-92264-A, and 2) an “As Is” value entered in Section G, line 73b of form HUD-92264 to determine the Total Replacement Cost of the Project, in a manner similar to the procedure used in Sections 220 and 221(d) (4). Depreciation is not included. The value upon completion of the project should reflect that which could be obtained through an arms-length sale. If rental restrictions exist and will survive post-sale, then the value will be based upon these limitations. Alternatively, if the restrictions terminate upon sale, then the As-Is estimate would reflect the higher value. The “As Is” value is also used in completing Criterion 6 of form HUD-92264-A.

**B.** If the Total Estimated Replacement Cost of the Project (Line 74 of Section G of form HUD-92264) exceeds the value after rehabilitation, the residual “As Is” value by formula must be completed. This amount must be entered on line 73b of Section G, and Section G, line 74 will be considered to be the value of the project after rehabilitation, and this amount must be entered in Criterion 3 of form HUD-92264-A.

### **7.13.6 Valuation for RAD Transactions**

**A.** On RAD 221(d) (4) substantial rehabilitation transactions, the appraiser should use the Commitment to Enter into a Housing Assistance Payments (CHAP) rents along with historical occupancy and operating expenses, if available, to set value.

### **7.13.7 Contingency Reserves**

**A.** To address unanticipated costs inherent in the rehabilitation of older structures, there will normally be included in the mortgage amount a reserve for contingencies based on the percentage of estimated rehabilitation cost without fees. This percent may range between 10 and 15 percent, depending upon the scope and type of rehabilitation and the experience and financial ability of the Sponsor, the Borrower, and



contractor, and on whether the contractor's bid already contains a reserve for contingencies. This percentage, determined by the cost analyst, must be included as a separate line item in the estimate of replacement cost on form HUD-92264.

### 7.13.8 Interest During Construction

A. Interest during construction for substantial rehabilitation (line 53 in section G of form HUD-92264) must be calculated as the greater of:

1. **By Formula.** The amount of the mortgage multiplied by 50 percent, multiplied by construction interest rate, and multiplied by construction years. (Construction Years is the construction time in months from line 52 in section G of form HUD-92264 plus 2 months, then divided by 12).
2. **Lender's Estimate (optional).** The Lender's estimate of interest during construction must be documented by a pro forma draw schedule or equivalent.

### 7.13.9 Inspection Fee

A. The inspection fee is calculated as half of one percent (0.5%) of the loan amount when the project involves new construction. For substantial rehabilitation projects, the inspection fee is calculated as the sum of Total for All Improvements times one half of one percent (0.5%) rounded to the next higher \$100.

### 7.13.10 Offsite Costs

A. If there are any offsite costs associated with the rehabilitation, enter them as a line item in the Estimated Replacement Cost. This separate entry is necessary in rehabilitation processing, since the "As Is" value does not include offsite cost requirements.

### 7.13.11 Rehabilitation Cost not Attributable to Residential Use

A. This entry must be completed for all rehabilitation projects and is prepared on Rehabilitation Cost Not Attributable to Residential Use, found in the MAP Form Book, and transferred to line 4b under Criterion 4 (Amount Based on Limitations per Family Unit) on form HUD-92264A.

### 7.13.12 Developer's Fee, when Applicable

A. HUD may include a nonprofit Developer's fee in the estimated replacement cost of a project, in addition to the legal, organizational and audit fees normally included in the estimated replacement cost of a project.

1. The fee will be based on a sliding scale at eight percent of the mortgage, but not less than \$40,000 or more than \$400,000.
2. The following exceptions apply:
  - a. For mortgages in excess of \$5,000,000, increase the maximum fee to provide an additional 2 percent based on that portion of the mortgage that is in excess of \$5,000,000.
  - b. At the option of the nonprofit Sponsor/Borrower, the fee included in the replacement cost may be reduced.

3. Part of or the entire fee may be used to pay for transactional costs related to developing the subject project, including but not limited to:
  - a. Reduction of the estimated closing costs of the project,
  - b. Staff salaries,
  - c. Nonprofit working capital deposit,
  - d. Relocation expenses,
  - e. Operating deficit escrow,
  - f. Financing fees above the 3.5 percent included in the estimated replacement cost of the project,
  - g. Environmental studies, and/or
  - h. Housing Consultant services provided by either in-house staff or contractor.
4. Funds not used to meet the estimated cash requirements of the project will be released to the nonprofit based on a percentage of completion method.

### **7.13.13 Exclusions to Estimated Replacement Cost**

A. HUD will no longer include in the estimated replacement cost of a project an Allowance to Make Project Operational (AMPO) nor an amount for Housing Consultant services, except as part of the Developer's fee noted above.

## **7.14 Calculating Operating Deficits**

### **7.14.1 Estimate of a Project's Operating Deficit**

A. When it is anticipated that the project's net income will be inadequate to support the insured loan during the initial rent-up period, the appraiser must estimate the anticipated project operating deficit utilizing the following steps:

1. Estimate the total project operating expenses, add the debt service requirement (including principal, interest, and mortgage insurance premium (MIP)) and divide the total by the potential gross income for the project. The resultant ratio is the break-even occupancy level. Multiply that percentage times the total project units to obtain the number of units required for break-even occupancy (rounding up any fraction of a unit).
2. Estimate the total number of units expected to be occupied at the time of Final Endorsement. The difference between the total units required for break-even occupancy and those occupied units at the time of Final Endorsement represent the total number of units that must be rented in order to reach a break-even occupancy level.
3. Estimate the likely rate of absorption of the available units, taking into account the current and proposed supply of housing units in the subject's market balanced against demographic and demand considerations. The absorption or lease-up rate must be supported by comparison to similar projects' historic rates of absorption during their lease-up period, whenever such a comparison can be made.

The number of units to be absorbed, divided by the monthly absorption rate, will yield the total number of months of the entire operating deficit period.

- a. **Absorption Period.** The Absorption Period is the period of time necessary for a newly constructed or renovated project to achieve stabilized occupancy. The absorption period begins when the first certificate of occupancy is issued and ends when the last unit to reach stabilized occupancy has a signed lease and is actually occupied by a resident. A typical pre-marketing period begins about three to six months prior to the issuance of the certificate of occupancy, therefore the month that leasing is assumed to begin should accompany all absorption estimates. It is important to consider that the absorption of restricted/low-income units may be different, depending on the differential in rent between low-income rents and market rents, and the number of income-qualified potential residents in the Housing Market Area (HMA.)
  - b. **Maximum Allowable Absorption Period.** As a result of risk mitigation guidance, the absorption period used in estimating market demand for the proposed number of units has been reduced from 24 to 18 months. Larger projects may phase additional units under a separate application for mortgage insurance (e.g., under Section 241(a)). An exception to the 18-month absorption period limitation may be waived by the Regional Center Director for large high-rise buildings. Such projects will be evaluated based on their own merit and will require a larger initial operating reserve to insure against the risk inherent in a longer absorption period.
  - c. **Absorption Rate.** The Absorption Rate is the average number of units rented each month during the absorption period.
4. Because the deficit period can begin at certificate of occupancy and continue through the cost certification phase and the amortization phase, there are three distinct expense intervals to consider when calculating the total deficit period, although not every project will require using all three intervals.
- a. **Interval 1** covers the time between certificate of occupancy and the end of the construction period and cost certification. (Note that the construction period is defined as construction time plus two months for cost certification purposes). This is an optional interval, because some projects may have the same certificate of occupancy and construction completion dates and thus would not need an Interval 1. When calculating expenses for this Interval, no debt service is to be included as an expense since the mortgage interest for this interval is included in the mortgage in Section G Line 53 "Construction Interest". Replacement Reserves and ground rent are not to be included in Interval 1. This interval must only include the appraiser's estimate of all of the applicable operating and leasing expenses for each month (period).
  - b. **Interval 2** begins at the end of the construction period/cost certification process (construction time plus two months) and ends at the beginning of loan principal amortization. This period can be no greater than 2 months and is also an optional interval. ([Chapter 8, Section 8.9.1.B.1](#) requires amortization to begin "no later than 4 months after construction completion for insurance of advances and first day of second month after final endorsement for insurance of completion cases"). If amortization begins at the end of the construction period, this interval will not be necessary. Debt service must include payment of interest and MIP, but not amortization, as the beginning of amortization signals the beginning of Interval 3. (Section G Line 53 of form HUD-92264 includes mortgage interest for the construction period plus two months. If amortization is deferred until 4 months after construction completion, there will be two months of unaccounted-

for interest and MIP that must be included in the Initial Operating Deficit (IOD)). Ground rent must be included if the project is a leasehold since only ground rent during construction can be included in the mortgage, and this interval begins after construction completion. Replacement reserves are not included in interval 2. This interval must include the appraiser's estimate of applicable operating expenses for each month (period).

- c. **Interval 3** begins at the beginning of amortization. Amortized debt service is mandatory in this interval, and must include payment of principal, interest, and MIP. Ground rent, if applicable, and replacement reserves are also mandatory in interval 3. This interval must include the appraiser's estimate of applicable operating expenses for each month (period). Interval 3 ends when NOI becomes positive and is sufficient for breakeven coverage of the mortgage debt.

**B.** Operating deficits can occur before and after the start of amortization. The operating deficit calculation for the first interval must begin when the Certificate of Occupancy is secured.

**C.** If the dollar amount of debt service for a period is greater than the net income for that period, the difference represents the estimate of the operating deficit. One period of positive income does not cancel a prior period of income deficiency.

**D.** The operating deficit represents the total of all cumulative losses projected to occur before the project reaches breaks even and produces a positive cash flow. These losses may not be offset by intermittent periods of positive cash flow.

**E.** Where commercial facilities are included in the project, a separate operating deficit estimate of income loss for commercial rent-up must be prepared. The appraiser must ensure that expenses included in the residential deficit estimate are not duplicated in the commercial space deficit estimate so as to unfairly penalize the project. The commercial space deficit is added to the residential operating income deficit to determine the total project operating deficit escrow funding that will be necessary. Any positive income attributable to the commercial space during the deficit period will not offset the residential operating deficit requirements.

## 7.15 Leaseholds/Ground Leases

**A.** HUD may insure a leasehold deed of trust (or mortgages) that constitutes a mortgageable interest under the law of the state in which the project is located and otherwise meets the requirements of the National Housing Act and this Section. However, HUD prefers to provide insurance on deeds of trust and mortgages secured by a project owned in Fee Simple. The MAP Lender's underwriting and appraisal analysis must fully describe the interest in a Leasehold Estate transaction and related values. Except as specifically noted below, waivers of this Section and modifications to the HUD Lease Addendum (form HUD-92070M) are not permitted in the field and must be processed in HQ except for affordable transactions with a governmental entity as the lessor.

### 7.15.1 Definitions

**A. Fee Simple (Estate).** An ownership interest in land that is the broadest property interest allowed by law, extending beneath the soil to the air above, and which endures until the last holder dies without heirs.

**B. Leasehold (Estate).** A Tenant's possessory interest in land for a term of years granted to the Tenant pursuant to a lease agreement. Upon expiration of the Lease term, all rights to possess and use the land revert back to the Landlord (Fee Simple owner) and the leasehold estate terminates. A leasehold interest can be in the land only (ground lease) or the land and building and improvements.

**C. Leased Fee.** A Landlord's interest and rights to the leased property, including the right to receive rental income and a right to possess the property at the end of the lease.

**D. Tenant.** An entity with a possessory interest in the land granted by the Landlord through a Lease, typically the single asset Borrower entity, *i.e.*, the HUD Borrower.

**E. Landlord.** The owner of the Fee Simple interest in the land (and sometimes improvement on the land) who grants the Tenant the temporary possessory interest in the land (and improvements, if applicable).

**F. Lease.** A contract for exclusive possession of lands or tenements for a determined period. Note that the *Lease Addendum – Multifamily* (form HUD-92070M)) uses the term Lease to refer to Leasehold Estates comprised of the land (or air) and Improvements, but for purposes of this Section, Lease may refer generally to a lease of land and improvements, a Ground Lease, or an Air Rights Lease.

**G. Ground Lease.** A particular form of Lease, typically a long-term contract between the Landlord and Tenant granting the Tenant an exclusive possessory interest in land for a term of years in return for lease payments or rent. A Ground Lease for purposes of this Section does not include improvements.

**H. Rent or Ground Rent.** Money paid by Lessor to Lessee in exchange for the exclusive use and enjoyment of the land or improvements.

**I. Improvements:** Improvements are a permanent addition to real property (land).

**J. Operating Expenses.** See [Section 7.7](#).

**K. Taxes:** Project taxes and special assessments. Taxes shall not include income taxes. Net income before Debt Service Payments shall mean the annual amount which remains after operating expenses and taxes are subtracted from Effective Gross Income.

**L. Debt Service Payment.** The annual amount paid to mortgage principal, interest, and MIP.

**M. Net Cash Flow.** The annual amount remaining after Debt Service Payments are subtracted from net income.

**N. Air Rights.** The right to undisturbed use and control of designated air space above a specific land area within stated elevations. Air rights may be acquired to construct a building above the land or building, or to protect the light and air of an existing or proposed structure on an adjoining lot. The rights may be transferable, which is an air right, that cannot be used by the landowner, or that the owner chooses not to use, but can be conveyed to landowners in another location.

## 7.15.2 Legal Requirements

**A.** The Tenant/Borrower must have a mortgageable interest in the property comprised of:

1. A Leasehold interest in the land – *Lease Addendum – Multifamily* (form HUD-92070M) (Option 1 “Ground Lease”); or

2. A Leasehold interest in the land and building/improvements – *Lease Addendum – Multifamily* (form HUD-92070M)) (Option 2 “Lease,” permitted only in cases where the Landlord is a public/governmental entity); or
3. A Leasehold interest in the air rights – *Lease Addendum – Multifamily* (form HUD-92070M) (Option 1 “Air Rights Ground Lease”).
4. A Leasehold interest in air rights and improvements – *Lease Addendum – Multifamily* (form HUD-92070M) (Option 2 “Air Rights Lease,” permitted only in cases where the Landlord is a public/governmental entity).
5. For Leaseholds of trust lands or Native American tribal land, HUD must ensure that the Lease provisions, including the term of the lease and any waivers of Lease Addendum provisions, are acceptable to both HUD Headquarters and the Bureau of Indian Affairs.

**NOTE: In all cases the Landlord must be the Fee Simple owner of the property and must grant the leasehold estate directly to the Tenant (i.e., the Borrower). This prohibition against insurance of mortgages on sub-leasehold estates is statutory for Sections 207/223(f) and 231 and cannot be waived for these programs.**

**B.** The Lease must meet the following requirements:

1. **Term of Lease.** The term of the lease must comply with the National Housing Act and cannot be waived.
  - a. Sections 221(d) and 220: the term of the lease must run at least ten (10) years beyond the maturity date of the mortgage or for a period of not less than 99 years which is renewable.
  - b. Sections 207/223(f) and 231: the term of the lease must run at least fifty (50) years beyond the date of mortgage execution or for a period of not less than 99 years which is renewable.
  - c. Section 223(a)(7): the term of the lease is subject to the requirements of the original mortgage program for the project being refinanced.
  - d. Section 241(a): the term of Lease (from the insured first mortgage) may remain the same except if the 241(a) loan is being extended beyond that of the insured first mortgage. The term of Lease must be extended by a corresponding number of years in cases where the original Lease term is other than 99 years and renewable.
2. **Recording.** The Lease or a Memorandum of Lease must be recorded in the applicable land records office and must contain the following information (in addition to any information required by state law):
  - a. The names of the parties (Landlord and Tenant);
  - b. A legal description;
  - c. Term of the Lease and any option to renew;
  - d. Reference to the HUD *Lease Addendum – Multifamily*, form HUD-92070M; and
  - e. Specific reference to HUD’s option to purchase in Section 7 in the HUD Lease Addendum (unless Section 7 is expressly waived in writing by HUD in accordance with Program Obligations).

3. **Lease Addendum – Multifamily (form HUD-92070M).** The Lease Addendum must be included and used as follows:
- a. The Lease must incorporate the *Lease Addendum - Multifamily* form HUD-92070M (“Lease Addendum”). If the Lease has been recorded, the Lease Addendum must also be recorded in the official records to amend the previously recorded Lease. If a Memorandum of Lease has been recorded, it must be amended in the official records to reference the incorporation of the Lease Addendum as noted above.
  - b. The Lease, through the incorporation of the Lease Addendum, must grant HUD the option to purchase good and marketable fee simple title to the property and the Landlord’s interest, if any, in the building and improvements (Section 7 of form HUD-92070M).
    - 1) **Option Price:** HUD’s option price must be the value of the Leased Fee Estate (net present value of Ground Lease) at the time of Firm Commitment (see [Section 7.15.4](#) regarding valuation of the leasehold interest).
    - 2) **Waiver:** If the Landlord is a state or local unit of government or public entity created pursuant to state law, the Regional Center Director may waive the purchase option requirement at the time of issuance of the Firm Commitment. To be eligible for this waiver, the project must also:
      - a) Be “affordable” as defined in [Chapter 3, Section 3.1.12](#), OR be a low-leverage, low-risk loan with significant public purpose and benefit;
      - b) Be appraised for both Leased Fee and Leasehold interests, as well as the Fee Simple interest in the land (the Leased Fee is the net present value of the Ground Lease); and
      - c) Provide a thorough discussion in the appraisal and underwriting narrative of the Lease terms, and a determination by Lender that both the Leasehold Estate is marketable and the Leased Fee is less than the Fee Simple interest in the land.
      - d) Additionally, HUD will permit the use of discounted cash flow analysis and/or direct capitalization in determining the value of the Leased Fee. The Lender must include a thorough discussion of the parameters and methods used in the determination of the discount rate. The value of the Leasehold Estate will be accounted for in form HUD-92264A on line 3(a) and will be used to calculate the maximum insured mortgage for purposes of Criterion 3. No value is given to the Leased Fee under either Criterion 3 or 4.
  - c. Execution of a new Lease Addendum is not required for 223(a)(7) transactions.
4. **Estoppel Certificate.** The Tenant/Borrower must provide an estoppel certificate signed by the Landlord that identifies the Lease documents, including all amendments, and confirms: the legal description; that the Lease is in full force and effect; and that there are no defaults, pending defaults, or conditions that could give rise to a default under the Lease. The estoppel certificate must also contain the required language from 24 C.F.R. § 200.62 and the “warning” language from the Lease Addendum. The estoppel certificate must be dated within 30 days of closing.



## 7.15.3 Lease Payments (Ground Rent)

### 7.15.3.1 Acceptable Form of Ground Rent Computation

A. For all Leasehold projects, the Ground Rent must meet the underwriting standards of this MAP Guide. Ground Rents may be computed using one of the following three methods:

1. A fixed percentage of Gross Collections (or Effective Gross Income). The percentage must remain the same throughout the term of the Lease.
2. A fixed percentage of net cash flow to equity (after Debt Service Payments but before Lease payments). The percentage must remain the same throughout the term of the Lease.
3. A stated dollar amount per year which must remain fixed for at least ten years beyond the term of the insured mortgage. If monthly or quarterly payments are required, these will be converted to annual amounts by the appraiser. When the Lease contains more than one method of computing the Ground Rent, it must also indicate whether the amount to be paid is to be the greatest or the least, or the sum of, these amounts. The stated annual dollar amount may be described as a minimum payment.

B. The MAP appraiser must evaluate the payment based upon the acceptable Ground Rent computations and incorporate the payment into their conclusion of net operating income.

### 7.15.3.2 Unacceptable Lease Payments (Ground Rent)

A. HUD will not accept variable Ground Rents, including (1) graduated schedule of future increases on a lump sum/year-by-year basis, (2) Cost of Living Allowance (COLA) or Consumer Price Index (CPI) increase, and (3) increases based on the results of future appraisals or arbitration.

### 7.15.3.3 Ground Rent During Construction

A. Ground Rent during construction must be included in the estimated replacement cost of the project and in the certified cost, subject to the following conditions:

1. The period for which Ground Rent is estimated must be the same as that for which interest and other related charges are calculated, or the estimated construction time plus two months.
2. Ground Rent during construction must be entered in Line G 69 of form HUD-92264 (currently labeled "Construction Fee"). A remark must be entered in Section H, indicating that the amount in Line G 69 represents Ground Rent during construction.
3. Ground Rent must not be included in the base on which Section 220, 221(d) BSPRA is calculated.
4. The annual amount of Ground Rent during construction may not exceed the test for acceptability of Lease payments.
5. For rehabilitation under all Sections of the Act, Ground Rent during rehabilitation must be included in the replacement cost.

## 7.15.4 Valuation of the Leasehold Estate

A. The value of the Leasehold Estate is determined by analyzing the factors used by the MAP Appraiser in developing a value for Criterion 3 such as income capitalization supported by comparable sales and included on line 3.a of form HUD-92264-A.

1. For affordable projects that involve a ground lease on land or on both land and improvements without an option to buy, the Department will not insure a loan that will recognize a leasehold interest for security unless the property meets these requirements:
  - a. The lessor must be governmental body or a housing authority, or a non-profit entity. There are no exceptions and no waivers at the Regional level.
  - b. The property must qualify as affordable housing, as defined in [Chapter 3, Section 3.1.12](#);
  - c. No deviations from form HUD-92070M are permitted, except for those previously stated.
  - d. The project must be a low leverage, low risk loan with significant public purpose benefit.
2. Valuation methodology and analysis must clearly outline the various components of the lease, and the Highest and Best Use section of the Appraisal must present the appropriate analysis and methodology that reflects the following:
  - a. Value of the Fee Simple Interest in the Land per requirements in the MAP Guide, typically supported by comparable sales and reflected elsewhere in the appraisal. The specific components of the fee simple estate must be clearly defined (i.e., land, land and shell, land and building, etc.)
  - b. Value of the Leased Fee must reflect the Net Present Value of all lease payments and the appropriate risk to collecting those payments. The value must reflect the typical terms in the market by a typical investor and may be appropriately reflected by both a capitalization of the initial income for the current year lease and by using a Discounted Cash Flow. Any/all variances in value between these two methodologies must be analyzed and explained in terms of the risk to HUD.
  - c. The impact of the Leased Fee Value on the Leasehold Estate must be clearly discussed and reflected in the Leasehold Value estimated in the Income Approach, and any/all adjustments must be reflected in the value determined by the Sales Comparison Approach.
  - d. The resulting value of the Leasehold Estate must be analyzed and reported in Section G, Line 73b of form HUD-92264 and Line 3a of form HUD-2264-A respectively.
  - e. Upfront land lease payments essentially reflect the Net Present Value of annual payments that would have otherwise occurred under a Land Lease, subject to any/all HUD requirements. The appraiser must analyze that payment as it reflects the Net Present Value of the income stream that would have otherwise been an operating expense, thereby reducing the NOI. This up-front payment may also affect Leasehold Value as set forth in Criterion 3, potentially impacting the requested loan amount.
  - f. The appraiser must support all Overall Rates, Discount Rates, Internal Rates of Return, etc. as it relates to the various components of Leased Fee and Leasehold Estate Values in the Market and clearly explain the impact on the Value Estimates. The Leased Fee value may not exceed the Fee Simple Interest in the property (i.e., land, land and shell, land and building, etc.)

## 7.15.5 Rehabilitation of an Existing Project

A. When Building/Improvements are owned by the Tenant/ Borrower and the Leasehold mortgage is to be insured and contains existing buildings, the valuation processing shall be as follows:

1. “As Is” Leasehold Value of both land and building(s) must be established by capitalization of income and/or by comparable sales, as appropriate.
2. Value of the land without building/improvements must be established by market comparison based on sales of similar sites. When the existing improvements are in poor condition and have little or no inherent value, their contributory value may be added to the value of the site plus any demolition cost in order to render the structure ready for development.
3. The total “As Is” value of the entire project is the value of the site plus contributory value of the improvements, plus any demolition costs, so that the site is ready and available for development.

## 7.15.6 Maximum Mortgage Amount for Criterion 3

A. The value or replacement cost of the project described in the mortgage shall be the value or replacement cost of the Leasehold Estate (as determined by HUD), which in all cases shall be less than the value or replacement cost of the property in fee simple.

## 7.15.7 Fee-Joinders

A. Under certain limited circumstances, HUD may insure mortgages even when the Borrower entity does not directly own the requisite Fee Simple Estate and/or eligible Leasehold interest with appropriate closing documentation to ensure compliance with the National Housing Act, as discussed below.

B. Certain states have statutorily authorized programs that provide tax abatements to residential rental projects. In order to take advantage of such programs, private Developers will transfer Fee Simple ownership of their project to the state or local development agency, and then enter into a Lease with the state or local development agency for a duration that is shorter than required under the National Housing Act. Through a joinder to the FHA-insured mortgage, as an accommodation to gain FHA-insured financing, the governmental agency agrees to allow its Fee Simple Estate to serve as security for the FHA-insured loan. This arrangement is deemed a subordination of the fee (or “Joinder of the Fee”).

C. For FHA purposes, a document titled *Rider to the Security Instrument – Fee Joinder* (the “Rider”), must be used in these situations. Through this document, the governmental agency/Landlord agrees to subject its Fee Simple interest to the FHA-insured Security Instrument so that the MAP Lender has a first mortgage on real estate in Fee Simple for the entire term of the FHA loan. If the Borrower defaults under its obligations, then the FHA Lender, HUD, or other purchaser at foreclosure sale (as applicable) will acquire Fee Simple title to the project.

D. MAP transactions requesting HUD approval for Joinder of the Fee must meet the following requirements:

1. The project, Borrower, and transaction must otherwise be eligible pursuant to this MAP Guide;
2. The project must benefit from a state or locally authorized tax abatement program;

3. The Landlord must be a state or local unit of government or public entity created pursuant to state law;
4. Lender’s counsel and the HUD closing attorney must ensure that under state law, the FHA Security Instrument (mortgage or deed of trust) represents a first lien on the entire Fee Simple Estate of the project for the duration of the FHA-insured Note;
5. The Rider must be executed and attached to the Security Instrument; and
6. Borrower must provide a title insurance policy satisfactory to the MAP Lender and HUD.

**E.** For valuation purposes, Fee joinder structures must be underwritten to the full amount of the project taxes.

**F. Additional Requirements:**

1. Security Instrument.
  - a. The Landlord must be added to the first paragraph of the Security Instrument as an accommodating “Joinder Party.” This addition is necessary to ensure the proper indexing of the Fee Simple security interest granted by the Rider. While the Landlord will be added as a party in the first paragraph of the Security Instrument, it will not be a signatory to the Security Instrument itself.
  - b. The Rider must be executed by the Landlord and the Borrower and must meet the state-law specific signature and attestation requirements.
  - c. The Security Instrument must not be referred to or titled as a Leasehold Mortgage/Leasehold Deed to Secure Debt/Leasehold Deed of Trust because the Rider results in the Security Instrument encumbering the entire Fee Simple Estate as collateral for the loan.
2. Title Insurance Policy.
  - a. The title insurance policy must not be a “Leasehold Loan Policy.” Instead, Schedule A2 must list both the Fee Estate and Leasehold Estate. Schedule A3 should similarly list both the Landlord and the Borrower. In Schedule A4, where the Security Instrument is listed, the Rider must be appropriately referenced. Schedule B, Parts I and II, must list all exceptions and encumbrances pertaining to both the Fee Simple and Leasehold Estates. Any exceptions must be acceptable to HUD.
3. Lease Addendum – Multifamily, form HUD-92070M.
  - a. The Borrower must use the Lease Addendum, striking paragraphs 7, 11, and 12, as they are not applicable in this Fee Joinder context. Further, paragraph 10 regarding condemnation must be stricken and replaced with the following (no HQ approval is needed): “All awards and /or proceeds from the condemnation, or the negotiated sale in lieu of condemnation, of all or any part of the Tenant’s and/or Landlord’s interests in the Property, Improvements or the leasehold estate, shall be paid to Lender and applied as provided in the Security Instrument between Lender and Tenant.”

## 7.16 Tax Abatement Procedures

### 7.16.1 General Comments and Exceptions

**A.** Tax Abatement is a reduction of project taxes for a specified term by the taxing authority. Properties with abatement are eligible for additional mortgage funds under certain circumstances. The abatement must run with the real estate and not with the type of sponsorship if it is to secure additional mortgage proceeds based upon value (Criterion 3). The debt service approach (Criterion 5) used for underwriting must include an amount for the expected project taxes (including abatement or PILOT) in the project operating expenses. The terms of the tax abatement must be analyzed and a stress test demonstrating the risk must be performed even if the present owner or its transferee may benefit from the abatement for the term of the mortgage. The risk that a transferee of the project or an assignee of the mortgage in the future might cause the tax abatement to be lost is an unacceptable risk to the insurance fund. Exceptions to these requirements include the following:

1. If the property is subject to LIHTC covenants to maintain affordability, or if over 90% of the units are covered by a Section 8 project based rental assistance contract, and if the tax abatement runs with the sponsorship (Borrower) entity, then the Regional Center Director may waive the MAP Guide so that the underwriting does not have to include a provision for project taxes during the period of the tax abatement. This exception is justified for low loan-to-value mortgages on LIHTC projects and the additional due diligence and oversight by private equity investors. A real estate tax abatement will be recognized in both value (Criterion 3) and underwriting (Criterion 5) calculations even if the abatement runs with the owner rather than with the land, so long as the owner is non-profit sponsored.
2. Some properties are leased from a governmental body to either a non-profit or for-profit Developer, where the project is exempt from taxes and the abatement flows to the leasehold improvements. There is usually a requirement for a percentage of units to be set aside as affordable housing, which is imposed by a land use restriction or regulatory agreement. Regional Center Directors may grant a waiver, after appropriate review, to promote affordable housing.

### 7.16.2 Full Term Tax Abatement

**A.** If the amount of the tax abatement is fixed and runs the entire term of the mortgage, the real estate tax expense reported on form HUD-92264 must be the actual amount of taxes the project will pay, if any. The full amount of the real estate taxes without the abatement must be noted in the remarks section of form HUD-92264. The project will benefit from an increased mortgage amount due to the lower pro-forma operating expenses and an increased NOI estimate. When the abatement runs for the full term of the mortgage, the NOI used for form HUD-92264-A Criteria 5 may also be processed at the reduced tax amount.

**B.** Also, if value attributable to long term tax abatement is recognized in the subject's market area, the same NOI may be capitalized and the resulting value may be used in Criterion 3. Attributing value to the abatement is allowable only if the abatement is transferable.

### 7.16.3 Partial Term or Variable Tax Abatement

**A.** If the abatement is partial term or variable, it may still be used to secure additional mortgage proceeds. The additional mortgage will be the amount that will amortize over the term of the tax abatement. A special amortization plan must be requested which has debt service payments that are increased by the additional net income generated during the term of the abatement. When processing a partial term or variable abatement, the full amount of the project taxes must be estimated and included in the total project expenses on form HUD-92264 as if there were no abatement. The additional debt service carry resulting from the abatement must be calculated on line I, Criteria 5 of form HUD-92264-A.

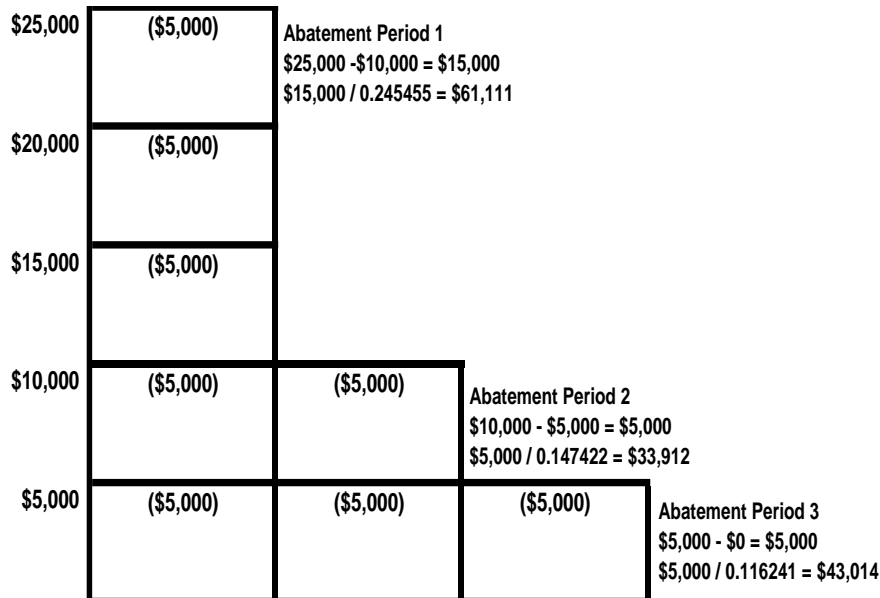
**B.** If Criterion 5 (Amount Based on Debt Service Ratio) is not the controlling criterion, partial term or variable abatements cannot be used to secure additional mortgage proceeds. Also, the appraiser must not include extra value associated with partial-term abatement in either the estimate of land value, the “As Is” value for substantial rehabilitation, or the “As Repaired” or “As Is” value for existing projects, and it must not be included in Criterion 3.

1. Partial Term Abatements: Assume that Project A has been awarded a 5-year tax abatement of \$5,000/year and the interest rate on the insured loan is quoted at 7.5% and the MIP is 0.5%. The amount of additional mortgage is calculated by dividing the annual abatement, \$5,000 by the applicable debt service constant (P, I, and MIP). In this example the debt service constant is 0.245455383.

$$\$5,000 / 0.245455383 = \$20,370$$

The additional mortgage amount based upon debt service (Criterion 5 of form HUD-92264-A) would be an increase of \$20,370 and a special amortization schedule would be required with a debt service payment that is \$5,000/year greater in years 1 through 5.

2. Variable Abatements: Variable tax abatements are more complex to quantify but are essentially calculated in the same manner. Assume that Project B has been awarded 15-year tax abatement. In years 1 through 5, the abatement is \$25,000; in years 6 through 10 the abatement is \$10,000; and in years 11 through 15 the abated amount is \$5,000. The interest rate on the insured loan is quoted at 7.5% and the MIP is 0.5%. The amount of additional mortgage is calculated as the amount that could be fully amortized by the variable payments over the 15-year period based on the stated financing terms. The graph below illustrates the calculation.



When there are two or more abatement amounts and periods, and the amounts decline, the abatement amount for each period is found by subtracting the abatement amount of the next period. Period 1 will run for 5 years, Period 2 will run for 10 years, and Period 3 will run for 15 years. Because all three periods begin amortization at the same point in year 0, the amount of the abatement for the next period must be subtracted to avoid double counting.

- a. Abatement Period 1: \$25,000 minus \$10,000 (the amount of abatement in period 2) = \$15,000 for 5 years. The debt service constant for a 5-year term at 7.5% interest with 5% MIP is 0.245455383. Dividing \$15,000 by 0.245455383 indicates additional mortgage proceeds of \$61,111 attributable to period 1.
- b. Abatement Period 2: \$10,000 minus \$5,000 (the amount of abatement in period 3) = \$5,000 for 10 years. The debt service constant for a 10-year term at 7.5% interest with 0.5% MIP is 0.147442123. Dividing \$5,000 by 0.147442123 indicates additional mortgage proceeds of \$33,912 attributable to period 2.
- c. Abatement Period 3: \$5,000 minus \$0 (since there are no periods remaining) = \$5,000 for 15 years. The debt service constant for a 15-year term at 7.5% interest with 0.5% MIP is 0.116241483. Dividing \$5,000 by 0.116241483 indicates additional mortgage proceeds of \$43,014 attributable to period 3.
- d. Adding the supportable mortgages from each of the abatement periods results in a total additional supportable mortgage of:
 

1) Period 1	=	\$ 61,111
2) Period 2	=	\$ 33,912
3) Period 3	=	\$ 43,014
4) Total	=	\$138,037



The mortgage amount based on debt service (Criteria 5 of HUD 92264-A) would be increased by \$138,037 and a special amortization schedule would be required with a debt service payment that reflects \$25,000 per year in years 1 through 5, \$10,000 per year in years 6 through 10, and \$5,000 per year in years 11 through 15. The appraiser must not include extra value associated with variable abatement in either the estimate of land value, the “As Is” value for substantial rehabilitation, or the “As Repaired” or “As Is” value for existing projects, and it must not be included in Criterion 3.

## 7.16.4 Deferral of Real Estate Taxes

A. A real estate tax deferral must be distinguished from a real estate tax abatement. A tax deferral only postpones the payment of real estate tax until some future date. The Borrower shall not participate in a real estate tax deferral program unless approved by HUD Headquarters in writing. HUD will not approve participation in any real estate tax deferral program unless participation will not result in the creation of a lien that has priority over the insured mortgage and, if applicable, any second mortgage held by the Commissioner. However, if any deferred taxes result in a first lien on the property, the tax lien must be paid before HUD will allow an FHA insurance claim, and the payment will not be reimbursed by HUD as part of any insurance claim.

## 7.17 Project-Based Section 8 and LIHTC

### 7.17.1 For Section 223(f)

A. The project must be evaluated under two scenarios: a) the “hypothetical market value” of the project without regard to any Section 8 project-based subsidies, rent restrictions, or LIHTC; and b) a debt service analysis must be performed that considers all Section 8 project-based subsidies and other low income rent restrictions. Two independent Section C rent schedules must be prepared, one for a hypothetical market rent estimate and one that recognizes all rent restrictions and subsidies.

#### 7.17.1.1 Criterion 3 Market Value

A. The appraiser must ignore the Section 8 contract rents and tax exempt bond or LIHTC restricted rents when determining market value and the income to be capitalized for a determination of market value for the purposes of determining Section K, form HUD-92264, and Criterion 3, form HUD-92264-A Value. To be consistent, the appraiser must use a market capitalization rate and must assume market rents in the income approach to value. Note that the comparable sales approach to value must be completed without regard to Section 8 or LIHTC awards.

#### 7.17.1.2 Criterion 5 Debt Service Analysis

A. In calculating net operating income to be used for Criterion 5 Debt Service, rent restrictions must be observed. For the Criterion 5 debt service analysis, the Line 6, form HUD-92264-T rents must be used. This applies to projects receiving LIHTCs that may use either tax exempt bond or market-rate financing.

### 7.17.1.3 Form HUD-92264T for LIHTC Projects without Section 8

A. Follow the existing form instructions. Processing will be based upon the lesser of Lines 1, 4, or 5.

### 7.17.1.4 Form HUD-92264T for Section 8 Project-Based Assistance without LIHTC

- A. Enter the market rent by comparison on Line 1.
- B. Enter Personal Benefit Expenses on Line 2.
- C. Line 3 is Not Applicable.
- D. Line 4 is Not Applicable.
- E. Enter the Project Based Section 8 Contract Rent on Line 5.
- F. Subtract Line 2 from Line 5 (if applicable).
- G. Process using the lesser of Line 1 or Line 5.

### 7.17.1.5 Form HUD-92264T for Section 8 Project-Based Assistance with LIHTC

A. The LIHTC rent must be recorded but is not used as a limiting criterion because the total income to the project is the LIHTC rent combined with the Section 8 rent, so that the actual amount of rental income to the project will be the Project-Based Section 8 rent, as follows:

2 Bedroom Section 8 Contract Rent:	\$850/Month
2 Bedroom LIHTC Rent limit:	\$350/Month
Resident's Rent Obligation to Project:	\$350/Month
Section 8 Payment to Project:	\$500/Month
Total Income to Project:	\$850/Month

## 7.17.2 Fee Income

A. If additional fees for project amenities are mandatory for all residents, the mandatory fee income from restricted units must be excluded from the calculation of net income. The mandatory fee income from non-restricted units may be included if these amenity fees are indicated by comparable properties in the market and it must be explained in the remarks section of form HUD-92264.

## 7.17.3 Income Limits

A. The appraiser must ascertain that the correct income limits are employed in calculating the maximum LIHTC rents and in completing form HUD-92264-T. The Housing and Economic Recovery Act of 2008 (HERA) modified HUD's income limit methodology for calendar years after 2008 to require HUD to increase applicable area median incomes by the amount area median incomes rise, even if the HUD-determined area median incomes would be frozen under HUD's 2007 and 2008 income limit methodology.

## 7.17.4 Expenses/Fees

A. Properties with LIHTC-restricted units will commonly have a higher operating expense ratio per unit than market rate properties, which may be due to increased administrative costs for tax credit compliance monitoring, performing resident income certifications, and staffing to provide on-site resident services. Estimating operating expenses for projects that are to be funded through the sale of LIHTC requires the analysis of LIHTC comparables if available, and consultation with other experts (i.e. appraisers and project managers) in the context of current market conditions, which should consider the size of the project and unit mix. Utility expense unit rent adjustments in LIHTC projects may be estimated by the analysis of actual costs supplied by the Developer, the utility company, or by use of the Section 8 utility allowances.

1. If the project has the same operating expenses under LIHTC or Project-Based Section 8 operation as it would under market rate operation, enter expenses as usual.
2. If a project has different expense needs as a subsidized project, the expenses used for Criterion 3 must be market rate expenses and the expenses used for Criterion 5 debt service shall be the actual expenses under its proposed usage. This will ensure that the Criterion 5 debt service analysis of the form HUD 92264a is calculated based on the actual estimate of the rent restricted NOI for the project.

## 7.18 Appraisal Review Policy and Requirements

### 7.18.1 Scope of Work

A. Scope of Work includes project identification, extent of inspection, the type and extent of data researched, and the kind of analysis needed to arrive at opinions or conclusions. The rule also states that appraisers have broad flexibility and significant responsibility in determining the appropriate scope of work for an appraisal or appraisal review assignment.

B. According to USPAP, appraisers, including HRAs, are responsible for determining the scope of work. However, as an employer who is also the client, the Department may issue guidance as to what is the extent of an assignment for a review appraisal. It is not a violation of USPAP for an appraiser to accept an assignment, in which a limited scope of work is appropriate, so long as the assignment and scope of work are clearly defined, produces credible results, and is performed objectively without bias.

C. HRAs may have to expand the scope of work and do additional research in performing an assignment. The HRA should discuss such situations with management to determine whether additional work by HUD staff is appropriate, or if the application should be rejected or approved with conditions.

D. According to USPAP, if relevant information is not available because of assignment conditions that limit research opportunities (such as conditions that place limitations on inspection or information gathering), an appraiser must withdraw from the assignment unless the appraiser can still develop credible assignment results. For example, they may be able to modify the assignment conditions to expand the scope of work to include gathering the information or use an extraordinary assumption.

## 7.18.2 Jurisdictional Exception Rule

A. The Jurisdictional Exception Rule provides a saving or severability clause intended to preserve the balance of USPAP if compliance with one or more of its parts is precluded by the law or regulation of a jurisdiction. When an appraiser properly follows this Rule in disregarding a part of USPAP, there is no violation of USPAP.

B. USPAP defines law as including constitutions, legislative and court-made law, administrative rules, and ordinances. Regulations include rules or orders having legal force, issued by an administrative agency, such as HUD. This would include Handbooks, Notices, and the MAP Guide. Instructions from an attorney or a client do not establish a jurisdictional exception.

C. The need to take a Jurisdictional Exception should be rare. If it is needed, the appraiser or HRA must specifically cite the regulation and the portion of USPAP that is affected. Verbal direction from management is not sufficient to justify an exception. The HRA must cite a citation from the MAP Guide or other appropriate authority.

## 7.18.3 Record Keeping Rule

A. This rule specifies record keeping procedures for appraisers. The rule does not mandate that an appraiser have possession of assignment work files. The Department does not permit permanent or personal possession of records relating to a review appraiser's work. The Department retains these records for far more than the time required under USPAP and will, with due process of law, cooperate with appraiser regulatory agencies, professional peer review committees, and to assist obtaining a professional designation. Appraiser work-files will be maintained in the Satellite office. When an HRA leaves employment, they shall be transferred to the Regional Office. Records should be stored on the local or regional network drive. Paper records should be scanned as needed.

## 7.18.4 Loan Committee

A. HRAs are expected to complete workload assignments to facilitate loan approval (or rejection) including an executive summary and other material needed for Regional Center or National Loan Committees. The summary is intended to allow peers and management the ability to efficiently complete their reviews and conclusions. The Department allows the use of an alternative format for the NLC narrative as long as it is approved by the Regional Center Director and contains an executive summary. It is the Department's position that its programs and instructions are in compliance with USPAP. Management has the right to disagree with conclusions made by HRAs or any other technicians. Management should document the file with the reasons for any disagreement. The original conclusions are part of the permanent project file.

## 7.18.5 Workload Sharing

A. Workload Sharing arrangements may require HRAs to perform reviews without the benefit of being able to do a physical inspection. The assignment will generally be completed with the HRA making certain assumptions, such as the condition to be consistent with the photographs and other reports.

## 7.18.6 Consultations with Other Staff

A. HRAs may be required to provide consultation with Senior Underwriters and other staff who have been asked to review an appraisal. A Frequently Asked Questions grid included in Addendum 7 discusses tasks which can be accomplished, as well as the level of required USPAP compliance.

## 7.18.7 Environmental Processing

A. The responsibility for environmental processing has been typically assigned to the HRA, though other appropriately trained HUD staff may also perform these reviews. In accordance with 24 CFR 50.32, HUD, not the Lender, is responsible for independently evaluating the information supplied by the Lender, supplementing that information as needed, and making the required findings in HEROS as the environmental review record for the project. HUD will determine whether the proposed project site is out of compliance with applicable laws, Executive Orders, or regulations or otherwise would endanger residents' health or safety or put FHA mortgage insurance or the US Government at financial risk or liability. Federal regulations at (24 CFR 50.11) further require that a Program Approving Official take responsibility for the scope and content and the environmental finding. These functions cannot be delegated to a Lender or the Lender's or owner's consultants. In order for HUD to complete these functions, the Lender or Lender's consultant must submit an environmental report to HUD using the HEROS system for all projects submitted under MAP. Additional details are provided in [Chapter 9](#) of this Guide.

B. When HUD staff appraisers are assigned this duty, it is not considered an appraisal assignment subject to USPAP requirements. In accordance with [Chapter 9](#) of this Guide, the Department expects the appraiser or other responsible staff to perform the environmental review under the National Environmental Protection Act (as required) and HUD's regulation at 24 CFR Part 50, and ensure compliance with related environmental laws and authorities including the Wetlands/Floodplain Executive Orders, Endangered Species Act, National Historic Preservation Act, etc. HUD staff must review the HEROS report, including the Phase I Environmental Site Assessment submitted by the Lender, obtain additional information as needed from other governmental or private sources, and complete the review in HEROS. The Regional/Satellite Director who issues the commitment is responsible for certifying the review in HEROS as the Program Approving Official. [Chapter 9](#) requires that HUD staff must make a site visit.

## 7.18.8 Technical Appraisal Review Requirements

A. The HRA or Senior Underwriter must follow the review requirements listed below:

1. **Exhibits.** The Lender must submit the exhibits listed in [Section 7.10.1](#) to HUD.
2. **Market Study Review.** The HRA or Senior Underwriter and the EMAD economist must each provide a desk review of the market study to determine reasonableness and compliance with Market Study requirements. The Reviewer must make final recommendations to the team leader regarding market demand for the project.
3. **Level of Inspection.** The HRA or Senior Underwriter must state the level of inspection. Preferably, they should inspect the subject site and as many as possible of the comparables used in the appraiser's forms HUD-92273 and HUD-92274 analysis.

4. **Environmental Review.** The HRA (or other designated employees) must review the Lender's submitted HEROS report, including the Phase I ESA, supplement the information as needed, and make the required findings in HEROS.
5. **Site Review.** The HRA must review site characteristics and make a recommendation regarding site acceptability to the team leader.
6. **Comparables.** The HRA must determine that the comparables submitted are acceptable.
7. **Recommendation.** From a review of forms HUD-92264, HUD-92273, HUD-92274, and supporting information, the HRA must make a recommendation to the team leader regarding:
  - a. The acceptability of the proposed rents and estimated rental income,
  - b. The acceptability of the total operating expenses,
  - c. The acceptability of the site and the estimated warranted price of land or "as is" value,
  - d. If applicable, the estimate of market value, and
  - e. Any recommended modifications necessary to approve the application instead of a categorical rejection. Any value conclusions made by HRA that differ from the appraisal under review require preparation of a work file in accordance with Standard 1 of USPAP. Only licensed appraisers may develop a different value. In determining acceptability, the Department prefers that the HRA or Senior Underwriter only opine on the quality of the work under review and as to whether or not it is reliable for use in underwriting mortgage insurance.
8. **Compliance with USPAP.** The HRA or Senior Underwriter must also ascertain if the appraisal complies with Standards 1 and 2 of the Current USPAP. Senior Underwriters must be familiar with USPAP or consult as necessary with the HRA. USPAP does not require that reviews to determine USPAP compliance be made by an appraiser.

### 7.18.9 Documentation of the Appraisal Review

**A.** The Department's SharePoint site contains a number of appraisal review templates as well as review forms from the previous MAP Guide. HRAs and Senior Underwriters have a great deal of flexibility in the format that they use, so long as it is approved by the Regional Center Director and contains an executive summary.

## Chapter 8 Mortgage Credit

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### 8.1 Introduction

A. This chapter is designed to explain FHA’s underwriting criteria for determining the creditworthiness of a Principal, i.e., the Principal’s capacity of credit, experience and financial histories. It also covers determining the maximum insurable mortgage as well as other financial requirements for issuing a Firm Commitment and closing under the different sections of the National Housing Act.

B. Principals of the borrowing entity and of other entities participating in FHA multifamily mortgage insurance programs must have a positive credit history demonstrating that they will honor their legal, financial and contractual obligations. All Principals must be identified and analyzed with respect to their creditworthiness. Regulatory standards established in the Code of Federal Regulations (24 C.F.R.) Part 200 Subpart H Participation and Compliance Requirements determine the appropriate review of previous participation in multifamily insured programs, based upon past performance and other aspects of a Principal’s records.

C. In certain standards addressed in this chapter, separate policy has been developed for Low Income Housing Tax Credit projects and this policy is presented in [Chapter 14](#). If apparent conflicts arise between this Chapter and [Chapter 14](#), [Chapter 14](#) guidance will prevail in the underwriting of Tax Credit Projects.

### 8.2 Borrower Types – Single Asset Borrower Entity

A. A single asset Borrower entity is required for all multifamily FHA mortgage insurance projects. The single asset Borrower entity must be registered in the United States and in the State where its corporate office is located. Natural Persons, Delaware Statutory Trusts, Maryland Business Trusts, foreign entities, and Tenants in Common are not eligible single asset Borrower entities, although such entities may have ownership interests in the single asset entity Borrower. Acceptable forms of single asset entities that may participate in FHA insured transactions include the following:

1. General Partnership (GP); An ownership structure may have two or more general partners. A written partnership agreement may be accepted in lieu of a state registration.
2. Limited Partnership (LP); A limited partnership must have at least one GP and at least one LP and must also conform to the laws of the jurisdiction in which it was established.
3. Corporation, C Corporation, or S Corporation with shareholder owners and corporate officers and directors who may or may not be shareholders.
4. Limited Liability Company (LLC) composed of members, with one or more managing members and one or more investor members.
5. Trust with beneficiaries and one or more trustees (when the Borrower is a trust, the duration of the trust must be equal to or longer than the term on the FHA Note).
6. Nonprofit Corporation with officers and directors.



7. Any other public or private single asset Borrower entity.
8. Any combination of acceptable ownership forms can be used to establish a joint venture for the purpose of jointly sharing the risks and the rewards and contributing the appropriate knowledge, skills or assets necessary to a successfully developed project. However, the Borrower must always be a single asset entity.

## 8.3 Reviewing Principals and Other Parties in Control

A. The individual(s) and entity(ies) who exercise operational and financial control over a project are subject to a mortgage credit review. This review includes creditworthiness review and a review of previous participation of such individual(s) and entity(ies) in federal programs.

### 8.3.1 Determining Principals and Who is in Control

A. The term Principal refers to individual(s) and entity(ies) who exercise operational and/or financial control over a project. MAP Underwriters will consider a Principal(s) in three contexts: (1) individual(s) or entity(ies) who possess financial and/or legal control of the Borrower, thereby requiring financial and credit analysis; (2) person(s) or entity(ies) who will execute Section 50 of the HUD Regulatory Agreement and also require financial and credit analysis; and (3) individual(s) or entity(ies) who must disclose for Previous Participation Certification review.

B. “Principals” may include any of the following:

1. “Active Principals” are individuals or entities who singly or with others direct and control the Borrower and are responsible for the Borrower’s ability to execute any and all actions for the benefit of the project, regardless of the extent of their equity interest. A Principal is any entity that has an ownership interest of 25% or more in the project to be insured, which is reduced to 10% or more for corporations. However, and regardless of the percentage of ownership interest, principals are subject to both a financial underwriting review and a previous participation review if they possess a substantial financial interest or have decision making authority in the Borrower.
  - a. Active principals of a borrowing entity that possess a substantial financial interest and/or have decision making authority are subject to a credit and financial underwriting review. A substantial financial interest is an interest that would create an ability by the investor to direct the operations of the Borrower, or influence, either directly or indirectly, the decision-making authority of the managing member or general partner and those member(s) of business entities which, if they suffered material negative financial or legal problems, would pose a risk to HUD. The MAP Lender must determine whether a principal is Active by reviewing the organizational chart and identifying the various partners and their relation to the borrowing entity and to each other.
2. “Passive Principals” are persons or entities who singly or with others have limited or no decision-making power or control over the Borrower but who have an ownership interest of 25% or more (10% for corporations) in the Borrower. Language in the Partnership Agreement or Organizational Documents should evidence that the Passive Principal has no operational or decision-making authority.
3. “Borrower” is the single asset Borrower entity.

4. Foreign National individual and/or business entity. See [Section 8.3.5](#).
5. A Special Limited Partner Entity (SLP) [This principal type applies only to LIHTC transactions]. This permits the admission of a “Special Limited Partner” in case of default by or other failure of the initial General Partner. Provision of Notice to the Investor by HUD and pre-approval of a Special Limited Partner can be achieved through a “Rider to the Security Agreement for LIHTC Properties” available at: [http://portal.hud.gov/hudportal/documents/huddoc?id=Security\\_Instrument\\_Rider.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=Security_Instrument_Rider.pdf). In addition, instructions for the use of this Rider are provided at: [http://portal.hud.gov/hudportal/documents/huddoc?id=Pre-appr\\_Process\\_Instru.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=Pre-appr_Process_Instru.pdf). When passive partners are replaced after final endorsement, HUD requires a modified Transfer of Physical Assets (“TPA”). The Production Office will process submissions for Pre-Approval of the Special Limited Partner Entity, which must occur at or before Initial Endorsement or Initial/Final Endorsement; otherwise the SLP shall be treated as a passive investor.
6. Requirements for General Contractors (GC): A General Contractor will be treated as a principal if it has an ownership interest in the project of over 10%.
7. A Principal may be a public or private entity, whether an individual or business, proposing to participate in a project as an owner or General Contractor. Under certain conditions specified in [Section 8.3.5](#), the individual or entity may also be a foreign national. A Principal maintains significant decision-making authority regarding an FHA-insured loan transaction, and/or retains the significant percentage of ownership in a single asset Borrower entity. The Principal’s role can involve active participation in directing the activities and affairs of the Borrower entity or passive participation when an ownership interest has been acquired in the entity. All types of Principals are subject to financial and credit disclosure and underwriting.

## 8.3.2 Underwriting Active Principals and Those with Control

**A.** Principals must have positive experience and qualifications in developing, owning or building multifamily properties reasonably comparable in kind and scale to the subject of the proposed transaction. Comparable in kind and scale means: (a) similar in physical size (e.g. number of units) and building type and uses (e.g., low rise, high rise, commercial spaces); (b) similar financially (e.g. revenues, expenses, size of mortgage, required liquidity ); (c) similar operationally (e.g. target markets/tenant population, elderly, subsidized or affordable); and (d) similar in kind of transaction purpose (e.g. acquisition, re-positioning/turn-around, rehabilitation, new construction).

**B.** Underwriting a Principal requires their financial and credit disclosure including: (1) a designated person and an entity to sign Section 50 of the Regulatory Agreement, (2) individual or entity credit reports, (3) individual or entity financial statements, HUD forms, documents and Schedule of Real Estate Owned (REO)/debt schedules, (4) Internet searches (e.g. SAM.gov (System for Award Management) and searches of debarment and delinquencies (i.e. MDDR Multifamily Delinquency and Default Report), OFAC (Office of Foreign Assets Control) and any other relevant databases, and (5) pre-approval in cases where their total FHA-insured debt is greater than \$500,000,000.

**C.** Credit and Financial Underwriting Review Required on Other Principals (individuals and entities):

1. Investors (passive principals) that have exceeded the \$500,000,000 threshold or wish to avoid exceeding that threshold and wish to invest in a project as a passive investor.

2. An investor (passive principal) whom the Borrower relies upon for both their financial strength and cash requirement contribution.

**D. Principal Types Not Subject to Credit Review:**

1. Investor entities with limited liability benefiting from tax credits, including but not limited to low-income housing tax credits pursuant to Section 42 of Title 26 of the United States Code, whether such investors are syndicators, direct investors or investors in such syndicators and/or investors.
2. Parties whose sole interest is that of a purchaser or owner of less than five individual unit(s) in the same condominium or cooperative development; (ii) parties whose sole interest is that of a tenant in not more than two units in an FHA mortgaged insured property.
3. Public Housing Agencies (PHAs) where the PHA is acting in its capacity as a PHA owning and/or operating public housing. However, PHAs are expected to form single asset entities to hold properties financed with FHA mortgage insurance.
4. Passive Principals who have limited or no decision-making power or control over the ownership entity. A passive Principal's financial or other obligations to the Borrower and the property must be fixed and defined before endorsement, with the Borrower or its Principals having limited or no power to compel a passive Principal to increase its obligations. A passive Principal may have limited power singly or with others, or no power to remove, replace or diminish the powers, or alter the compensation of Principals. As used here "limited" means that the rights of a passive Principal to exert control or effect decisions that are defined in organizational documents and are limited to specific actions intended to remedy negligence or default by a Principal, or to protect the passive Principal from loss due to a default or failure of performance by the Borrower.
5. Shell Entities that do not take actions themselves but only serve as legal vehicles through which the partners, members or owners of such entity take actions.

**E. Organizational Charts.** An organizational chart of the single asset Borrower entity must be submitted with each application. Organizational charts are a visual/graphical disclosure of the participants that constitute the ownership structure, which facilitate HUD's loan underwriting and the separate process of a Previous Participation certification and review.

**F. Acceptable organizational charts for the typical HUD project have the following attributes:**

1. Depicts all tiers of the ownership structure, starting with the single asset Borrower entity and concluding with the ultimate source of equity. Ultimate sources of equity are often an individual, trust, or a widely held corporation.
2. Displays all intermediate entities such as pass-through entities, which results in a full disclosure of all participants. Controlling and limited ownerships are depicted as separate intermediate individuals/entities.
3. Displays each entity's legal name, type (e.g. LLC or LP) and ownership percentage of its parent. Ownership percentages reconcile to 100% for entities (including intermediate entities).
4. Lists at least one natural person. Tax credit investors and limited investors need not always trace to a natural person.

5. Denotes individuals or entities that will sign Section 50 of the HUD regulatory agreement (i.e. using an asterisk and footnote or other means).
6. Discloses if any entity is publicly held, its exchange, and ticker symbol (e.g. “XYZ Corp. (NYSE: XYZ)”).
7. Consolidates or groups widely held interests to achieve conciseness. For example, a group may be labeled on the organizational chart (e.g. “10 Additional Limited Partners”), along with aggregate ownership percentage.
8. Provides additional disclosure in narrative form or a separate organizational chart, avoiding unnecessary visual complexity of the Borrower’s organizational chart.

### **8.3.3 Previous Participation Certification Requirements**

**A.** Certain Principals are subject to a previous participation certification review as set forth in 24 C.F.R. Subpart H 200.220, as may be amended from time to time. This review is in addition to any underwriting considerations or review. Those individuals and entities subject to previous participation certification review in accordance with 24 C.F.R. Subpart H 200.212 must submit form HUD-2530 or any successor form or electronically through the Active Partners Performance System (APPS) or any successor electronic system. Individuals and entities that are excluded from underwriting review are also excluded from previous participation review. Guidance with respect to previous participation certification review may be updated from time to time through Mortgagee Letters or other appropriate means.

**B.** For any multifamily project, with an insured or proposed FHA insured mortgage under the National Housing Act (a “Covered Project”), an individual or entity serving in any of the following capacities is also considered to be a “Participant” for purposes of this previous participation section. Participants are natural persons (individual) or entities who may or may not be an Active and/or Passive Principal but who are required to file for previous participation certification review, i.e. form HUD-2530 or APPS.

**C.** Notwithstanding the foregoing or anything else in this Guide, if HUD determines that an individual or entity does not actually exercise financial or operational control of a Covered Project or Specified Capacity, such individual or entity shall not be considered a Controlling Participant.

**D.** Active Principals must possess and disclose social security numbers (SSN) and employer identification numbers (EIN). This is required by 24 C.F.R. 5.216(c), (d) & (f) for applicants and participants under 24 C.F.R. 200.6 and 24 C.F.R. 200.1101.

1. Controlling Participants for Previous Participation Review Purposes. Controlling Participants are those entities and individuals (i) serving as a Specified Capacity with respect to a Covered Project as both terms are defined below; and (ii) the entities and individuals in control of the Specified Capacities. At least one natural person must be identified as a Controlling Participant for each Specified Capacity.

Specified Capacities are:

- a. The Borrower entity;
- b. The owner, if different from the Borrower entity, e.g. in a transfer of physical assets (TPA) or change in role;
- c. The Management Agent;

- d. The General Contractor; and/or
  - e. The foreign national (individual and/or business entity). The foreign national Active Principal, who is an individual, must possess and provide an SSN, and a business entity must possess and provide its EIN. An Individual Tax Identification Number (ITIN) may not be used in place of the SSN or EIN for a foreign national Active Principal. HUD will not require a foreign national Passive Principal to provide an SSN or EIN. An SSN or EIN is required if the Passive Principal's role later changes to Active Principal.
2. In addition to the entities named above, an individual or entity determined by HUD to have control over the day-to-day financial or operational decisions of an FHA-insured property shall also make a previous participation certification review submission. If a Controlling Participant is an entity, the submission must include those individuals who exercise the day-to-day financial or operational control for that entity.
  3. The previous participation certification procedure assesses the experience of applicants with FHA- HUD insured mortgage programs and with the United States Department of Agriculture Rural Development (USDA-RD) multifamily programs. All submissions must include a previous participation certification and may be made via the Active Partners Performance System (APPS), or paper form HUD-2530. Submission of the previous participation certification review or form HUD-2530 is not a substitute for processing the application for project acceptability, credit capacity, or competency. Paper submissions are acceptable if the Participants are having trouble with the APPS access. All Participants must certify and sign the certificate personally as to their individual record and are responsible for its timely filing with the Regional Center having jurisdiction over the project. Any Participant experiencing trouble with or wants to learn more about APPS, to register, access the user guide, or use the tutorial can visit HUD's website by clicking the following link: [https://www.hud.gov/program\\_offices/housing/mfh/apps/appsmfhm](https://www.hud.gov/program_offices/housing/mfh/apps/appsmfhm).
  4. A Previous Participation Certification is required from the following List of Controlling Participant types:
    - a. Tax credit syndicators or investors with an identity of interest in the general partner or managing member.
    - b. For-profit entities; officers of the entity's board of directors (BOD); officers and the executive management team of the entity (such as the President, Chief Executive Officer etc.), if different from the officers of the BOD; or any other individuals determined by HUD to control the entity.
    - c. Nonprofit borrowing entities, including the:
      - 1) Executive Director or another manager or officer of the non-profit corporation. Non-profit board members who do not exercise control over the corporation in another capacity (for example, as Executive Director or other manager or officer of the non-profit corporation) are excluded from the requirement of filing for the previous participation certification and review.
    - d. Special Limited Partner (SLP) Entity in a LIHTC transaction seeking pre-approval.
    - e. Investors (passive principal) that have exceeded the \$500 million threshold or investors who wish to avoid exceeding that threshold and want to invest in a project as a passive investor with less than a 25% interest (10% for corporations) so as not to trigger the threshold.

- f. An investor (passive principal) who the Borrower relies upon for both financial strength and cash requirement contribution but still maintains an ownership interest of less than 25% (10% for corporations).
  - g. Foreign nationals who are Controlling Participants (as defined in 24 C.F.R. 200.212 & 200.216 and Housing N-2016-15) for the Specified Capacity (owner, Borrower, Management Agent, General Contractor, as set forth in the Regulations and Housing Notice) are required to register in the Business Partner Registration System of APPS (Active Partners Performance System). Participants will either prepare and submit the electronic filing of the Previous Participation Certification (form HUD-2530) through APPS or submit a non-electronic (paper) filing of the form HUD-2530. The Controlling Participant must file using either an SSN or EIN. Passive Principals are not required to file a Previous Participation Certification. See Housing Notice H 2016-15 and 24 CFR Part 200, Subpart H (2018) for more detailed information.
  - h. If the applicant or MAP Lender has any reason to believe that any Controlling Participant is not of sound mind or body or is otherwise incapacitated, such information must be disclosed to HUD to review and determine whether another individual is acting as a Controlling Participant.
5. List of Exclusions. Except that any Specified Capacity is a Controlling Participant, and unless otherwise determined in writing by HUD in a specific transaction to exercise day-to-day control of a Covered Project or Specified Capacity, Controlling Participants do not include the following:
- a. Wholly-owned entities. Any entity that is 100% owned or controlled by one individual or entity is excluded. Such entities are not exercising control; the individual or entity that wholly owns them is exercising control. An organizational chart may include one or more tiers of wholly-owned entities. All wholly-owned entities in all tiers are excluded.
  - b. Shell entities. Entities that do not take actions themselves but only serve as legal vehicles through which the partners, members or owners of such entity take actions are excluded. These entities are not exercising control; the partners, members or owners of such entities are controlling. The "middle tiers" of an organizational chart are often shell entities.  
  
For example, if a Borrower ("Borrower LLC") has a managing member ("Managing Member") that is a joint venture partnership of two entities ("Partner 1" and "Partner 2") and day-to-day control of Managing Member is exercised by Partner 1, then Partner 1 is the Controlling Participant of the Borrower. In this example, neither Managing Member nor Partner 2 are exercising control and are excluded. If Partner 1 is itself a shell LLC, with three members, then the individual(s) or entity(ies) that exercise day-to-day control of Partner 1 would be the Controlling Participant(s). If day-to-day control of Partner 1 is exercised by Member A, then Partner 1 would be excluded, and Member A would be the Controlling Participant. If the organizational chart reflects this arrangement and unless additional information or special circumstances warrant further inquiry, HUD will accept Member A's certification that it is the Controlling Participant and will not require an examination of the various entities' organizational documents to confirm that Managing Member and Partner 1 are excluded shell entities.
  - c. Individuals who provide a certification in one capacity need not provide a separate duplicate certification. When a corporation (for-profit or nonprofit) is a Principal, all its officers, directors and principal stockholders need not individually sign, certify nor file the certificate when they all have the same record. When their previous participation records are identical the officer



authorized to sign for the corporation will list on the certificate the full names for all such principals connected with the corporation who do not elect to sign. Those principals who have a separate participation record outside that of their corporation must certify, sign and file. The objective is full disclosure.

- d. Attorneys and Architects with only an arms-length fee arrangement for services.
- e. Sub-contractors.
- f. Minor corporate officers who do not exercise control over an entity or who have no significant involvement in a project, as determined by HUD, need not complete a previous participation submission.

In the event HUD requests an officer who has not provided a Previous Participation Review submission to provide a submission, HUD shall accept certification from the officer that (s)he has limited involvement in the Covered Project, does not exercise operational or financial control over the Covered Project and does not have the ability to prevent or resolve violations or circumstances giving rise to flags related to the Covered Project (See Notice 2016-15 Section G for details on "Flags".)

- g. Less than 25% ownership interest. Unless exercising control through another capacity, members, partners, stakeholders, and owners of entities with less than a 25% interest in an entity are excluded. This exclusion does not apply to any such member, partner, stakeholder or other owner of an entity ("Proposed Excluded Member") who would have an interest greater than 25% if the combined percentages of all other members, partners, stakeholders or other owners (including beneficial interests in trusts) with whom the Proposed Excluded Member has an "Identity of Interest," or a conflict of interest because of familial relation or common financial interest, exceeds 25%. Whether an Identity of Interest or conflict of interest exists is determined by HUD. If the program requirements of the applicable program in which the Covered Project is participating speak to Identify of Interest or conflict of interest, those program requirements control.
- h. Members of a Board of Directors. Members of a non-profit or for-profit corporation's board of directors who do not exercise control over the corporation in another capacity (for example, as Executive Director or other manager or officer of the non-profit corporation) are excluded.
- i. Parties whose sole interest is that of purchaser or owner of less than five individual unit(s) in the same condominium or cooperative development; and parties whose sole interest is that of a resident.
- j. Tax Credit investors, Passive Investor Principals, Syndicators and direct investor entities in Low-Income Housing Tax Credits, Historic Tax Credits, New Markets Tax Credits or other tax credits (if HUD determines such credits are substantially similar to the listed tax credits) are excluded unless such entities exercise day-to-day control or seek other involvement that would trigger the need for previous participation review. For these passive investors, HUD requires the "*Identification and Certification of Limited Liability Investor Entities (ILLC)*". The certification is found in [Appendix 8, Section A.8.8](#).

If during the underwriting it is found that an entity has triggered the need for a previous participation review because it will exercise day-to-day control or other involvement exists that would trigger a review, or the entity does not want to provide an *ICLLIE*, they must submit in place



of the required certifications the following items: organizational documents, form HUD 92013-SUPP, a credit authorization, EIN verification, and credit report.

- k. Public Housing Agencies/Authorities, whether in their capacity as owning and operating public housing or otherwise, are excluded. Public housing agencies are subject to different oversight and review by HUD's Office of Public and Indian Housing, and who are subject to separate treatment for projects redeveloped under the RAD program.
- l. Brokers whose services are limited to referring the loan to a Lender and presenting information on behalf of the Borrower.
- m. A Qualified Opportunity Zone Fund that has invested in an insured project structured as a shell entity need not file; however, the fund and its participants must be identified on the organizational chart.
- n. Publicly Held Companies. For publicly held companies, the chief executive officer (or equivalent position), the controlling shareholder (if any), and other individual(s), if any, identified as having day-to-day control over a Specified Capacity or Covered Project, including any relevant project manager(s), must file but the publicly held company shall otherwise be treated as an individual without need for other individual shareholders to file certifications in their individual capacity or identify their social security or tax identification numbers.
- o. Mortgagees. Mortgagees acting in their capacity as such are excluded.
- p. No Exercise of Financial or Operational Control. Any individual or entity determined by HUD not to exercise financial or operational control of a Covered Project or Specified Capacity shall not be considered a Controlling Participant.
- q. For the Sections 223(a)(7), 223(t), 241(a), 232(i) and 223(d) programs Controlling Participants are only subject to Previous Participation review if they were not previously approved to participate in that project (provided they have not changed roles in the project without prior approval).

### 8.3.4 Nonprofit Principals

**A.** Nonprofit Principal is understood to mean “the Single Asset Entity (SAE) Borrower and its Board of Directors” (BODs). The BODs acting as officers and/or member/directors who do not exercise control over the corporation in another capacity are excluded from filing. However, an Executive Director or other managing officer of the nonprofit corporation are considered Controlling Participants.

**B.** Nonprofit entities and sponsoring parent organizations that are Principals with control and exercise day-to-day financial or operational control of the SAE must demonstrate financial strength, credit history, experience and capacity Executive officers must provide resumes evidencing experience commensurate with the requirements of the project. Generally, analysis of personal financial information, including credit reports, form HUD-92013-SUPP, and financial statements including verifications of deposit or available liquidity are not required of board members or officers of the nonprofit. Any Officers that exert management control and other executive management including the Executive Director of the nonprofit corporation will provide only the previous participation certification.

C. Where a nonprofit is not a Principal but proposes a role such as property manager, service provider, or an intermediary with a local community or constituency, the nonprofit must demonstrate experience, management ability and financial capacity to execute the proposed services. For its role as property manager, the non-profit entity must provide the previous participation certification.

D. “Sponsor” is an informal term use for persons or entities who may do one or more of the following: locate and control the site; assemble the development team, provide financial assistance to the project or provide development experience and expertise to the project in ways other than as a paid consultant. The Sponsor is not the SAE though they may also act as a Principal in the ownership entity.

### 8.3.5 Foreign National Participation in FHA-Insured Multifamily Programs

A. Foreign national individuals and business entities may participate as either Active or Passive Principals in FHA-insured Multifamily programs (as defined in [Section 8.3](#) of the MAP Guide and as clarified below). The formed single-asset-entity Borrower must be registered in the United States and in the State where its corporate office is located. At least one Principal with operational decision-making authority must be a United States citizen or a foreign national who is a lawful permanent resident of the United States, having an immigration status granted by the United States government that enables that Principal to exercise operational decision-making authority. It is the MAP Lender’s responsibility to confirm that foreign national entities are properly identified as Active or Passive Principals. This analysis is to ensure that Passive Principals have no decision-making authority, or operational control, and do not represent a financial or legal risk to HUD.

B. As required under [Section 8.3](#) above, each foreign national individual or foreign national controlled private entity that is an Active or Passive Principal must be listed on the Borrower entity’s organizational chart.

C. Background Evaluations of Foreign National Principals. In addition to the existing requirements applicable to all Active and Passive Principals under [Section 8.3](#) above, the MAP Lender must perform a thorough and independent background evaluation for all foreign national Principals including:

1. A review of organizational documents, personal resumes, history of past business relationships and litigation, i.e. foreign and domestic criminal and civil; and
2. Research of the foreign national Principal on the following internet and database systems: SAM.gov (System for Award Management); Office of Foreign Asset Control (OFAC) and the MDDR (Multifamily Delinquency and Default Reporting). The analysis of a foreign national business entity is conducted at the business entity level in addition to the executive who is authorized to execute actions of the entity.
3. Based upon the content of this background evaluation, HUD may require additional information and/or an investigation to better assess the foreign national Principal in terms of risk to HUD. The MAP Lender will summarize the results of their background evaluation from the legal risk and the business relationships in the MAP Lender’s Underwriter Narrative.

D. A Domestic Principal is an individual that acts on behalf of the partnership in cases where the remaining principals in the partnership are Passive foreign nationals. Similar to an Active Principal, Domestic Principals with operational decision-making authority must be a United States citizen or a

lawful permanent resident of the United States. This authority to act on behalf of the Borrower presumes that the Domestic Principal has similar credit and financial strength and real estate development experience with those he/she is representing, such as an executive level officer (if employed by a real estate development organization). The MAP Lender has the responsibility to determine that the Domestic Principal has significant liquid assets and net worth (e.g., a net worth equal to at least 3-5% of the proposed loan amount) that are commensurate with the level of financial obligation of the loan being insured, notwithstanding the requirement for the other Active (or Passive) Principals to provide necessary equity. The Domestic Principal should also evidence a high level of experience in similar real estate projects to that being proposed.

**E.** The MAP Lender must conduct a thorough underwriting of the Domestic Principal, focusing on the relationship of the Domestic Principal to the foreign national principal/entity, in the single asset entity. This investigation should include any past partnerships and joint ventures, the length of time that the parties have known or done business with each other, and any financial or legal obligations created by one to the other.

**F.** E-2 Treaty Investors are not eligible as Active Principals or Domestic Principals, given their nonimmigrant classification and temporary status (subject to renewal every two years: <https://www.uscis.gov/working-united-states/temporary-workers/e-2-treaty-investors>). Their short-term status conflicts with the need for longer term operational decision-making authority and stability of the foreign national Active and Domestic Principals within single asset Borrower entities due to the lengthy maturity terms of FHA-insured Multifamily loans.

### **8.3.6 Definition of Principal for Regulatory Agreement Section 50**

**A.** For privately held entities, the provision generally requires two signatures for project Sponsors. In most cases, HUD, upon the Lender's recommendation, shall approve an individual signatory to sign in his or her individual capacity and the project parent/Sponsor entity to sign in a corporate capacity. In any specific deal, underwriting may conclude that an entity with the requisite control and involvement or interest in the Project that possesses a positive credit history and adequate financial strength relative to the size of the loan may serve in the capacity required by Section 50. In some circumstances, particularly involving large, capitalized, and experienced corporate entities with complex corporate organizational structures, the underwriting may not reveal any apparent individual to reasonably serve in the required capacity, whereas the parent/Sponsor entity itself may possess such necessary characteristics to act as the sole necessary signatory.

**B.** The Lender may consider whether the entity has been approved as an appropriate signatory to provisions similar to Section 50 in a recent Government Sponsored Enterprise (GSE) transaction. A GSE transaction means any Fannie Mae DUS or Risk Sharing or Freddie Mac loan program, in which they have approved the signatory on their comparable carve out provisions. HUD will also consider the Federal Home Loan Bank as a GSE, if they also have similar approval. The GSE-approved entity may be an appropriate sole signatory for Section 50 if the entity has positive credit history and adequate financial strength. A copy of relevant excerpts from the recently closed transactions would evidence such GSE approval.

**C.** For publicly traded corporations, Real Estate Investment Trust (REITs), or nonprofit Borrower: The parent/Sponsor entity itself is acceptable as the sole signatory. For such entities, any individual signing on behalf of the corporate entity does not sign in an individual capacity, but to bind the parent/Sponsor. No personal liability will be claimed against the individuals signing in such a capacity.

**D.** For nonprofit Borrowers, the parent or other Principal must be named as the signatory for Section 50. In the event the parent or other Principal is not the entity, the nonprofit Single Asset Entity is the signatory named in Section 50. The MAP Underwriter's Narrative should contain a brief explanation as to the reason why the nonprofit entity is named as the signatory.

**E.** For any corporate entities required to execute Section 50: An officer or entity or other person authorized to bind the company in connection with the proposed transaction may sign.

**F.** The following prohibitions relate to Section 50:

1. Insertions of "or successors" language to the identification of signatories is not allowed. The Regulatory Agreement can and should be amended when there is a new individual who is responsible for the provisions of Section 50.
2. Riders to the regulatory agreement that attempt to limit a signatory's liability are not allowed.
3. Section 50 may not be omitted simply because a currently insured project has been processed as a Section 223(a)(7).

**G.** The Domestic Principal or foreign national Active Principal who is a lawful permanent resident of the U.S. may each sign Section 50 of the Regulatory Agreement in his or her individual capacity. A foreign national Active Principal Section 50 signatory must either remain a lawful permanent resident of the U.S. for the life of the loan or be replaced, with HUD's prior written approval, by a U.S. citizen or lawful permanent resident of the U.S.

**H.** The Lender is responsible for the mortgage credit review of the parent/Sponsor entity and to identify and verify the identity of the signatory of Section 50 of the Regulatory Agreement. The signatory will be identified in the Firm Commitment (or in a letter Amendment to the Firm Commitment).

## 8.4 Investigating Credit and Character

**A.** The MAP Lender's Underwriter is responsible for analysis and review of the mortgage credit exhibits, identifying credit issues and/or resolving discrepancies in order to determine that the Borrower and the Principals have demonstrated: (a) both the willingness and the ability to pay creditors in accordance with agreed terms, (b) the ability to deliver timely and satisfactory performance of contractual or business obligations, and (c) the mitigation of litigation risks by honoring prior loan obligations (especially during adverse market/financial conditions).

### 8.4.1 Use of Credit Reports and Credit Investigation

**A.** Credit reports or credit histories are a means of validating and cross-checking information received from the Borrower and Principals in financial statements and in application exhibits. Credit reports give

a picture of payment history and financial interactions with creditors. The Lender must reconcile any contradictions with a summary statement.

**B.** A commercial credit report for a business or a residential mortgage credit report (RMCR) for individuals must be current within 60 days of the application acceptance date, and HUD may require updated reports during processing. Merged credit reports from the three major credit bureaus are acceptable, but compiled infile reports are not acceptable. Infile reports have the potential of containing select or less reporting rather than the full reporting as in a single credit report.

**C.** For Principals who are individuals, credit reports are needed for the individual and for that individual's other business concerns (i.e. ownership of property management firm, general contracting or subcontracting firm, or land or property development entities, etc.). The Lender should randomly select an overall 10% or more of these other business ventures or property operating companies for credit review for the individual and its other business concerns. The report should contain information on pending judgment(s), legal actions and bankruptcy claims.

**D.** The General Contractor's credit reports are required on the business entity/firm, and its operating affiliates, if any. The Lender must provide credit reports for Principal(s) of the General Contractor if the financial capacity and track record of the General Contractor entity is deemed insufficient to assess a credit risk.

## **8.4.2 Lender's Review of the Credit Report**

**A.** The Lender is required to do all of the following:

1. Compare all information obtained from credit reports and histories to the financial statements provided by the relevant Borrower or principal(s). Resolve or explain contradictory information.
2. Make reasonable inquiries to determine if the applicant or any principal is in default on any type of federal debt including direct loans, HUD insured loans, student loans, Small Business Administration loans or judgment liens against the property.
3. Investigate any adverse credit information that appears on the credit report and obtain a written explanation of any late payments, actions, judgments or derogatory information.

## **8.4.3 Delinquent Federal Debt, Judgments and Pending Litigation**

**A.** When delinquent federal debt is identified, the Lender must include as part of the required application exhibits:

1. A detailed written explanation from any applicant or principal with a prior federal default or claim, or whose credit report and financial statements contain conflicting or adverse information.
2. A letter from the creditor agency stating that the delinquent federal debt is current or satisfactory arrangements for repayments have been made.
3. The Lender's reason(s) for recommendation of the applicant, which may be included in the Lender Underwriter's review and recommendation.

**B.** The Lender shall also investigate any other serious adverse information, including but not limited to bankruptcies, defaults on real estate mortgages, tax liens, foreclosures or deeds-in-lieu of foreclosures, judgments and pending litigation.

#### **8.4.4 Trade and Credit References**

**A.** HUD requires a completed Fannie Mae Form 1006, *Request for Verification of Deposit* or bank statements (including a three-month average balance on the VOD or three months of consecutive bank statements) to verify Borrower's/Principal's liquid assets for each bank account submitted for review. Deposits and/or marketable securities of the Principal must be verified and examined in consideration of the Principal's liquid assets reported on financial statements. Both sources should be reasonably consistent, and any significant differences should be explained. When a Principal's financial statements show real estate owned and other mortgage debt, the credit references must include a sampling of the Principal's mortgage payment histories and must confirm the character, business acumen, expertise and timeliness of the Principal in meeting their business obligations.

**B.** A credit report with sufficient data may be used in place of trade or credit references.

**C.** Written inquiries of trade references should include a copy of the certification authorizing the release of credit information.

#### **8.4.5 Rejection Due to Unacceptable Character and Credit**

**A.** The Lender's professional judgment is required in approving or rejecting Principals on the basis of character and credit.

**B.** The Principal should be a credit rejection if:

1. The Principal has a history of late payment or non-payment of creditors or has defaulted on debt without making reasonable attempts to remedy or cure the default. The Lender's Underwriter may not recommend approval of a Principal with a history of default without contacting the defaulted Lender to determine the circumstances surrounding the default with a summary of these discussions included in the Lender's narrative.
2. Delinquent federal debt has not been resolved or satisfactory arrangements made for repayment.
3. There are judgments or actions against the party, that:
  - a. Could significantly impact the financial position of the individual/ firm or corporation; or
  - b. Result in a determination that the individual/firm or corporation is an unacceptable credit risk.
4. The Principal is insolvent or is the subject of a pending bankruptcy or insolvency proceeding at the time of application, issuance of the Firm Commitment, or at the time of loan closing.
5. Active Principals are currently flagged in the Active Partners Performance System (APPS) for FHA-insured mortgage defaults or other financial improprieties as determined by HUD.

**C.** The MAP Lender is responsible for amending or withdrawing the Commitment application if there is a material adverse change in the Borrower's credit after application submission.



**D.** Principals with repaired credit may be considered for approval provided that a positive credit history has been established and sustained for a period of time encompassing both favorable and unfavorable economic conditions and that the principal has during that time been engaged in financial transactions and/or business enterprise comparable in scale to the proposed insured mortgage transaction. It is unlikely that this period would be less than 7 years.

**E.** Departmental Enforcement Center (DEC) Referrals. The MAP Lender should discuss with the Borrower and its Principals to ensure that any matters pending with the DEC relating to the Borrower, the Management Agent and/or the Project have been resolved.

## 8.5 Evaluating Financial Capacity

### 8.5.1 Financial Statement Analysis

**A.** MAP Lenders have the responsibility to review financial statements of the Borrower and its Principals to determine that the Borrower, and/or the Principals have the financial capacity to own and operate the property. For construction proposals, an analysis of financial statements is used to determine whether the owner and the General Contractor have the singular ability to deliver the project. Financial analysis is performed on Active Principals as identified in the Borrower entity's organizational structure. The Lender's Underwriter must determine which Principals have control of the single asset entity and the property; and review their financial statements along with any financial schedules to assess the Principal's financial stability and assess any potential risk to FHA. Also, the Underwriter must analyze and disclose to HUD as part of their recommendation any financial interests that do not rise to the level of Principal, but nevertheless have a material impact on the creditworthiness of the proposed Borrower or its Principals.

**B.** These determinations are based on:

1. Past financial condition;
2. Present liquidity; and
3. Projected future financial capacity.

#### 8.5.1.1 Submission of Financial Statements—New Construction

**A.** The Active Principals and the General Contractor must submit with the loan application current financial statements to include a balance sheet, income and expense statement, supporting schedules a REO schedule history and the schedule of mortgage debt. Individuals will submit a Personal Financial and Credit Statement, form HUD-92417 (or an acceptable form of financial statement, e.g., balance sheet that contains a certification and criminal warning statement) and if applicable, an REO schedule and schedule of mortgage debt. The General Contractor must submit a REO schedule if it has a significant financial interest or contribution or has a role to direct project operations. A non-identity of interest General Contractor with only a nominal equity interest need not submit REO. See [Appendix 8, Section A.8.1](#) for detailed requirements.

**B.** The financial analysis is used to determine the amounts available for investment in the project by performing an analysis of working capital. Working capital is the difference between current assets and



current liabilities and is the cash or liquidity that exists to purchase assets, pay off debt and make up deficits from operations or fund new activities or projects. The financial analysis also determines which non-pledged assets can be readily used as collateral or pledged as security to obtain cash. See [Appendix 8, Section A.8.2](#) for instructions on how to correctly analyze financial statements when determining the financial capability of the Active Principal, Sponsor, General Contractor and/or Manager of an LLC.

### 8.5.1.2 Existing Project Financial Statements

**A.** The Borrower entity must submit:

1. The last three (3) fiscal years of unaudited financial statements on the project and, if more than three (3) months have elapsed since the closing date of the most recent financial statements, a year-to-date balance sheet and operating statement. If three years have not elapsed from certificate of occupancy to application submission, a trailing twelve month or year-to-date balance sheet and operating statement is required.
2. Copies of the most recent insurance and property tax bills.
3. Three years of financial statements reviewed, audited, compiled, or consolidated by a CPA.

**B.** If the 3 years of financial statements are audited by an independent CPA or IPA, no further review is needed to validate the statements.

**C.** For refinance applications, if the financial statements are not audited, submit a CPA or IPA “reviewed” statement for the last complete fiscal year. “Audited,” and “Reviewed,” are defined professional standards for reports understood by CPAs. The intent of this requirement is to obtain an independent (non-identity of interest) professional review of the financial statements certified by the Owner.

**D.** Year-to-date financial statements may also require CPA or IPA review, or if the project has a history of stabilized occupancy and financial performance, a Borrower-certified year-to-date statements may also be acceptable. Examples of when year-to-date financial statements might require CPA or IPA review include factors such as: 1) period covered is all but the last month of the fiscal year, 2) there is a soft market or case-specific risk factors, and 3) the project is applying under the three-year rule waiver and has just reached sustaining occupancy. For this purpose, “CPA reviewed” means a review by a Certified Public Accountant and “IPA reviewed” means a review by an Independent Public Accountant of the records and statements of the Borrower specifically including:

1. The property’s financial statement(s) for the period;
2. Rent rolls for each month of the period;
3. Bank statements for not less than the last 6 months of the period;
4. The Borrower’s income tax return for the past year; and
5. Reconciliations of rent rolls to financial statements and financial statements to normalized operations, cash receipts and tax returns.

**E.** There may be circumstances beyond the Borrower’s control where the required financial statements are not available because of loss by fire, arson, theft, flood event etc.

1. The Borrower must submit:

- a. Evidence satisfactory to the Lender that the financial statements are not obtainable; and
  - b. Project financial statements that are available including an owner-certified balance sheet and operating statement.
2. Lender's case file must contain a statement from the Borrower that explains why all the required records are not obtainable and a memorandum from the Underwriter to the Regional or Satellite Office Director stating that he/she has evaluated the Borrower's statement and agrees that the information is not available.

**F.** Owner-certified financial statement or owner-certified balance sheet and operating statement must include the entire certification and criminal warning found in [Appendix 8, Section A.8.1.A.1.b.i](#), [Section A.8.1.A.1.b.ii](#), and [Section A.8.1.A.1.b.iii](#).

**G.** Past due accounts payable and outstanding liabilities for project operating expenses must be cleared and released, or otherwise fully resolved, before or at Initial Closing. Examples of such items include deferred management fees, over-due utility bills or real estate taxes, and trade payables. These items are not to be included in the eligible debt basis in the calculation of the cost of refinance/ acquisition.

**H.** If the transaction does not involve a Transfer of Physical Assets (TPA), and if approved by the Regional Center Director, surplus cash notes may be established for payables owed to a related entity. Accounts payable and outstanding liabilities that are not past due do not need to be resolved at or before closing.

### **8.5.1.3 Review of Financial Statements and Other Documents**

**A.** A current financial statement must be no more than 3 months old when the form HUD-92013 is submitted to the Lender for Firm Commitment review. The Lender must determine financial stability and financial strength unless the Active Principal and/or the Sponsor are a public company with an investment grade credit rating.

**B.** Exceptions:

1. The credit investigation or other circumstances may warrant more current financial statements.
  - a. Assess the adequacy of each Active Principal's liquidity and its ability to provide immediate and ongoing support to the property, as well as to any asset that is in financial difficulty. For those properties in financial difficulty, consider that property's strength as well as liquidity sources outside the property, such as the Principals and/or the Sponsor, as applicable. The Lender must look for likely future events that may drain cash resources from the Principals (e.g., loans held by an Active Principal that mature within five years).
  - b. The Lender may include other sources of Principal cash flow in the analysis, if the source and stability of the cash flow has been verified by reviewing historical tax returns. It is not necessary to include interest income from notes receivable, real estate investment income, dividend income and Principal salaries in the analysis.
2. Audited or reviewed financial statements prepared by a CPA or IPA may be up to 1 year old. The audited or reviewed statements must be supplemented with year-to-date financial statements and supporting documentation, which may be Management Agent-prepared if more than 6 months have elapsed since the closing date of the audited statement.

**C.** A Borrower that is fully funded with adequate capital in an account in the name of the Borrower must still provide financial statements for the Active Principals.

**D.** Make a working capital determination for the Borrower, its Active Principals and the General Contractor based upon a review of their financial statements and projects currently planned or in the development process/construction stage as applicable. Adjust the net working capital for the effect of contingent liabilities, pledged financial requirements and the financial needs of other projects in the planning stage or under construction, adjusted by the percentage of completion.

**E.** Net worth in lieu of working capital (hypothecation of fixed assets) occurs when existing assets can secure loans or lines of credit to cover the project's financial requirements and such loans or lines of credit are confirmed as being available. In this case, the Underwriter should recommend approval based on "true net worth" rather than on working capital; and require the Active Principal to provide a commitment letter from a lending institution that states:

1. The rate, amount, term and conditions, if any, of the loan or line of credit that the lending institution is willing to provide. (See [Section 8.5.1.4.F](#) below)
2. The date by which the commitment letter must be exercised. The date must extend at least to the anticipated date for initial endorsement.
3. The party that will be responsible for repayment of the loan or line of credit, if the commitment is exercised.
  - a. Repayment may not be an obligation of the Borrower entity.
  - b. A certification from the Lender affirming that the lending institution will not make any claim against the mortgaged property, mortgage proceeds, any reserve or deposit required by HUD, or against the rents or other income from the mortgaged property for payment of the loan or line of credit. This certification must contain the criminal certification found in [Appendix 8, Section A.8.1](#).

**F.** Funds provided by a parent company/Sponsor or affiliate of the Principals will require a certification from the Board of Directors or authorized agent that specifies the funds the parent company/Sponsor or affiliate will commit. Establish the availability of funds from the parent company/affiliate. Consider whether:

1. Individual corporations have any excess operating capital (e.g. restricted assets);
2. Laws under which they are incorporated or their banks permit:
  - a. Withdrawals, loans or advances to owners or Sponsors.
  - b. Stock investment in affiliated corporations.
  - c. Guarantee of debts of associated corporations.

### **8.5.1.4 Letters and Lines of Credit**

**A.** Letters of intent and letters of credit cannot be used to establish financial capability. At initial endorsement, however, letters of credit may be substituted for cash to set up many of the escrows required at initial and final endorsement or during construction. If a Borrower draws down cash at initial

closing to satisfy the escrow requirement, a letter of credit may not be substituted to establish the same escrow requirement.

**B. Ratings and requirements for bank issued letters of credit.** When a letter of credit is permitted, the ratings and requirements for banks issuing letters of credit for all multifamily project escrows must meet criteria in the Ginnie Mae Guide, as follows:

1. **Bank Rating Requirements:** Irrespective if the loan is pooled with Ginnie Mae, the bank must meet rating requirements for depository institutions and deposit accounts found in Ginnie Mae MBS Guide 5500.3, Chapter 16, Part 8, Section B. It is available at the following link:

[https://www.ginniemae.gov/issuers/program\\_guidelines/MBSGuideLib/Chapter\\_16.pdf](https://www.ginniemae.gov/issuers/program_guidelines/MBSGuideLib/Chapter_16.pdf)

2. **Form and Terms.** For loans pooled with Ginnie Mae, the letter of credit must be in the form specified by Ginnie Mae MBS Guide 5500.3, Appendix VI-3 found at the following link:

[https://www.ginniemae.gov/issuers/program\\_guidelines/MBSGuideAppendicesLib/Appendix\\_VI-03.pdf](https://www.ginniemae.gov/issuers/program_guidelines/MBSGuideAppendicesLib/Appendix_VI-03.pdf)

**C.** If the loan is not pooled with Ginnie Mae, MAP Lenders must prepare beneficiary forms acceptable to HUD at closing (with substantially the same terms as Ginnie Mae). MAP Lenders should coordinate drafting and approval of the proposed forms directly with the Regional Center.

**D.** The Lender of record (as having a financial stake in the Borrower's position) may not be the issuer of any letter of credit without prior written consent of the Regional Center Director. Such consent will be granted only on an exception basis with sufficient investigation of a potential conflict of interest. If a demand under any letter of credit is not met immediately, the Lender must provide the cash equivalent to the remaining balance of the letter of credit.

**E.** On an exception basis and with prior written consent of the Regional Office Director, lines of credit may be used to establish a portion of the principal's financial capability. With the Firm Commitment application, the Lender must have the principal provide a letter from a lending institution that confirms:

1. The existence of the line of credit, original amount and available balance, repayment terms, and expiration date.
2. The line of credit must not expire prior to project completion.

### **8.5.1.5 Sponsor's Continuing Commitments**

**A.** A written statement must be submitted from Active Principals who are Sponsors and are relied on for financial capacity; it must indicate the parameters of their financial commitment to and contractual relationship(s) with the Borrower:

1. If the relationship is not intended to continue until the project reaches sustaining occupancy, the financial requirements have not been met.
2. Any Sponsor relied on for financial support but not having an ownership interest in the Borrower must also certify in writing the amount of funds it will commit.

**B.** The Firm Commitment will contain special conditions to ensure the contractual association of the Sponsor to the project:

1. The condition must indicate that the withdrawal of any individual/firm relied on for financial capacity requires prior HUD approval. If there is a change in sponsorship or of the individuals/firms relied on for financial capacity and the Sponsor or the remaining Principals do not demonstrate the capacity to meet the financial requirements of the project at any processing stage of the application, this is considered a significant deviation from the original proposal and a cause for rejection of an application. Additionally, the withdrawal of any individual/firm relied on for financial capacity could result in HUD declaring the Firm Commitment, if issued, null and void.
  2. Identification of the individuals/firms relied on for financial capacity. For confidentiality reasons, do not indicate their alphabetic designation or their dollar contribution as they are listed in the Remarks Section on form HUD-92264-A.
  3. Require organizational documents reflecting such continuing contractual relationships, (i.e., for nonprofits).
- C.** Individuals are prohibited from submitting financial statements as Sponsor and then abandoning the project and the Borrower after the Firm Commitment is issued. The Lender should require a certified statement from such Sponsor stating their commitment to the project and specifying the amount of funds that will be reserved for contingent needs through Final Endorsement and sustaining occupancy.
- D.** The submission of a financial statement that is used to influence Federal Officials concerning a mortgage insurance risk determination when the Sponsor does not plan a continuing relationship with the Borrower could result in appropriate sanctions being taken against the Sponsor including suspension or debarment.

### **8.5.1.6 General Contractor with Adequate Capital**

- A.** The General Contractor's adjusted working capital position should equal 5% or more of the estimated construction contracts in place.
1. The instructions for hypothecation (See [Section 8.5.1.3.D](#)) of fixed assets may be applied if the General Contractor does not have an acceptable working capital position.
  2. The General Contractor's ability to obtain a performance-payment bond does not negate or lessen this requirement.
  3. Adjust the working capital amount for projects in construction.
  4. If the General Contractor does not have an acceptable working capital position or sufficient fixed assets that can be hypothecated, a joint venture may be established with a financially stronger General Contractor provided these firms' combined working capital equals at least 5% of all construction contract amounts for projects in construction and development.
  5. Waiver of the working capital requirement is reserved to Regional Center Directors and will be considered only when there are specific strongly supported mitigating factors.
  6. Pay When Paid subcontracts affect the timing of the payments to the subcontractor, not the requirement to pay, and therefore should have no effect on the working capital calculation. Pay if Paid contracts will relieve the General Contractor's obligation to pay the subcontractor; however these type contracts, while not prohibited, are generally discouraged for both policy and risk reasons.

Therefore, HUD will generally not permit an adjustment to the General Contractor's working capital requirements if either contract is used.

### **8.5.1.7 LIHTC, Historic Tax Credit or New Market Tax Credit Transactions**

**A.** In the case of LIHTC, Historic Tax Credit or New Market Tax Credit transactions, the application must include a Letter of Commitment/Letter of Intent to fund the required equity from a syndicator or investor. This Letter of Commitment/Letter of Intent must specify the total equity amount, pay-in schedule, and conditional equity pay-in benchmarks so the Lender can verify the availability of equity. The Lender must identify the funding and use of any syndicator or investor-required reserves in comparison to HUD's reserve and escrow requirements and reconcile any differences in the Lender's Narrative.

**B.** The Lender must also review additional documentation (e.g. financial statements, syndication track record/history, etc.) to determine the syndicator or investor's ability to make all future equity installments. The Lender should focus on and evaluate the syndicator's or the investor's financial strength, experience, and reputation. The Lender should also identify whether they syndicator or investor has a majority ownership interest or identity of interest in the Borrower entity, as addressed in [Section 8.3](#). See [Chapter 14](#) for further guidance on underwriting an application with tax credits.

### **8.5.1.8 Real Estate Owned Schedule and Mortgage Debt Schedule**

**A.** Real Estate Owned (REO) Schedule and Mortgage Debt Schedule must disclose the latest entire calendar year of operations. The purpose of requiring the REO and Mortgage Debt Schedules is to determine an Active Principal's exposure to any risk associated with their real estate portfolio (e.g. multifamily rental, assisted living, commercial, office, undeveloped land, and new construction versus stabilized properties, etc.). Generally, the REO Schedule lends credibility to asset values reported on the principal's financial statements by requiring detailed information on each real estate asset and serves as a cross-check to the financial statements. The mortgage debt schedule should include loans that are maturing within the next 5 years or have floating-rate resets within the next 5 years. Other debt that has a material impact on the Principals' creditworthiness should be included as well (e.g. if they are in default or are likely to have problems with a loan over the next few years) to determine if any of the properties should be classified as a troubled asset. A troubled asset is one that has, or is likely to, defaulted on its mortgage obligations, or has significant financial management or operational problems. The credit evaluation shall include:

1. An analysis of the various properties' net operating income, outstanding indebtedness, cash flow and valuation estimates must detail and support the Lender's assessment of the likelihood of the Borrower's successfully refinancing projects that have maturing balloon debt, assuming current capital markets conditions and current availability of alternative long-term financing sources. The analysis should pay particular attention to Principals with a history or anticipated incidence of adverse credit actions including (but not limited to) bankruptcies, foreclosures or a pattern of renegotiating debt.
2. A financing plan that should include both conventional financing and other FHA insured loans, including healthcare loans, for any shortfall or anticipated lack of available credit.
3. An analysis of large nonprofit or for-profit entities/ owners with large portfolios and audited summary financial statements. Generally, the Lender can provide summary data, including a



description of exposure to maturing debt obligations, a detailed listing and analysis of troubled projects, including those with recent or anticipated defaults or other material adverse actions.

4. If a tax credit syndicator is identified, a brief overview and analyses of the entity. Typically, a tax credit syndicator is an investor intermediary with only a limited ongoing obligation to LIHTC rental properties. Accordingly, an REO schedule is not required for tax credit syndicators or investors. However, the syndicator's liquidity, track record, asset management and monitoring capability and ability to perform on its commitment to provide equity to the Borrower after Initial Endorsement are material issues for the HUD Senior Underwriter's analysis of the tax credit investor/LP.
5. The REO and mortgage debt schedule in tabular format containing the information described below and any other information sufficient to present their analysis and conclusions. Typically, the format is a spreadsheet accompanied by a summary description and analysis of each project. When the REO schedule materially differs from the financial statements and are not minor variations arising from timing of statements or changes in principal balances, then the Lender should investigate, reconcile and explain the differences. Refer to [Appendix 8, Section A.8.1](#) for the itemized physical property list and the schedule of mortgage debt.

## 8.6 Required Prior Credit Approval of Principals/Borrowers

### 8.6.1 FHA Insured Balances Greater than \$500 Million

#### 8.6.1.1 Purpose

**A.** Prior credit approval of a principal is a specialized review of a large Borrower to manage risk and promote efficient program application processing.

**B.** HUD manages risk with a prior approval review by:

1. Determining whether an active principal represents a reasonable credit risk given the operating performance, age, utility and physical condition of the principal's existing FHA insured, including HUD assisted and other properties;
2. Determining the amount of any new mortgage insurance commitments that may be extended to a principal given their credit history, cash flow, net worth, liquidity, scheduled debt maturities and operational stability; and
3. Identifying and evaluating the risks arising from any unique combination of assets that may suggest an adverse circumstance that could impact the stability of the principal's portfolio, such as concentration in a particular asset type, industry sector or geographic or market concentration.

**C.** Over time, the levels of aggregate loan balances for some principals have increased, with balances well exceeding \$500 million. These portfolios can also involve varied degrees of Borrower risk generated by factors such as:

1. An imbalance of new construction in the Borrower portfolio;



2. Concentrations of insured loans in similar geographic areas;
3. Risk associated with excess and/or unwarranted litigation, including asset management and financial deficiencies; or
4. An aggregate loan balance that presents a single point of failure risk to the FHA insurance fund if a key principal (or principals) of the business entity would suffer an event that would materially, negatively affect their portfolio.

**D.** The prior approval of principals also assures a consistent, timely and efficient response to active principals with portfolio holdings that may be scattered among numerous Multifamily Regional Centers.

**E.** In addition, it enables the largest users of FHA programs to plan for future property development or acquisition relying on financing available through the insurance programs.

## 8.6.2 Principal Types

**A.** Two Principal types must receive HUD's prior credit approval before submission of the application, if the REO portfolio exceeds a threshold (see next section):

1. Principals normally subject to application-level mortgage credit underwriting as defined in [Section 8.3.2.A](#) and [Section 8.3.2.C](#) and Active Principals, defined as those member(s) of business entities which, if they suffered material negative financial or legal problems, would pose a risk to HUD.
2. Investors participating exclusively as Passive Principals, as described in [Section 8.3.2.D](#), except whose interest is not fixed or some form of continuing or contingent responsibility exists (e.g. a future equity investment obligation).

## 8.6.3 Threshold

**A.** The threshold for a mandatory review is the principal is a participant in FHA insured projects with outstanding loan balances greater than \$500 million (unadjusted for ownership interest). Changes in the principal's REO schedule resulting from Transfer of Physical Asset (TPA) transactions may trigger a mandatory prior credit approval request or, in cases where an active prior credit approval exists, the lead Lender must ensure a TPA is in compliance with the decision's insured loan balance limit.

## 8.6.4 Threshold Applies to Current and Expected Balance

**A.** Prior approval applies to future applications of MAP multifamily and healthcare loan programs. It does not apply to future refinancing applications pursuant to Section 223(a)(7) or Housing Finance Agency or Government Sponsored Enterprise risk-sharing loans. This also applies to all applications for Transfer of Physical Assets in cases where the ownership interest of the transferee meets the definition of an Active Principal in accordance with [Section 8.3.1.B.1.a](#) above.

## 8.6.5 Effective Date and Duration

**A.** A prior approval decision will be effective and may be relied upon for 24 months or lesser period specified by HUD, from the date of the credit approval.

## 8.6.6 Lender Submission and Procedure

A. The MAP Lender must prepare a specialized mortgage credit review for the subject principal(s). Key areas include individual/corporate financial analysis, REO analysis and key performance metrics (both overall and FHA insured segment), ownership/investment strategy analysis, geographic concentration risk, key person dependency risk, proposed FHA financing analysis, and Management Agent analysis.

B. [Appendix 8, Section A.8.3](#) and [Section A.8.7](#) sets forth the instructions and requirements for MAP Lenders to file a prior approval request. The Lender should deliver the prior approval submission to the HUD Regional Center most relevant to future application activity. The Regional Center will then forward this presentation to HUD Headquarters Office of Multifamily Housing Production for review.

## 8.7 Secondary Financing

A. The amount, form, terms and conditions of any permitted secondary financing must comply with the guidance herein and 24 CFR Sections 200.71 and 200.85. This section provides guidance when secondary funding is included in the project financing plan. Except as specifically noted in this section, the term of any subordinate loan may not mature before the term of the HUD-insured first mortgage. Additional secondary financing guidance for Low Income Housing Tax Credit projects is found in [Chapter 14, Section 14.14](#). Identify all subordinate loan funds in Section III “Source of Funds to Meet Cash Requirements” form HUD-92264-A.

### 8.7.1 Public Sources

A. For all Sections of the Act (SOA), when secondary financing is funded by sources such as HOME funds, Affordable Housing Program, Federal Home Loan Banks (FHLB), Grants, or other quasi-public, federal, state, or local governmental sources, the following is applicable:

1. The subordinate loan must be documented by a promissory note (with terms similar to form HUD-92223M, Surplus Cash Note) and may be secured with a mortgage lien as prescribed by the governmental funding source and reviewed and approved by HUD and made subordinate to the HUD-insured first mortgage using form HUD-92420-M, entitled “Subordination Agreement - Public.” At a minimum, the associated note will need to contain the following language from [Section 8.7.5](#) below. Note that the parties will need to execute and record a Subordination Agreement and the note will need to conform to the terms in Section 3 of the Subordination Agreement.
2. Secondary financing (or grants lent to the property as a secondary loan) may be used to offset up to 100% of the applicable SOA equity requirements, and may also be used to finance non-mortgageable costs, which when added to the HUD mortgage and required equity contribution, may exceed 100% of the project’s total cost. None of these sources may be substituted for Tax Credit Equity and all remain subject to the cumulative 75% limit on payments from surplus cash.
3. Non-mortgageable costs (i.e. replacement cost items, not eligible for inclusion in the HUD insured loan) to be financed by the secondary loan, must be certified by the funding source to be reasonable and necessary to complete the project. Documentation to this effect must be included with the application submission.

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4. The term of a subordinate loan should generally be coterminous with the HUD insured first mortgage. However, the HUD Underwriter may consider exceptions on a case-by-case basis for public debt when other HUD programs (e.g., the HOME program, National Housing Trust Fund) require shorter amortizations and the risk is mitigated. Examples of mitigants include items such as significant additional public funds, low loan-to-value or loan-to-cost ratios, below market rents or higher than minimum debt service coverage.
5. Any restrictive covenants in the secondary financing must expire upon foreclosure of the HUD insured loan's mortgage or deed to trust. However, when the source of the secondary financing is HOME program funds, HUD will permit the Rider/Restrictive Covenant Agreement to be modified such that the restrictive covenants will survive foreclosure of the FHA insured security instrument. Additionally, state lending programs that provide secondary financing on terms similar to those under the HOME Program may also be considered under this policy on a case by case basis.

## 8.7.2 Private Sources – Section 223(f)

**A.** Secondary financing from a private lending source must be evidenced by a promissory note (form HUD-92223M Surplus Cash Note or form HUD-92908M Residual Receipts Note) that may not be modified or altered in any manner without the written consent of HUD. If secured by the Project, the private loan must be subordinated to HUD-insured loan with form HUD-92907M Subordination Agreement – Private.

**B.** Private secondary financing is permitted to offset mortgageable and nonmortgageable costs up to the difference between the loan-to-value percentage and a maximum combined debt of 92.5% of the fair market value (FMV), **except** in instances when private secondary financing is combined with federal, state or local governmental agency secondary financing. (In these instances, the governmental loan, in aggregate with the HUD first and private second, may exceed the property's FMV.) The 92.5% limitation on combined debt does not apply to Low Income Housing Tax Credit transactions, in which primary and secondary debt together may equal but not exceed 100% of total development costs. (See [Chapter 14](#) for details.)

**C.** Private secondary financing up to 92.5% total LTV (including both HUD-insured and private secondary financing) may be secured by a lien encumbering the real property.

**D.** Mezzanine financing is a subordinate loan usually secured by a pledge of ownership interests, rather than by a secondary lien on the real estate or an obligation of the Single Asset Mortgagor Entity. Mezzanine debt terms must be fully disclosed to and approved in writing by HUD. Any mezzanine debt that remains from a previous financing of the property is subject to the secondary financing guidance in this section. Payments on mezzanine financing may be made only from surplus cash, and the debt may not mature before the FHA insured loan. Mezzanine loan interest rates will typically be higher than that of the first mortgage but must be reasonably consistent with market rates for mezzanine debt. Additionally, the interest rate must not be so high that it jeopardizes the ownership stability of the property, or that the interest due cannot reasonably be expected to be repaid from surplus cash. Interest due or accruing on the mezzanine loan must be approved as reasonable by HUD.

**E.** In the event of nonpayment or default on the mezzanine debt, any transfer of an ownership interest in the Borrower entity or in its principals to the mezzanine Lender must have prior written approval by HUD, through the Transfer of Physical Assets (TPA) process. The mezzanine Lender may exercise no enforcement remedies against the real estate or against the Borrower entity during the term of the

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mezzanine loan, nor may the mezzanine Lender take action that would trigger a Transfer of Physical Assets (TPA) without HUD approval.

**NOTE: Project-specific exceptions or waivers to these policies for mezzanine financing must be approved in writing by HUD and documented in a HUD-2 waiver form.**

### 8.7.3 Private Source – New Construction/Substantial Rehab

A. Private secondary financing is not permitted under Section 221(d)(4) or other new construction/substantial rehabilitation first mortgage programs. The only exception to this consideration is Seller-financed secondary debt (aka seller take-back note). The Seller-financed secondary debt must meet the follow criteria:

1. The FHA loan to replacement cost ratio is less than 50% (80% loan ratio for tax credit applications) of mortgageable cost; and
2. The Seller financed secondary debt is either:
  - a. An arms-length transaction; or
  - b. It involves an identity of interest transaction and the selling price of the land or building is not greater than the property's "as is" value."
3. Seller-financed secondary debt must also meet all of the following:
  - a. It is an inferior cash flow debt, such that cumulative payments for that and any other subordinate debt must not exceed 75% of surplus cash, if available.
  - b. It is documented in a promissory note that is not recorded and not secured with a lien against the property; this prohibition on a lien does not apply to LIHTC transactions (see [Chapter 14](#)).
  - c. It does not contain any provision of foreclosure that would threaten the first mortgage.
  - d. It is subject to automatic re-subordination in any subsequent refinancing of the first mortgage; and
  - e. The subordinate debt does not have a balloon payment or maturity prior to maturity of the FHA-insured first mortgage.

### 8.7.4 Section 223(a)(7) Refinance Program

A. For Section 223(a)(7) applications, secondary financing terms are governed by the SOA of the underlying insured mortgage but shall not be used directly or indirectly to provide funds for an equity takeout or a Transfer of Physical Assets.

### 8.7.5 Condition for Repayment of Secondary Financing

A. (Subordination Agreement – Public (form HUD-92420M) and Subordination Agreement – Private form HUD-92907M). Required repayment of this and any other secondary debt, including interest, must be made solely payable cumulatively from up to 75% of available surplus cash. Consider using form HUD-92223M or including the following language in the secondary financing promissory note, or otherwise ensure the transaction provides for the following:

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*"So long as the Secretary of Housing and Urban Development or his/her successors or assigns, are the insurers or holders of the first mortgage on **(insert project name and FHA Project No.)**, the total payment(s) due under this Note, and all other secondary debt instruments shall be payable and shall not cumulatively exceed 75% of available surplus cash. Non-project sources that are outside the Mortgaged Property may also be used to repay subordinate financing. The term surplus cash is defined in the Regulatory Agreement dated **(insert date)** between HUD and **(insert name of Borrower)**. The restriction on payment(s) imposed by this paragraph shall not excuse any default caused by the failure of the maker to pay the indebtedness evidenced by this Note."*

**B.** This language does not need to be added to the Subordination Agreement – Public (form HUD-92420M) or the Surplus Cash Note (form HUD-92223M)

## 8.7.6 Secured Public Secondary Financing Conditions

**A.** The Borrower may secure a Surplus Cash Note (form HUD-92223M) with a subordinate lien from a governmental agency against the property under the following conditions:

1. The Lender on the insured mortgage must consent to the placing of the subordinate lien and agree that its existence could not create a basis for default on the first mortgage.
2. There must be a simultaneous closing of the subordinate financing documents and the insured first mortgage loan documents. Both the subordinate and first mortgage closing documents must be recorded prior to or on the day of closing. Though recordable closing documents are frequently recorded in advance of actual closing, funds may not flow until closing. See [Chapter 19, Section 19.1.3.4](#) for details on closing arrangements.
3. The terms of the subordinate mortgage must comply with the following requirements:
  - a. The term of the subordinate mortgage must be approved by the Field Counsel.
  - b. The term of the subordinate mortgage must be consistent with the terms of the insured Surplus Cash Note, the first mortgage, the Regulatory Agreement and all HUD regulations and requirements.
  - c. The subordinate mortgage shall not contain a cross default provision or any right of foreclosure before the termination of the FHA insured mortgage.
  - d. The term of the subordinate mortgage must be extended if any of the following occur:
  - e. The Promissory Note is due, and there are no surplus cash funds or residual receipts available for repayment, and the first mortgage has not been repaid in full. (Distribution of residual receipts must be approved by HUD Asset Management and can only be approved by the terms of a written agreement between HUD and the owner.)
  - f. HUD grants a deferment of amortization or forbearance that results in an extended maturity of the insured mortgage.
  - g. The maturity date of the subordinate mortgage is prior to the term of the FHA-Insured mortgage.
  - h. The subordinate mortgage must be assumable when a sale or transfer of physical assets occurs, and the insured mortgage remains in place.
  - i. The subordinate mortgage must automatically terminate if HUD acquires title to the project by a deed in lieu of foreclosure.

- j. No more than 75% of surplus cash may be pledged to the repayment of the subordinate loan(s).

## 8.7.7 Unsecured Private Secondary Financing Conditions

A. Terms of unsecured private Promissory Notes must reflect those provisions found in: form HUD-91710M, Residual Receipts Note [Non-profit Borrower], or form HUD-91712, Residual Receipts Note [Limited Dividend Borrower], or form HUD-92223M, Surplus Cash Note [Profit Motivated Mortgagors] based upon the type of Borrower; or Form *Residual Receipts Note* (form HUD-92908M), when Borrower's distributions are restricted through a *Residual Receipts Rider* to the *Regulatory Agreement*. See the Closing [Chapter 19, Section 19.4.8.2](#) for further details.

1. Form HUD-91710M, Residual Receipts Note (for Non-profit Mortgagors) and form HUD-91712M, Residual Receipts Note (for Limited Dividend Mortgagors).
  - a. Principal and interest shall be due and payable on or after the maturity date of the HUD-insured mortgage.
  - b. If the HUD-insured mortgage is prepaid in full, the holder of the residual receipts note has the right to declare the entire principal sum or any remaining balance including any accrued interest immediately due and payable.
  - c. Prepayments to principal and interest:
    - 1) may be made (a) from the residual receipts as defined in the Regulatory Agreement only after obtaining written approval from HUD or (b) from sources other than Project Income or Project Assets, e.g., syndication proceeds.
    - 2) may be made only after final endorsement of the insured mortgage and after the end of a semiannual or annual fiscal period.
  - d. if unauthorized prepayment is accepted, the funds shall be returned to the project immediately upon discovery.
  - e. The residual receipts note is nonnegotiable and may not be sold, transferred, assigned, or pledged by the payee.
  - f. Presentation, demand and notice of demand, nonpayment and protest of the residual receipts note are waived.
  - g. Interest on the note must not compound; however, for LIHTC projects, HUD will consider compounding of interest pursuant to the instructions in [Chapter 14, Section 14.11.B.5](#) of the MAP Guide.
2. Form HUD-92223M, Surplus Cash Note (for all other mortgagor entities). The conditions and limitations are the same as form HUD-91710M, except that:
  - a. Provisions may be made for interest payments annually or semiannually or at the end of a fiscal period. However, the Note should provide for interest to accrue and be payable in full at maturity.
  - b. Prepayment of principal or any payment of interest must be limited to sources other than Project Income or Project Assets, e.g., syndication proceeds or surplus cash as defined in the Regulatory Agreement.



- c. Payments on promissory notes will be made only as permitted by the applicable Regulatory Agreement, but prepayment of the promissory notes from sources other than the project is permitted without HUD approval.
- d. Should any unauthorized prepayments be made, as determined by HUD, it shall be the responsibility of the Borrower to return them to the project.
- e. Interest on the Note must not be compounded, however for LIHTC and otherwise affordable projects, HUD will consider compounding of interest pursuant to the instructions in [Chapter 14, Section 14.11.B.5](#) of the MAP Guide.

## 8.7.8 Tax Credit Equity Bridge Loans

A. Tax credit equity syndicators or investors (with or without an identity of interest with the MAP Lender) may make bridge loans to fund required equity contributions for LIHTC, Historic or New Market Tax Credits during the construction or substantial rehabilitation period as described in [Chapter 14, Section 14.14](#).

## 8.8 Application Exhibits and Responsibilities

A. The Lender shall utilize HUD's standardized application exhibit checklist to facilitate the electronic submission of the application to aid in HUD's completeness review of deliverables and to record underwriting processing results and conclusions for both pre-application and firm applications. The standardized checklist is a concise structured template organized with separate sections directly related to each technical discipline. The template will permit the HUD-delegated Underwriter and Lender to locate exhibits within the application binder, which will in turn expedite the application review process while reducing HUD's risk during the underwriting analysis of the application. These application templates are for use for all program applications submitted under the Multifamily Accelerated Processing with the exception of Section 223(a)(7) applications. The Lender's application submission templates for mortgage insurance are:

1. Underwriter's Narrative
2. Application Checklist
3. Form HUD-92013-C, LIHTC Summary Report (LIHTC transactions only)

### 8.8.1 General Responsibilities of Lender's Underwriter

A. Underwriting multifamily projects is a process for evaluating the character, capacity and creditworthiness of the Sponsor, Borrower and its principals, the General Contractor, and in the instance of an identity of interest, the property management company, in order to reach specific conclusions resulting in the approval (with conditions, as appropriate) or denial of a mortgage insurance application.

B. The Lender must assess the Borrower's ability to manage all of the responsibilities of the ongoing operations of multifamily properties, including the development, construction, completion, and lease-up for new construction proposals and property maintenance, tenant relations, financial and performance reporting and effective management for existing properties.



**C. The Lender's Underwriter must:**

1. Identify the Borrower and its principal entities or individuals and present a complete, consistent and coherent picture of the financial capacity and creditworthiness of the Borrower and the various Active Principals.
2. Analyze the creditworthiness of the Sponsor(s), the Borrower entity, if formed, and its principals and/or individuals and the contractor. If a borrowing entity is not yet formed at the time the firm application is submitted, the MAP Underwriter must still perform the financial and credit analysis on the Active Principals and/or individuals. The Underwriter must demonstrate that the principals and/or individuals have the character, capability, creditworthiness and commitment to provide expert leadership, working capital and cash needed to close the proposed transaction(s), complete the development process, as applicable, and to support the operations of the property. This determination is made in light of the obligations that may already be required of the principal, or are expected to arise due to ownership of other business interests and real estate projects.
3. For existing mortgagor entities and properties, evaluate the financial performance of the mortgagor and the property based on its financial statements and other operating reports, (e.g., rent rolls) and credit history to determine eligibility, mortgage amount and conformance to program requirements.

4. Conduct a mortgage credit review to include:

- a. The balance sheets for principals as discussed in [Appendix 8, Section A.8.2](#), "How to Analyze Financial Statements" and in addition to the Schedule of Real Estate Owned and other relevant schedules.

In each case the Lender will conduct sufficient diligence to determine what should be an appropriate period of past financial review. Character is best demonstrated during periods of economic distress and so a review of at least one complete business cycle (means the entity's fiscal year) is necessary. Any material credit problems in the last 2 to 5 years should be carefully reviewed and may result in an application rejection. Events that occurred before that period if, for example more than 8 or 10 years have passed, would not have as material an impact on creditworthiness but may still be relevant. The Lender should consider all relevant factors in the analysis and credit approval decision.

- b. Determine whether the Sponsor(s) has (or will have, given proposed transactions) existing insured mortgage balances exceeding \$500,000,000. If a Sponsor has obtained prior approval to exceed this amount, submit a copy of the Prior Approval Decision together with any other documents identified as required by the Prior Approval Decision. (See [Appendix 8, Section A.8.3](#) for prior credit approval instruction.).
5. Determine if there is incomplete or inconsistent information, or discrepancies between the information included on the financial statements and in the credit reports. Any inconsistencies must be reconciled.
  6. In addition to the formal documents and credit investigation described above, the Lender's Underwriter must conduct and describe the results of an internet search of each principal and determine if there is any information that raises concerns about creditworthiness and address any negative information.

7. Provide the Office of Foreign Assets Control (OFAC)/Terrorism checks and verifications on principals which are required by the U.S. Patriot Act. These checks must be completed and documented no later than the time of Initial Endorsement, whether or not the Lender is a regulated financial institution. The OFAC verification is not part of MF Regional/Satellite Office review except to the extent that the Lender has identified problems during the OFAC check. OFAC requirements are administered by the Department of the Treasury and Lenders should refer to the Treasury's website

<http://www.ustreas.gov/offices/enforcement/ofac>, for any questions.

## 8.8.2 Additional Exhibits Required of Project Participants

A. The Borrower shall provide the following exhibits for participating professionals and officers of corporations:

1. **Identity of Interest of Borrowers Using Builders and Sponsors Profit and Risk Allowance (BSPRA).** General Contractors with an identity of interest with the Borrower may be either independent businesses with an ownership interest created in the Borrower entity primarily to obtain the Builders and Sponsors Profit and Risk Allowance (BSPRA) or businesses owned and operated by a Principal of the Borrower. Notwithstanding any identity of interest, the General Contractor is required to provide the identical exhibits as a participant.
2. **Management Agent.** A detailed resume is required for Management Agents even when they have no ownership interest in the Borrower entity or identity of interest with a Principal. Credit reports are required for the Management Agent only in cases where there is an identity of interest between the owner and the Management Agent, or in cases where the Management Agent holds an equity interest in the Borrower. Also, receipt of negative information concerning the performance or capacity of the Management Agent could require a credit review. Analysis of financial statements is generally not required, unless the agent has an identity-of-interest with the Borrower or a Principal, or where financial statements are necessary to evaluate the capacity of the management entity to perform its management role.
3. **Fee Developer/Consultant.** Fee Developers, packagers, consultants and other professional persons or organizations are sometimes retained to assist nonprofit Sponsors that might lack needed experience. Such services might include assisting with project development, financial structuring or HUD processing. Packagers and consultants must provide resumes evidencing their qualifications, and the Developer must provide credit reports and financial statements when their services are critical to project viability.
4. **Design Architect/Engineers.** Design professionals must provide resumes establishing their credentials, competence and experience commensurate with levels of expertise and experience required by the project. Absent an ownership interest in the Borrower that would otherwise qualify the design professional as a Principal, no other mortgage credit exhibits are required.
5. **Executive Officers of Borrower.** Officers with less than 10% of the voting stock of a for-profit corporation but who qualify as a principal of the Borrower, may be required to submit resumes and demonstrate appropriate competence and experience to provide an accurate picture of character, capacity and commitment.
6. **Executive Officers and Directors of Publicly Traded Corporations.** These individuals are not required to submit mortgage credit exhibits as individuals, notwithstanding their stock ownership

inasmuch as such firms are regulated by the U.S. Securities and Exchange Commission (SEC). The SEC-required annual corporate report (Form 10-K) and quarterly corporate report (10-Q) provide complete financial statements, background and history of corporate operations as well as resumes and compensation of corporate officers and disclosure of conflicts of interest of officers and directors. In addition, the credit of publicly traded corporations is rated by agencies such as Standard and Poor's, Fitch and Moody's. When a publicly traded corporation is a Principal, Forms 10-K and 10-Q and agency credit ratings may be accepted in lieu of mortgage credit exhibits.

### 8.8.3 Evaluating Nonprofit Sponsors and Borrowers

**A.** Nonprofit Borrower/Sponsors (whether national, regional, or local) must have the experience and financial strength appropriate for the development and ownership of the proposed property, see [Section 8.3.2](#). The nonprofit Sponsor being evaluated may not have equal strength with respect to all criteria. In transactions where the Borrower/Sponsor's ownership structure contains multiple entities performing differing functions, the Lender must evaluate the nonprofit and each of the other entities on their capacity to perform its particular function, e.g. ownership, property management, acquisition, development, resident services or asset management. This includes the need for prior acceptable history of successful development, ownership and management of assets similar in size and complexity as the proposed project. Therefore, only the criteria for the areas in which the nonprofit entity has direct responsibility or authority need to be applied during the evaluation process. The eligibility of prospective nonprofit Sponsor/Borrower must be determined before a Pre-application approval or Firm Commitment is issued.

**B.** The Lender must include in the Underwriter Narrative summary a description of the party(s) paying pre-development costs, in addition to the follow written explanations:

1. Details of any proposed rent/income restrictions on the property to be developed by the nonprofit.
2. Developer's Agreement or any other document which shows the relationship and work responsibilities of all parties associated with the transaction.
3. Explanation of the terms and conditions of the Housing Consultant's contract, if applicable. The fee for the Housing Consultant shall be an expense of the Borrower.
4. Memorandum of findings and recommendations:
  - a. Must include a description of the relationship between the nonprofit and any profit motivated entities involved in the transaction.
  - b. The determination of eligibility or ineligibility of the nonprofit Sponsor/Borrower must be approved by the HUD office with jurisdiction.
  - c. At the Firm Application stage and prior to initial endorsement (beginning of construction in the case of Insurance Upon Completion), describe the Sponsor's and Borrower's relationships with parties or firms furnishing land and services.
  - d. Describe any signed agreements of relationship between such parties or firms with the Sponsor and Borrower.
  - e. All relationships are subject to HUD approval therefore the Sponsor and the Borrower must inform HUD in writing if there is a change in any signed agreements of relationship.

5. Explain any nonperforming assets in nonprofit Borrower/Sponsor portfolio in conjunction with the REO review.
6. Detailed explanation of the motivation for sponsoring the project including a history of the organization's involvement in multifamily housing.
7. The Management Agent must have a minimum of 3 years of experience in directing and overseeing the management of at least 3 properties serving the same resident clientele and comparable to the proposed property in scale, complexity, tenant profile and regulatory compliance requirements. A property manager must demonstrate adequate property management experience with properties comparable to the subject property.
8. Signed written resolution of the nonprofit's directors or trustees, acknowledging the responsibilities and obligations of sponsorship and continuing ownership, and that the subject proposal reflects the will of the board and/or the membership of the organization.
9. Detailed statement of arrangements made or proposed for the following (listing principals involved, their relationship with the nonprofit Sponsor/Borrower, the terms of the arrangements and the circumstances surrounding each):
  - a. Land on which the project will be built including the existing length of ownership.
  - b. Project construction/rehabilitation, including selection of General Contractor, subcontractors, and Architect.
  - c. Legal and consulting services.
  - d. Project financing, including any discounts.

NOTE: A national, State, or regional organization acting as a cosponsor must submit a separate form HUD-3433 and Supplemental documentation.
10. The nonprofit Sponsor must have diverse and stable funding sources with recurring revenue and, if required, a proven record of raising sufficient funds to meet its operating needs. The Lender must identify whether the nonprofit Sponsor's primary funding sources are from fees on development projects or from sources such as public funding, public contracts, grants, or donations that may be subject to budget or funding constraints.

#### **8.8.4 Credit Review of a Nonprofit Sponsor and Borrower**

**A.** The Lender's Underwriter narrative should describe how the nonprofit Sponsor/Borrower is qualified to start, complete, and operate a project under the insured loan programs. The Lender must determine that the nonprofit Sponsor/Borrower is acting on its own behalf, or if either knowingly or unwittingly acting under the influence, control or direction of any outside party seeking to derive a profit or gain from the proposed project—such as a landowner, real estate broker, contractor, Architect, attorney or consultant.

**B.** Credit investigation analysis:

1. As with for-profit Sponsors, the Lender's Underwriter must make a determination of the individuals and entities with decision-making and operational authority over the project. The Underwriter will

provide an in-depth written analysis on the aspects of the mortgage credit review in the Underwriter's narrative.

2. Check that the Borrower/Sponsor has no unresolved issues related to payment history and check credit references.

**C. Financial data analysis:**

1. Determine the amount of cash and liquid assets available for investment in the project and overall financial condition of the sponsoring group, and in particular whether the financial statements indicate that income will be sufficient to meet the expenses incurred by the group.
2. Financial statements of many large nonprofit organizations show various fund accounts, such as general and building fund, etc.
  - a. Identify any inter-fund receivables and payables that cancel each other.
  - b. Do not consider restricted-use funds in the analysis.
  - c. Review the Public Records section of the credit report to eliminate any assets that were used as collateral in secured borrowing.
3. The project size and complexity should be consistent with the abilities of the sponsoring organization.

### **8.8.5 Nonprofit Developer Fees**

**A.** Nonprofits may earn a non-profit Developer Fee, but not BSPRA, on a new construction or substantial rehabilitation proposal under Sections 220, 221(d)(4), 231, or 241(a).

### **8.8.6 Consultant Fees**

**A.** Nonprofit Borrowers may include a consultant fee as part of the replacement cost to be paid from the Organizational line item. The selection of a housing consultant is the responsibility of the Sponsor/Owner who will execute a consultant contract or agreement that engages the consultant to assist the Sponsor/Owner in the development process. The MAP Lender will review and explain the terms of the housing consultant contract in the Underwriter's Narrative but does not approve the contract nor determine compensation limits. The resume(s) are to be submitted with the FHA loan application. HUD will permit a consultant fee under the following conditions:

1. As currently permitted, a consultant fee may be part of the Developer Fee where one exists.
2. Where a Developer's Fee is not permitted in the loan, a consultant fee may be paid from the Organizational line item in Section G on form HUD-92264.
3. Use of a consultant fee is limited to nonprofit sponsored projects that have retained a consultant to assist in the origination, development, financial services (non-tax credit deals) and/or loan processing of the project. The agreement between the Nonprofit Borrower and consultant shall outline the services to be provided and fee amount.
4. The fee amount shall be based upon complexity of the transaction but limited to the greater of \$40,000 or 10 percent of the estimated total for all improvements, total carrying charges and total legal, organizational and audit fees; and

5. No more than 50% of the consultant fee shall be paid at initial endorsement, with the remainder to be paid during the construction period and final endorsement as described in the consultant contract.

### **8.8.7 Establishing a Profit-Motivated Borrower Entity**

**A.** A nonprofit Sponsor may establish a profit-motivated Borrower entity for the purpose of owning a tax credit project or obtaining BSPRA. Distributions are limited to 75% of available surplus cash. Such a request may be approved provided:

1. The Borrower's legal counsel's opinion determines that there is no legal impediment that would prohibit approval of this relationship structure.
2. The profit-motivated Borrower entity agrees to be regulated by the terms and conditions of the regulatory agreement (form HUD-92466M, Regulatory Agreement Multifamily Housing Projects) applicable to a profit-motivated entity.
3. The nonprofit is subject to the mortgage limitations applicable to a profit-motivated entity.
4. A working capital deposit is required.
5. A nonprofit Developer's Fee is not included in the mortgage; the nonprofit can include BSPRA.
6. If the nonprofit provides evidence that it has obtained exemption from real estate taxes, the tax exemption must run with the real estate and not with the type of sponsorship.
7. The Borrower's legal counsel's opinion addresses any potential tax consequences and determines there will be no change in the nonprofit's Section 501(c)(3) tax-exempt status with IRS.
8. The nonprofit Sponsor is the Section 50 signatory, see [Section 8.3.6.G](#) for guidance.

### **8.8.8 Lender's Review and Recommendation**

**A.** The Lender's Underwriter's recommendation, after review of all processing materials and third-party reports, is made in a separately bound report addressed to HUD included in the Underwriter's narrative.

1. The report must detail the project's financial requirements and the credit capacity of the Sponsors, Borrower entity, its principals, and the General Contractor. The Lender's Underwriter's narrative must detail the project's financial feasibility with an analysis of the primary risks, any mitigating factors, and the rationale for any waivers requested. The mortgage credit analysis must contain evidence of the financial feasibility and acceptability of the single asset entity, of each principal with decision making control and of investors providing funds for initial closing. Include at a minimum, the:
  - a. Name of the Borrower entity.
  - b. Composition of the Borrower entity include the tiers showing principals with control and providing the financing.
  - c. Name of the General Contractor, disclosing any relationship(s) with the Borrower entity.
  - d. Mortgage amount and controlling criterion.
  - e. Financial requirements for closing.

- f. Sources of funds to meet cash requirements, including all sources and disclosing how the money will be used.
  - g. Ratio of loan proceeds to actual cost for the purpose of cost certification.
  - h. The experience level of the development team relative to the proposed project.
  - i. A credit and financial review of Sponsor(s)/Borrower and principals and General Contractor. This review must provide an overview of their financial strength, liquidity, experience, and creditworthiness and address positive and negative findings known by the Lender.
  - j. Completion Assurance requirements. (See [Chapter 3, Section 3.2.7](#))
  - k. Recommendation to accept or reject the proposed project.
  - l. If accepted, any conditions to be included in the commitment. (See [Chapter 11](#))
2. Complete form HUD-92264-A and exhibits for the type of mortgage proposed.
  3. The Lender must transmit to HUD all Borrower submissions and related documents. The Lender will analyze the stability of the principal's portfolio ownership and management structure, portfolio characteristics and market conditions and recommend prior approval of creditworthiness. The analysis shall include:
    - a. Review of the stability of ownership and management.
    - b. Evaluation of any problems and challenges confronting the principal and the principal's plans for action in response to such challenges including:
      - 1) Underperforming properties, (e.g., properties at less than 90% occupancy; properties at less than 1.1 to 1 debt service coverage; properties with significant physical or management problems).
      - 2) A review of REAC scores for existing HUD properties. Explanation and corrective action for properties having a score of less than 65.
      - 3) Existing defaults and/or pending capital transactions, (e.g., anticipated refinancing or refunding, pending balloon payments, interest rate resets).
      - 4) Property or Asset Management deficiencies, (e.g., underfunded reserves, deferred management fees).
      - 5) Suits, judgments, liens, or related adverse actions.
      - 6) Weak or unstable markets affecting geographically concentrated properties or other actual or prospective adverse conditions affecting a unique combination of assets and the impact of such conditions on the portfolio.
      - 7) A determination whether the principal's reputation, past performance and capacity support a conclusion that insured assets will be maintained in good physical condition, with timely capital replacements and prompt, effective action to remedy problems.



## 8.8.9 Mortgage Credit Duties of HUD

**A. Concentrated Risk Prior Approval.** Confirm that the Lender has correctly determined if prior approval is required for the Sponsor to file an application. (See [Appendix 8, Section A.8.3](#) for prior credit approval instruction).

**B. Previous Participation.** Perform the electronic 2530 review and approval process.

**C. Underwriting Conclusions.** Review Lender's preliminary analysis and recommendation about the Development Team's financial capacity, experience and creditworthiness and the Lender's analysis of any defaults, mortgage relief, assignments, and foreclosures relating to these projects.

**D. Verify Sources of Funds.** HUD will verify, through use of the form HUD-92264-A and documents supplied by the Lender, the source(s) of funds to meet cash requirements

## 8.9 Mortgage Term and Amortization Commencement

### 8.9.1 Sections 220, 221(d)(4), 241(a) and 231 Projects

**A. Term:** The term of the mortgage is the lesser of 75% of the estimated remaining economic life of the physical improvements or 40 years from the date of the first payment to principal. Express the mortgage term in whole or partial years, with a partial year expressed on months, for example 26 years, 3 months.

**B. Amortization starts on the following date:**

1. For Insurance of Advances projects amortization begins 4 months (after the scheduled construction completion date as estimated in the Firm Commitment. (For example: with a 16-month construction period, amortization begins in the 21<sup>st</sup> month).
2. For Insurance Upon Completion project, the first day of the second month following the date of Final Endorsement.

**C. Section 241(a) projects:**

1. **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.
2. **Amortization.** If fewer than 25 years remain on the term of the first mortgage and so long as the term of the insured mortgage is no greater than 75% of the project's remaining useful life, HUD will consider an amortization period up to 40 years regardless of the underlying first mortgage's amortization period.

### 8.9.2 Section 207 Pursuant to 223(f) Projects

**A.** The maximum term of the mortgage is 35 years or 75% of the estimated remaining economic life of the physical improvements, whichever is less, provided that the term may not be less than 10 years.

1. The mortgage term shall be the eligible number of whole or partial years between 10 and 35.

2. Express a partial year in months for example 26 years and 3 months.

**B.** Amortization starts on the first day of the second month following the date of the Initial/Final Endorsement.

### **8.9.3 Section 223(a)(7) Projects**

**A.** Most transactions are processed with a lower interest rate and re-amortized either within the remaining term or with an extension of up to 12 years. Exceptions are detailed in [Chapter 18](#). Extended amortizations may reduce risk to the Department by lowering debt service requirements so long as the physical condition of the property supports the extended term of the mortgage. In every case, the loan term cannot exceed 75% of the remaining useful life of the property.

**B.** Amortization starts on the first day of the second month following the date of the Initial/Final Endorsement of the mortgage.

## **8.10 Commitment Processing 220, 221(d), 231, 241(a)**

### **8.10.1 Mortgage Amounts and Cash Requirements**

**A.** Firm Commitment Processing.

1. For new construction, the insurable loan amount is the lowest of four criteria on form HUD-92264-A, Supplement to Project Analysis: the application amount, the cost amount, the statutory limits amount, and the debt service amount, which are described below. Refer to [Appendix 3, Section A.3.1](#) for the applicable program's required maximum loan ratios and the debt service coverage ratios needed to complete criteria for Firm applications for new construction and substantial rehabilitation:

a. The Application amount.

b. The Amount Based on Value or Replacement Cost. The result of Lender's estimate of the replacement cost after completion, multiplied by the applicable program percentage.

c. The Amount Based on Limitations Per Family Unit - Statutory Limits:

1) The Statutory limits are determined by an amount attributable to per unit limitation type as adjusted by the High Cost Percentage (HCP) and dwelling use (excluding land).

2) Record the sum of *costs not attributable to dwelling* use from Section M Line 15, form HUD-92264 into Criterion Line 4.b. Insert the same program percentage loan-to-cost ratio noted in A.1 above in the percentage space in Line 4.b. Multiply the sum of costs not attributable with the percentage loan-to-cost ratio and record the sum.

3) On Line 4.c. insert the full value of the "*warranted price of the land*" (see Section G Line 73a, form HUD-92264) or the full amount of the "As Is" value of the Land Without the Improvements (strike through "*warranted price of the land*" and insert "As Is Value") if the transaction is a substantial rehabilitation loan (see Section H Remarks Section, form HUD-92264).

- 4) On Line 4.e. total costs not attributable multiplied by the percentage of the loan-to-cost ratio, plus (added to) the maximum statutory limit calculated for the number of each by-unit-type. The sum calculated is the criterion mortgage amount. Strike a line through Line 4.e “*Total Number of Spaces*” field or leave blank, this field is no longer applicable.
- 5) For the latest High Cost Percentages visit the HUD web site at:  
[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/housing/mfh/mfinfo](http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/mfinfo) .
- d. Amount Based on Debt Service Limit. The loan amount supported by the applicable percentage of the projects’ estimated net income. The NOI used to support this mortgage criterion may be split into two or more income streams, for example to capitalize the savings from tax abatement or to recognize other revenue sources such as from an IRP decoupling or the difference between market rents and HAP contract rents.
  - 1) That portion of the maximum mortgage supported by the tax abatement or other source must be amortized over the same period as the additional NOI is available.
  - 2) In order to be recognized in the mortgage proceeds, any tax abatement must run with the real estate and not with the type of sponsorship.
2. Substantial Rehabilitation Loan Limits. Amount of Loan Rehabilitation under Section 220 and 221(d). (This includes only projects involving substantial rehabilitation.) The insurable loan amount is the lowest of four criteria on form HUD-92264-A, Supplement to Project Analysis: the application amount, the cost amount, the statutory limits amount or the debt service amount, as described below. Refer to [Chapter 3](#) for the applicable program required maximum loan ratios and the debt service coverage ratios needed to complete the criteria for substantial rehabilitation Firm Commitment applications.
  - a. The Application amounts.
  - b. The Lender’s estimate of the rehabilitation cost plus the “as is” value of the land and existing improvements before rehabilitation, multiplied by the applicable percentages in [Chapter 3](#).
  - c. Amount of Loan – Rehabilitation under Section 231. (Only for projects involving substantial rehabilitation.) The amount as permitted under the new construction program except the loan limitation is based on the estimate of value rather than the replacement cost. The insurable amount is the lowest of:
    - 1) The application amounts.
    - 2) Property owned – 100% of the estimated cost of rehabilitation plus the lesser of:
      - a) Principal amount of existing indebtedness against the property and closing charges, or
      - b) For all Borrowers, apply the amounts in [Chapter 3](#), to calculate the Lender’s estimated appraised value of the property before rehabilitation and closing charges less:
        - i. Value of leased fee, if leasehold, and/or
        - ii. Principal amount of special assessment
    - 3) Property to be acquired – For all Borrowers apply the amounts in [Chapter 3](#) to calculate the Lender’s estimated current cost of rehabilitation/reconstruction plus the lesser of:

- a) Apply the amounts in [Chapter 3](#) for all Borrowers to calculate the actual purchase price of the property and closing charges, or
- b) For-profit Borrowers apply the amounts in [Chapter 3](#), of the Lender's estimated appraised value of the property before rehabilitation and closing charges and/or principal amount of special assessment.

**B. Insurance of Advances and Related Matters.** See [Chapter 12, Section 12.7](#) and [Appendix 12](#) for processing instructions.

## 8.11 Sections 223(a)(7) and 223(f) Firm Commitment Processing

### 8.11.1 Determining Mortgage Amounts, Cash Requirements, and Related Matters

#### A. Firm Commitment Processing for Section 207 Pursuant to Section 223(f)

1. Amount of loan in a purchase transaction. In a purchase transaction involving an arm's length sale, the mortgage may not exceed the lowest of 5 criteria on form HUD-92264-A, Supplement to Project Analysis: the application amount, the loan to value amount, the statutory limits amount, the debt service amount, and the cost amount, which are described below. Refer to [Chapter 3](#) for the applicable maximum loan ratios and the debt service coverage ratios needed to complete criteria for a Firm application for a purchase transaction.
  - a. Application amount.
  - b. **Loan-to-Value Ratio amount.** Refer to [Chapter 3](#) for ratios. These loan-to-values apply to both for-profit and nonprofit Borrowers. (The amount based on value for Section 202 or 202/8 Direct Loan purchase transactions is 90%).
  - c. **Statutory Limits Amount.** This limit is based on maximum costs. The maximum per family unit limitation for refinance under Section 207 may be increased by the percentage of the High Cost Percentages (HCP) plus the percentage loan ratio noted in [Section 8.11.1.A.1.b](#), above. Follow the same guidance for inclusion of cost not attributable as set forth in [Section 8.10.1.A.1.c](#).

NOTE: Per family unit limits may be increased by the High Cost Percentages. The per-unit limits and HCP may be obtained on the HUD web site at:

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/housing/mfh/hicost/hicost](http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/hicost/hicost)

- d. **Debt Service Amount.** Debt service is the loan amount supported by the applicable percentage of the project's estimated net operating income (NOI). The mortgage may exceed this limit by capitalizing the savings from any tax abatement. In such cases, the net earnings estimate will not reflect that temporary tax abatement.

The NOI used to support this mortgage criterion may be split into two or more income streams to capitalize the savings from tax abatement or to recognize other revenue sources such as from an IRP decoupling or the difference between market rents and HAP contract rents.

- 1) That portion of the maximum mortgage supported by the tax abatement or other source of revenue must be amortized over the same period as the additional NOI is available.
- 2) Any tax abatement must run with the real estate and not with the type of sponsorship if it will be recognized in the mortgage proceeds.
- e. **Acquisition Cost.** The applicable percentage from [Appendix 3, Section A.3.2](#) must be applied to the Borrower's acquisition cost. Acquisition cost is defined as the sum of the items:
  - 1) Purchase price shown in the purchase agreement and determined allowable by the Lender.
  - 2) The Lender's estimate of repair cost, if any, provided such costs are paid by the Borrower and are not included in the purchase price.
  - 3) The sum of reasonable financing charges, legal, organizational, and title and recording expenses paid by the Borrower.
  - 4) Eligible discounts paid by the Borrower at property acquisition.

NOTE: Any fees, discounts or other amounts paid by the seller for or on behalf of the purchaser must be reflected as a reduction to the acquisition cost.
  - 5) Eligible Architect's fees, mechanical engineering fees, municipal inspection fees, HUD inspection fees, if applicable, and other fees as may be determined eligible by the Lender including the cost of Lender third party reports.
2. **Amount of Loan in a Refinancing Transaction.** The subject loan will be the lesser of a or b:
  - a. Amounts in [Section 8.11.1.A.1](#) above, except e.
  - b. **Cost to Refinance.** An amount that equals the greater of the following:
    - 1) 80% of the Lender's estimate of the value of the project, or
    - 2) The cost to refinance the project, which is defined as the sum of:
      - a) The amount needed to pay off the existing indebtedness as determined eligible by the Lender.
      - b) The initial deposit to the Reserve for Replacements.
      - c) The sum of reasonable financing charges, legal and organizational, and title and recording expenses paid by the Borrower.
      - d) The Lender's estimate of repair cost, if any.
      - e) Eligible discounts paid by the Borrower.
      - f) Eligible Architect's fees, mechanical engineering fees, municipal inspection fees, HUD inspection fees, if applicable, and other fees as may be determined eligible by the Lender including the cost of Lender third party reports.
      - g) Less the amount of any Reserve escrow for replacement and/or major movable equipment that will be purchased as an asset of the project.
  - c. **Cash-Out / Equity from Loan Proceeds.** The maximum loan-to-value ratio for cash-out refinances is 80%. In cases where the completion of repairs is deferred (i.e., non-critical repairs

and any deferred accessibility remedies) and the mortgage amount exceeds the costs of refinancing and all required costs including repairs (“cash-out transaction”), the Lender must withhold fifty percent (50%) of the cash-out proceeds in a dedicated account until all repairs are completed in a manner acceptable to the MAP Lender and to HUD. When the sum of cash held back from cash-out proceeds exceeds \$1,000,000, HUD will allow Regional/Satellite Offices the discretion to reduce the holdback amount when the following criteria are satisfied: (1) the non-critical repairs are minimal, (2) the owner has demonstrated both the ability to complete repairs in a timely manner and a commitment to keeping the property in good repair with no deferred maintenance; and (3) that any reduction in the holdback below the \$1,000,000 represents no risk to HUD.

Critical repairs are not subject to this cash-out or withholding of proceeds. Critical repairs are completed before Initial/Final Endorsement and are not deferred. Refer to [Chapter 12, Section 12.17](#) to see the guidance on when and how repair funds are released from escrow.

- d. Funding Repair Escrow and an Additional Assurance of Completion (Escrow Agreement for Deferred Repairs (form HUD-92476.1M (6/2018)).
  - 1) 100% cash escrow equal to the total cost of estimated repairs must be established and withheld in cash from mortgage proceeds to cover the **total** cost of the estimated repairs (non-critical repairs/deferred repairs) identified in the CNA ([Chapter 5, Section 5.10.8.H](#)) for completion after endorsement. See also [Chapter 14](#) for funding of completion escrow for LIHTC transactions.
  - 2) Additional escrow for an assurance of completion is a percentage of the repair cost. The additional escrow is broken down as follows:
    - a) Section 223(f) 20% in cash or letter of credit,
    - b) Section 223(a)(7) 10% in cash or letter of credit, and
    - c) For Tax Credits 10% tax credit equity or letter of credit.

**B. Identity of Interest Purchase Transaction.** Refer to [Chapter 13, Section 13.16](#).

**C. Determining Existing Indebtedness in a Refinancing Transaction.** Existing indebtedness in a refinancing transaction is defined as:

1. Outstanding mortgage(s) incurred in connection with the construction or acquisition of the project or with capital improvements made to the property, as confirmed by the current mortgagee. Use the pay-off letter located in [Appendix 8, Section A.8.5](#) of this Guide to record amounts.
2. Other recorded indebtedness such as mechanic's liens and tax liens, provided the liens do not result from personal obligations of the Borrower.
3. Unrecorded debt directly connected with the project supported by documentation from the Borrower. For such debt to be recognized, the Borrower must provide the Lender with documentation that unquestionably identifies the indebtedness with the project and is not the result of unpaid operational expenses such as delinquent interest, accounts payable or deferred management fee. Examples are:
  - a. Prepayment penalties on the mortgage.
  - b. Indebtedness incurred in making significant betterments to the property.

NOTE: Program penalties arising from the defeasance of tax-exempt and taxable bonds greater than 10% of the proposed FHA insured loan amount cannot be recognized. Similarly, the costs of settling prepayment penalties or yield maintenance fees associated with swaps or other derivatives (e.g., swap breakage fees) greater than 10% of the proposed FHA insured loan amount are not eligible to be included in the calculation of existing indebtedness. Prepayment penalty, defeasance costs and/or the costs associated with prepayment of derivative instruments which are greater than 10% of the proposed FHA insured loan amount may be paid only from equity out (i.e. when the loan amount is 80% of LTV or less on a Section 223(f) refinancing).

4. **Mezzanine Debt.** Mezzanine debt may be considered in the eligible basis for refinancing only where there is no identity of interest between the principals and the Mezzanine Lender or any affiliates of either party, or in cases where the funds were used to fund capital improvements.

5. Do not recognize indebtedness:

- a. Recently placed against the project to increase the mortgage or circumvent program intent.

NOTE: "Recent indebtedness" for multifamily properties is defined as any debt incurred up to 1 year before the submission of an application for mortgage. Recent indebtedness can be recognized only if it was used for a non-identity of interest acquisition, for construction, or capital improvements to an existing project. Bridge loans to retire maturing debt used for such purposes are acceptable. The Borrower must provide sufficient documentation that supports recent indebtedness.

- b. Created by wrap mortgages:

- 1) The Borrower and Lender must give a detailed explanation of the purpose of the wrap and a documented accounting of the use and disbursement of the loan proceeds.
- 2) The Lender may recognize loan proceeds used for capital improvements or project operations.

**D. Reserve for Replacements.** The cost of an initial deposit to the Reserve for Replacements is eligible for inclusion in the maximum insurable mortgage.

1. Purchase Transaction:

- a. The purchase agreement must specify:

- 1) Whether or not the transfer includes the Reserve for Replacements or other escrows as an asset of the project.
- 2) Dollar amounts of escrow and/or items which the seller will pay on behalf of the Borrower, e.g., the operating deficit, discounts, initial deposit to the Reserve for Replacements.

- b. Apply existing Reserve funds transferred as an asset of the project as a reduction of acquisition cost when computing Criterion 7 on form HUD 92264-A.

2. Refinancing Transaction:

- a. The Borrower must submit a list of escrows currently on deposit with the project. This applies to both FHA insured and non-insured projects. Details of the disposition of escrow funds will depend on the type and terms of the transaction and the specific escrow account.



- b. The real estate tax and insurance escrow account and Reserve for Replacements (RFR) must remain with the project.
- c. The balance of the existing RFR is applied to fund the initial deposit to the reserve for replacement (IDRR). Any excess is applied as a reduction to the cost of refinancing under criterion 10 on form HUD 92264-A, or as an additional source of funds.

E. Discounts and/or Costs of Issuance associated with bond financing may be eligible for inclusion in the computation of Criteria 7 and 10. See [Chapter 3](#) for further details.

## 8.12 Firm Commitment Processing with Grants and Loans

### 8.12.1 General

A. These instructions apply to:

1. Grants and loans to the Borrower or its Principals from a federal, state or local government agency or instrumentality.
2. Grants and loans to the Borrower or its Principals from national, regional and local community service organizations (nongovernmental source) or foundations.
3. Refer to [Chapter 14](#) for guidance on LIHTC, Historic Tax Credit and New Markets Tax Credit equity syndication proceeds.

### 8.12.2 Application for Mortgage Insurance

A. At the Firm Commitment processing stage, the applicant must:

1. Identify the use of grant/loan funds on form HUD-92013, Application for Project Mortgage Insurance.
2. Submit: A commitment letter signed by an authorized agent of the governmental agency or instrumentality or the non-government source identifying:
  - a. Amount of grant/loan funds including all repayment terms and conditions and any regulatory restrictions that affect the operation of the property.
  - b. Intended use of the grant/loan funds.
  - c. Any conditions to the grant/loan and any reasons the commitment letter could be withdrawn.
  - d. That the grant/loan is not subject to a future appropriation or funding availability that is not currently in the hands of and available for disbursement by the governmental agency or instrumentality or the non-government source.

B. Any type of grant/loan not disclosed by the Borrower may result in a rejected application or the issued Firm Commitment made null and void.

## 8.12.3 Grants and Loans from a Government Agency or Instrumentality

### 8.12.3.1 Firm Commitment

A. HUD will review the proposed grant/loan structure, terms and conditions and the draft grant/loan documents during Firm Commitment processing or earlier, as needed. HUD will consider waivers with reasonable terms in order to facilitate coordination between FHA requirements and those of the governmental agencies.

### 8.12.3.2 Initial Endorsement

A. Before scheduling the closing, Field Counsel must review the grant/loan documents to assure their legal sufficiency.

B. The MAP Lender must consent in writing to the placing of the subordinate mortgage and agree that its existence could **not** create a basis for default on the first mortgage.

C. The governmental secondary financing Lender must enter into the HUD prescribed form of Subordination Agreement.

D. The Borrower, instead of that portion of the front money escrow provided by the grant/loan, may use either:

1. An unconditional irrevocable letter of credit issued by a banking institution with a rating and term acceptable to HUD; or
2. An agreement between the governmental agency or instrumentality, the MAP Lender and the Borrower, which provides the following:
  - a. MAP Lender has:
    - 1) The right to approve construction advances after considering any reported noncompliance by the agency or instrumentality if the project is proceeding in compliance with approved plans and specifications.
    - 2) A joint review and agreement between the MAP Lender, and the governmental agency or instrumentality on the construction progress schedules and allocation of draws.
    - 3) Sole authority to resolve differences in the inspection process and the process of disbursing grant/loan proceeds.
  - b. The MAP Lender will furnish both HUD and the governmental agency with copies of the approved interim advances form HUD-92448, Contractor's Requisition, form HUD-92403, Application for Insurance of Advances of Mortgage Proceeds, and supporting documentation. HUD approves the initial and final advances.
  - c. The governmental agency or instrumentality must process the advance from its grant or loan funding promptly and without adjustment. HUD or the MAP Lender will:
    - 1) Send the governmental agency a copy of the approved requisition for its records.

- 2) The governmental agency must notify HUD and the Lender of a need to make an adjustment the following month.
- d. The governmental agency assumes the risk for any grant/loan funds disbursed in excess of the amount approved by HUD or the Lender and agrees to replenish the excess funds within 10 working days of notification by HUD or the Lender.
- e. If a default occurs before completion of construction, the governmental agency must disburse the remaining grant/loan funds so long as the request for funds remains in the same ratio as previously authorized.
- f. The governmental agency's attorney must render an opinion that the agreement and grant/loan commitment is legally binding on present and all future administrations.

### **8.12.3.3 Grant and Loan Proceeds Must be Advanced**

- A. Before the insured mortgage proceeds, or
- B. Concurrently and on a pro rata basis with the disbursement of the insured mortgage proceeds.
  1. If the grant/loan proceeds are not available at initial endorsement, HUD may either:
    - a. Proceed to initial endorsement, but not disburse any insured mortgage proceeds until the grant/loan is in place and the funds are available for disbursement, or
    - b. Recommend the Borrower/Sponsor fund an escrow equal to the grant/loan. Advances from this escrow must follow outstanding instructions for the disbursement of the grant/loan.
- C. Release of grant/loan proceeds cannot be conditioned on the completion of specific project improvements.
- D. See [Appendix 12, Section A.12.1](#) for front money requirements and disbursement of mortgage proceeds on LIHTC projects.

### **8.12.4 Grants and Loans from a Non-Governmental Source**

- A. Commitment Processing.
  1. The last 3 years of audited financial statements, if available, must be submitted evidencing that the providing source has the financial capacity to meet its funding commitment.
  2. If audited financial statements are not available, unaudited statements meeting the requirements of [Section 8.4.3](#) must be provided.
- B. Initial Endorsement.
  1. Before scheduling the closing, HUD must review the grant/loan documents to assure the legal sufficiency of the documents.
  2. The grant/loan funds must be disbursed before insured mortgage proceeds.
  3. Release of grant/loan proceeds cannot be conditioned on the completion of specific project improvements.

C. All work performed with the grant/loan proceeds:

1. Must be cost certified.
2. Must conform to Davis-Bacon requirements including submission of payrolls, certifications, etc., if payment of Davis-Bacon wage rates is required by the grant/loan program.

## 8.13 Insurance Upon Completion

A. Insurance Upon Completion (IUC) is an option for new construction and substantial rehabilitation projects financed under Sections 220, 221(d)(4), and 231. Mortgage insurance is provided after project completion and issuance of Certificates of Occupancy for all units. The following instructions apply to IUC projects:

1. A financial and credit investigation is required on the Borrower, its Principals and any identity of interest General Contractor.
2. MIP is not included in form HUD-92264 nor is it charged until the project reaches endorsement.
3. Working Capital and Operating Deficit Escrows. Projects that apply under IUC must meet the operating deficit escrow and working capital requirements as outlined in [Section 8.14](#) below, except for the extra 2% construction contingency portion of the working capital, which is not required.
4. Assurance of Completion is not applicable to IUC projects. However, at endorsement, the General Contractor must address latent defects by completing the Latent Defects Escrow, form HUD-92414M. An escrow of 2½% of the total amount of the construction contract in the form of a surety bond, cash escrow, or an irrevocable letter of credit issued by a banking institution is required at endorsement. (See [Chapter 12, Section 12.16.S](#) Builder's Warranty)
5. Breakdown of Financing Charges: In IUC projects before issuance of the Firm Commitment.
  - a. The mortgagee must provide:
    - 1) A breakdown of financing charges and discounts by submitting form HUD-92455M Request for Endorsement of Credit Instrument, Certificate of Mortgagee, Borrower and General Contractor, with the Certificate of Mortgagee portion completed. The balance of the Form is to be completed before Final Endorsement in lieu of form HUD-92023M.
    - 2) Information relative to the construction and permanent interest rates and mortgage term.
  - b. Each item is reviewed to ensure its reasonableness in relation to comparable projects and market conditions.
  - c. HUD will inform the Borrower of the fees that are recognizable for cost certification.
6. Building Loan Agreement, form HUD-92441M, is not applicable to IUC projects.

## 8.14 Determining Cash Requirements for Completion

A. The MAP Lender has the obligation to collect and hold all funds, escrows, and deposits (initial draw, mortgage proceeds) specified for the transaction; this includes all other funds held by or at the order of

the Lender in connection with the loan transaction. All funds are held by the Lender or a depository institution satisfactory to the Lender and must be pursuant to any applicable escrow agreement(s).

**B.** The MAP Lender must evaluate the Borrower's and its Principals' financial strength and creditworthiness, including their ability to meet the financial requirements for completing a project. The Lender's Underwriter is responsible for completing the form HUD-92264-A and the form HUD-92013-C, LIHTC Summary Report required only for applications with LIHTCs to present their analysis of cash requirement to close the transaction.

**C.** To calculate the financial requirements, the Lender must total the following:

1. Total estimated development cost, including the amount by which the:
  - a. Contractor's and/or Borrower's estimate for construction exceeds Lender's estimate;
  - b. Owner/Architect Agreement for design and/or supervisory services exceeds Lender's estimate;  
or
  - c. Consultant's contract for services exceeds Lenders estimate.
2. Amount necessary to clear all debts on the land (or property if substantial rehabilitation). The Lender must verify all indebtedness that must be paid off at endorsement. In purchase transactions, include other costs associated with the acquisition that will not be recoverable from mortgage proceeds, such as zoning expenses.
3. Estimated cost of offsite improvements and demolition.
4. Cost of equipping and furnishing a project with non-realty items, if applicable. Use the higher of Lender's estimate or the Borrower's estimate.
5. Working capital deposit, if required.
  - a. The working capital escrow requirement for new construction transactions is 4% of the mortgage amount, half of which is a construction contingency for cost overruns and approved change orders. Separate provisions within the working capital escrow will govern the remaining 2% construction contingency. Any unused portion of the construction contingency escrow is refunded to the Developer at Final Endorsement. Construction funded from the contingency portion of the working capital escrow may be considered as the basis for a request for an increased mortgage amount. A waiver of the 2% Working Capital Escrow requirement for substantial rehabilitation transactions with Section 8 rental assistance covering 90% or more of the units (with or without LIHTC restrictions), may be granted when the Lender is able to demonstrate there will be enough income generated by the project during the rehabilitation period to cover items typically funded by the Working Capital Escrow. See [Chapter 3, Section 3.2.10](#) of the MAP Guide.
  - b. Working capital funds are not mortgageable and the unused portion may be released to the Borrower. See [Chapter 12, Section 12.15.5](#) for release of the escrow.
  - c. For LIHTC projects with a funded working capital reserve held by the partnership (even though controlled by the syndicator or investor and not by HUD or the Lender), the funded reserve will be credited towards the increased construction reserve requirement, although the Lender-controlled account must still meet the 2% working capital escrow requirement.

- d. The working capital escrow requirement for substantial rehabilitation projects is 2% of the mortgage amount.
  - e. Use form HUD-92412-M, Escrow Agreement for Working Capital. The Lender will deposit said funds in an account insured or guaranteed by a federal agency. See Handbooks 4350.4, Insured Multifamily Mortgagee Servicing and Regional Office Director/PC for the depository requirements.
6. Operating deficit escrow.
- a. For all new construction and for substantial rehabilitation projects in which there will be significant resident displacement resulting in negative cash flow during the rehabilitation period, the operating deficit escrow will be the greater of:
    - 1) What the appraisal and underwriting analysis determines to be appropriate; or
    - 2) 3% of the mortgage amount; or
    - 3) 4 months debt service (Principal & Interest and Mortgage Insurance Premium) if the property is a garden apartment, or 6 months debt service (Principal & Interest and Mortgage Insurance Premium) if the property is an elevator building where a single Certificate of Occupancy will be issued before any of the units or any of the entire floors can be rented.
  - b. HUD will consider Lender requests for operating deficit escrow draws during lease-up based on the adequacy of the remaining amount of operating deficit escrow on deposit with the project. See [Chapter 12, Section 12.15.5](#) for further mitigation and release guidance.
  - c. The amount of the operating deficit escrow for substantial rehabilitation projects with at least 90% Project-Based Rental Assistance shall be based only upon the conclusions of the appraisal and underwriting analysis and need not be the higher of 3% of the mortgage amount or 4 months of debt service. The underwriting presentation should provide a detailed estimate of the projected cash flow through the period of the rehabilitation to support the lower escrow amount.
  - d. For LIHTC projects with a funded operating deficit reserve held by the partnership (even if controlled by the investor and not by HUD or the Lender), the funded reserve will be credited towards the increased reserve requirements of 3% of the mortgage amount or 4 months of debt service, although the Lender-controlled account must still meet what the appraisal and underwriting analysis determines to be an appropriate operating deficit amount.
  - e. Use form HUD-92476a-M, Escrow Agreement for Operating Deficit. The Lender will deposit said funds in an account insured or guaranteed by a federal agency. See Handbook 4350.4, Insured Multifamily Mortgagee Servicing and Regional/Satellite Office for the depository requirements.
7. Commitment, marketing fees, and discounts must be paid out-of-pocket by the Sponsor/Borrower and may not be paid from the operating deficit escrow.
8. For tax-exempt or taxable bond financing, cost of issuance must be paid out-of-pocket by the Sponsor/Borrower and may not be paid from the operating deficit escrow.
9. The operating deficit escrow may be used to pay relocation expense that was not included in MAP Lender's estimated replacement cost on form HUD-92264-A.

10. Calculate the cash investment required. The Lender must deduct from the estimated development cost: the maximum insurable mortgage, any grant/ loan funds or tax credit equity attributable to replacement cost items, and fees not to be paid in cash. The remaining balance is the estimated financial requirements to complete the project. Record this calculation on form HUD-92264-A Line 7.
11. Cash-Out Escrow from Land Equity. If land, or the “as is” property value for a substantial rehabilitation project, is contributed to meet the Borrower’s equity requirement, any cash-out from the excess land value above what is required at initial endorsement must be deferred until the project is complete and has demonstrated to the satisfaction of the Regional Office that it has achieved 6 consecutive months of break-even occupancy (or 12 months break-even occupancy for transactions meeting Large Loan parameters). The Borrower may apply any excess land value to fund the operating deficit, the working capital escrow (including the construction contingency escrow) or other (i.e. non-mortgageable) cash requirements at initial endorsement. To the extent that excess mortgage proceeds remain after capitalizing the required escrows, any remaining balance may be used for the purposes described in [Appendix 12, Section A.12.1.4](#). See also [Chapter 12, Section 12.8](#) and [Section 12.15](#) of the MAP Guide for specific instructions. After all escrows and cash requirements are established at initial endorsement, any balance shall be escrowed with the Lender until the project has achieved the occupancy thresholds described above. After these minimum thresholds have been met, the balance of the escrow may be released to the Borrower. (See [Chapter 12, Section 12.15.3](#) for working capital details and [Chapter 12, Section 12.15.4](#) for the IOD details).
12. Employment-Based Fifth Preference.EB-5 Equity Source. EB-5 is a U.S. Citizenship and Immigration Services (USCIS) program created in 1990 to stimulate the U.S. economy through job creation and capital investment by foreign investors and is used to raise equity. See the U.S. Citizenship and Immigration Services (USCIS) website at: <https://www.uscis.gov/eb-5>. Any contribution of EB-5 equity must be available at the time of initial closing, therefore, an equity deferred pay-in schedule cannot be applied. Projects that propose EB-5 investments as debt rather than equity are subject to the limitations on secondary financing. HUD will only consider waivers only if there are significant affordable rent and income restrictions and there is some public interest motivation (beyond the EB-5 program incentive itself.)
13. Assurance of Completion. Performance Bond and Payment Bond. The General Contractor must provide for the protection of HUD and Lender and to meet state and local requirements protecting material suppliers, mechanics, and subcontractors. The General Contractor’s assurance of completion must provide:
  - a. For non-elevator buildings, or elevator buildings with four (4) stories or less, where the cost of construction or rehabilitation is more than \$500,000, the assurance shall be in the form of corporate surety bonds for payment and performance, each in the amount of 100% of HUD’s estimated cost of construction or rehabilitation including an assumed builder’s profit on BSPRA transactions (see Section G Line 50, form HUD-92246, less Architect’s design and supervisory fee and mortgagor’s other fees). Alternatively, the completion assurance agreement may be secured by a cash deposit or Letter of Credit in the amount of 15% of the HUD estimated cost of construction or rehabilitation.
  - b. For elevator buildings of five (5) stories or more, the assurance shall be in the form of corporate surety bonds for payment and performance, each in the amount of 100% of HUD’s estimated cost of construction or rehabilitation including an imposed builder’s profit on BSPRA transactions.



Alternatively, the completion assurance agreement may be secured by a cash deposit or Letter of Credit in the amount of 25% of the HUD estimated cost of construction or rehabilitation.

- c. The Completion Assurance Agreement, form HUD-92450 is secured by a cash deposit (or unconditional, irrevocable letter of credit).

## 8.15 Bond Financed Projects and Tax-Exempt Agency Loans

### 8.15.1 Review of Financing Documents

**A.** A tax-exempt bond is a security issued by a governmental agency in which the interest income produced is free from federal income tax and sometimes free from state and/or local income tax. In addition, many public agencies may make tax-exempt loans under the same principals without the issuance of bonds. Financing documents associated with mortgage bonds or tax-exempt bonds and loans are prepared and reviewed by the issuer, their counsel and, with respect to bonds, the bond Underwriter, and their counsel. The tax-exempt loan and/or bonds are secured by one or more assets, which may be cash, a letter of credit, GNMA mortgage-backed security issued by the Lender (Ginnie Mae Security), and/or a mortgage. In FHA insured transactions, these tax-exempt loans and bonds are typically backed by cash collateral held by the trustee, or by the Ginnie Mae Security, but may also be backed indirectly by an interest in the insured loan.

1. The Sponsor must submit, with the application for Commitment processing, a separate statement itemizing the estimated costs of issuance, fees and discounts and financing fees for the tax-exempt loan or bond to be paid out of pocket by the Sponsor/Borrower with an explanation of the necessity and reasonableness of each cost. The Lender's Underwriter must check the statement for reasonableness, using the data from previously processed tax-exempted financed projects and adjust costs where appropriate. This information is used to develop the Total Estimated Cash Requirement form HUD-92264-A, Supplement to Project Analysis.

### 8.15.2 Loan Rates

**A.** The construction loan and the permanent loan rates may exceed the interest rate on the bond obligations. When this occurs, the spread will create a surplus of funds which must be held by the bond trustee. At initial closing, the bond counsel must supply HUD with a legal opinion that any investment income received by the mortgagee but not held for its own account must be under the control of the trustee or agent holding the product funds relating to the tax-exempt financing and will not flow through the books and records of the project. The tax-exempt financing documents will instruct the holder of the projects funds to invest the funds in a federally-insured interest bearing account, submit the project's financial statement, or permit the Borrower to use the surplus of funds to cover costs associated with the tax-exempt financing transaction.

**B.** In all cases, the interest rate on the tax-exempt financing will not be known during the Commitment processing, therefore the underwritten rate will almost certainly change once the tax-exempt interest rate has been established (e.g. the sale of the bonds). Upon determination of the mortgage rate, an amendment

letter to the Firm Commitment will be issued reflecting the actual interest rate. If, due to time constraints, HUD does not have sufficient time to reprocess a higher mortgage for the project, the Firm Commitment must contain the following condition:

C. “Any interest savings resulting purely from a differential between the HUD-processed interest rate and the actual, final interest rate may not be construed as excess funds that may be used to offset costs in other categories at the time of cost certification. Any such savings must be applied as a mortgage reduction.”

**NOTE: An exception to the above is that savings resulting from the early completion of construction may be used to offset cost certifiable overruns in other cost categories. Compute interest savings by:**

1. Recalculating the interest line item on form HUD-92264, using the actual interest rate for the scheduled construction period.
2. Subtracting the actual interest cost recognized at cost certification from the revised interest figure developed in (1) above.
3. HUD will allow a total financing and placement fee of 5.5% on tax-exempt financing applications. This limit applies to all multifamily Sections of the Act except Section 223(a)(7) and is reflected in the replacement cost mortgage amount confirmed at cost certification.

### 8.15.3 Tax-Exempt Loans and/or Bonds

A. Tax-exempt loans and/or bonds may be sold at a premium to investors, whereby the investor pays an amount in excess of the face value of the tax-exempt loans and/or bonds. The premium results from the tax-exempt financing carrying a higher rate than is generally available in the marketplace.

1. Any premium raised by a transaction is considered part of the mortgagee, bond Underwriter, and/or issuer’s profit, as applicable. However, if a mortgagee gives something of value without the expectation of being repaid, HUD considers this to be a kickback. The one exception involves tax-exempt financing transactions where the issuer of loans and/or bonds permits the Borrower to receive some portion of the premium to offset the cost of issuance so that the mortgagee, bond Underwriter and/or issuer, as applicable are simply conduits for the transfer of funds.
2. If any of the premium is remitted to the Borrower, it will be considered excess investment income, treated as project income, and used to reduce the total allowable cost of the project.
3. On tax-exempt financed projects, the premiums may be treated as project income under the following conditions:
  - a. The Sponsor/Borrower cannot benefit monetarily from the excess investment income.
  - b. The premium, if accessible to or given to the Sponsor/Borrower, is considered as excess investment income.
  - c. Closing documents must detail the amount of the premium being given to the Sponsor/Borrower.
  - d. The premium may be used to pay for additional cost associated with the cost of issuance and may be applied to other recognizable cost overruns.
  - e. The Borrower’s accountant or the Borrower must detail in the notes to the financial statement the amount of excess income received.

4. For nonprofit applications, excess income generated from premiums may be applied to recognizable cost overruns. Any excess income over and above that used towards recognizable cost overruns must be transferred to the reserve for replacement account.
5. On Section 223(f) applications, excess income generated from premiums must be transferred to the reserve for replacement account.

## 8.15.4 Itemized Statement of Costs

A. An itemized statement of the costs of issuance of the obligations, discounts and financing fees paid through the mortgagee must be attached to and reflected in the Lender's Certificate, form HUD-92434M.

1. The statement must detail the use of each individual item necessary for the issuance of the obligations.
2. The Lender must review the amount of each item to ensure its reasonableness in relation to comparable projects.
3. A letter from the Regional Office Director will inform the mortgagee that HUD will recognize for cost certification purposes the costs of issuance, discounts and financing fees in an aggregate amount not to exceed 5.5% of the insured loan amount, which may be included in the mortgage for all programs (except Section 223(a)(7)).
4. The mortgagee, bond Underwriter, and/or issuer, as applicable have the option of deferring collection of additional discounts, financing fees, slow draw fees, etc., through the provision of Paragraph 20(G) of the Lender's Certificate (form HUD-92434M).
  - a. The deferred collection of these items must be an obligation of a third party. Each of the third party and the mortgagee's bond Underwriter, and/or issuer, as applicable must attest in writing that they will not look for payment from the:
    - 1) Borrower,
    - 2) Mortgaged property,
    - 3) Mortgage proceeds,
    - 4) Any reserve or deposit required by HUD and/or the mortgagee in connection with the insured mortgage transaction; or
    - 5) Rents or other income from the mortgaged property.
  - b. The Borrower may (but is not required to) issue, as evidence of the debt, promissory note to the third party for costs identified in this paragraph which contains surplus cash limitations and which HUD otherwise determines to be reasonable.

## 8.15.5 State and Local Tax-Exempt Financed Projects

### 8.15.5.1 Prepayment of Note

A. State and local bond financed projects are subject to prepayment restrictions and penalty charges as provided in [Chapter 11, Section 11.8.3](#). However, in the case of so-called short-term cash-collateralized tax-exempt financing issued in conjunction with an allocation of 4 percent LIHTCs, the tax-exempt

financing is non-recourse to the Borrower and the financing is fully secured by cash collateral or an interest in project loan documents, and will mature shortly after construction completion (for construction loans) or project repairs (for projects insured under Sections 207/223(f) and 223(a)(7)). In such cases, the tax-exempt financing documents, which may include promissory note, loan agreements, collateral agreements, etc. are generally not subject to HUD's requirements for secondary financing unless the short term cash-collateralized tax-exempt bonds are secured against the insured project using a recorded Bond Mortgage.

### **8.15.5.2 State/Local Occupancy Use and/or Rent Restrictions**

**A.** Use or rent restrictions sought by the State or local jurisdiction for projects financed by proceeds from State/local tax-exempt obligations are often more restrictive than the minimum requirements of the Internal Revenue Code. The Regional/Satellite Office Director may approve a State or local restriction exceeding the minimum requirements of the Internal Revenue Code, but only if the following conditions are met:

1. The Regional/Satellite Office Director must determine that the restriction is not likely to have an adverse impact on project occupancy, marketability, or long-term feasibility. This determination must be made on a project-by-project basis.
2. The restriction must not conflict with any applicable HUD mortgage insurance regulations or related administrative requirements.
3. The restriction must not appear in the Note, Mortgage, Regulatory Agreement, or any other HUD/FHA loan document.
4. Unless otherwise approved in writing by HUD, the restriction must be qualified to provide that it will automatically terminate in the event of either foreclosure or transfer of title by deed in lieu of foreclosure. Such a termination provision must be included in every legal instrument (e.g., deed, land use restriction agreement, Security Agreement, or financing agreement) in which the restriction appears.

### **8.15.6 Pre-Cost Certification Conference Information**

**A.** The Lender must demonstrate at the pre-cost certification conference that:

1. The net cost of negative arbitrage (i.e.: the tax-exempt escrow account yield vs. capitalized interest expense) may be recognized if there are offsetting savings in the mortgage.
2. Any rebate to the Sponsor/Borrower from the mortgagee, issuer, or bond Underwriter, as applicable, will reduce the mortgageable cost certification. The following are two samples of the most common types of rebates:
  - a. If mortgagee/issuer/bond Underwriter contributes a portion of the initial service charge that was collected to pay discounts or other fees.
  - b. If mortgagee/ issuer/bond Underwriter refunds a portion of the construction loan interest to the Borrower or Sponsor.

## Chapter 9 Environmental Review and Requirements

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### 9.1 Introduction

A. This chapter outlines for the Lender and HUD staff the policies and procedures that must be followed to meet environmental review responsibilities. An environmental review is the process of reviewing a project and its potential environmental impacts to determine whether it meets federal, state, and local environmental standards and to determine whether the project is environmentally acceptable. The environmental review process is required for all insured projects to ensure that the proposed project does not negatively impact the environment, and that the property site itself will not have an adverse environmental or health effect on residents.

#### 9.1.1 Legal Authorities, Guidance, Standards, and Documentation

A. All Federal agencies are required to comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) (NEPA) and the implementing procedures issued by the Council on Environmental Quality at 40 CFR Parts 1500-1508. HUD regulations implementing NEPA are contained in 24 CFR, Part 50, "Protection and Enhancement of Environmental Quality." Related Federal laws and authorities are listed in 24 CFR 50.4 and 50.3(i). Under Part 50, HUD may not delegate its environmental responsibilities to others; it is required to prepare the environmental review, make the appropriate environmental finding, and obtain all required review, comment and approvals prior to issuing a Firm Commitment. (See 24 CFR 50.11.)

B. HUD has guidance on complying with environmental requirements at the HUD Exchange Environmental Review website.<sup>18</sup> Housing has additional FHA-specific guidance at the Office of Housing Environmental Review Resources website.<sup>19</sup>

C. HUD has established the HUD Environmental Review Online System (HEROS) to document compliance with NEPA and other Federal environmental laws, authorities, Executive Orders, and HUD standards. This system replaced the form HUD-4128 for MAP projects in May 2016. The use of HEROS to document environmental reviews is required under 24 CFR 50.18(a). All required source documentation, including the ASTM Phase I Environmental Site Assessment, must be uploaded to the relevant HEROS screens. HEROS source documentation, including but not limited to the ASTM Phase I Environmental Site Assessment, will be made available to the public for one year after HUD issues a Firm Commitment. See [Section 9.2.2.M](#) for details.

D. This chapter cites many standards and guidance documents, such as ASTM standards. These are frequently updated, amended or superseded, and as such this chapter may include references that become outdated. Wherever standards or guidance are cited in this chapter, **HUD requires reliance on the most recent edition in force or superseding document.** This also applies wherever sections, chapters, or

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<sup>18</sup> <https://www.hudexchange.info/programs/environmental-review/>

<sup>19</sup> <https://www.hudexchange.info/programs/environmental-review/housing/>

addenda of the standards or guidance are cited. The comparable sections, chapters, or addenda of the most recent edition in force should be referenced and relied upon.

E. Requirements in this chapter may exceed those of many State agencies. One reason for this is HUD may become the project owner if a mortgagor defaults on an FHA-insured project. Under Section 120(h) of the Comprehensive Environmental Response and Liability Act (CERCLA), Federal agencies that own properties are required to take “all remedial action necessary to protect human health and the environment” with respect to known hazardous substances upon disposition of the property. This requirement is beyond any liability releases under State or Federal law and any due diligence requirements under CERCLA.

## 9.1.2 Project Description, Aggregation, and Extent of Review

A. A complete project description is necessary to determine the correct approach to an environmental review.

The project description should capture the maximum anticipated scope of the activity. All physical aspects of the project, such as plans for multiple phases of development, size and number of buildings, size of parcel(s), and activities to be undertaken should be included in the description, as well as details of the physical impacts of the project, including whether there will be ground disturbance.

1. HUD must aggregate together related activities when determining what should be included as part of the project. Where a multifamily parcel that secures the FHA mortgage is part of a larger site, the project should be defined as the multifamily parcel plus the parts of the rest of the site that are directly related to the multifamily development (access roads, parking, storm water detention systems, open spaces, utilities, etc.). What gets defined as directly related is contextual; it depends on project circumstances and may vary from project to project.<sup>20</sup> Note that off-site improvements that may be included as part of an aggregated environmental review are not to be considered for the purposes of calculating Davis-Bacon wage rates.
  - a. For all projects, the environmental review can and often must extend beyond the defined project boundaries in order to comply with the laws and authorities. The area of impact may differ based on the individual 50.3(i) or 50.4 authority under review and the type of activity undertaken. For example, an Area of Potential Effect considered under the National Historic Preservation Act can extend beyond the boundaries of a project site, especially if a project is in a historic district. Similarly, off-site endangered species may be impacted by the FHA action.
  - b. In most cases, the Lender is required to cover only the FHA collateral parcel for the Phase I Environmental Site Assessment conducted under ASTM E1527-13. (This applies to ASTM E1527-13 in-scope items only). However, the Phase I Environmental Site Assessment must consider the impact of contamination from offsite parcels on the collateral parcel. Remediation would be required for non-collateral areas only to the extent the hazard could affect the health and safety of occupants of the property securing the mortgage or conflict with the intended utilization of the property and as per [Section 9.4.7](#).

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<sup>20</sup> For examples, visit <https://www.hudexchange.info/programs/environmental-review/housing/#faq>.



2. Housing staff are considering an application for FHA mortgage insurance at a particular site and therefore are limited to considering three alternatives: the action as proposed, modifications within the aggregated project site, or no action, i.e., rejection of the application. This applies to the Environmental Assessment, floodplain and wetland 8-step, and any other law and authority that requires alternative analysis.

## 9.1.3 Levels of Environmental Review

**A.** All projects submitted under MAP require an environmental review. The level of environmental review varies based on the HUD program and proposed activity.

**B.** Projects are categorized by activities into four levels of review under 24 CFR Part 50:

1. Categorically Excluded Not Subject to the laws and authorities at 50.4 (CENST)
2. Categorically Excluded Subject to the laws and authorities at 50.4. (CEST)
3. Environmental Assessment (EA)
4. Environmental Impact Statement (EIS)

**C.** In general, the level of environmental review does not directly correspond to the HUD program. For example, a 221(d)(4) substantial rehabilitation project can be reviewed as CEST if below certain thresholds, or as an EA if above those thresholds. The following discussion outlines level of review determinations by HUD program and project specific activities.

1. **Categorically Excluded Not Subject to Related Laws and Authorities (CENST):** 223(a)(7). HUD has determined programmatically that Section 223(a)(7) projects are categorically excluded, not subject to the laws and authorities at 50.4 as per 24 CFR 50.19(b)(21) other than the flood insurance requirements specified at 24 CFR 50.4(b)(1) and described at [Section 9.6.6](#).<sup>21</sup> Compliance with MAP radon requirements described at [Section 9.6.3](#) is encouraged.
2. **Categorically Excluded Not Subject to Related Laws and Authorities (CENST):** 223(f) under limited circumstances. The categorical exclusion at 24 CFR 50.19(b)(21) also applies to currently HUD-insured Section 223(f) refinancing transactions that will not allow new construction or rehabilitation, nor result in any physical impacts or changes except for maintenance.<sup>22</sup> HUD must determine for each currently insured 223(f) whether the physical impacts meet the environmental definition of the term "maintenance" and must document this in the description of the proposed project in the project summary screen in HEROS.
  - a. For environmental review purposes, the term "maintenance" means an activity that slows or halts deterioration of a building and does not materially add to its value or adapt it to new uses. A more detailed explanation including examples is found in in "Guidance for Categorizing an Activity as Maintenance for Compliance with HUD Environmental Regulations, 24 CFR Parts 50 and 58."<sup>23</sup>

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<sup>21</sup> Unless extraordinary circumstances require an EA or EIS as per 24 CFR 50.19(a).

<sup>22</sup> Unless extraordinary circumstances require an EA or EIS as per 24 CFR 50.19(a).

<sup>23</sup> HUD Notice CPD 16-02: <https://www.hudexchange.info/resource/3197/guidance-categorizing-activity-as-maintenance-environmental-regulations-24-cfr-parts-50-and-58/>



- b. Note that this definition of maintenance is specifically for environmental review purposes. Please see [Chapter 5, Section 5.1](#) for definitions of alterations and repairs that apply for other program purposes.
  - c. The flood insurance requirements specified at 24 CFR 50.4(b)(1) and MAP Guide [Section 9.6.6](#) are still applicable, as are the Lead Based Paint requirements discussed in [Section 9.6.1](#). Compliance with MAP radon requirements described at [Section 9.6.3](#) is encouraged.
3. **Categorically Excluded Subject to Related Laws and Authorities (CEST):** 223(f). Pursuant to 24 CFR 50.20(a)(5), the purchase or refinance of housing or medical facilities under section 223(f) of the National Housing Act is categorically excluded from NEPA but still subject to the laws and authorities listed at 24 CFR 50.4.
- a. Almost all 223(f) projects will be CEST, with two limited exceptions:
    - 1) Currently HUD-insured Section 223(f) refinancing transactions that will not incorporate new construction or rehabilitation, nor result in any physical impacts or changes except for maintenance as discussed in [Section 9.1.3](#); or
    - 2) Extraordinary circumstances with the potential for a significant impact (see 24 CFR 50.20(a) and (b)).
  - b. CEST projects must comply with all of the laws and authorities listed in [Section 9.3.G.1](#). Projects must also comply with the requirements related to Nuisances and Hazards in [Section 9.6.19](#) unless otherwise noted in the guidance.
  - c. For 223(f) projects that include new construction of accessory structures or ancillary improvements, the level of review remains the same as a traditional 223(f) refinance (CEST), but because the project will include ground disturbance, there is a greater risk of environmental impact. The project description must include the extent of the ground disturbance and the HEROS review must consider the laws and authorities at 24 CFR 50.4 and [Section 9.3.G.1](#) in the context of new construction, including:
    - 1) Consultation with federally recognized Tribes in addition to the State Historic Preservation Officer (SHPO) under the National Historic Preservation Act.
    - 2) Noise assessment and mitigation as required if the new construction is a noise sensitive use.
    - 3) Above Ground Storage Tank requirements for new construction.
    - 4) Airport clear zone requirements for new construction.
    - 5) The 8-step analysis for construction in a floodplain or wetland.
    - 6) Consideration of Endangered Species, Farmlands, Sole Source Aquifers, Wild and Scenic Rivers, Coastal Zones and Air Quality.
4. **Categorically Excluded Subject to Related Laws and Authorities (CEST):** rehabilitation under 221(d)(4), 220, 231 and 241(a) under limited circumstances. Rehabilitation projects under the 221(d)(4), 220, 231 or 241(a) programs may also be reviewed as CEST if they are not considered

substantial rehabilitation under HUD’s environmental regulations (see 24 CFR 50.20(a)(2)(ii)).<sup>24</sup> Note that for environmental review purposes, the term “substantial rehabilitation” refers to rehabilitation that does not qualify as CEST in 24 CFR 50.20(a)(2)(ii). Please see [Chapter 5](#) for a definition of substantial rehabilitation that applies for FHA program purposes.

- a. Projects that exceed the 50.20(a)(2)(ii) thresholds are considered substantial rehabilitation for purposes of the environmental review and must complete an Environmental Assessment. Projects at or below these thresholds may complete a CEST-level environmental review documenting compliance with the related laws and authorities at 24 CFR 50.4 and [Section 9.3.G.1](#) and the requirements related to Nuisances and Hazards in [Section 9.6.19](#) unless otherwise noted in the guidance.
  - b. In order to consider a CEST level environmental review for a rehabilitation project under the 221(d)(4), 220, 231 and 241(a) programs, Lenders must document and HUD staff must confirm that the project meets the categorical exclusion threshold in the description of the proposed project in the project summary screen in HEROS. In the absence of this documentation, rehabilitation projects under these programs will require an Environmental Assessment level of review.
5. **Environmental Assessment (EA):** All 221(d)(4), 220, 231 or 241(a) new construction projects and rehabilitation projects that fall above the Part 50 definition of substantial rehabilitation as discussed in [Section 9.1.3](#). Environmental Assessments must include all of the laws and authorities listed at 24 CFR 50.4 and [Section 9.3.G.1](#), Additional Nuisances and Hazards at [Section 9.6.19](#) and the Environmental Assessment requirements at [Section 9.6.20](#).
  6. **Environmental Impact Statement (EIS):** Projects over 2500 units, as discussed at 24 CFR 50.42(b). Contact HUD staff immediately if the project is close to 2500 units.
  7. The Section 213 Cooperative Housing Program follows Traditional Application Processing (TAP), not MAP. Section 213 projects must follow environmental review thresholds as discussed in 24 CFR 50.20 and described in [Section 9.1.3.B.4](#) And [Section 9.1.3.B.5](#).

## 9.1.4 Local, State, Tribal or Federal Requirements

**A.** The acronym “LSTF” as used in this chapter refers to “local, state, tribal or Federal”.

**B.** In cases where local, state, or tribal laws, ordinances, codes or regulations are more restrictive than Federal requirements, the Borrower must comply with the stricter local, state, or tribal standard unless Federal law states otherwise. An Application for Firm Commitment does not relieve an owner of responsibility for compliance with local, state, or tribal requirements.

**C.** HUD will not assume any responsibility with respect to inspection, enforcement, interpretation or determination of compliance with such local, state, or tribal requirements.

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<sup>24</sup> Current regulations define rehabilitation for multifamily residential buildings as CEST if unit density is not changed more than 20%, the project does not involve changes in land use from residential to non-residential; and estimated cost of rehabilitation is less than 75 percent of the total estimated replacement cost after rehabilitation. Projects should refer to the latest CEST regulations.

D. Where the project is located on a Native American reservation, the tribal authority may assume the responsibilities of the state or local environmental protection agencies.

E. This chapter is not a substitute for requirements in the laws, regulations, and Executive Orders regarding environmental analysis and mitigation.

## 9.2 Procedures

### 9.2.1 Lender Responsibilities and Limitations

A. The Lender must submit an environmental report to HUD using the HEROS system for all projects submitted under MAP. The HEROS submission must follow the requirements as described in this chapter. The failure to submit a complete environmental report, including applicable supporting documentation, may cause delays in the environmental review process.

B. The Lender must identify any environmental issues to be resolved in the HEROS submission and in the Lender Narrative, including a plan accompanied by a timeframe to resolve identified issues, cost estimates and identification of those responsible for implementing the plan. To the extent possible, all environmental issues should be resolved prior to submission of the application. HUD will not upload the Lender Narrative to HEROS.

C. HUD environmental policy requires that there be a limitation of certain activities or actions by any direct or indirect parties<sup>25</sup> to the transaction from the time of pre-application (or application for straight to Firm deals) until HUD has completed the environmental review process. Specifically, no action concerning the proposal shall be taken prior to completion of the environmental review which could: (1) have an adverse environmental impact, (2) limit the choice of reasonable alternatives, or (3) prejudice the ultimate decision on the proposal. Activities that limit the choice of reasonable alternatives include an action or commitment to repair, rehabilitate, construct, demolish or clear the site.

1. Certain actions are permitted prior to the completion of an environmental review, such as development of plans or designs, or performance of other work necessary to support an application for Federal, State or local permits. Planning activities include rezoning, platting or replatting. Site studies and assessments that will not have an environmental impact include Phase I and Phase II Environmental Site Assessments, wetlands delineations, and minimal associated soil borings. Ground disturbing activities beyond minimal soil borings or minimal archaeological tests for site assessment purposes are choice limiting actions and cannot be taken prior to completion of the environmental review.
2. Existing multifamily residential properties may continue normal operations during the FHA application process including leasing to new tenants, completing maintenance and repairs related to unit turnover, and drawing from reserve for replacement accounts for regularly scheduled or emergency repairs. Existing properties may not undergo critical or non-critical repairs that are included as part of the FHA application for mortgage insurance prior to a completed environmental review.

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<sup>25</sup> Direct or indirect parties include the Lender, Borrower, Developer and related partners.

3. Other actions are strictly prohibited until an environmental review is completed, such as demolition, modification of a wetland, or actions that adversely affect a historic property. Pursuant to the “anticipatory demolition” requirements of Section 110(k) of the National Historic Preservation Act (54 U.S.C. 306113), even before application submission takes place, any action by a potential Lender or Borrower, or any action by another party that the Lender or Borrower has the legal power to prevent, that is taken with the intent to avoid Section 106 review and that significantly adversely affects a historic property, could result in rejection of an application.
4. If a project has received an encouragement letter or invitation letter after a concept meeting or submission of a pre-application, respectively, and an application is not submitted for mortgage insurance by the lender within the approved timeframes, or is submitted for mortgage insurance but withdrawn by the lender prior to the issuance of a commitment to insure, then the project is no longer federalized. If the project is resubmitted for mortgage insurance at a later date, then any environmental compliance concerns noted by HUD during the project’s original concept meeting/pre-application/firm commitment application must be addressed at re-submission. The revised application must describe any actions taken at the project site post HUD review that might have adversely affected or otherwise threatened compliance with any originally noted environmental concerns. These actions, if taken by the owner, may impact the acceptability of the project and may result in rejection of the re-submission.
5. If any party is unsure as to whether an action would fall within such limitations it should seek advice and possibly determination by HUD.
6. This section does not change the long-standing FHA prohibitions on any construction (other than outlined in [Section 9.2.1.C.1-2](#)) after a concept meeting without HUD approval. The Lender must instruct the Developer that modification of the site (e.g. grading, clearing, filling) after a concept meeting is expressly prohibited.
7. These restrictions apply to early start of contractually-related construction activities discussed in [Chapter 12](#) and pre-endorsement improvements discussed in [Chapter 5, Section 5.8](#).

## 9.2.2 HUD Responsibilities

**A.** In accordance with 24 CFR 50.32, HUD, not the Lender, is responsible for independently evaluating the information supplied by the Lender in HEROS, supplementing that information as needed, and making the required findings in HEROS as the environmental review record for the project. HUD will determine whether the proposed project site is out of compliance with applicable laws, Executive Orders, or regulations, would otherwise endanger residents’ health or safety, or would put FHA mortgage insurance or the U.S. Government at financial risk or liability.

**B.** HUD staff shall promptly notify the Lender that HUD will take appropriate action to ensure that the objectives and procedures of HUD environmental policy are achieved if it becomes aware that an action subject to limitation as discussed in [Section 9.2.1.C](#) has taken place or may be about to take place.

**C.** Trained HUD staff must review the documentation submitted by the Lender and must make a site visit. The site visit will help validate the information provided in the HEROS Environmental Report. HUD staff should use the latest Multifamily Site Assessment Form to prepare for and document the site visit. HUD staff will analyze each response, conduct consultation when required, supplement the Lender’s documentation as needed, and make the required findings in HEROS. As part of its environmental review

responsibilities, HUD may require additional environmental material from a Lender, such as a Phase II Environmental Site Assessment or a Biological Evaluation, even when the Lender might not believe that such additional environmental material is necessary.

**D.** HUD staff must certify the completed environmental review in HEROS as the preparer. The Approving Official for the program must also certify the HEROS environmental review.<sup>26</sup>

**E.** Regulations at 24 CFR 50.32 require that Environmental Assessment-level reviews for projects with more than 200 units (or as specified at 24 CFR 50.32) be sent for review and comment to the Regional or Field Environmental Officer (REO/FEO) in whose jurisdiction the project is located. The REO/FEO must also review and comment on Environmental Assessment-level new construction projects or projects that convert land uses to residential when noise is in the unacceptable noise zone (above 75 DNL (a weighted day-night average sound level)). Neither requirement applies to categorically excluded projects.

**F.** The REO/FEOs are the regional experts on environmental review requirements and should be consulted for technical assistance on complex environmental issues, such as:

1. projects in the normally unacceptable noise zone;
2. projects in a floodplain or wetland, particularly when the project uses the incidental exception discussed in [Section 9.6.5.F.1](#);
3. projects with an adverse effect on historic properties including archaeological resources;
4. projects with contamination issues; or
5. any other environmental issue that requires specialized knowledge or a mitigation plan to resolve potential impacts.
6. REO/FEOs should also review special environmental conditions in the Firm Commitment, particularly when they have given technical assistance on an issue.

**G.** Housing staff are strongly encouraged to consult with the REO/FEO (regardless of the number of units) for CEST and EA projects that:

1. Are located on or adjacent to a designated Superfund Site or a Formerly Used Defense Site (FUD).
2. Have an unresolved contamination issue with the potential to affect the health and safety of occupants.<sup>27</sup> For example:
  - a. An ASTM Phase I or Phase II Environmental Site Assessment (ESA) indicates a release or threat of release of hazardous substances or petroleum products but does not identify a Recognized Environmental Condition (REC), or
  - b. There is current or proposed remediation, mitigation or monitoring at the site; or
  - c. Issues are raised in the Phase I or Phase II ESA but not addressed in the mitigation plan.
3. Are located on or directly adjacent to a parcel with a floodway.

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<sup>26</sup> The Production Division Director is the Approving Official for Multifamily Production.

<sup>27</sup> Not including Asbestos, Lead Based Paint or Radon.

**H.** When Housing staff determine they should or must consult with the REO/FEO, they should do so at the earliest possible time after receipt of the required information from the Lender. Housing staff should also invite REO/FEOs to the concept meeting for new construction projects over 200 units or if there is a complex environmental issue.

**I.** HUD will discuss any environmental conditions in the letter of invitation for Sections 221(d)(4), 220, 241(a) and 231. Any requirements that affect project design will be fully detailed. The Lender must assure that any requirements affecting project design are conveyed to the design Architect for incorporation into the contract drawings and specifications.

**J.** Housing staff shall ensure that all environmental conditions are identified, any required mitigation plans are approved, and the environmental review in HEROS is completed and approved prior to issuance of a Firm Commitment.

**K.** When environmental reviews reveal environmental conditions that require mitigation, HUD will require an acceptable plan for mitigation prior to Firm Commitment and will condition the Firm Commitment on completion.<sup>28</sup> HUD will discuss the requirements for completion of mitigation in HEROS on the Mitigation Measures and Conditions Screen. HUD staff will identify who is responsible for implementing a special condition along with the associated timelines (e.g. by initial endorsement, final endorsement, or ongoing by Asset Management). Mitigation plans must be detailed in the Firm Commitment, Closing Agreement and other relevant documents.

**L.** HUD staff must update and record the completion of the environmental conditions in HEROS using the Mitigation Follow-up Screen. Regional Production Division Directors will determine the appropriate staff positions in each office to review and upload the mitigation resolutions after construction completion and final endorsement. This screen appears only after an environmental review has been marked Completed in HEROS. Note that HEROS will allow HUD to continue editing environmental reviews to document that mitigation measures and conditions are fulfilled.

**M.** HUD shall distribute completed environmental reviews to those who have requested them. Additional efforts for involving agencies, Tribes or the public shall be made when required by the implementing procedures of the laws and authorities cited in 24 CFR 50.4. HUD staff shall also 'archive' HEROS reports at the time the Multifamily office issues the Firm Commitment. This archive step posts the environmental review record and all uploaded documentation online and makes it available to the public for one year.

### 9.2.3 Timing Considerations

**A.** Lenders are required to submit all the exhibits necessary to identify and resolve any environmental issues with the Firm application submission via HEROS. For Lenders that use the pre-application process for new construction or substantial rehabilitation proposals, HUD requires the environmental documentation to be submitted via HEROS at pre-application. The purpose of completing HEROS at pre-application is to help make an early evaluation of any environmental issues so HUD can determine if all environmental issues can be resolved or a plan for mitigation can be approved prior to issuance of the Firm Commitment. The letter of invitation will condition the issuance of a Firm Commitment upon the environmental review finding that there are no unresolved environmental concerns.

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<sup>28</sup> For examples of acceptable conditions to the Firm visit <https://www.hudexchange.info/programs/environmental-review/housing/#faq>.



**B.** Certain environmental issues cannot be resolved until the final plans and specifications have been submitted, which may result in HUD finalizing the environmental review during the Firm application rather than at pre-application.

**C.** Any environmental problems present at the site will require a discussion of impacts to human health and appropriate mitigation measures. The Lender must provide mitigation plans for those environmental problems, as discussed in [Section 9.2.1.B](#).

**D.** The implementation of mitigation and remediation plans may, with HUD approval, commence prior to initial endorsement or at commencement of and continuing throughout the construction period. HUD will review the Lender's plan and make it a condition of the Firm Commitment if HUD considers the plan acceptable.

**E.** Lenders are strongly encouraged to request a HUD concept meeting to discuss all known and/or suspected environmental issues and concerns, and HUD staff are strongly encouraged to invite REO/FEOs to the concept meeting as discussed in [Section 9.2.2.H](#).

## 9.2.4 Verifying Qualifications of Professionals

**A.** The Lender will generally select the professionals who prepare the HEROS Environmental Report, the Phase I ESA, or any other environmental information required by HUD, and must verify that the professionals used are qualified for their assigned responsibilities.

1. The Environmental Professional preparing the Phase I ESA must meet the qualification and license/certification, education, or experience requirements of Appendix X2 of ASTM E1527-13.
2. When a Phase II study is conducted, the Phase II Assessor must meet the qualification requirements in ASTM E1903-19.
3. Professionals may be required to evaluate technical areas, such as lead-based paint, asbestos, radon, noise, wetlands, flooding, endangered species, historic preservation, soil stability conditions, engineered fall distances, pipeline hazards, or other areas. Multiple subject matter experts or firms with subject matter experts may be required.

## 9.2.5 Consulting with Regional or Satellite Offices

**A.** Lenders should consult early with Regional Multifamily program staff<sup>29</sup> on HUD environmental requirements. Local conditions and interagency relations affecting environmental review requirements differ from state to state and from field office to field office. For instance, coastal zone management requirements are not applicable in most states, but in states where they are applicable, compliance procedures differ. In some states, a letter from the state coastal zone management agency for projects in the coastal zone is required but in others, alternative review procedures make this unnecessary. Some states require special licensure of professionals evaluating asbestos, lead-based paint, radon, and soil stability conditions.

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<sup>29</sup> For contact information, please see [https://www.hud.gov/program\\_offices/housing/mfh/hsgmfbus/abouthubspcs](https://www.hud.gov/program_offices/housing/mfh/hsgmfbus/abouthubspcs).



## 9.3 HEROS Environmental Reports

**A.** The Lender must provide information in HEROS regarding compliance with NEPA, the laws and authorities listed at 24 CFR 50.4, and the HUD-specific requirements described herein, as applicable, as well as any issues that might affect the acceptability of the project, including any issues of compliance with state environmental laws. The HEROS submission and uploaded documentation constitutes the Environmental Report.

**B.** The HEROS submission must address each authority at the appropriate level based on the activity and level of environmental review. In cases where the MAP Guide has requirements that go beyond what is required in HEROS, Lenders and HUD staff must include MAP compliance on the appropriate HEROS screen.

**C.** The Environmental Report must include and appropriately cite supporting documentation. Maps must clearly identify the subject site(s). Failure to submit applicable supporting documentation may cause delays in the environmental review process.

**D.** HUD will post its environmental review for one-year post-initial endorsement, including the ASTM Phase I report and all other environmental documentation. These records may be found on the HUD Exchange,<sup>30</sup> a public-facing website, for one year after the review is posted.

**E.** Lenders and third parties will find information about registering for HEROS, HEROS training materials, and HEROS Guidance for Multifamily FHA Partners at:  
<https://www.hudexchange.info/programs/environmental-review/housing/>.

**F.** [Section 9.4](#) and [Section 9.6](#) of the MAP Guide provide background information on the laws and authorities and Multifamily Housing specific requirements; more information, including where to find maps and specific compliance steps, can be found on the HUD Exchange Environmental website<sup>31</sup> and on the Housing environmental website<sup>32</sup>. The MAP summaries do not substitute for the requirements in the statutes, regulations, Executive Orders, and handbooks.

**G.** The following environmental issues must be addressed in HEROS, as applicable:

1. Laws and Authorities

9.4. Contamination and Toxic Substances (and related [Section 9.5](#) HUD Staff Responsibility in Cases Requiring Remediation of Contamination and Toxic Substances).

9.6.1.1 Lead-Based Paint

9.6.1.2 Asbestos

9.6.1.3 Radon

9.6.1.4 Historic Preservation

9.6.1.5 Floodplain Management

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<sup>30</sup> <https://www.hudexchange.info/programs/environmental-review/environmental-review-records/>

<sup>31</sup> <https://www.hudexchange.info/programs/environmental-review/>

<sup>32</sup> <https://www.hudexchange.info/programs/environmental-review/housing/>

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- 9.6.1.6 Flood Insurance
- 9.6.1.7 Wetlands Protection
- 9.6.1.8 Noise Abatement and Control
- 9.6.1.9 Explosive and Flammable Hazards
- 9.6.1.10 Air Quality
- 9.6.1.11 Airport Hazards
- 9.6.1.12 Coastal Barrier Resource
- 9.6.1.13 Coastal Zone Management
- 9.6.1.14 Endangered Species
- 9.6.1.15 Farmlands Protection
- 9.6.1.16 Sole Source Aquifers
- 9.6.1.17 Wild and Scenic Rivers
- 9.6.1.18 Environmental Justice
- 2. Housing and EA Requirements
  - 9.6.1.19 Additional Hazards and Nuisances
  - 9.6.1.20 Environmental Assessment Factors

## 9.4 Contamination and Toxic Substances

**A.** The purpose of the requirements of this section is to identify manmade contamination on a site, other than contamination from in-place building components such as asbestos containing materials (but see [Section 9.6.2](#)) or lead-based paint (but see [Section 9.6.1](#)), and to ensure that any contamination so identified is mitigated to the point where it would be unlikely to “affect the health and safety of occupants or conflict with the intended utilization of the property” as stated in HUD-wide policy at 24 CFR 50.3(i)(1). Laboratory analysis may reveal naturally occurring contaminants in the pathway vectors (air, water, groundwater, soil or sediment) surrounding the proposed HUD-assisted project at levels that pose a health or safety risk to sensitive receptors. Mitigation might be required depending on the intended use of the proposed project, the direction, the transmissivity, the proximity and the use of the pathway vectors with respect to the location of the proposed project. Specific requirements for radon are described in [Section 9.6.3](#).

**B.** Lenders are strongly encouraged to request a HUD concept meeting to discuss any potential contamination issues. It is recommended that Lenders consult with HUD before preparing an ASTM E1903-19 “Standard Practice for Environmental Site Assessments: Phase II Environmental Site Assessment Process (Phase II ESA).”

## 9.4.1 Phase I Environmental Site Assessment Requirements

**A. Submission:** The Lender must submit a complete and final Phase I ESA with the pre-application or, if the pre-application stage is omitted, with the application for Firm Commitment as part of the HEROS submission. A summary submission is not acceptable. The Lender must inform the ESA preparer of all of the following Phase I ESA requirements:

- 1. Purpose:** The Phase I ESA will make an initial determination as to the presence or likely presence of “hazardous substances” as defined by CERCLA, and of petroleum and petroleum products. The Phase I ESA can meet EPA’s All Appropriate Inquiry requirements for CERCLA liability protection for the property owner.<sup>33</sup> However, HUD’s purpose is to document compliance with 24 CFR 50.3(i), which states HUD’s policy that all properties proposed for use in HUD programs be free of hazardous materials, contamination, toxic chemicals and gases, and radioactive substances, where a hazard could affect the health and safety of occupants or conflict with the intended utilization of the property. This purpose must be described in the “Purpose” subsection to the required “Introduction” Section of the Phase I ESA. To meet this purpose, in addition to the standard Phase I determination of whether Recognized Environmental Conditions (RECs) have been identified in connection with the site, the Evaluation section’s discussion of Findings, Opinions, and Conclusions must state whether further investigation or corrective action is recommended to meet §50.3(i).
- 2. Format:** The Phase I ESA must be prepared in accordance with the requirements of ASTM E1527-13 “Standard Practice for Environmental Site Assessments, Phase I Environmental Site Assessment Process”. The Phase I ESA must utilize the table of contents and report format specified in Appendix X4. The Phase I ESA must incorporate a vapor encroachment screen performed in accordance with ASTM E2600-15. The Phase I must clearly indicate that HUD is an authorized user of the report. The Phase I preparer must also be notified that HUD will post its HEROS environmental review online, including documentation such as the Phase I ESA report, for one year following its completion.
- 3. Timing:** The Phase I ESA must be conducted (meaning the earliest of the date of the site visit, records review documents, or interviews) within one-year of the submission to HUD. HUD may require updates or additional analysis in specific circumstances. A Phase I ESA that was conducted more than 180 days prior to the submission date to HUD, but within the allowable one-year period, must be updated pursuant to Section 4.6 of ASTM E1527-13. A Phase I ESA prepared more than one year prior to submission to HUD, even if updated within 180 days of being submitted, is not acceptable.
- 4. Preparer’s Qualifications:** The Qualifications section of the Phase I ESA must describe the preparer’s qualifications. The Environmental Professional preparing the Phase I ESA must meet all of the qualification requirements of Appendix X2 of ASTM E1527-13.
- 5. Findings Section:** The Findings section of the Phase I ESA must list all known or suspect Recognized Environmental Conditions (REC), Controlled Recognized Environmental Conditions (CREC), Historical Recognized Environmental Conditions (HREC) and de minimis conditions (such as minor soil staining). The Findings section must also list Vapor Encroachment Conditions (VECs), likely VECs, and circumstances in which VECs cannot be ruled out.

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<sup>33</sup> For more information on the All Appropriate Inquiry Rule, please see <https://www.epa.gov/brownfields/brownfields-all-appropriate-inquiries>.

6. **Opinions Section:** The Opinions Section must discuss each finding from the Findings section and whether it is a REC pursuant to Section 12.6 of ASTM E1527-13. The justification for any Finding deemed not to be a REC must be included in the Opinions section. If the ESA preparer cannot make a statement as to whether a condition is or is not a REC, the Opinion Section must state what information or further investigation would be deemed necessary to make such a determination. The ESA preparer must also identify any data gaps and state whether the data gaps are significant. When previous remediation has been performed or is ongoing, i.e., not yet an HREC at the proposed site, the Phase I ESA must fully discuss the extent of such remediation in this section of the Phase I ESA, including any involvement of LSTF Authorities. The Phase I preparer must justify whether such ongoing remediation should resolve any RECs or undecided issues identified in the ESA. Note that even if the Environmental Professional preparing the Phase I ESA determines that a Finding does not rise to the level of a REC, HUD may determine that the finding warrants Phase II investigation based on HUD's toxics policy at §50.3(i).
7. **Conclusions Section:** The Conclusions Section must make a determination of whether a REC, including a CREC, exists on the site in accordance with one of the two quoted statements at Section 12.8 of ASTM E1527-13.
8. **Evaluation Section:** In addition to the standard Phase I determination of whether RECs have been identified in connection with the site, the Evaluation section's discussion of Findings and Conclusions should state whether further investigation or corrective action is recommended to meet 24 CFR 50.3(i).
9. **User Provided Information Section:** The Borrower or the current property owner (if different from the Borrower) shall complete the User Questionnaire(s) as per Appendix X3 of ASTM E1527-13, which must be included in the "User Provided Information Section" of the Phase I ESA, and the preparer must take into account any information provided in the preparation of the Phase I ESA.
10. **Testing Not Required:** The Phase I ESA does not require sampling and testing. A Phase II ESA or remediation plan, if required, would include sampling and testing (see below). If a Phase II ESA had been previously completed at the property, the Phase I must reference and discuss any prior Phase II ESA performed in general accordance with ASTM E1903-19, including whether a condition is a REC.
11. **Vapor Encroachment Screen:** The Phase I ESA shall incorporate an initial vapor (a.k.a. gas) encroachment screen following ASTM E 2600-15 to determine if there is a potential for vapors to occur in the subsurface below existing and/or proposed on-site structures. Those hazardous substances may be petroleum and petroleum products that consist of volatile organic compounds (VOC), semi-volatile organic compounds (SVOC), and inorganic volatile compounds. The initial vapor encroachment screen shall be performed using Tier 1 "non-invasive" screening pursuant to ASTM E 2600-15 "Standard Guide for Vapor Encroachment Screening on Property Involved in Real Estate Transactions, Section 8". If the Tier 1 vapor encroachment screen determines that, as indicated in ASTM E2600-15, Section 8.7.1, there is a "vapor encroachment condition" (VEC) which is the "presence or likely presence" of such vapors in the subsurface below existing and/or proposed on-site structures, it must be reviewed under the Phase I ESA to determine if it is a REC as per the ASTM E1527-13 standard. Vapor encroachment screen analyses must be included in their own section in the report but also integrated into the findings, opinions and conclusions sections of the Phase I ESA.
12. **Lead-based Paint (LBP) Chips:** LBP chips that are not inside or part of a structure may be deemed to be a hazardous substance. Therefore, if there is or was a structure on the site that was built prior

to 1978, any evidence of paint chips not inside or part of any current structures must be discussed in the “Site Reconnaissance” section of the Phase I ESA, must be listed in the Findings Section, and must be discussed further as to whether the paint chips are either a REC or a de minimis condition in the Opinions section.

13. **Underground Storage Tanks (UST) containing hazardous waste or petroleum products:** The Phase I ESA must identify onsite USTs containing, or previously containing, hazardous waste or petroleum products. For tanks regulated by the state, the Phase I must document that the UST is in compliance with state regulations, including confirmation of tank integrity. For tanks not regulated by the state, HUD will require an integrity test and an O&M plan as discussed in [Section 9.4.13](#). These requirements do not apply to propane USTs.
14. **Previous Remediation:** When previous remediation has been performed, or remediation is currently taking place, the Phase I ESA must fully document such remediation, including any involvement from LSTF Authorities, No Further Action letters as discussed at [Section 9.4.5.D.3](#), and narrative descriptions of any on-going remediation work and monitoring. The Phase I ESA must discuss whether the previous or ongoing remediation is consistent with current applicable LSTF standards.
15. **Evaluation of the ESA:** The Phase I ESA will be evaluated by HUD to determine if the property is acceptable for the hazards reviewed. HUD may require additional information, or a Phase II ESA based on findings that indicate an unacceptable risk under HUD’s toxics policy at §50.3(i), or an unacceptable business risk. Any Phase I ESA that identifies a REC will require a Phase II ESA, unless it can be determined from the Phase I ESA that corrective action is not feasible. If no corrective action is feasible, HUD may reject the property.

## 9.4.2 Phase II Environmental Site Assessment Requirements

**A. Purpose:** The purpose of the Phase II ESA is to determine if the RECs or risks related to HUD’s toxics policy identified in the Phase I ESA have resulted in the presence of hazardous substances or petroleum products that exceed unrestricted use criteria. The Phase II ESA must be prepared in accordance with the ASTM E1903-19, “Standard Practice for Environmental Site Assessments: Phase II Environmental Site Assessment Process.” The Phase II ESA need not necessarily be a complete site characterization (total nature and distribution) of contamination, but must proceed to a point where it indicates the location of greatest concentration and risk, taking into consideration all of the Recognized Environmental Conditions (RECs) identified in the Phase I ESA or other hazards that affect the health and safety or occupants or conflict with the intended utilization of the property. A Limited Phase II ESA or a Limited Site Assessment is acceptable if it meets the requirements outlined above.

**B. Timing:** The Phase II ESA shall be submitted with the pre-application or, if the pre-application stage is omitted, with the application for Firm Commitment. It is recommended that Lenders consult with HUD before preparing a Phase II ESA.

**C. When Required:** A Phase II ESA is required if:

1. The Phase I ESA indicates that there is a REC; or
2. HUD requires a Phase II ESA for reasons that are described to the Lender, including that the Phase I indicates an unacceptable risk under HUD’s toxics policy at §50.3(i).

**D. Exception to Submission Requirement:** If it is obvious that remediation will be required, with HUD's approval the Phase II ESA may be incorporated within the "site characterization" segment of the remediation plan referenced in [Section 9.4.3.B.1](#).

**E. Standards to Use:** The Phase II ESA shall be performed pursuant to the logic model of ASTM E1903-19, Section 7, including developing the conceptual model and validation.

**F. Report Format:** The Phase II ESA must be prepared in accordance with the requirements of ASTM E1903-19 using the table of contents and report format specified in Appendix X3.2 as amended by X3.3. Some of the steps that a Phase II assessor might perform may be intuitive in nature, but they nevertheless must be documented in the report to demonstrate its scientific validity.

**G. HREC:** If the Phase I ESA indicates that there is a HREC, as described in ASTM E1527-13, i.e., a hazard has been remedied and an LSTF Authority has issued a No Further Action (NFA) letter or similar approval and, as consistent with current applicable LSTF standards, HUD may either deem the NFA as completion of the remediation or it may require a Phase II ESA and/or further remediation. Any ongoing commitments associated with operation, maintenance and monitoring must be incorporated as a condition of the Firm Commitment.

**H. Vapor Encroachment/Vapor Intrusion:** If it is determined that there is a potential for vapors to occur in the subsurface below existing and/or proposed on-site structures, the Phase II ESA shall include either a Tier 2 vapor encroachment screen (per ASTM E2600-15, Section 9), a vapor intrusion assessment (VIA) pursuant to LSTF policy and/or procedure (as discussed in ASTM E2600-15, Appendix X7.1), or go directly to a Tier 4 "mitigation" (per ASTM E2600-15, Appendix X7).

1. If a Tier 2 screen was performed and it determined that a VEC exists, either a vapor intrusion assessment (VIA) pursuant to LSTF policy and/or procedure or a Tier 4 "mitigation" (per ASTM E2600-15, Appendix X7) is required.
2. If a VIA was performed, any mitigation (or remediation) deemed necessary must follow LSTF policy and/or procedure or go through a Tier 4 "mitigation" as per ASTM E2600-15, Appendix X7.

**I. Phase II Conclusion:** The Phase II ESA must conclude that:

1. There are hazardous substances as defined by CERCLA, and/or petroleum products and/or other hazards that HUD considers an environmental risk under §50.3(i) at levels that exceed LSTF unrestricted criteria and list any chemicals so found, or
2. No hazardous substances, petroleum or petroleum products or environmental risks under §50.3(i) have been identified above LSTF unrestricted criteria.

**J. Off-site contamination conclusion:** The Phase II ESA must indicate whether there is a risk of off-site contamination migrating on to the proposed site, including if:

1. There is no known or perceived off-site contamination in the vicinity of the proposed site, It is unlikely that any known or perceived off-site contamination will migrate on to the site, or
2. It is likely that known or perceived off-site contamination will migrate on to the site.

**K. Description of Remediation:** If there is off-site contamination, the preparer must describe the remediation underway for the off-site contamination and whether the remediation has effectively brought migration under control.



**L. Conformance to LSTF Requirements:** The Phase II ESA written report must describe how it conforms to any applicable LSTF requirements and must include a detailed, common language summary.

**M. Exception of requirement for Phase II preparation and submission for ongoing remediation:** A Phase II ESA is not required when remediation is ongoing to the point of not yet being an HREC (see [Section 9.4.1.A.5](#), above), if the Phase I ESA preparer states that such remediation should resolve any RECs and undecided Phase I ESA issues, (see [Section 9.4.1.A.6](#), above), and if the remediation plan preparer indicates that all of the Phase II ESA requirements have been met. However, an NFA or similar from the LSTF authority must be submitted to HUD as per [Section 9.4.3](#) and [Section 9.4.4](#) or [Section 9.4.5](#).

### 9.4.3 Remediation Response Planning

**A.** Remediation plans are required if the Phase II ESA concludes that hazardous waste or petroleum products are present at levels that exceed LSTF unrestricted (de minimis) criteria, and/or that it is likely that known or expected off-site contamination will migrate on to the site.

**B.** The following requirements apply to all remediation plans:

1. A site characterization must be prepared.
  - a. Anytime a site has been identified from a Phase I or Phase II ESA as having contamination (or contamination exposure pathways), be it vapor (gas), liquid, solid, dissolved, or non-aqueous phase liquid (NAPL) above LSTF residential/unrestricted criteria, a site characterization (sometimes known as a special site assessment report, a remedial investigation report, a detailed Phase II ESA, or a Phase III ESA) must be prepared as the initial step of any remediation plan.
  - b. It must determine the total nature and distribution of such contamination, exposure pathways, and potential receptors (a.k.a., a conceptual site model). However, if the remediation plan preparer determines that the Phase II ESA preparer has already determined the nature and distribution of such contamination, exposure pathways and potential receptors, then such determination shall be so indicated, and the Phase II ESA shall be made a part of the remediation plan.
  - c. It must be based on LSTF requirements, or on the appropriate combination of ASTM Practices and Guides, as determined by the remediator's environmental investigator.
2. Any remediation studies and plans must be in the form of a report which includes a detailed, common language summary.
3. The remediation plan preparer's qualifications must be discussed in any remediation reports.
4. The remediation plan must cover all relevant contaminant phases: vapor (gas), liquid, solid, dissolved, and NAPL.
5. The remediation plan must require either the removal of contamination to LSTF unrestricted criteria pursuant to [Section 9.4.4](#) or incomplete removal of contamination to restricted residential levels in the form of a Risk-Based Corrective Action or other accepted cleanup program pursuant to [Section 9.4.5](#).
6. Any remediation studies and plans must be submitted to HUD with the pre-application or, if the pre-application stage is omitted, with the application for Firm Commitment. Evidence of approval of the



remediation plan by the LSTF authority must be submitted with the Application for Firm Commitment. For Lenders using the pre-application process, HUD will review remediation plans before an invitation letter is issued.

7. HUD may require that the project implement the remediation plan, including completing clearance testing and obtaining No Further Action letters from the LSTF, prior to HUD issuing the Firm Commitment. In these cases, the remediation work cannot take place until HUD completes the HEROS review and approves an early start as per [Chapter 12](#) or pre-endorsement improvements as per [Chapter 5, Section 5.8](#).
8. If the extent and cost of removing the contamination can be definitively determined, and the cost of removing that contamination can be specified pursuant to a contract for remediation (see [Section 9.5](#)), HUD may allow a remediation plan that has been approved by the LSTF authority as long as:
  - a. It permits the remediation including site testing, any clearance and closure documents, and the approval by the LSTF, prior to Initial Endorsement (as long as HEROS is complete and HUD has approved an early start as per [Chapter 12](#)), or
  - b. If the Lender can show why it would be impractical to complete remediation prior to Initial Endorsement, it permits the remediation including site testing, any clearance and closure documents, and the approval by the LSTF, prior to Final Endorsement and initial occupancy.
9. All residents living regularly and construction workers working regularly on site while remediation is taking place shall be informed of the remediation activities and protected from any potential contamination. This requirement must be a part of the remediation plan.
10. Unless HUD determines otherwise, the remediation contract shall require cost cap and reopener insurance coverages, copies of which are to be included in the remediation plan.
11. If remediation is taking place or has been completed but has yet to receive approval by the LSTF at the time of submission of the Phase I ESA, the remediation plan and all remediation studies shall be submitted, along with a detailed common language summary, at the same time as the Phase I ESA.

#### **9.4.4 Remediation Plans with Complete Removal of Contamination**

**A.** Except for situations where [Section 9.4.5](#) (Remediation Plans with Incomplete Removal of Contamination) applies, the Lender must submit a remediation plan designed to bring the contamination identified by a complete site characterization per [Section 9.4.3.B.1](#) to LSTF unrestricted criteria levels, with no ongoing active or passive remediation. There must not be any need for engineering controls, institutional controls, or monitoring wells.

**B.** All of the requirements for [Section 9.4.3](#) must be met.

**C.** A remediation plan that involves control of off-site contamination per [Section 9.4.7](#) and/or Tier 4 vapor encroachment mitigation per [Section 9.4.2.B.10](#) is not permitted under this section but may be allowed under [Section 9.4.5](#).

## 9.4.5 Remediation Plans with Incomplete Removal of Contamination

A. If the LSTF authority determines that remediation to LSTF unrestricted criteria levels is infeasible, HUD may accept a Risk Based Corrective Action (RBCA) or other accepted remediation plan approved by the LSTF authority that allows for incomplete removal to LSTF restricted residential criteria levels.

B. Justification for incomplete removal of contamination must be submitted along with the remediation plan and must include documentation that shows that the cost of the incomplete removal of contamination, including any life cycle costs for Operation and Maintenance and any applicable enforcement requirements of LSTF authorities, are sufficiently below the costs of complete contamination removal, per [Section 9.4.4](#) above.

C. The RBCA or other accepted cleanup program report(s) must:

1. Meet all of the requirements of [Section 9.4.3](#);
2. Discuss how the remediation plan complies with the regulatory procedures as discussed in [Section 9.4.5.B](#), above;
3. Discuss how it meets or will meet all of the requirements of [Section 9.4.5.D](#); and
4. Discuss how it meets or will meet all of the requirements of [Section 9.4.6](#) through [Section 9.4.10](#) (plus [Section 9.4.11](#) through [Section 9.4.13](#) if applicable).

D. The RBCA or other accepted cleanup program must be supported by the applicable combination of:

1. **Engineering and Institutional Controls (EC/IC):** An Engineering Control is a physical measure that reduces or eliminates exposure to contamination. An Institutional Control is a non-engineered instrument, such as administrative and legal control. ICs typically limit land and/or resource use or provide information that helps modify or guide human behavior at a site. An appropriate mix of ECs such as capping and slurry walls, and ICs such as protective covenants, access restrictions and tenant and employee notification, are usually required for all RBCAs or other accepted cleanup program as approved by the LSTF authority.<sup>34</sup> EC/IC may include:

a. **Hard/Soft Cap Engineering Control:** A hard cap EC, such as concrete, generally is required if any contamination will remain on the site after Final Endorsement. Unless the Lender can justify why a lesser depth to contamination would be protective of the health and safety of occupants, the depth of any remaining contamination should be greater than the deepest of the following:

- 1) the depth of the foundations of any existing or proposed structures including sumps;
- 2) the depth of any existing or proposed utilities on site; or
- 3) five feet below the surface.

HUD may allow for a soft cap (e.g. dirt) if other engineering controls such as an impenetrable geotextile fabric are included. If EC is not required for a soft cap, IC is still required.

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<sup>34</sup> Additional information about IC and ECs can be found on EPA's website at <https://www.epa.gov/superfund/superfund-institutional-controls-guidance-and-policy> and [https://www.epa.gov/sites/production/files/2015-09/documents/ec\\_information\\_guide.pdf](https://www.epa.gov/sites/production/files/2015-09/documents/ec_information_guide.pdf).

- b. **Slurry Wall or Equivalent Engineering Control:** A slurry wall or equivalent type EC may be required to prevent offsite contamination from migrating onsite or to prevent onsite contamination from migrating onsite or offsite. If the Phase I and/or Phase II ESA determines that the likely existence of off-site contamination presents a risk to the site, such a slurry wall or equivalent type EC will be required.
  - c. **Monitored Natural Attenuation and Enhanced Passive Remediation (MNA/EPR):** MNA/EPR such as by bio-augmentation where no additional active input is required and passive engineering controls such as a slurry wall may be allowed as part of the RBCA. In such cases, the LSTF authority must issue a conditional No Further Action Letter or similar approval. Monitoring wells pursuant to the above RBCAs and meeting the requirements of [Section 9.4.6](#) will be required to monitor the progress of the remediation. When MNA/EPR is part of the RBCA or other accepted cleanup program, the remediation may continue beyond Final Endorsement provided that the LSTF authority has determined in writing that such undertakings would present no threat to health, safety or the environment.
  - d. **Vapor Encroachment/Vapor Intrusion Mitigation:** If a VEC is present, as per an ASTM E2600-15 Tier 1 Vapor Encroachment Screen, then mitigation as discussed in ASTM E2600-15, Appendix X7 is required, unless a vapor intrusion assessment (VIA) has been, or will be, performed pursuant to LSTF policy and/or procedure. When remediation goes directly from a Tier 1 screen or a Tier 2 screen, such controls shall, where feasible, consist of a poured-on vapor barrier to be used in conjunction with active and passive venting systems.
  - e. IC regarding groundwater contamination, if applicable, must be put in place.
  - f. HUD may require ICs beyond LSTF requirements in order to support the ECs and ensure protection of the residents throughout the term of the mortgage.
2. **Operations and Maintenance (O&M) Plans:** Any time there is an EC there must be an O&M plan. The O&M plan must be approved by the LSTF authority and must discuss any associated enforcement required by LSTF authorities. An O&M plan must be in place for management of all contamination remaining on the site and any controls thereof. If HUD determines that the mortgagor does not have sufficient capacity to manage the O&M plan, the mortgagor must contract an appropriate servicer to do so. The O&M Plan must ensure maintenance of any engineering controls and assign responsibility for that maintenance. (See [Section 9.5](#) for guidance on cost determination.)
  3. **No Further Action Letter (NFA):** The LSTF authority must issue an NFA, or similar approval, except that a conditional NFA may be allowed pursuant to MNA/EPR (see [Section 9.4.5.D.1.c](#)).<sup>35</sup> The LSTF authority must indicate in the NFA that the remediation that has taken place or will take place protects the health and safety of occupants and does not conflict with the intended utilization of the property. Usually, this will be satisfied by a statement that the remediation meets LSTF residential use standards. The NFA must be submitted to HUD pursuant to the timeline required by [Section 9.4.3.B.7](#) and [Section 9.4.3.B.8](#).
  4. **Groundwater Requirement:** A site is or will be otherwise acceptable if contamination exists in the groundwater after completion of remediation, if:

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<sup>35</sup> For a list of state approvals that meet MAP requirements, visit <https://www.hudexchange.info/programs/environmental-review/housing/#faq>.

- a. IC regarding the groundwater is/will be put in place, along with approval by the LSTF authority, and any applicable enforcement requirements of LSTF authorities. The ICs must prohibit any and all uses of the groundwater. Municipal restrictions on groundwater may substitute for LSTF approval if the restrictions are included as an IC on the property deed and requirements of [Section 9.4.5.D.2.b](#) and [Section 9.4.5.D.2.c](#) are met;
  - b. The highest anticipated levels of groundwater based on high groundwater and/or 100 year flooding events are below the levels of any construction or potentially anticipated utility work unless it can be shown how such high groundwater levels will not modify the horizontal and vertical extent of contamination to such a degree that it could affect the health and safety of residents and workers; and
  - c. Any vapors from groundwater and/or soils are shown not to present a significant risk pursuant to Tier 1 vapor encroachment assessment, Tier 2 vapor encroachment assessment, vapor intrusion assessment, or mitigation.
5. **Safety of and Disclosure to Residents and Workers:** Any time contamination above LSTF unrestricted criteria is allowed to remain on site after initial occupancy and final closing, all maintenance workers who might perform activities that could compromise the EC/IC, construction workers, and building residents, etc. are to be informed of the general type and extent of contamination and the protective measures that have been taken. It would be up to residents to inform any of their visitors/guests of these conditions.
6. **Hazardous Substance Quantification:** If any RBCA or other accepted program remediation plan identifies hazardous substances (listed in 40 CFR 302.4) that will remain on the property after Final Endorsement, such plan shall determine the quantity of such hazardous substances and whether it equals or exceeds the levels indicated at 40 CFR 373.2(b). (This is information that HUD is required to report under CERCLA in the event that HUD will own the property or take over its management.)

## 9.4.6 Monitoring Wells, Flushing Wells, and Testing Wells

### 9.4.6.1 General Requirements

A. The presence of a testing or monitoring well on the property does not bar the property from consideration for mortgage insurance. If a monitoring well is required to confirm that contaminants have been removed to intended levels or that an MNA/EPR is working properly, EC/IC will be required until such time as contaminants are reduced to LSTF criteria and a Final NFA letter is issued.

### 9.4.6.2 Monitoring Well Protocols

A. Monitoring protocols must be specified in the RBCA or other accepted program report, and monitoring must proceed until contaminants have been removed to intended levels or passive MNA/EPR is working properly.

### 9.4.6.3 Monitoring Wells for Off-site Contamination

A. If a monitoring well is required to determine if existing or assumed off-site contamination has migrated or might migrate on-site, the site is generally not acceptable unless associated EC/IC are put in place pursuant to a RBCA or other accepted program, or unless the LSTF authority provides a statement that

such off-site contamination would not present a risk to the health of the project's occupants if it were to migrate on-site.

#### **9.4.6.4 Flushing Wells**

A. In no case may Final Endorsement/initial occupancy take place when a flushing well is in operation or will be required.

#### **9.4.6.5 Testing or Monitoring Wells Ordered by LSTF**

A. A testing or monitoring well may also be placed on the property by order of the LSTF to test or monitor contamination on the site or from a neighboring site. If a monitoring well would be required or exists solely to monitor the general health of an aquifer used as a water supply or potential water supply, but not in relation to an existing or potentially hazardous condition, this is not a bar to environmental approval. However, the Lender must notify HUD if there is any current or intended placement of a monitoring or testing well.

#### **9.4.6.6 Non-operating Wells**

A. Non-operating wells are not a bar to environmental approval but must be capped over and closed out pursuant to the appropriate LSTF authority.

### **9.4.7 Off-Site Contamination**

A. If the Phase I and/or Phase II ESA determine that the existence of off-site contamination presents a risk to the site or the residents of the project and the Sponsor has no control over the off-site locations of the contamination, the site is not acceptable unless such off-site contamination is subject to a RBCA or other accepted program meeting all of the requirements of [Section 9.4.3](#) and [Section 9.4.5](#).

### **9.4.8 Escrow**

A. Any monitoring wells and engineering controls, such as caps or slurry walls, may warrant an escrow account to be established by the Lender at Initial Endorsement to offset the cost of any ongoing maintenance. See [Section 9.5.3](#) for further discussion.

### **9.4.9 Waivers**

A. If a Regional Office intends to waive any of the requirements in this [Section 9.4](#) that are not regulatory in nature, the advice of the Departmental and/or Housing Environmental Officer, or the applicable REO/FEO in whose district the project is located, should be obtained before the waiver is granted to ensure that such waiver is in compliance with the environmental requirements of 24 CFR 50.3(i).

### **9.4.10 LSTF Approvals and Reviews**

A. The LSTF must have jurisdiction over the project. EPA has jurisdiction over most Superfund sites (see [Section 9.4.11](#)), but not sites that are solely on federal facility property, such as the Department of Defense.

The U.S. Army Corps of Engineers has jurisdiction over most Formerly Used Defense Sites. A project may need clearance from multiple LSTF authorities.

**B.** Any approvals by an LSTF authority must be given directly by that authority and may not be given by a third party approved by that authority to act in lieu of the authority itself. Approvals by local authorities are only acceptable when such authority is acting under delegation from the State.

## 9.4.11 Superfund Sites

**A.** A site located on an existing or proposed Superfund site requires consultation with EPA. Sites adjacent or proximate to a Superfund site may require consultation with EPA to confirm that the contamination will not impact the HUD site.

### 9.4.11.1 Superfund National Priority List (NPL) Sites

**A.** The first step is to determine the extent to which EPA has completed a site characterization at the NPL site.<sup>36</sup>

1. In some cases EPA has conducted a remedial investigation or other characterization work that allows for an assessment of the area that includes the property of HUD interest, and EPA's site characterization work may be so detailed and thorough that it can substitute for MAP requirements regarding an ASTM Phase II and/or a site characterization report. HUD would make the determination on the adequacy of available information to substitute for MAP requirements in conjunction with EPA and relevant state regulatory agencies.
2. In other cases EPA has conducted a remedial investigation or other characterization work at the site that shows the NPL site related contamination does not extend to the property that HUD may want to support. Examples include ground water at depth with no potential for vapor intrusion at levels of concern, or a very large site with uncontaminated areas within the boundary of the overall site.
3. Sometimes EPA has not yet completed a remedial investigation or other site characterization work for the area that includes the property of HUD interest. Generally, this will include sites that are newly listed to the NPL or very large sites. These sites generally undergo at least some characterization to ensure that there are no unacceptable risks that require immediate action.

**B.** Projects on existing or proposed NPL sites need written documentation from EPA (and sometimes also from the relevant LSTF authority) that the project is suitable for residential use. This written documentation can take four forms:

1. Where EPA has deleted the site from the NPL and published a deletion notice in the Federal Register. Because a site could be deleted from the NPL for a planned nonresidential use, HUD must confirm that the site is suitable for residential use.
2. Where EPA has issued a Site Wide Ready for Anticipated Use (SWRAU) status for the site. This indicates that the entire site is safe for the intended use and institutional and engineering controls are

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<sup>36</sup> Information about proposed NPL sites, NPL sites, and deleted NPL Sites, including maps and EPA contact information can be found at <https://www.epa.gov/superfund/superfund-national-priorities-list-npl>.



in place.<sup>37</sup> Because a site could achieve SWRAU status for a planned nonresidential use, HUD must confirm that the SWRAU is for residential use.

3. Where EPA has issued a Ready for Reuse (RfR) Determination for the site. The RfR determination can apply to all of the site or to a part of the site where clean up or EC/IC has been implemented. HUD must consult with EPA to determine if the RfR determination applies to the proposed project site and that cleanup is to residential standards.
4. Where a site has not yet reached SWRAU or RfR status. In this case, HUD will need written documentation from EPA that an NPL site is suitable for residential use.

### **9.4.11.2 Superfund Sites Not on the NPL**

A. Superfund sites that are not on the NPL will only be acceptable if the site is cleaned up to residential levels and HUD receives written documentation from EPA that the site is suitable for residential use.

### **9.4.11.3 EC/IC Put in Place by EPA**

A. HUD must incorporate any EC/IC put in place by EPA into its environmental conditions and subsequent program commitments. HUD may impose additional ICs to ensure long term safety at the site. HUD must conduct its own due diligence at Superfund sites and may determine that the property is unacceptable for FHA mortgage insurance or other HUD assistance.

## **9.4.12 Unacceptable Sites**

A. A site over a former solid waste or hazardous waste landfill/dump site is not acceptable for development unless the hazardous substances, petroleum, and petroleum products are completely removed or remediated to restricted residential standards and the LSTF with management authority over the site gives written approval of the site for residential usage.

## **9.4.13 Underground Storage Tanks Not Regulated by the LSTF**

A. For Underground Storage Tanks (USTs) containing, or previously containing, hazardous waste or petroleum products not regulated by the LSTF, HUD will require an integrity test and an O&M plan.<sup>38</sup> The UST and its service lines must pass an integrity test before HUD completes the environmental review. In addition, an O&M plan must include periodic testing of the tank and its service lines, as well as repair, maintenance and emergency response procedures. These requirements do not apply to propane USTs.

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<sup>37</sup> The list of sites that have achieved SWRAU status can be found at <https://www.epa.gov/superfund-redevelopment-initiative/sitewide-ready-anticipated-use-swrau-superfund-sites>.

<sup>38</sup> Guidance available at <https://www.hudexchange.info/programs/environmental-review/housing/#faq>.



## 9.5 HUD Responsibilities when Projects Require Remediation

### 9.5.1 General Responsibilities

A. The Department assumes greater risk any time a Firm Commitment is issued on a contaminated site, which risk is even greater when a loan is on a site where complete removal of contamination is not possible, requiring monitoring possibly with continuous remediation techniques such as MNA/EPR. Therefore, HUD staff must exercise great care in the review process to assure that all reasonable measures are taken to mitigate HUD's risk exposure and that an accurate determination is made of any remediation costs that are included in the HUD-insured mortgage. Any special site assessment reports, Phase II or Phase III ESAs should be reviewed so that the extent of the contamination is fully understood. Although the Lender is responsible for assuring that environmental remediation contractors are qualified and experienced, field staff must still review references and qualifications and are strongly encouraged to consult with an REO/FEO at the start of any remediation discussion.

### 9.5.2 Projects with Complete Removal of Site Contamination

#### 9.5.2.1 Technical Reviews

A. Trained Underwriting or Technical staff (often an Appraiser) is responsible for the review of all environmental documentation and for completing the environmental review in HEROS, which may be supplemented as needed to document the review and HUD's conclusions as to the adequacy of the proposed remediation plan.

B. Any estimates of value or rents should be made as if the project is unaffected by contamination and conditioned on successful removal. The appraisal must address any effect of marketability that may be present due to the prior environmental history.

#### 9.5.2.2 Architecture/Engineering and Cost

A. A construction analyst should review the cost estimate of the remediation plan to determine whether it is reasonable and if the remediation and removal contractor is appropriately bonded and qualified. Cost data for remediation is not as plentiful as with more routine construction tasks. The HUD construction analyst may consult with local environmental remediation professionals about costs for similar work.

#### 9.5.2.3 Mortgage Credit

A. The HUD Underwriter shall determine escrow, performance and bond payment requirements. The cost of the mitigation work based upon the estimated cost from the contractor may be included in the insured loan. The amount of the escrow or bond shall be at least 150% of the total of the estimated cost of the mitigation work. The cash requirements for the escrow or bond, and the Lender and Mortgage Credits procedures for administering the escrow, shall be in accordance with existing closing instructions in the [Chapter 19](#) of the MAP Guide. Higher escrow or bonding requirements will be necessary if Multifamily Regional staff and/or the REO/FEO determine that there is a greater than average risk that unforeseen problems may arise, resulting in increased cost based on previous experience with similar

work and/or research through local environmental remediation contractors about their experience in containing the cost within their stated estimate.

### **9.5.3 Projects with Incomplete Removal of Site Contamination**

- A.** HUD staff should follow the guidance in [Section 9.5.2](#) regarding initial removal or mitigation costs.
- B.** HUD staff must assure that the cost of any requirement for continuous monitoring and/or mitigation is accommodated. An escrow account established by the Lender at Endorsement may be the most appropriate choice. This may also be accomplished by including the cost in Section E of the form HUD-92264 under “Other Maintenance” and would include fees charged by service providers who are engaged to perform monitoring. If an expense is for actual or anticipated replacement of a component such as a pump, it should be included in the Reserves for Replacement. The basis for the expense or additional replacement reserve will be obtained from a qualified engineer and/or contractor. The engineer/contractor’s estimate should be sufficiently detailed and supported to allow review by the construction analyst as well as the appraiser.
- C.** Any effect on project marketability, value or rents due to the need for continuous monitoring/mitigation must be quantified and discussed in the appraisal.

### **9.5.4 Insurance and Guarantee Requirements**

- A.** Borrowers are required to obtain separate insurance for environmental hazards from an insurer acceptable to HUD if remediation work will be done on the site during the insured loan period, if the coverage is available. Environmental hazard insurance typically covers liability (including occurrence coverage for harm that manifests itself during or after the remediation work) and cost of completion.
- B.** The environmental remediation contractor will almost always be different from the project's General Contractor. Aside from the contractor qualifications, licensure and bonding that are addressed above, the remediation contractor must provide HUD a separate guarantee of completion for their work on a form prescribed by HUD.

### **9.5.5 Management, Coordination, and Communication**

- A.** The Department assumes greater risk in cases involving environmental mitigation that will occur after Initial Endorsement especially when mortgage proceeds are used to fund the cost of remediation. Extra attention must be given to the need for frequent communication, preferably with written documentation, between disciplines that are coordinated by branch chiefs and regional production division directors relating to levels of contamination, cost estimates and the certainty of the effectiveness of mitigation.

## 9.6 Environmental Laws and Authorities

### 9.6.1 Lead-Based Paint (24 CFR Part 35.115(a))

**A.** Lead-based paint requirements are applicable to multifamily housing constructed before 1978, in accordance with 24 CFR Part 35.

**B.** There are three exceptions:

1. The project is proposed for demolition, provided the property will remain unoccupied until demolition.
2. The housing is designated exclusively for the elderly or persons with disabilities, unless a child of less than 6 years of age resides or is expected to reside there.
3. The housing is zero-bedroom dwelling units, unless a child of less than 6 years of age resides or is expected to reside there.
4. The property that has been found to be free of lead-based paint by a certified lead-based paint inspector.
5. The property where all lead-based paint has been identified, removed, and clearance has been achieved.

**C.** There is one exemption: 223(a)(7) transactions do not require an appraisal and are therefore exempt from lead-based paint requirements.

**D.** HUD regulations regarding lead-based paint are found at 24 CFR Part 35, copies of which, along with guidance materials, may be downloaded from:

[https://www.hud.gov/program\\_offices/healthy\\_homes/enforcement/lshr](https://www.hud.gov/program_offices/healthy_homes/enforcement/lshr), or obtained by telephoning 1-800-424-LEAD (TTY: 800-877-8339).

The helpful Lead Rule Compliance Advisor is available at:

<http://portalapps.hud.gov/CorvidRpt/HUDLBP/welcome.html>.

**E.** For pre-1960 residential properties that do not involve conversions or major rehabilitation, the lead-based paint report shall consist of a risk assessment to identify lead-based paint hazards, performed in accordance with 24 CFR 35.1320(b), by a certified lead risk assessor. Any identified lead-based paint hazards must be treated with “interim controls” in accordance with 24 CFR 35.1330 or “abatement” in accordance with 24 CFR 35.1325 (as authorized by 24 CFR 35.155) and shall be considered to be completed when clearance is achieved in accordance with 24 CFR 35.1340. Interim controls or abatement shall be completed prior to issuance of the Firm Commitment, unless HUD approves their completion prior to Final Closing under conditions in the Firm Commitment that require an escrow of sufficient repair or rehabilitation funds. Before the issuance of the Firm Commitment the Sponsor shall agree to incorporate ongoing lead-based paint maintenance into regular building operations and maintenance activities in accordance with 24 CFR 35.1355(a) unless abatement through removal of all of the lead-based paint has been performed. See 24 CFR 35.620.

1. Interim controls must be conducted by a firm certified as a Lead-Safe Certified Renovation, Repair and Painting Rule firm by the EPA or by the state, if authorized by EPA to issue such certification, and performed by a supervisor and workers who are certified renovators based on their having passed a lead renovator course in accordance with 40 CFR 745.90 or 745.326, respectively. Interim controls are a set of measures designed to reduce temporarily human exposure or likely exposure to lead-based paint hazards, such as repairs, painting, temporary containment, specialized cleaning, clearance, ongoing lead-based paint maintenance activities, and the establishment and operation of management and resident education programs (24 CFR 35.110).
  2. Abatement must be conducted by a firm certified as a Lead Abatement firm by the EPA or by the state, if authorized by EPA to issue such certification, and performed by workers who are certified lead abatement workers and a supervisor who is a certified lead abatement supervisor who has passed an accredited lead abatement supervisor course in accordance with 40 CFR 745.226 or 745.325, respectively. Abatement means any set of measures designed to permanently eliminate lead-based paint or lead-based paint hazards (see definition of “permanent”). Abatement includes the removal of lead-based paint and dust-lead hazards, the permanent enclosure or encapsulation of lead-based paint, the replacement of components or fixtures painted with lead-based paint, and the removal or permanent covering of soil-lead hazards; and all preparation, cleanup, disposal, and post abatement clearance testing activities associated with such measures. (24 CFR 35.110).
  3. Information and guidance are in the HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing, especially [Chapter 11](#) through [Chapter 15](#). (See the HUD Office of Lead Hazard Control and Healthy Homes’ (OLHCHH’s) website, specifically, the Guidelines’ page at [https://www.hud.gov/program\\_offices/healthy\\_homes/lbp/hudguidelines](https://www.hud.gov/program_offices/healthy_homes/lbp/hudguidelines).)
  4. Details about the revisions to the Lead Safe Housing Rule (LSHR) are on the OLHCHH’s LSHR webpage at [https://www.hud.gov/program\\_offices/healthy\\_homes/enforcement/lshr](https://www.hud.gov/program_offices/healthy_homes/enforcement/lshr).
- F.** For multifamily properties constructed after 1959 and before 1978 that do not involve conversions or major rehabilitation, before the issuance of the Firm Commitment the Sponsor shall agree to incorporate ongoing lead-based paint maintenance practices into regular building operations in accordance with 24 CFR 35.1355(a). See 24 CFR 35.625.
- G.** For conversions and major rehabilitations (defined in this context as “rehabilitation that is estimated to cost more than 50% of the estimated replacement cost after rehabilitation”), of multifamily properties constructed before 1978, a “lead-based paint inspection” to identify the presence of lead-based paint shall be performed in accordance with 24 CFR 35.1320(a), by a certified lead-based paint inspector. The Firm Commitment shall require that any lead-based paint identified on the property shall undergo “abatement” in accordance with 24 CFR 35.1325 with the abatement to be completed prior to both initial occupancy and Final Closing. HUD will generally require that such abatement be achieved through paint removal or component replacement.
1. If the Sponsor can demonstrate that paint removal or component replacement is not practicable because the substrate material is architecturally significant and would be damaged by so doing, HUD may approve permanent encapsulation or enclosure and, if it does, shall approve incorporation of ongoing lead-based paint maintenance into regular building operations maintenance activities.
  2. Upon request by the State Historic Preservation Office, the Sponsor may conduct interim controls of the lead-based paint in accordance with 24 CFR 35.1330 instead of lead-based paint abatement. If

interim controls are conducted, ongoing lead-based paint maintenance and reevaluation shall be conducted in accordance with 24 CFR 35.1355.

3. See [Section 9.6.21](#) for more information about maintenance plans. Abatement or interim control is considered complete when clearance is achieved in accordance with 24 CFR 35.1340. See 24 CFR 35.630.

**H.** If an evaluation (such as a lead-based paint inspection or risk assessment) or hazard reduction is undertaken, the Sponsor shall provide a notice to occupants in accordance with 24 CFR 35.125. The Sponsor shall also provide the lead hazard information pamphlet in accordance with 24 CFR 35.130 if it has not already been provided.

**I.** Where required, the LBP report must be submitted with the application as part of the HEROS Environmental Report.

**J.** The cost of lead-based paint abatement or hazard control work may be included in the proposed mortgage loan with HUD approval.

**K.** Sale and rental transactions or properties covered by [Section 9.6.1](#) are also subject to the HUD-EPA lead-based paint disclosure rule at 24 CFR Part 35, Subpart A.

## 9.6.2 Asbestos (24 CFR 50.3(i))

**A.** While specific uses of asbestos are technically allowed today, several uses of asbestos have been banned starting in the early 1970s, and many commercial enterprises stopped installing asbestos products as of the late 1970s. In 1989, the U.S. Environmental Protection Agency instituted a partial ban on the manufacture, import, processing and distribution of some asbestos containing products. Some of the more common examples of asbestos containing materials include insulation, fireproofing, sprayed on finishes such as acoustical ceiling texture, joint compound, ceiling tiles, vinyl floor tile, glazing compound and mastic or caulk used to fix the tile in place, siding, and roofing, although they can be found in many construction material types installed before 1989 that are still in use today. These asbestos-containing materials (ACM) can be found in both friable<sup>39</sup> and non-friable states.

**B.** Asbestos studies and information must be included in the Environmental Report, in accordance with HUD's environmental policy articulated at 24 CFR 50.3(i) which states that all properties proposed for use in HUD programs be free of hazardous materials, contamination, toxic chemicals and gasses, and radioactive substances, where a hazard could affect the health and safety of occupants or conflict with the intended utilization of the property.

**C.** Knowledge of the location, quantity, type and condition of ACM in the facilities, building, and, if applicable, the surrounding area of the property, are critical for proper management of the hazard. These factors will determine if ACM will need to be selectively removed for maintenance, removed prior to renovation, removed prior to demolition, left in place and encapsulated or enclosed with procedures outlined in the Operation & Maintenance (O&M) Program, or a combination of these strategies.

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<sup>39</sup> Friable material is a material that is easily crumbled or powdered by moderate (hand) pressure.

**D.** An asbestos survey is not required for applications that are categorically excluded not subject to the laws and authorities at 50.4 (CENST) under 24 CFR 50.19(b)(21) (see [Section 9.1.3.C.1](#) and [Section 9.1.3.C.2](#)).

**E.** However, applicants are encouraged to complete a survey even at the CENST level of review to provide the basis for an asbestos O&M program for protection of workers and residents.

**F.** Any structures or ancillary facilities on the site built before 1989 must be assessed as per the ASTM E 2356-18, “Standard Practice for Comprehensive Building Asbestos Surveys” or the city, county, or state requirements if they exceed the ASTM E2356-18 standards. For structures built in 1989 or later, HUD requires projects to report any knowledge of asbestos use at the property and to verify the composition of roofing materials, either through direct documentation (e.g. receipts or labels) or through sampling and analysis.

1. At minimum, structures built before 1989 must undergo a Baseline Survey, or stricter standard if applicable in the jurisdiction, to determine if ACMs are present or suspected to be present at the site.
2. The ASTM E 2356-18 Baseline Survey is a building-wide or facility-wide inspection that provides a general sense of the overall location, type, quantity, and condition of asbestos-containing materials present. It is thorough in that most accessible functional spaces are inspected, and that bulk samples are taken of suspect materials observed. The baseline survey provides information for long-term management of ACM and prioritization of response actions. The presence of asbestos in suspect materials may be assumed or presumed in some cases without bulk samples being taken or analyzed. In a baseline survey, destructive testing is minimized, e.g. concealed spaces are not normally breached.
3. Any structures or ancillary facilities built before 1989 that are planned to be demolished or planned to undergo rehabilitation above the level of repair as defined in MAP Guide [Chapter5, Section 5.1.3](#) must complete a building asbestos survey by a qualified asbestos inspector performed pursuant to the “Pre-Construction Survey” requirements of ASTM E 2356-18 or stricter standards if applicable in the jurisdiction. At minimum, the survey must include all spaces within the limits of construction, as well as adjacent areas where ACM may be disturbed by construction activities.

The Pre-Construction Survey is performed in anticipation of a demolition or rehabilitation project. The Pre-Construction Survey requires destructive testing if concealed spaces are to be breached during construction. The Pre-Construction Survey satisfies the EPA NESHAP requirements for renovation or demolition to “thoroughly inspect the affected facility.”

**G.** An accredited asbestos professional will determine whether projects that complete a Pre-Construction Survey must also complete a Baseline Survey. The asbestos professional will also determine if the project requires additional surveys beyond the minimum HUD requirements.

**H.** The practices outlined in the ASTM E 2356-18 apply to all activities (unless following a stricter local, state or tribal standard) and all surveys or sample analysis must be completed by a licensed/accredited professional and laboratory.

1. Asbestos professionals must be accredited by EPA or an EPA approved state program under the Model Accreditation Plan. The professional must also be licensed by the state, city, or local jurisdiction in which the work is being conducted if the jurisdiction has this requirement.



2. Transmission electron microscopy (TEM) bulk sample analyses may be necessary for samples originating from jurisdictions that require this analysis. Additionally, TEM analyses is commonly used to verify a reported no asbestos detected result for non-friable organically bound material (NOB) and other non-friable materials by polarized light microscopy (PLM).

**I.** If prior surveys for ACM have been completed within the building, facilities, and project site by a licensed professional and accredited asbestos laboratory, HUD may accept the earlier documentation. If there is question about its validity, HUD will request a determination by an accredited asbestos professional. The determination of the applicability and usability of prior ACM surveys will be based upon the determination of the current licensed/credentialed asbestos professional or by HUD.

**J.** If ACM or suspected ACM is identified at a facility, HUD requires a response action to address the risk. Response actions may include complete removal, limited removal/repair, encapsulation, enclosure or management of the ACM under an O&M Program, or a combination of these, as recommended by an accredited asbestos professional. If ACM or suspected ACM remains after the initial identification and, if applicable, response actions, an asbestos O&M program shall be implemented. The following are examples for when certain response actions may be appropriate, but they do not encompass all response actions.

1. Removal:

- a. Damaged friable materials
- b. Friable materials in good condition with high potential for disturbance (e.g., accessible pipe or tank insulation, ceiling tiles where air exchanges occur in plenum above, ceiling tiles that are required to be moved to access mechanical equipment or piping on a routine basis, etc.)

2. Limited removal/repair, encapsulation or enclosure:

- a. Damaged non-friable materials (limited removal/repair)
- b. Limited damage to ceiling texture (limited removal/repair)
- c. More extensive wall and/or ceiling texture damage or highly friable texture
- d. Pipe insulation with limited damage but with limited potential for disturbance/impact (enclosure or removal)

3. O&M Plan:

- a. Non-friable materials in good condition.
- b. Joint compound or wall and ceiling textures in good condition.
- c. Adhesive ceiling tiles with no real potential for disturbance.
- d. Friable pipe insulation materials in mechanical areas in good condition with limited potential for disturbance/impact by maintenance activities.

**K.** The asbestos survey(s) must be submitted with the application as part of the HEROS Environmental Report. If the survey identifies asbestos or asbestos is assumed, HUD must receive a remediation plan from an accredited asbestos professional with an appropriate mix of asbestos abatement and an asbestos O&M plan in accordance with EPA's How to Develop and Maintain a Building Asbestos Operations and Maintenance (O&M) Program website (<https://www.epa.gov/asbestos/how-develop-and-maintain->



building-asbestos-operations-and-maintenance-om-program) or any applicable LSTF requirements if more protective of health and the environment. See [Section 9.6.21](#) for more information about Operation and Maintenance Plans. The asbestos survey report(s), O&M plans, and updated records if materials are removed or identified subsequently should be maintained by the operator and owner(s) of the property and made available to appropriate staff.

**L.** Other than for asbestos abatement on a structure that will be completely demolished, the cost of any asbestos abatement activities may be included in the proposed mortgage loan.

**M.** All asbestos abatement shall be done in accordance with EPA requirements for air pollution prevention pursuant to 40 CFR Part 61, subpart M especially 40 CFR 61.145, and OSHA requirements for Worker Protection, pursuant to 29 CFR 1926.1101, asbestos safety and health regulations for construction, and any LSTF asbestos abatement and worker protection rules. All asbestos abatement must be performed by a qualified asbestos abatement contractor with a supervisor ('competent person') trained in accordance with OSHA and, if applicable, EPA standards, and workers trained in accordance with the OSHA standard.

## 9.6.3 Radon (Supersedes ML 2013-07)

### 9.6.3.1 Background

**A.** One common constituent of soil and rock is the unstable element uranium. One of the decay products of uranium is radon, a colorless, odorless gas. Under certain natural conditions, the radon gas can enter surface soils and become part of the "soil gas" environment, which then can enter the air, including air inside of buildings. When soil gas that contains radon enters a building, radon and its decay products are either directly inhaled, or attached to dust on walls, floors and in the air, which then can be inhaled. These decay products then undergo further decay, resulting in the release of subatomic alpha particles. This alpha particle radiation can cause mutations in lung tissue which can lead to lung cancer. The risk of contracting lung cancer from radon increases with an increase in the concentration of radon in the air that is breathed by building occupants. EPA recommends mitigation for residences with radon concentrations at or above 4 picocuries per liter of air (pCi/L).

### 9.6.3.2 General Requirements

#### **A. Radon Report:**

1. A radon report is required unless an exception listed in [Section 9.6.3.2.C](#) applies.
2. The radon report shall be included in the pre-application, or application, as applicable. For new construction, or substantial rehabilitations or conversions where early testing is not feasible, the radon report must be submitted to HUD at the final completion inspection. Applications (including those for which early testing is not feasible) must include the radon mitigation system in the architectural plans, as HUD relies on the Project Architect to design and incorporate any required radon mitigation system consistent with the relevant standard. HUD encourages the Architect to seek technical advice from a radon professional should the Architect believe it to be necessary in their professional judgment or if it is required by the relevant mitigation standard.

3. The radon report shall include the results of any testing performed, the sampling strategy as applicable, the details of any mitigation deemed necessary, and the timing of any such mitigation. The radon report must be signed and certified as to its compliance with the requirements of this section by a Radon Professional and include copies of appropriate certifications and/or licenses.

#### **B. Radon Professionals:**

1. All testing of existing properties, post-construction testing, and any mitigation required as a result of this testing must be performed by, or under the direct supervision of a Radon Professional, in accordance with the protocols referenced in this section.
2. Radon Certification/License of the Radon Professional is required as follows:
  - a. Certification from either the American Association of Radon Scientists and Technologists (AARST) National Radon Proficiency Program (NRPP) or the National Radon Safety Board (NRSB); and
  - b. Certification/License from the state in which the testing or mitigation work is being conducted if the state has this requirement.

#### **C. Exceptions to a Radon Report:**

1. A Radon Professional may conclude that testing or mitigation is not necessary based on exemptions laid out in the relevant state or ANSI-AARST radon standard. Any such justifications as to why testing or mitigation is not necessary must be provided in the Environmental Report in the form of a signed letter from the radon professional that references the appropriate standard. Housing staff will determine whether to grant the exception.
2. A radon report is not required for applications that are categorically excluded not subject to the laws and authorities at 50.4 (CENST) as per 24 CFR 50.19(b)(21) (see [Section 9.1.3.C.1](#) and [Section 9.1.3.C.2](#)).

However, applicants are encouraged to test for radon even at the CENST level of review. Any such testing must follow the testing protocols and resident notification protocols below and must then be incorporated within a radon report as described within this section. If the results of such testing indicate levels of radon at or above the threshold for unacceptability, mitigation as described in this section is required, following [Section 9.6.3.2.F](#).

#### **D. Testing Protocols:**

1. Radon testing must follow the protocols set by the American Association of Radon Scientists and Technologists, Protocol for Conducting Radon and Radon Decay Product Measurements in Multifamily Buildings (ANSI-AARST MAMF-2017) (available at [www.standards.aarst.org](http://www.standards.aarst.org)). This includes testing 100% of ground floor units and 10% of upper floor units in all buildings included in the project.
2. As an alternative to a full testing assessment, all ground level units/rooms in all buildings included in the project must be mitigated following the appropriate mitigation standard listed at [Section 9.6.3.2.F](#).
3. The threshold for unacceptability is 4.0 picocuries per liter (4.0 pCi/L) based on initial and any confirmatory testing, if performed.

### **E. Occupant Notification:**

1. Occupants of all new applications for Multifamily MAP mortgage insurance programs shall be informed of forthcoming testing in the manner described in AARST MAMF-2017, Section II.B and Section III. 2.2.1.
2. Occupants shall be informed both prior to and after mitigation activities. In the case of new construction, incoming occupants shall be informed of radon mitigation activities.

### **F. Mitigation Standards:**

1. Radon resistant construction is required for all new construction, and radon mitigation is required for existing construction where testing has revealed that radon levels exceed the threshold for unacceptability. The radon resistant construction or radon mitigation, when required, must conform to the following standards, which include post-mitigation testing requirements. All standards listed below are available at [www.standards.aarst.org](http://www.standards.aarst.org).
  - a. For existing buildings:
    - 1) Multifamily structures reference ANSI-AARST RMS-MF 2018, Radon Mitigation Standards for Multifamily Buildings.
    - 2) Single Family structures reference ANSI/AARST Standard SGM-SF-2017, Soil Gas\_Mitigation Standards for Existing Homes.
  - b. For new construction:
    - 1) Multifamily structures reference ANSI-AARST CC-1000-2018, Soil Gas Control Systems in New Construction of Buildings or ANSI-ASHRAE 189.1-2017, Standard for the Design of High-Performance Green Buildings except Low Rise Residential Buildings, Sections 801.3.4, 1001.3.1.9, and 1001.3.2.1.4.5.d.
    - 2) Single Family structures reference ANSI-AARST CCAH-2020, Reducing Radon in New Construction of 1 & 2 Family Dwellings and Townhouses.

### **G. Mitigation Timing:**

1. For new construction and substantial rehabilitation properties, all mitigation reports, including follow-up testing, must be submitted to HUD staff at the final completion inspection. Radon mitigation included as part of a Section 223(f) project's repairs must be completed as quickly as practicable, and in any event, no later than 12 months after Closing. The scope of work and related costs identified in the Firm application must include all repairs related to radon.

### **H. Certificate of completion:**

1. A certificate of completion from the Radon Professional must be submitted and appended to the radon report once radon testing and/or mitigation is completed. HUD staff must upload this to HEROS.

### **I. Operation and Maintenance Plans:**

1. An operation and maintenance plan (called an operation, maintenance and monitoring (OM+M) plan under the ANSI-AARST standards) must be administered in accordance with the applicable mitigation standard for any mitigation project. A condition shall be attached to the Firm Commitment requiring that the Borrower operate and maintain the property consistent with the referenced OM+M plan for

the duration of the insured mortgage. The project must submit the final OM+M plan to HUD after the radon mitigation system is installed. Given the ongoing risk associated with radon, the OM+M requirement for maintaining mitigation systems must be implemented when a mitigation system is present on the property.

**J. Existing Mitigation Systems:**

1. All existing mitigation systems installed at the property must be evaluated to ensure that they function properly, and if applicable, corrective action must be taken by a qualified radon professional.

**K. Cost estimates:**

1. It is the responsibility of the Lender to provide the cost estimate for radon remediation to be included into the overall construction cost. The cost estimate must be accurate to the proposed construction and include ongoing O+M costs. Estimates must be based on the locality of the project as well as the proposed time of construction.

### **9.6.3.3 Requirements for Section 223(f) Projects**

**A.** All Section 223(f) projects must be tested for radon.

1. Testing must be performed no earlier than 1 year prior to application submission.
2. Exception: The applicant may elect to proceed directly to mitigation without prior testing.

**B.** For mitigation, see the requirements at [Section 9.6.3.2.F](#), which include post mitigation testing. If estimated costs exceed the allowable cost for the Section 223(f) program, the application cannot be approved but may be considered under the substantial rehabilitation program.

### **9.6.3.4 Requirements for Substantial Rehabilitation and Conversion**

**A.** All substantial rehabilitation and conversion projects must be tested for radon.

**B.** Regarding testing prior to substantial rehabilitation or conversion:

1. Early testing may not be feasible. For some proposals, such as a conversion of an existing building from non-residential to residential, the building envelope may change to such an extent that early testing would not be appropriate and in some cases not possible. If this is the case, proceed directly to mitigation as discussed at [Section 9.6.3.4.C](#).
2. When early testing is feasible:
  - a. It must be performed no earlier than 1 year prior to application submission in accordance with [Section 9.6.3.2.D](#).
  - b. If test results are below the threshold, no mitigation is required.
  - c. If test results are at or above the threshold, mitigation must be built into the project design per [Section 9.6.3.4.C](#).

**C.** Regarding mitigation:

1. If mitigation is built into project design, it must be conducted in accordance with the requirements at [Section 9.6.3.2.F](#), which require post mitigation testing.

2. If mitigation is not built into project design, a radon report must be submitted to HUD at the final completion inspection. If testing results are at or above the threshold, retrofit mitigation pursuant to the requirements at [Section 9.6.3.2.F](#) is required.

### **9.6.3.5 Requirements for New Construction**

- A. All new construction projects must follow radon resistant construction requirements.
  1. Multifamily structures reference ANSI-AARST CC-1000-2018, Soil Gas Control Systems in New Construction of Buildings.
  2. Single Family structures reference ANSI-AARST CCAH-2020, Reducing Radon in New Construction of 1 & 2 Family Dwellings and Townhouses.
    - a. Post-construction testing is required prior to final completion inspection. If post-construction testing results are above the threshold, the project must be brought into compliance by activating the mitigation system or through retrofit mitigation.
    - b. All testing and mitigation required as a result of this testing must be performed by, or under the direct supervision of a Radon Professional, in accordance with the protocols referenced in this section.

### **9.6.4 Historic Preservation (24 CFR 50.4(a))**

A. HUD must comply with the National Historic Preservation Act (54 U.S.C. 300101 et seq.) and its implementing regulations at 36 CFR Part 800, which require Federal agencies to take into account the effects of their undertakings on historic properties, consult with the State Historic Preservation Officer (SHPO) and/or Tribal Historic Preservation Officer as appropriate, and afford the Advisory Council on Historic Preservation a reasonable opportunity to comment. The process is known as Section 106 review.

B. Applications for Firm Commitment, whether for new construction, rehabilitation, refinancing or conversion from non-residential to residential property are considered “federal undertakings” which require HUD to make a determination of no historic properties affected, no adverse effect, or adverse effect upon historic properties. An historic property means any prehistoric or historic district, site, building, structure, object, or traditional property or landscape included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. Also, HUD must consider the area of potential effect (APE), which is often the site boundary, but occasionally the block on which the site is located or the immediate site environs.

C. Pursuant to the “anticipatory demolition” requirements of Section 110(k) of the National Historic Preservation Act (54 U.S.C. 306113), even before the concept meeting or application submission takes place, any action by a potential Lender or Borrower, or any action by another party that the Lender or Borrower has the legal power to prevent, which is taken with the intent to circumvent Section 106 review and that significantly adversely affects a historic property, could result in rejection of an application.

D. There are three exceptions (if applicable, a statement identifying the exception and supporting documentation must be included in the application):

1. Categorical exclusions not subject to related laws and authorities (CENST) under 24 CFR 50.19(b)(21) (see [Section 9.1.3.C.1](#) and [Section 9.1.3.C.2](#)).

2. HUD has determined that some undertakings have No Potential to Cause Effects under 36 CFR 800.3(a)(1), because there is no physical impact beyond maintenance. These determinations are made by HUD's Office of Environment and Energy and include certain Rental Assistance Demonstration (RAD) transactions and certain 223(f) refinance transactions with no site work beyond maintenance, as defined in HUD Notice CPD-16-02<sup>40</sup>. In order to use this exception, a project must meet the conditions in an applicable No Potential to Cause Effects Memo that is found on HUD's website<sup>41</sup>. For such transactions, there is no requirement to contact the State Historic Preservation Officer (SHPO), and historic preservation responsibilities are limited to documenting this determination in HEROS by marking No Potential to Cause Effects on the Historic Preservation Screen and uploading a copy of the relevant Memo. Only projects that meet the conditions of one of the posted Memos can use this finding.
  3. Some states may have a Programmatic Agreement (PA) with HUD and the proposal may be part of a class of actions that do not require Section 106 consultation under the PA.<sup>42</sup> Historic preservation responsibilities of HUD staff are limited to documenting this determination in HEROS by marking Programmatic Agreement on the Historic Preservation screen, uploading the Programmatic Agreement into HEROS, and copying the applicable part of the PA agreement into HEROS.
- E.** If an exception does not apply, HUD must conduct a Section 106 review and make a finding of effect. Multifamily production staff typically conduct the Section 106 review with information provided to HUD by Lenders and their authorized representatives. Also, HUD has determined that MAP-approved Lenders and their authorized representatives may act on behalf of HUD to consult with SHPOs and other consulting parties to initiate the Section 106 review process, identify and evaluate historic properties, and assess effects. This delegation does not extend to consultation with Tribes. HUD must initiate and conduct consultation with Indian Tribes (see [Section 9.6.4.I](#)).
1. The material provided to the SHPO should include a narrative explaining the proposal, a map identifying the site location and proposed Area of Potential Effect (APE), a list of potential interested consulting parties that have been or will be invited to consult, a description of identified historic properties (listed and eligible), digital photos of buildings and setting, a description of the proposed project activities, a description of direct or indirect effects on the historic properties, and a determination of No Historic Properties Affected, No Adverse Effect, or Adverse Effect. The information must be submitted to the SHPO following the procedures outlined by the individual SHPO office.

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<sup>40</sup> Guidance for Categorizing an Activity as Maintenance can be found in HUD Notice CPD 16-02 at <https://www.hudexchange.info/resource/3197/guidance-categorizing-activity-as-maintenance-environmental-regulations-24-cfr-parts-50-and-58/>.

<sup>41</sup> No Potential to Cause Effect memos can be found at <https://www.hudexchange.info/resource/3865/no-potential-to-cause-effects-to-historic-properties-memos/>.

<sup>42</sup> HUD's Programmatic Agreement Database can be found at: <https://www.hudexchange.info/resource/3675/section-106-agreement-database/>. Specific information about states with Part 50 Programmatic Agreements at Housing's environmental FAQ website: <https://www.hudexchange.info/programs/environmental-review/housing/#faq>.



2. Lenders and their authorized representatives using the delegated process must include a copy of HUD's delegation Memorandum<sup>43</sup> with each submission to the SHPO. The submission must include the information discussed in [Section 9.6.4.E.1](#) plus the HUD program followed by the section of the National Housing Act and an appropriate contact person at both the Lender's organization and the authorized representative hired to coordinate the review. In addition, for Lenders and their authorized representatives using the delegation, if a project involves demolition of a building over 45 years old, new construction in or adjacent to a historic district, substantial ground disturbance<sup>44</sup>, or exterior rehabilitation of a building more than 45 years old, Lenders must retain a Qualified Historic Preservation Professional<sup>45</sup> in the discipline relevant to the project activities to prepare submissions to SHPO and manage consultation with interested parties and the public, as well as coordinate with HUD on HUD's consultation with Indian Tribes.
3. Lenders that do not use the delegated process must still provide HUD the information required in [Section 9.6.4.E.1](#).
4. All submission materials, a copy of the letter to the SHPO and a copy of the response must be included in the HEROS Environmental Report along with any comments received from consulting parties and the public. HUD remains legally responsible for all findings and determinations, regardless of who initiates the Section 106 review. HUD will independently review and confirm the APE, the determination of effect finding and the SHPO's response and may request additional information if needed. Only HUD staff can complete the Section 106 HEROS screen by documenting whether compliance steps or mitigation are required.
5. The SHPO has 30 calendar days to respond from receipt of an adequately documented submission. If the submission is inadequate, the SHPO may request additional information and the 30-day clock resets to the date that SHPO receives it.

**F.** Because of the technical nature of historic property identification, evaluation and treatment, it may be appropriate to retain a qualified historic preservation professional to prepare the initial consultation and supporting documentation even for projects where HUD is conducting the consultation directly or for delegated projects that do not otherwise require it under [Section 9.6.4.E.2](#). Such consultant should meet the Secretary of the Interior's Professional Qualifications Standards (36 CFR Part 61) and have experience in Section 106 reviews. Examples of when retention of a qualified historic preservation professional may be appropriate include when National Register eligibility of a property is unclear, when adverse effects are expected, when the property contains archeological sites, and/or when the project is controversial.

**G.** For a No Historic Properties Affected or No Adverse Effect determination, after a SHPO concurrence has been received and/or 30 calendar days after the SHPO's receipt of an adequately documented finding have elapsed without objection from the SHPO or consulting parties, obligations under Section 106 are

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<sup>43</sup> Delegation Memorandum can be found at <https://www.hudexchange.info/programs/environmental-review/historic-preservation/>.

<sup>44</sup> Does not include minor ground disturbance for installing posts for a fence, deck, ramp, handrail, etc.; routine landscaping; or repaving a parking lot or sidewalk.

<sup>45</sup> A Qualified Historic Preservation Professional is one who meets the Secretary of the Interior's Professional Qualifications Standards for Archeology, History, Architectural History, Architecture, or Historic Architecture and has substantial experience in conducting Section 106 reviews of historic properties. Detailed information can be found at [https://www.nps.gov/history/local-law/arch\\_stnds\\_9.htm](https://www.nps.gov/history/local-law/arch_stnds_9.htm).



fulfilled. No Historic Properties Affected is appropriate when there are no historic properties or there are no direct or indirect effects on historic properties. No Adverse Effect is used when there is an historic property that is affected by the project, but the effects are not adverse.

**H.** HUD will participate in and complete the Section 106 process when: an undertaking may adversely affect a historic property or historic district; there is a disagreement between the applicant or their authorized representative and the SHPO regarding identification and evaluation or historic properties and/or assessment of effects; there is potential for a foreclosure situation per 36 CFR 800.9(b) or anticipatory demolition as specified in Section 110(k) of the National Historic Preservation Act; there is an objection from Tribes, consulting parties or the public regarding their involvement in the review process, recommended Section 106 findings and determinations, or the implementation of agreed upon provisions; or HUD deems the consultation record inadequate. This process may result in a design change, research and preservation, salvage, or in rare cases, rejection of the application for Firm Commitment. Consultation to resolve adverse effects may take considerable time and must be completed generally through execution of a Memorandum of Agreement (MOA) before a commitment can be issued.

**I.** For Tribal Consultation:

1. In addition to consultation with the SHPO, or THPO if the project is on tribal lands, consultation with federally recognized Indian Tribes and Native Hawaiian Organizations may be required. HUD must follow the guidance on tribal consultation in HUD Notice CPD-12-006 and supplemental Memorandum<sup>46</sup>. Not all projects that require Section 106 review require consultation with Indian Tribes. Consultation with federally recognized Tribes is only required when a project includes activities that have the potential to affect historic properties of religious and cultural significance to Tribes. These types of activities include:
  - a. ground disturbance (digging),
  - b. new construction in undeveloped natural areas,
  - c. introduction of incongruent visual, audible, or atmospheric changes,
  - d. work on a building or structure with significant tribal association, or
  - e. transfer, lease or sale of historic properties of religious and cultural significance.
2. When tribal consultation is required, the Lender will utilize the HUD Tribal Directory Assessment Tool (<https://egis.hud.gov/tdat/>) to determine if the site is located in an area where a Tribe has indicated interest or significance and present this information to HUD.
  - a. The Lender must submit the same information discussed in [Section 9.6.4.E.1](#) to HUD in the form of draft letters to each Tribe. HUD will review the information, prepare the letters on HUD letterhead, and mail or email the letters, as appropriate for each Tribe.
  - b. Only HUD can consult with the Tribes.

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<sup>46</sup> HUD Notice CPD-12-006 can be found at <https://files.hudexchange.info/resources/documents/Notice-CPD-12-006-Tribal-Consultation-Under-24-Cfr-Part-58.pdf>.

Supplemental Memorandum can be found at <https://files.hudexchange.info/resources/documents/HUD-Memo-Section-106-Tribal-Consultation-in-Projects-Reviewed-Under-24-CFR-Part-50.pdf>.

- c. The tribal consultation requirement applies to properties *off* tribal lands as well as on tribal lands. Properties with religious and cultural significance to native people may include ancestral archaeological sites and natural areas where traditional practices or ceremonies have been carried out as well as more familiar historic properties. Some traditionally used places have very strong religious associations, and it may be difficult or even inappropriate for native people to talk about their significance. If this situation arises, hiring a qualified professional with experience in tribal consultation may be required. The cost of such a professional shall be paid by the Borrower.

J. The Section 106 review must be completed before HUD approves and/or commits assistance to a project. Additional guidance on the Section 106 review process is available at <https://www.hudexchange.info/programs/environmental-review/historic-preservation> and <https://www.achp.gov/protecting-historic-properties>.

K. For projects receiving federal and/or state historic tax credits (HTC) the HTC process does not replace HUD's obligations under Section 106. Projects with HTC must still consult with the SHPO, Tribes, other consulting Tribes and the public as appropriate. The materials used in the HTC application (Parts 1 and 2) should be useful in the Section 106 consultation. More information about HTC available at <https://www.hudexchange.info/programs/environmental-review/historic-preservation/tax-credit/>.

L. The cost of historic preservation mitigation may be included in the proposed mortgage loan.

## 9.6.5 Floodplain Management (24 CFR 50.4(b)(2))

A. Applications for Firm Commitment are subject to regulations regarding floodplain management found at 24 CFR Part 55 which implements Executive Order 11988 (Floodplain Management). Lenders must provide the effective FEMA Flood Insurance Rate Map (FIRM) with the subject site(s) clearly marked to determine whether the project is in or near a floodplain. In most areas, FIRMs are available online through the FEMA Map Service Center at <https://msc.fema.gov>.

B. In addition, Lenders must provide any FEMA-supplied preliminary or pending floodplain maps or studies or Advisory Base Flood Elevations (ABFE) for the site, as HUD must use the latest of these sources unless the ABFE or preliminary FIRM indicates a lower Base Flood Elevation (BFE) than the current FIRM and Flood Insurance Study (FIS). Preliminary FIRMs can be found through the FEMA Map Service Center by clicking "Show ALL Products", or at a central Flood Map Changes Viewer (<https://fema.maps.arcgis.com/apps/webappviewer/index.html?id=e7a7dc3ebd7f4ad39bb8e485bb64ce44>). FEMA issues Advisory Base Flood Elevations after major flood disasters and disseminates them by region.

C. FEMA maps indicate floodplains as follows:

1. 100-year floodplains (a.k.a. the Special Flood Hazard Area (SFHA) and the 1% annual chance floodplain) are designated as Zone A1-30, AE, A, AH, AO, AR, or A99.
2. 500-year floodplains (a.k.a. the moderate flood hazard area and the 0.2% annual chance floodplain) are designated as Zone B or a shaded Zone X.

3. Floodways are the portion of the floodplain which is effective in carrying the flow of flood waters and will generally be the most dangerous part of the floodplain during riverine flooding. Floodways are designated as Zone AE hatched.
4. Coastal high hazard areas are areas subject to high velocity waters and wave action, and they are designated as Zone V1–30, VE, or V.
5. Limit of Moderate Wave Action (LiMWA) are coastal areas in updated FEMA maps that are outside of the coastal high hazard area, but which are expected to receive between 1.5 and 3 foot breaking waves during a 1% annual chance flood. LiMWAs are designated with an informational line.
6. Areas where FEMA has not completed a detailed study sufficient to identify the flood risk are designated as Zone D. As these areas have the potential for unidentified flood hazards, HUD will rely on best available information to assess risk.

**D.** If any part of the site or integral offsite development (i.e., ingress, egress and/or parking) is located within the 100-year floodplain or within a 500-year floodplain for critical actions<sup>47</sup>, according to the best available data, the project must comply with HUD's floodplain management regulations at 24 CFR Part 55.

**E.** An application for mortgage insurance shall not be approved for a property located in: (a) a floodway; (b) a coastal high hazard area; or (c) a FEMA identified special flood hazard area in which the community has been suspended from or does not participate in the National Flood Insurance Program. If a stream coursing through a proposed site is designated as being in the 100-year floodplain according to FEMA's best available data, but there is no designated floodway area, development will be prohibited in the channel of the stream.

**F.** 24 CFR 55.12(c) lists categories of proposed actions for which the floodplain management requirements in 24 CFR 55 are not applicable. These exceptions include:

1. An incidental exception, if only an incidental portion of the project is in the 100-year floodplain, floodway, or coastal high hazard area (or for critical actions, the 500-year floodplain), and certain conditions are met (see 24 CFR 55.12(c)(7)).
  - a. HUD does not consider improvements<sup>48</sup> to be incidental, meaning that this exception does not apply if there are any buildings or improvements in any portion of the floodplain.
  - b. The incidental exception does not apply to sites that plan to bring in fill for a Letter of Map Revision because the fill modifies the floodplain.
  - c. For a visual representation of the incidental floodplain exception, see <https://www.hudexchange.info/resources/documents/Incidental-Floodplain-Exception-Illustration.pdf>.

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<sup>47</sup> Critical Actions are defined at 24 CFR 55.2(b)(3). Critical actions include roadways providing sole egress from flood-prone areas, and projects likely to contain occupants who may not be sufficiently mobile to avoid loss of life or injury during flood or storm events, e.g., persons who reside in hospitals, nursing homes, convalescent homes, intermediate care facilities, board and care facilities, and retirement service centers. Housing for independent living for the elderly is not considered a critical action.

<sup>48</sup> HUD defines improvements as buildings, roads, sidewalks, parking lots, permanent recreational areas with impervious surfaces, or other man-made structures or impervious surfaces other than landscaping.

- d. When invoking the incidental portion exception at 24 CFR 55.12(c)(7), a protective covenant or comparable restriction must be placed on the property's continued use to preserve the floodplain. This covenant must protect the entire portion of the site in the floodplain. The covenant or comparable restriction must run with the land to provide for permanent preservation of the floodplain. A restriction that is contained in a document that would expire at the conclusion of the HUD-insured mortgage does not meet the requirement for permanent preservation of the floodplain.
  2. Refinances of currently HUD-insured mortgages are exempt from the 24 CFR Part 55 requirements when the refinance will not result in any physical impacts or changes except for maintenance under 24 CFR 50.19(b)(21) (CENST). However, the flood insurance requirements specified at 24 CFR 50.4(b)(1) and [Section 9.6.6](#) are still applicable.
  3. The requirement for a 5- or 8-step analysis does not apply if the project is not on a wetland and has a Conditional Letter of Map Amendment (CLOMA) or of Map Revision (CLOMR) removing the entire site from the applicable floodplain prior to submission of the pre-application or, in the absence of a pre-application, prior to submission of the application for Firm Commitment. If the Borrower has a CLOMA or CLOMR, HUD approval for a Firm Commitment will be conditioned on the Borrower: (1) meeting the requirements of the CLOMA or CLOMR; (2) obtaining a Final Letter of Map Amendment (LOMA) or Map Revision (LOMR) removing the entire property from the applicable floodplain prior to Final Endorsement; and, (3) maintaining flood insurance on any building during the construction period until the LOMA or LOMR is issued. If any portion of the HUD-insured property remains in the floodplain or floodway after the CLOMA/CLOMR, the project will not qualify for this exception and must proceed with a 5- or 8-step decision making process (see 24 CFR 55.12(c)(8).)
- G.** Projects that are converting from a non-residential to a residential use are considered the same as "new construction" for floodplain management.
- H.** In considering the safety of the residents, offsite floodways and other flood hazards will be evaluated in terms of separation distance, elevation differences, and the nature of the hazard in question. Unacceptable proximity to hazards may result in rejection of the application.
- I.** Due to the potential for significant wave damage in Limit of Moderate Wave Action (LiMWA) areas, HUD will not approve applications for any new construction or substantial rehabilitation project in the LiMWA. HUD strongly discourages approving currently uninsured 223(f)s or currently insured 223(f)s with repairs at Level Two or above in the LiMWA and will only do so if the work meets the current standards for coastal high hazard areas in FEMA regulations (44 CFR 60.3(e)). HUD will consider on a case by case basis approving currently insured refinance transactions that do not exceed Level One repairs (as defined in [Chapter 5](#) of this MAP guide) or currently assisted projects with minor rehabilitation.
- J.** New construction and substantial improvement, as defined at 24 CFR 55.2(b)(10), in 100-year floodplains are strongly discouraged. This flood buffer zone is extended to the 500-year floodplain for proposed rehabilitation, refinancing, or new construction for facilities housing or serving mobility-impaired individuals, a critical action. Such sites in the applicable floodplain according to the best available data will not be considered for mortgage insurance unless the following steps are taken:
1. HUD must determine if there may be extraordinary circumstances which lead to the conclusion that there are no practicable alternatives to the project site being in the floodplain. In order to make this determination, HUD must conduct an 8-step decision making process which includes publishing two

public notices and taking comments, as summarized in 24 CFR 55.20<sup>49</sup>. Prior to issuing the first public notice, HUD will require detailed information about how the property will be altered and improvements designed. This information includes the elevation of the property, the base flood elevation, and the location of life support systems and other data that may be necessary to assess the safety of the site.

- a. The 8-step process may require as a condition of any project approval that a CLOMA or CLOMR for the buildings be issued prior to initial endorsement, a LOMA or LOMR be issued prior to Final Endorsement, and flood insurance be maintained on any building during the construction period until the issuance of the LOMA or LOMR.
- b. The 8-step process shall require that the lowest floor of new construction be elevated at or above the Base Flood Elevation of the applicable floodplain based on the best available FEMA data, plus two feet of freeboard. Substantial rehabilitation projects must elevate or mitigate following National Flood Insurance program requirements (as instituted by state and local codes).
- c. The 8-step process requires that all “critical actions” as defined in 24 CFR 55.2(b) (3) must comply with the requirements of 24 CFR 55.20(e).
- d. Instead of elevating non-residential or mixed-use structures that are not critical actions, the project may be designed and constructed such that below the flood level, the structure is non-residential and floodproofed to the level of the best available flood data plus two feet. Floodproofing requires structures to be watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic loads, hydrodynamic loads, the effects of buoyancy, or higher standards required by the FEMA National Flood Insurance Program as well as state and locally adopted codes.
- e. The 8-step process shall be completed by HUD before issuance of the Firm Commitment. HUD will develop the 8-step, including the two notices, but the costs of publication will be borne by the Borrower.
- f. The 8-step process shall consider three alternatives: the action as proposed, modifications within the aggregated project site, or no action, i.e., rejection of the application.

**K.** For purchase or refinancing actions described in 24 CFR 55.12(a)(2) or non-substantial repair, rehabilitation, modernization or improvement actions described in 24 CFR 55.12(a)(3), an abbreviated 5-step process pursuant to 24 CFR 55.12(a) may be used by HUD to determine their acceptability. The abbreviated process eliminates the two public notices and the alternatives analysis. Detailed information about the proposed actions, and about any plans for mitigation, must be submitted with the application or preapplication. HUD will evaluate risks and mitigation measures in making its decision. HUD discourages these actions if the lowest floor and/or the life support facilities, or egress and ingress of the existing building, are below the 100-year base flood elevation. The abbreviated review process shall be completed by HUD before issuance of the Firm Commitment.

**L.** Where a site does not appear to be located in the floodplain on official FEMA maps, but shows evidence of flooding or has a history of flooding, HUD shall qualitatively evaluate the acceptability of the site.

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<sup>49</sup> Additional guidance, including an example 8-step process and sample notices, can be found at <https://www.hudexchange.info/programs/environmental-review/floodplain-management/>.

Lenders will be required to provide extensive data to aid HUD in evaluating previously flooded or floodplain sites.

M. The cost of floodplain mitigation may be included in the proposed mortgage loan.

## 9.6.6 Flood Insurance (24 CFR 50.4(b)(1))

A. Flood insurance is property insurance that covers damages caused by flooding, ranging from the need for full replacement to repairs such as replacing flooring and walls. This type of insurance is typically not included in a standard property insurance policy. Flooding can cause a great deal of damage. Even if it does not destroy the property, it can fill the property with mud, silt, and other debris, and the moisture from the flooding may lead to rot, mold, mildew, and other problems. Many items may need to be rebuilt or replaced, forcing residents to stay in temporary facilities while their unit is made livable. Flood insurance mitigates these costs.

B. A project located in the 100-year flood zone, also known as the Special Flood Hazard Area (SFHA), has a 26% chance of flooding over the life of a 30-year mortgage. A project located in the moderate flood hazard zone (500-year floodplain) has a 6% chance of flooding over the life of a 30-year mortgage.

C. Any insurable structure that is located within a FEMA mapped SFHA is required to carry flood insurance under the National Flood Insurance Program for the term of the loan<sup>50</sup>. General flood insurance requirements as well as required insurance coverage amounts are set forth in MAP Guide [Chapter 3](#).

D. At the time of Application for Firm Commitment, the Lender must submit a completed Standard Flood Hazard Determination Form (found online at <https://www.fema.gov/media-library/assets/documents/225>) with proof that the new mortgagor has a commitment for flood insurance effective as of loan closing.

E. HUD will also require flood insurance on any building where the Advisory Base Flood Elevations (ABFE) or preliminary FEMA Flood Insurance Rate Map (FIRM) indicates it will be in a Special Flood Hazard Area. Additionally, Housing Approving Officials have the discretion to require flood insurance for buildings located<sup>51</sup>:

1. In the moderate flood hazard area (FEMA zones B or shaded X),
2. On a parcel that includes a SFHA (including those considered incidental for floodplain management), in coastal areas not in a SFHA but subject to tidal flooding, tsunami, wave action or storm surge, including LiMWAs, and

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<sup>50</sup> FEMA defines structure as a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. Structure, for insurance purposes, means: (1) A building with two or more outside rigid walls and a fully secured roof, that is affixed to a permanent site; (2) A manufactured home ("a manufactured home," also known as a mobile home, is a structure: built on a permanent chassis, transported to its site in one or more sections, and affixed to a permanent foundation); or (3) A travel trailer without wheels, built on a chassis and affixed to a permanent foundation, that is regulated under the community's floodplain management and building ordinances or laws. For the latter purpose, "structure" does not mean a recreational vehicle or a park trailer or other similar vehicle, except as described in paragraph (3) of this definition, or a gas or liquid storage tank (44 CFR 59.1).

<sup>51</sup> According to FEMA, 20 to 25% of claims nationally are for properties located outside of the 100-year flood zone.



3. where topography or past flooding create a high risk for flood events.

**F.** All new and renewal leases for projects where HUD has required flood insurance must contain acknowledgements signed by residents indicating that they have been advised that the property is in a floodplain and flood insurance is available for their personal property.

**G.** Owners can significantly lower flood insurance premiums by elevating or flood proofing structures. HUD encourages these measures and may require them in some cases.

## **9.6.7 Wetlands Protection (24 CFR 50.4(b)(3))**

**A.** Applications for Firm Commitment are subject to regulations regarding wetlands at 24 CFR Part 55, which implement Executive Order (EO) 11990 "Protection of Wetlands." EO 11990 prohibits the development or disturbance of wetlands and proposals impacting wetlands unless there is no practicable alternative and the proposed action includes all practicable measures to minimize harm to the wetland. Proposals impacting wetlands must be reviewed by HUD under the 8-step process in 24 CFR 55.20 to determine consistency with HUD's-wetland protection policy.

**B.** The term "wetlands" means those areas that are inundated by surface or ground water with a frequency sufficient to support, and under normal circumstances does or would support, a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds. This definition includes both wetlands subject to and those not subject to section 404 of the Clean Water Act (i.e. jurisdictional and non-jurisdictional wetlands). Manmade retention/detention ponds are not considered wetlands unless they have the characteristics of a wetland as noted above. Lenders shall use the Fish and Wildlife Service's National Wetlands Inventory (NWI) as a primary screening tool but must also submit observed or known wetlands not indicated on NWI maps. HUD must consider onsite and off-site impacts that result in draining, impounding, or destroying wetlands.

**C.** If an NWI map indicates the presence of wetlands, FWS staff, if available, must find that no wetland is present in order for the action to proceed without further processing. Where FWS staff is unavailable to resolve any NWI map ambiguity or controversy, an appropriate wetlands professional must find that no wetland is present in order for the action to proceed without Section 55.20 processing.

**D.** New construction or rehabilitation projects that develop or disturb onsite or offsite wetlands will be considered only after HUD conducts an 8-step decision-making process as described in 24 CFR 55.20 and includes consultation, issuing two public notices and taking public comment. Developing or disturbing onsite or offsite wetlands includes draining, dredging, channelizing, filling, diking, impounding and related activities.

**E.** The first five steps of the 8-step process are not required if the project involves new construction outside the 100-year floodplain<sup>52</sup> and the applicant has submitted with its application to HUD an individual Section 404 permit (including approval conditions) issued by the U.S. Army Corps of Engineers, or by a State or Tribal government under Section 404(h) of the Clean Water Act, and all wetlands adversely

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<sup>52</sup> 500 year floodplain for critical actions.



affected by the project are covered by the permit<sup>53</sup>. This streamlining approach is not available to sites with a general Section 404 permit. Wetlands under local or state jurisdiction are subject to state or local review as appropriate. However, compliance with state or local requirements is not a substitute for the 8-step process.

**F.** If a project impacts wetland, the Lender should consult early with the Multifamily field office and must provide extensive data to aid HUD in evaluating wetland impacts.

1. HUD may require that the Lender submit a wetlands delineation performed by a qualified professional to evaluate the direct and/or indirect wetland impacts of the project.
2. Appropriate and practicable compensatory mitigation is recommended for unavoidable adverse impacts to more than one acre of wetlands. Compensatory mitigation is defined at 24 CFR 55.2(b)(2) and includes but is not limited to: permittee-responsible mitigation, mitigation banking, in-lieu fee mitigation, the use of preservation easements or protective covenants, and any form of mitigation promoted by state or Federal agencies.
3. The 8-step process shall consider three alternatives: the action as proposed, modifications within the site controlled by the applicant, or no action, i.e., rejection of the application.

**G.** When on-site wetlands exist but will not be developed or disturbed, HUD will require assurance from the Borrower that no activities that may impact a wetland will be undertaken without prior approval from HUD. Where appropriate, this will take the form of a restrictive covenant.

## **9.6.8 Noise Abatement and Control (24 CFR Part 51, Subpart B)**

**A.** HUD standards regarding the acceptability of noise impacts on residential property are found at 24 CFR Part 51 Subpart B. The noise regulation applies to all projects as noted below except those categorically excluded (CENST) under 24 CFR 50.19 (see [Section 9.1.3.C.1](#) and [Section 9.1.3.C.2](#).)

**B.** For new construction and conversions from non-residential to residential located above the noise threshold criteria, projects shall incorporate noise attenuation features as required by HUD environmental criteria and standards at 24 CFR 51.104. The interior standard is 45 dB (decibels).

**C.** The "Normally Unacceptable" noise zone includes community noise levels from above 65 dB to 75 dB. Approvals in this noise zone require a minimum of 5 dB additional sound attenuation for buildings having noise-sensitive uses if the day-night average sound level is greater than 65 dB but does not exceed 70 dB, or a minimum of 10 decibels of additional sound attenuation if the day-night average sound level is greater than 70 dB but does not exceed 75 dB. Where the sound attenuation is determined using the online Sound Transmission Classification Assessment Tool (STRraCAT), the required attenuation value provided by the tool may be used (<https://www.hudexchange.info/stracat/>).

**D.** Locations with day-night average noise levels above 75 dB have "Unacceptable" noise exposure. Noise assessments must be projected out 10 years.

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<sup>53</sup> See 24 CFR 55.28.

**E.** For rehabilitation projects that require an Environmental Assessment level of review, HUD will actively seek noise mitigation for projects in the “Normally Unacceptable” or “Unacceptable” noise zones. For projects in the “Unacceptable” zone where HUD policy strongly encourages conversion of noise exposed sites to land uses compatible with the high noise levels, HUD will also critically evaluate the application to determine the project’s compatibility with HUD’s interior noise goal of a day-night average of 45 decibels, and to determine the noise level’s effect on marketability.

**F.** For 223(f) and other refinance or rehabilitation projects at the CEST level of review, HUD will encourage appropriate noise attenuation measures for inclusion in the project. Noise exposure by itself will not result in the rejection of existing residential properties for mortgage insurance but is a marketability factor that HUD will consider in determining if the amount of any insurance or other assistance that may be given. Projects at the CEST level of review are not required to complete a noise calculation but must complete preliminary noise screening of distance from noise sources. The preliminary screening must include distance from the project to each noise source.

**G.** Lenders should contact regional Multifamily staff prior to attempting to design mitigation measures.

**H.** New construction or conversions of existing structures to residential housing in the Unacceptable Noise Zone, where outdoor noise levels are above 75 dB, are generally prohibited. If the Regional Office wants to consider such a proposal, it must:

1. Require an Environmental Impact Statement (EIS). If the Regional Office believes that the proposal is acceptable based on the EIS, it must then obtain project approval, including approval of noise mitigation measures, from the appropriate Assistant Secretary as required in HUD’s noise regulations.
2. If the Regional Office determines that noise is the only environmental issue and no outdoor noise sensitive activity that is not mitigated to below HUD’s 65 dB standard will take place on the site, it may request a waiver of the EIS Requirement by the appropriate Assistant Secretary as required in HUD’s noise regulations and must also obtain project approval, including approval of noise mitigation measures, from that Assistant Secretary.<sup>54</sup>

**I.** Balconies<sup>55</sup>:

1. There are generally no restrictions on balconies for existing residential projects, although HUD encourages noise attenuation. For new construction projects or existing projects that convert from non-residential to residential in Unacceptable and Normally Unacceptable noise areas, bedrooms and studio apartments may have direct access to balconies if:
  - a. The interior noise levels have been mitigated to not exceed a day-night average noise level of 45 dB as documented by the Sound Transmission Classification of the dwelling unit’s exterior walls factoring in fenestration.
  - b. Appropriate ventilation is provided by a mechanical ventilation system and not by opening doors or windows, and

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<sup>54</sup> Information about HUD’s EIS waiver process for sites in the Unacceptable Noise Zone can be found at <https://www.hudexchange.info/programs/environmental-review/housing/#faq>.

<sup>55</sup> Notice CPD-16-19: Balcony Policy Under 24 CFR 51, Subpart B as it Applies to Parts 50 and 58 Regarding Building Facades Exposed to Noise.

- c. An Operations and Maintenance plan is in place that requires periodically inspecting seals and repairing or replacing building components when their performance diminishes.
2. Bedrooms and studio apartments may not have direct access to balconies if there is no mechanical ventilation and there is no Operations and Maintenance plan requiring periodic inspection and repair or replacement of all window and door seals as needed.
3. HUD Approving Officials may require additional mitigation measures or deny approval of balconies based on noise or other concerns. In addition, Environmental Assessment or Environmental Impact Statement levels of environmental review must consider potential health effects stemming from issues related to noise sources, such as air quality (24 CFR 50.4(h)) and toxic hazard exposure near transportation (24 CFR 50.3(i)).

**J.** The HUD noise regulation allows flexibility for non-acoustic benefits in limited situations. The project must meet all of the conditions at 24 CFR 51.105 and receive the approval of a Regional or Field Environmental Officer.

**K.** Regarding Railroad Vibration, Noise, and Location:

1. Buildings closer than 100 feet to a railroad track are often subject to excessive vibration transmitted through the ground. For existing properties, the structure should be examined for damage caused by vibrations. A railroad vibration study and vibration mitigating measures may be required. These studies should be performed by a registered professional engineer with experience in structural vibration analysis.
2. Whenever rail lines are less than 100 feet from a facility, HUD approval should be obtained prior to the application submission. In addition to concerns about vibration, HUD will want documentation that the project complies with applicable LSTF safety standards.
3. Railyards (areas of multiple track sections used for assembling and disassembling trains) have been determined to create loud, impulsive sounds. For projects within 3,000 ft of actively operating rail yards, HUD may require up to 8 dB additional noise attenuation to be incorporated in the project. In determining whether this is necessary, HUD will consider the impact of existing or proposed barriers, topography, and nature of the rail yard operations.

## **9.6.9 Explosive and Flammable Hazards (24 CFR Part 51 Subpart C)**

**A.** HUD will not insure a property where structures and residents will be exposed to unacceptable risks posed by proximity to explosive or flammable hazards.

**B.** For new construction projects, rehabilitation projects where residential density is increased, projects where there is a conversion from non-residential to residential use, or projects where a vacant building is made habitable:

1. Aboveground storage facilities with explosive or flammable material contents must comply with the Acceptable Separation Distance (ASD) standards at 24 CFR Part 51 Subpart C as amended by the final rule permitting the application of NFPA Code 58 (2017) in lieu of HUD ASD standards for residential propane tanks (85 FR\_4225\_(January 24, 2020)). Analysis of sites within one mile of these types of facilities must be submitted by the Lender and reviewed by HUD as part of the HEROS review, as per

the guidance on the HUD Exchange at <https://www.hudexchange.info/environmental-review/explosive-and-flammable-facilities/>.

2. If propane tanks meet the new exemption, submit documentation that the specific tanks meet the NFPA Code 58 (2017) requirements, including separation distance.
3. If a plan is agreed upon with HUD before the issuance of a Firm Commitment, these hazards may be mitigated during the construction period, if the work can be done on the subject property. In cases where off-site mitigation is required, the remediation must be completed prior to initial closing.

C. A useful tool for calculating ASDs can be found on the HUD Exchange at <https://www.hudexchange.info/programs/environmental-review/asd-calculator/>.

D. If a barrier will be constructed as hazard mitigation, HUD's Barrier Design Guidance (Guidebook 6600.G) for flammable/explosive hazards mitigation is available on the HUD Exchange at <https://www.hudexchange.info/resources/documents/Barrier-Design-Guidance-HUD-Projects-Near-Hazardous-Facilities.pdf>.

E. Only a licensed professional engineer (civil or structural) should design and oversee the construction of mitigation barriers.

F. For existing residential projects to be refinanced or purchased that do not involve an increase in residential density, HUD will substantively evaluate the risks associated with proximity to hazardous facilities. HUD reviews of such projects will consider the potential danger presented by existing and proposed liquid fuel and gas storage tanks, and may require mitigation.

1. Whenever stationary aboveground storage tanks (ASTs) containing liquid fuel (other than LPG/propane tanks that do not exceed 1,000 gallons in water capacity and which submit documentation that they are in compliance with NFPA Code 58 (2017), or common liquid industrial fuels with a capacity of 100 gallons or less), or tanks of any size containing pressurized gas exist on site or on an adjacent site that could impact the HUD project, a conformance letter from the governing Fire Department/District must be requested. The letter must specifically address the safety of the AST(s). Correspondence with the fire department must be included in the application submission.
2. In cases where safety letters cannot be obtained for existing ASTs or where new ASTs are being added, an acceptable separation distance (ASD) calculation must be included in the application, and HUD may require mitigation.

## 9.6.10 Air Quality (24 CFR 50.4(h))

A. The Clean Air Act was implemented to remedy the damaging effects that poor air quality can have on human health and the environment. The Clean Air Act is administered by the U.S. Environmental Protection Agency (EPA), which sets National Ambient Air Quality Standards (NAAQS). These are limits on certain "criteria" air pollutants, including limits on how much of these pollutants can be in the air anywhere in the United States. Geographic areas that are in compliance with standards are called "attainment areas," while areas that do not meet standards are called "nonattainment" areas. The location of areas designated by U.S. EPA as polluted under the Clean Air Act is documented in the U.S. EPA's Nonattainment Areas for Criteria Pollutants (Green Book) (<https://www.epa.gov/green-book>).

**B.** In addition to the EPA, the Clean Air Act is administered by state, tribal, and local agencies, which are responsible for developing local solutions to air quality problems. States must develop State Implementation Plans (SIPs) to regulate their state air quality. In order to show compliance with the NAAQS, projects funded by HUD must demonstrate that they conform to the appropriate SIP.

**C.** For new construction projects located in a nonattainment or maintenance area, HUD must determine if the estimated emission levels exceed de minimis emissions levels for the nonattainment or maintenance level pollutants. If the estimated emissions levels exceed de minimis levels, HUD must determine whether the project can be brought into compliance with the State Implementation Plan through modification or mitigation.

**D.** The HEROS website includes an FAQ on completing the Clean Air Act Screen in HEROS. (<https://www.hudexchange.info/faqs/2794/im-not-sure-what-im-supposed-to-enter-in-the-air-quality-screen>).

**E.** Additional information about complying with the Clean Air Act can be found at <https://www.hudexchange.info/programs/environmental-review/air-quality/>.

### **9.6.11 Airport Hazards (24 CFR Part 51 Subpart D)**

**A.** HUD standards regarding the acceptability of property located in Runway Clear Zones (also known as Runway Protection Zones), Clear Zones, and Accident Potential Zones are found at 24 CFR Part 51 Subpart D. An Accident Potential Zone (Zones I and II) is an area at military airfields that is beyond the Clear Zone.

**B.** Construction or major rehabilitation of any property located within a Clear Zone is prohibited. Acquisition and refinance of projects within Clear Zones are allowed with notification requirements as per [Section 9.6.11.C](#). HUD must determine that projects located in Accident Potential Zones are generally consistent with Department of Defense land use compatibility guidelines for Accident Potential Zones.

**C.** HUD, as part of its environmental review for an existing property, shall advise the Lender who will advise the mortgagor purchasing the property that the property is in a Runway Clear Zone, and what the implications of such a location are. The mortgagor purchasing the property must sign a statement acknowledging receipt of this information. HUD may reject applications for existing properties within a Runway Clear Zone or Clear Zone because of the possibility that the property may be acquired at a later date by the airport operator.

### **9.6.12 Coastal Barrier Resources (24 CFR 50.4(c)(1))**

**A.** Under the Coastal Barriers Resources Act, HUD is prohibited from insuring a project located within designated coastal barriers of the Atlantic Ocean, Gulf of Mexico, or the Great Lakes, known as Coastal Barrier Resource System (CBRS) units and shown on associated Fish and Wildlife Service maps (see the Official CBRS Maps webpage at <https://www.fws.gov/cbra/maps/index.html> for instructions on obtaining an official CBRS map and unit number). A project located within a CBRS unit or that includes a facility (such as a water main or a utility conduit) leading to a CBRS unit will not be eligible for application processing.

**B.** Additional information can be found at: <https://www.hudexchange.info/programs/environmental-review/coastal-barrier-resources>.

### 9.6.13 Coastal Zone Management (24 CFR 50.4(c)(2))

A. Projects located within a state’s coastal management zone must be determined to be consistent with the approved state Coastal Zone Management program. In many states, HUD will require a letter from the State Coastal Zone Management Agency confirming consistency with the approved program. Mortgagees should be aware of the extent of coastal management zones in coastal states and contact the field office early when examining a proposal in a coastal zone. Additional information can be found at: <https://www.hudexchange.info/programs/environmental-review/coastal-zone-management>, including state specific information at <https://coast.noaa.gov/czm/consistency/states/>.

### 9.6.14 Endangered Species (24 CFR 50.4(e))

A. Under Section 7 of the Endangered Species Act (ESA), HUD must consult with the U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service (the Services) whenever a proposal may affect an endangered or threatened species or its habitat. The ESA is jointly administered by the Secretaries of the Interior and Commerce. The U.S. Fish and Wildlife Service (FWS) is responsible for terrestrial and freshwater species and the National Marine Fisheries Service (NMFS) is responsible for marine species and anadromous fish, such as salmon. Some projects, especially those in the Pacific Northwest, may need to consult with both agencies.

B. A required consultation should be assumed for any site within the critical habitat (as defined in 50 CFR Part 17 and Part 226) of a listed species; consultation may also be required even if no critical habitat is present. As of 2015, critical habitat has been designated for a little less than 50% of threatened and endangered species. The lack of critical habitat is not an indicator of the presence or lack of presence of a listed species.

C. In areas where impacts on endangered or threatened species are a concern, all appropriate information regarding possible impacts of the project should be provided to HUD as early as possible. The Services may have a regional letter, memorandum or other document that allows HUD to make a No Effect determination for projects that meet specific criteria.

D. The HEROS Environmental Report should include review of published information, including but not limited to information on the Services’ websites (for example, Information for Planning and Consultation (iPaC, at <https://ecos.fws.gov/ipac/>)) regarding the possible presence and associated critical habitat of any listed species in the vicinity of the proposal, and provide HUD with the results of the research. Furthermore, if a proposal is in an area of potential impacts on a listed species or its critical habitat, any possible associated impacts caused by the proposal should be discussed in the HEROS Environmental Report. Lenders and third-party consultants can request species lists, prepare Biological Assessments for HUD’s review, and provide the information needed for consultation, but HUD must initiate formal and informal consultation with the Services.

E. If the project activity could affect an endangered/threatened species or its habitat, HUD must make a determination of effect. HUD must document a “no effect” determination with scientific information or a regional letter or memorandum but does not need to consult with the Services on projects it determines will have no effect. HUD must seek concurrence of the Services on any “may affect, not likely to adversely affect” determination and associated mitigation measures. HUD must initiate formal consultation under Section 7 of the Endangered Species Act for a “may affect, likely to adversely affect” determination. For



all effect determinations, the Lender may be required to obtain special studies such as habitat assessments, surveys or biological assessments at the Borrower's cost.

F. Consultation under Section 7 of the Endangered Species Act may result in more stringent conservation measures than would otherwise be imposed.

### **9.6.15 Farmlands Protection (24 CFR 50.4(j))**

A. The purpose of the Farmland Protection Policy Act is to minimize the effect of Federal programs on the unnecessary and irreversible conversion of important farmland to nonagricultural uses. Important Farmland includes prime farmland, unique farmland, and/or land of statewide or local importance. Farmland subject to Farmland Protection Policy Act requirements does not have to be currently used for cropland.

B. For new construction, HUD must consider whether the project will have an impact on important farmland. There are a few exemptions to the Farmland Protection Policy Act, including one for land already in or committed to urban development. USDA/NRCS regulations contained at 7 CFR 658.2 define "committed to urban development" as land with a density of 30 structures per 40-acre area; lands identified as "urbanized area" (UA) on the Census Bureau Map or as urban area mapped with a "tint overprint" on USGS topographical maps; or as "urban-built-up" on the USDA Important Farmland Maps. Note that land "zoned" for development, i.e. non-agricultural use, does not exempt a project from compliance with the FPPA.

C. Additional information about farmland, including consulting with the USDA Natural Resources Conservation Service, can be found at <https://www.hudexchange.info/programs/environmental-review/farmlands-protection/>.

### **9.6.16 Sole Source Aquifers (24 CFR 50.4(d))**

A. Aquifers are drinking water systems that may be impacted by development. The Safe Drinking Water Act of 1974 requires protection of drinking water systems that are the sole or principal drinking water source for an area and which, if contaminated, would create a significant hazard to public health.

B. New construction and Environmental Assessment level rehabilitation projects located within the boundaries of a sole source aquifer or the recharge area of a designated sole source aquifer must be reviewed by EPA for the potential to contaminate the sole source aquifer.

C. Additional information about sole source aquifers, including a national map of sole source aquifer locations, can be found at <https://www.hudexchange.info/programs/environmental-review/sole-source-aquifers>.

D. Some HUD regions have established MOUs or other agreements for HUD projects which can be found at <https://www.hudexchange.info/resource/5778/regional-sole-source-aquifer-mous-between-hud-and-epa/>.



### 9.6.17 Wild and Scenic Rivers (24 CFR 50.4(f))

A. The Wild and Scenic Rivers Act provides federal protection for certain free-flowing, wild, scenic, and recreational rivers designated as components or potential components of the National Wild and Scenic Rivers System (NWSRS)<sup>56</sup>.

B. For new construction and rehabilitation, HUD must consider whether projects in proximity to a wild and scenic river could impact the designated river or be inconsistent with the management and land use plan for the designated river area.

C. Additional information about the Wild and Scenic Rivers Act and compliance requirements can be found at <https://www.hudexchange.info/programs/environmental-review/wild-and-scenic-rivers/>.

### 9.6.18 Environmental Justice (24 CFR 50.4(I))

A. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, requires that federal actions not result in disproportionately high and adverse health of environmental effects on minority or low-income populations.

B. When a project impacts a minority or low-income population and there are unmitigated adverse environmental impacts such as a location in a floodplain or a noise impacted site, HUD will perform the necessary analysis before determining the acceptability of the project. A project that will receive a Low-Income Housing Tax Credit or a Section 8 HAP contract and has unmitigated adverse environmental impacts is an example of when environmental justice concerns should be evaluated.

C. HUD will request information to complete this analysis as necessary and will advise the Lender of any Environmental Justice concerns including recommendations on their resolution. In most cases the preferred resolution would be to modify the project to eliminate or at least reduce the adverse effects, when feasible.

D. Additional information on complying with Environmental Justice, including notification and involvement of the impacted community when there are unmitigated adverse environmental impacts, can be found at <https://www.hudexchange.info/programs/environmental-review/environmental-justice/>.

### 9.6.19 Additional Nuisances and Hazards

A. These requirements are applicable to all transaction types except those categorically excluded from all environmental review (CENST), as discussed at [Section 9.1.3.C.1](#) and [Section 9.1.3.C.2](#), or as noted below.

B. Pressurized pipelines transferring flammable or combustible liquids and gases are a recognized potential hazard to properties and their occupants.<sup>57</sup> Because of the potential hazard, HUD has determined that:

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<sup>56</sup> The Act requires projects to consider Wild and Scenic Rivers, Study Rivers and the Nationwide Rivers Inventory. Follow link in 9.6.Q.3 for details.

<sup>57</sup> Pressurized pipelines transferring flammable and combustible liquids and gases does not include vertical or horizontal drilling used in Conventional or Hydraulic Fracturing for mineral exploration or recovery.

1. No structures, ancillary facilities or structures, common areas, parking areas or like related property improvements or features may be constructed or located within 10 feet of or on the easement of a pressurized pipeline transferring flammable or combustible liquids and gases that exceed 200 psi operating pressure (pressurized pipelines). This does not apply to distribution lines supplying only the facility itself.
  2. All new construction, rehabilitation projects where residential density is increased, projects where there is a conversion from non-residential to residential use, or projects where a vacant building is made habitable must consider the potential hazard of pressurized pipelines. The analysis must identify all buried and aboveground pressurized pipelines within a one (1) mile radius of the property that exceed 200 psi operating pressure. Suggested resources include the National Pipeline Mapping System (NPMS), State and Local Agencies, pipeline markings identified on site, the 811 system, and property surveys. Once the pipelines are identified and relevant pipeline diameter and operating pressure has been obtained, refer to the table found in the Appendix A to determine the Baseline Pipeline Impact Radius.
  3. Once the steps above are completed, one of the two outcomes below will need to be completed:
    - a. If any of the properties' buildings, ancillary facilities or structures, common areas, parking areas or like related property improvements or features are located within the Baseline Pipeline Impact Radius, the Lender must obtain an engineering report to assess the Thermal Radiation and Blast Overpressure hazard<sup>58</sup> to the HUD assisted property or occupants, and determine any mitigation measures as required.
    - b. If none of the properties' buildings, ancillary facilities or structures, common areas, parking areas or like related property improvements or features are located within the Baseline Pipeline Impact Radius, these facts should be noted in the environmental analysis and no further assessment will be needed.
  4. If the pipeline poses a safety hazard, HUD requires mitigation to address the issues and may reject the project if no mitigation is possible. Mitigation can include modifying the building design using heat retardant and high tensile strength materials; rearranging the site plan and exterior building shapes; or constructing a barrier designed by a licensed professional structural or civil engineer.
- C.** HUD recognizes that certain free-standing structures may pose a hazard to properties and their occupants through structural failure or other causes. Structures considered under this part include high voltage utility post and towers; free-standing radio/TV/cell towers; free-standing water towers; wind turbines; and other like free-standing structures. Exclusions from this definition include items affixed to the structure (such as a radio/TV antenna, satellite dishes, cellphone towers, and similar features), unless specifically identified as a hazard during the review. Additional exclusions include local service electric lines and poles. Because of the potential hazards of such structures, HUD has determined that:
1. No buildings, ancillary facilities, structures or common areas may be constructed or located within the easement of these fall hazards.

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<sup>58</sup> Thermal heat flux exposure threshold of 450 BTU/hr/ft<sup>2</sup> for people in open spaces where people congregate, such as parks and playgrounds; thermal heat flux exposure threshold of 10,000 BTU/hr/ft<sup>2</sup> for buildings; and blast overpressure threshold of 0.5 psi as the maximum allowable pressure that can be measured at a distance from an explosive hazard applicable to buildings, building occupants and outdoor unprotected facilities.

2. All buildings, ancillary facilities, structures or common areas, must consider the potential fall hazards from such free-standing structures. The first step is to determine the maximum fall distance of the free-standing structure.
  - a. If the maximum fall distance does not include any buildings, ancillary facilities, structures, or common areas, document this in the environmental analysis in HEROS.
  - b. If any of the property's buildings, ancillary facilities, structures or common areas are located within the maximum fall distance around the free-standing structure, the Lender must submit an engineering report to evaluate the engineered fall distance of the structure, which may be less than the maximum fall distance. The engineered fall distance must be calculated by a registered professional engineer.
- D.** For new construction projects, projects that convert a building to residential use, or projects that increase residential density, all structures must be outside of the engineered fall distance. For monopoles with no seams, welds, connections or weak points where a sustained load could cause failure to the pole length, HUD will accept certifications by a licensed structural engineer that the monopole and base are in good condition and comply with all structural requirements in lieu of a specified fall distance.
- E.** For existing residential facilities that do not increase residential density that are within the engineered fall distance, the Lender may submit a report from a registered professional engineer that includes the condition of the tower, the tower specifications, the date of the last tower maintenance, pictures of the tower including the foundation, an assessment of the hazard to the HUD project, and a discussion of any mitigation measures that could minimize this risk. Housing staff will determine whether to grant an exception to the prohibition on being within the engineered fall distance.
- F.** HUD has requirements for oil or gas wells, sour gas wells and slush pits.
  1. For an operating or planned drilling site, no residential structures may be within 300 feet of the boundary of the drilling site.
  2. For an operating well, no residential structures may be within 75 feet, unless the following mitigating measures are taken:
    - a. Controls on nuisances;
    - b. Controls on noise caused by pumping; and
    - c. Spill controls to reduce risk of contamination.
  3. For abandoned wells:
    - a. Confirmation by the State government that the well is safely and permanently abandoned. No residential structures may be located within 10 feet.
    - b. If there is no confirmation letter, no residential structures may be located within 300 feet of an abandoned well.
  4. For sour gas (hydrogen sulfide bi-product) wells, separation distance must be determined by a Petroleum Engineer, with concurrence by State government.
  5. For slush pits (used for drilling mud mixes for well lubrication):

- a. If on-site, hazards analysis is required to be performed pursuant to [Section 9.4](#). Mitigation must include, but not necessarily be limited to, removal of all drilling mud from the site and backfilling with clean compacted material.
  - b. If offsite, hazards analysis must be performed pursuant to [Section 9.4](#).
6. Hydraulic fracturing (fracking) activities within or adjacent to the project site:
- a. Fracking well pads. No residential structure may be within 300 feet of the boundary of an existing or planned fracking well pad.
  - b. If fracking well pads are greater than 300 feet but within 1000 feet of a proposed MF project, HUD requires a hazard analysis from a qualified party such as a geologist or a geotechnical engineer evidencing that lateral fracking would not negatively affect soil stability, cause petroleum releases, or create other risks to the HUD property and/or residents. etc. The analysis should include information about extraction wells and other above ground fracking operations within 1000 feet of the project site and an assessment of risks from these operations. The report should include information regarding the status of each horizontal well and future plans for new drilling at or adjacent to the site.
  - c. MAP requirements related to above ground storage tanks ([Section 9.6.9](#)) and pressurized pipelines ([Section 9.6.19.B](#)) apply to the above-ground fracturing operations.
  - d. If issues are identified, HUD requires mitigation to address the issues and may reject the project if no mitigation is possible.
- G.** If any part of a site is to be developed on filled ground, HUD may require that all grading be properly controlled to prevent differential earth movement, sliding, erosion, and/or other occurrences which might damage dwellings, streets or other improvements. Excessive slopes, soil compatibility, and potential for erosion are important site planning factors that impact the cost of development and the ultimate success of the project.
- H.** HUD may require mitigation of a variety of additional nuisances and hazards on the property which would affect the health and safety of residents and the security of the collateral.
- I.** Regional Centers or Satellite Offices may adopt additional requirements to address unique local concerns, but, if any local requirement is mandated, the Regional Office must inform the Deputy Assistant Secretary for Multifamily Housing and the HUD Headquarters Housing Environmental Clearance Officer of the requirement and its rationale.

## 9.6.20 Environmental Assessments (24 CFR 50 Subpart E)

**A.** An Environmental Assessment (EA) level review requires compliance with NEPA in addition to the laws and authorities listed at [Section 9.3.G.1](#) and the additional Housing Specific requirements at [Section 9.6.19](#). When an EA level of review is required (See [Section 9.1.3.C.5](#)), HUD will require and analyze information to determine if the project results in any significant impact and if an environmental impact statement is needed.

**B.** The following are EA requirements that must be included in the HEROS submission<sup>59</sup>:

1. **Purpose and Need:** HUD's EA review requires a project justification that outlines the objectives of the environmental review. The purpose and need statement provides a framework for environmental decision-making.
2. **Existing Conditions and Trends:** HUD's EA review must determine existing physical conditions of the project area and also describe the character, features and resources of the project area and its surrounding. This section should identify the trends that are likely to continue in the absence of the project.
3. **Effects Analysis:** HUD's EA review must consider any changes to the human environment that are reasonably foreseeable and have a reasonably close causal relationship to the HUD project. Consistent with 40 CFR 1508.1(g), HUD's EAs must discuss both effects that occur at the same time and place as the proposed project and any effects that are farther removed in time or distance from the project area (e.g. potential changes to the land use and development patterns of the surrounding community.) This analysis must include the full aggregated project site.
4. **Alternatives:** Projects must always consider the No Action alternative. HUD staff are considering an application for FHA at a particular site and therefore are limited to considering three alternatives: the action as proposed, modifications within the site controlled by the applicant, or no action, i.e., rejection of the application.
5. **Environmental Assessment Factors:** The EA must analyze the project's impacts on land development, socioeconomic factors, community facilities and services, and natural features.<sup>60</sup> The analysis will vary from project to project. For example, a project designed to house families will focus on access to schools, parks and recreation while a project designed to house seniors would instead focus on healthcare and social services. Some EA factors are listed below. For a full list with suggested resources, see footnote 41.
  - a. Conformance with comprehensive plans, zoning compatibility, site safety, energy consumption, and urban impact.
  - b. Availability of services like educational facilities, commercial facilities, health care and social services.
  - c. Availability of supporting infrastructure such as solid waste, wastewater, storm water, and access to municipal water supply, public safety (Police, Fire, and Emergency Medical Services), open space and recreation, cultural facilities, and transportation.

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<sup>59</sup> Additional details and examples of the EA requirements provided at <https://www.hudexchange.info/programs/environmental-review/housing/#faq>. The HEROS Partner EA form also gives a good overview of EA requirements, which can be found at <https://files.hudexchange.info/resources/documents/Environmental-Assessment-Factors-and-Analysis-Partner-Worksheet.docx>.

<sup>60</sup> Guidance on considering EA factors can be found at <https://files.hudexchange.info/resources/documents/Environmental-Assessment-Factors-Guidance.pdf>.

## 9.6.21 Operation and Maintenance Plans

A. For projects that contain lead based paint (LBP) or asbestos, or have ongoing risks such as radon or contamination that may require permanent installation of ventilation, detection or alarm devices, the Borrower or Project Architect is responsible for engaging the services of qualified abatement contractor(s) as required by the relevant standard to prepare a scope of work for the abatement or mitigation. Where the scope of abatement work consists of permanent enclosure or encapsulation or ongoing monitoring, but not removal, a qualified consultant or abatement contractor(s) must also prepare, separate from the scope of abatement work, an Operations and Maintenance (O&M) Plan. The O&M Plan must describe ongoing maintenance procedures to be followed for as long as the hazard remains in place. All abatement work and ongoing maintenance activities for radon, LBP, asbestos, and/or any other hazards shall conform to the requirements described in this chapter. A condition shall be attached to the Firm Commitment requiring that the Borrower operate and maintain the property consistent with the referenced O&M plan(s) for the duration of the insured mortgage.

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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. 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.

**B. Form 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.

**C. Form 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.

**D. 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.

**E. 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.

**F. 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.

**G. Marketing, Leasing, and (if applicable) Relocation Plan:**

1. 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.
2. 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.
3. 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.

**H. 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.

**I. 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

**A.** 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:

1. Past and Current Management

a. The Lender must review the proposed agent's past experience and current performance with respect to the following indicators:

- 1) Experience with projects similar in size and configuration to the subject;
- 2) Billing practices;
- 3) Controlling operating expenses;
- 4) Vacancy rates;
- 5) Resident turnover;
- 6) Rent collection and accounts receivable;
- 7) Physical security;
- 8) Physical condition and maintenance;
- 9) Financial reporting;
- 10) Resident relations;
- 11) Resident income certification, record keeping and reporting if an affordable or subsidized project;
- 12) Appropriate applicant outreach and affirmative marketing in accordance with a HUD-approved AFHMP; and
- 13) Tenant selection in accordance with Fair Housing principles.

b. 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.

2. Ability to Manage Troubled Projects

a. 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.

3. Management Qualifications

a. 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.
  - b. 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.
4. Past Performance with Identity-of-Interest Contractors
  - a. 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.
5. The Lender can utilize the following additional sources to determine the capability and expertise of the proposed Management Agent:
  - a. 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.
  - b. 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.
  - c. Monthly and Annual Financial Statements of the Project including the Independent Public Auditor (IPA) Internal Controls Questionnaire.
  - d. Additional documentation that the Lender may review includes:
    - 1) HUD/mortgagee on-site review reports;
    - 2) Correspondence;
    - 3) Resident complaint files;
    - 4) Previous management reviews;
    - 5) Previous REAC inspections/scores, and
    - 6) 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

- A. Asset Management Firm Commitment reviews will be assigned by the Chief, Account Executive Branch.
- B. The Account Executive will review the various management documents and application exhibits and advise the HUD Underwriter of their conclusions and recommendations.
- C. 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.
- D. 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. The Active Partners Performance System (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

- A. The Lender must determine that the agent has adequate bonding to provide a basic level of protection for the multifamily project assets.
- B. 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.
- C. The fidelity bond or coverage must name the mortgagee and HUD as additional loss payees.

**D.** 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.

**E.** 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

### 10.7.1 Applicability

**A.** 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.

### 10.7.2 Required Contents

**A.** 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:

- 1) Immediately without penalty if an event of default occurs under the Security Instrument, Note or Regulatory Agreement; or
- 2) Upon 30 days written notice, for failure to comply with the provisions of the Management Certification or for other good cause; or
- 3) 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 (form 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.

### **10.7.3 Length/term of the Agreement**

**A.** 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.

### **10.7.4 Management Fee**

**A.** 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.

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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

A. 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.

B. 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 Agents and Escrow Administration

A. 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 [Chapter 12, Section 12.15.4.C](#).



**B.** 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.

## Chapter 11 Lender Underwriting, HUD Review and Closing

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### 11.1 General

**A.** The MAP program delegates due diligence and underwriting responsibility to MAP approved Lenders and their Underwriters. The MAP approved Underwriter must be completely familiar with the contents of the MAP Guide, have demonstrated experience and mastery of commercial lending practices and real estate finance, and have a working knowledge of HUD regulatory and statutory authority.

**B.** HUD retains commitment authority and responsibility for final determination of acceptable risk to the insurance fund, as well as certain technical and compliance responsibilities. However, this in no way relieves the MAP Lender from responsibility for their underwriting and programmatic compliance.

**C.** The basic function of a MAP approved Underwriter is to objectively evaluate the following factors in making a credit approval recommendation:

1. Character, creditworthiness, competence, and capacity of the Borrower and development team members.
2. Cash flow sufficient to service the proposed loan.
3. Collateral quality, including valuation, physical condition, environmental factors and location.
4. Capital structure, including all proposed indebtedness and equity.
5. Cash available to close, given the total mortgageable and non-mortgageable costs of the transaction; and
6. Compliance with HUD program and processing requirements.

**D.** The Underwriter must identify all material risks and weaknesses, with appropriate mitigants including quantitative analysis and stress testing to identify the impact of “worst case” scenarios. If a transaction recommended by a Lender is properly underwritten and processed, and is complete and technically compliant, HUD’s role is to review the application and the Lender can assume a timely determination.

**E.** If the application fails to identify material underwriting risks and mitigants, or has material processing or compliance deficiencies, HUD has the option to reject the application, re-underwrite it and approve with conditions, or return the application to the Lender for modifications to address deficiencies.

**F.** The responsibilities of MAP Lender and HUD Underwriters are addressed in [Chapter 4](#) (Processing) and in this chapter.

### 11.2 Lender Underwriting

**A.** The Lender is responsible for assigning a MAP approved Underwriter for the Pre-application or Firm Commitment submission. The MAP approved Underwriter is responsible for the selection and

performance of the third-party professionals (both the firms and individuals). The Construction Loan Administrator must be approved prior to the Firm Commitment stage if the closing and servicing Lender has been identified, or as soon as identified.

**B.** The MAP Lender is responsible for underwriting the loan. This responsibility necessarily requires the Lender's oversight, acceptance and recommendation to HUD for approval of the conclusions and recommendations of the third-party reports, except as modified by the Lender, and as explained, and justified in the Lender's underwriting. The Lender's MAP approved Underwriter is responsible for oversight and performance of the following tasks:

1. Due diligence, including selection and management of their third-party consultants;
2. Loan Processing;
3. Mortgage Credit review;
4. Underwriting;
5. Obtaining internal loan approval (from the Lender's loan committee or other process);
6. Submission of the loan application to the appropriate Regional Center or Satellite Office and payment of the application fee;
7. Responding to HUD deficiency letters and requests for information;
8. Coordinating with the Borrower and their counsel, and follow-up to get the loan to closing; and
9. Coordination with construction loan administration, cost certification, and servicing.

**C.** The MAP Underwriter should perform the site visit for new construction properties and for existing properties an on-site lease audit and physical inspection representing a sample of each unit type. Alternatively, an analyst, Underwriter trainee, or different MAP approved Underwriter of the Lender acting under the direction of the MAP Underwriter (i.e., one that does not report to the originator) may perform the site visit and physical inspection of the units. The Underwriter or trainee who conducts the inspection must be identified in the narrative. Typically, the leases that are audited will be the same as the units that are inspected, as follows:

1. For projects 50 units or less, inspect at least 1 of each unit type, to include a representative sample of 10% of the units.
2. For projects between 51 and 250 units, inspect at least 1 of each unit type, to include a representative sample of 10 units plus 5% of the total number of units greater than 50.
3. For projects greater than 250 units, inspect at least 1 of each unit type, to include a representative sample of 15 units, plus 2% of the total number of units greater than 250, for a maximum of 50 units.
4. The terms of the leases must be compared to the rent roll, verifying the unit number, resident name, lease commencement date, expiration date, concessions, if any, and monthly rent. The Underwriter must confirm that this data is consistent with the assumptions used in the underwriting analysis.
5. Any inconsistencies or conflicts between the leases, rent roll and the underwritten revenue assumptions must be fully investigated and explained. The scope and results of the lease audit review must be discussed in the Underwriter's Narrative. The Underwriter is required to retain a copy of the individual leases reviewed in the Underwriter's working papers, which may be subject to audit but

should not be included in the Firm Commitment application submission. Some lease files, especially for long-term residents, may be extensive. Only the most recent leases from the audit review should be retained. However, if irregularities exist in the leasing history (such as missing lease pages, unexplained modifications to lease terms or parties to the lease, for example), the entire leasing history for the applicable unit should be retained by the Lender, and any irregularities must be explained in the Lender's Underwriters Narrative that is submitted with the loan application.

### 11.2.1 Pre-application

**A.** The Lender's Underwriter must determine that the submission meets the requirements of this Guide and represents an acceptable risk to the insurance fund. The pre-application submission to the field office must include a Standardized Underwriter Narrative together with any additional information and all narrative attachments, which provide:

1. A summary of the relevant data and quantitative analysis.
2. Strengths, weaknesses, risks and mitigants.
3. A summary of programmatic eligibility and technical factors considered.
4. A description of the proposed project and the surrounding market conditions, including demand, extent of competition, vacancy rates, market absorption, details about features of the proposal (e.g., zoning, unusual site conditions, environmental) which may present potential problems, and any other information that would be useful to analyze the proposal.
5. A description of the individual or entity in control of the Borrower (plus General Contractor and Management Agent, if known), their qualifications, the identification of principals and a preliminary mortgage credit and creditworthiness review.
6. Explanations for any differences between the underwriting conclusions and the third-party due diligence.
7. List of proposed in-house and third-party reviewers of the application and their qualifications.

**B.** Further details on the required content of the Standardized Underwriter's Narrative and the materials to be included in the pre-application can be found in this Guide and appendices.

### 11.2.2 Firm Commitment Application

**A.** The Lender's MAP Underwriter must review the in-house and third-party reports to ensure the processing of the loan is in accordance with the requirements of HUD program and processing requirements and determine that the loan recommendation represents an acceptable risk and is financially sound.

**B.** The MAP Underwriter must document any changes made to the technical reports and must submit an updated, signed Standardized Underwriter's Narrative describing all relevant aspects of the mortgage transaction including a full discussion of the following:

1. Characteristics of the proposed mortgage loan that make it financially sound or an acceptable risk, with the reasons the Lender recommends the loan.
2. All significant risk factors and risk mitigants.

3. Changes in the project from the pre-application stage including changes in sponsorship, proposed development team and Lender reviewers.
  4. Evaluation of the mortgage credit and financial capacity of the principals of the Borrower and its ability to repay the loan.
  5. Evaluation of the financial and technical capacity of the General Contractor to build/rehabilitate the project.
  6. Property financial analysis including both actual operating history and projected trends.
  7. Property physical description.
  8. History of Borrower's involvement including the Borrower's equity investment in the property, and if applicable, any previous engagements to obtain FHA financing for the property.
  9. Analysis of market, rents, expenses and estimated rent-up and operating deficit.
  10. Adequacy of the proposed Reserve for Replacement.
  11. Summary of environmental conditions, including any issues or potential issues and their mitigants.
  12. Documentation of any changes the Underwriter made to the conclusions of the appraisal/technical reports with justification.
  13. Requests for any waivers of HUD program and processing requirements with supporting documentation and justification summary.
  14. Certifications from the individual reviewers (see [Section 11.2.3.B](#)).
  15. Notify HUD of the rate lock and allow sufficient time to process any required amendment to the Firm Commitment prior to endorsement. If the Borrower and the Lender choose to rate lock prior to the submission of draft closing documents to HUD, they do so at their own risk. As always, Lenders and Borrowers assume the risk of having to pay extension fees.
  16. Further details on the required content of the Standardized Underwriter's Narrative and the materials to be included in the Firm Commitment application can be found in this Guide and appendices.
- C.** The MAP Underwriter is responsible for the review and reconciliation of the third-party reports and the results of the mortgage credit review and other due diligence.
- D.** Lender Due Diligence Certification: With each Firm Commitment package, the Lender must submit a letter signed by the MAP approved Underwriter which certifies that:
1. The Lender has reviewed all in-house and third-party forms/reports/reviews.
  2. The preparer of the forms/reports/reviews is qualified as required by this Guide and has all required insurance coverage(s).
  3. The forms/reports/reviews were prepared in the manner required by the Guide and are complete and accurate.
  4. The Lender has identified all staff and third-party contractors who contributed to the underwriting presentation and their role.

5. The proposed loan represents an acceptable risk to the Department and is financially sound, based upon the Lender's review and analysis, and that the application complies with all HUD program and processing requirements.
6. The letter must include the following certification and language:

*I am an authorized agent of the Lender and employed full time by the MAP Lender. I have no side deals, agreements, or other financial considerations in connection with this transaction and will not enter into such arrangement in connection with this transaction.*

### 11.2.3 Third-Party Report Certifications

- A. The following Certification must be included in the Lender's third-party reports:

I understand that my (appraisal, market study or architectural, cost, environmental, or other specialized report) will be used by \_\_\_\_\_ (name of MAP Lender) to document to the U.S. Department of Housing and Urban Development that the MAP Lender's application for FHA multifamily mortgage insurance was prepared and reviewed in accordance with HUD requirements. This report has been made, presented, and delivered for the purpose of influencing an official action of the FHA, and of the Commissioner, and may be relied upon by the Commissioner as a true statement of the facts contained therein. I certify that my review was in compliance with HUD program and processing requirements applicable on the date of my review and that I have no financial interest or family relationship with the officers, directors, shareholders, members or partners of the Lender or affiliated entities, Borrower or affiliated entities, the General Contractor, any subcontractors, the buyer or seller of the proposed property and that I have not engaged in any business that might present a conflict of interest.

- B. Both the MAP Underwriter and third-party certifications must contain the following warning 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. §§ 1708 and 1735f-14, and 1833a; 18 U.S.C. §§1001, 1006, 1010, 1012, and 1014; and 31 U.S.C. §§3729 and 3802.

### 11.2.4 HUD Forms Submission

- A. The Lender must submit a Standardized Underwriting Narrative and form HUD-92013-C, LIHTC Summary Report required only for applications with LIHTC. The form HUD-92264 and form HUD-92264-A are still required to be submitted and signed by the Lender and third parties preparing the documents. The Lender must certify that all parties preparing forms, reports or reviews are qualified as required by the HUD program and processing requirements.

## 11.3 HUD Regional Center or Satellite Office Underwriting Review

### 11.3.1 HUD Underwriter Responsibilities

A. Under the direction of the MF Regional Center Director or other appropriate managers, the HUD Underwriter is responsible for coordinating with technical support and other HUD staff, and the oversight and performance of the following tasks:

1. Conduct of Concept meetings and follow-up communication.
2. Review of proposed MAP Lender and Underwriters and reporting to Asset Management and Counterparty Oversight Division of any concerns.
3. Working with the Workload Distribution Lead for the Regional Center and/or Satellite Office and other appropriate officials in managing workload assignments for new applications.
4. Screening applications for completeness, and fiscal controls for new application submissions.
5. Conducting an “Early Warning System” screening to determine what level of Underwriter and technical specialist review is required given the complexity and risk factors associated with the transaction, and specific risk issues in the transaction.
6. After screening or during the underwriting and technical review, the Regional Center or Satellite Office will advise the Lender of deficiencies in the application, and the Lender will have 5 business days to correct the defects or deficiencies. If the defects/deficiencies cannot be corrected within the 5 business days, or such other time frame as the Regional Center Director determines as appropriate, HUD will reject the application.
7. Acknowledging receipt of the application, management of the queue and estimating processing target dates.
8. Advising the Lender if there are deficiencies or additional information is needed.
9. Performing technical reviews based on Lender underwriting and third-party reports or arranging for technical specialist reviews for higher risk or complex transactions or functions that need specific technical analysis given the features of a particular transaction.
10. Recommending transactions for loan approval (or rejection) decisions.
11. Preparing and issuing Pre-application Invitation letters and Firm Commitments.
12. Assisting the closing coordinator as needed in coordinating the closing process with OGC, the Lender, and Borrower’s team.
13. Coordinating with Asset Management in turnover of files, briefing about conditions of the Firm Commitment, and providing information necessary for Asset Management’s risk rating of the transaction; and
14. Coordinating with Asset Management and/or HUD’s Departmental Enforcement Center (DEC) to ensure that any open DEC referrals with respect to the Borrower or the proposed managing agent are resolved.



## 11.3.2 Pre-Application and Firm Commitment Processing

**A.** The HUD Underwriter will conduct or arrange for the Pre-application or Firm Commitment review, including any required technical specialist reviews. The HUD Underwriter will coordinate the technical reviews, resolve any inconsistencies and make a recommendation as to whether an application should be approved, modified or rejected. The HUD Underwriter must document and justify any recommendation to approve a loan or to require conditions with which one or more technical reviewers does not concur.

**B.** If a HUD technical review does not concur with the conclusions approved by the Regional Center or Satellite Office Director, the technical reviewer may document the non-concurrence separately in the file. The HUD Underwriter should address the non-concurrence and document how the issues were addressed in the loan approval decision.

**C.** Upon completion of the technical reviews and the environmental assessment, the HUD Underwriter must prepare a memorandum to the Regional Center or Satellite Office Director summarizing the individual reviews of the specialists, any proposed waivers of Guide requirements and the Team Leader's overall recommendation.

## 11.3.3 Underwriting Recommendation

**A.** The memorandum recommending loan approval will be in the standard loan committee report or alternative format, and specifically address:

1. The adequacy of the initial operating deficit for any new construction or substantial rehabilitation loans.
2. The adequacy of the working capital escrow and construction contingency for any new construction or substantial rehabilitation loans.
3. The adequacy of the initial deposit and ongoing payments to the reserve for replacement.
4. A description of any non-critical repairs to be performed after closing for Section 223(f) loans.
5. In a tax credit transaction, the schedule of the equity contribution at closing and remainder during various stages of the construction period.
6. The architectural drawings and specifications.
7. Any environmental conditions or other concerns.

**B.** Back-up documentation necessary to prepare and issue the Firm Commitment must be attached or available, including Previous Participation Certification from APPS, the technical staff reviews, the Lender narrative summary, the Lender's technical reviews, form HUD-92264 and form HUD-92264-A signed by the HUD reviewers and Team Leader. Where the HUD Underwriter has rejected a conclusion by a technical reviewer or has modified any technical recommendation by the Lender or HUD reviewer, documentation and justification must be included in the memorandum.

**C.** HUD's review appraisers have the option to modify appraisal conclusions internally or to return the application to the Lender for revision of the appraisal. Should the HUD review appraiser choose to modify the appraised value, rent or expense conclusions internally, as per USPAP Standard 3, this opinion

becomes its own appraisal whether it concurs with the opinion of value in the work under review or differs from the opinion of value.

### **11.3.4 Firm Commitment Issuance, Extensions, Amendments and Reissuance**

**A.** Upon issuance of a Firm Commitment, the HUD Underwriter must provide such support as needed and requested to the closing coordinator to prepare for closing, and provide files, data, and information as needed by the Account Executive to facilitate Asset Management's rating and servicing of the loan.

**B.** Firm Commitments will be issued for a term of 60 calendar days. The Lender has the option of requesting an extension of the Commitment to prepare for the Initial Endorsement submission. The Regional Center Director may grant one or more extensions, for up to a total of 120 calendar days from the original expiration date. An additional 60-day extension for good cause may be approved by the Director of Multifamily Production in HUD Headquarters, after which a reopening fee will be required.

**C.** When the Regional Center Director determines that extenuating circumstances justify a limited extension of an outstanding Firm Commitment, the Lender must certify and Regional Center Director must concur that the documentation provided by the Lender demonstrates that granting the extension will not likely change the underwriting data and assumptions on which the Firm Commitment was issued or undermine the feasibility of the project. Such factors include but are not limited to a change in the Borrower's or development team's configuration or financial capacity, market, inflation or other factors impacting cost. A change in the interest rate or other terms or conditions of the Firm Commitment may require reprocessing and amendment of the Firm Commitment.

**D.** If a Firm Commitment has been extended beyond 120 calendar days from its original date, the Lender must provide an updated appraisal/market study, cost and mortgage credit, or other information as required by the Regional Center or Satellite Office for review prior to loan closing.

**E.** Only the Regional Director, Production Division Director, and other officials formally designated to act in these capacities are authorized to sign Firm Commitments and/or endorse Insured Mortgage Notes.

**F.** The Department has limited flexibility to permit the resubmission of rejected applications. In accordance with the procedures contained in HUD Handbook 4410.1 Rev-2, Project Fiscal Procedures will apply.

**G.** An amended commitment bears the same date as the original commitment, followed by the date of the amendment, although the applicable regulations are those in effect on the original commitment issuance date. Most underwriting changes, such as changes in mortgage amount and/or interest rate, will be incorporated in letter amendments to the commitment.

**H.** Additional conditions are part of the Firm Commitment. Changes to the specific terms of such conditions or allowing closings to proceed when conditions are not yet met, must be documented with a letter amendment to the Firm Commitment.

**I.** A reissued commitment will have its own date which will control what regulations apply and how long the commitment will remain in effect and will substitute for the originally issued commitment. A Lender which accepts a reissued commitment will no longer have rights granted under the original, or a previously amended, commitment. A re-issued commitment is required for:

1. Requests for reconsideration of an expired or terminated commitment.
2. Changes in project location.
3. Major changes in plans and specifications.
4. Reprocessing to reflect changes in the MIP.

### 11.3.5 Waivers

**A.** Statutory requirements shall not be waived under any circumstance. Regulations may only be waived by an Assistant Secretary (usually the FHA Commissioner for MAP loan issues other than environmental regulatory waivers).

**B.** Requested waivers of this Guide must be submitted for Regional Counsel review to ensure there is no conflict with a statute or regulation. The Regional Center Director may waive requirements of this Guide that are not statutory or regulatory except for the following matters which must be approved in HQ:

1. Debt coverage ratios for all programs.
2. Loan to value ratios for Section 223(f) loans.
3. Loan to cost ratios for the 221(d) and 220 programs.
4. Traditional Application Processing for MAP eligible transactions.
5. Substantive modifications to the Ground Lease addendum form (form HUD-92070M).
6. The requirement for a Single Asset Borrower Entity (see 24 CFR 200.5).
7. The prohibition on a Lender advancing fees for payment of discounts on behalf of the Borrower.
8. Payment of broker or referral fees to any party with an identity of interest with the Borrower or its affiliates.
9. Extensions of Firm Commitments beyond 180 days of issuance (original term of 60 days plus up to a 120-day extension).
10. Approval of applications in which the Regional Environmental Officer recommends disapproval of an FHA mortgage insurance application.
11. Waivers of [Chapter 19](#) (Closing Guide) as well as any waiver of, or revision to, closing documents must be processed pursuant to the procedures in [Chapter 19, Section 19.4.1](#).

**C.** The Regional Center Director will submit to the Director of the Office of Multifamily Housing Production all waiver requests requiring HQ approval as early as possible. Requests for regulatory waivers will take longer to process since they require review and concurrence from the Office of General Counsel and the Deputy Assistant Secretary for Multifamily Housing, as well as the approval of the FHA Commissioner. HQ will not consider waiver requests submitted directly by MAP Lenders.

**D.** Any waiver granted in connection with the proposed transaction must be documented in the field office docket and HQ docket, along with the Lender's request and field office request using form HUD-2, as further set forth in [Chapter 1, Section 1.4.E](#). Waivers granted by the Regional Center, along with supporting documentation, must be submitted to the Office of Multifamily Housing Production to determine if changes to this Guide or the regulations are necessary.

## 11.3.6 Interest Rate Lock

A. The Lender must notify HUD of interest rate lock (e.g. Ginnie Mae investor trade agreement) to allow sufficient time to process any amendments to the Firm Commitment. While the Lender may elect to lock rate after receipt of a commitment to insure, Lenders and Borrowers assume all risk of fees due (e.g. investor extension or delivery fees) associated with the timing of transaction closing and mortgage-backed security pooling or issuance.

## 11.4 Program Closing Provisions

A. [Chapter 19](#) (Closing Guide) addresses various program closing provisions and procedures that the Lender must be aware of to prepare for initial closing, final closing and initial/final closing events. The HUD Underwriter's responsibilities (or Closing Coordinator, as applicable) include:

1. Ensuring all special conditions to the Commitment have been individually addressed and satisfied, including the resolution of any open DEC referrals, prior to or in tandem with closing.
2. Reprocessing and amending Firm Commitments as necessary and appropriate [Cross references: FHA Closing Guide Section 19.1.02 and Regulations 24 CFR 200.46 for Commitment Issuance & 200.47 for Firm Commitment].
3. Extending or Re-issuing Firm Commitments. [Note: The Reopening fee for an expired Firm Commitment is \$0.50 per thousand (Regulations 24 CFR 200.40(g)); Cross references: 24 CFR 200.46 and 200.47].
4. Coordinating with Asset Management staff to ensure the orderly transition from Production to Servicing.
5. Coordinating the closing schedule with OGC, the Lender, and Borrower.

## 11.5 Loan Fees

A. Lenders may charge loan origination and placement fees, both of which are mortgageable, and the combination of which cannot exceed 3.5% of the mortgage amount (or 5.5% for tax-exempt bond financing) for Section 223(f) refinancing transactions and new construction or substantial rehabilitation transactions. The maximum fees for Section 223(a)(7) loans is 2% for loans greater than \$2 million, and up to \$40,000 for loan amounts less than \$2 million. In addition to loan origination and placement fees, Lenders may realize trade profit (also known as marketing gain) on the sale of Ginnie Mae or other mortgage backed securities.

B. Lenders are required to report loan fees earned that exceed five percent (5%) of the insured loan amount on each FHA-insured loan over \$2,000,000 endorsed during the Lender's fiscal year period covered in its audited financial statements. Loan fees include: (a) origination and placement fees as permitted by this Guide, plus (b) trade profit, trade premium or marketing gain earned on the sale of the Ginnie Mae security at a value above par, even if the security sale is delayed until after endorsement, minus (c) loan fees applied by the Lender to its legal expenses incurred in connection with loan closing. This

reporting is confidential and is not subject to release under the Freedom of Information Act but will be examined by HUD in evaluating counterparty risk as part of the Lender monitoring responsibility.

**C.** The loan fees on a particular transaction that exceed 5% must be reported by both the originating Lender and closing Lender when the loan is assigned for closing and fees are split between the two entities. Trade profit fees used to pay prepayment penalties on behalf of a Borrower in a Section 223(a)(7) transaction are not net out of the loan fees in calculating whether or not the loan fees exceeded 5%.

**D.** Loan fees are earned as follows:

1. Construction loan fees are earned at initial closing, except to the extent that the loan documents defer a portion to a later date. Construction loan extension fees are not earned until the time such extensions are granted.
2. Permanent loan fees and permanent loan extension fees, to the extent a separate permanent loan is anticipated, are earned at final closing.
3. Construction/Permanent loan fees (for construction loans anticipated to convert to permanent loans) are earned at initial closing, except to the extent that the loan documents defer a portion to a later date.

## 11.5.1 Deferred Fee Collection

**A.** [Chapter 8, Section 8.15.4.A.4](#) sets forth provisions for the deferred collection of fees in connection with tax-exempt bond financing.

## 11.5.2 Broker's Fees

**A.** Fees to mortgage brokers are allowed so long as they are disclosed in the Underwriting Narrative and form HUD-92434M (or form HUD-92455M, as appropriate), there is no identity of interest between the mortgage broker or its affiliates, or the Lender and its affiliates, and the Borrower or its affiliates, and the broker is actively engaged in the business of mortgage loan origination.

**B.** Referral fees to other parties, such as consultants, Management Agents, or entities or individuals with any identity of interest with the Borrower or its affiliates are prohibited.

**C.** Lender or affiliates of Lenders may not pay anything of value directly or indirectly to any person or entity in connection with an insured transaction if the person or entity has received any other compensation from Borrower, seller, builder or any other person for services related to the transaction, or related to the purchase or sale of the mortgaged property, except as approved by the Director of Multifamily Production in HUD Headquarters. See 24 CFR 202.5(l). Refer also to [Chapter 2, Section 2.4](#) of the MAP Guide.

## 11.6 Title Matters

### 11.6.1 Preliminary Title Report

A. As noted in the Application Checklist, a preliminary title commitment or report should be reviewed as part of the Firm Commitment processing. It is used to validate existing indebtedness, ensure correct legal description of the parcel(s) to be mortgaged, and the adequacy of title with respect to matters such as liens, easements, restrictions and other exceptions. See [Chapter 19](#) (Closing Guide) for additional requirements related to title and survey matters.

### 11.6.2 Air Rights and Other Shared Interest Projects

A. A three-dimensional air rights map for air rights projects is required. The existence of adequate vertical ways to the ground for required services, e.g., utility and fire suppression lines, chimneys, trash chutes, elevators and emergency exit stairs must be verified. In addition, there must be an acceptable discharge to a public way from all building egresses, including emergency exits, and services, e.g., trash removal.

B. Maintenance, joint use, easement and other agreements may be required. In cases where common facilities exist between the insured parcel and an adjacent parcel, Borrower must provide for recordation of an agreement for the common use land and facilities, e.g., common drives, common lobbies, elevators, walkways, utility roads, parking structures, recreation facilities, storm water management facilities (retention ponds detention ponds, swales and culverts) or other air rights project common facilities. The agreement must grant rights to the HUD project site and its residents to use the common facilities. If the HUD project is subject to property/homeowner association documents such as with a cooperative, these documents may provide for maintenance, access and cost sharing, which must be determined acceptable to HUD prior to or as a condition of the Firm Commitment.

C. If the air rights parcel is on a leasehold, it must include the Ground Lease addendum form (form HUD-92070M) with minimal modifications to reflect an air rights lease.

D. The Regional Center or Satellite Office Director must:

1. Assure that the integrity and maintenance of air rights platform foundations and other structural members are defined as the air rights provider's responsibility.
2. Verify that shared maintenance/operating costs are equitable and that enforcement rights protect the project interests.
3. Require easements, cross easements or other documents to provide the HUD project and its residents the right to use the common facilities.

## 11.7 Borrower Entity's Organizational Documents

A. Draft (or final) organizational documents should be reviewed as part of the creditworthiness analysis during Firm Commitment underwriting. Organizational documents for the Borrower entity must be submitted at closing. The specific documents required for each type of Borrower entity are set forth in

[Chapter 19](#) (Closing Guide). These requirements apply to all types of closings including initial, initial/final, and final endorsements.

B. The documents terms must include the required language found in [Chapter 19](#) (Closing Guide).

## 11.8 Note

### 11.8.1 Term

A. The term must be the same as specified in the Firm Commitment, which must be within the maximum terms allowed by the program and not less than 10 years.

1. Generally, for most new construction or substantial rehabilitation rental projects, the term, calculated from the date of completion of construction, may not exceed the lesser of 40 years or 75% of the project's remaining economic life.
2. For existing projects (insured under Section 207 pursuant to Section 223(f)), the term must be not less than 10 years, and may not exceed the lesser of:
  - a. 35 years, or
  - b. 75% of the estimated remaining economic life of the physical improvements.
3. For 223(a)(7) projects, the term of the mortgage is statutorily limited to 12 years beyond the remaining term of the existing mortgage (excluding any previous Section 223(a)(7) loan) so long as the PCNA and underwriting determine that the loan term is no more than 75% of the remaining useful life of the property.

### 11.8.2 Prepayment Provisions

A. Generally, prepayment lockout and/or penalty structures that are commercially reasonable and consistent with industry practice, that expire after 10 years and are no more than 10% during any of the first 10 years, and no more than 1% thereafter are acceptable, so long as the interest rate is commercially reasonable at the time of the rate lock.

B. The following additional conditions and terms apply:

1. Market rate properties.
  - a. Prepayment must be permitted in whole or in part so long as 30 days advance written notice is given to Lender of intent to prepay, except for Section 223(f) loans (subject to statutory five year prepayment lockout), which must meet certain conditions and receive HUD approval if the property will be converted to a use other than rental housing, in order to prepay within the five year prepayment lockout.
  - b. Prepayments must be permitted for up to 15% of the original principal amount in any one calendar year without a prepayment charge. Prepayments exceeding 15% may be subject to a reasonable charge agreed to by Borrower and Lender and included in the Mortgage.



- c. Notwithstanding the Borrower's right to prepay, a HUD 9807 must be processed in order for HUD to release the recorded Regulatory Agreement.
2. Affordable or subsidized properties.
    - a. FHA insured projects which are, or formerly were, affordable or subsidized and are subject to a Use Agreement, Regulatory Agreement, or similar restrictive covenants require prior written consent of HUD to prepay the mortgage debt.
    - b. HUD may approve partial prepayments to reduce succeeding monthly payments over the remaining portion of the original mortgage term or may also approve partial prepayments made after 30 days written notice. Prepayments exceeding 15% of the original principal amount may be subject to a reasonable charge on such excess as agreed to by Borrower and Lender and included in the Mortgage.
  3. Prepayment of bond financed or Ginnie Mae securitized mortgages. Where the mortgage is given to secure Ginnie Mae mortgage-backed securities or a loan made by a Lender that has obtained the funds for the loan by the issuance and sale of bonds or bond anticipation notes, or both, the mortgage may contain a prepayment restriction and prepayment penalty charge acceptable to the Commissioner as to term, amount, and conditions.

### **11.8.3 Conditions for Including Lockouts and/or Penalties**

**A.** Compliance with the following conditions is required when prepayment lockouts and/or penalties are permitted.

1. Lender's Certificate and Request for Endorsement. The Lender's Certificate, form HUD-92434M and the Request for Endorsement, form HUD-92455M, requires the Lender to certify that in the event of a default during the term of the prepayment lockout and/or penalty (i.e., prior to the date on which prepayment may be made with a penalty of one percent or less), it will comply with Program Obligations. The Lender, in order to comply, must:
  - a. Request a 90-day extension of the deadline prescribed by 24 C.F.R. Section 207.258(a)(2) for filing a notice of its intention to file an insurance claim and its election to assign the mortgage.
  - b. Assist the Borrower to arrange refinancing to cure the default and avert an insurance claim if HUD grants the requested (or shorter) extension of the notice filing deadline.
  - c. Report to HUD at least monthly on any progress in arranging a refinancing.
  - d. Otherwise cooperate with HUD in taking reasonable steps to avoid an insurance claim.
  - e. Require any successors or assigns to certify in writing that they agree to be bound by these conditions for the remainder of the term of the prepayment lockout and/or penalty period; and
  - f. Notify HUD of the delinquency where a payment is not received by the 16th day of the month in which it is due.

### **11.8.4 Late Charge Provisions**

**A.** Lender may collect a late charge for the cost of handling delinquent payments, subject to the following:

1. Charges must not exceed two cents per dollar of unpaid principal and interest that is more than 10 days in arrears.
2. Late charges must be separately charged to and collected from Borrower and cannot be deducted from any total monthly mortgage payment, or collected from any reserve escrow, residual receipts funds, or from any interest accruals thereto.

## **11.8.5 Override of Prepayment Lockout**

**A.** Where obligations pursuant to tax-exempt bond financing or Ginnie Mae involvement do not impose restrictions independent of the Lender's restrictions, HUD may consider exercising an override of prepayment lockout and/or premium provisions imposed by the Lender if:

1. Borrower has defaulted on the insured loan and HUD has received notice as required by the regulations.
2. HUD determines that the project has been experiencing a net income deficiency, which has not been caused solely by management inadequacy or lack of owner interest, and which is of such a magnitude that the Borrower is currently unable to make required debt service payments on the insured loan, pay all project operating expenses and fund all required HUD reserves;
3. HUD finds there is a reasonable likelihood that the Borrower can arrange to refinance the defaulted loan at a lower interest rate or otherwise reduce the debt service payments through partial prepayment; and
4. HUD determines that refinancing the defaulted loan at a lower rate or partial prepayment is necessary to restore the project to a financially viable condition and to avoid a full insurance claim.

## Chapter 12 Construction Period

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### 12.1 HUD Construction Administration Roles and Responsibilities

#### 12.1.1 General

A. For new construction and substantial rehabilitation projects the HUD construction administration period begins at initial endorsement and extends to final closing. For refinance transactions with repairs and alterations, the construction administration period begins at endorsement and ends at the closing of the Repair Escrow. Construction administration involves managing risks during construction and ensuring compliance with all contractual obligations upon completion. HUD's personnel tasked with construction administration roles and related duties are as follows:

#### 12.1.2 HUD Construction Analyst (CA)

A. HUD regional production chiefs or designated technical branch chiefs will assign HUD construction analysts to administer construction for each project. The assigned construction analyst (CA) serves as a single point of contact on behalf of HUD to the Lenders and the external development team (e.g., owner, General Contractor, Architect, etc.) during the construction administration period. In general, the CA is responsible for overseeing construction progress and the development team's performance during construction and the contractor's warranty period. The HUD CA must be familiar with all program and contractual requirements particular to the project. Where existing HUD forms (e.g. the Trip Report, form HUD 95379) refer to the HUD "construction manager" or "CM" the reference is to the HUD construction analyst designated as the HUD point of contact for construction administration of the project.

#### 12.1.3 HUD Inspector

A. The HUD inspector monitors construction on HUD's behalf by visiting the site, participating in progress meetings, and generating inspection reports based on observations and interviews of the project development team in order to protect HUD's interests during construction. As HUD's agent, the inspector ensures that the construction conforms to the drawings, specifications, and sound construction practice within the scope of the contract.

1. The HUD inspector is typically an independent third-party contracted by HUD to serve as HUD's agent managed by HUD CA.
2. The HUD CA or another designated HUD construction analyst may act as HUD inspectors on a project-by-project basis.

## 12.2 Pre-Construction Conference

### 12.2.1 General Requirements

**A.** A pre-construction conference is required for every new construction and substantial rehabilitation project and must precede the initial start of construction, including early start of construction. A pre-construction conference is optional for Section 223(f) projects depending upon the size and scope of the project, complexity of the repairs and experience of the development team. A pre-construction conference is not required for refinance projects where work is limited to repairs and level 1 alterations but is recommended when the cost and/or classification of work requires a Project Architect, except when the Architect's task is limited to design of accessibility remedies. The HUD Inspector or the HUD CA conducts the pre-construction conference as the HUD representative and the conference should be held at initial endorsement or early start approval where feasible but may be scheduled shortly before or after endorsement if necessary. The necessary attendees and the topics to be covered are set forth below:

1. Expected attendees:
  - a. Borrower's representative;
  - b. Borrower's supervisory Architect;
  - c. General Contractor;
  - d. Major subcontractor(s), i.e., principal trades, MEP, site, structural, finish or any with 15% or more of the work measured in hard cost;
  - e. HUD representative (HUD CA or HUD Inspector);
  - f. HUD's Underwriter;
  - g. Lender's representative; and,
  - h. Representative from the Office of Davis-Bacon and Labor Standards for Davis-Bacon Wage related issues.

**B.** For new construction and substantial rehabilitation projects, the HUD representative should review the Supplementary Conditions of the Contract for Construction, form HUD-92554M, covering Davis-Bacon wage rates, special environmental conditions related to construction including issues regarding lead-based paint, asbestos, site contamination or the need for archaeological monitoring on site during excavation, Federal labor standards and equal employment provisions-related issues, including contract obligations of the General Contractor and all subcontractors as follows:

1. Certification of compliance with Davis-Bacon wage rates with each request for advances;
2. That Davis-Bacon wage rates are applicable to a second mortgage securing a governmental loan.
3. Statement of sanctions that may be imposed for not complying with the supplemental conditions.
4. Applicable Davis-Bacon wage decision and form HUD-92554M must be made part of the subcontracts for all tiers.

5. Importance of Federal wage payments, prompt certified payroll submissions and proper recordkeeping. A copy of the applicable Davis-Bacon wage decision and Form WH-1321, Notice to Employees, must be conspicuously posted at the job site.
6. Identifying HUD Labor Standards and Enforcement staff that will review labor standards compliance and answer any further inquiries concerning Davis-Bacon wage and reporting requirements.
7. The URL for Universal Source Locator to obtain the Equal Opportunity poster with instructions to post conspicuously at the job site.
8. Contractor's Guide to Davis-Bacon.
9. Contractor's registration with Elation Systems for Davis-Bacon prevailing wage payroll certification.

## **12.2.2 Contract Administration**

- A.** The HUD representative should describe the contract provisions for administering the work, including:
1. General contract administration responsibilities of the Lender, Borrower, Borrower's Architect and/or supervising Architect, General Contractor, and HUD representative.
  2. Procedures for:
    - a. Change orders;
    - b. Requesting clarification of construction documents;
    - c. Reporting and correcting non-compliant work;
    - d. Requesting periodic payments and release of escrowed funds;
    - e. Substantial completion of work or portions thereof; and,
    - f. Permissions to occupy, including management plans and rent rolls.
  3. Work changes completed in anticipation of a future change order will be regarded as non-compliant. There will be no insured advances for such work or other work dependent on it.
  4. Periodic advances:
    - a. Borrower's and General Contractor's required preparation of requests, including the field approval and subsequent processing;
    - b. Provisions for submitting surveys, title reports, and other documentation in support of construction advances;
    - c. Requirements for contractor's retainage and its release.
  5. Stored materials and procedures to request payment for materials stored onsite, and components stored offsite where applicable (see Appendices 12B and 12C).
  6. Offsite work and procedures to request payment for completed offsite work, the required retainage and its release.
  7. Termination of contract(s). Provisions for terminating the construction contract and/or Architect's contract, and the Lender's responsibilities during the construction stage and in the event of a default.

## 12.2.3 Cost Certification

**A.** Cost certification requirements for the mortgagor and (if applicable) the General Contractor, subcontractors, equipment lessors and suppliers, industrialized housing manufacturers and relocation-related costs. Where there is a second mortgage securing a Governmental loan, the cost certification also applies to the second mortgage.

**B.** HUD staff to inform all parties that HUD will initiate a pre-cost certification conference to be held when construction is 90% complete and that detailed instructions will be provided at that point. (See [Chapter 13](#) for cost certification procedures.)

**C.** Matters concerning identity of interest are as follows:

1. Identities of interest that develop or become known after initial closing must be reported to the Lender and to HUD within 5 working days of having such knowledge;
2. HUD must give prior approval for all identity of interest subcontractors and apply penalties where this is not done;
3. Self-owned equipment must be certified; and
4. Shell companies are prohibited. In this context a shell company is a firm organized for the apparent purpose of acting as a General Contractor but in practice subcontracts the preponderance of its responsibility measured both in the substance of the work as well as in monetary value to one or two other de facto General Contractors, collecting a fee but performing little or no commensurate service. See the 50/75 percent rule in [Chapter 13, Section 13.15.3.D](#).

## 12.3 HUD Construction Inspection and Monitoring

### 12.3.1 Purpose of Inspection

**A.** Inspection means periodic observations made of construction activity at the site by a HUD Inspector for the purpose of protecting HUD's interests. Inspections are conducted to:

1. Evaluate the contractor's and Architect's performance;
2. Confirm construction is in accordance with the contract documents; and,
3. Report on conformance with prevailing wages and other contract requirements.

**B.** The inspection instructions are the same for projects involving the insurance of advances and those to be insured upon completion, except for those variations specifically stated to be applicable to one or the other.

### 12.3.2 Access

**A.** At all times, HUD has the right of access to the property and the right to inspect all work performed and materials furnished to complete the project.

## 12.3.3 HUD Construction Analyst's Duties

### 12.3.3.1 Assignment

A. HUD CA will assign a third-party inspector to conduct inspections for the project. Upon assignment, the CA will issue the following to the inspector:

1. Set No. 3 of the contract drawings and specifications. This set will be HUD's "As-Built" document for the inspector to redline throughout construction to conform it to the contractor's "Record Set."
2. Copy of the Construction Contract, form HUD-92442M for insured advances projects and other acceptable construction contract for Insurance Upon Completion projects (see [Chapter 5, Section 5.5](#)) or AIA A104 when applicable for certain refinance or acquisition transactions.
3. Owner-Architect Agreement (AIA Document B108 or B104) when an Architect is required to administer the construction contract (see [Chapter 5, Section 5.2.3.3](#)).
4. Contractor's and/or Borrower's cost breakdown. Schedule of Values, form HUD-2328 when insured advances are involved or list of repairs and alterations with costs summary as applicable for certain refinance or acquisition transactions.
5. Drawings and specifications pertaining to off-site improvements.
6. Agreements or contracts providing for off-site construction.
7. Construction Schedule.
8. Other construction-related documents such as repairs lists, relocation plans, etc.

### 12.3.3.2 Offsite Fabricated Construction

A. HUD will not conduct inspections of construction progress for modular or panelized products fabricated in off-site manufacturing facilities. (See [Chapter 5, Section 5.7.4.G](#))

### 12.3.3.3 Trip Report Review

A. The CA shall review and evaluate all form HUD-95379 Trip Reports completed by the HUD Inspectors and initiate appropriate actions as necessary.

1. The CA should be aware of progress, trends, new or uncorrected non-compliance, unusual conditions, etc., in order to be familiar with the work and to initiate any required corrective action immediately (see [Section 12.3.6](#)).
2. The CA shall review Trip Reports for quality and identify any absence of significant facts, findings, and evaluation comments.
  - a. The CA shall advise the HUD Inspector of any unsatisfactory action or detail in the report, or any error in its preparation to prevent repeat of similar errors.
  - b. A field review inspection by the CA may be necessary to evaluate the quality of the reports.
  - c. Any differences of opinion or findings between the HUD Inspector and other technical specialists involved during inspection must be resolved by the CA prior to the official submission of the Trip Report to the Architect and the Lender.



#### **12.3.3.4 HUD Inspector Oversight**

A. The CA shall keep informed of the general quality of the performance of HUD Inspectors. A protocol for supervising HUD Inspector's field operations is established in the Inspection Contract and is followed for each project.

### **12.3.4 HUD Inspector's Duties**

A. The inspector is to observe and report on construction activities for compliance with the contract documents. The inspector must be factual and specific in all statements in reporting and recording significant construction developments observed.

#### **12.3.4.1 Orientation**

A. Upon assignment to a project, the inspector will study the drawings and specifications and become familiar with the conditions at the site.

#### **12.3.4.2 Facilities**

A. The contractor must furnish the inspector with enclosed working space that is acceptable to HUD. Adequate (but not elaborate) facilities should be required as soon as actual construction begins at the site.

#### **12.3.4.3 Inspections**

A. **Duties.** The major functions during inspection are to:

1. Evaluate the performance of the contractor and construction administration of the supervisory Architect;
2. Report on the contractor's conformance with construction schedule;
3. Report on occupancy, delays, disputes, and changes;
4. Conduct inspections of periodic construction progress and of critical phases of the work;
5. Report noncompliance with the contract documents observed by the inspector and/or the supervisory Architect;
6. Determine that the amounts requested by the contractor and recommended by the Architect for payment are reasonable;
7. Conduct employee wage interviews using form HUD-11; and,
8. Report on labor and EEO compliance.
9. Review completed units and execute the form HUD-92485 Permission to Occupy as required;
10. Report on compliance with a relocation plan, when applicable (see [Appendix 3, Section A.3.5](#) for applicability and requirements).

**B. Frequency.** The inspector shall make one job site visit each month for new construction and substantial rehabilitation projects, except when HUD determines no inspection is necessary due to the progress of the work in a particular period. Additional visits may be necessary due to the nature of the

project. The frequency of inspection should ensure reasonable continuity and be appropriately scheduled for the size and character of the project, the speed with which construction is progressing and the quality of work on the project. Visits should be scheduled to observe major construction operations without neglecting lesser operations. Enough time must be allotted to each visit to make a complete inspection. Inspection frequency for Section 223(f) transactions is described in [Section 12.17.2](#).

**C. Form.** Each inspection shall be recorded on a HUD Representative's Trip Report, form HUD-95379.

**D. Reporting requirements.** The following documents or forms executed during inspection must be sent promptly to the CA, the Project Architect and the Lender's Construction Loan Administrator:

1. **HUD Representative's Trip Report, form HUD-95379.** Original to the CA, with copies to the Architect and the Lender's Construction Loan Administrator.
2. **Contractor's Requisition, form HUD-92448.** Original to the Lender's Construction Loan Administrator for signature with copies of the signed documents to the CA, the Architect and the HUD Inspector.
3. **Change Order form HUD-92437.** Original to the Lender's Construction Loan Administrator for signature with copies of the signed document to the HUD CA, the Architect, and the HUD Inspector.
4. **Permission(s) to Occupy, form HUD-92485.** When all required signatures (mortgagor, Architect, contractor, Lender, and HUD Inspector) are affixed, the document will be sent to the HUD CA for approval. Upon signing by the FHA authorized agent, copies are sent to the Lender's Construction Loan Administrator, the Architect, and the HUD Inspector.
5. **Nonconformity with HUD requirements.** If any nonconformity with HUD requirements or site conditions not considered in the design is found at any point, they are to be reported by memorandum to the CA and to the Regional Center Director.

#### 12.3.4.4 Start of Construction Date

**A.** The inspector will report the date of initial construction start and the date of the start of permanent construction on form HUD-95379.

1. The date of the initial construction start, used for recording and reporting purposes, is the "start of construction" as used in connection with labor standards and prevailing wage requirements. This is defined as the beginning of initial site clearance and preparation, provided these activities are pursued diligently and are followed, without appreciable delay, by other construction activities.
2. The date recorded as the start of permanent construction, used for the purpose of determining the earning of the inspection fee, will correspond to the first day that permanent on-site building elements were put into place, such as footings and/or foundations, pilings, utility lines, etc.
3. While excavation is an integral part of foundation work, it does not constitute a start of permanent construction.

#### 12.3.4.5 Shop Drawings and Other Data

**A.** During the construction period, the inspector must check whether shop drawings are being submitted by the contractor for approval by the Architect as required by the AIA General Conditions of the Contract.

Upon request by the Architect or the inspector, the contractor will keep copies of tests, certifications and any other data required by the contract documents onsite for review.

#### **12.3.4.6 Work Stoppage**

A. The HUD inspector will report to the CA on form HUD-95379 any work stoppage unless such stoppage is due to inclement weather or similar reasons. If known to the inspector, the reason for the work stoppage should be stated and when resumption of construction is anticipated.

#### **12.3.4.7 Occupancy**

A. The HUD inspector will complete the portion, "FHA Inspection Report," of form HUD-92485, Permission to Occupy, when submitted, to request permission to rent or occupy specific living units, commercial or other space. The form is to be submitted when the inspector reports safe ingress and egress to the units and/or building, as evidenced by a certificate of occupancy from the locality. In the event that scheduling does not permit the inspector to inspect the completed units on a timely basis, then the CA may authorize the Architect to issue a phased Permission to Occupy on condition that the HUD Inspector will inspect the completed units at the next regularly scheduled site visit. Units and spaces should not be occupied prior to approval by HUD. The Regional Center Director should determine who in the Regional Center or Satellite Office will approve the permission to occupy.

1. Occupancy prior to the execution of form HUD-92485 will be reported to the Regional Center Director by written memorandum.
2. The inspector will also include on the form HUD-95379, the number of units occupied prior to approval, as well as the date occupancy took place.

#### **12.3.4.8 Additional Duties of the Inspector**

A. Additional Duties of the Inspector include:

1. Advising the Architect administering the construction contract on HUD requirements;
2. Reviewing the Architect's job log;
3. Reviewing copies of the Architect's decisions;
4. Reporting on project construction progress to the CA on form HUD-95379;
5. Notifying the Architect and the contractor if an identity of interest exists between the owner and the contractor, or if it is determined that there are any essential variations in the cost of the work installed, materials stored and the request for construction advances recommended by the Architect; and
6. Conducting interviews with an appropriate sampling of the laborers and mechanics engaged and records interview information on Record of Employee Interview, form HUD-11, in connection with wage and labor compliance in the construction of the project.

#### **12.3.4.9 Construction Record**

A. From the initial construction start through final inspection, the HUD Inspector shall be responsible for maintaining a record of construction that includes minutes of the pre-construction conference as well as

reports of required guarantee inspections. The Inspector shall keep a record binder when the CA first assigns the project or may elect to expand the project record binder to include inspection reports. All forms, reports, decisions, and documents relevant to construction or inspection reporting shall be recorded in the binder in chronological order. The forms and documents listed below shall be included in the Construction Inspection Record Binder, when applicable.

1. Drawings and specifications: Set 1, 2, and 3 referenced in journals though filed elsewhere (record the storage location of set 1 and use of 2 and 3).
2. Off-site drawings and specifications (referenced in journal).
3. Construction Contract, forms HUD-92442M.
4. Owner-Architect Agreement.
5. Progress schedule (form HUD 5372) and construction schedule (See [Chapter 5, Section 5.3.1.D](#) and [Section 5.3.2.2](#)).
6. Contractor's and/or Borrower's Cost Breakdown, form HUD-2328.
7. HUD Representative's Trip Report, form HUD-95379.
8. Contractor's Requisition, form HUD-92448.
9. Change Orders form HUD-92437, AIA G710, and Architect's supplemental instruction or equivalent.
10. Letters, memoranda, notes, and worksheets.
11. Journal of Architectural Actions (if separate binder).
12. Surveyor's Report, form HUD-91073M (final and others, if requested).
13. Permission(s) to Occupy, form HUD-92485.
14. Record of established escrows including amounts escrowed and a complete list of unfinished construction items, record of call-back inspections and recommendations for monies to be released.

#### **12.3.4.10 Projects Insured Upon Completion**

A. The inspector will report the percentage of completion of the project on form HUD-95379 at the end of each month. This percentage is an approximation for general information and is not used for disbursement.

#### **12.3.4.11 Off-Site Inspection**

A. The inspector checks all off-site construction for conformity with the terms of the contract and reports work progress by percentages on form HUD-95379. Completion is reported on form HUD-92464.

### **12.3.5 Construction Progress Meetings (monthly meetings)**

A. During construction the contractor, mortgagor, mortgagor's supervisory Architect and HUD Inspector must attend monthly job meetings at the job site when monthly requests for advances are prepared. The Project Architect is responsible for conducting and keeping official written records of the meetings.

**B.** The owner's representative must be a member of the Borrower entity, usually a general partner or managing member with authority to make decisions. Non-profit organizations may be represented by an executive officer or member of the Board of Directors.

**C.** The MAP Lender's representative must attend whenever the project is out of compliance, such as when construction has fallen more than 10% behind schedule according to the Construction Progress Schedule (form HUD-5372), or other problems arise that jeopardize the completion of the project (see Section 12.3.6.C for examples of construction-related problems).

**D.** During the meeting, the HUD Inspector must:

1. Comment to the group on the quality of construction and of the Architect's observations and the contractor's supervision.
2. Comment on all known construction defects and deficiencies (non-compliance) and methods of correction.
3. Explain that changes in the work from the contract documents (non-compliance) must be resolved by approved change order requests or the work done in accordance with the contract documents. All change orders must receive prior approval before work subject to the change order is commenced.
4. Inform parties of HUD policy for holdback of construction advances until non-compliance is corrected.
5. Record on form HUD-95379 the issues raised at the meeting. Significant concerns of any party should be presented by memorandum through the CA to the Regional Center Director.
6. Resolve equal opportunity and labor disputes. When such disputes are known, the HUD Labor Standards and Enforcement and Equal Employment officers must be invited to attend.
7. Address any tenant relocation concerns, including any URA compliance-related issues.

### 12.3.6 Reporting Serious Construction Problems

**A. HUD Office.** HUD Offices must identify and report, by electronic mail, to the Regional Center Director and Multifamily Asset and Counterparty Oversight Division (COB) all insured multifamily projects under construction or in the guarantee period that have serious construction defects or other serious construction-related problems. This information will be used to reply to inquiries, as an "early warning system" on troubled projects, and to determine if assistance by the HUD Office is necessary. The Production Division Director or designee will work with the Lender, owner, contractor and other related parties to resolve the noncompliance.

**B. HUD Inspector.** HUD Inspector must identify all construction problems that may delay completion or lead to foreclosure or assignment of the mortgage to HUD by using form HUD-95379, HUD Representative's Trip Report.

**C. HUD Construction Analyst (CA).** The CA must prepare a referral memorandum to the Regional Center Director when defects or construction-related problems occur, such as:

1. Work stops for 20 calendar days;
2. There are slow payments or non-payments to the general contractor and/or subcontractors;
3. Contractor abandons the job;

4. Contractor, owner or Architect changes during construction;
5. Correction of any construction deficiency is not started within 30 days of the first notification to the contractor; or,
6. Contractor cannot or will not correct any construction defect or latent defect.

**D. Referral Memorandum.** The referral memorandum must include full details of the construction-related problem, including:

1. A copy of form HUD-95379, which identifies the problem.
2. The inspector's opinion of the cause and recommendation for correction.
3. A report of action by the CA and/or other HUD Office staff.
4. A report of actions by the owner, Architect, contractor, mortgagee, and bonding company (when appropriate).
5. A plan of action to be undertaken by the HUD Office if the mortgage is assigned to HUD during construction or foreclosure is initiated by the Lender.

**D.** Only the initial report is required unless the Regional Center Director requests further action or follow-up by the HUD Office.

**E. MAP Lender.** It is the Lender's responsibility to work with the Borrower, General Contractor, and Architect to get projects back on schedule and in compliance with the contract documents. The Lender should take the lead in initiating appropriate measures and coordinate efforts by the development team. The Borrower, Lender, and General Contractor must develop an action plan and submit to HUD to get projects back in compliance when construction is 60 or more days behind schedule and/or the project is at risk of not reaching completion. The MAP Lender shall prepare a written plan when the project is at risk before the project goes into default. This plan should include:

1. A description of the circumstances that led to the project being at risk of default;
2. A listing of the issues needing resolution;
3. An identification of which party has which role in the resolution;
4. Action items needed and the responsible party/parties;
5. A list of resources required and identification of those available for resolution;
6. A timeline of projected deliverables and milestones toward resolution;

**F.** For complete instructions on handling problems before final closing, see [Appendix 12, Section A.12.5](#).

## 12.4 Architect's Duties in Administering Construction

### 12.4.1 General Requirements

**A.** The Architect administering construction (Supervisory Architect) shall:

1. Provide services in accordance with the Owner-Architect Agreement.

2. Have no identity of interest with the owner or contractor. An identity of interest is defined in the HUD Amendment to the B108, Owner-Architect Agreement.
3. Ensure that construction is carried out in accordance with the contract documents, including:
  - a. Restricting materials, products and equipment to those specified.
  - b. Restricting all deviations to those substantially consistent with the original design concept including form, color, and texture.
  - c. When arriving at the net amount due on every requisition, comparing the cost of the work and materials with the cost to complete the project. Current and previous payment must relate to the total cost for completion.
  - d. Restricting substitution of items of a different design or size from those specified to those that are equivalent in utility (i.e., durability, quality, and ease of maintenance).
  - e. Restricting substitution of any material differing in composition or appearance from the one specified to one which is equivalent in its attributes (i.e., character, quality, durability and ease of maintenance).
  - f. Keeping a log on the site that is readily available to the mortgagor and HUD representatives.

## 12.4.2 Architect's Supplemental Instructions

- A.** The Architect administering the construction contract may issue field orders using AIA Document G710, Architect's Supplemental Instructions, or a similar form.
- B.** The Architect must send a copy of each supplemental instruction to HUD, although prior approval by the Lender and HUD is not required.
- C.** Supplemental instructions must not involve a change in contract sum or contract time. Supplemental instructions may be used to:
  1. Direct the contractor to bring construction into compliance with the contract documents.
  2. Interpret or clarify the contract drawings and specifications.
  3. Order minor changes in the work, not involving cost.
  4. Accept specified equivalents.
  5. Record other "field orders" that are not construction changes.

## 12.4.3 Architect Administering the Construction Contract

- A.** The Architect administering the construction contract is responsible for reporting in writing the results of periodic visits to the construction site. The Architect's log should provide information regarding assessment of the progress of the work and a record of the actions taken to ensure that the work is being accomplished in the best interests of all the parties.
- B.** The American Institute of Architects (AIA) Document G711, Architect's Field Report, may be used for the log. A log of each visit should show, at a minimum, the following:



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1. Date of inspection.
2. HUD project identification and location.
3. Time, weather, and temperature range.
4. Estimated percent of completion.
5. Work in progress and conformance with the contractor's progress schedule.
6. Persons present at work site.
7. Observations and items to verify.
8. Information or action required.
9. Firm name and signature.

## 12.5 Architect's Adequacy

A. The Architect's administration of the construction contract is covered by the Owner-Architect Agreement and by the General Conditions of the Contract for Construction. The HUD inspector is responsible for determining the adequacy of the Architect's administration.

### 12.5.1 Deficient Administration

A. The Architect's administration of the construction contract will be considered deficient when: 1) the Architect does not report all observed non-compliance with contract documents; 2) does not report instances of unacceptable performances; and, 3) fails to actively pursue remedies. The Architect will not be responsible for actual construction, construction means, methods, techniques or other related responsibilities of the contractor. However, based on on-site observation as the owner's agent the Architect must keep the Lender, owner and HUD informed of the progress of the work and endeavor to protect the owner and HUD against defects, deficiencies, and delays in the construction.

### 12.5.2 Reasons for Termination of Services

A. Inadequate performance, undue delay, misrepresentation or failure to act on the part of the Architect or the Architect's associates and employees shall be reason for the termination of the Architect's services on the project and may adversely affect the firm's acceptability on future projects.

### 12.5.3 HUD Office Actions

A. The HUD inspector shall bring to the attention of the Architect specific areas in which services are considered deficient. Sufficient time and appropriate assistance shall be given to obtain necessary compliance.

B. When the Architect's performance is first observed as deficient, in addition to the HUD Representative's Trip Report, form HUD-95379, the inspector shall also prepare a written memorandum to the CA of the deficiency and advise of any planned actions or assistance. The memorandum should

recommend that future requests for Architectural inspection fees be disallowed until performance improves to an acceptable level.

C. An immediate follow-up by the CA is always required. Conferences with the inspector and the Architect should be arranged and a target date established for the Architect to comply. The CA shall inform the Regional Center Director of current problems and of established target dates for corrections. Deficiencies related to misrepresentation, undisclosed identity of interest and known illegal kick-backs should be immediately referred to the local HUD Office of General Counsel with a copy to the Regional Center Director. The local HUD Office should clearly document all actions.

### **12.5.4 Request for Contract Termination**

A. When compliance with the contract cannot be obtained within 30 days, the Regional Center Director shall request termination of the Architect's contract in accordance with the provisions of the AIA Owner-Architect Agreement. Upon termination, the Architect shall be entitled to only the prescribed portion of the fee determined by the percentage to which construction was completed on the date that the Architect was removed from the project. The Regional Center Director has full authority to secure acceptable performance.

### **12.5.5 Contract Termination**

A. The owner will hire an independent Architect who is acceptable to all parties to continue the administration of the project construction documents. The HUD inspector does not assume the Architect's responsibility.

## **12.6 Completion Inspections for New Construction and Substantial Rehabilitation**

### **12.6.1 Substantial Completion**

A. The Architect will date and sign the certification on form HUD-92485 Request for Permission to Occupy, for that part or for all the work that is sufficiently complete, in accordance with the contract documents, and may be occupied for the use intended.

B. The contractor must submit a punch-list of items to be completed or corrected to the Architect when the work is ready for occupancy. (See Article 9.8, AIA Document A201.)

1. The Architect will inspect, check the punch list and modify it if necessary, and determine when the work is substantially complete. (Dwelling units containing punch list items will not be accepted for occupancy.
2. However, punch list items in interior common areas and on the exterior do not preclude occupancy.)

C. The Architect and HUD Inspector will verify on form HUD-92485 Request for Permission to Occupy the date that the work, or a portion of the work, is substantially complete and suitable for occupancy.

**D.** Where the Owner-Architect Agreement and the General Conditions of the Construction Contract, AIA Document A201, refer to a Certificate of Substantial Completion, it confirms that the Permission to Occupy Project Mortgages, form HUD-92485, was executed.

**E.** The date of substantial completion of a portion(s) of the project is the date that the HUD Inspector signs the Permission to Occupy for the portion(s) of the work completed. This is contrasted with the final completion date, which is the date the HUD Inspector signs the final HUD Representative's Trip Report, form HUD-95379 evidencing that construction is 100% complete.

**F.** The Contractor's Warranty Period commences with Substantial Completion of the Project as defined in Article 3.D of the Construction Contract, form HUD-92442M which takes precedence over AIA Document A201, Article 9.8.4, and stipulates that warranties commence with the substantial completion of each portion of the work.

## 12.6.2 Final 100% Draw Completion Inspection

**A.** The Architect and HUD inspector will make the final inspection upon written request of the contractor for 100% draw request requiring no modifications.

1. The Architect must determine that all punch-list items have been completed unless they are beyond the control of the contractor (i.e.: items of delayed completion).
2. The inspector must prepare the final inspection report on form HUD-95379 which includes:
  - a. Reports onsite construction completion, although there may be items of delayed completion.
  - b. Lists and describes any items of delayed completion.
  - c. Lists any offsite work and reports the percentage of completion for each.
3. The HUD Construction Manager will check the final inspection report to determine:
  - a. If unacceptable and, requires re-inspection (i.e.: the report is not considered final).
  - b. If acceptable, the report will be endorsed as follows:
    - 1) "Construction acceptably completed." (If there are items of delayed completion, add, "subject to escrow of funds to assure completion of listed items of delayed completion.")
    - 2) "All offsite sewer, water, electrical and gas facilities are completed, connected and operable, and safe, adequate, all-weather ingress and egress provided." (If offsite item incomplete, add, "except as stated at the time of inspection.")
    - 3) Date and sign the report.
  - c. CA will prepare a memorandum for signature by the Regional Center Director transmitting the final inspection report, which:
    - 1) States the date of final completion (i.e.: the date of final inspection);
    - 2) Lists incomplete offsite work; and
    - 3) Lists items of delayed completion and the estimated of cost of completion for each item.

**B.** The escrow for items of delayed completion must not be less than 150% of the estimate to complete and must not exceed 2% of the mortgage. Work must be completed within the time specified in form

HUD-92456M, Escrow Agreement for Incomplete Construction, but not more than 12 months from the date of the final HUD inspector's trip report.

### 12.6.3 Warranty Inspections

A. Inspections to ensure correction of latent defects (defective or nonconforming work not observed during construction) or to check any item of delayed completion will generally not be required or expected to be performed by the HUD Inspector. HUD has the option of requiring such inspections on particular transactions. For those transactions where such inspections are requested by HUD, they should be performed within 1 year of the date of final completion and the following requirements will apply:

1. The CA will schedule guarantee inspections as follows:
  - a. If required, the first inspection must be within 9 months of final completion and should provide for inspection of the entire project.
  - b. Other inspections may be necessary to assure inspection of seasonal items such as heating and landscaping.
  - c. The last inspection must be not later than the 10th day of the 12th month after the final endorsement date to check previously reported defects and their correction, and to identify any additional defects.
  - d. The ninth- and twelfth-month warranty inspections are to be attended by the Architect, Owner and General Contractor. Copies of the Architect's Field Reports for these inspections are to be forwarded to both HUD and the Lender.
2. The Architect must report each guarantee inspection on form HUD-95379, including:
  - a. If work is acceptable, state, "All observable work acceptable at the time of this inspection."
  - b. If unacceptable, list latent defects.
    - 1) Describe each item.
    - 2) Recommend method of correction.
    - 3) Estimate current cost of correction.
  - c. Check any item of delayed completion and list complete and uncompleted items under a separate heading.
  - d. Note any improper maintenance or casualty damage under a separate heading.

## 12.7 Application for Insurance of Advances

### 12.7.1 General

A. Insurance of advances is the process of releasing insured mortgage funds and other funds necessary for the construction, acquisition and/or refinancing of the project. The following general criteria apply to the advancing of such funds:

1. All escrowed funds for on-site improvements (with the possible exception of grant/loan proceeds furnished by a government agency or instrumentality or tax credit equity proceeds) must be disbursed before mortgage proceeds. See [Chapter 14](#) for instructions on the pro-rata disbursement of tax credit equity proceeds. EB-5 Investments must be funded in advance, in the same way as other equity sources, and are not eligible to be disbursed on a pro-rata basis.
2. The amount of construction funds approved and advanced for insurance must be consistent with construction progress as approved by the HUD Inspector, except in the case of the initial and final advance which must be approved by the Regional Office Production Director, See [Section 12.7.1.A.6](#) below.
3. Other mortgageable items must be adequately documented with bills and/or receipts before funds can be approved and advanced for insurance.
4. The amount advanced for construction items must be adjusted for a 10% holdback until 50% completion then reduced per [Section 12.15.1.A.3](#) below.
5. The final amount approved for insurance must be supported by certified costs recognized in the cost certification review. Projects that are exempt from the cost certification process can submit for HUD's review a copy of their final Sources and Uses Statement prepared by the allocating State Housing Finance Agency or in the alternative, a statement of the final sources and uses amounts prepared by the title insurance company providing services for the project.
6. The Application for Insurance of Advance of Mortgage Proceeds, form HUD-92403, is initiated by the mortgagor. The initial and final advances must be submitted by the mortgagee to HUD for review and approval. Interim advances are approved by the mortgagee, based upon the HUD Inspector's approval of the construction amount. The approved Lender's construction loan administrator must sign forms HUD-92403 and HUD-92448 in the Authorized HUD Official signature block.
  - a. For the initial and final advances, the Regional Production Director must sign forms HUD-92403 and HUD-92448, in the following spaces:
    - 1) Under Authorized HUD Official for form HUD-92403, and
    - 2) Under Director, Housing Production for form HUD-92448.
  - b. For other interim advances, the Lender (i.e., either the Lender's Underwriter or construction loan administrator) must sign forms HUD-92403 and HUD-92448 for HUD, in the same spaces as described for signatures by the Regional Production Director for initial and final advances in the immediately preceding sub-paragraph 6.a.
7. Requests for funds must be supported with relevant evidence attached to form HUD-92403 and form HUD-92448, Contractor's Requisition, such as bills and receipts.
8. Please see [Chapter 19](#), Closings for additional requirements related to title and survey matters.

## 12.7.2 Lender's Role in Processing Application for Insurance of Advance

A. Lender's role in processing form HUD-92403, Application for Insurance of Advance includes:

1. Complete the application indicating:

- a. In Column B, amounts approved by the Lender/HUD;
  - b. Lender's approval date;
  - c. Amount to be advanced from mortgage proceeds;
  - d. Amount disbursed from mortgagee's front money escrow, if any; and
  - e. Total loan proceeds disbursed including the current request.
2. Submit the initial and final application to HUD for review and approval.
  3. Process and approve interim advances.
  4. Ensure clear title before advancing the approved disbursement.
  5. Notify HUD in writing when clear title does not exist or is impaired by reason of mechanics liens unresolved for more than 60 days or other impairments appearing since initial endorsement without Lender and HUD consent.

### 12.7.3 Stages of Advances

A. In cases involving insurance of advances, HUD and the Lender's processing of advances is divided into the following stages:

1. **Initial advance.** Initial advance refers to the first application and coincides with the initial endorsement of the HUD-insured Note. The initial advance will be reviewed and executed by the HUD mortgage credit analyst. The Lender should submit form HUD-92403, Application for Insurance of Advance of Mortgage Proceeds, with supporting documentation for HUD approval.
2. **Interim advances.** Interim advances are subsequent applications up to completion of the project and will be processed and approved by the Lender.
3. Next to Final Advance.
  - a. When HUD is in receipt of the contractor's certification and the consent from both the mortgagor and surety, if any, the final 2.5% of the construction holdback is released.
  - b. This procedure applies only to non-identity of interest contractors or where the contractor's identity of interest in the project ownership is not greater than 5%.
4. **Final Advance.** Final advance refers to any remaining balance of mortgage proceeds at final endorsement and takes into consideration funds necessary to set up the escrows for "Items of Delayed Completion" and "To Be Paid in Cash Items" and will be processed by HUD. In addition to the form HUD-92403, the Lender must submit a copy of form HUD-92451 Financial Record of Mortgage Loan Transaction (or similar format in an Excel worksheet), which reflects payments to the various participants during the construction period.

### 12.7.4 Approval of Initial/Interim Advances

A. Instructions for Approval of Initial/Interim Advances can be found in [Appendix 12, Section A.12.1](#).

## 12.7.5 Contractor's Monthly Requisition and Related Matters

A. See [Appendix 12, Section A.12.2](#) for instructions on completing Contractor's Requisition, form HUD-92448, and related matters.

## 12.7.6 Next to Final Advance

A. The Lender may request the next to final advance when construction is acceptably complete, even if there are items of delayed completion.

1. It may provide for the release of the contractor's holdback provided the conditions in [Section 12.15.5](#) have been met. The amount approved for release will be based on the cost certification review and HUD-approved amount (or where the cost certification is exempt, an operating statement is reviewed instead). The amount approved for release will also consider items of delayed completion. A special condition will be included in the Firm Commitment in the event that the cost certification is exempt, and an operating statement will be reviewed instead.
2. The balance of the off-site escrow may be released upon HUD approval provided:
  - a. The off-site sewer, water, electrical and gas facilities are completely installed and connected for a period not less than 30 days; and safe and adequate all-weather facilities for ingress and egress are provided.
  - b. All other required off-site construction, if any, is completed.
  - c. There is no event of default on the mortgage or failure to comply with program obligations.
  - d. The mortgagor has provided a latent defects assurance consistent with the requirements of the form HUD 91073M.

## 12.7.7 Final Advance

A. The Application for Insurance of the Final Advance will request any remaining balance of mortgage proceeds and ensures that:

1. The mortgagor's cost certification has been approved and the maximum insurable mortgage amount determined using form HUD-92580, Maximum Insurable Mortgage.
2. Form HUD-92403 is accompanied by a completed form HUD-92448, with required Contractor's Prevailing Wage Certificate, if the contractor's holdback has not been previously disbursed. Refer to [Section 12.15.5](#) for instructions on releasing the contractor's holdback.
3. The sum to be approved for the advance is the balance of the mortgage proceeds, based on the maximum insurable mortgage on form HUD-92580. Refer to [Chapter 13, Section 13.10](#) for instructions on an advanced amortization adjustment, if any.
4. An escrow is established for incomplete or delayed construction items under the provisions of form HUD-92456M, Escrow Agreement for Incomplete Construction.
5. Form HUD-92023M, Request for Final Endorsement of Credit Instrument, or form FHA-2453, Commitment to Insure upon Completion, must have been submitted and reviewed.



6. The escrow for the mortgagor's unpaid construction costs under the provisions of form HUD-92456M, Escrow Agreement for Incomplete Construction is established.

## 12.7.8 Keeping the Mortgage in Balance

**A.** Soft cost overruns (such as interest, taxes, mortgage insurance premium [MIP], and property or liability insurance) that result from a construction delay before completion of the project and is the fault of the General Contractor, (i.e. due to poor performance), are funded according to the liquidated/actual damages clause in the construction contract. This clause is not intended to penalize the contractor, but to provide a source of funds for the increased soft cost.

**B.** The interest allocation is considered over expended when:

1. The percent of the expended interest allocation exceeds by 10% or more the percentage of completion indicated by the Construction Progress Schedule, form HUD-5372; or,
2. The budgeted interest allocation remaining is demonstrably insufficient to carry the loan through Final Endorsement.

**C.** The Lender must notify HUD immediately, and HUD will advise the Lender of the following procedures:

1. When the interest allocation is insufficient, have the Architect and the HUD inspector estimate an expected completion date.
  - a. Compute the minimum liquidated damages for the period between the completion date specified in the construction contract, as adjusted by approved change orders, and the estimated completion date.
  - b. When the interest allocation has been exhausted, the non-profit Developer's fee, if applicable, or the working capital escrow should be used to keep interest current.
  - c. Transfer the computed liquidated damages amount from column I, Construction, to Column G, Carrying Charges and Financing, on form HUD-92451 (or similar format in an Excel worksheet) and:
    - 1) Allocate the full amount to interest, initially.
    - 2) Funds may be used for MIP, taxes, or insurance payments, if requested, after the funds for these line items and non-profit Developer's fee, if applicable and working capital escrow are exhausted. However, funds transferred from the construction account may be used to cover only the cost of those items attributable to the period between the completion date specified in the construction contract as adjusted by any approved change orders, and the estimated completion date.
2. Notify the Borrower, contractor, HUD and the surety, if any, by certified mail of the amount and the reason for the transfer.
3. Require written acknowledgment from HUD and surety, if any, before transferring funds.
4. The amount of transferred funds must be reflected on subsequent forms HUD-92448 as a decrease to item 7, Sum of Cost Breakdown Items Plus Inventories of Materials.

5. After review of the cost certification documents, if the full amount of transferred funds was not needed to cover the cost of interest, MIP, taxes, and insurance attributable to the period identified, the balance will be transferred back to the construction account.
  6. In processing form HUD-92448, before releasing the General Contractor's holdback, make adjustment for the lesser of actual or liquidated damages determined in the cost certification review.
  7. This procedure should be used only if, in consultation with the Regional Center Director, it is determined that the problems causing the delay will be remedied within the near future.
- D.** In the event the project continues to sustain an imbalance between sources and uses of funds, the Regional Production Office will inform the Regional office of Asset Management about the issues and the status of any release of IOD funds.

## 12.8 Change Orders – HUD Duties

### 12.8.1 General Requirements

- A.** Construction contract changes to the scope of contract work, contract price or contract time must be requested by the mortgagor through the Lender on form HUD-92437, Request for Construction Changes and must be signed by the mortgagor's Architect, the mortgagor, the General Contractor and the Lender before HUD reviews the change order for approval.
1. The HUD CA will review each change order and describe the substance and consequence of the change to the HUD Underwriter who will consult the respective Technical and/or Underwriting Branch Chief on any consequential change.
  2. Change orders will be approved only when they are necessary or are for betterment or an equivalent. The following information should appear on the face of the change order:
    - a. Classification (necessary, betterment, etc.);
    - b. Qualification for payment from the contingency reserve and from the Developer's fee for non-profit Borrowers; and
    - c. Whether the change order results from error, omission or negligence on the part of the Architect, contractor or mortgagor.
  3. Change orders submitted after the final HUD Representative's Trip Report will not be approved, except where:
    - a. The change order pertains to "Items of Delayed Completion," or
    - b. Written approval is given by the Regional Production Director.
  4. Surety approval must be secured in writing before approving any change order for time extension (see [Section 12.8.7.A.3](#)). Surety consent is not required where the project's assurance of completion is by a cash escrow or letter of credit.
  5. The working capital escrow requirement for new construction transactions is 4% of the mortgage amount, half of which (or 2%) is used as new construction contingency to fund HUD approved change

orders, construction cost overruns and other cost overruns not caused by the General Contractor. For eligible uses and procedure for release of the working capital escrow see [Section 12.15.3](#).

**B. Other change order policies include:**

1. Changes must be accurately reported and accounted for pursuant to U.S. Criminal Code, Section 1010, Title 18, U.S.C.
2. Procedures for changes outlined here are not to be used to alter the intent of the contract documents or to lower the quality or value of a project.
3. HUD does not initiate any change but may require it as a condition of approval in connection with a change proposed by the Architect, mortgage or contractor.
4. All changes must be approved in writing by the Lender and HUD before they are made.
5. Any change that is made without formal approval, even though tentatively agreed to as technically acceptable, must be recorded by the HUD Inspector as a noncompliance until the form HUD-92437, Request for Construction Changes - Project Mortgages, is approved. The payment of future insured advances may be affected until corrected.
6. Change orders that include a physical alteration such as change of materials, change of building plans, or change of site plans must not have any negative impact on the approved environmental review or any mitigation conditions. If the change order will have an impact, HUD will either reject the change order request or require an updated environmental review consistent with [Chapter 9](#) requirements.

## 12.8.2 Change Order Classification

**A. Necessary.** Necessary changes (which the CA or designee must document) are those that arise from:

1. Latent conditions that differ from conditions defined by the construction documents;
2. Changes in the applicable state or local codes, ordinances, etc. after:
3. Initial closing for insured advances; or
  - a. Firm Commitment for insurance upon completion.
  - b. The Architect's errors or omissions.
  - c. Damage to completed construction.

**B. Betterment.** Betterment changes are those that are economically justified. They must either:

1. Increase net income;
2. Reduce long-term project maintenance and/or operating expenses; or
3. Otherwise enhance the mortgage security.

**C. Equivalent.** Equivalent changes are those proposed because:

1. A specified item is not readily available, and the substitution provides equivalent or better utility and performance; or
2. The proposed substitution reduces the contract price but provides equivalent or better utility and performance.

### 12.8.3 Additive change Orders

- A.** The Lender must not give any explicit or implied assurance to the Borrower or the contractor that an increase in the insured mortgage amount will be granted when construction changes are approved.
- B.** Except for “necessary” change orders, the Lender must require the Borrower to escrow funds with the Lender for any additive change order where HUD first estimates that the aggregated change orders equal or exceed a \$5,000 increase in the construction contract price, and for all subsequent additive change orders.
1. The Lender may submit to HUD a letter of confirmation from the contractor stating that the Borrower has fully paid for the approved change order instead of escrowing the funds.
  2. Non-profit Borrowers may use the Developer’s fee to fund additive change orders.
  3. After 75% completion is achieved and if construction is on schedule and without findings of non-compliance, the CA may allow any HUD approved additive change order to be funded from the 2% contingency.
    - a. Excess mortgage proceeds, if available, may be used to fund the escrow for necessary and betterment change orders. However, any excess mortgage proceeds used to fund the escrow for contractor estimated costs in excess of HUD estimated costs, or HUD estimated costs in excess of contractor estimated costs, may not be disbursed until final closing. [See Cross References at [Chapter 8, Section 8.14.C.11](#) and [Appendix 12, Section A.12.1.4](#)]
    - b. The Lender may accept a third-party letter of credit instead of a cash deposit, subject to the Lender agreeing to provide the cash equivalent, where the letter of credit is not immediately honored.
    - c. The Lender may recognize the cost of third party paid change orders at cost certification, where there are available mortgage savings.
  4. For substantial rehabilitation projects the Lender must approve disbursements from the established contingency reserve in an amount not to exceed the HUD cost estimate for necessary or betterment change orders.
    - a. The Lender must require an escrow for any amount that the contractor’s cost estimate exceeds the HUD estimate.
    - b. The Lender may authorize the use of excess mortgage proceeds, if available, to satisfy the escrow requirement, subject to the disbursement limitations in [Section 12.8.4.A.1](#) above.
    - c. After substantial rehabilitation work is complete and approved by the HUD Inspector and subject to Lender and HUD approval, the Borrower may elect to apply funds remaining in the contingency reserve line item to do:
      - 1) Necessary, further improvements, betterments or upgrades to the property,
      - 2) An initial deposit to the reserve for replacement account, or
      - 3) A reduction to the principal mortgage balance.
  5. The Lender must approve the following forms for mortgagor’s application for funds for completed additive change orders:

- a. Form HUD-92464M, Request for Approval of Advance of Escrow Funds, where an escrow is used, which must be submitted to HUD for approval.
- d. Form HUD-92403, Application for Insurance of Advance of Mortgage Proceeds, where a rehabilitation project's contingency funds or a non-profit's Developer's fee or excess mortgage proceeds are to be used.

## 12.8.4 Deductive Change Orders

**A.** Where the HUD estimated decrease in contract price for any aggregation of change orders remains less than 2-1/2% of the contract price, the Lender must reduce the Contractor's "Final" Requisition, form HUD-92448, by the appropriate amount.

**B.** Equals or exceeds 2-1/2% of the contract price and for all subsequent deductive change orders regardless of the amount, the Lender must:

1. Reflect the decrease in the Contractor's Requisition, form HUD-92448, item 8.
2. Reduce the original mortgage amount at cost certification, where required.

## 12.8.5 Changes that Adversely Affect Property Income

**A.** Changes that adversely affect property income are a basis for change order rejection, except where it is a necessary change order and the situation is unavoidable. HUD staff must adequately document the analysis and decision showing that the change resulted in less property income. If the estimated reduction in property income would result in a reduced mortgage amount, the change order must be submitted to the Regional Production Director for review and approval. (See [Section 12.10](#) and [Section 12.11](#) below.)

## 12.8.6 Extension of Contract Time

**A. Approval.** The MAP Lender may approve an extension only where:

1. The delay is beyond the contractor's control (e.g. strikes, adverse and unknown site conditions, bad weather exceeding the average for the season, etc.) and the delay is documented or associated with an approved change order,
2. The extension request is submitted within the limit provided by the contract and the general conditions for delays beyond the contractor's control, and submitted concurrently with any requested changes in the work, and
3. The request is accompanied by a Surety's written consent. There is no consent requirement where the project's assurance of completion is by a cash escrow or letter of credit.

**B. Funding.** The Lender may require funding for the increased cost for interest, taxes, insurance, MIP and contractor's general requirements by use of a cash escrow, excess mortgage proceeds, or non-profit's Developer's fee, if applicable, or from contingency reserve.

**C. Enforcement.** HUD may enforce liquidated damages in accordance with the terms of the construction contract (form HUD-92442M).

**D. Required Documentation.** Within 21 days of the date a construction delay occurs, the contractor must document the delay with the Architect in an extension request, which must include the written consent of the Surety and conform to AIA document A201, Article 8.3. The request must include:

1. Date of occurrence and number of calendar days it covered;
2. Effect on construction progress;
3. Cause of the delay. If the cause is of a continuing nature, submit the extension request when the cause ceases, but still record the initial date of occurrence and its effects on construction.

## 12.8.7 Changes to Items of Delayed Completion

**A.** Changes to items of delayed completion are the only construction contract changes that the HUD CA may approve after project completion. All others require the Regional Center Director’s consent.

## 12.8.8 Emergency Changes

**A.** The only time a change can be made without prior written approval of the Lender and HUD is in emergencies that:

1. Endanger life or property; or
2. Halt construction.

**B.** However, even then, the Architect must notify the Lender and HUD and as soon as possible, submit a form HUD-92437.

## 12.8.9 Insurance Upon Completion

**A.** Construction Contract Changes, form HUD-92437, are to be processed in the same way as Insurance of Advance cases, except as modified below:

1. An escrow is not required for additive change orders. The Borrower:
  - a. Must be able to provide the additional funds required, and,
  - b. Must not have any outstanding obligation in connection with construction other than the insured mortgage at the time the mortgage is presented to HUD for insurance upon completion.
2. Surety approval is not required for the approval of additive change orders regardless of the percentage of contract increase.

## 12.8.10 Changes to Offsite Construction

**A.** Changes to offsite construction must be requested by letter or other acceptable format with the information required by form HUD-92437 used as a general guide, although the actual form must not be used.

## 12.8.11 Other Changes

A. Changes necessitated by error, omission or negligence of the Architect, owner, or contractor must be recorded by the HUD CA or HUD inspector, on form HUD-92437, including.

1. The reason for the determination; and
2. Confirmation that the cost of the changes must not be included in the mortgage amount.

## 12.9 Change Orders - Inspection Instructions

### 12.9.1 General Procedure

A. Any contemplated changes are first discussed among the Architect, contractor, owner, and HUD inspector.

B. The HUD inspector may assist the General Contractor and owner by reviewing potential change order packages as desired to make a preliminary determination of technical acceptability before the change is submitted for approval to the Lender and the HUD Office. (This neither commits HUD to the change, nor relieves the Architect or the contractor of having to submit form HUD-92437.)

C. All onsite changes to construction documents and requests for time extensions must be submitted for approval on form HUD-92437, Request for Construction Changes - Project Mortgages.

1. Required attachments for physical changes are:
  - a. Appropriate modifications to the contract drawings and specifications;
  - b. Architect's statement that the change:
    - 1) Conforms to the original intent of the contract drawings and specifications;
    - 2) Is necessary to overcome an impediment to construction or is an addition desired by the owner.
  - c. Backup documentation from the contractor of the amount requested consisting of itemized quantities and costs including a breakdown of labor and materials, as well as any requisite general requirements and eligible allowances for overhead and profit.
2. The form must be signed by the:
  - a. Borrower,
  - b. Contractor,
  - c. Architect; and,
  - d. Authorized representative of the Lender.

D. All offsite changes to construction documents and requests for time extensions must be:

1. Requested in a letter or other format acceptable to the CA, but not on form HUD-92437.
2. Documented and processed the same as on-site changes.



E. HUD will promptly review all requests submitted so delays will not affect construction or contractor requisitions.

1. Processing should normally take no more than 5 workdays and is directed by the CA.
2. All construction change requests must be reviewed, signed, and dated by the CA.

## 12.9.2 Voiding Changes

A. If an approved change is not made, it must be nullified by a form HUD-92437 restoring the drawings and specifications to the status prior to the change request or to a status acceptable to HUD.

## 12.9.3 Unapproved Changes

A. When there are unapproved changes in the construction, the HUD inspector must modify the amount of the contractor's requisition to cover:

1. The non-compliance (any change that has not formally been approved on form HUD-92437), and
2. Construction removal that may be required if the unapproved change does not receive approval.

B. For projects involving insurance upon completion, references here to "contract requirements" or "contract documents" include the conditions and provisions of the commitment if there is no construction contract.

# 12.10 Change Orders – HUD Architectural and Cost Instructions

## 12.10.1 Architectural

A. The HUD CA will review all requested changes for technical acceptability.

## 12.10.2 Cost

A. Construction changes:

1. The HUD CA will produce a cost estimate for each construction change request submitted by the mortgagor by applying current data to accepted or amended change order quantities; include amounts for general requirements and builder's overhead and profit using the percentage of each from Section G of form HUD-92264 that was approved at Firm Commitment.
2. Compare the estimate with the mortgagor's estimate and, if reasonable, use the mortgagor's figure. Otherwise use the HUD estimate.
3. Complete the cost entries on form HUD-92437 and forward the completed form to the HUD Underwriter.

**B. Approved time extensions:**

1. Calculate the additional general requirements cost due to the extension of time.
  - a. Divide the cost of general requirements from the contractor's approved form HUD-2328 by the number of months estimated for construction from Section G of form HUD-92264 approved at Firm commitment. Sixty-five percent of this amount is the estimate per month of additional general requirements.
  - b. Use one quarter of the monthly estimate per week.
  - c. There is no cost effect for extensions of time for less than one week.
2. Complete the cost entries on form HUD-92437 and forward the completed form to the HUD Underwriter.

## 12.11 Change Orders – HUD Underwriter Instructions

### 12.11.1 Appraisal Reconsideration, When Required

**A.** The HUD Underwriter must determine if a requested change is likely to reduce project marketability or income by reducing rents or revenue and/or increasing operating expense. The HUD Underwriter or the assigned HUD appraiser must identify and explain any estimated increase or decrease in net project income on the reverse of form HUD-92437.

**B.** The HUD Underwriter or assigned appraiser must prepare a Trial form HUD-92264 and Trial form HUD-92264-A reflecting the new data for the HUD Underwriter to re-determine the maximum insurable mortgage.

### 12.11.2 HUD Underwriter Tasks

**A. Processing:**

1. If the Borrower's or contractor's estimate for the change order exceeds HUD's estimate, the difference must be escrowed with the Lender. Excess mortgage proceeds, if available, may be used to satisfy this requirement. Conversely, that portion of HUD's estimate that exceeds the Borrower's or contractor's estimate must be restricted and held until final endorsement to ensure funds to complete the project.
2. Process the cost and appraisal findings and show the cumulative effect on cost of all approved change items.
3. Use [Section 12.8.4](#) and [Section 12.8.5](#) for additive and deductive change orders.
4. Recalculate the maximum insurable mortgage when any approved construction change or changes adversely affect net income, e.g., a change that causes an increase in project operating costs or a reduction in project income.
  - a. The HUD Underwriter or assigned appraiser completes a Trial form HUD-92264 with an updated income and expense analysis.
  - b. Re-determine the maximum insurable mortgage.

- c. If the re-determined mortgage is lower than the original mortgage amount, as a condition of approval of the change order, indicate in item 3b of form HUD-92437 that subsequent Contractor's Requisitions, form HUD-92448, must be reduced by the greater of:
  - 1) The difference in mortgage amounts;
  - 2) The net increase in costs resulting from acceptable construction changes.
5. Extensions of time.
  - a. The HUD CA is responsible for determining whether the delay was beyond the contractor's control and, if so, the length of the approved time extension.
  - b. Calculate the cost increase due to the extension:
    - 1) Compute pro-rata daily rate for interest, taxes and insurance by using estimates in Section G of form HUD-92264 and multiply these rates by the approved time extension measured in days.
    - 2) An additional year of MIP will be required if the approved time extension, when added to the estimated construction term plus the two months included in Section G of form HUD-92264 plus previously approved time extensions, would extend the term past twelve, twenty four or thirty six months, as applicable.
    - 3) Add the additional general requirements, if any, noted by the HUD CA on the change order request. Only this item amends the construction contract price on form HUD-92437.
    - 4) Determine the source of funds for any increase due to the extension, e.g. cash, excess mortgage proceeds or non-profit's Developer fee, or contingency reserve funds.
  - c. Requests for release of excess mortgage proceeds or contingency reserve funds set aside to fund time extensions are submitted on form HUD-92403.
  - d. Releases from a cash deposit are made using form HUD-92464M.
  - e. These funds may be released only after the account for the soft cost item(s) being requested has been exhausted on form HUD-92451, Financial Record of Mortgage Loan Transaction (or similar format in an Excel worksheet).
- B.** Requests for disbursement of contingency reserve funds, working capital construction contingency funds and non-profit's Developer fee for completed change order items, are made on form HUD-92403. All requests:
  1. Must be accompanied by a certification by the Borrower's supervisory Architect and the HUD Inspector that all the work covered by the change order was acceptably completed in accordance with contract documents.
  2. Must include the authorization by the Depository Institution relative to payment to the contractor contained on form HUD-92464M, Request for Approval of Advance of Escrow Funds.
  3. Must include the criminal certification contained in form HUD-92464M for certifications made in [Section 12.11.2.A.1](#) and [Section 12.11.2.A.2](#) above.
  4. Are subject to a holdback of retainage consistent with the construction contract.

**C. Change orders funded from excess mortgage proceeds.** Excess mortgage proceeds may be used to fund either necessary or betterment change orders.

1. These funds may be used to fund HUD's estimate of increased costs as well as any portion of the contractor's estimate that exceeds the HUD estimate. The portion that exceeds HUD's estimate must be restricted until final endorsement.
2. Funds are released in the same manner as contingency reserve funds.

**D. Releasing Cash Deposit.** The Borrower must submit, through the Lender, form HUD-92464M when construction covered by a cash deposit is complete and acceptable to HUD.

1. The Borrower's supervisory Architect and the HUD inspector must certify on form HUD-92464M that all work and materials covered by the change order are satisfactory and consistent with contract drawings.
2. If construction costs were paid in full by other than the cash escrow or excess mortgage proceeds before submitting the disbursement request to HUD for approval, the Borrower must submit a receipt of payment signed by the General Contractor.
3. If construction costs will be paid after HUD's approval for the release of the funds deposited for the construction change, before the next form HUD-92403 is submitted, the Borrower must submit a receipt of payment signed by the General Contractor.

**E. Change Order Summary Sheet** showing cumulative cost of all executed change orders should contain, at least:

1. The date the change order was signed by the Borrower;
2. The date HUD received the change order;
3. The date the HUD Underwriter completed review of the change order;
4. The Borrower's or contractor's estimate of cost for the change order;
5. HUD's estimate of cost for the change order;
6. The amount of change orders to be funded from contingency reserve, working capital construction contingency, non-profit's Developer fee, or excess mortgage proceeds;
7. The required cash escrow deposit, if any;
8. The HUD percentage of cost increase or decrease.

## 12.12 Labor, Fair Housing and Equal Opportunity (FHEO) and URA Compliance

### 12.12.1 Wages

**A. Payrolls.** Contractor payrolls are submitted directly to the HUD Labor Standards and Enforcement staff a minimum of once a month.

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**B. On-Site Interviews.** The HUD inspector submits all original copies of the form HUD-11, Record of Employee Interview, to the HUD CA who forwards these to the HUD Labor Standards and Enforcement Staff.

### 12.12.2 Labor Violations

**A.** The HUD CA must advise the Labor Standards and Enforcement Staff of continuing minor infractions that cannot be resolved or of any identified or suspected major violations. Labor standards enforcement staff shall provide written clearance to Housing and OGC in connection with final closing confirming either that there are no outstanding issues and the project may proceed to closing without condition, or that outstanding issues remain and the closing may proceed conditioned on the deposit to the U.S. Treasury of funds sufficient to meet any wage restitution and/or liquidated damages that have been or may be found due. Final closing may not occur without receipt of this written guidance from labor standards enforcement staff.

### 12.12.3 FHEO Noncompliance

**A.** The HUD CA must advise the local HUD Director of FHEO of continuing minor noncompliance that cannot be resolved or of any identified or suspected major noncompliance.

### 12.12.4 Compliance with Any Applicable Relocation Plan

**A.** See [Appendix 3, Section A.3.5](#). If existing tenants are displaced by rehabilitation or repairs and alterations, a relocation plan should be in place and the Borrower must be executing the plan. If the Lender, the HUD inspector or the HUD CA observe relocation of existing tenants where no relocation plan is in place or observe an unmet need to relocate tenants, the Regional Production Director must be immediately advised and the Borrower required to cease any construction activity that requires or should require the Borrower to relocate tenants. If the project is subject to the Uniform Relocation Act or Section 104(d) of the Housing and Community Development Act of 1974, the HUD CA should promptly seek the assistance of the HUD Regional Relocation Specialist. Otherwise the HUD CA should advise the Lender and the Borrower that the HUD approved relocation plan must be followed, or if no such plan is approved, then a relocation plan consistent with [Appendix 3, Section A.3.5](#) must be prepared, approved by HUD and implemented before any further construction that requires relocation may proceed.

## 12.13 Surveys

**A.** Surveys must be by a licensed surveyor and show the exact location of on-site improvements, including utility lines and easements. Please see the FHA Multifamily Program Closing Guide for additional requirements related to survey matters.

**B.** The contractor must give the owner and HUD surveys, as follows:

1. At any time, the owner or HUD requires; and
2. When construction is complete (“as-built” survey).

C. The inspector, when uncertain of the location of construction or stored materials in relation to property lines or easements, may ask the Architect to require a survey with the next contractor's requisition.

D. If encroachments are found, the inspector must notify the HUD CA by memorandum explaining the conditions. (Encroachments may jeopardize the entire property as security for an insured mortgage.)

## 12.14 Permission to Occupy

A. Permission to Occupy form HUD-92485 must be executed and dated by the Architect before the Borrower permits occupancy of any phased dwelling unit and signed and dated by the HUD inspector on the same date as the Architect for the final Permission to Occupy.

### 12.14.1 Physical Completion

A. The work, or portion thereof for which Permission to Occupy is approved, must be sufficiently complete in accordance with the contract documents so the mortgagor can occupy or utilize the identified portion of the work for its intended use.

1. Support facilities (utilities, disability access, vehicular access and parking, fire life-safety equipment, etc.) must be in place.
2. The acceptability of each unit and facility for which Permission to Occupy is requested must be confirmed:
  - a. Property must be inspected and form HUD-92485 signed by the Borrower, supervisory Architect, contractor, and HUD Representative.
  - b. Minor items that do not preclude occupancy are permitted but must be listed as an attachment to form HUD-92485.
  - c. The contractor is fully responsible for any incomplete or improperly performed contract work whether or not listed.

### 12.14.2 Signatures, Approval and Permission

A. The form HUD-92485 must be signed by the Borrower, supervisory Architect, contractor, Lender, and HUD CA.

B. The HUD CA or a designated HUD Technical Branch Chief signs as Chief, Architecture and Engineering Section. The Underwriting Branch Chief signs as Chief Underwriter.

C. The Regional Production Director will designate an FHA Authorized Agent in the Regional Center or Satellite Office to sign the Permission to Occupy.

### 12.14.3 Submission Documents

A. The Lender must sign form HUD-92485 agreeing with the request and stating that insurance risks have been covered for the project. The Borrower must include the following documents with the completed form HUD-92485:

1. A Certificate of Occupancy or equivalent permit from the governing municipal authority for all units and facilities listed on the Permission to Occupy; and any other required permits or authorizations;
2. An accord or certificate of property and liability insurance from the Borrower's insurance company.

### **12.14.4 Partial Occupancy Approval**

**A.** Favorably consider partial occupancy of units as they become available, where vandalism could be minimized, needed project income is provided, an earlier rent-up date could be achieved, utility costs for occupied units can be metered separately from contractor's utilities, etc.

**B.** Approve a series of Permissions to Occupy as units or facilities become available, e.g. individual buildings on multi-building projects, or individual floors or wings on larger buildings.

**C.** Approve a single Permission to Occupy for all units where dictated by management considerations, e.g. very small projects.

## **12.15 Escrowed Funds, Letters of Credit, Deposits, Holdbacks and Related Matters**

### **12.15.1 Application for Disbursement of Escrowed Funds**

**A.** Form HUD-92464M, Request for Approval of Advance of Escrow Funds, must be used where the escrow is to ensure completion of offsite improvements, demolitions, additive change orders, Non-Critical repairs and accessibility-related Critical repairs approved for deferred completion (within 12 months of initial closing) under Section 223(f) program, temporary resident relocation, or Borrower's unpaid construction items at final endorsement.

1. The Borrower must initiate the process by completing form HUD-92464M. The Borrower must determine the amount of funds to request for release from the escrow that align with the completed work. The Lender must complete the form before submitting a disbursement request to HUD for approval.
2. The HUD Inspector is required to record the percentage of acceptably completed escrow work on the HUD Representative's Trip Report, form HUD-95379, and should also sign page 5 of form HUD-92464M in the space for the HUD Inspector if requested work is acceptably completed. The Borrower will review the Trip Report to determine the amount of funds to request for release of escrow funds that align with the completed work. After the Borrower has reviewed the Trip Report and entered information on the form HUD-92464M, the Borrower must forward a copy of both forms to the Lender for their review and completion before the disbursement request is submitted to HUD.
3. HUD will not authorize interim advances (form HUD-92403) that exceed the documented percentage of completion less the applicable retainage. An interim advance is the difference between the percentage of completion times value of work currently complete previous payments that included a 10% retainage, until work is 50% complete. (This does not apply to the Section 223(f) program.)



4. Where excess mortgage proceeds are used to fund an escrow for completion of offsite improvements, additive change orders or mortgagor's unpaid construction items, return the original copy of form HUD-92464M to the depositor and retain one copy.

## 12.15.2 Release of Letters of Credit

A. In the event of a claim:

1. **Assignment.** HUD will not accept an assignment of the letter of credit to HUD from the Lender.
2. **Undrawn Balance.** HUD will treat any undrawn balance from a letter of credit or escrow agreement as cash held by the Lender.
3. **Cash equivalent.** The Lender must provide cash equal to the undrawn balance if demand on a letter of credit is not met.

## 12.15.3 Working Capital Deposit

A. Working Capital Deposit (form HUD-92412M) escrow is established at initial closing with the Lender. It is the responsibility of the Borrower to advise the Lender how it plans to fund the escrow: either by cash, a letter of credit, excess mortgage proceeds, or excess land equity, if any.

B. **Purpose.** The deposit is used to:

1. Defray the cost of initial marketing and rent-up including sales and advertising, model furnishing, and equipment and supplies essential to initial rent-up, etc.
2. Cover project expenses that are not covered by project income or the Initial Operating Deficit Escrow in the first operating year. The project expenses include real estate taxes, permanent property insurance premiums, mortgage insurance premium, ground rents and assessments.
3. Cover shortfalls in interest, taxes, property insurance premiums, mortgage insurance premiums, ground rents and assessments during construction after funds available under the Building Loan Agreement are exhausted.
4. Fund necessary change orders and construction cost overruns not caused by the contractor from the 2% new construction contingency portion of the working capital escrow.

C. **Control and Release of Escrow.** The Lender controls disbursements from the escrow and, in conducting its due diligence during initial occupancy, is required to fully document all expenditures from the escrow. In reviewing a Borrower's request to release a partial amount of escrow, the Lender should consider the following.

1. Borrower's request for the release of such escrow funds must be by letter to the Lender, rather than on form HUD-92403.
2. None of the escrow can be used to defray any of the hard costs of construction applicable to the Total for All Improvements, Section G of form HUD-92264, Rental Housing Project Income Analysis and Appraisal (or other Firm Stage underwriting form applicable to the Section of Act the project is to be insured under).
3. Avoid premature disbursements and unnecessary expenditures.

4. As portions of a project are ready for occupancy, a partial disbursement may be permitted for reasonable opening expenses. However, the Lender must not exhaust the escrow prior to project completion but should retain a reasonable amount to offset funding needs through the remainder of the construction period and thereafter.
5. The HUD Office may direct that the deposit be used to cover any shortfall in interest, taxes, property insurance mortgage insurance premiums, ground rent and assessments.

#### **D. Final Release of Escrow.**

1. Subject to HUD approval, the Lender may release any unused balance in the working capital portion of the escrow to the Borrower if the project is not in default and when the operations of the project have demonstrated to the Regional Production Director's satisfaction that the project has achieved 6 consecutive months of sustaining occupancy as defined in [Chapter 3, Section 3.1.25](#).
2. If the mortgage is in default, the Lender must apply any balance of the escrow (either working capital or construction contingency portions) to cure a default, where a default occurs before its release.
3. At final endorsement, any remaining balance of the new construction contingency portion of the escrow may be used to fund any latent defects assurance or escrow for delayed construction items or if these needs are otherwise met, refunded to the Borrower.

### **12.15.4 Initial Operating Deficit Deposit**

**A.** Initial Operating Deficit Deposit must be established with the Lender at initial closing. The Borrower must advise the Lender how it plans to fund the escrow, by cash, a letter of credit, excess mortgage proceeds, or excess land equity, if any.

**B.** The purpose of the operating deficit escrow is to provide funding for operating expenses, non-capitalized property taxes, insurance and interest and principal payments when income is insufficient during the initial lease up period. This escrow is not mortgageable and the unused portion must be returned to the Borrower.

**C.** Release of the Initial Operating Deficit Escrow. HUD will consider Lender's request using form HUD-92464M, Request for Approval of Advance of Escrow, for all initial operating deficit draws during lease-up. The Lender's request must be accompanied by:

1. A review and analysis of the monthly accounting reports detailing progress on lease up as compared to the lease up projections used in underwriting, and
2. An updated calculation of the sufficiency of the escrow. This analysis and calculation are particularly important if the project is experiencing substantial variations from its lease up projections.

**D.** Unused amounts will be released upon the Lender's request when the project has demonstrated to the Regional Production Director's satisfaction that the project has achieved six consecutive months of sustaining occupancy as defined in [Chapter 3, Section 3.1.25](#).

1. The HUD Underwriter will consult with Asset Management (AM) staff prior to approval of a release to obtain AM's approval.
2. HUD offices should exercise caution to be certain that monthly results are not erratic or seasonal and that 1.0 or better debt service coverage will be sustainable after release of the escrow funds.

3. For garden-style apartment projects consisting of separate buildings, each of which is leased up separately, HUD will consider partial releases of the operating deficit escrow as individual buildings achieve 6 consecutive months of sustaining occupancy.
4. It is the Lender's responsibility to fully document all expenditures from the escrow fund to ensure that funds are used solely for project operating needs.

### 12.15.5 Amount of Contractor's Retainage and Release

**A. Purpose.** Retainage provides an incentive for the General Contractor and mortgagor to promptly complete the project, submit cost certification and reach final closing.

**B. Amount of retainage.** The Building Loan Agreement allows for the possibility of a reduced holdback amount as set forth in a retainage reduction rider when the project reaches 50% completion. The rider is not a HUD form. The owner and the General Contractor will create a rider, to attach to the Building Loan Agreement, which describes how the retainage is reduced according to the guidance below. The construction contract also provides for a 10% holdback from the contractor's monthly payments for acceptably completed work, acceptably stored materials, and where applicable, components acceptably stored offsite. The requirements for reduction of the retainage after 50% completion are as follows:

1. The Contractor has no identity-of-interest with the owner that is greater than a 5% equity interest in the ownership entity,
2. Prior written consent from the Surety must be obtained and attached to the request for reduction, and
3. There can be no questions regarding the contractor's performance concerning the quality of work, compliance with the contract and with any change orders or work in progress. The Regional Production Director or his designee must make the decision to reduce the retainage based on the recommendation of the HUD CA and/or the HUD inspector.
4. Assuming the above conditions are met, 10% retainage will be required only until 50% completion. After 50% completion the retainage may be reduced from 10% to 5% until 75% completion, and then may be reduced further to 2.5% retainage until the loan reaches Final Endorsement.

**C. Release of retainage for identity of interest contractors.** Except as provided in [Section 12.15.5.D.4](#) and [Section 12.15.5.D.5](#) below, the retainage may not be released, in whole or in part, until Final Endorsement for a contractor with an identity of interest that is greater than 5% equity interest in the ownership entity.

**D. Release of retainage for non-identity of interest contractor.** The contractor's retainage, or the remaining balance in the retainage, may be released at the next to last advance, when requisitioned on form HUD-92403, Application for Insurance of Advance of Mortgage Proceeds, subject to compliance with the following:

1. Contractor's cost certification, where required, has been reviewed and the necessary adjustments made to form HUD-92451, Financial Record and Mortgage Loan Transaction (or similar format in an Excel worksheet);
2. Contractor has disclosed its final obligations on form HUD-92023M, Request for Final Endorsement of the Credit Instrument;

3. All work under the construction contract has been inspected and approved by the controlling jurisdictions and/or authorities;
4. Certificates of occupancy or other required approvals for the dwelling units and non-dwelling facilities, where applicable, have been issued by governmental authorities having jurisdiction. (Separate buildings for community rooms, rental offices, laundry rooms, etc., commonly require separate certificates of occupancy.);
5. Permission to Occupy, form HUD-92485 has been issued by HUD for all units;
6. All Davis-Bacon payroll requirements have been satisfied;
7. Surveyor's Certificate, form HUD-91073M, and survey showing the location of all improvements, utility easements and site utility distribution lines have been submitted to HUD, and
8. Retain, where applicable, an adequate amount to cover the following:
  - a. Items of delayed completion in an amount equal to 150% of the HUD CA's cost estimate for completion,
  - b. Any owed or contested amounts indicated by mechanics, subcontractor, supplier, or equipment lessor liens, etc.
  - c. The lesser of the liquidated damages or actual damages computed at cost certification, and
  - d. The net effect of all change orders if said effect is negative.

**E. Early partial release of retainage.**

1. After 90% contract completion, the Regional Production Director may release part of the General Contractor's retainage and suspend further withholding of retainage from payments due, where:
  - a. The contractor has no identity of interest or the contractor's only identity of interest in the project ownership is less than 5%;
  - b. The contractor, mortgagor and mortgagee request the early release of the holdback and attach the request to form HUD-92403, Application for Insurance of Advance of Mortgage Proceeds; and
  - c. Prior written consent from the surety, if any, for the early release of holdback is provided with the request.
2. The Regional Production Director must determine that:
  - a. The contractor's general performance warrants partial release of the holdback without conditions; or
  - b. A partial release of the holdback is appropriate with conditions, e.g., measures to assure immediate distributions to subcontractors or others, would be in the mutual interest of all participants; and
  - c. The undisbursed holdback amount must equal or exceed 2.5% of the contract amount.

**F. Projects in difficulty.** Release of part of the contractor's holdback before 90% contract completion may be granted only to prevent a default of the construction loan and only if it would solve the project's problems and enable it to reach construction completion.

1. The contractor's performance meet the following conditions:
  - a. The completed work must be satisfactory;
  - b. The percentage of completed contract work must be sufficient to ensure project completion within the specified contract time; and
  - c. The holdback may not be released if there are unresolved questions concerning:
    - 1) Quality of work,
      - a) Compliance with the contract, including outstanding change orders, or
    - 2) Work that is progressing behind the contractor's construction schedule, as amended by approved change orders.
2. Written consent for the early release of holdback must be obtained from the surety, if any, the mortgagor and the mortgagee.

### 12.15.6 Cash-Out Escrow from Land Equity

**A.** Cash-Out Escrow from Land Equity (or any balance remaining after funding all mortgage requirements). See [Chapter 8, Section 8.14.C.11](#).

1. Cash out from the excess value of the land, or the “as is” property value for a substantial rehabilitation project, that was contributed to meet the Sponsor’s equity requirement at initial endorsement, above what was required at initial endorsement must be deferred and held by the Lender. If any of the land equity was used to fund escrows at initial endorsement, the remaining balance is deferred and held by the Lender. The Lender will have discretion as to the form of escrow used for holding cash-out from land equity. Refer to [Appendix 12, Section A.12.1.4](#) about eligible uses of cash-out from land equity.
2. The Lender will hold the cash-out funds until project operations have demonstrated to the HUD field office’s satisfaction that it has achieved 6 consecutive months of sustaining occupancy or 12 months of sustaining occupancy for transactions that meet the Large Loan parameters (see [Chapter 3, Section 3.1.25](#) for sustaining occupancy definition.)
3. The HUD Underwriter will consult with Asset Management staff prior to approval of a release. HUD Offices should exercise caution to be certain that monthly results are not erratic or seasonal and that 1.0 or better debt service coverage will be sustainable after release of the escrow funds. HUD will approve a request for release of funds on form HUD-92464M from the Lender. The Lender’s file should contain the HUD approval and documentation supporting the release.

## 12.16 Insurance Upon Completion (IUC)

**A.** Basic requirements during construction stage are generally the same as for projects with FHA insured advances. However, IUC advances are not FHA insured. Therefore, HUD does not monitor the Lender’s disbursements. Also, because HUD has no risk exposure until final endorsement, HUD does not become involved in the resolution of construction problems, even if those problems prevent or may prevent the

Borrower from meeting program obligations. The following are major variations from standard program requirements for insurance upon completion projects.

**B. Firm Commitment to Insure Upon Completion**, completed on the HUD Commitment template by HUD staff, must contain special conditions defining requirements necessary to maintain the commitment until Final Endorsement of the permanent mortgage.

1. While there is no initial closing there should be a preconstruction meeting to advise the Lender, Borrower and contractors of requirements that must be met and the construction monitoring methods that will be followed from the date of the Firm Commitment through Final Endorsement. The construction stage starts after the issuance of the Firm Commitment.
2. The Firm Commitment must specify the expected date of construction start and the expected date of construction completion, followed by a date for Final Endorsement. Construction/rehabilitation must start and be completed within the period provided by the Firm Commitment, subject to HUD's decision to amend the Firm Commitment pursuant to a request by the Lender. Unless terminated, the Firm Commitment will endure until consummated at Final Endorsement. The Lender may request or advise HUD of its termination of the Firm Commitment for the convenience of the Borrower. HUD may terminate the Firm Commitment upon Lender or Borrower's failure to cure material non-performance of program requirements and/or requirements of the Firm Commitment after notice and opportunity to cure consistent with existing construction administration procedures defined in this [Chapter 12](#). In the event of termination, the Lender will not be entitled to any refund of application or inspection fees paid.

**C. Required documents include the following:**

1. Construction contract, form HUD-92442M. The following must be made a part of the contract:
  - a. General Conditions, AIA Document A201;
  - b. Supplementary General Conditions, form HUD-92554M;
  - c. Davis-Bacon Wage Rates (supplied by HUD Labor Standards and Enforcement);
  - d. AIA Document B108 with HUD 92408-M, HUD Amendment to AIA Document B108 attached identifying identities of interest between Owner, Contractor, Subcontractor and Architect; and
  - e. Cost certification criteria from form HUD-92442M, Article 13, where an identity of interest exists or a "cost plus" form of contract is used.
2. A complete master set of drawings and specifications and two duplicate sets.
3. The Agreement and Certification, form HUD-93305M, executed by the Borrower, Lender, and the General Contractor.
4. A title policy or title evidence showing:
  - a. Insured property free of all encumbrances other than the mortgage and acceptable reservations of title;
  - b. Proof that no unpaid obligations exist except as previously approved by HUD; and
  - c. Title policy continued to date of credit instrument endorsement.
5. Survey and Surveyor's Certificate, form HUD-91073-M.

6. Contractor's Requisition Project Mortgages, form HUD-92448. The Contractor's Prevailing Wage Certificate must be submitted at the time the mortgage is presented to HUD for insurance
  7. Assurance of funds to meet operating deficit. Completed forms to assure funds are available to carry the project to a sustaining occupancy after final closing:
    - a. Form HUD-92476M, Agreement of Sponsor to Furnish Additional Funds;
    - d. Form HUD-92476a-M, Escrow Agreement for Operating Deficit; and
    - e. Form HUD-92477M, Bond Guaranteeing Sponsor's Performance.
  8. Warranty against latent defects is required in accordance with [Section 12.16.S](#).
- D.** The pre-construction conference must precede the initial start of construction, see [Section 12.2](#). However, matters concerning insured advances of funds, and deposits to or disbursements from escrows for additive change orders are not relevant to insurance upon completion transactions.
- E.** Construction monitoring and reporting must be done in accordance with [Section 12.3](#) but only for the purpose of Labor and FHEO compliance and adherence to the approved plans and specifications subject to approved change orders.
- F.** For Labor and FHEO liaison, see [Section 12.12](#).
- G.** Contractor's monthly requisitions are not applicable to projects insured upon completion.
- H.** Off-site construction:
1. Monitoring is recorded by the HUD inspector on form HUD-95379.
  2. Advance of funds monitoring is not applicable to projects insured upon completion.
- I.** Construction contract changes and Architect's supplemental instructions (see Sections 12.8 to 12.11 and 12.4.D). Construction changes are processed in the same manner as insurance of advances, except as modified below:
1. An escrow is not required for additive change orders, because HUD has no risk exposure until final closing. The mortgagor must be able to provide the additional funds required and must not have any outstanding obligation in connection with construction other than the insured mortgage at the time the mortgage is presented for insurance.
  2. Surety approval is not required for the approval of additive change orders regardless of the percentage of contract increase.
- J.** Permission to Occupy applies as in [Section 12.14](#).
- K.** Final HUD CA or Inspector's Trip Report falls under HUD procedures above at [Section 12.3.4](#).
- L.** Warranty period falls under HUD procedures above at [Section 12.6.3](#).
- M.** Working capital deposit and operating deficit escrows are usually required for Insurance upon Completion projects. Therefore, to mitigate any risk, projects that apply for Insurance upon Completion must fully meet the operating deficit escrow and the working capital requirements contained in [Chapter 8, Section 8.13](#), except for the extra 2% new construction contingency portion of the working capital escrow which is not required. See [Section 12.15.3](#) and [Section 12.15.5](#) for releasing escrowed funds.



**N.** Property insurance schedule and requirements. When onsite construction is 80% complete (before Final Endorsement of the mortgage), the Lender must prepare the following:

1. Property Insurance Schedule, form HUD-92329, that:
  - a. Correctly shows the insurable value of the completed structures; and
  - b. Reflects any changes in cost occurring after issuance of Firm Commitment.
2. Property Insurance Requirements, form HUD-92447.

**O.** MIP is not charged until final endorsement.

**P.** For information about cost certification, see [Chapter 13](#).

**Q.** Closing must occur within the period provided in the commitment.

**R.** Extension of Firm Commitment instructions are discussed in [Chapter 11](#).

**S.** The General Contractor must provide a builder's warranty and enter into a latent defect agreement with the Owner and Lender for the benefit of HUD and provide one of the following at Final Endorsement to assure correction of any latent defects:

1. Cash escrow deposit of 2.5% of the total cost of construction, to be retained in an escrow held by the Lender for a period of 15 months, or
2. An irrevocable, unconditional letter of credit for 2.5% of the cost of construction issued to the Lender by a banking institution.

## 12.17 Completion of Repairs and Alterations Pursuant to Section 223(a)(7) and 223(f)

### 12.17.1 Repairs and Alterations

**A.** Repairs and Alterations are documented by the Lender with a list that categorizes each work item as Critical or Non-Critical. (See [Chapter 5, Section 5.1.3](#) and [Appendix 5, Section A.5.7.2.2](#)).

#### 12.17.1.1 Completion of Repairs and Alterations

**A.** All critical repairs completed before initial closing. A site visit(s) and report(s) by a HUD representative are required to confirm satisfactory completion of critical repairs before closing. The only exception is critical accessibility repairs that HUD approved for deferred completion based on the complexity of the repair (see [Chapter 5, Section 5.10.8.E](#)). No other critical repairs may be deferred.

**B.** Non-critical repairs may be considered for deferred completion after closing at the request of the mortgagor. HUD will require the following schedules prior to approving the request:

1. Schedule of Values (see [Section 12.17.3](#) below) for payment of completed repairs;
2. A progress schedule ensuring that repairs begin immediately upon closing and, with limited possible exceptions, are completed within 12 months of loan closing;

3. Schedule of Delayed or Interrupted Occupancy or Income, which must list:
  - a. All facilities or units for which occupancy or income will be delayed or interrupted by repairs deferred until after closing;
  - b. Estimated period of delayed or interrupted occupancy or income;
  - c. Projected completion date; and
  - d. An additional deposit must be made to an operating deficit account for delayed repairs that interrupt occupancy or income for any period. The amount of the additional deposit will be determined by HUD.
4. Temporary Resident Relocation Schedule, when required.

### **12.17.1.2 Payment for Repairs**

**A.** For critical repairs completed before closing, mortgage proceeds may be advanced at Initial/Final Endorsement only upon verification that repairs have been completed.

**B.** Non-Critical repairs completed after closing are funded by a repair escrow.

1. A repair escrow account must be established for the full amount of the costs of deferred repairs and alterations plus an additional assurance of completion amount equal to 10% or 20% of the estimated cost of deferred repairs and alterations (see [Chapter 5, Section 5.10.8.F](#)) depending upon program guidance.
2. The Schedule of Values for deferred repairs and alterations will be provided to the HUD inspector, who will recommend progress payments based on this Schedule as a part of form HUD-95379, HUD Representative's Trip Report following the inspection as described below.

**C.** Payments for repairs completed after closing when a Project Architect and/or General Contractor are involved must be handled as follows:

1. The General Contractor or Architect initiates by completing and providing supporting documentation for form HUD-92464M, Requests for approval of advances of Repair Escrow Funds.
2. Both the Project Architect and the HUD Inspector (when applicable) should have performed the inspection of the completed repairs and signed the form HUD-92464 which the Architect submits to the owner who signs the form and forwards the request for advance of funds to the Lender.
3. Funds may be released for completed hard costs, i.e., repairs and alterations. Partial payment for a certain percentage of completion of a particular repair work item should only be allowed when such a progression is distinctly inspectable.
4. Generally, deposits or down payments on materials should not be funded from the Escrow. The HUD CA may allow case-by-case exceptions for affordable properties or Section 202 refinancing projects.
5. For any completed repair work item, HUD will approve the release of funds up to, but not exceeding, the originally estimated amount for that item or an amended amount based on an approved change order(s).
6. Soft costs are payable pro-rata, based on the percentage of hard cost approved for disbursement.

7. A non-prorata portion of the overall general requirements may be paid consistent with accomplishing a particular milestone or completing a relevant group of repairs and alterations that made necessary a particular item of cost classified as general requirements.
8. When the entire work is executed by a General Contractor under the administration of a Project Architect with contractual relationships established by AIA Contract Documents (i.e., AIA B104 & A104), the release of Escrow funds may be based on AIA Document G702 and G703 submitted by the General Contractor at appropriate intervals of progress of the work.

### **12.17.1.3 Release of Cash-Out/ Equity from Loan Proceeds**

**A.** Projects with a 50% cash-out holdback escrow, set up at Endorsement on form HUD-92476.1M, Escrow Agreement for Deferred Repairs, may have escrowed funds released at the request of the Lender when all non-critical repairs and deferred accessibility repairs are successfully completed and evidence of clear title, lien satisfaction and latent defects coverage have been provided even if this is after 12 months from endorsement.

### **12.17.1.4 Funds Remaining in the Escrow**

**A.** Funds remaining in the repair escrow may be released to Borrower when:

1. All repairs have been satisfactorily completed as determined by HUD;
2. Evidence of clear title has been provided to HUD; and,
3. In cases where the cost of repairs and alterations exceeds \$400,000, the Borrower (or the General Contractor in cases where a construction contract was executed) has provided latent defect assurance with funded escrow. The escrow must be in the form of cash or letter of credit or surety bond (at the option of the Lender) equal to 2½% (or a greater percentage as warranted) of the cost of repairs and alterations, to be maintained for fifteen months from completion of repairs. See Agreements 8 and 9 of form HUD-92476.1M for further details.

## **12.17.2 Inspection**

**A.** Unless HUD waives or delegates the non-critical repair escrow administration to Federal Housing Administration (FHA)-approved Multifamily Lenders and Servicers, inspections of completed repairs are performed by the HUD Inspector based upon the level of repairs and alterations set forth in this section.

**B.** The following are the requirements for inspection:

1. Projects insured under Section 223(a)(7) are limited to repairs which are routine maintenance. Accordingly, 223(a)(7) transactions and projects insured under 223(f) where work is limited to Repairs and Level 1 Alterations (as defined in [Chapter 5](#) of the MAP Guide) will not require inspections and the owners may self-certify for the Lender's and HUD's review.
2. Those projects with Level 2 Alterations will require periodic inspections unless explicitly waived by the HUD CA based on the limited type and complexity of improvements. The waiver of HUD inspection must be clearly stated in the Firm Commitment.
3. Those projects with a level of work requiring a Project Architect (costs exceeding \$15,000 per dwelling and/or Level 2 and 3 Alterations) will require inspections at repair completion stages of

35%, 65% and 100%. The requests for release of funds from the Repair Escrow at these stages must be signed by the Project Architect and HUD Inspector prior to being reviewed and approved by the owner, Lender and HUD. (See [Section 12.17.1.2.C.2](#), above.)

4. The owner may request inspections based on a schedule for projects where milestones based on completion of specific repairs and alterations or on time intervals is more appropriate than the percentage of completion (e.g., 4 months, 8 months and 12 months rather than 35%, 65% and 100%) for HUD CA's approval.
5. The agreed number and occasions for inspection should be reflected in the Escrow Agreement (form HUD-92476.1-M, as part of Exhibit "A" to the form) in alignment with the estimated amounts to be released at the established intervals.
6. For projects with no new tax credits, determine the monetary value of repairs and alterations satisfactorily completed based on full or partial completion of each work item appearing on the CNA e-Tool lists of repairs and alterations. Partial completion may be recognized only when the extent of completion is explicitly determinable by measurement or count, e.g. 3 of 8 similar buildings are re-roofed, therefore a quantity of 3 times the price per each may be reimbursed from the Repair Escrow.
7. For new LIHTC projects, the inspection must determine the percentage of completion of construction based on the Project Architect's plans and specifications and the General Contractor's approved form HUD-2328.

C. Inspections may be attended by the owner, Architect, General Contractor, consultants, and any other parties deemed necessary by HUD. HUD may also determine that construction progress meetings as described in [Section 12.3.5](#) be held in conjunction with the inspections. The inspection showing that all repairs covered by the repair escrow are completed shall be considered the 100% final inspection. Inspection Reports are filed on form HUD-95379, HUD Representative's Trip Report (Trip Report), for each monitoring visit. The following are included in the Trip Report:

1. Non-compliance with provisions of the commitment or closing, e.g. work write-up, drawings, specifications, etc., including changes made to the work without prior approval;
2. Adverse conditions e.g. slow work completion, destruction of work, new municipal requirements, disputes, etc.;
3. Borrower's performance of any applicable relocation plan;
4. Availability for use of facilities listed on the schedule of delayed or interrupted occupancy, when applicable;
5. Municipal authorizations. Permissions to occupy or use permits, etc. Where applicable, these must be issued before closing, unless related to work deferred until after closing;
6. Items to be completed within twelve months from initial/final endorsement. The HUD inspector must include the following in the Trip Reports:
  - a. A detailed list of the status of all required repair work with photos;
  - b. Escrow amount requested on the form HUD-92464M; and
  - c. For the final 100% Trip Report, the date of the completion of all the repairs.

**D.** The HUD CA should assemble the following documents, which are required for HUD Construction Inspection and Monitoring, to monitor repairs and recommend payments during construction:

1. Firm Commitment;
2. Escrow agreement;
3. Survey, surveyor's report and legal description;
4. List of required repairs (work write-up with clear and accurate scope cost and schedule of the work items);
5. Drawings and specifications (where required);
6. Schedule of Values;
7. Progress schedule;
8. Construction schedule (where required);
9. Schedule of delayed or interrupted occupancy or income (required only for projects with repairs delayed after closing);
10. Tenant relocation plan (where required);
11. Construction contracts and Owner-Architect Agreement (where required); and
12. Agreement and Certification.

### **12.17.3 Schedule of Values for Reimbursement from the Repair Escrow**

**A.** The schedule of values is the itemized cost estimate for the proposed scope of construction work funded from the Repair Escrow.

1. For Section 223(f) applications with a scope of work described in the CNA e-Tool (see [Chapter 5, Section 5.3.3.4](#)), schedule of values are the costs reported in Column B of the Lender's 223(f) Repairs & Alterations Cost Worksheet (see [Chapter 5, Section 5.3.3.5](#) and [Appendix 5, Section A.5.12](#)) with hard costs itemized on the list(s) of repairs and alterations from the approved CNA.
2. For Section 223(f) applications with new tax credits, the schedule of values is the approved form HUD-2328.

### **12.17.4 Final Report**

**A.** Final HUD Trip Report must be made upon completion of all work prepared by the HUD Inspector. The final report must show that:

1. All work is acceptably completed in accordance with the firm commitment and/or closing escrow, as applicable, and approved changes;
2. Offsite work is completed or that the municipality has given written assurance for its completion;
3. Utilities are connected;

4. Permanent ingress and egress facilities are provided; and
5. Applicable municipal inspections, approvals, etc., have been issued.

### **12.17.5 Change Orders**

A. Changes in the repairs and alterations work items, including associated cost changes, must be submitted to Lender and HUD for review and approval.

1. Changes prior to endorsement must be handled as follows:
  - a. For non-LIHTC projects, a revised CNA e-Tool must be submitted to HUD for review and approval to issue an amendment to the Firm.
  - b. For new LIHTC projects, revised plans and specifications and form HUD-2328 must be submitted to HUD for review and approval to issue an amendment to the Firm.
  - c. In all cases, the changes must be reflected in a revised Repair Escrow Agreement (form HUD-92476.1M).
2. Changes after endorsement must be handled as follows:
  - a. Changes that result in increased costs must be funded by the Borrower at the time the change order is approved and the Repair Escrow Agreement (form HUD-92476.1M) must be revised reflecting the addition of funds.
  - b. The Repair Escrow Agreement amount must not be reduced for change orders that result in cost reduction.
  - c. For non-LIHTC projects, approved changes after endorsement do not need an amended CNA eTool. The changes in cost and scope may be shown as annotated and initialed changes to the list(s) of repairs and alterations. A revised Lender's 223(f) repairs & Alterations Worksheet should reflect any cost changes.
  - d. For new LIHTC projects, approved changes should be reflected in a revised form HUD-2328 and revised plans and/or specs to the extent required by the nature of the change.
  - e. The assurance of completion should not be used as a source of funding for change orders prior to completion of all repairs and alterations.
  - f. When an Architect is engaged and the changes are minor with no changes in cost and time, Architect's Supplementary Instructions (ASI) may be used without a Change Order Request submission to HUD. The Architect must forward a copy to the HUD Inspector and Lender after issuance for confirmation that the changes are not material.
  - g. In all cases, Lenders must ensure that any change order(s) or other addition to cost do not result in a total cost of repairs and alterations exceeding the cost threshold that defines substantial rehabilitation.
3. Change orders must be formatted as follows:
  - a. When a Project Architect is involved, AIA G701 is to be used;

- b. When no Architect is involved, a written request in a format similar to form HUD-92437 Request for Construction Changes on Project Mortgages may be submitted. form HUD-92437 may be used as a general guide, but the actual form must not be used.
4. Contractor and Project Architect (if employed) must sign all change order requests.
5. Borrower and Lender must review and sign the change order request and provide an updated list of repairs describing all changes to HUD for review and approval.
6. Change order work may proceed once approved.

### **12.17.6 Warranty Inspections**

**A.** Where the owner uses a contractor, rather than its own staff, to carry out repairs, warranty inspections will be scheduled to discover and require correction of latent defects within 1 year of the date of substantial completion of all repairs. See Sections 12.6.C and 12.16. S.

### **12.17.7 Projects in Difficulty**

**A.** Physical, financial, or management problems could be an indication that a default is imminent. For further explanation see Management Agent Handbook 4381.5 REV-2 Chapter 6 Exhibit 6-1, and Item 7 of the form HUD-92476.1M, Escrow Agreement for Deferred Repairs.

**B.** If the Borrower has not completed all deferred repairs by the end of the repair period the HUD Inspector will document all such non-completed repairs on form HUD-95379, HUD Representative's Trip Report, and will submit the report to the Lender and HUD Construction Manager.

**C.** The Lender will complete the repairs using the repair escrow funds. The Lender will submit a work schedule to HUD for the completion of all remaining repairs and will provide the Borrower with a breakdown of these repairs and the cost(s) of completion (including administrative expenses).

**D.** Funds remaining in the repair escrow account after completion of the repair work by Lender will be returned to the Borrower, less reasonable administrative costs incurred by Lender in completing the repairs.

## **12.18 Casualty Events During Construction**

**A.** A casualty claim may occur during construction that will require funding from a stakeholder's insurance coverage. If the claim is payable under the Builder's Risk policy the funds shall be applied toward a change order (form HUD-92437) to correct the damage. For new construction or substantial rehabilitation projects, the amount to correct the damages must include the Davis-Bacon wage rate.

**B.** If the casualty claim is payable under the owner's casualty insurance, the owner may choose another contractor to correct the damages, provided however, if Davis-Bacon wage rates apply, the other contractor must execute a contract form providing enforcement provisions as required for General Contractors in new construction transactions.



## Chapter 13 Cost Certification

### 13.1 Projects that Must Certify

**A.** Cost certification is required for all insured multifamily projects, except when the mortgage is 80 percent or less of value and at least one of the following two criteria applies: 1) the transaction involves tax credits, or 2) the project is refinancing under Section 207/223(f).

**B.** The purpose of certification is to establish the Borrower's actual costs, including contractor's cost, and establish the "maximum insurable mortgage" for Final Endorsement of the insured mortgage.

**C.** Certifiable costs are those costs that have been paid in cash or will be paid in cash within 45 days of final closing, except for:

1. Land Value, which HUD will calculate;
2. General Overhead, which is certifiable whether or not it is paid in cash;
3. Builder's and Sponsor's Profit and Risk Allowance (BSPRA), which is cost certifiable whether or not it is paid in cash, where there is an identity of interest between the Borrower and contractor; and
4. Non-profit Developer's Fee, which is cost certifiable whether or not it is paid in cash, less amounts certified to and allowed on other line items.

### 13.2 Projects Exempt from Cost Certification

**A.** The Housing and Economic Recovery Act (HERA) of 2008 affected the Borrower's obligation to certify "actual cost" (as defined in the National Housing Act) under insured mortgage programs. If it is determined at the time of issuance of the Firm Commitment for insurance that the ratio of loan proceeds to the actual cost of the project is less than or equal to 80 percent, the Borrower is not required to certify actual cost to HUD. This exemption affects construction, rehabilitation (including property acquisition), purchase, or refinance of a multifamily housing project for which equity is provided through tax credits (e.g., LIHTC, Historic Tax Credits, or New Market Tax Credits.) Since the actual cost is not known at the time of the issuance of the Firm Commitment, use in lieu of the actual cost the *Total Estimated Replacement Cost* of the project (see Section G line 74 on the form HUD-92264, Multifamily Summary Appraisal Report). An example of this computation is provided below.

#### 13.2.1 Low Income Housing Tax Credits

**A.** This example illustrates the applicability of the cost certification exemption for a new construction and substantial rehabilitation project using the lowest controlling mortgage criterion.

Total Estimated Replacement Cost of Project (Section G line 74 form HUD-92264):	\$13,000,000
Tax Credit Equity for Mortgageable Items (form HUD-92264-A), Supplemental to Project Analysis, line I.11.b(2):	\$5,000,000*
Maximum Insurable Mortgage Amount (form HUD-92264-A)	\$8,000,000

$\$8,000,000 / \$13,000,000 = 62\%$

### 13.2.1.1 Audit Fee Not Applicable

A. In cases that are exempt from cost certification, a Cost Certification Audit Fee (Section G line 66, on form HUD-92264) is not applicable. The Borrower and the General Contractor may certify to their actual costs. Should they decide to cost certify per HUD's methodology, the audit cost is mortgageable.

B. The Borrower and the General Contractor have the option to cost certify according to the guidance in [Section 13.4](#) through [Section 13.17](#).

### 13.2.1.2 Establishing Substantial Completion Date

A. The substantial completion date is the date the Architect dates and signs the certification on form HUD-92485, Permission to Occupy Project Mortgages (PTO). Upon execution, the Architect certifies that the construction work is sufficiently complete in accordance with the construction contract documents, such that the project may be occupied for the intended use except for acceptable items of delayed construction completion. The HUD Inspector examines the rental units for being occupiable, and, if so, with any exceptions noted, will complete the "FHA Inspection Report" portion on the Form to verify whether construction is substantially complete and the project is suitable for occupancy. The Form is subsequently signed by HUD's Authorized Agent granting approval of the PTO. Refer to [Chapter 12, Section 12.6.1](#) for the full guidance on the issuance of a certificate of substantial completion. The Regional Center or Satellite Office will notify the Borrower, General Contractor, and Lender in writing of the substantial completion date so that preparation for final closing can begin.

B. To account for multiple buildings constructed under one insured mortgage, the Architect will approve a series of Permissions to Occupy as buildings are complete and units become available. When all buildings are complete the Architect will write on the front of form HUD-92485 indicating it is the final PTO.

C. The date on the final form HUD-95379, HUD Representative's Trip Report is used in the absence of a cost certification cut-off date. Production staff will enter "The Date of Visit" from the final form HUD-95379 as the cost cut-off date in the HUD data system, e.g., DAP (Development Application Process), and advise the Borrower of the date by letter. The day after becomes the "Financial Assessment Subsystem (FASS) date" to mark the beginning of project operations and annual financial statement (AFS) reporting.

D. Production staff will issue a letter to all parties (Owner, Lender, Closing Coordinator, Asset Management, etc.) that HUD has established the cut-off date as: "02/26/20XX and the Financial Assessment Subsystem (FASS) date as 02/27/20XX".

E. For financial reporting purposes, the day after the cut-off date is the commencement of operations and the projects' first year of reporting annual audited financial statements. This first year will cover the period from the day after the cut-off date to the project's fiscal year end. Once the certificate(s) of occupancy (form HUD-92485) is issued, this becomes the date Asset Management will begin monitoring the project's financial condition (e.g., monthly financial accounting reports).

### 13.2.1.3 Treatment of Operating Income Generated During Construction

**A.** The Borrower must account for all operating income generated during construction and ending three months before the originally-scheduled date of the first principal payment under the mortgage. In cases such as new construction with partial occupancy approval (as described in [Chapter 12, Section 12.14.4](#)), or a substantial rehabilitation tax credit project without significant resident displacement, there may be considerable net operating income (NOI) (or interim income) generated during the construction period. This interim income may be used to pay for mortgageable and non-mortgageable items.

**B.** Therefore, the Borrower must prepare an Operating (Income and Expense Statement) Statement covering the period from first occupancy (see [Chapter 12, Section 12.14.4](#) if occupancy occurred during construction), or from the date of substantial completion, through the period ending three months before the date of the first principal payment of the originally-scheduled mortgage. The Borrower may include in the operating statement all soft costs incurred up to 60 days beyond this date, which will establish the cut-off date and the date for the operating statement. See [Section 13.6](#) and [Section 13.10.2.A.5.j](#) as a cross reference. The day after the cut-off date is the commencement of operations and the project's first year of reporting annual audited financial statements.

**C.** Borrowers with project based rental assistance must submit a CPA-prepared audited operating statement to meet FASS reporting and auditing requirements.

**D.** The Lender must submit the Borrower's operating statement to HUD at least 30 days before the final endorsement scheduled date. If the operating statement evidences receipt of NOI during this period, the Borrower can apply the interim income according to the following:

1. If the replacement cost mortgage (Criterion 3) is not the controlling mortgage, any NOI generated during construction may be applied to cover shortfalls in mortgageable soft costs, change orders, initial operating deficit and escrows. At final endorsement, the balance of funds may be distributed to the Borrower, deposited to the project's Reserve for Replacement account, or applied toward the amortization of the mortgage principal, subject to HUD approval.
2. If the replacement cost mortgage (Criterion 3) is controlling, the Mortgage Credit staff will do a calculation and determine if the interim NOI is equal to or greater than 1% of the original mortgage. If the interim NOI is greater than 1% of the original mortgage amount, the total amount of interim NOI is deducted from the certified replacement cost amount. When the NOI does not meet this 1% threshold, the Borrower will apply the amount toward shortfalls, etc. as instructed in number 1 above. The Lender must deposit any remaining balance into the project's Reserve for Replacement account or apply it toward the amortization of the mortgage principal at final endorsement. There is no distribution to the Borrower.
3. See [Section 13.15.3](#) on the distribution prohibition for a Borrower's affiliate or principal.

**E.** In those cases where interim income is not generated, or the Borrower opts not to set a cost cut-off date, it is not necessary for a Borrower to submit an operating statement. The Regional Center or Satellite Office will notify the Lender, Borrower, and General Contractor in writing of the 100% final completion date from the final form HUD-95379, HUD Representative's Trip Report. The Production staff will enter "The Date of Visit" date from the final form HUD-95379 into the HUD data system as the cost cut-off date. The day after this date will begin project operations and FASS reporting.

### 13.2.1.4 Copy of Final Sources and Uses Statement

A. The Lender may submit a copy of the final Sources and Uses Statement prepared by the state tax credit allocating agency to assist in the Lender and HUD review of the final amounts of sources, income and uses.

### 13.2.1.5 Modification to Form HUD-92580

A. For those projects that are exempt from providing a cost certification, after substantial completion, the Regional Center or Satellite Office will issue a modified form HUD-92580, Determination of Maximum Insurable Mortgage, as illustrated below. Strikeouts are illustrated on lines 2 in the example below:

1.	(a) Original Mortgage Amount	\$10,000,000
	<i>(b thru e) are not applicable – Insert N/A or strike through</i>	
2.	<del>Certified Actual Cost</del> – <i>Strike “Certified Actual Cost” and insert “Replacement Cost from Section G line 74”</i>	\$13,000,000
3.	Disallowed Cost <i>(Insert N/A)</i>	\$N/A
4.	Recognized Actual Cost of Improvements (Sec. G line 74)	\$13,000,000
5.	Land	\$
6.	TOTAL LAND AND IMPROVEMENTS	\$13,000,000
7.	Statutory Percentage of Total Cost (___ % of item 6)	\$N/A
8.	For Substantial Rehabilitation-Property Owned, enter the Lesser of:	
	i. \$_____ existing Mortgage Indebtedness on (Land and Improvements to be Rehabilitated) or	
	ii. An Amount Equal To ___% of the Fair Market Value \$_____ of Land and Improvements	
	Before (Repair or Rehabilitation)	\$N/A
9.	TOTAL line 7 plus line 8, (if any)	\$N/A
10.	Maximum Insurable Mortgage in Multiples of \$100, (Item 1(a) or Item 6, whichever is the Lesser)	\$10,000,000

**NOTE: The Mortgage Credit staff should indicate on this Form that the project is exempt from cost certification due to the loan proceeds to actual cost being equal to or less than 80%. For this example, the actual percentage of the loan to cost is 77% (\$10M/\$13M).**

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**B.** Completion of the reverse side of this Form would be as follows:

Schedule 1	N/A
Schedule 2 – Disallowed Costs:	N/A
Schedule 3 – Computation of Borrower’s Initial Equity Investment	
1. Total Land and Improvements (line 6 above)	\$13,000,000
2. Less: Maximum Insurable Mortgage (line 10 above)	\$10,000,000
3. Borrower’s Initial Equity Investment	\$3,000,000

## 13.3 Types of Cost Certification

**A.** Standard or "Long Form" Certification is required, except for projects permitted to use the "simplified" cost certification and for certification of projects insured under Section 207.

**B.** Simplified Certification is restricted to projects involving 40 units or less of proposed construction or substantial rehabilitation and is used for projects under Section 207/223(f).

**C.** Section 223(f) Certification is required for all projects insured under Section 207, except for Section 207/223(f) transactions where the insured mortgage is 80% or less of the value.

**D.** Section 223(f) Supplemental Certification is required for projects identified in [Section 13.3.C](#) above, when completion of repairs is permitted after closing. The Certification is submitted 15 business days after repairs are confirmed complete.

## 13.4 Entities That Must Cost Certify

**A.** The Borrower must certify under all programs, **except** where HUD has determined at the time of issuance of the Firm Commitment that the insured mortgage under:

1. Section 221(d)/220/231 new construction/substantial rehabilitation is 80% or less of replacement cost and the project is will benefit from LIHTC, Historic Tax Credits or New Market Tax Credits; or
2. Section 207/223(f) refinance is 80% or less of value.

**B.** When the Borrower is required to cost certify, the Contractor must also cost certify when:

1. The Contractor has an identity of interest with the mortgagor, whether such identity of interest existed or developed before or after the initial closing (for insured advances projects) or issuance of the Firm Commitment (for insurance upon completion projects); and/or
2. The Contractor used form HUD-92442M, Construction Contract-Cost Plus, whether or not any identity of interest with the Borrower existed or developed.

**C.** When the Borrower is required to cost certify the subcontractors at any tier, equipment lessors, material suppliers, and manufacturers of industrialized housing must cost certify where:

1. The total of all subcontracts, purchases, and leases are more than 0.5% of the mortgage, and

2. An identity of interest exists or comes into being between such subcontractor, equipment lessor, material supplier, or manufacturer of industrialized housing and either:
  - a. The Borrower; or
  - b. The contractor, where the contractor must cost certify.

## 13.5 Cost Certification Sequence of Events

**A. Notification of Pre-Cost Certification Conference.** HUD must notify the Lender, Borrower, and contractor when the project is 80% complete. HUD should notify new Sponsors and General Contractors as early as 70% completion.

1. The letter should state that the Borrower, General Contractor, their accountants, and the Lender should attend the conference.
2. Enclose with the letter:
  - a. The contact information for the Fair Housing Information Clearinghouse (1-800-767-7468);
  - b. The internet address for Handbook IG 2000.4 Consolidated Audit Guide for HUD Programs: [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/administration/hudclips/handbooks/oigh/2000.4](http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/handbooks/oigh/2000.4); and
  - c. Four copies of each of the applicable forms:  
[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/administration/hudclips/forms/hud9#group2](http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/forms/hud9#group2):
    - 1) Form HUD-92330, Borrower's Certificate of Actual Cost, and/or
    - 2) Form HUD-92330A, Contractor's Certificate of Actual Cost, if applicable.

**B. Pre-Cost Certification Conference.** Conduct of the Pre-Cost Certification conference is the responsibility of the assigned HUD staff and should be held before the project is 90% complete. At the conference, HUD staff will explain:

1. Substantial completion, administrative completion, and cut-off dates.
2. Documentation required for cost certification including the income statement and balance sheet.
3. Responsibility of the Borrower and accountant for computing the liquidated damages/actual damages and incentive portions, if applicable, of the construction contract using the certified amounts on form HUD-92330.
4. Necessity for a careful review and completeness of the documentation, including dates and signatures, and timeliness of the submission, HUD review, and final endorsement.
5. Any problems with prevailing wage certifications or other labor issues.

**C. Cut-off date established for computation of the cost certification.** Submission and HUD approval of the cost certification must occur before final closing, except that the Section 223(f) supplemental cost certification is not required until completion of non-critical repairs deferred until after closing.

**D. Certificate of Actual Cost.** The Borrower and General Contractor, if applicable, must submit the Certificate of Actual Cost to the Lender for review prior to the Lender's submission to the HUD assigned Underwriter. The HUD Underwriter will review the cost certification and determine the Maximum Insurable Mortgage using form HUD-92580.

**E. Maximum Insurable Mortgage.** Form HUD-92580, Maximum Insurable Mortgage, is a required final endorsement exhibit. Record in Schedule 1 of the Form any additional conditions that must be met as part of final endorsement.

## 13.6 Project Completion and Cut-Off Dates

**A.** The substantial completion date is the date the Architect dates and signs the certification on form HUD-92485, Permission to Occupy Project Mortgages. The Architect is certifying that part of or all the construction work is substantially complete in accordance with the construction contract documents and that the project may be occupied for the intended use. The form is subsequently signed by HUD's Authorized Agent. Construction must be complete except for acceptable items of delayed completion, and the Regional Center or Satellite Office will notify the Borrower, General Contractor, and Lender in writing of the substantial completion date.

**B.** The date the final HUD Representative's Trip Report (form HUD-95379) is signed begins the effective date for cost certification. The Borrower has the option to include in the cost certification all soft costs incurred up to 60 days beyond this date. The date selected by the Borrower is the "cut-off date" for the soft costs.

**C.** The Borrower's balance sheet and operating statement date must agree with the selected cut-off date.

**D.** Final completion is the date the HUD Inspector signs the final HUD Representative's Trip Report (form HUD-95379) provided that the Construction Manager subsequently endorses the trip report. Construction must be 100% complete.

**E.** Production staff will enter "The Date of Visit" from the final form HUD-95379 as the cost cut-off date in the HUD data system, i.e. DAP (Development Application Process), and advise the Borrower of the date. The day after becomes the "Financial Assessment Subsystem (FASS) date" to mark the beginning of project operations and annual financial statement (AFS) reporting.

**F.** Production staff will issue a letter to all parties (Owner, Lender, Closing Coordinator, Asset Management, etc.) that HUD has established the cut-off date as: "02/26/20XX and the Financial Assessment Subsystem (FASS) date as 02/27/20XX".

**G.** For financial reporting purposes, the day after the cut-off date is the commencement of operations and the projects' first year of reporting annual audited financial statements. This first year will cover the period from the day after the cut-off date to the project's fiscal year end. Once the certificate(s) of occupancy (form HUD-92485) is issued, this becomes the date Asset Management will begin monitoring the project's financial condition (e.g., monthly financial accounting reports).



## 13.7 Administrative Completion Date

- A. The Regional Center Director may advance the completion date to prevent unnecessary accumulation of soft costs when projects that are nearly complete face unnecessary delay.
- B. The Regional Center Director may set an administrative completion date for any project when the monthly inspection reports show 95% completion of work and thereafter less than 2% increase in percentage of completion in any month.
- C. The Regional Center Director will notify the Borrower, General Contractor, and Lender in writing of the administrative completion date and the following:
1. The administrative completion date is the effective date for cost certification except that all soft costs up to 60 days beyond this date may be included at the option of the Borrower.
  2. The date of the balance sheet and operating statement must be the same as the cut-off date selected by the Borrower.
  3. Liquidated/actual damages for cost certification purposes will be computed using the administrative completion date. However, the General Contractor is responsible for liquidated/actual damages through the date of substantial completion.
- D. Copies of the notification go to the HQ Docket, Office Docket, and Closing Attorney's file.

## 13.8 Submission Date

- A. The submission date for cost certification should be within 30 to 45 days after the cut-off date, and not less than 30 days before the desired final closing date.

## 13.9 Required Forms

- A. **Form HUD-92330, Mortgagor's Certificate of Actual Cost.** Line-by-line instructions are contained in the MAP Forms Book or Handbook 4470.2 Chapter 4:

<https://www.hud.gov/sites/dfiles/OCHCO/documents/92330.pdf> and

[https://www.hud.gov/program\\_offices/administration/hudclips/handbooks/hsgh/44702](https://www.hud.gov/program_offices/administration/hudclips/handbooks/hsgh/44702)

- B. **Form HUD-92330A, Contractor's Certificate of Actual Cost.** See instructions contained herein at [Section 13.10](#), [Section 13.14](#), and [Section 13.15](#). The subcontractor, material supplier, industrialized housing manufacturer, and the equipment lessor are required to use this form to certify cost.

**NOTE: When a project includes rehabilitation and new construction, a separate form is required for each, with a master form summarizing total project costs, including fees.**

- C. **Form HUD-2205-A, Borrower's Certificate of Actual Cost (Section 207 Pursuant to Section 223(f)).** Line-by-line instructions are contained in the MAP Forms Book. The form is located at:

<https://www.hud.gov/sites/dfiles/OCHCO/documents/2205-a.pdf>

D. Statements of Sources and Uses and Settlement Statements may be used to meet cost certification requirements under the HERA exemption.

## 13.10 Required Statements and Certifications

A. For all projects, regardless of whether the project has a cost certification exemption, the statements and certifications described in this section are required.

B. New construction and substantial rehabilitation projects require both: 1) an unaudited balance sheet that covers the period from the date of initial endorsement through cut-off, and 2) an unaudited income statement covering the period from first occupancy (see [Chapter 12, Section 12.14.4](#) if occupancy occurred during construction), or from the date of substantial completion, through the period ending three months before the date of the first principal payment of the originally scheduled mortgage.

### 13.10.1 Simplified Form of Cost Certification

A. Simplified cost certification is permitted for new construction or substantial rehabilitation projects involving 40 units or less and for refinancing or purchase of existing properties under 207/223(f).

1. Use forms HUD-92330 and HUD-92330A (if a cost-plus construction contract was used or an identity of interest exists between the Borrower and the General Contractor). An accountant's opinion is not needed.
2. If there is an identity of interest between a subcontractor, material supplier, equipment lessor, or manufacturer of industrialized housing and the Borrower and/or General Contractor must cost certify, and the total of all identity of interest subcontracts, purchases and leases is more than 0.5% of the mortgage, the identified party uses form HUD-92330A. This requirement, established by the form HUD-93305M, Agreement and Certification, applies in all cases.
3. An unaudited balance sheet of the Borrower entity, as of the cut-off date, is required in all cases. Format and content of the balance sheet must follow [Section 13.10.2.A.4](#) below.
4. An unaudited operating statement is required if occupancy occurred during construction. Format and content of the operating statement must follow [Section 13.10.2.A.5](#) below.

### 13.10.2 Long Form Cost Certification

A. For cases that do not qualify for simplified cost certification based upon [Section 13.10.1.A.1](#) above, the following must be submitted:

1. Form HUD-92330, Borrower's Certificate of Actual Cost, supported by an accountant's opinion (refer to [Section 13.10.2.A.6](#)).
2. Form HUD-92330A, Contractor's Certificate of Actual Cost, supported by an accountant's opinion (refer to [Section 13.10.2.A.6](#)), which is required if there is an identity of interest with the Borrower or if a cost-plus construction contract was used.
3. Subcontractors, suppliers, and equipment lessors with an identity of interest with either the Borrower or General Contractor must submit form HUD-92330A, supported by an accountant's opinion.

- a. Material suppliers must attach to form HUD-92330A a sheet showing:
  - 1) Quantities furnished;
  - 2) Sources from which the materials were obtained; and
  - 3) Unit prices paid to the sources, brand names, model numbers, sizes, lumber grades, etc., as applicable.

NOTE: No amount will be included for general requirements (e.g., job overhead).
- b. Equipment Lessors must attach to Form HUD-92330A a sheet showing:
  - 1) Dates the equipment was acquired;
  - 2) Age of equipment at acquisition date;
  - 3) Brand names and model numbers;
  - 4) Sizes;
  - 5) Dates and length of time used; and
  - 6) Rates charged.
    - a) The Lessor(s) must certify that:
      - i. The rates charged were not more than the local going rate obtainable in the area, including any maintenance and repair;
      - ii. The time charged was not more than essential for the project; and
      - iii. The charges did not exceed the purchase price of the equipment.
    - b) Lump Sum Basis. Instead of providing an attachment containing the above information, the lessor(s) may elect to certify to charges at 85% of the local going rates for identical equipment under arms' length (lump sum) leases. When using this alternative, the lessor agrees:
      - i. The Regional Center is the sole judge of the reasonableness of the time and rates charged; and
      - ii. Equipment maintenance and repair expense is the responsibility of the lessor(s) and is not included as an additional cost.
    - c) Subcontractor's equipment. Costs for subcontractor(s) equipment, whether owned or rented, are considered in the markup for overhead and profit. These costs shall be reflected in the total subcontract and in the prior approval of identity of interest entities. A separate certification of the equipment is not required.
- c. Manufacturers of Industrialized Housing must attach to form HUD-92330A a breakdown of Division 13, Special Construction, showing:
  - 1) Manufacturing costs, including:
    - a) Labor;
    - b) Materials;

- c) Sales and any other taxes;
- d) Factory overhead; and
- e) General overhead and profit.

NOTE: The manufacturer's accounting system must follow generally accepted accounting procedures, which will allow certification of the actual cost of manufacturing by a Certified Public Accountant or Independent Public Accountant. No amount will be included for transportation or work at the project site.

- 2) Transportation costs from the factory to the project site (if provided by the manufacturer), including:
  - a) Labor; and
  - b) Equipment.
- 3) On-site erection costs (if provided by manufacturer), including:
  - a) Labor;
  - b) Equipment;
  - c) Materials; and
  - d) General requirements (job overhead).
- 4) The remainder of the manufacturer's form HUD-92330A is to be completed per the form's standard instructions.

NOTE: There can be no duplication of manufacturing costs (e.g., repair of components damaged in shipment.)

- 4. An audited balance sheet of the Borrower entity, as of the cut-off date is required.
  - a. The balance sheet must contain the following certification:

I HEREBY CERTIFY that the foregoing figures and statements contained herein submitted by me as agent of the Borrower [owner] for the purpose of obtaining mortgage insurance under the National Housing Act are true and give a correct showing of (Name of Borrower or owner) financial position as of (date of financial statement).

- b. Signed this \_\_\_ day of \_\_\_\_, 20 \_\_\_\_\_ (Signature of authorized agent with name printed or typed under signature)

WARNING: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

- c. Furnish reconciling information if short-term liabilities on the balance sheet do not agree with Column B of form HUD-92330.
- d. Explain the purpose of all liabilities in the notes to the financial statement and include repayment requirements of the liabilities. Take special care to note any liabilities included for repayment on the balance sheet that were not disclosed during the firm processing stage or before initial endorsement. If such liabilities are found, inform the Borrower that the liabilities cannot be an obligation of the project; repayment is the responsibility of the Borrower. These liabilities will

- not be considered (allowed nor disallowed) in the review of the cost certification. When non-disclosures are found, it requires a detailed review of cost certification forms HUD-92330 and HUD-92330A.
- e. If proceeds and obligations from project syndication are passed through the books and records of the Borrower entity, reflect receivables as an asset of the Borrower entity.
  - f. The notes to the balance sheet must identify the original amount of, and summarize the expenditures from, the working capital deposit.
5. An audited operating statement is also required if occupancy occurs before the cost certification cut-off date.
- a. The statement must contain the certification contained in [Section 13.10.2.A.4](#).
  - b. Prepare the operating statement on an accrual basis.
  - c. The statement must cover the beginning of marketing and rent-up activities (or date of initial endorsement in rehabilitation projects where occupancy is continuous) to the cut-off date.
  - d. Marketing and rent-up activities will start no later than 6 months before the issuance of the first form HUD-92485, Permission to Occupy-Project Mortgages.
  - e. The statement must show the actual dates covered, rather than language such as "From the Date of Commencement of Marketing and Rent-up Activities, etc."
  - f. The statement must show income from all sources. Do not consider security deposits as income.
  - g. The operating statement should not contain any expense items that were paid or should have been paid from the working capital deposit or otherwise included in cost certification.
  - h. Operating expenses may include:
    - 1) Expenses directly related to renting the project, such as:
      - a) Rental commissions customary for the type of project, if any, and
      - b) Marketing and advertising expenses.
    - 2) Purchase of furnishings, fixtures, equipment, and supplies not paid from the working capital deposit and in the eligible replacement costs.
    - 3) Reasonable fees for preparing any Federal, State, or local tax return information required of the project. For example, if the Borrower entity is a partnership, the cost of preparing both IRS Form 1065 (U.S. Partnership Return of Income) and related K Schedules may be considered. Do not recognize the cost of preparing a partner's personal IRS Form 1040 return.
    - 4) Electricity, gas, water, and operating salaries (maintenance, cleaners, gardeners, elevator operators, etc.) to the extent they are not included in construction cost on form HUD-92330, Borrower's Certificate of Actual Cost, or form HUD-92330A, Contractor's Certificate of Actual Cost.
    - 5) Management fee stated in the contract.

- 6) Services not covered by the management fee under Chapter 3 of Handbook 4381.5, Compensations for Management Services in Multifamily Housing Projects with Insured or HUD-Held Mortgages.
  - i. Operating expenses may not include:
    - 1) Depreciation.
    - 2) Interest, taxes, property insurance premiums, and mortgage insurance premiums that are reflected in form HUD-92330, Borrower's Certificate of Actual Cost.
    - 3) Salaries paid to principals of the Sponsor or Borrower for managing the Borrower entity.
  - j. Treatment of net operating income generated during construction:
    - 1) If the replacement cost mortgage (Criterion 3) is not the controlling mortgage, any NOI generated during construction may be applied to cover shortfalls in mortgageable soft costs, change orders, initial operating deficit, and escrows. At final endorsement, the balance of funds may be distributed to the Borrower, deposited to the project's Reserve for Replacement account, or applied toward the amortization of the mortgage principal.
    - 2) If the replacement cost mortgage (Criterion 3) is controlling, the Mortgage Credit staff will do a calculation and determine if the interim NOI is equal to or greater than 1% of the original mortgage. If it is, the calculated interim NOI is deducted from the certified replacement cost amount. When the NOI does not meet this 1% threshold, apply the amount toward shortfalls, etc. as instructed in number 1 above. The Lender must deposit any remaining balance into the project's Reserve for Replacement account or apply it toward the amortization of the mortgage principal at final endorsement. There is no distribution to the Borrower.
    - 3) For a non-profit mortgagor, any NOI generated during construction may be processed as:
      - a) A recovery of construction costs at cost certification, to the extent that it was used to reduce liquidated/actual damages.
      - b) An offset for a mortgage increase.
      - c) A deposit of the unused portion of net income into the project's Reserve for Replacement account at final endorsement.
  - k. If operating expenses exceed income:
    - 1) No entry is made on form HUD-92330, Mortgagor's Certificate of Actual Cost.
    - 2) Operating deficit may be carried over as a reduction to net income on the supplemental operating statement.
6. A Certification by an independent Certified Public Accountant or an Independent Public Accountant must accompany form HUD-92330, Mortgagor's Certificate of Actual Cost, including the audited balance sheet and operating statement of the Borrower, and form HUD-92330A, Contractor's Certificate of Actual Cost.
  - a. The accountant must meet the auditor qualifications of the Government Auditing Standards (GAO Yellow Book), including the qualifications relating to independence and continuing professional

- education. The audit organization also must meet the quality control standards of the GAO Yellow Book.
- b. The Code of Federal Regulations prohibits accountants from contracting for services when their name is shown on the HUD and General Services Administration (GSA) Government-wide Consolidated List of Debarred, Suspended and Ineligible Contractors and Grantees (2 CFR Part 2424 Subpart J).
  - c. The accountant must also comply with the requirements in Chapters 1, 2, and 6 of HUD Handbook IG 2000.4, Consolidated Audit Guide for Audits of HUD Programs.
7. The Borrower must submit a supplemental operating income statement if more than 3 months exist between the cut-off date and the start of amortization. If a deferment of amortization was granted (see [Section 13.25](#)), use the new date for the start of amortization in determining the need for a supplemental operating statement.
- a. This requirement does not apply to non-profit Borrowers or any project where the mortgage is \$200,000 or less.
  - b. The statement covers the period from the cost certification cut-off date to the date which is 3 months before the start of amortization. The Borrower should submit the statement within 30 days after the expiration of this period.
  - c. If the required original cost certification was audited, a CPA or IPA must prepare and certify the supplemental statement.
  - d. The Borrower may advance the date of amortization to avoid submitting a supplemental income statement.
  - e. In preparing the statement, if the operating statement submitted at cost certification shows expenses in excess of income, such expenses may be carried forward as "un-recovered expense—prior period."

### 13.10.3 Section 223(f) Projects

- A.** The Borrower must certify to the total costs incurred in the acquisition or refinancing of the property using form HUD-2205-A, Mortgagor's Certificate of Actual Cost. The certification must be dated and signed by an authorized agent of the Borrower. An accountant's opinion is not needed.
1. The certification must be submitted after all critical repairs have been completed, but at least 15 days before the desired closing date.
  2. The General Contractor will be required to cost certify using form HUD-92330A if a cost-plus construction contract is used.
  3. A balance sheet and income statement are not required.
  4. For cases involving deferred repairs, the Borrower must submit a supplemental cost certification (form HUD-2205-A) detailing the actual cost of the deferred repairs.
  5. No cost certification is required for a 207/223(f) refinancing transaction where the mortgage is equal to or less than 80% of value at the time of issuance of the Firm Commitment.



## 13.11 Deficiencies in Cost Certification Submission

A. When the cost certification package is received for processing, the Cost and Mortgage Credit reviewers will:

1. Determine deficiencies associated with the Borrower's and contractor's cost certifications.
2. Advise the Regional Center Director and estimate the time needed to resolve the problem(s).
3. Attempt to resolve all problems by telephone before making a formal written request. This usually allows processing to continue while waiting for a formal reply.
4. Send a letter within 5 workdays to the Borrower with copies to the General Contractor (if applicable), their accountants, and the Lender stating the deficiencies and requesting information.

B. Upon receipt of all necessary information, combined processing should not exceed 15 workdays.

C. If the Borrower or contractor indicates clarification will be forwarded within 5 workdays, the conclusions of cost certification can await the additional information.

D. Otherwise, issue form HUD-92580.

## 13.12 Mortgage Credit Limited Review

A. In cases where the Borrower has not requested a mortgage increase, the HUD staff will:

1. Review form HUD-92330, Borrower's Certificate of Actual Cost. Adjust for items paid out of working capital and costs reflected on the income statement.
2. Review the reporting of:
  - a. Net income earned before the start of amortization. Report all income earned from the beginning of marketing and rent-up activities to the cut-off date for new construction projects and unoccupied substantial rehabilitation projects. For substantial rehabilitation projects where occupancy is continuous, report all income from the date of initial endorsement or, for insurance upon completion cases, the start of construction to the cut-off date. Make adjustments for ineligible reported expenses, such as depreciation.
  - b. All grants/loans received for replacement cost items.
3. Complete form HUD-92580 (Maximum Insurable Mortgage) using the figures from Column C (Total) of form HUD-92330. Complete the forms based on the most current instructions, except for the following changes:
  - a. Line 2 - Reflect the amount indicated in Column C of form HUD-92330.
  - b. Line 3 - Explain any adjustments made to the net income or grant/loan amounts reported on form HUD-92330.

NOTE: If adjustments are made to items other than net income and grants/loans, form HUD-92331A, Cost Certification Review Worksheet should be completed.

4. When the Borrower and the contractor submit their individual certificates of actual costs for review, they should have already agreed to the amount due the contractor. The amount due the contractor is reported on the certificates of actual costs and there should be no disagreement because all “to be paid items” will be listed on form HUD-92580, Determination of Maximum Insurable Mortgage, schedule 1, item by item. Form HUD-92023, Request for Final Endorsement of Credit Instrument, must match the Maximum Insurable Mortgage, form HUD-92580 minus whatever was paid in the interim. As Mortgage Credit performs the cost certification and prepares form HUD-92580, consider the following when reconciling the certified costs:
  - a. After completion of form HUD-92580, the Regional Center or Satellite Office notifies the Lender/owner/General Contractor of the balance in the line item for the General Contractor. If there are issues, the Field will not move forward with the cost certification until all pending “to be paid items” are resolved.
  - b. The General Contractor’s cost certification must balance with the items remaining to be paid.
  - c. Mortgage Credit must reconcile these numbers at cost certification. If there is a dispute, all releases freeze until HUD/Lender/General Contractor come to agreement on who is owed what.
5. Report anything suspicious in the submission (e.g., liabilities not disclosed during firm processing or before initial endorsement) to the Regional Center Director, who has the authority to request that a full cost certification review be completed. For such cases, complete forms HUD-92331-A, and HUD-92580 based on the instructions in the MAP Forms Book and [Section 13.14](#) below. Also, if an accountant’s work is consistently deficient, warn the accountant that Borrowers using their services will be advised that HUD will perform a detailed cost certification review.

## 13.13 Mortgage Credit Detailed Review

- A. When a mortgage increase is requested of the Regional Center Director, a more detailed review is required. The HUD Underwriter will:
  1. Carefully review forms HUD-92330 and HUD-92330-A if required for mathematical accuracy and compliance with prescribed procedures.
  2. Ensure that the submission contains required schedules and bills, which have not been submitted with previous draw requests, to support the certified amounts for interest, taxes, property insurance, HUD-FHA mortgage loan insurance premium (MIP), title and recording, financing fees, legal, organizational and audit fees, offsite costs, and other fees.
  3. Require clarification or breakdown of all, or any part of, the cost figures presented by the Borrower or General Contractor, if applicable.
  4. Scrutinize any existence of an identity of interest subcontractor, material supplier, or equipment lessor relationship.
  5. Review the notes and schedules attached to the accountant’s opinion. Pay special attention to any liabilities included for repayment on the balance sheet that were not disclosed during the firm processing stage or before initial endorsement. These liabilities are not eligible for inclusion in the cost certification.

6. Recommend that the Regional Center Director request an audit of the Borrower's and/or contractor's books by the Regional Inspector General for Audit before issuing form HUD-92580, Maximum Insurable Mortgage, when differences of opinion arise from other than:
  - a. Honest differences of opinion clearly identifiable as such.
  - b. Other justifiable causes.
7. If considerable time has passed between initial occupancy and the cut-off date, some items properly allocable to renting and operating the project may be charged against construction cost.
  - a. It may not be possible or practical to make precise allocation of such items as gas and electricity, clean-up costs, etc., between construction and operation periods.
  - b. Insist on reasonable allocations and eliminate duplicate claims for the expenses under both categories.
8. Advise cost staff of any construction costs included in "Miscellaneous" and "Other" categories of form HUD-92330.
9. Check items and amounts in the Borrower's cost certification without auditing the Borrower's books and records. An audit may be needed later. (Refer to [Section 13.27](#).)
10. Record the results of the review (including NOI) on form HUD-92331A, Cost Certification Review Worksheet.

## 13.14 Review of Borrower's Cost Certification

### 13.14.1 Construction Contract

- A. Lump Sum Contract.** A lump sum construction contract is permitted when no identity of interest exists between the Borrower and General Contractor. The amount allowed in cost certification is the lesser of:
1. Actual cash paid or to be paid by the Borrower under the construction contract, or
  2. Contract price as adjusted by HUD's estimated cumulative effect of approved change orders paid, or to be paid, by the Borrower and the liquidated/actual damages provision to the contract, if applicable.
- B. Cost-Plus Contract.** A cost-plus construction contract is required when an identity of interest exists between the Borrower and General Contractor.
- C. Allowable Costs.** The amount allowed in cost certification when a cost-plus contract is used is the lesser of:
1. Actual cash paid, or to be paid, by the Borrower under the construction contract, or
  2. Amount the cost analyst allowed for construction on form HUD-92331, Summary of Cost Certification Review–Cost Section, or

3. Contract price as adjusted by HUD's estimated cumulative effect of approved change orders paid, or to be paid, by the Borrower and, if applicable, either the incentive provision or the liquidated/actual damages provision of the contract.
  - a. Recognize approved change orders necessitated by errors or omissions by the Architect only to the extent there are savings in the mortgage. Do not recognize these change orders when processing a mortgage increase.
  - b. Do not recognize approved betterment change orders in calculating the adjusted upset price in [Section 13.14.1.A.2](#) and [Section 13.14.1.A.3](#), above, unless they are determined by the cost staff to be necessary changes as defined in [Chapter 12, Section 12.8](#).
  - c. Recognize the increase in general requirements, if any, noted on approved time extension change orders. Do not recognize increases in soft costs associated with the change order. The soft costs will be recognized under the applicable line items.
  - d. When BSPRA is not applicable, for profit motivated projects involving an identity of interest between the Borrower and General Contractor, the amount of builder's profit as shown on form HUD-93305M is eligible whether or not it was paid in cash.
  - e. For non-profit Borrowers, the allowable builder's profit is the lesser of the amount actually paid or to be paid in cash to the General Contractor or the amount of builder's profit shown in Section G of form HUD-92264, plus or minus any amount applicable due to HUD-approved change orders.

**D. Identity of Interest.** An identity of interest is construed to exist when:

1. There is any financial interest of the Borrower in the General Contractor or any financial interest of the General Contractor in the Borrower.
2. Any officer, director, stockholder, or partner of the Borrower is also an officer, director, stockholder, or partner of the General Contractor.
3. Any officer, director, stockholder, or partner of the Borrower has any financial interest in the General Contractor; or any officer, director, stockholder, or partner of the General Contractor has any financial interest in the Borrower.
4. The General Contractor advances any funds to the Borrower.
5. The General Contractor supplies and pays, on behalf of the Borrower, the cost of any architectural services or engineering services other than those of a surveyor, general superintendent, or engineer employed by a General Contractor in connection with its obligations under the construction contract.
6. The General Contractor takes stock or any interest in the Borrower corporation as consideration of payment.
7. There are any side deals, agreements, contracts, or undertakings entered into or contemplated, thereby altering, amending, or canceling any of the required closing documents, except as approved by the Secretary.
8. Any relationship existing (e.g., family) which would give the Borrower or General Contractor control or influence over the price of the contract or the price paid to the subcontractor, material supplier, or lessor of equipment.

**E. Incentive Fee Payments to Contractors.** The owner may request that the construction contract be modified before Initial Endorsement to provide for a General Contractor incentive fee for completed construction work and delivering a completed project before the date specified in the construction contract (or as amended by HUD-approved time extension(s)). Incentive fees must be specified in an Addendum to the construction contract that has been approved by HUD before initial endorsement or at the execution of a construction contract that has been approved by HUD for Insurance Upon Completion and Insurance of Advance projects. An Incentive Payment Addendum may not be added to the contract after Initial Endorsement.

1. Where there is an identity of interest between the Borrower and General Contractor:
  - a. General Contractor may benefit from savings in construction interest, taxes, property insurance, and mortgage insurance premiums to the extent there are construction cost overruns.
  - b. Incentive payment is included in the adjusted upset price of the construction contract. If there is an identity of interest between the Borrower and the General Contractor, an incentive fee may only be paid if there are certified cost overruns that were not included in a HUD-approved change order, and the amount of the incentive fee may not exceed the amount of certified cost overruns that were incurred.
2. Where there is not an identity of interest between the Borrower and General Contractor:
  - a. Use Construction Contract Incentive Payment, form HUD-92443.
  - b. Include the incentive payment under "Other" on form HUD-92331A. Incentive fees must be calculated in accordance with form HUD-92443. The incentive fee computed for Lump Sum construction contracts may not exceed 50% of the amount by which the estimated interest, taxes, property insurance and mortgage insurance premium, exceeds the certified costs for these same items through the actual date of completion. The incentive fee computed for Cost Plus construction contracts may be paid in an amount calculated in accordance with the Incentive Payment Computation on page two of form HUD-92443. Additionally, when the cost-plus contract is used the **contractor may not** receive total payments that exceed: (1) the actual costs of construction, (2) the cash fee provided in the construction contract, or (3) the incentive fee as determined by the computation. (The contractor shall not be paid an incentive fee that is greater than the amount of cost overruns; the contractor must only receive the amount of the incentive fee. Any excess of this amount must be refunded to the Borrower.)

**F. Damages Clause.** Apply the damages clause of the construction contract when the General Contractor does not complete the project on time. The clause holds the General Contractor financially responsible for the added soft costs resulting from the contractor's delay.

1. Calculate the amount of actual damages and liquidated damages, using the lesser to determine the adjusted upset price.
2. To determine actual damages, compute the actual cost of interest, taxes, insurance, and MIP for the period from the scheduled completion date (as amended by HUD-approved change orders) through the substantial completion date.
3. To determine liquidated damages, multiply the daily liquidated damages rate from the construction contract by the number of days between the scheduled completion date specified in the construction contract, as amended by the HUD-approved time extensions, through the substantial completion date.

4. Reduce the damages by the portion of the net operating income earned during the liquidated/actual damage period.
5. For those cases where an administrative completion date has been established, use this date for computing damages for cost certification purposes. However, the General Contractor is responsible for damages through the date of substantial completion.

**G. General Contractor.** A Borrower must be a single asset mortgagor entity and thus cannot act as its own General Contractor, though there may be an identity of interest between the two parties.

**H. Incomplete Minor Items.** The Borrower's certification of the amount due under the terms of the construction contract may include the cost of minor items of on-site work that remain incomplete under the construction contract.

### 13.14.2 Architect's Fee(s)

**A.** Architect's fee(s) are limited to the amounts paid in cash. Recognize the cost of additional services set forth in Article 10 of the Standard Form of Agreement between Owner and Architect for Housing Services, American Institute of Architects (AIA) Document B108 (see <https://www.aiacontracts.org/contract-documents/19711-owner-Architect-agreement-for-a-federally-funded-or-federally-insured-project>). Ask Architectural and Cost staff to check the reasonableness of these charges.

**B.** Disallow:

1. Any portion of the Architect's fee paid in stock.
2. Any costs associated with a clerk of the works.

**C.** If any identity of interest comes into being between the Architect and either the Borrower or General Contractor during project construction:

1. See maximum design Architect's fee for cost certification purposes set forth in form HUD-93305M, Agreement and Certification.
2. Do not allow a fee for supervisory services to an identity of interest Architect.

**D.** Treat any unused balance of the total Architect's fee as a direct mortgage reduction to the original mortgage amount on form HUD-92580.

### 13.14.3 Interest Accrued

**A.** Interest is allowable in the amount accrued on the first mortgage between initial endorsement (start of construction for insurance upon completion projects) and the cut-off date defined in [Section 13.6](#).

1. Recognize interest costs associated with an approved early start, provided:
  - a. The Borrower entered into an agreement with the contractor which:
    - 1) Was approved by the Regional Center Director.
    - 2) Agrees to reimburse the contractor for interest on money borrowed for construction prior to initial endorsement.

- 3) States that reimbursement will be made only to the extent the Borrower has funds available in the amount estimated for interest during construction.
  - b. The certified amount, when added to the interest cost incurred directly by the Borrower, does not exceed the total amount of interest estimated in Section G of form HUD-92264.
  - c. Form HUD-92415, Request for Permission to Commence Construction Prior to Initial Endorsement for Mortgage Insurance, was executed and approved.
  - d. Interest costs reflect the contractor's actual cost of money borrowed to cover the cost of construction between the early start date and the initial endorsement, as adjusted by [Section 13.14.5](#) below.
  - e. The rate of interest does not exceed the rate established for the insured loan.
2. The interest rate paid on the construction loan cannot exceed:
    - a. For insurance of advances: the rate stated in the Firm Commitment.
    - b. For insurance upon completion: the rate acknowledged by the Regional Center Director before issuing the Firm Commitment.
  3. Deduct accrued interest forgiven by the Lender or otherwise not paid in cash.
  4. Treat Lender/Bond Underwriter's refund of any portion of the construction loan interest to the Borrower or Sponsor as a direct mortgage reduction to the original mortgage amount on form HUD-92580.
  5. If the construction interest rate changes before initial endorsement and it was not feasible to reprocess the project, or if tax exempt bonds were sold to finance the construction loan and the true interest rate was not known until cost certification:
    - a. Interest savings may be created from the difference between the processed interest rate and the actual final interest rate.
    - b. Treat these savings as a direct mortgage reduction if the following condition was included in the Firm Commitment:
      - 1) "Any interest savings resulting purely from a differential between the HUD processed interest rate and the actual construction interest rate may not be construed as excess funds that may be used to offset costs in other categories at the time of cost certification. Any such saving must be applied as a mortgage reduction."
  6. Neither the interest on subordinated liens nor other obligations of the Borrower are allowed as certifiable costs.

### 13.14.4 Taxes Accrued

**A.** Taxes are allowable in the amount accrued on the first mortgage between initial endorsement (start of construction for insurance upon completion projects) and the cut-off date defined in [Section 13.6](#). Do not recognize costs accrued during the early start period.



### 13.14.5 Property Insurance Accrued

A. Property insurance is allowed in the amount accrued on the first mortgage between initial endorsement (start of construction for insurance upon completion projects) and the cut-off date defined in [Section 13.6](#). Do not recognize costs accrued during the early start period.

### 13.14.6 Mortgage Insurance Premium

A. The FHA Comptroller's office cannot compute the exact amount of MIP due during the construction period until the project has been completed and the Washington Docket forwarded to Headquarters.

1. For a project involving insurance of advances, allow the higher MIP rate applicable to the specific FHA insurance program being used, per annum on the mortgage amount on the basis of accrual for the number of days in the period used in [Section 13.14.3](#) above, when applicable.
2. For a project involving insurance upon completion, no MIP is paid during construction.

### 13.14.7 HUD Application, Commitment, and Inspection Fees

A. HUD application, commitment, and inspection fees are allowable in the amounts paid. Fees paid to reopen an expired or terminated commitment are not allowable costs.

### 13.14.8 Financing Expenses

A. Financing expense includes the initial service charge, discounts fees, Ginnie Mae commitment authority fees, permanent Lender commitment fees, and other customary fees. Not eligible are financing expenses that are unusual or result from timing or delays, such as extension fees incurred for the Lender's delivery of a mortgage-backed security.

1. Allow the lesser of:
  - a. Amounts paid, or to be paid, in cash.
  - b. Amounts shown on form HUD-92434M, Lender's Certificate, or Certificate of Lender portion of form HUD-92455M approved by the Regional Center Director before Initial Endorsement (Insurance of Advances) or issuance of Firm Commitment (Insurance Upon Completion).
2. Construction Lender's initial service charges are usually not more than 2%. Construction and permanent Lenders' fees in the aggregate cannot exceed 3.5% (5.5% for bond financed projects) for Section 223(f) refinancing transactions and new construction or substantial rehabilitation transactions. The maximum fee for Section 223(a)(7) loans is 2% for loans greater than \$2 million, and up to \$40,000 for loan amounts less than \$2 million. The aggregate amount of origination, financing, and permanent placement fees must include the amount for Lender's legal fee and is expected to cover the following:
  - a. Processing fees.
  - b. All expenses of the Lender's counsel paid directly from the initial service charge. (Reconcile separate invoices or bills with the cost of the itemized figures.)
  - c. All other charges by the construction Lender.

- d. Exclude:
    - 1) Construction loan discounts.
    - 2) Construction loan extension fees.
  - e. Any charges made by the Lender for payment of counsel services or charge paid directly to the Lender's counsel, to the extent they cause the initial service charge to exceed 2 percent, are not certifiable. However, if charges are related to "Title and Recording" expenses, certify these under the same category (see [Section 13.14.9](#) below.)
  - f. Lender's permanent placement fee is usually not more than 1.5%. It is expected to cover all permanent placement expenses, including Lender's legal costs, but not discounts or some of the fees associated with a bond financed transaction.
  - g. If Ginnie Mae Mortgaged Backed Securities are involved, the Lender may not assess an additional charge for the MBS application fee or for the custodial or delivery fee.
3. Recognize for cost certification:
- a. Reasonable discounts based on current interest rates at the time of issuance of the Firm Commitment for projects involving insurance of advances and insurance upon completion charged by the construction and permanent Lenders. Construction loan extension fees are not earned until the time such extensions are granted. Recognize extension fees charged by the construction Lender if funded at initial endorsement and shown on the form HUD-92434M, Lender's Certificate.
  - b. Permanent loan fees and permanent loan extension fees, to the extent a separate permanent loan is anticipated, are earned at final closing.
  - c. For Insurance Upon Completion cases, construction, and permanent loan extension fees, in particular, to the extent a separate permanent loan is anticipated, which are earned at final closing. The fee is shown in Statement C 2(h) and 2(i) of form HUD-92455M.
  - d. Financing fees (including extension fees and discounts) paid on behalf of a Borrower by a third party under Statements D 3(i) and 3(j) of the Lender's Certificate or Statements C 2(h) and 2(i) of form HUD-92455M, and shown as a current liability on the Borrower's balance sheet to the extent there are savings in the mortgage. At final endorsement, require a promissory note be used for any unpaid balance of the obligation recognized in cost certification.
  - e. For bond financed projects, cost of issuance, discounts, and financing fees in excess of 5.5%, provided the cost certification evidences that the Sponsor/Borrower cannot benefit monetarily from excess investment income from the proceeds of the invested obligations. Refer to [Chapter 8, Section 8.15](#).
  - f. The Regional Center Director will inform the MAP Lender in writing of the aggregate amount that will be allowed at cost certification for discounts, financing fees, and issuance costs. The allowed amount shall be reflected as a percentage of the mortgage loan. The amount of the fee is listed in the financing section of form HUD-92264 (or in an attachment thereto), which is a part of the Firm Commitment. The Lender will be required to acknowledge the additional costs, if any, that HUD will allow at cost certification by signing a copy of a letter from HUD to Lender detailing such costs.

Such acknowledgement must be filed with form HUD-92434M in order to properly review the cost certification.

4. Do not recognize for cost certification:
  - a. Any "side deals" (except for approved discounts) by which the Borrower agrees to pay additional sums.
  - b. Discounts required to buy down the construction and/or permanent rate to a below market rate.
5. Treat the following as a direct mortgage reduction at final endorsement:
  - a. Premiums paid by Lender to the Borrower or Sponsor for acquiring the construction or permanent loan.
  - b. Partial refunds of the Commitment fee allowed in processing, which are returned to the Borrower or Sponsor.
  - c. Discounts or other fees paid for by a contribution of a portion of the initial service charge by the Lender/Bond Underwriter.
  - d. Rebates paid to a Borrower or Sponsor by the Lender/Bond Underwriter for bond-financed mortgages.

### **13.14.9 Title and Recording Expenses**

- A.** Title and recording expense are limited to cash paid for:
1. Title search and policy at the time of initial endorsement;
  2. Recording fees at initial endorsement;
  3. Mortgage and stamp taxes;
  4. Survey recording fees;
  5. Updating title policy during construction;
  6. Final title policy and recording charges; and
  7. Legal fees incurred with any of the above.

### **13.14.10 Legal, Organization, and Audit Expenses**

**A.** Legal, organization, and audit expenses are limited to expenses incurred in organizing the Borrower entity, developing the proposal to submit to HUD and other necessary governmental agencies, and required services during closing and construction.

1. For organizational allowances:
  - a. Include only the amount in Section G of form HUD-92264 for the organizational fee unless the Borrower, who justifies the need for and reasonableness of the additional expenditure, submits fully supporting documentation.
  - b. Any costs incurred in excess of this allowance are not eligible for recognition in processing a mortgage increase or the equity computation on form HUD-92580.

- c. Do not allow:
  - 1) Expenses that are not directly identifiable with the proposed HUD insured transaction, i.e., predevelopment reports that were not prepared for the HUD insured loan.
  - 2) Expenses related to developing a larger development that includes the HUD insured parcel.
- 2. Limit the Borrower's legal expenses to those incurred for: initial through final closings; tax advice during organization of Borrower entity only; and preparation of documents and representation for and during organization of the Borrower entity.
  - a. Allow customary expenditures expected to be incurred before and during initial closing, construction period, and final closing.
  - b. Do not allow:
    - 1) Expenses connected with land acquisition already included in, or contributing to:
      - a) Title and recording expense.
      - b) Estimated market price of site.
      - c) Obtaining changes in zoning.
    - 2) Costs of legal services to create tax shelters, trusts, etc.
- 3. Recognize the cost of a "package deal" for organization and legal services, provided:
  - a. The supplier is qualified to furnish the needed services.
  - b. Duplicate credit is not allowed for the same services.
- 4. Audit fee covers the cost of the accountant's audit and opinion of the Borrower's certificate of costs.
- 5. Amounts included in form HUD-92264 for legal and audit expenses are not blanket allowances, but ordinarily set an upper limit on allowable amounts.
  - a. Non-typical fees must be borne by the Borrower, unless a higher fee is proven by the Borrower, in an exceptionally complex case, to be necessary and reasonable. Detailed invoices and/or other documentation are required as to the reasonableness, purpose, necessity, and proper classification of all items in the category.
  - b. This limitation is not flexible where a "package deal" for legal and organizational services is involved, or where a substantial amount of the legal and organizational services is performed by the same firm.

### **13.14.11 Offsite Costs**

- A.** Where the Borrower enters into a supplemental contract for constructing offsite improvements, allow the lesser of:
- 1. Contract price as adjusted by HUD's estimated cumulative effect of approved offsite change orders.
  - 2. Actual cash paid or to be paid for offsite work.
  - 3. Amount allowed by cost analyst for offsite construction on the form HUD-92331, Summary of Cost Certification Review - Cost Section.

## a. NOTE:

- 1) The Valuation Branch must adjust the as-is land value of the property, if the allowed amount for offsite and demolition differs from HUD's estimate on form HUD-92264 issued at Firm Commitment.
- 2) Offsite costs are not allowable for leasehold estates when the ground rent is based on a land value that reflects all required offsite improvements, since the Borrower has not paid for those improvements.
- 3) If the Borrower certifies to off-site costs, the land value entered on form HUD-92580, "Maximum Insurable Mortgage" will be reduced by the amount of off-site costs.

### 13.14.12 Other Costs

A. Other costs include all costs and/or recovery of costs which are not provided for elsewhere, and which are clearly attributable to the actual cost of the project. Examples include:

1. Cost of acquiring the leasehold interest, provided the acquisition cost plus ground rent and offsite costs paid by the Borrower (if any) do not exceed the HUD Fair Market Value of the Land Fully Improved. Any excess is to be reflected as a disallowed cost of acquiring the leasehold.
2. Ground rent paid during the period of the first mortgage between initial endorsement (start of construction for insurance upon completion projects) and the cut-off date as defined in [Section 13.6](#).
3. Incentive payment due a nonidentity of interest contractor for completing construction before the scheduled completion date as amended by HUD-approved change orders.
4. Compensation from an insurance claim, including any income earned by investing the proceeds of the claim. Treat as recovery of cost after computing BSPRA.
5. Contractor's bond premium if paid by the Borrower. If the construction contract contained an amount for the bond premium, subtract it from the contract amount when developing the adjusted upset price on line 1c of form HUD-92331A.
6. Other fees, including engineering and topographical survey. Cost staff must determine if such costs are reasonable and not duplicated in the General Contractor's costs.
7. Contingency reserve included in the replacement cost of substantial rehabilitation projects.
  - a. The contingency reserve may be used for unforeseen costs of necessary items, betterment change orders approved by HUD, and unanticipated soft costs for time extensions approved by HUD.
  - b. Expenditures for change orders and shortfalls in soft costs should be certified to and allowed under those specific line items.
  - c. There will not normally be an amount certified to under contingency reserve, since all expenditures will be certified to on other line items.
  - d. An itemization of all expenditures covered by contingency reserve funds must be attached to the cost certification submission.
8. Grants, governmental loans, or tax credit equity used to pay for allowed cost items.
  - a. Should be treated as a recovery of cost after BSPRA.

- b. Do not deduct grant, loan, or tax credit equity funds from the total recognized costs when the funds were used to pay for non-replacement cost items (i.e., used toward but not limited to: paying the acquisition cost of the land in excess of the HUD allowance, the operating deficit, working capital, and items on form HUD-2880, Applicant/Recipient Disclosure.
9. Residential relocation fund established on form HUD-92264. Allow only those expenses approved by HUD up to the amount established on form HUD-92264. Apply unused allowance as a direct mortgage reduction.
10. Third Party costs for appraisals, market analysis, PCNA etc. These are no longer recorded in Other Fees and should be included with Organizational Cost line items (refer to [Chapter 3](#)).

### **13.14.13 Builder's and Sponsor's Profit and Risk Allowance**

- A. HUD does not control the division of Builder's and Sponsor's Profit and Risk Allowance (BSPRA.)
- B. Compute BSPRA without regard to amounts on form HUD-92264, based on a percentage of allowed costs.
  1. Use the same percentage (not to exceed 10%) in the Firm Commitment review.
  2. Exclude from the computation the cost of off-site work, land, payments for acquisition of leasehold, ground-rent, relocation expenses, supplemental management funds, and Major Moveable Equipment, if applicable.
- C. Apply the 50/75% rule.
  1. Whether or not there is an identity of interest, no General Contractor's fee (general overhead and profit) will be allowed when:
    - a. More than 50% of the contract sum in the form HUD-92442M, Construction Contract–Cost Plus, is subcontracted to one subcontractor, material supplier, or equipment lessor; or
    - b. 75% or more of the contract sum in form HUD-92442M is subcontracted with three or less subcontractors, material suppliers, and equipment lessors.

NOTE: If two or more subcontractors have any common ownership, they are considered as one subcontractor.
  2. The 50/75% rule is not applicable to:
    - a. Manufacturers of Industrialized Housing.
    - b. Trade items performed by persons on the General Contractor's payroll.
    - c. The Supplemental Loan program.
    - d. Rehabilitation programs other than substantial rehabilitation.
  3. The Cost Analyst determines the applicability of the 50/75% rule.
  4. Where the 50/75% rule is violated, the General Contractor forfeits its profit and only Sponsor's Profit Risk Allowance (SPRA) is allowed.

**D.** Where there is no identity of interest between the Borrower and builder, or when the 50/75% rule has been violated, compute an SPRA which is 10% of the allowable:

1. Architectural fees,
2. Carrying charges and financing, and
3. Legal, organization, and audit expenses.

**E.** If an identity of interest between the Borrower and General Contractor is established after initial endorsement and exists at the time of substantial completion, BSPRA is allowed in lieu of a builder's profit and SPRA.

**F.** If an identity of interest no longer exists between the Borrower and builder prior to the substantial completion date, substitute SPRA for BSPRA.

1. The construction contract may be amended to permit a typical builder's profit.
2. Treat the difference between BSPRA and the combination of SPRA and builder's profit as a direct mortgage reduction on form HUD-92580.

### **13.14.14 Non-Profit Developer Fee**

**A.** The allowable amount is included in the Firm Commitment, less amounts certified and allowed on other line items.

## **13.15 Review of Contractor's Cost Certification**

### **13.15.1 Actual Costs**

**A.** Actual costs are all costs paid by the General Contractor under the Construction Contract for completion of the project, and to which the General Contractor certifies using form HUD-92330A.

1. Include actual costs paid in cash, or to be paid in cash (such as items of delayed completion), within 45 days after the date of the substantial completion, for labor, materials, equipment, subcontract work, general requirements (job overhead), fees, and general overhead. Also include amounts estimated for any items requiring an escrow.
  - a. General Requirements may include salaries of clerical staff for time actually spent at the project site.
    - 1) Prorating of annual salaries on a percent basis is not permitted.
    - 2) Salaries of executives may not be included in General Requirements. Such salaries are included in General Overhead.
  - b. General Overhead includes only the amount of the accepted Schedule of Values in form HUD-2328.
    - 1) Form HUD-2328 may be adjusted by the effect of approved change orders.
    - 2) Itemization is not required.



2. Kickbacks, rebates, adjustments, discounts, or any other devices which the contractor may have received, or is entitled to, must be deducted from actual costs.

### **13.15.2 Mortgage Increase or Detailed Review Not Requested**

**A.** For cases where the Borrower is not seeking a mortgage increase or a detailed review is not requested by the Regional Center Director:

1. The Cost Analyst will not review form HUD-92330A, Contractor's Certificate of Actual Cost, in assisting the Mortgage Credit Examiner in the analysis of the Borrower's cost certification.
2. The Cost Analyst will advise the Mortgage Credit Examiner of the approved change orders.

### **13.15.3 Cost Review**

**A.** Conduct a detailed cost review when the Borrower applies for a mortgage increase or the Regional Center Director orders a detailed review.

**B.** Review certifications where required from the contractor, or any subcontractor, equipment lessor, material supplier, or manufacturer of industrialized housing.

**C.** The forms necessary to make reviews include:

1. Form HUD-92330, Borrower's Certificate of Actual Cost.
2. Form HUD-92330-A, Contractor's Certificate of Actual Cost.
3. Form HUD-93305M, Agreement and Certification.
4. Form HUD-92437, Request for Construction Changes–Project Mortgages.
5. Form HUD-92326, Project Cost Estimate (HUD Estimate).
6. Form HUD-2328, Contractor's and/or Borrower's Cost Breakdown.
7. Form HUD-92331-B, Cost Certification Review Worksheet.
8. Form HUD-92331, Summary of Cost Certification Review.
9. Form HUD-95379, Trip Report.

**D.** Follow these steps to conduct the review:

1. 50/75% rule check: Use information from the "total" and "name of subcontractor or payee" columns of the General Contractor's cost certification. If the rule applies, disallow the General Contractor's general overhead and profit. If the project uses BSPRA, disallow only the general overhead and inform the Mortgage Credit Examiner.
2. Identity of interest subcontract review (for Borrower, General Contractor, subcontractors, equipment lessor, material suppliers, and industrialized housing manufacturers):
  - a. Examine form HUD-93305M and form HUD-92330-A to establish all declared identities of interest.
  - b. Review each identity of interest subcontractor's cost certification.

- 1) If a cost certification is not received, disallow the subcontractor's overhead, profit, and all questionable costs.
- 2) If there is no prior approval as an identity of interest subcontractor, disallow the subcontract overhead and profit.
- 3) In cases with prior approval:
  - a) Allow prior-approved subcontract overhead and profit, plus or minus the effect of approved change orders. Disallow excess.  
  
NOTE: Do not reduce the prior-approved subcontract overhead and profit in the event that the certified cost for the work is less than the prior-approved maximum subcontract price.
  - b) Allow up to the prior approved maximum subcontract amount for work, plus or minus the effect of approved change orders. Disallow excess.

**E. Review the trade line items:**

1. On form HUD-92331-B:
  - a. Enter all trade line costs from HUD estimate (form HUD-92326) or Contractor's schedule of values (form HUD-2328) after adjusting for approved change orders.
  - b. Enter all trade line costs from General Contractor's cost certification (form HUD-92330-A). Take the Architect's fees from the Borrower's cost certification (form HUD-92330).
  - c. Using dollar and percentage variance columns, compare each trade's actual cost with the estimate. Determine allowable amounts.
2. Allowable amounts are not limited by the estimates. Analyze differences.
  - a. Allow actual costs paid to complete the work in accordance with the construction contract.
  - b. Allow actual costs due to unusual circumstances, such as subcontractor bankruptcy, code changes, required replacement of completed work, replacements due to natural occurrences (storms, floods, earthquakes, etc.)
3. Question only amounts substantially in excess.
  - a. Contact the General Contractor and/or Borrower requesting explanation or more documentation.
  - b. Make disallowances if explanation/documentation is not received in a reasonable amount of time.
  - c. Only the accountant may make reallocation of monies from one trade item to another.
  - d. As a result of discussion, have the accountant amend form HUD-92330-A and resubmit.
4. Disallow any amount not justified or supported as being part of the construction contract work.
5. Disallow costs for duplication of work due to contractor's error or negligence, such as improper placement, failure to protect, noncompliance with contract, etc.

### 13.15.4 Lump Sum Construction Contract Cost Certification

- A. Review the Borrower's certification (form HUD-92330) if requested to do so by Regional Center Director.
- B. Review the cost certification of any subcontractor that has identity of interest with the Borrower.

### 13.15.5 Summary of Cost Certification Review (on Form HUD-92331)

- A. On form HUD-92331:
  - 1. Enter all recommended disallowances.
  - 2. Enter summary of construction contract costs.
  - 3. Enter contractor's profit from Borrower's form HUD-92330. Add profit from all HUD approved change orders.
  - 4. Enter offsite costs from Borrower's form HUD-92330, if applicable.
    - a. Review itemized offsite breakdown.
    - b. Disallow any cost duplication on General Contractor's form HUD-92330-A.
  - 5. Complete new Property Insurance Schedule form HUD-92329 using allowed construction costs.

## 13.16 Non-Profit Borrower's Initial Equity Investment

- A. A non-profit Borrower will be permitted a 6% return on its initial equity as computed on form HUD-92580, Maximum Insurable Mortgage.
  - 1. The base equity is determined as follows:
    - a. **For New Construction:** Line 6 on form HUD-92580, minus finally-endorsed mortgage determined in line 10 of the form.
    - b. **For Rehabilitation – Property Owned:** Reduce the sum of line 4 on form HUD-92580, plus HUD's estimate of the "as is value" of the existing land and improvements before rehabilitation, by the finally-endorsed mortgage determined in line 10 of the form.
    - c. **For Rehabilitation – Property Acquired:** Reduce the sum of line 4 on form HUD-92580, plus the lesser of HUD's estimate of the "as-is value" of the existing land and improvements before rehabilitation or the acquisition cost of the property, by the finally-endorsed mortgage determined in line 10 of the form.
    - d. **For Rehabilitation under Section 220 and 221(d)(4):** Use the New Construction formula in [Section 13.16.A.1.a](#) above.
  - 2. The base equity computed in [Section 13.16.A.1](#) above may be increased by:

- a. The cost of furnishing, fixtures, equipment, or other necessary items and betterments essential to the operation of the project.
  - b. The non-profit Developer's fee used to reduce the estimate closing costs of the project.
  - c. Grants from national, regional, and local community service organizations (non-government source).
  - d. Sponsor's cash contribution for the cost of land over and above what HUD has allowed.
3. Modify the Regulatory Agreement to require the return on equity be:
    - a. Used for continued affordable housing initiatives; or
    - b. Pledged to the repayment of surplus cash or residual receipts notes held as secondary financing.
  4. Asset Management will monitor the non-profit Borrower to be certain that the return on equity is used only for permissible purposes.
  5. The return on equity is paid from surplus cash/residual receipts. Any shortfall in the permitted return in one year may be made up from surplus project funds in a future year.

## 13.17 Determine the Borrower's Initial Investment

**A.** For new construction and substantial rehabilitation projects under Sections 220 and 221(d)(4), use line 6 on form HUD-92580, minus the maximum insurable mortgage determined in line 10 of the form.

**B.** The amount determined by [Section 13.17.A](#) above may be increased by:

1. Expended working capital funds not recognized in the cost certification review.
2. Residential relocation expenses approved by HUD in excess of the amount established on Form HUD-92264 Section G and Section O (Remarks and Conclusions).

**C.** Perform HUD-92466M, Regulatory Agreement, Mortgagor or any Affiliate or Principal shall not make, receive, or retain any distribution of assets or any income of any kind from the project, except from Surplus Cash. This limitation does not apply to interim income generated during construction, but project income as it relates to the surplus cash calculation.

## 13.18 Section 223(f) Modified Form of Cost Certification

**A.** HUD shall complete and submit a modified form of cost certification for review 15 days before the initial/final endorsement of the loan for insurance for all projects processed pursuant to Section 223(f), except those 207/223(f) refinancing transactions where 80% or less of value is the controlling criterion (in such cases, cost certification is not required.) Unlike other cost certification procedures, savings from one line item cannot offset cost overruns on another line item. HUD completes the cost certification, and if there is a cost savings, HUD must recalculate the maximum insurable mortgage. Refer to the instructions for form HUD-2205-A.

1. The Borrower must certify to the total actual costs incurred in the acquisition or refinancing of the property. The certification must be submitted on form HUD-2205-A, and it must be dated and signed by an authorized agent of the Borrower.
  2. The Lender must submit the certification to HUD for computation of the maximum insurable mortgage and completion of Section II of form HUD-2205-A.
  3. If in a purchase transaction, the amount of the acquisition cost determined allowable at cost certification exceeds the estimate of value (which was determined during processing), the rent formula shall be recomputed. This re-computation may be accomplished using the allowable acquisition cost as determined by cost certification and the dollar amount of secondary financing represented by the approved promissory notes (form HUD-92223).
- B.** For an escrow that was established at initial/final endorsement to complete non-critical repairs, the Borrower must submit a supplemental cost certification for deferred repairs within 15 days after repairs are complete. In cases where the actual costs are less than estimated, the Lender must recalculate the maximum insurable mortgage. If the maximum insurable mortgage is reduced based upon this recalculation of the lower actual costs, the Borrower must either:
1. Have the required prepayment deducted from the repair escrow, or
  2. Deposit proceeds into the project's replacement reserve account, or
  3. Provide the required prepayment to the Lender.

## 13.19 Special Instructions for Substantial Rehabilitation

**A.** Cost certification instructions (which are set by statute) dictate that, in substantial rehabilitation cases, the lesser of the "as is" value of the land and improvements (before repair or rehabilitation), or the purchase price of the land and improvements, is used in the cost build up for Criterion 3 of form HUD-92264-A. Consequently, when mortgage proceeds will be used to fund the acquisition of the property, the "as is" value estimation will be used as a test of the reasonableness of the acquisition price.

**B.** When the acquisition price is **less than** the "as is" value of the land and improvements (as accepted by HUD), and mortgage proceeds will be used to fund the acquisition of the property, the acquisition price will be used in the cost build up for Criterion 3, forming the cost basis for the Firm Commitment.

**C.** When the acquisition price **exceeds** the "as is" value of the land and improvements (as accepted by HUD), and mortgage proceeds will be used to fund the acquisition of the property, then the "as is" value will comprise the basis of the cost build up for the Firm Commitment.

**D.** When mortgage proceeds will not be used to fund the acquisition of the property, the "as is" market value of the property will be used in the cost build up for Criterion 3, forming the cost basis for the Firm Commitment. This is particularly significant when below market rent restrictions are in place (such as in the case of LIHTC limited rents or Section 8 rent subsidy) and the use of market rents in valuing the property will result in a premium over these rent restrictions. (See [Chapter 7, Section 7.13.3](#) on defining how rents are derived as the basis for the "as is" value).

## 13.20 Mortgage Reduction after Cost Certification

**A.** The National Housing Act requires that the mortgage will not exceed the applicable percentage of actual costs. If certified actual costs are lower than original projected cost as reflected in form HUD-92264, a reduction in mortgage may be applicable. Form HUD-93305M, Agreement and Certification, also addresses this issue and provides that where HUD accepts, for cost certification, estimates of cost for any item, the later substitution of certified actual costs may require a reduction of the mortgage. For affordable projects that are exempt from providing a Cost Certification but are determined to be over-sourced based on a CPA-prepared cost certification (for LIHTC purposes), a mortgage reduction is allowed. As evidence of the mortgage reduction, HUD will accept the Lender-prepared form HUD-92580, Maximum Insured Mortgage, along with the final sources and uses, as well as form HUD-92264 and form HUD-92264-A that were modified showing the reduction. The mortgage reduction must be evaluated and requested by the MAP Lender, Borrower, Borrower's CPA, and tax credit investor.

**B.** Reductions of cost may arise from scrutinized, checked, evaluated, and/or examined:

1. Refunds, rebates, or discounts.
2. Excess of escrows over the actual costs of incomplete construction items.
3. Refunds of deposits made by the Borrower to prevent losses to the Lender in connection with sale of the mortgage.
4. Settlement of claims against bonding companies or others after project completion.

**C.** At final endorsement, the Borrower must set up a **cash escrow** to pay all "to be paid in cash items" identified on form HUD-92330, Borrower's Certificate of Actual Cost, and debts to third parties who made the original disbursement for an item listed as paid on form HUD-92330.

1. Reconcile the difference between:
  - a. Obligations listed on form HUD-92023M, Request for Final Endorsement of Credit Instrument or form HUD-92455M (for Insurance Upon Completion Projects only), and
  - b. The "to be paid" column on form HUD-92330, plus debts to third parties.
2. Paid receipts to third parties must support differences and a statement from the Borrower identifying, by name and cost, those items paid in cash. The receipts and statement are affixed to forms HUD-92023M or HUD-92455M.
3. Do not accept personal or business checks issued by the Borrower at final endorsement as evidence of payment. Payments to third parties must be in the form of a certified or cashier check.
4. Prepare a new form HUD-92331A to disallow obligations listed as "paid" or "to be paid" on form HUD-92330, which are represented at final endorsement as paid by HUD-approved notes. Prepare a new form HUD-92580 from the total of HUD-approved cost of revised form HUD-92331A.
5. Undisbursed mortgage proceeds may supplement or satisfy the cash escrow for all "to be paid in cash items".
6. Use form HUD-92476.1M, Escrow Agreement for Non-Critical, Deferred Repairs, to:
  - a. Set up the cash escrow for all "to be paid in cash items".

- b. Attach a detailed listing of the unpaid costs.
  7. Use form HUD-92464M, Request for Approval of Advances of Escrow Funds to disburse escrow.
  8. Escrow should be disbursed within 45 days after final endorsement. If all the funds are not disbursed, follow the procedures for sixty days after final endorsement in [Section 13.20.D](#) below.
  9. At final endorsement, if all obligations have been paid in cash, this completes the process.
- D.** At sixty days after final endorsement:
1. Prepare a new form HUD-92331A. Enter under the column headings:
    - a. "92264" - the amount of each item of cost recognized from the earlier form HUD-92331A "Allowed" column.
    - b. "92330/92330A" - the amount listed in Column C of the form HUD-92330, Borrower's Certificate of Actual Cost, for each item of cost.
    - c. "Allowed" - the amounts paid in cash based on the reconciliation performed in [Section 13.20.B](#) above and disbursements from the cash escrow account.
    - d. "Disallowed" - the lower of the amounts previously allowed or paid in cash.
  2. Compute a new Maximum Insurable Mortgage, form HUD-92580, based on the total of the "Disallowed Column" (form HUD-92331-A). If this computation produces an amount less than the mortgage finally endorsed:
    - a. Notify the Directors of Housing Production and Asset Management (OAMPO) by memorandum that prepayment to the mortgage is required.
    - b. Prepayment is mandatory, and:
      - 1) Is applied in amounts equal to the scheduled monthly principal payments, to the extent possible.
      - 2) Any remainder goes to the Reserve for Replacements Account.
    - c. If HUD is notified that payment has been delayed because of a dispute or litigation, retain funds to pay the amount, pending resolution of the dispute.
    - d. Notify the Lender or escrow agent by letter (from the Director of Housing Production) of the required prepayment.
    - e. Control the remaining balance in a special account, as a reserve for unpaid construction costs from which disbursements may be made only after written consent of the Regional Center or Satellite Office.
  3. The Lender will continue to use the existing amortization schedule for servicing the mortgage.
    - a. The prepayment is in addition to the regular monthly payments to principal.
    - b. There is no adjustment in the amount of the annual MIP due because of these mandatory prepayments.
  4. The escrow requirement does not apply to funds the General Contractor owes. However, the General Contractor must submit a reconciliation of its "to be paid" items, such as form HUD-92330A.



## 13.21 Increase in Mortgage Amount

**A.** Requests for a mortgage increase will not be considered until the project is complete, cost certification has been submitted, the Final Endorsement will likely be achieved immediately following processing of the mortgage increase, and the conditions in [Section 13.21.B](#) below are met.

**B.** Following are the bases for considering a mortgage increase:

1. Necessary changes that arise from differing site conditions (as defined in the construction contract).
2. Compliance with local codes.
3. Unforeseen conditions that might affect the safety and health of occupants.
4. Betterment changes that are economically justified as determined by HUD (e.g., those that can be documented to produce significant cost savings to project operation, increase income expectancy, or enhance the security of the mortgage.)
5. Costs caused by extensions in construction time, when such extensions are approved by HUD, justifiable under AIA General Conditions, and caused by problems beyond the contractor's control.
6. Other costs not known at Firm Commitment resulting from requirements of local authorities and beyond the Borrower's control.
7. Construction hard cost increases caused by a natural disaster declared by Federal or State government, to the extent not covered by casualty insurance.
8. Increased costs resulting from concealed subsurface site conditions, provided it is determined those exploratory tests during project design were sufficient and thorough and neither the Architect nor engineer was at fault.
9. Costs of substituting a General Contractor when the original General Contractor is terminated for cause and the surety has failed to perform.
10. Costs to correct a substantial HUD error in the original processing that would otherwise result in serious inequities.

**C.** Any mortgage increase for an insured project must be in an amount greater than 2.5% of the original mortgage or \$400,000.

**D.** Increases to the HUD insured mortgage at Final Endorsement for affordable projects may be considered on a case-by-case basis, as long as the increase is necessary, justified, and HUD's risk is not materially increased. As evidence of the mortgage increase, HUD will accept the Lender-prepared form HUD-92580, Maximum Insured Mortgage, along with the final sources and uses, and Forms HUD 92264 and 92264-A. The mortgage increase must be requested by the Lender and reviewed and approved by the Lender, Borrower, Borrower's CPA, tax credit investor, and GNMA investor.

## 13.22 Restrictions on Mortgage Increases

- A. A mortgage increase may not be granted for cost overruns associated with completion of the work in accordance with the original contract documents by the original contractor, changes made primarily for the convenience of the Borrower or contractor, or for the aggrandizement of the Borrower or contractor.
- B. Cost overruns are not a basis for granting a Borrower's request for mortgage increase, nor are changes made primarily for the convenience or aggrandizement of the Borrower or contractor.
- C. Any mortgage increase for an insured project must be in an amount greater than 2.5% of the original mortgage or \$400,000.
- D. The increase must be supported by the underwritten net operating income under Criterion 5 of form HUD-92264-A finally approved at Firm Commitment or Initial Endorsement.
- E. A mortgage increase may not be granted for replacing a contractor where the Borrower sets up a "straw contractor" for purposes of BSPRA.

## 13.23 Processing a Mortgage Increase

- A. Technical processing consists of Step One through Step Four below. There are four steps to processing a mortgage increase, depending on the bases for the increase being considered.
  1. **Step One:** Use the alternative applicable to the basis for the increase being considered.
    - a. *Alternative One*, applicable to necessary items and betterment change order cost increases:
      - 1) HUD Construction Analyst and Valuation staff review the change orders to determine eligibility for processing a mortgage increase. Architecture further reviews for the added cost.
      - 2) HUD Underwriter computes the allowable costs on form HUD-92331-A, Cost Certification Review Worksheet–Mortgage Credit Staff, line 1.d. Reduce this amount by the cost attributable to any change order(s) not qualifying for a mortgage increase.
      - 3) The adjusted hard cost forms the basis of the mortgage increase computation.
    - b. *Alternative Two*, applicable to contract time extension soft cost increases:
      - 1) HUD Underwriter computes the allowable costs on form HUD-92331-A, Cost Certification Review Worksheet, Mortgage Credit Staff lines 3 through 6.
      - 2) The adjusted soft cost forms the basis of the mortgage increase computation.
    - c. *Alternative Three*, applicable to construction contract cost increases due to a change in the contractor:
      - 1) HUD Construction Analyst computes a new form HUD-2328 and form HUD-92264, Section G through line 50.
      - 2) HUD Underwriter computes the allowable costs of form HUD-92331-A, Cost Certification Review Worksheet–Mortgage Credit Staff, line 1.c. for hard cost increases between the

- original contractor and the contractor completing the work, and lines 3 through 6 for soft cost increases associated with the change in contractor.
- 3) The adjusted hard and soft costs form the basis of the mortgage increase computation.
- d. *Alternative Four*, applicable to substantial errors in HUD cost processing:
- 1) The HUD Construction Analyst completes a new form HUD-2328 and form HUD-92264, Section G through line 50.
  - 2) Underwriter computes the allowable costs on form HUD-92231-A, Cost Certification Review Worksheet–Mortgage Credit Staff, line 1.c, using the criteria in [Section 13.23.A.3](#), below.
  - 3) The allowable construction costs for processing the increase will be based upon the lesser of:
    - a) The amount of the construction cost certified by the Borrower, or
    - b) The upset price of the construction contract as adjusted by approved change orders eligible for a mortgage increase, plus the increases resulting from correcting or errors in the original processing.
  - 4) The adjusted hard cost forms the basis of the mortgage increase computation. Where there is a substantial error in HUD cost processing, the mortgage credit Underwriter must not use the adjusted upset price of the construction contract as a limiting criterion.
2. **Step Two:** The HUD Underwriter must compute (for use by Valuation to complete form HUD-92264) the eligible costs and fees for the following: Architect’s fees, bond premium if paid by the Borrower, other fees not included in the construction contract and paid by the Borrower, interest, taxes, the mortgage insurance premium, Developer’s fee (if applicable), legal, organizational and audit fees, marketing (if applicable), offsite costs, as-is land value, and “as-is” value of property (if applicable). The HUD Underwriter must comply with the following to compute the costs and fees:
- a. Do not increase BSPRA or restore Contingency Reserve or non-profit’s Developer’s Fee.
  - b. Do not include non-mortgageable items (construction or permanent loan extension fees, discount rate, maintenance fees, etc.)
  - c. Offset non-mortgageable items by net interim income (net non-proprietary income, if applicable) to offset amount of mortgage increase.
  - d. For increases caused by natural disaster:
    - 1) Consider in the revised cost any increases from any interim closing for carrying charges, financing fees, and legal fees. Do not include any cost due to construction delays before the disaster.
    - 2) Cut the new estimated replacement cost by the amount of any actual recovery through insurance proceeds.
    - 3) Require prepayments to be made for any late recovery of insurance proceeds.
3. **Step Three:** Valuation must use the costs and fees developed by HUD Underwriter in Step Two in revising form HUD-92264. Valuation must consider each of the following:
- a. Examination fee, initial service fee, Ginnie Mae fee, inspection fee, MIP, and title and recording based on the approvable increased mortgage amount.

- b. Net operating income derived from the final underwritten market rent in Criterion 5 of the form HUD-92264-A, approved at Firm Commitment or initial endorsement. This test will determine whether the current NOI is no lower than the underwritten market rent. If the NOI is lower the project will not qualify for a mortgage increase. If the NOI has increased the test is based on the rent and expense and occupancy approved at Firm Commitment or initial endorsement.
4. **Step Four:** The HUD Underwriter must prepare a revised form HUD-92264-A, using the revised form HUD-92264 and Trial form HUD-92264-A prepared by Valuation in Step Three.
- B.** Prepare a modified form HUD-92580 for a Mortgage Increase.
  1. Add on line 1(d) Other: "ADD Mortgage Increase" and enter the amount of the approved increase as an amount rounded to an even \$100.
  2. Include a condition in Schedule 1 requiring the modification of the mortgage at final endorsement.

## 13.24 Authorization to Reopen Mortgage Transaction

- A.** HUD must advise the Lender of its approval or denial of the request for a mortgage increase upon completion of technical processing. Where a determination is made to increase the mortgage, use Specimen Letter–Agreement Authorizing Reopening of Mortgage Transaction ([Appendix 13, Section A.13.1](#)) to notify the mortgagee.
1. Approval of a mortgage increase is subject to the payment of the following fees based on the amount of the increase.
    - a. Application Fee of \$3.00 per thousand of the increase.
    - b. Inspection Fee of \$5.00 per thousand of the increase is applicable only when the increase involves construction hard costs.

## 13.25 Deferral of Principal Payments

- A.** Borrowers are expected to manage the construction period and fulfill the payment terms of the mortgage note without modification. However, certain uncommon circumstances that result in delays in construction or achieving sustaining occupancy may justify a deferral of principal payments (e.g., delay in the commencement of amortization.)
- B.** Sufficient justification to support a deferral may exist after a casualty loss or catastrophic event (e.g., hurricane, flooding, etc.), or other significant non-Borrower related delays. However, general delays from normal inclement weather, labor/material shortages, or other typical construction-related exigencies would likely be insufficient justification for HUD to approve the deferral request.
- C.** Should a MAP Lender request a deferral in principal payment, the following conditions must be met.
1. Securitized Loan Requirements: If the loan is collateral for a Ginnie Mae mortgage-backed security, then Ginnie Mae's written acknowledgement that it is acceptable to delay principal payments via a loan modification is required. The MAP Lender must contact Ginnie Mae, Office of Issuer and Portfolio Management, Multifamily Division for review and approval.

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2. FHA Request Requirements:
  - a. Justification that conforming to the existing amortization schedule is an unreasonable hardship and would increase risks to HUD;
  - b. Written assurance by the owner confirming that sufficient funds exist outside the mortgage proceeds to pay any interest overrun;
  - c. The Borrower can evidence reasonable effort to complete construction and attain sustaining occupancy on a timely basis; and
  - d. The period of deferment is limited only to the additional time necessary for the Borrower to stabilize project operations.
3. Deferment Letter: Use [Appendix 13, Section A.13.2](#), Specimen Letter – Agreement Authorizing Deferment of Principal Payments for Level Annuity Monthly Payment and distribute copies in accordance with [Section 13.26](#) below.
4. Deferment Instruments: The Regional Center Director is authorized to approve modifications of the principal and interest payment as may be necessary to affect the deferment of principal payments.

## 13.26 Document Distribution

**A.** For form HUD-92580, Maximum Insurable Mortgage:

1. The Lender receives the original and one executed copy.
2. Each of the following receives one executed copy: Closing Attorney, Mortgage Credit Control File, Washington Docket, Regional Center or Satellite Office Docket, Regional Center or Satellite Office.

**B.** For Cost Certification documents: the original documents are filed in the Washington Docket and one copy is filed in the Regional Center or Satellite Office Docket.

## 13.27 Office of Inspector General

**A.** The Regional Center Director should refer Borrowers to the Office of Inspector General to evaluate the Borrower's and/or contractor's books where discrepancies appear to arise from other than inadvertent error, or from creditable misinterpretation of applicable criteria. Do not issue form HUD-92580, Maximum Insurable Mortgage, before completion of an OIG audit or investigation initiated before its issuance. A referral must also be requested for any indicated fraud or material misrepresentation detected after issuance of form HUD-92580.

## 13.28 Cost Certification Incontestability

**A.** After HUD approves the certifications and issues form HUD-92580, Maximum Insurable Mortgage, they are final and incontestable unless there is fraud or material misrepresentation by the Borrower, General Contractor, or subcontractors.

## 13.29 Post-Closing Escrows

A. Post-Closing Escrows must be set up at final closing to pay all “to be paid in cash” items identified on form HUD-92330, Borrower’s Certificate of Actual Cost, and debts to third parties who made the original disbursement for an item listed as paid on form HUD-92330. These amounts may be adjusted for payments made between the cut-off date and the date of final closing.

## 13.30 Final Closing – Insurance of Advances

### 13.30.1 Amortization and Mandatory Prepayments

#### 13.30.1.1 Advance Amortization Requirements

A. “Advance amortization” is the requirement that, to the extent that the project generates net operating income during the Accountability Period (defined in [Section 13.30.1.2.A](#) below), HUD may require the Borrower, prior to final endorsement, to make, or to agree to make, a prepayment to principal in the amount of such net operating income, all as discussed more fully in [Section 13.30.1.3](#) below. In order for the Regional Center Director to determine whether or not advance amortization is required, the Borrower must account for all operating income for the period ending three months prior to the originally scheduled date of the first principal payment under the mortgage loan (e.g., through June 30 if the first principal payment is scheduled for October 1).

#### 13.30.1.2 Income and Expense Statement Requirement

A. In connection with cost certification, the Borrower will already have reported the results of occupancy during the cost certification period. Therefore, when more than three months intervene between the cost certification period and the first principal payment as originally scheduled, the Regional Center Director will require an income and expense statement covering the period beginning at the end of the cost certification period and ending three months prior to the date of the first principal payment under the mortgage loan as originally scheduled (the Accountability Period).

##### 13.30.1.2.1 Agreement of Borrower

A. When final closing is scheduled to occur before the expiration of the Accountability Period, the Borrower must agree in writing, as an inducement to HUD to approve the final disbursement of mortgage loan proceeds prior to the expiration of the Accountability Period, to:

1. Furnish an income and expense statement for the required period within 30 days after its expiration, and
2. Immediately apply, as a mandatory prepayment to the mortgage loan, such portion of the net operating income as HUD may require.

B. When final closing is scheduled to occur after the close of the Accountability Period, the income and expense statement shall be submitted prior to final closing.

### **13.30.1.2.2 Treatment of Items in Statement**

A. In the preparation of the income and expense statement, the Borrower must include as income all rents received, exclusive of security deposits. All expenses for operation, including taxes, insurance, HUD-FHA mortgage loan insurance premium (MIP), interest and reasonable management fees (but not officers' salaries or depreciation), may be deducted in determining net income for this purpose. If the cost certification reveals an excess of expense over income, such excess (to the extent recognized by HUD) may be carried forward to the statement required by this paragraph as “unrecovered expense prior period.”

### **13.30.1.3 Amount of Required Prepayment**

A. The amount and handling of the required prepayment is subject to the following:

1. In no case shall the required prepayment exceed the amount which would have been due in cumulative principal payments if the first scheduled payment had been on the first of the month in which the Accountability Period started.
2. Prepayment will be required only to the extent that the amount of the net income permits payment of one or more full monthly principal payments as scheduled.
3. If the circumstances are such that the operating statement is submitted before final endorsement, the Lender and Borrower may elect to have the mortgage loan endorsed for less than the face amount by a sum equal to that which would have been required as mandatory prepayment, provided such action is acceptable to Ginnie Mae.

### **13.30.1.4 Excess (Unused) Mortgage Loan Proceeds**

A. In circumstances where the cash paid out for completion of the project is less than the mortgage loan proceeds, the Regional Center Director shall require that any part of the mortgage loan proceeds that have not been expended to pay necessary costs of completing the project shall be deposited in the reserve for replacement account of the Borrower, from which disbursements may be made only with the prior written consent of the Regional Center Director. This requirement is stated in form HUD-93305M, Agreement and Certification, at paragraph 3. Where the Commissioner requires the Borrower to make a deposit of cash, such deposit shall be with Lender or a repository acceptable to the Lender. The deposit shall be held by the Lender in a special account, or by the depository under an appropriate agreement approved by the Commissioner.

1. The establishment of the fund can be avoided by an immediate reduction of the mortgage loan at closing, before establishment of the amortization schedule.
2. The Regional Center Director will approve or disapprove the use of the funds for purposes other than reduction of the mortgage loan.
3. If the mortgage loan proceeds exceed the cash paid out for completion solely because there is a difference between the purchase price of land for a period of years and its “fair market value” in fee simple and “as is”, as determined by HUD, the Regional Center Director may waive this requirement. The request for waiver shall be accompanied by full information as to the date of purchase and the purchase price of the land.



## 13.30.2 Confirmation of Final Loan Amount

### 13.30.2.1 Preparing Form HUD-92580, Maximum Insurable Mortgage

**A.** Prior to final endorsement, the Regional Center Director shall execute form HUD-92580, Maximum Insurable Mortgage, for the purpose of indicating to the Lender and Borrower whether or not a reduction in the original amount of the Loan is necessary, based either upon the cost certification or upon a request by the Lender for a principal increase. The Regional Center Director will receive, review, and accept certificates of actual cost and form HUD-95379, Final HUD Representative’s Trip Report, prior to completing form HUD-92580.

**B.** If there is any change in the loan amount, form HUD-92580 also will recite the revised amount of the Level Annuity Monthly Payment (LAMP).

**C.** Upon execution of form HUD-92580, the original shall be forwarded to the Lender and an executed copy shall be forwarded to the Borrower. One copy shall be placed in the Washington Docket with copies of the cost certification exhibits and one copy, unless stored electronically, will be placed in the field office docket

**D.** Copies of both form HUD-92580 and form HUD-95379 also shall be forwarded to the HUD Closing Attorney for use in preparing for final endorsement.

### 13.30.2.2 Decrease in Loan Amount

**A.** If HUD’s review of the cost certification results in a decrease in the Loan amount, which decrease would be set forth in form HUD-92580, the Lender must, subject to local practice, prepare and submit the following items to HUD, prior to final endorsement, to modify the Security Instrument amount and the LAMP amount accordingly.

1. A proposed Modification Agreement, in a form acceptable to HUD (see requirements in Part 2 of the Closing Guide) and,
2. As applicable, a proposed Allonge, in a form acceptable to HUD (see requirements in Part 2 of the Closing Guide).

**B.** The final endorsement for insurance shall be in the lesser loan amount.

**C.** If a small loan decrease is involved, and the Borrower does not request a change of amortization, a notation may be made on the Note indicating that the mortgage loan amount is reduced without a change in amortization. In this case, the finally endorsed amount will reflect the reduced principal balance.

**D.** Any reduction in the original principal amount of the loan that may be required by HUD as a result of cost certification shall not be construed as a prepayment of the mortgage loan.

### 13.30.2.3 Increase in Loan Amount

**A.** If the Regional Center Director approves an increase in the mortgage loan amount, as reflected in form HUD-92580, the Lender must include the following items in the package of draft closing documents submitted to HUD for final endorsement to evidence the obligation to repay the amount of the increase and to consolidate the initial and supplemental documents:

1. Supplemental Note.

2. Supplemental Security Instrument.
  3. Modification and Consolidation Agreement.
  4. Supplemental Borrower’s Attorney’s Opinion (as to the foregoing three documents).
  5. Updated title policy insurance amount.
- B.** The requirements for these documents are discussed in [Chapter 2, Section 2.10](#) of the Closing Guide.

### **13.30.2.4 Statement of Status of Escrows**

**A.** Form HUD-92580 shall also:

1. Show the status of all escrow accounts that were established by the Borrower at initial closing; and
2. Indicate whether, based on the final form HUD-95379, HUD Representative’s Trip Report, an escrow for unpaid construction costs appears necessary. See discussion concerning incomplete facilities, in the Closing chapter at [Chapter 19, Section 19.3.1](#).

### **13.30.2.5 Borrower’s Investment**

**A.** The amount of the Borrower's initial equity investment is to be determined by the Program Staff in accordance with the MAP Guide. Once this determination has been made, the Regional Center Director will immediately notify the Borrower in writing as to the amount of the initial equity investment. A copy of such determination shall be attached to each copy of form HUD-92580. For new construction and substantial rehabilitation projects, equity is determined by subtracting the finally endorsed mortgage loan amount from the amount on line 6, form HUD-92580.

**B.** To the base amount of the final mortgage loan, as determined above, there may be added certain cash outlays for furnishings, equipment, or other betterments essential to the operation of the project. The nature and extent of such outlays shall be substantiated by a supporting schedule in a manner satisfactory to the Regional Center Director. The schedule shall set forth the vendor's name, a description of the item or items purchased, the total price, and the cash paid on account of the price. The schedule shall be signed by an authorized representative of the Borrower.

### **13.30.3 Final Closing – Insurance Upon Completion**

**A.** See [Chapter 19](#) for closing details for new construction or substantial rehabilitation, Section 223(a)(7) and Section 223(f).

## Chapter 14 LIHTC and Other Tax Credit Programs

### 14.1 Introduction

A. The Low-Income Housing Tax Credit (LIHTC) program was enacted as part of the Tax Reform Act of 1986. It is administered by the Treasury Department and State Housing Finance Agencies (HFAs). In July 2008, the Housing and Economic Recovery Act (HERA) provided statutory rulings for FHA multifamily program changes, to facilitate the use of insured mortgages with LIHTC developments.

B. This chapter outlines policies and procedures for underwriting and reviewing FHA multifamily mortgage insurance applications for projects using LIHTC. Standard processing of such applications applies except as modified below, and all LIHTC projects are underwritten using the “single underwriter model”. Underwriters assigned LIHTC projects must have specialized training in underwriting these deals. Guidance provided here addresses all LIHTC projects underwritten for FHA insurance.

### 14.2 LIHTC Underwriting Guidance

A. Guidance for processing and underwriting insured loans for LIHTC projects under the various mortgage insurance programs can be found in other chapters and appendices of this Guide, noted in the chart below:

MAP Guide Section Number	Content
<a href="#">Chapter 2, Section 2.6.5</a>	Identities of Interest (IOI) are permitted between Lenders and equity syndicators, investors, or bridge loan Lenders, in limited circumstances.
<a href="#">Chapter 2, Section 2.6.7</a>	IOI Tax Credit Equity Syndicator or Investor Representation and Warranty certification requirements.
<a href="#">Chapter 3, Section 3.1.33</a>	Underwritten occupancy requirements for LIHTC transactions.
<a href="#">Chapter 3, Section 3.3</a>	Loan sizing ratios under 221(d)(4) are provided, and these apply to Tax Credit projects underwritten for that program unless adjusted for the New Pilot in separate guidance.
<a href="#">Chapter 3, Section 3.4, Section 3.5, and Section 3.7.</a>	Loan sizing ratios under 220, 223 and 231 are provided, and these apply to Tax Credit projects underwritten for each program unless adjusted for the New Pilot in separate guidance.
<a href="#">Chapter 3, Section 3.2</a> and <a href="#">Chapter 4, Section 4.2.2.</a>	One-stage application processing is permitted for all Tax Credit projects under all Sections of the Act. If Lender chooses two-stage processing, no pre-application fees are charged.
<a href="#">Chapter 5, Section 5.6</a>	Streamlined processing (including delayed submission of final plans) is permitted for Tax Credit projects, assuming certain conditions are met.
<a href="#">Chapter 7, Section 7.4.A</a>	No market study, other than that which would be provided in the appraisal, is required for projects with 90% or more project-based rental assistance.
<a href="#">Chapter 7, Section 7.5.13</a>	Demand Estimate and analysis of demand for LIHTC properties.
<a href="#">Chapter 7, Section 7.7.9</a>	Underwriting NOI for projects with Section 8 and LIHTC and projects with above-market Section 8 rents for a long term.

<b>MAP Guide Section Number</b>	<b>Content</b>
<a href="#">Chapter 7, Section 7.13</a> and <a href="#">Chapter 8, Section 8.14.C.6</a>	Calculating operating deficits (for all Tax Credit projects).
<a href="#">Chapter 7, Section 7.14</a>	Valuation instructions for affordable projects with a lease.
<a href="#">Chapter 7, Section 7.16</a>	Underwriting tax abatements and waivers of certain underwriting requirements for Tax Credit projects.
<a href="#">Chapter 7, Section 7.17</a>	Valuation of Tax Credit and other affordable properties.
<a href="#">Chapter 14, Section 14.10.1.</a>	Special Limited Partners (SLP) and pre-approval of SLP.
<a href="#">Chapter 8, Section 8.3</a>	Identifying and underwriting the principals in an LLC, LP, or non-profit for purposes of mortgage credit review and limited review of tax credit equity syndicators and passive investors and Previous Participation Review Requirements.
<a href="#">Chapter 8, Section 8.5</a>	Financial requirements and LIHTC Letters of Commitment.
<a href="#">Chapter 8, Section 8.7</a>	Secondary Financing requirements for public and secondary financing. Requirements for secondary financing from governmental Lenders and for bridge loans used to fund equity during the construction period; use of HUD's form of Subordination Agreement instead of Note Rider.
<a href="#">Chapter 8, Section 8.8</a>	Evaluating mortgage credit for non-profit Sponsors.
<a href="#">Chapter 8, Section 8.12</a>	Firm Commitment Processing with Grants and Loans.
<a href="#">Chapter 8, Section 8.14</a>	Cash requirements for Closing.
<a href="#">Chapter 8, Section 8.15</a>	Requirements for tax-exempt bond financing.
<a href="#">Chapter 11, Section 11.5</a>	Loan fees for tax-exempt bond financing.
<a href="#">Chapter 11, Section 11.8</a>	Prepayment provisions for affordable or subsidized properties.
<a href="#">Chapter 12, Section 12.7</a> and <a href="#">Chapter 13, Section 13.1, Section 13.4</a>	No cost certification required for Tax Credit projects if LTC/ LTV less than or equal to 80%.
<a href="#">Chapter 16</a>	Master Leases.
<a href="#">Appendix 3, Section A.3.2</a>	Developer Fees by Program.
<a href="#">Appendix 3, Section A.3.8</a>	Broadly Affordable and Affordable MIP rate categories.
<a href="#">Appendix 4</a>	Application exhibits.
<a href="#">Appendix 8, Section A.8.8</a>	Identification and Certification of Limited Liability Investor Entities.
<a href="#">Appendix 12, Section A.12.1</a>	Disbursement of grant and LIHTC proceeds.

## 14.3 Historic and New Markets Tax Credits

**A. Federal Historic Preservation Tax Credit Program.** The Federal Historic Preservation Tax Credit (HTC) program encourages private sector investment in the rehabilitation and re-use of historic buildings. The National Park Service and the Internal Revenue Service administer the program in partnership with State Historic Preservation Offices. Some states also offer tax credits for historic buildings and encourage applicants to apply to both federal and state programs together. The HTC can be coupled with other local, state and federal incentives as well, including LIHTC.

**B. New Markets Tax Credits.** New Markets Tax Credits (NMTC) are administered by the Community Development Financial Institutions Fund, or CDFI Fund, (a program within the U.S. Department of the

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Treasury) and the Internal Revenue Service. NMTC can be used to finance a number of property types including mixed-use with multifamily so long as the property is within a low-income community as defined by the U.S. Department of the Treasury. NMTC investors typically invest in intermediary entities, Community Development Entities (CDEs), which then provide funding to the project-level ownership entity, usually in the form of non-traditional debt. No more than 80% of a NMTC property can be residential on a square footage and income basis; 20% or more must originate from a commercial use. NMTCs can be combined with HTC but are not typically combined with LIHTC.

**C. HTC and NMTC programs.** The HTC and NMTC programs are only occasionally used in FHA-insured projects, so policies for each program are not provided in this chapter; however, to the extent it is legally permissible and consistent with FHA's mortgage credit and underwriting standards, HTC and NMTC may be used in a manner similar to that described below for LIHTC projects<sup>61</sup>. For example, Equity Bridge Loans (EBL) may be used by Borrowers and/or tax credit investors as a substitute for the pay-in of HTC equity during a project's development and stabilization phases (see [Section 14.16](#)). The Lender should approach HUD at concept to discuss the proposed structure of the HTC and NMTC transaction, particularly any areas of deviation from the standard LIHTC structure to confirm acceptability. The Lender and HUD Underwriter are responsible for verifying that the amounts and timing of the HTC or NMTC contributions are reasonable and can be expected to meet the development costs of the project. The Lender is also responsible for documenting the financing terms associated with HTC and NMTC in the Lender's Narrative and the form HUD-92013-C LIHTC Summary Report (LIHTC transactions only).

## 14.4 Subsidy Layering Review

**A.** Subsidy Layering Review (SLR) requirements have been eliminated for LIHTC projects using FHA-insured loans but no other sources of Federal subsidy. Thus, most of HUD's mortgage insurance transactions are exempt from the formal SLR. The Lender and HUD Underwriter must always review the Sources and Uses Statements for both mortgageable and non-mortgageable funds, however, to ensure that costs are not being funded twice and that all costs funded from mortgage proceeds are appropriate and necessary to complete the transaction<sup>62</sup>. Documentation must be included in the Firm Application. To ensure accuracy, all costs must be identified and should not be categorized as "other" on the Sources and Uses statement.

**B.** In addition to the analysis of the Sources and Uses Statement in the FHA loan underwriting, other public funds combined with the FHA mortgage in a Tax Credit project may require a formal SLR. These public funds might include Home Investment Partnerships Program (HOME) funds and other Federal loans or grants, secondary financing provided from state or local sources, or capitalized debt supported by above-market, budget-based Section 8 rents. If those funds require a SLR, either a state agency, another public source, or HUD will perform the review based on the FHA MAP Lender's analysis.

**C.** Criterion 11 on the *Supplement to Project Analysis* (form HUD-92264-A) is not required. It may be used as an optional worksheet.

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<sup>61</sup> The tax credit equity pay-in schedule found in Chapter 14.13 does not apply to HTC or NMTC transactions.

<sup>62</sup> For projects with LIHTC, the State Housing Finance Agency will require the Borrower to certify to actual costs.

## 14.5 Evidence of Tax Credit Allocations

**A.** The Firm Application for any LIHTC project should include evidence of 1) a LIHTC award in the form of a 9% State Agency Allocation or if 4% Tax Credits, an allocation of private activity bond cap, or 2) in the case of Historic Credits or New Market Credits, an equivalent form of verification from the appropriate agency.

**B.** LIHTC allocation timing varies by state, and in some cases FHA applications must be submitted before final allocations of tax credits can be secured. Accordingly, other evidence is allowable. For example, in the case of 4% LIHTC allocations, state agency bond cap allocators' assurances and written procedures stating that bond cap remains available for the period in question, that an application has been submitted for the project in question, and that allocations are obtainable in the time available.

**C.** Regional offices have discretion to accept applications proposing 4% LIHTC allocations based on evidence of approval that is customary for the allocating agency in question.

## 14.6 HAP Contract Renewals for Section 8 Projects

**A.** Where a Section 8 HAP contract is involved, the Borrower and Lender are responsible for ensuring that the renewal terms under the Section 8 Renewal Policy have been or will be satisfied prior to loan application submission or Initial Endorsement. Consistent with the definition of "Affordable Housing" in this MAP Guide, if an existing Housing Assistance Payment (HAP) contract has a remaining term of 15 years or greater from final endorsement, then no renewals are necessary for purposes of qualifying for FHA insurance (other programs, such as RAD may have additional requirements). See [Chapter 7, Section 7.8.5](#) for underwriting requirements for projects with short and long-term HAP contracts. Criterion 3 remains value-based using market rents, unless the project is a first-time refinance of a 202 or a RAD transaction. For Project Based Voucher (PBV) contracts, a 15-year contract is both typical and acceptable.

**B.** In the case of a HAP Contract Renewal Request, the Rent Comparability Study (RCS) must be reviewed by the Lender as part of the underwriting process and when reviewing the MAP appraisal. If the Borrower commissions the RCS, the same firm can not do the appraisal. However, if the Lender commissions the RCS, the same firm may do the appraisal. The Lender is expected to analyze the loan using the rents from the RCS to develop income estimates (and/or the Section 8 budget prepared by the Borrower in the case of budget-based rents) and to address any inconsistencies in the Lender's narrative. The HUD Underwriter will review the Section 8 HAP Contract Renewal Request, RCS and Lender's underwriting narrative to verify that the rents requested by the Borrower in the Renewal Request are supported by the RCS and that the Lender's underwriting accounts for the RCS and the Renewal Request. At the HUD Underwriter's discretion, the HUD appraiser may be asked to review an RCS to determine its reasonableness. If the Performance Based Contract Administrator's<sup>63</sup> (PBCA) appraiser has not undertaken a detailed review of the RCS, the HUD appraiser must also review the RCS to determine reasonableness using Guidelines in Chapter 9 of the "Section 8 Renewal Policy".

**C.** Coordination among the assigned HUD Underwriter, the field office's Asset Management and Portfolio Oversight (OAMPO) representative assigned to the project, and if necessary, HUD HQ's OAMPO staff is

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<sup>63</sup> The PBCA is an agency hired to assist HUD/OAMPO in the administration of Section 8 contracts.



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essential to ensure that a) the Section 8 HAP Contract Renewal Request and rent increase, if applicable, are approved in a timely fashion, b) a prepayment approval is obtained if needed, and c) any other waivers are processed and approved in a timely fashion.

**D.** Section 8 HAP Renewal Requests and Rent Adjustment Requests must be delivered to the Performance Based Contract Administrator (PBCA) at least 60 days prior to the submission of the Firm Commitment application, and 120 days in advance is preferable. However, the RCS rents and the appraiser's rents must be determined within 180 days of the issuance of the Firm Commitment, or those rents must be updated in accordance with [Chapter 7, Section 7.6.1](#). Thus, the owner and Lender must carefully manage the timing.

**E.** Similarly, Lenders' requests for prepayment of an FHA-insured loan should be submitted to headquarters well before submission of the Firm Application package to the HUD field office (see Mortgagee Letter 2018-07). The PBCA, under the direction of OAMPO, prepares and signs the new contract and attached cover letter for delivery to the owner.

**F.** Borrowers and their Lenders should refer to the Section 8 Renewal Policy for detailed guidance on Section 8 contract renewals.

**G.** If the Borrower is submitting a budget-based rent request, the Lender must coordinate with the Borrower to determine a preliminary debt service figure for the new loan that the Borrower will include in the proposed budget to submit to HUD and the PBCA. The final debt service figure is subject to change during the final underwriting process, so this may have to be amended on the HAP contract request later. The income, expenses and debt service amounts listed on the Borrower's request must match the amounts in the Lender's underwriting.

## 14.7 Application/Submission Requirements

**A.** Documentation to be provided in the Firm Application for Section 8 Assisted properties requesting a HAP Contract Renewal include the following:

1. HAP Contract Renewal Request and Rent Comparability Study. A MAP-compliant appraisal and HUD forms HUD-92264, HUD-92264-T, HUD-92273, and HUD-92274 should also be submitted with the application. However, the appraiser may opt to use the form HUD-92273 used in the Rent Comparability Study or another format and may use form HUD-92274 or an alternative format acceptable to the Lender and the HUD Underwriter.
2. The following describes application requirements for LIHTC projects that differ from those described in other sections of the MAP Guide for projects without LIHTC. Other standard documents will be those used for a given project's Section of the Act (SOA) program.
  - a. The form HUD-92013-C, LIHTC Summary Report, which provides specialized information on sources and uses of funds, net equity pay-in requirements, flow of funds and other matters essential to analysis of LIHTC projects must be submitted for all Tax Credit projects. The LIHTC Summary Report is located at:

<https://www.hud.gov/sites/dfiles/Housing/documents/LIHTCSummaryReport20AllDealTypes0920.xlsx>



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- b. Existing Land Use Restriction Agreement (LURA) or other Regulatory Agreement (if any).
- c. Letter of Intent (LOI) from Investor or Syndicator.

**B.** HUD has issued separate guidance for Rental Assistance Demonstration projects for underwriting RAD transactions with FHA-insured loans and LIHTC. The guidance is available at:

<https://www.hud.gov/RAD/library/notices>

**C.** Application documents specific to the New Pilot are listed in the New Pilot Application Exhibits Checklist.

## 14.8 Architecture and Engineering

**A.** The ALTA Survey submission may be waived for Tax Credit transactions involving the refinance of a project with an existing FHA-insured mortgage, if the Borrower submits a statement reviewed and approved by the MAP Lender and certifies that there have been no material changes or additions to the structure or property boundaries since the closing of the original loan. HUD may accept an existing survey for such projects rather than requiring a new survey document.

## 14.9 Identities of Interest in Tax Credit Transactions

**A.** In cases of identities of Interest (IOI) transfers for non-profits, non-profit owners of currently insured or HUD-held properties may syndicate LIHTC properties and form new partnerships, subject to HUD's Transfer of Physical Asset (TPA) policies. (See Housing Notice 2011-31.)

**B.** See [Chapter 2](#) and [Chapter 8](#) for additional guidance on acceptable IOI relationships.

## 14.10 Mortgage Amounts, Contingency and Escrow

**A. Transfer of Ownership.** Section 223(f) applications for Tax Credit projects that involve transfers of ownership to IOI purchasers may be treated either as acquisitions or refinancing transactions for purposes of sizing the mortgage. Lenders may use either Criterion 7 or 10 on form HUD-92264-A.

**B. Substantial Rehab Contingency.** Generally, unspent contingency funds in an FHA-Insured loan project may be deposited into a Reserve for Replacement Account (R4R) or applied to pay down the mortgage, or do further improvements, betterments or upgrades to the property. One exception to this rule applies to Low Income Housing Tax Credit properties with affordability restrictions that meet HUD's definition of "Affordable Housing" and obtain FHA mortgages not sized using the cost criterion. In such cases, HUD allows contingency funds included in the FHA mortgageable cost, but not needed for repairs, appropriate betterments, or deposits to R4R, to be used to pay the Developer Fee (deferred or otherwise) or any other HUD-approved project-related expense (e.g., relocation costs) or reimbursement item. Unused contingency funds may be used after issuance of the Final Trip Report, form HUD-95379.

**C. Relocation Escrow.** Unused Relocation funds, if escrowed from FHA loan proceeds, may also be released in accordance with guidance above including payment of Developer Fee (deferred or otherwise.)

**D. Initial Operating Deficit Escrow.** Initial Operating Deficit escrow requirements are outlined in [Chapter 3, Section 3.10](#), [Chapter 7, Section 7.14](#), and [Chapter 8, Section 8.14](#). For LIHTC projects only (New Construction, Gut Rehab or Adaptive Re-Use), HUD will allow the HUD required Borrower's Initial Operating Deficit to be contributed after Initial Endorsement but no later than the point in time when HUD signs the Permission to Occupy form, HUD-92485.

**E. Working Capital Escrow.** The 2% Working Capital Escrow requirement for substantial rehabilitation projects with Section 8 rental assistance and LIHTC restrictions covering more than 90% of the units is not required when the Lender can demonstrate 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. A Waiver of the Working Capital Escrow is only available for LIHTC properties with 90% greater rental assistance (LIHTC only is not sufficient) and can be approved by the Regional Production Division Director.

## 14.11 Structuring of Secondary Debt

**A. LTV Ratio and Private Secondary Debt.** For transactions that do not have LIHTC, Section 223(f) limits the combination of FHA insured and secondary financing to a loan to value limit of 92.5% (except when the debt source is a public sector or quasi-public sector entity<sup>64</sup>).

**B. Conditions for Secondary Debt.** For LIHTC projects (new construction, substantial rehabilitation, and refinance transactions), debt limits can restrict property basis and tax credit amounts unnecessarily. Accordingly, for LIHTC projects only, HUD does not impose a loan to value limit on secondary financing, regardless of the source (public debt or private debt). This means that in some cases debt may exceed value. However, all such secondary debt remains subject to the following conditions:

1. Payments on all secondary debt are restricted to 75% or less of the annual surplus cash, and/or the proceeds of a sale or refinancing of the property. (See 24 CFR 200.85(b)). This limit applies cumulatively to all secondary debt, private and public, to ensure that at least 25% of the surplus cash remains as an incentive to the owner. Owners may make additional payments on the debt out of their remaining 25% of cash flow, or from other sources.
2. The FHA insured loan and the total combined public and or private secondary debt may not exceed 100% of total mortgageable and nonmortgageable project costs as confirmed by the HUD Underwriter's analysis of a comprehensive Source and Uses of Funds Statement.
3. The maturity date of the secondary debt must be coterminous with, or later than that of the first mortgage. The HUD Underwriter may consider exceptions on a case-by-case basis for public debt when other HUD programs (e.g., the HOME program) require shorter amortizations and the risk is mitigated. Examples of mitigants include significant additional public funds, low loan-to-value or loan-to-cost ratios, below market rents or higher than minimum debt service coverage.
4. The secondary debt can reasonably be expected to be paid off over its term with 75% of the project's surplus cash.

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<sup>64</sup> A quasi-public entity or corporation is defined as a company in the private sector supported by the government with a public mandate to provide a given service, such as the Federal Home Loan Bank or utility companies.

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5. The debt is documented in HUD's form of Surplus Cash Note (form HUD-92223M) or subsequent version with simple interest. HUD will permit compounding of interest if the Lender provides a thorough analysis demonstrating that project cash flow will be sufficient to avoid accruals of interest that would undermine the long term financial and physical integrity of the project, and all other risks have been adequately mitigated; and
6. Private debt of up to 100% of Total Project Costs may be secured with the project under all Sections of the Act but it must be subject to automatic re-subordination in any refinancing of the first mortgage.

**C. Bridge Loans.** Temporary bridge loans are treated differently from other secondary financing and are described in detail below in Part 14.16.

**D. Publicly Funded Loans or Public Debt.** Loans funded with HOME Funds or other federal, state or local public sources, as well as those funded by quasi-public agency programs such as the Federal Home Loan Bank's Affordable Housing Program (AHP), may be granted or lent directly to HUD's Borrower, or to the GP or Sponsor of the Borrower, who will then loan it to HUD's Borrower. All such sources will be treated as public secondary financing sources, and as such need not be included in the calculation of the 100% of total project cost limit applied to private secondary debt. However, none of these sources may be substituted for Tax Credit Equity required by the pay-in schedule provided below and all remain subject to the 75% cap on payments from surplus cash.

## 14.12 Developer Fees

### 14.12.1 Treatment of Developer Fee

- A. Developer fees may, though are not required to be, treated as mortgageable costs so long as they are:
  1. In amounts approved by the project's LIHTC allocation agency and
  2. Scheduled for payment in amounts and at times agreed upon with the syndicator or investor.
- B. Developer Fees for different project types and loan programs are addressed in greater detail in [Appendix 3, Section A.3.2.1](#) and [Appendix 2](#).
- C. Neither BSPRA nor SPRA may be claimed when a Developer's Fee is included in the project budget, regardless of whether the Developer Fee is treated as a mortgageable cost.
- D. An IOI between the GC and the owner is allowed and does not require a waiver, but it must be disclosed in the application and may affect the fee and profit structure (may use Lump Sum or Cost-Plus form of Construction Contract and neither the General Contractor nor the Borrower need to cost certify if the project is exempt from providing a Cost Certification per [Chapter 13](#) as determined at the time of Firm Commitment). No blanket restriction has been imposed on the amount of General Contractor profit, except it must be reasonable based on the market and the scope of work. HUD generally relies on the policies of the State tax credit allocation agencies, which often scale fees down when a single party or two related parties are receiving both the Developer Fee and the GC Profit:

## 14.12.2 Deferred Developer Fee (DDF)

**A.** If repayment of the DDF is an obligation of the Borrower, repayment terms must be identified in the Borrower's Limited Partnership Agreement or Operating Agreement, and/or in a Note. The DDF loan does not need to be documented in HUD's form of Surplus Cash Note. Whether the DDF loan is documented in the Borrower's organizational documents or in a Note, language must be included specifying that repayment is restricted to Surplus Cash or non-project funds (as that term is defined in the Regulatory Agreement between the Borrower and HUD). A DDF loan may not be secured by the project, and its term may be shorter than the term of the FHA mortgage. The DDF loan is not subject to the limits on the amount of secondary debt, and it need not be combined with other private secondary debt to determine if the combined amount exceeds the limit of 100% of total project costs. In the event of any conflict between the provisions of this section and other provisions of the MAP Guide, the provisions of this section control.

**B.** Regardless of whether the Deferred Developer Fee was structured as debt of the ownership entity as evidenced in a Note or if the Deferred Developer Fee was treated as equity (e.g. an obligation of one or more of the upper tier members and not the Borrower, as evidenced in the Limited Partnership Agreement or Operating Agreement), the Deferred Fee may be recognized as eligible debt and paid off in the same manner as other debt per [Chapter 8, Section 8.11.1.C](#), Determining Existing Indebtedness, in a Refinancing Transaction subject to the following conditions:

1. The amount of the outstanding Deferred Developer Fee is verified by documentation (e.g. Audited Financial Statements) from the Borrower/Limited Partner/Investor Member.
2. The Borrower/Limited Partner/Investor Member affirmatively consents to the use of loan proceeds and to the refinancing in general (if the Investor/Member currently maintains interest in the ownership structure or will remain as part of the proposed ownership structure post refinancing), and,
3. The Lender's underwriting must support the inclusion the Deferred Developer Fee as a cost to refinance, in addition to the first mortgage and/or any other eligible debt.
4. In no event will Deferred Developer Fee be considered eligible debt in a Section 223(a)(7) transaction.

## 14.13 Tax Credit Equity Pay-In Schedule

**A.** FHA requires minimum Tax Credit equity contributions according to the following pay-in schedule for all LIHTC transactions<sup>65</sup>. This schedule, with actual total equity and net-equity amounts entered, is to be added as a special condition to the Firm Commitment for all LIHTC Projects. Waivers of the requirements set forth below will generally not be considered.

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<sup>65</sup> This schedule does not apply to equity derived from New Market or Historic tax credits.

**Benchmarks for Equity Installments**

On or Before Initial/Final Closing for Section 223(f)68 deals and by Initial Closing for Section 221(d)(4) deals:

At 65% Completion of Repairs for Section 223(f) deals and at 65% Construction Completion for Section 221(d)(4) deals:

At 100% Completion of Repairs for Section 223(f) deals and at Final Endorsement for Section 221(d)(4) deals:

**Minimum Equity Installment** <sup>66,67</sup>

20% of Total Equity (of this amount, 10% may be funded with an Equity Bridge Loan)

37.5% of Net Equity remaining after initial installment

62.5% of Net Equity remaining after initial installment (cumulative)

**B.** Equity investors may fund all or part of the required equity pay-ins defined above, except for half of the first 20% payment (10% of Total Equity), with Equity Bridge Loan proceeds that meet the requirements described in [Section 14.15](#) below. Investors may not substitute any grant or loan funds, other than funds in the form of Equity Bridge Loans as described in [Section 14.15](#) below, for the equity payments. The equity installments noted above may be used for mortgageable or non-mortgageable costs.

## 14.14 Definition of “Net Equity”

**A.** The term “Net Equity” is equal to Total Equity less the initial 20% installment less “Delayed” Developer Fees for amounts due after the completion of repairs or construction and predetermined reserve amounts to be held by the investor for project uses after the time of the final pay-in noted in the schedule above. Reserves allowed for this calculation may include only amounts that are required in the project’s Partnership Agreement or LLC Operating Agreement but excludes those specifically required by HUD. Allowable items include Lease Up Fees and Escrows, Operating and Debt Service Reserves, Section 8 HAP Contract Transition Reserves, Replacement Reserves, and State Agency Administrative Fees or Escrows, not otherwise required by HUD. The total deductions used to determine Net Equity may not exceed 25% of Total Equity. When calculating the pay-in amounts due at the benchmarks listed on the chart above, owners must first reduce the total amount of equity committed to the project by the initial installment and the allowable deductions, and apply the payment percentages above (37.5% and 62.5% respectively) to the remaining or “Net” Equity. This calculation, specifying each applicable use, must be provided to HUD on the form HUD-92013-C, LIHTC Summary Report included in the FHA insurance application.

**B.** An example of the calculation of the Net Equity amount, and the resultant pay-in schedule, is provided below:

**Net Equity = (Total Equity) – (Equity Pay In #1) – (Allowed Deductions)**

Total Equity or Gross Proceeds:	\$7,500,000
• Less Payment #1a:	\$1,500,000 (20% of Total Equity)
• Less Payment #1b:	\$1,500,000 (any combination of at least 10% Total Equity & 10% or less Equity Bridge Loan)

<sup>66</sup> Additional equity is acceptable at each benchmark date shown, as well as at other interim dates at the investors’ discretion.

<sup>67</sup> With the exception of the first equity payment, which is calculated as a percentage of Total Equity, all percentages used in this column represent percentages of Net Equity.

<sup>68</sup> The repair escrow is not required to be funded at 100% at the time of closing if tax credit equity is being used to fund repair costs. The gradual pay-in of tax credit equity is allowed per the benchmarks in the chart above. The Assurance of Completion, however, must be funded at 100% at the time of Closing.

- Less Allowed Deductions Not to Exceed 25% of Total Equity:  $(25\% \times \$7,500,000) = \$1,875,000$
- Minimum Net Equity =  $\$7,500,000 - \$1,500,000 - \$1,875,000 = \$4,125,000$

**Sample Owner’s Proposed Reductions:**

Delayed Developer Fee	\$800,000
Lease Up Fees and Escrows	\$175,000
Operating Reserves	\$145,000
Debt Service Reserves	\$200,000
Section 8 HAP Contract Transition Reserves	\$235,000
Replacement Reserves	\$300,000
State Agency Administrative Fees or Escrows	\$45,000

Total \$1,900,000

*This total would be disallowed, as the \$1.9 million exceeds the 25% of total equity (\$1.875 million) allowed. Accordingly, it is reduced by \$25,000 in the following calculations.*

C. Net Equity is the Balance, after Total Equity is reduced by Payment #1, and the Allowed Deductions of \$1,875,000, or \$4,125,000. This number would be adjusted if the owner were to claim less than the maximum Allowed Deductions.

Payment	Description	Formula	Amount
Equity Pay In #1a	20% of Total Equity	$20\% \times \$7,500,000$	\$1,500,000
Equity Pay In #2	37.5% of Net Equity (\$4,125,000)	$37.5\% \times \$4,125,000$	\$1,546,875
Equity Pay In #3	62.5% of Net Equity (\$4,125,000)	$62.5\% \times \$4,125,000$	\$2,578,125

D. There is no change in the computation to determine the cash requirements and/or front money escrow on form HUD 92264-A. The remaining cash requirements not being satisfied with LIHTC equity will be satisfied in accordance with outstanding instructions. The Borrower must pay out-of-pocket when there is no available cash from mortgage proceeds or other committed sources.

## 14.15 Equity Bridge Loans in Tax Credit Projects

A. Equity Bridge Loans (EBL) may be used by Borrowers and/or tax credit investors as a substitute for the pay-in of equity during a project’s development and stabilization phases, thereby deferring the pay-in of equity and increasing the return on equity. The EBL may be the obligation of one or more of the investors or other upper-tier partners to the ownership entity (i.e. the limited or general partners), or an obligation of the project ownership entity/single-asset mortgagor itself.

B. In addition, the following conditions must be met:

1. EBLs must be made expressly subordinate to the HUD insured first mortgage through use of the Equity Bridge Loan Rider, see [Chapter 19, Section 19.16](#). EBLs may not be secured by a lien on the real estate or on any other “Mortgaged Property” as defined in the Security Instrument, and do not require a subordination agreement. They may be secured by a pledge of tax credits, tax credit equity, and/or an upper tier (i.e., the limited or general partner or managing member) or investor members’ interests in the project’s ownership entity. Any security for the EBL may be held by the Borrower in a separate, segregated account, specifically labeled as non-project funds, and which are not part of the Mortgaged



Property in Section 1(w) of the Security Instrument. As with any transfer of the controlling partner of an ownership entity, any entity that intends to acquire the general partner's position in the ownership entity whether under certain triggering default conditions set forth in the Borrower's partnership or operating agreement or otherwise, is subject to HUD approval under the modified Transfer of Physical Assets process and Previous Participation Certification (form HUD-2530) clearance, including financial statement review.

2. EBLs must be non-recourse to the Borrower (except for Surplus Cash or residual Receipts, as applicable, of the Borrower), and the bridge Lender shall have no claim even in an event of default against the Project, FHA mortgage loan proceeds, the Mortgaged Property, or any reserve or deposit made with the FHA Lender.
3. In the event HUD acquires title to the Project by foreclosure or deed in lieu of foreclosure, the equity bridge loan documents shall be discharged with respect to the FHA Borrower, and the FHA Borrower shall be released of all of its obligation with respect to the EBL. Notwithstanding the required discharge of the FHA Borrower imposed by this paragraph, the equity bridge loan documents may provide that such discharge neither:
  - a. Excuses or relieves any co-signer, guarantor or any other party from the obligation to repay the indebtedness evidenced by the bridge loan note and bridge loan documents; nor,
  - b. Affects, limits, or impairs the bridge Lender's ability to seek a monetary judgment and pursue other remedies against any co-signer, guarantor or other party.
4. The obligation must be evidenced by a promissory note with appropriate subordination provisions and limitations on recourse against the Borrower.
5. The term of the note may last through the construction or rehabilitation period but must be paid in full no later than the following dates:
  - a. In the case of EBLs provided by private, for-profit Lenders, the earlier of the filing of the form HUD-8609 or (a) one year after (a) Final Endorsement for Section 221(d)(4)/220 loans, or (b) one year after the end of the repair period for 223(f) loans; and
  - b. In the case of EBLs provided by not-for-profit, public sector or quasi-public sector entities, no later than ten years following (a) the end of the repair period for 223(f) loans, or (b) Final Endorsement for 221(d)(4) loans.
6. The FHA Borrower must provide evidence to the Lender's and HUD's satisfaction that the bridge loan will be paid in full by the timeframes noted above. At application, HUD will accept the Lender's review of the LPA pay-in schedule/EBL term sheet and sources, uses and draw schedule in the form HUD-92013-C, LIHTC Summary Report. Following endorsement, HUD will accept the Bridge Loan documents and a loan satisfaction. When applicable, the Borrower's audited financial statement (AFS) must reflect that the EBL was paid on time. This must be reflected in the AFS due in the reporting period after the due dates for full EBL repayment noted above.
7. At Firm Application, or as soon as the need for an EBL is known, the Lender must submit for HUD's approval a term sheet describing the key terms of the bridge loan, as well as a certification that the loan will be secured only by a pledge of tax credits, tax credit equity, and/or an upper tier (i.e., the limited partner or general partner of managing member) or investor members' interests in the project's ownership entity and that the bridge Lender will have no claim against the Project, the



Mortgaged Property, mortgage proceeds, or any reserves or deposits with respect to the Project, for repayment of the bridge loan.

8. The EBL Documents may not be amended, assigned, transferred, sold, or otherwise held without the prior written consent of HUD.
9. For identity of interest Bridge Lenders, indemnification provisions in the EBL Documents shall not be construed to require the HUD Borrower to make indemnification payments beyond those permitted by the HUD required provisions to be added to the Borrower's Organizational Documents.

C. Bridge loans for other purposes, (i.e. that are not used to advance equity in tax credit projects) are described in [Chapter 8](#).

## 14.16 Syndicator and Investor Fees from Operations

A. Tax Credit projects often involve annual asset management-related fees paid to the syndicator or an investor representative. HUD's Office of Asset Management and Portfolio Oversight allows usual and customary fees and expenses for operating a Tax Credit project, including payment of a syndicator's and/or investor's asset management fee, state allocation agency compliance and asset monitoring fees, and mandatory interest payments of up to one percent on subordinate debt provided by a government Lender to be paid from the operating revenues. If the expenses described above are included in the operating budget, however, the loan must be sized accordingly by the Lender, and the chosen treatment of the expenses must be documented in the closing documents. Fees paid with surplus cash should not be included in the operating budget. HUD generally requires that at least 25% of surplus cash remains available as an owner incentive, though the remaining 75% may be obligated to payment of secondary debt.

## 14.17 Mark to Market (M2M) Transactions

A. Owners may receive an Incentive Performance Fee (IPF), and this is paid before the 25%/75% split is calculated. Thus, the IPF is paid first and may be realized in addition to the owner's 25% of surplus cash. M2M also obligates the owner to use the full 75% of surplus cash to pay down the program's secondary M2M loans. Accordingly, in M2M transactions the payment of syndicators' and investors' fees must be limited to the 25% that is not committed for loan repayment.

## 14.18 Firm Commitment Additional Conditions

A. The following additional conditions must be added to the Firm Commitment as applicable to applications for mortgage insurance for projects that will have equity funded from Tax Credit proceeds:

1. This Commitment is conditioned on the availability of the tax credit equity contribution described above and in the Equity Contribution Schedule provided with the firm commitment application and approved by HUD, attached as [Exhibit G](#). Changes to equity contribution amounts or the Equity Contribution Schedule require the submission and approval of an updated form HUD-92013-C, LIHTC Summary Report and an amendment to the Firm Commitment.

2. The initial equity investment amount is \$\_\_\_\_. The initial equity investment must equal to no less than 20% of total LIHTC equity, of which 10% may be funded with Equity Bridge Loan proceeds.
3. The Lender must submit satisfactory evidence of an agreement that binds the tax credit investors to timely and periodically pay to the Borrower entity the tax credit equity to contribute to Project completion costs, in the aggregate amounts set forth in form HUD-2880, HUD-92013, and the HUD-92013-C, LIHTC Summary Report . A Disbursement Agreement that reflects the terms of the Limited Partnership Agreement or Operating Agreement for the remaining outlay of tax credit equity contributions must be provided prior to Initial Closing.
4. All Tax Credit Equity documents to which either the Borrower or Controlling Participants are a party, and any related land use restrictions(if available), must be approved by HUD prior to the date of Initial Endorsement, and must comply with HUD’s legal and administrative tax credit equity requirements, and all related HUD closing forms.
5. In addition to the standard provisions that must be included in the organizational documents for the Borrower entity, a provision must be added that prohibits any changes to the organizational documents that affect the obligations of the tax credit investor without written consent of the Lender and HUD.
6. **Special Limited Partner.** [NAME] has been preapproved to serve as the Special Limited Partner to replace the General Partner for a limited period of time. A “Rider to the Security Instrument for LIHTC Properties” must be submitted with the closing documents.
7. **Cost Certification Exemption.** The Project is exempt from providing Cost Certification pursuant to Program Obligations (see LIHTC Projects, MAP Guide [Chapter 13, Section 13.4](#)). In cases such as new construction with partial occupancy approval as described in [Chapter 12, Section 12.14.4](#) or a substantial rehabilitation tax credit project without significant resident displacement, there may be considerable net operating income (NOI) (or interim income) generated during the construction period. This interim income may be used to pay for mortgageable and non-mortgageable items. Therefore, prior to Final Endorsement, the Borrower must prepare and submit an Operating (or Income and Expense) Statement, accounting for Interim Income from the period from first occupancy through the time that HUD issues the Permission to Occupy form, HUD-95485 and after all Change Orders have been funded.
8. **Deferred Drawings and Specifications – LIHTC Projects and Certain Eligible Borrowers.** As an accommodation to the Borrower, this Commitment has been issued based upon preliminary drawings, instead of the final drawings, specifications and cost estimates (see MAP Guide, [Chapter 5, Section 5.6.5](#)). At least 30 days prior to the scheduled date for Initial Endorsement, HUD must receive the final drawings, specifications and the Lender’s architectural/cost review report for review and approval to ensure consistency of design and cost. The plans and a complete specifications manual must be submitted to [Name of Construction Analyst] at [HUD office location] for review and approval. [Name of Construction Analyst] can be reached at [phone number]. They will provide information on where the three approved sets of Plans and Specifications with signature blocks will need to be mailed for the preconstruction conference and Initial Endorsement. In addition, it is the Lender’s and General Contractor’s responsibility to incorporate the most current Davis-Bacon Wage Rates into the appropriate documents. If there is a net cumulative construction cost change of more than 5%, or a change in design concept, this Commitment shall be subject to and conditioned upon the further approval of HUD, to be evidenced in writing. Based on such change and review, this

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Commitment may be terminated and voided by HUD, or, additional conditions may be imposed at HUD's option. Add if applicable: this Commitment is conditioned on the following corrections that must be made to the Plans and Specifications before Initial Endorsement.

9. **Bridge Loan (only as applicable).** {insert: amount, interest rate, repayment terms, maturity date, financing instrument(s), name of maker on the loan.}

This Commitment is conditioned on the availability of the Bridge Loan described above. All Bridge Loan documents to which either the Borrower or Controlling Participants are a party must be approved by HUD prior to the date of Initial Endorsement and must comply with HUD's legal and administrative bridge loan requirements, and all related HUD closing forms. If there is a conflict between the HUD loan documents/Program Obligations (HUD Requirements), the HUD Requirements control.

10. **Bonds (only as applicable).** This Commitment is conditioned on the availability of the Bonds described above. All Bond documents to which either the Borrower or Controlling Participants are a party must be approved by HUD prior to the date of Initial Endorsement and must comply with HUD's legal and administrative bond requirements, and all related HUD closing forms. If there is a conflict between the HUD loan documents/Program Obligations (HUD Requirements), the HUD Requirements control.

11. **Deferred Developer Fee.** Whether the DDF loan is documented in the Borrower's organizational documents or in a Note, language must be included specifying that repayment is restricted to Surplus Cash or other non-project funds (as that term is defined in the Regulatory Agreement between the Borrower and HUD).

12. {The following additional Tax Credit Equity condition applies to transactions with master lease structures to facilitate Historic or New Market Tax Credits.}

A master lease structure has been approved for this Loan transaction to facilitate [Historic Tax Credits] [New Market Tax Credits]. The Borrower and master tenant **[insert name of master tenant]**, along with the following (residential and/or commercial) master sub-lessees **[insert names of master sub-lessee 1, master sub-lessee 2, etc.]** must execute separate Regulatory Agreements with the appropriate HUD Rider attached. The Riders can be found at the following link:

[https://portal.hud.gov/hudportal/HUD?src=/program\\_offices/general\\_counsel/mffaq](https://portal.hud.gov/hudportal/HUD?src=/program_offices/general_counsel/mffaq).

{HUD staff must also insert here the required additional conditions for master lease transactions from MAP Guide [Chapter 16, Section 16.4.A](#).}

## 14.19 Other Matters

**A.** The market study, appraisal and underwriting for all Tax Credit projects must address the relationship between the Tax Credit ceiling rents, the attainable rents, any subsidy contract rents and terms, and true market rents. Any disparities among these rents and the related risks must also be addressed.

**B.** HERA's Exception to the Tax Credit Program's 10-Year Holding Period. HERA provides for an exception to the LIHTC's ten-year holding period requirement for certain federally assisted buildings, specifically those that are 221(d) or 236-insured. Because the HERA language refers to the two specific programs

noted above as well as to “...any other program administered by the Department of Housing and Urban Development...” the waiver should apply to all FHA-insured tax credit projects. HUD does not render tax advice, however, so owners should seek tax counsel with respect to this interpretation.

### **14.19.1 Bond-Financed Projects in New York City**

A. Section 42 of the IRS Code provides that for projects located in New York City, the “40-60” test (restricting 40% of the units for the use of tenants earning no more than 60% of median income) for determining whether a project qualifies as a low-income project, is replaced by a “25-60” test. Thus, the affordability requirement is reduced from 40% to 25% of the units to be set aside at 60% of area median income. HUD will consider this exception to the set-aside on a case-by-case basis, when the Lender’s application demonstrates that the NYC market rents for the additional 15% unrestricted units that would otherwise have been restricted, will still provide for significant affordability in the local market.

### **14.19.2 Lien Priority**

A. The FHA mortgage lien is required by statute to be in first position ahead of all other financing. Restrictive covenants with no monetary obligations are not considered liens and, in some instances, may facilitate a transaction if affordability use restrictions other than the Tax Credit LURA survives foreclosure and is recorded prior to the FHA mortgage. On a case-by-case basis HUD may approve non-monetary use restrictions that run with the land and therefore may be superior in priority to HUD’s first mortgage position. When waivers are requested, the Lender must demonstrate, and the HUD Underwriter must verify, sufficient financial strength and strong mitigants to offset the risk of a negative impact on the marketability of the project in the event of a foreclosure or loan sale. Mitigants might include a low FHA loan-to-value or loan-to-cost ratio, significant amounts of public funds, high levels of funding by the source in question, Section 8 assistance for all the units, and higher than minimum debt service coverage.

### **14.19.3 Tax Credit Regulatory Agreements**

A. In Tax Credit projects, certain IRS Section 42 obligations must be allowed to continue post-default. Generally, however, for the Tax Credit LURA, and/or when public secondary financing with regulatory agreements or restrictive covenants are required, HUD requires the use of its standardized rider to these restrictive covenants, which indicates that in case of conflicts between a LURA or another restrictive covenant and FHA “program obligations,” FHA requirements take precedence. Neither this provision nor the use of the rider itself should be waived. Instead, staff must identify the point of conflict and consult with OGC. Alterations of the rider that are once approved can then be used as the template for that jurisdiction, as applicable. Typical conflicts include differing numbers of units set aside for specific income levels, different use agreement termination dates, etc. It is the Lender’s responsibility to draw attention to potential conflicts between FHA requirements and the LURAs or other restrictive covenants as early as possible (i.e., during Concept Meetings) and no later than with Firm Commitment application submission. If they are not addressed in the Firm Commitment, the Lender should assume the closing will be delayed.

### **14.19.4 Tax Exempt Bonds - FHA Insured Permanent Debt**

A. Tax Credit projects are often financed with the “4%” Tax Credits allocated in conjunction with private activity bond volume cap, rather than the “9%” Tax Credits competitively allocated by State Agencies.

Taxable Ginnie Mae securities' yields and the resulting rates on FHA multifamily loans at times can be lower than long-term tax-exempt bonds and municipal bond-backed multifamily loan rates. Consequently, investment banks have developed an approach that combines taxable Ginnie Mae securities with short-term, tax-exempt bonds and 4% LIHTC. This structure establishes several different account funds, along with a series of cash flow events between the various accounts upon a draw request. The tax-exempt bonds are secured by cash collateral initially provided by the FHA Lender's warehouse funds (or other funding source, but not FHA-insured loan proceeds), which in turn are reimbursed with proceeds from the sale of Ginnie Mae-guaranteed securities. The tax-exempt bonds are retired with the proceeds of the bond collateral account when the project is placed into service.

**B.** This structure allows the Borrower to avoid higher loan rates that exist when the loan funding source consists exclusively of tax-exempt bonds, and still take advantage of the 4% LIHTC equity. This bond financing structure is generally acceptable to HUD, but each transaction must be reviewed by Housing field staff and OGC field counsel for programmatic and legal sufficiency, including the review of specific transaction documents. Accordingly, Underwriters must involve their OGC counterparts early in the process to ensure these issues are addressed early and do not constrain the transaction's processing.

**C.** Note that FHA-insured loan proceeds may not be used to serve as collateral for the bonds, and they may not be paid to the bond trustee or sent to other accounts to facilitate issuance of the bonds. This is a statutory prohibition that may not be waived, as FHA-insured loan proceeds are only permitted to directly finance the relevant activity authorized under the applicable section of the National Housing Act. To ensure statutory compliance regarding the use of FHA-insured loan proceeds, HUD OGC requires Lenders to complete Section F of the Lender's Certificate (form HUD-92434M) or the Request for Endorsement (form HUD-92455M) as applicable for financings structured in this manner.

### **14.19.5 Refinancing of M2M Properties**

**A.** HUD's Office of Recapitalization, along with the field offices' Asset Management staff, are responsible for reviewing any transactions that have been through an M2M restructuring. Those transactions require a waiver of the "due on sale..." clause and extension of the maturity dates of all subordinate notes originated in the restructuring. Current guidance is in Notice H 2012-10, and it explains when the field offices can process the waivers and when HQs must do it. In complex Tax Credit transactions requiring subordination of M2M debt, the owner or Lender must request the waiver as early as possible to avoid delays. FHA Production staff may also be involved to ensure that the Recapitalization Office's conclusions are consistent with the underwriting of the project.

### **14.19.6 Income Averaging**

**A.** HUD defers to the State HFA rules and requirements regarding Income Averaging and Section 42 eligibility.

## **14.20 FHA Tax Credit Pilot Program Expansion**

**A.** See Housing Notice: H 2019-03 for guidance on the Section 221(d)(4) and Section 220 New Construction and Substantial Rehabilitation Multifamily Project with LIHTC Pilot Program.

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## Chapter 15 Oversight of MAP Program Requirements

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### 15.1 Oversight of MAP Lenders

**A.** This chapter of the MAP Guide implements 24 CFR Part 200, Subpart Y which provides the authority for enforcing MAP program requirements and imposing MAP sanctions.

**B.** By permitting a MAP Lender to prepare much of the documentation for an application submission for mortgage insurance, HUD places confidence in and relies on the Lender's integrity and competence. HUD and its MAP Lenders have a mutual interest in ensuring the expertise of any Lenders which are authorized to represent the MAP program, and their compliance with the MAP Guide and other relevant guidance and handbooks. If, in the process of performing its work, a MAP Lender places HUD at undue risk, HUD will issue a Letter of Caution, a Warning Letter or will sanction the Lender.

**C.** Every HUD multifamily staff member plays an important role in the MAP Quality Assurance (QA) effort. This chapter provides QA and enforcement guidance to HUD production offices and the Office of Multifamily Production (OMP). Such QA and enforcement tools are: 1) Letters of Caution; 2) Warning Letters, which may include the imposition of Targeted Enforcement Measures; 3) Probation; 4) Suspension; 5) Termination; 6) suspension, debarment or Limited Denial of Participation ("LDP") of individuals or firms participating in the MAP program; and 7) referral to the MAP Lender Review Board, the Mortgagee Review Board, the Departmental Enforcement Center (DEC) or the Office of Inspector General. An LDP is a sanction applied to persons and participants in loan transactions, other than to MAP Lenders themselves, under procedures set forth in 24 CFR Part 2424 Subpart J. The purpose and authority of the MAP Lender Review Board is set forth in this chapter. The purpose and authority of the Mortgagee Review Board is set forth in 24 CFR Part 25.

**D.** If a MAP Lender, or an authorized employee or Agent of the Lender acting under the control and supervision of the Lender, violates any program requirement including, but not limited to, committing fraud, misrepresentation or any violation described at 24 C.F.R. §§ 25.6 or 30.35(a), HUD reserves its rights to initiate all actions available to it under the law including, without limitation, action against the Lender under the contract of mortgage insurance and the Mortgagee Review Board authorities.

### 15.2 Multifamily Asset and Counterparty Oversight Division

#### 15.2.1 Functions

**A.** The Multifamily Asset and Counterparty Oversight Division (COB), within the Office of Asset Management and Portfolio Oversight (OAMPO) and the Office of Multifamily Housing Programs (OMP), is the MAP Program's lead representative to and Quality Assurance counterparty monitor of the MAP Lenders and their key MAP personnel. The COB division also performs asset management oversight of the FHA insured multifamily portfolio, which is not addressed in this Guide. OAMPO works closely with the multifamily Loan Servicers to obtain data on, monitor, and asset manage loans in the insured portfolio,



including coordination on loan delinquency and default servicing, and on special servicing of troubled projects. COB monitors Servicers through OAMPO's activities and through the Government National Mortgage Association (GNMA), which conducts regular monitoring as part of its counterparty compliance reviews.

**B.** COB performs the following counterparty oversight functions on behalf of the MAP program:

1. Lender Administration:
  - a. Review new Lender applications and applications for reinstatement of suspended or terminated Lenders.
  - b. Review Lender change of control, sale, merger or license transfer requests.
  - c. Review changes in a Lender's key MAP personnel; approve new MAP Underwriters and MAP Chief Underwriters.
  - d. Review Identity of Interest determinations and waiver requests.
2. Oversight and Monitoring:
  - a. Review new, and changes to existing, Quality Control plans.
  - b. Audit Lender compliance with their Quality Control plans.
  - c. Audit Lender compliance with MAP Quality Assurance and program requirements.
  - d. Review loan transaction files.
  - e. Conduct Borrower concentration risk reviews and review 2530 flags.
3. Enforcement:
  - a. Issue, or recommend issuance of, sanctions including Letters of Caution, Warning Letters, Probation, Suspension or Termination.
  - b. Make referrals to the MAP Lender Review Board, the Mortgagee Review Board, the Departmental Enforcement Center or the Office of the Inspector General, as appropriate.
  - c. Recommend suspension, debarment or Limited Denial of Participation actions on a nationwide or a geographically restricted basis.

## 15.2.2 Data and Reports

**A.** To perform its Quality Assurance functions, COB will coordinate the sharing of data, reports and financial analyses on MAP Lenders which are available from other divisions within HUD, including:

1. Office of Lender Activities and Compliance, Lender Approval and Recertification Division, for the Lender's annual audited financial and net worth and liquidity reviews.
2. Office of Asset Management and Portfolio Oversight, for the Lender's loan portfolio and loan performance data.
3. Office of Multifamily Production, for the Lender's loan production data and post-closing transaction reviews.



4. Office of Risk Management, for analysis of the performance of the multifamily insured portfolio and risk issues.
5. GNMA for reviews and analyses of MAP Lenders, which are also Issuers, and FHA multifamily Loan Servicers.

### 15.2.3 Timing of MAP Lender Reviews

**A.** COB will conduct a full MAP Lender review and QC plan audit once every three years for all active MAP Lenders with three or more years of MAP experience, or more frequently for any MAP Lender which COB determines requires enhanced monitoring. Summary or limited reviews and updates may be performed on Lenders during intervening years. For any MAP Lender with less than three years of MAP experience, COB will conduct full Lender reviews every year, although COB will not review a new MAP Lender until after its first Firm Commitment has been issued. Further details on the scope and content of a full or limited Lender review will be included in the COB Handbook.

**B.** COB may conduct periodic on-site reviews at the Lender's office. It may also require the Lender to retain, at the Lender's expense, a third-party firm to investigate and analyze any loans that have defaulted, are seriously troubled or that raise other serious concerns. COB reserves the right to review any loan transaction without limitation at any time, for any purpose and for any reason.

**C.** At the start of each Fiscal Year, COB should notify each MAP Lender that will be subject to a full or limited review during that year. The schedule will be based on the timing for reviews described in this section and on a determination by the Deputy Assistant Secretary (DAS) for Multifamily Housing of COB's priorities, staffing and capacity for that Fiscal Year.

## 15.3 Authority to Issue MAP Sanctions

### 15.3.1 General

**A.** At any time a Production Director, a Regional Director, the Director of OMP, the Director of COB or the DAS for Multifamily Housing may initiate discussions with a MAP Lender, or may take certain actions as detailed below, regarding any concerns they have with respect to any of the Lender's actions, submissions, personnel or changes the Lender should make in using its MAP authority.

**B.** HUD multifamily staff members must refer any possible instances of fraud, material misrepresentation or other criminal violations which they may observe to COB and the Office of the Inspector General.

**C.** A Production Director may recommend to the Regional Director that s/he recommend to the Director of OMP:

1. The issuance of a Letter of Caution, Warning Letter, Probation, Suspension or Termination of a MAP Lender; or,
2. That a referral be made to the DEC for a possible suspension, debarment or an LDP of an individual or a firm on a geographically restricted or nationwide basis, pursuant to [Section 15.17.4](#), below.

**D.** A Regional Director may recommend to the Director of OMP:

1. The issuance of a Letter of Caution, Warning Letter, Probation, Suspension or Termination of a MAP Lender; or
  2. That a referral be made to the DEC for a possible suspension, debarment or an LDP of an individual or a firm on a geographically restricted or nationwide basis, pursuant to [Section 15.17.4](#), below.
- E.** Only the Director of OMP may recommend to the Director of COB or to the DAS for Multifamily Housing:
1. The issuance of a Letter of Caution, Warning Letter, Probation, Suspension or Termination of a MAP Lender; or
  2. That a referral be made to the DEC for a possible suspension, debarment or an LDP of an individual or a firm on a geographically restricted or nationwide basis, pursuant to [Section 15.17.4](#), below.
- F.** Only the Director of COB may issue a Letter of Caution or a Warning Letter. The Director of COB or the DAS for Multifamily Housing may: 1) refer a MAP Lender to the MAP Lender Review Board for Probation, Suspension or Termination; 2) refer a MAP Lender to the Office of Fair Housing and Equal Opportunity (FHEO) for investigation of noncompliance with 24 CFR 200.30 regarding nondiscrimination and equal opportunity or, 3) refer a MAP Lender to the Mortgagee Review Board or the Office of Inspector General. Only the DAS for Multifamily Housing may refer an individual or a firm to the DEC for possible suspension, debarment or issuance of an LDP on a geographically restricted or nationwide basis, pursuant to [Section 15.17.4](#), below.
- G.** A MAP Lender may be referred to the MAP Lender Review Board or to the Mortgagee Review Board without COB first issuing a Warning Letter. A MAP Lender may be referred to the Mortgagee Review Board without first referring the Lender to the MAP Lender Review Board.
- H.** All sanction recommendations authorized in this section shall be in writing and shall state the reasons for the recommendations and the supporting facts, together with copies of all supporting documents.

## 15.4 Administrative Record

- A.** When any enforcement action is taken with respect to a MAP Lender, an administrative record must be prepared that includes all materials that may have influenced the decision and not merely those relied upon in the final enforcement decision. Although not intended to be an exhaustive listing, the following are examples of material that should be included in the administrative record:
1. Correspondence between the Lender and HUD or the Lender and any third-party contractors.
  2. E-mails or facsimiles if considered or relied on in the decision-making process.
  3. Application and underwriting submissions.
  4. Copies of appropriate sections of notices, guides including FAQ's posted on the MAP web site, handbooks, regulations, and statutes.
  5. Notes from meetings and telephone conversations; and
  6. Work product and recommendations from HUD staff, together with copies of all supporting documents.

**B.** The term “enforcement action” includes the issuance of a Letter of Caution or a Warning Letter but does not include any referral, recommendation for action or presentation to the Directors of OMP or COB that does not result in an enforcement action. In matters before the Directors of OMP or COB, the administrative record ordinarily will consist of the referral and the materials accompanying the referral, any written materials submitted by the MAP Lender and any written materials submitted by the Directors of OMP or COB in response to those materials, the transcript of the informal meeting when that transcript is a part of the record, and the final decision of the Director of COB.

**C.** Intra-agency memoranda and other such internal records should be included unless they are privileged or would not otherwise be subject to release under a FOIA request. The administrative record in its final form as described in this section relates to and supports HUD’s final action and is not to be released to any person outside of HUD until it has been reviewed by the Office of General Counsel. All evidentiary material supporting any recommendation to the MAP Lender Review Board or the Mortgagee Review Board must be delivered to the MAP Lender as provided in [Section 15.13.1.A](#) and must be included in the administrative record.

## 15.5 Settlement Agreements

**A.** The Director of COB may negotiate settlement agreements with MAP Lenders to resolve enforcement actions. Settlement negotiations may occur before or after the issuance of a Warning Letter or any other sanction. Before COB has recommended a MAP Lender to the MAP Lender Review Board for possible probation, suspension or termination, the DAS for Multifamily Housing or his/her designee may approve a settlement agreement. After COB has recommended a MAP Lender to the MAP Lender Review Board for possible probation, suspension or termination, only the Review Board may approve a settlement agreement.

**B.** Settlement agreements may be appropriate for the following situations:

1. Cessation of any violation.
2. Correction or mitigation of the effects of any violation.
3. Removal of Lender staff from positions involving MAP loan origination, underwriting and/or construction loan administration.
4. Actions to collect monies wrongfully paid by the MAP Lender to a third party.
5. Implementation or revision of a Quality Control Plan or other corrective measure acceptable to COB or the DAS for Multifamily Housing; and/or,
6. Modification of the duration or provisions of any administrative sanctions COB or the DAS for Multifamily Housing deems appropriate.

**C.** A MAP Lender’s compliance with a settlement agreement will be evidenced by the Lender certifying its compliance with the conditions of the agreement and by COB determining that the Lender is in compliance with the conditions. A false statement that the Lender is in compliance constitutes a false certification and may constitute a violation of 18 U.S.C. § 1001.

D. Failure by a MAP Lender to comply with a settlement agreement may result in referral to the MAP Lender Review Board or the Mortgagee Review Board for probation, suspension or termination.

## 15.6 Letters of Caution, Warning Letters or Sanctions

A. A MAP Lender's improper, inaccurate, inadequate or negligent underwriting and/or construction loan administration may lead to the issuance of a Letter of Caution or a Warning Letter or other sanction. The issuance of a Letter of Caution or a Warning Letter is not a prerequisite to the Probation, Suspension or Termination of a Lender's MAP privileges. See [Appendix 15](#) for an explanation of the MAP Lender Deficiency Taxonomy and a list of Lender deficiencies or noncompliance that may be the basis for the issuance of either letter.

B. A Letter of Caution may be issued for relatively minor violations which are of low severity that do not rise to the level of a Warning Letter and do not require the imposition of Lender sanctions or Targeted Enforcement Measures. Violations that may result in issuance of a Letter of Caution are usually due to the Lender's failure to comply with its administrative or reporting obligations to HUD or with MAP loan application processing requirements, which the letter will direct the Lender to address. Only the Director of COB may issue a Letter of Caution but, since the letter will only address corrective actions to be taken and since Lender sanctions will not be imposed, there is no appeal.

## 15.7 Warning Letters and Targeted Enforcement Measures

A. Only the Director of COB may issue a Warning Letter to or impose targeted enforcement measures (discussed below) on a MAP Lender. A Warning Letter issued by COB may be appealed to the DAS for Multifamily Housing, whose determination will be final. A Warning Letter will be referred by COB, with the concurrence of the DAS for Multifamily Housing, to the Mortgagee Review Board for issuance of a Notice of Violation if the Lender does not respond and resolve the Warning Letter to COB's satisfaction within 30 calendar days of its issuance.

### 15.7.1 Warning letter

A. The Warning Letter:

1. Shall specify the violation(s) for which it has been issued.
2. May direct the MAP Lender to take corrective actions.
3. May impose targeted enforcement measures.
4. Must state that it is a Warning Letter issued pursuant to this Chapter and be mailed and emailed to the MAP Lender's contact person as listed on the MAP website and be distributed to all HUD production offices.
5. May require a meeting in the HUD official's office with the principal owners and/or officers of the MAP Lender to discuss the basis for the Warning Letter and possible corrective actions.

6. Must state that the Lender may appeal a Warning Letter to the DAS for Multifamily Housing.
- B.** If the Warning Letter explains or interprets a section of the MAP Guide, the text of the letter (after deleting any information that may identify the MAP Lender concerned) shall be posted on the MAP web site as a FAQ after the appeal time has lapsed or an appeal determination has been made.
- C.** A Warning Letter does not suspend a Lender's MAP privileges but may impose a higher level of review of the Lender's application submissions and underwriting by the HUD production office and/or Headquarters, or it may impose targeted enforcement measures that affect the Lender's processing of MAP applications.

## 15.7.2 Targeted Enforcement Measures

- A.** Along with issuance of a Warning Letter, the Director of COB may determine that the MAP Lender's actions, failures or omissions that were the basis for issuing the Warning Letter have or may increase the risk to the FHA insurance fund. If that determination is made, in addition to issuing a Warning Letter, COB may impose targeted enforcement measures until such time as it determines that the MAP Lender has adopted corrective actions and the targeted measures are no longer required. Although the Lender may continue to participate in all MAP programs, the targeted enforcement measures imposed will suspend or limit certain of the flexibilities and delegated authorities that have otherwise been granted MAP Lenders under the Guide. Many of the measures described below are the same as are imposed on new MAP Lenders during their initial application review period, as described in MAP Guide [Chapter 2](#). The targeted enforcement measure(s) imposed will be in response to the specific MAP program violation that was the basis for the Warning Letter.
- B.** Targeted enforcement measures that may be imposed by COB in conjunction with issuance of a Warning Letter include the following:
  1. For the MAP program in general:
    - a. Require a Concept Meeting for all new applications.
    - b. Require HUD HQ review and approval of the Lender's loan applications before a Firm Commitment may be issued.
    - c. Limit the Lender's ability to process MAP loans over a certain dollar amount or for properties over a certain number of units.
    - d. Require a post-closing review of the Lender's most recent applications and/or Firm Commitments before any new applications can be submitted.
    - e. Require that HUD technical staff review and approve the appraisal and any market study for all new applications.
  2. For the 223(f) and 223 (a)(7) refinancing programs:
    - a. Suspend the Lender's authority to manage critical and non-critical repair escrow releases without a site inspection and approval of escrow disbursements by HUD staff.
    - b. Suspend the Lender's authority to process 223(f) loans that require greater than Level I repair.
    - c. Require that HUD staff inspect a property if a CNA is found to be deficient.

- d. Require quarterly reporting on the Lender's administration of a non-critical repair escrow.
3. For the 221d(4) and 220 new construction programs:
  - a. Require two-step processing and prohibit direct-to-Firm applications.
  - b. Submission of full schematics and working drawings may be required during the pre-application process.
4. For the Low-Income Housing Tax Credit pilot:
  - a. Suspend the Lender from Fast Track processing of tax credit loan applications and require standard application processing.
  - b. Require submission of enhanced documentation to justify the reduced MIP for affordable and broadly affordable housing properties or for green energy improvements.
  - c. Suspend the authority to act as both equity investor/syndicator and MAP Lender on tax credit transactions.

## 15.8 MAP Probation

**A.** Only the MAP Lender Review Board may place a Lender on probation. Probation may be imposed for all MAP programs or only for specific programs, depending on the Lender's offense that was the basis for the probation sanction. Probation is intended to be remedial and not punitive, and to be in effect only until the required corrective action(s) has been implemented by the Lender. Release from probation will usually be conditioned on the Lender taking an action to address or remedy the problems or deficiencies that led to the sanction or on meeting specific requirements, such as replacing a staff member or closing a branch office, to HUD's satisfaction and in its sole discretion.

**B.** During the probation period, a MAP Lender may not submit, and a HUD production office may not accept, materials after the close of business on the date of the probation letter, for a new pre-application or Firm Commitment application for all MAP programs or for just the programs that were the subject of the probation action. If either a new pre-application or Firm Commitment application is received after the date of the probation Notice of Action, it must be returned to the MAP Lender.

**C.** During the probation period, a Lender may continue to process any pre-application or Firm Commitment application that was submitted to a HUD production office before the date of the probation Notice of Action, unless one or more active applications are specifically suspended as noted in the Notice of Action.

**D.** Probation continues until all corrective actions required by COB or the MAP Lender Review Board have been taken by the MAP Lender and the Lender has notified COB of the actions' implementation. Once COB is satisfied that the corrective action(s) have occurred and are effective, the probation period shall end. A false statement that corrective action has been taken constitutes a false certification and may constitute a violation of 18 U.S.C. § 1001. A Lender's failure to continue or maintain the corrective action(s) after Probation has ended may be the basis for Suspension or Termination.

**E.** Probation will be in effect nationwide and the Lender's name shall be removed from the MAP-Approved Lender list for all MAP programs or for just the programs that were the subject of the probation Notice of Action. When probation has ended, the Lender's name shall be re-posted to the list.

**F.** In accordance with the sanction and notice procedures of this chapter, the Notice of Action placing a Lender on probation will be:

1. Sent electronically and by overnight delivery.
2. Addressed to the MAP Lender's contact person as listed on the MAP website; and
3. Signed for by an employee of the MAP Lender upon receipt.

## 15.9 MAP Suspension

**A.** Only the MAP Lender Review Board may suspend a Lender's MAP eligibility, which suspension will not exceed 12 months except when special conditions are imposed. If both a time limit and special conditions are imposed, suspension will terminate only when the later of the time limit, or the resolution of the special conditions, has occurred. The MAP Lender must submit a certification of compliance with the conditions to the Board and the Board must notify the Lender that it is satisfied that the corrective actions have occurred. A MAP Lender may be suspended from all MAP programs or only from specific programs, depending on the offense that was the basis for the suspension sanction, in HUD's sole discretion.

**B.** During the suspension period, a MAP Lender may not submit, and a HUD production office may not accept, materials after the close of business on the date of the suspension letter, for a new pre-application or Firm Commitment application for all MAP programs or for just the programs that were the subject of the suspension action. If either a new pre-application or Firm Commitment application is received after the date of the suspension letter, it must be returned to the MAP Lender.

**C.** During the suspension period, a Lender may continue to process any pre-application or Firm Commitment application that was submitted to a HUD production office before the date of the suspension letter, unless one or more active applications are specifically suspended as noted in the Notice of Action.

**D.** Suspension will be in effect nationwide and the Lender's name shall be removed from the MAP-Approved Lender list for all MAP programs or for just the programs that were the subject of the suspension action. When suspension has ended, the Lender's name shall be re-posted to the list.

**E.** In accordance with the sanction and notice procedures of this chapter, the Notice of Action placing a Lender on suspension will be:

1. Sent electronically and by overnight delivery.
2. Addressed to the MAP Lender's contact person as listed on the MAP website.
3. Signed for by an employee of the MAP Lender upon receipt.



## 15.10 MAP Termination

**A.** MAP Lenders which fail to maintain a minimum level of MAP activity, defined as failing to submit either a pre-application package or a Firm Commitment application at least once every 12 months, may be terminated from the MAP program, in accordance with 24 CFR 200.1520(b). Otherwise, only the MAP Lender Review Board may terminate a Lender's eligibility for MAP. Termination applies to all MAP programs.

**B.** A terminated MAP Lender may not submit, and a HUD production office may not accept, materials after the close of business on the date of the termination letter, for a new pre-application or Firm Commitment application.

**C.** A MAP pre-application or Firm Commitment application already in process may no longer be processed by the terminated Lender. The Lender must immediately transfer the transaction to a new MAP Lender which must completely reprocess all stages of the application. Alternatively, the terminated Lender may cancel the application and return to the Borrower its information, application submissions and any deposits. At no time may the new or a subsequent MAP Lender assign the pre-application, the Firm Commitment application, the mortgage insurance commitment or the insured construction loan to the terminated Lender.

**D.** HUD will endorse a MAP loan processed by a terminated Lender only if the Firm Commitment was issued before the date of the termination letter and only if it is first transferred to a new MAP Lender. At no time may the new or a subsequent MAP Lender assign the pre-application, the Firm Commitment application, the mortgage insurance commitment or the insured construction loan to the terminated Lender. For construction loans that have been initially endorsed at the date of termination, the terminated MAP Lender may not continue to administer the construction loan and HUD will assume all construction loan administration duties.

**E.** The terminated MAP Lender may not service a loan it has transferred after Final Endorsement.

**F.** Termination will be in effect nationwide and the Lender's name shall be removed from the MAP-Approved Lender list.

**G.** In accordance with the sanction and notice procedures of this chapter, the Notice of Action terminating a Lender will be:

1. Sent electronically and by overnight delivery.
2. Addressed to the MAP Lender's contact person as listed on the MAP website.
3. Signed for by an employee of the MAP Lender upon receipt.

**H.** An application for reinstatement of MAP lending authority may not be submitted to COB until 12 months after the date of termination. The requirements for reinstatement will be the same as for initial qualification as a new MAP Lender under MAP Guide [Chapter 2](#) and the applicant must satisfy COB that the issues or problems that led to its termination have been resolved.

## 15.11 MAP Lender Review Board

**A.** The MAP Lender Review Board is appointed by the DAS for Multifamily Housing. The Board is authorized to impose probation, suspension or termination sanctions or to take other actions in response to any MAP Lender that violates, or is not in compliance with, the requirements of the MAP program.

**B.** The Review Board will consist of three Office of Multifamily Housing officials designated by the DAS for Multifamily Housing.

1. Members of the Board:

- a. Will be selected from among HUD production office Directors or Multifamily Housing senior staff.
- b. May serve on a continuing basis or may be chosen for a specific review, as the DAS for Multifamily Housing determines.
- c. Shall have no prior business affiliation or other conflicts of interest with the Lender under review.
- d. Shall select one of their members to act as Chairperson of the Review Board.
- e. Must have knowledge of MAP origination, underwriting and construction loan administration procedures.

2. The following persons are prohibited from serving on the Board:

- a. The HUD production office Director who made the Lender sanction recommendation.
- b. Staff from the HUD production office that is making the recommendation.
- c. The Directors of OMP or of COB.
- d. Staff from OMP or COB.

**C.** A designee from the Office of General Counsel will be a non-voting advisor to the Board.

**D.** The Directors of OMP or of COB, or his/her designee(s), will present cases to the Review Board.

**E.** Functions, Duties, and Powers of the Board will include:

1. The MAP Lender Review Board is authorized to impose appropriate sanctions on a MAP Lender after:
  - a. Conducting an impartial review of all information and documentation submitted to the Board.
  - b. Making factual determinations that there has been a violation of MAP requirements.
2. In determining what action is appropriate, the Board will consider among other factors:
  - a. The seriousness and extent of the violation(s).
  - b. Any history of prior offenses.
  - c. Deterrence of future violations.
  - d. Any inappropriate benefits received by the MAP Lender.
  - e. Potential inappropriate benefit to other persons.
  - f. Any mitigating or aggravating factors.

- g. Any policy issues that may be raised for the MAP program by the Board's decision.
- 3. The Board may refer:
  - a. A MAP Lender to:
    - 1) The Mortgagee Review Board.
    - 2) The Departmental Enforcement Center.
    - 3) The Office of Inspector General.
  - b. An individual or firm involved in a "covered transaction," as defined in 2 CFR 2424.220, to the DAS for Multifamily Housing for imposition of a suspension, debarment or LDP which may be imposed on a nationwide or on a more geographically restricted basis.

## 15.12 MAP Lender Review Board: Staff Responsibilities

**A.** The Chairperson of the MAP Lender Review Board will provide support staff who will:

- 1. Coordinate the Board's activities with other HUD offices and government agencies, as appropriate.
- 2. Develop the agenda and identify the policy issues for Board meetings.
- 3. Notify a MAP Lender when the Board is to consider sanctions.
- 4. Notify a MAP Lender of any sanction imposed by the Board.
- 5. Maintain and prepare the Board's administrative record, including the official minutes and the case files for all Board actions.
- 6. Draft all notices, orders, letters and directives on behalf of the Board.
- 7. Perform other duties as assigned by the Chairperson or as directed by the Board.

**B.** The Directors of OMP or of COB, or his/her designee(s), will:

- 1. Present sanction cases to the Board.
- 2. Collect, analyze, prepare, and submit to the Board the charges and supporting documentation against the MAP Lender, together with possible sanction options or recommendations.

**C.** The Departmental Enforcement Center or the Office of Inspector General will:

- 1. Refer MAP Lenders to the Board for consideration of sanctions as a result of its audits or investigations.
- 2. Upon receiving a request from the Board, and subject to agreement, perform audits or investigations of MAP Lenders.

**D.** The Office of General Counsel will:

- 1. Advise the Board as to the legal sufficiency of actions it proposes to take.
- 2. Assist the Board in the drafting of its decisions and orders.
- 3. Assist the Director of COB in settlement negotiations undertaken pursuant to [Section 15.5](#), above.

4. Provide other legal advice as may be requested by the Board.

## 15.13 MAP Lender Review Board: Procedures

**A. Referral.** The Director of COB or the DAS for Multifamily Housing may refer a MAP Lender to the MAP Lender Review Board for consideration of probation, suspension or termination sanctions.

1. The referral must be in a written report that includes:
  - a. A full description of the violations and their factual basis.
  - b. Specific citations of the Department's requirements that have been violated.
  - c. All available supporting documentation that bears upon the violations.
2. The Lender will be notified of the referral once the Review Board has been constituted by issuance of a Notice of Violation pursuant to [Section 15.14](#), below.

**B. Board Appointment.** When the Director of COB determines that he/she intends to make a referral to the Review Board, the Director will request that the DAS for Multifamily Housing appoint a Board, in accordance with [Section 15.11](#), above.

**C. Internal Conference.** When the MAP Lender Review Board receives a referral, its members may confer by email, conference call or in person. Confidential communications between and among Board members at this stage are privileged from disclosure and will not be part of the administrative record.

**D. Informal Conference.** Before the MAP Lender Review Board begins formal proceedings on the referral, the Lender may request an informal conference with the Board, which the Board will schedule.

1. After notifying the Lender of the referral and the proposed sanction by issuance of a Notice of Violation, and permitting the Lender an opportunity to respond, the Board will meet informally with the Lender or its designees and with the Director of OMP and COB to review the referral and documentary evidence and the presentations by both sides.
2. A transcript of the informal conference will not be kept, unless the Lender elects to have a transcript made by a certified court reporter at its own expense. If the Lender elects to have a transcript made, it must provide 3 copies of the transcript to HUD within 5 business days of the conference. The transcript will not become a part of the record unless it is submitted within the 5-day limit. The Board may consider voluntary admissions by the Lender or its representatives on any element of the violation charged. Any additional documents, evidence or written arguments which the Lender wishes the Board to consider must be presented within 5 business days after the informal conference.

**E. Action by the MAP Lender Review Board.** Upon consideration of evidence submitted by the Director of OMP, COB and the MAP Lender, the MAP Lender Review Board will formally confer and make a final decision.

1. Any final decision by the Review Board placing a Lender on probation, suspension or terminating a Lender shall be in writing and shall state the reasons for the decision and the facts supporting its decision (*see* Notice of Action in [Section 15.15](#), below).

2. The Review Board is not bound by the recommendations from other HUD officials, except that the Board may not impose any sanction or take any action against a Lender that is more severe than the action recommended by the Director of OMP or COB. In any case where the action taken by the Board differs from the sanction recommendation it received the difference shall be explained in writing.

**F. Effective Date of Action.** Unless the Review Board determines that a later date should apply, any sanction shall become effective on the date of the Notice of Action to the Lender, issued pursuant to [Section 15.15](#), below.

**G. Appeal.** The Lender may appeal the Board's decision and Notice of Action to the Appeal Official, as described in [Section 15.16](#), below.

## 15.14 Notice of Violation

**A.** Before the MAP Lender Review Board considers imposing a sanction on a MAP Lender, the Board's Chairperson will issue a written Notice of Violation and of the proposed sanction to the Lender's contact person as listed on the MAP web site. The Notice will be sent electronically and by overnight delivery and must be signed for by an employee of the MAP Lender upon receipt. The Notice of Violation will:

1. Inform the Lender that the Board is considering a specific violation and sanction.
2. State the alleged factual violations with a citation to the Department's requirements that have been violated.
3. Include as attachments copies of all documents evidencing the violation that the Board will consider in reaching a decision.
4. Provide the Lender with the opportunity, within 15 business days from the date of the issuance of the Notice, to:
  - a. Meet informally with the Board in person or by video conference; and/or
  - b. Present written evidence and any other relevant information.
5. Offer the MAP Lender the opportunity to reply in writing to the Board within 15 business days from the date of the issuance of the Notice. Failure to reply within the 15-business day period may result in a determination by the Board without consideration of any comments that were submitted after the deadline.

## 15.15 Notice of Action

**A.** The Review Board's final decision will be communicated in a Notice of Action within 10 business days of the receipt of the Lender's information and/or the informal conference. The Notice of Action will be sent electronically and by overnight delivery to the MAP Lender's contact person as listed on the MAP web site.

**B.** The Notice of Action will:

1. State the nature and duration of the sanction.

2. State the violations and any factual findings.
  3. Inform the MAP Lender of its right to an appeal conference; and
  4. May add to or modify the reasons for the decision that were stated in the Notice of Violation.
- C.** A copy of the administrative record will be sent to the Lender by overnight delivery within one business day after the issuance of the Review Board's Notice of Action.
- D.** The Review Board may issue a Notice of Action to immediately place a Lender on probation or suspension, or to terminate a Lender, without first issuing a Notice of Violation when there is an imminent need to protect the financial interests of HUD and the U.S. Government. No such action shall be taken except upon the written recommendation of the Director of COB with the approval of the DAS for Multifamily Housing, and upon a determination by the Review Board that immediate action is necessary. In such a case, the Lender shall be promptly notified of the Board's decision and the reasons for it in accordance with [Section 15.15.A](#) and [Section 15.15.B](#), above, and shall have the right to submit materials to the Board and appear before the Board to seek a prompt reconsideration of the Board's action.

## 15.16 Appeal Conference and Procedures

- A.** Whenever the MAP Lender Review Board imposes a sanction of probation, suspension or termination against a MAP Lender, the Lender may, within 10 business days of receiving the Notice of Action, request in writing an appeal conference before an Appeal Official designated by the Review Board. Requesting an appeal conference does not suspend the sanctions imposed by the Notice of Action, unless the MAP Lender Review Board has determined that a latter effective date will apply. The Appeal Official must be an individual who has not previously been involved with the Lender's case, proceedings or settlement discussions. Failure of the Lender to request an appeal conference within 10 business days of receiving the Board's Notice of Action will be considered a waiver of their right to appeal. While the appeal conference is pending, the Notice of Action and the Lender sanction will remain in effect.
- B.** The appeal conference will be held within 10 business days of the MAP Lender Review Board receiving the MAP Lender's appeal request, unless the Lender requests that the conference be held more than 10 but fewer than 30 business days after the date of their appeal request.
- C.** COB or the Director of OMP will provide the MAP Lender Review Board's administrative record to the Appeal Official and will describe the basis on which the Board's decision was made. The Lender may provide oral arguments in support of its position and on the evidence previously submitted. No new evidence may be submitted to the Appeal Official that was not included in the Review Board's administrative record.
- D.** An appeal conference is an informal meeting and a transcript will not be kept, unless the Lender elects to have a transcript made by a certified court reporter at its own expense. If the Lender elects to have a transcript made, it must provide 3 copies of the transcript to HUD within 5 business days of the appeal conference. The transcript will not become a part of the record if it is not received within the 5-business day limit.
- E.** Oral statements made by any participant at the appeal conference will not be considered as evidence on any matter under consideration, except that the Appeal Official may consider voluntary admissions by

the Lender on any element of the violation charged. Any additional written arguments that the Lender wishes to present to the Appeal Official must be presented within 5 business days after the date of the appeal conference.

**F.** Within 10 business days after the date of the appeal conference, or the expiration of the period allowed for the submission of written arguments, whichever is later, the Appeal Official will make a written determination and may confirm, modify or overturn the Review Board's decision, and will state the reasons for its determination.

**G.** If the Appeal Official overturns the MAP Lender Review Board's decision, the Lender shall immediately return to active status as a MAP Lender, which will be posted on the MAP website.

## 15.17 Suspension, Debarment or LDP

**A.** The standards and procedures that apply to suspensions, debarments, and Limited Denial of Participation (LDP) can be found in 2 CFR Part 180, 2 CFR Part 2424 and 24 CFR Part 24. The regulatory authority for imposing exclusionary sanctions are described in 2 CFR 180.700 for suspensions, 2 CFR 180.800 for debarments, and 2 CFR Part 2424, Subpart J for LDPs. When conflicts exist between this section and the foregoing authorities, those authorities control. The procedures described in this section for issuance of LDPs may change as a result of updated delegations of authority by the Secretary of HUD.

### 15.17.1 Parties subject to a suspension, debarment or LDP

**A.** A suspension, debarment or LDP may be imposed on any participant or contractor and their affiliates in a MAP transaction, except that HUD-FHA-approved mortgagees are not subject to LDPs. 2 CFR 180.630 and 2 CFR 2424.1145 authorize HUD to impute conduct of one person to another individual or organization, or from one organization to another, in a suspension, debarment or LDP proceeding.

**B.** Examples of participants who may be sanctioned include (but are not limited to):

1. MAP Lenders (for suspension or debarment only).
2. MAP Underwriters, Chief Underwriters or loan analysts.
3. Borrowers and Sponsors.
4. Independent fee appraisers.
5. Third party cost analysts.
6. Physical needs assessors.
7. Environmental analysts and engineers.
8. General Contractors.
9. Architects.

**C.** Once issued, a suspension, debarment or LDP may extend from an individual to an organization or to the individual's or organization's affiliates. For example, a specific appraiser or an entire appraisal firm may be issued a suspension, debarment or LDP, which may also apply to all its affiliates.



## 15.17.2 Limited Denial of Participation

**A.** Only the Departmental Enforcement Center (DEC) may issue an LDP. An LDP may be issued for reasons that include (but are not limited to):

1. Causing unacceptable risk to HUD.
2. Irregularities in the performance of professional duties.
3. Material failure to maintain prerequisites, such as required licenses and professional certifications.
4. Material failure to honor contracts or contract violations.
5. False certifications or false statements made to HUD.
6. Construction, or construction administration and oversight, deficiencies.
7. Unlawful activities, pending criminal charges or indictment.

**B.** The specific bases for which an LDP may be issued can be found at 2 CFR 2424.1110. An LDP will be effective on a geographically restricted or a nationwide basis and will remain in effect for a period of up to 12 months. The scope and duration of an LDP are described at 2 CFR 2424.1140. An LDP may be appealed within 30 days of receiving notice of its issuance under the procedures in 2 CFR 2424.1130.

## 15.17.3 Suspension and debarment

**A.** The Director of the DEC is HUD's Debarring/Suspending official and its Compliance Division processes referrals of suspensions and debarments from the DAS for Multifamily Housing. The standards for issuing a suspension or debarment can be found in the above-cited regulations, along with the procedures for due process appeals and reviews of suspension or debarment actions.

**B.** Suspensions will remain in effect for periods described in 2 CFR 180.760, but usually will not exceed 12 months or until the conclusion of a legal or debarment proceeding that triggered the suspension, but no longer than 18 months without initiating such proceedings. Debarments will be imposed for periods described in 2 CFR 180.865, depending on the seriousness of the underlying cause for debarment, and generally will not exceed three years but may be longer if circumstances warrant it.

## 15.17.4 Procedures to refer a suspension, debarment or LDP

**A.** A Production Director, a Regional Director or the Director of OMP may recommend a suspension, debarment or a geographically restricted or nationwide LDP, in accordance with the procedures in [Section 15.3](#), above, and must forward all pertinent information, along with the formal recommendation, to COB for review on behalf of the DAS for Multifamily Housing.

**B.** The recommendation to COB must include:

1. All related application processing documentation that is the basis for the recommended action.
2. A narrative summary detailing the description and nature of the alleged offense(s) committed.
3. A summary of the participant's history and performance in dealings with the Department.

4. A recommended course of action including why the sanction should be applied on a geographically restricted or nationwide basis.
- C. After COB's review and recommendation, the DAS for Multifamily Housing will determine whether to make a referral to the Director of the DEC for issuance of a suspension, debarment or a geographically restricted or nationwide LDP.

## 15.18 Referral to Mortgagee Review Board or OIG

- A. If the Director of COB or the DAS for Multifamily Housing determines there is adequate evidence of serious violations of HUD requirements by a MAP Lender, then the Director of COB or the DAS for Multifamily Housing may refer the Lender to the Mortgagee Review Board for possible sanctions, including possible termination of the Lender's authority as an FHA-approved mortgagee, without first issuing a Warning Letter or other sanction, or first referring the MAP Lender to the MAP Lender Review Board. If a HUD production Director determines there is adequate evidence of serious violations of HUD requirements by a MAP Lender, the Director may refer the Lender to COB or to the DAS for Multifamily Housing, who will determine if the matter should be referred to the Mortgagee Review Board. See Section 2-4, Requests for Mortgagee Review Board Action, HUD Handbook 4060.2 REV 2, Mortgagee Review Board, and HUD Regulations at 24 CFR 25.
- B. If the Lender issue involves possible fraud, material misrepresentation or other criminal violations, then the matter should be referred to the Office of Inspector General (OIG). See Section 3-1, Responsibilities of Departmental Management and Employees, OIG Handbook 2000.3 REV-4, Office of Inspector General Activities.

## 15.19 Other Enforcement Actions

- A. Notwithstanding any provisions contained in this Chapter or elsewhere in the MAP Guide, HUD reserves the right to pursue remedies for any false claims or false statements, as authorized by the False Claims Act, 31 U.S.C. §§ 3729-3731, the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812, and/or Civil Money Penalties under 12 U.S.C. § 1735f-14.

## Chapter 16 Master Leases with Market Tax Credits

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### 16.1 Introduction

**A.** This chapter addresses the use of Master Leases when Historic and/or New Markets Tax Credits are used in conjunction with an FHA-insured loan. These transactions may or may not have Low Income Housing Tax Credits (LIHTCs) as well. HUD's goal is to accommodate this type of structuring without compromising appropriate regulatory oversight and controls.

**B.** This chapter does not address ground leases or leasehold interests in an entire project for purposes other than Historic or New Market Tax Credits, commercial leases or sublease agreements (of either commercial space or residential units).

### 16.2 Background

**A.** Master Leases maximize the benefits of combining Federal or State Historic Tax Credits and New Markets Tax Credits. The projects may or may not use Low Income Housing Tax Credits as well. Investors and Developers participating in these programs benefit from increased leverage for project financing and premium pricing for equity while reducing the need for additional debt.

**B.** Typically, these leases are structured to permit a combination of investments by one or more investors under one or more tax credit programs in a single development project. A sample organization chart for a master lease ownership structure is included in [Appendix 16](#). Generally, the Master Lease structure involves the following parties, which often have total or partial identities of interest and common ownership:

1. FHA Borrower – the Single Asset Entity (the Lessor for the Master Lease);
2. Master Tenant – the lessee; and
3. Master Lease Sub-lessees for Residential units, and for Commercial space.

**C.** The Master Tenant must pay the Borrower/Lessor rent that equals or exceeds the amount necessary to satisfy all financial obligations required under the insured mortgage and to operate the property in accordance with all HUD directives, regulations and contracts. The Master Tenant and all Master Sub-lessees (but not the individual residential and commercial tenants) will execute HUD Regulatory Agreements and submit financial reports to HUD.

**D.** The HUD Multifamily Regional Center or Satellite Office will be responsible for approving Master Lease ownership structures in accordance with this chapter's requirements. The Regional Center Director retains waiver authority, but waivers of any provisions of this chapter should be discussed with and reviewed by Headquarters (HQ) Office of Multifamily Production prior to approval.

## 16.3 General Programmatic Requirements

A. In addition to other program requirements, the following are conditions for projects that use a Master Lease structure:

1. The insured mortgage must be in first lien position with respect to all project collateral. The fee simple ownership in the land and improvements provides the security for the mortgage.
2. All documents should include conflict language giving the HUD documents supremacy over other documents, except as otherwise permitted by HUD, and may not include indemnification provisions. In some cases, HUD may allow non-monetary matters such as affordability use restrictions to be recorded ahead of HUD's mortgage, but such variances are allowed only on a case by case basis.
3. The Master Tenant and Master Sub-lessees must be single asset entities. Tenant-in-Common structures, Delaware Statutory Trusts, Maryland Business Trusts, Natural Persons, foreign entities are not eligible, though such entities may hold an "upper tier" interest in the single asset entities. The Master Tenant and Master Sub-lessees may not engage in any other businesses or activity, including the operation of any other rental project, or incur any liability or obligation except as permitted by HUD in connection with the project.
4. The Master Tenant and Master Sub-lessees must execute the standard HUD Regulatory Agreement and Rider, to address various ownership and operational responsibilities with respect to the mortgaged property.
5. The Master Tenant and Master Sub-lessees (as well as the Management Agent) must file management certifications and management entity profiles (forms HUD-9839-A, HUD-9839-B, and HUD-9832). HUD may require a management agreement to be terminated, in accordance with the terms and conditions contained in the management certification.
6. Net rentable commercial area as a percentage of gross floor area and income will be determined in accordance with the applicable FHA program limitations.
7. The Master Lease and all Sub-leases (sometimes collectively referred to as "Leases") shall be subordinate to the insured mortgage and subject to approval by HUD prior to execution. The Leases may not be modified or amended thereafter without the prior written consent of HUD and may be terminated by HUD in the event that the insured mortgage is assigned. Any proposed modifications or amendments to the Leases must be approved by HUD's Regional Counsel. The Leases must incorporate by reference the Regulatory Agreement, HUD rules, regulations and directives, and contain an agreement to comply with their requirements. The Leases must include an obligation to pay all rent due to the Lender, in the event of a default under the loan documents. The loan documents may be amended to provide notice of default to the Master Tenant contemporaneously with the giving of notice to the Borrower/Lessor, and the acceptance of a cure of such default, during such notice period, from the Master Tenant on behalf of the Borrower/Lessor. Any such cure must occur prior to the assignment to HUD and will be limited to one opportunity to cure during each 12-month time period.
8. Surplus cash determinations will be made in accordance with the Regulatory Agreements and will be made as if the entire project is owned and operated by one single purpose entity.
9. All financial operations and reporting are governed by 24 CFR, Part 5, Subpart H.

10. The rent paid by the Master Tenant must equal or exceed the monthly principal and interest payments due on the insured mortgage and all required escrows and reserves.
11. All business agreements must be disclosed and are subject to HUD approval during loan underwriting (including, for example, inter- or intra-company loans, investor or outsider loans other than the insured mortgage, investor controls over operations, actions and deliverables that affect regulatory or contractual compliance or performance, etc.). The Firm Commitment will incorporate any conditions imposed by HUD with respect to such agreements.
12. Any proposed payments (equity contributions, fees, income, etc.) to the Borrower, Master Tenant, Master Sub-lessees by a syndicator or investor must be disclosed to HUD and approved during loan underwriting, and thereafter be reflected on the annual financial statement filings and on any required monthly reporting. If such payments are made while any party is in non-compliance with the Regulatory Agreement, enforcement action will be taken against all principals in the organization, subject to the notice and cure provisions in above number 5.
13. Master Leases and Sub-leases must prohibit assignments or subleases (except to the end-users of the commercial spaces and apartment residents), unless previously approved by HUD in writing.

## 16.4 Processing Requirements

### A. Firm Commitment Special Conditions:

1. The policies and procedures involving master lease structuring to facilitate the use of tax credits are incorporated herein and made a part of this Commitment for insurance of advances, specifically including, without limitation, the terms and conditions contained in [Chapter 16](#) of the MAP Guide. All information submitted to HUD with the Application for Multifamily Housing Project, form HUD-92013, to evidence the satisfaction of such terms and conditions shall be true and correct as of the date submitted and must continue to be true and correct at the time of Initial Endorsement.
2. This commitment is subject to, and has been issued upon the reliance of, the successful (a) allocation to the project of LIHTC, Historic Tax Credits or New Markets Tax Credits and (b) syndication of such credits, with an appropriate agreement for the timely investment of equity, as shown on forms HUD-2880 and HUD-92013, to assure completion of the project and pay other associated and incidental costs. In addition to the standard provisions that must be included in the organizational documents for the Borrower entity, a provision must be added that prohibits any changes to the organizational documents that affect the obligations of the tax credit investor without the written consent of the Lender and HUD.
3. Notwithstanding the issuance of this commitment, this commitment remains subject to, and HUD's obligations hereunder are conditioned upon the satisfactory resolution, as determined by HUD, of the adverse items determined by HUD during the Previous Participation Review process.
4. As an accommodation, this commitment has been issued and based upon schematic drawings, instead of the final Drawings and Specifications, if allowed by the State Historic Preservation Office (SHPO) and/or Memorandum of Understanding (MOU) for historic tax credits. At least 30 days prior to the scheduled date for initial endorsement, HUD must receive the final Drawings and Specifications for review and approval to ensure consistency of design and cost. In the event that there is a net

cumulative construction cost increase or change in the design concept, if allowed by the State Historic Preservation Office (SHPO) and/or MOU for historic tax credits, or a net cumulative construction cost decrease in the amount of more than 5%, this commitment shall be subject to and conditioned upon the further approval of HUD, to be evidenced in writing, and may be terminated and voided by HUD, or additional conditions may be imposed, at HUD's option.

5. (See [Chapter 5, Section 5.6, Streamlined Processing](#), for further policy guidance on the deferral of final plans and specifications at Firm Commitment when tax credits are involved.)

**B.** The following forms should be revised to reflect the lease structure and HUD requirements:

1. Form HUD-92434M, Lender's Certificate - To include language that clearly states that the Master Tenant and Sub-lessees must report lease payments during the construction period as rental income.
2. Form HUD-93305M, Agreement and Certification - To include language that clarifies that the Borrower must report all receipts and disbursements from the date of first occupancy and during the rehabilitation period for substantial rehabilitation cases.

**C.** Each Master Lease or Master Sub-Lease must be recorded in the appropriate real estate records, along with the Regulatory Agreement executed by each Master Tenant or Master Sub-Lessee. These documents must also be included in Schedule B, Part II of the title insurance policy. In jurisdictions where recording these leases would result in a substantial tax, a Memorandum of Lease may be used. In lieu of recording the lease(s), a lease memorandum approved by the HUD Multifamily Regional Center Director, after consultation with field counsel, may be filed.

## 16.5 Cost Certification and Final Endorsement

**A.** The Borrower/Lessor, the Master Tenant and all Master Sub-lessees will be required to cost certify the actual costs of the project unless the property contains Low Income Housing Tax Credits and HUD determines at the time of Firm Commitment issuance that it has a loan to cost ratio of less than 80 percent. The cost certification must contain a certification signed by an authorized agent of each entity, audited by a CPA or IPA, and contain a Schedule of Tax Credit/Syndication Proceeds that includes the following:

1. The amount of syndication proceeds received from the investing partner to date;
2. The purposes for which syndication proceeds received as of the cut-off date were used; and,
3. The dates, terms, and conditions under which future investor contributions are to be made.

**B.** Total income of the Borrower/Lessor, including lease payments, is recognized during the construction/rehabilitation period.

1. If the replacement cost mortgage (Criterion 3) is not the controlling mortgage and there is excess NOI (net operating income) generated during construction, it may be applied to cover shortfalls in mortgageable soft costs, change orders, initial operating deficit and escrows. At Final Endorsement, funds not needed to cover shortfalls in costs or operating deficits may be distributed to the borrower or deposited into the project's Reserve for Replacement account or applied toward the amortization of the mortgage principal.

2. If Criterion 3 is the controlling mortgage amount, HUD will determine if the balance of the NOI is equal to or greater than 1% of the original mortgage amount and, if it is, will deduct this amount from the certified replacement cost. When the NOI does not meet this 1% threshold, it can be used toward shortfalls as noted above. Any remaining balance must be deposited into the project's Reserve for Replacement account at Final Endorsement and there is no distribution to the borrower. The Borrower/Lessor, Master Tenant and Master Sub-lessees are required to submit a certified operating statement which reflects the income collected and expenses incurred in accordance with the lease agreements and all documents required by HUD. Refer to [Chapter 13](#) of the MAP Guide for further details on cost certification and the exemption from cost certification for LIHTC applications.
- C. A final Sources and Uses Statement must be included in the cost certification report as supplemental information and will be reviewed to determine actual sources and uses.



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# Chapter 17 Section 207: Refinancing Cooperative Housing Projects

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## 17.1 Introduction and Background

**A.** The following provides processing instructions for refinancing Cooperative Housing Projects under Section 207 pursuant to Section 223(f). This applies solely to refinancing a project and does not apply to projects that include an acquisition. Please note that proposed conversions or projects undergoing conversion to Cooperatives are not eligible for refinancing under this chapter. Projects that were organized as a Cooperative must use the guidance in this chapter in order to refinance. If a project is to be refinanced pursuant to [Chapter 3, Section 3.7, Section 207/223\(f\) Refinance or Acquisition](#), then the Cooperative must first be dissolved.

**B.** Cooperative ownership is popular in certain parts of the country, especially for low-to-moderate-income occupants. HUD already insures traditionally processed mortgage loans to facilitate the construction and substantial rehabilitation of Cooperative Housing projects under Section 213. Facilitating the refinancing of a Cooperative under Section 223(f) will further the Department's mission by assisting eligible Cooperative projects to obtain refinancing to make necessary repairs and/or consolidate more expensive outstanding debt, thereby serving to preserve the affordable housing stock. Refinancing the existing underlying mortgage is considered to be a better alternative than expending a Cooperative's reserve fund, which would have a negative impact on its financial stability and would help to avoid the need for a special assessment, which could harm low-to-moderate income occupants, especially those on a fixed income.

## 17.2 Program Eligibility

**A. Eligible Borrowers.** Eligible borrowers include non-profit Cooperative Ownership Housing corporations or non-profit Cooperative Ownership Housing trusts regulated under state law and regulatory agreements that require membership eligibility and transfer of membership in a manner approved by HUD. Limited profit ownership entities such as those established under the Mitchell-Lama program in New York City may be acceptable pending review by local HUD Counsel.

**B. Eligible Projects.** The property must contain at least 5 residential units with complete kitchens and baths. Proposed conversions or projects undergoing conversions are not eligible. Projects with a recent or unresolved vacancy history, or a history of shareholders not paying dues, carrying charges and other co-op obligations, will not be considered for mortgage insurance. The project must be fully subscribed prior to endorsement with no units owned by the original developer, and must meet these additional criteria:

1. **Project Design.** The project must be designed for primary residence only. Guest suites are permitted as an amenity 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 purposes. However, timeshares, resorts, Cooperative hotels or rental pools are not permitted. Section 513 of the National Housing Act

prohibits the use of the insurance programs for transient or hotel purposes. The borrower and individual shareholders cannot execute Occupancy Agreements for less than 30 days nor provide occupants with hotel services such as maid service, furnishing and laundering of linens, room service and bellboys. Units may not be sub-leased without the consent of the Cooperative Corporation. See [Chapter 3, Section 3.1.15](#) and Housing Notice 2018-10 Guest Suites in Multifamily Housing under the National Housing Act for the detailed requirements.

2. **General Market Conditions.** The Property must be located in an area evidencing strong market understanding and acceptance of Cooperative housing. Financing for the purchase of individual shares must be readily available from mortgage bankers/brokers, banks or saving and loan institutions. The Underwriting Summary must cite recent sales within the building and indicate the type of financing utilized.
3. **Repair Threshold.** A project cannot be processed under Section 223(f) if it meets the current requirements for substantial rehabilitation in [Chapter 5, Section 5.10](#). Projects that are not eligible for mortgage insurance under Section 207 pursuant to Section 223(f) should consider the Section 213(i) program.
4. **Fair Housing Act / Equal Opportunity Requirements.** All other applicable program requirements for the Section 207 pursuant to Section 223(f) program must be met, including compliance with applicable Civil Rights Laws, including the nondiscrimination and affirmatively furthering fair housing provisions of the Fair Housing Act, and applicable accessibility requirements for persons with disabilities.
  - a. **Affirmative Fair Housing Marketing.** The Affirmative Fair Housing Marketing Requirements (24 CFR Part 200, Subpart M) apply to all insured projects of five or more units but projects insured under Section 207 pursuant to Section 223(f) 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. The borrower must certify that it will not discriminate against any protected class, which includes race, color, national origin, religion, sex, familial status, or disability.
  - b. **Accessibility for Persons with Disabilities.** This is required for properties built after March 13, 1991, containing Fair Housing Act noncompliance. If a project built after March 13, 1991, is submitted for Section 223(f) refinancing and the Capital Needs Assessment (CNA) inspection reveals that it contains noncompliance with the Fair Housing Act design and construction requirements, the Department must require that the owner correct the noncompliance as a condition of insurance. The extent of the noncompliance and the cost of correction will determine whether the project is feasible as a Section 223(f) or whether to resubmit it as a substantial rehabilitation. In no case may the Department insure projects with outstanding Fair Housing Act noncompliance.
5. **Elderly Developments.** In refinancing of the underlying mortgage for an existing Cooperative project designed for the elderly, the Department defines the term “elderly family” in the National Housing Act (NHA) as a household composed of one or more persons with the Head of Household (HOH) who is 62 years of age or more at the time of initial occupancy. Waiver of this definition is not permitted under any circumstances.

The Cooperative shall not provide mandatory meals and services such as those associated with retirement service centers. No non-shelter services can be a mandatory condition of occupancy and

must be reviewed by the lender and approved by the Regional Center or Satellite Office for reasonableness. Non-shelter spaces already constructed for projects with current HUD-insured mortgages may include formal dining areas with meal services to be provided on an optional basis. All Cooperatives may provide modest kitchen equipment in a non-shelter space for the use of occupants or for catering services. The kitchen should be sufficient in size to comply with sanitary requirements. Additional requirements related to the provision of meals are as follows:

- a. Any meal service must be provided on an optional basis.
  - b. The cost of meals may not be included in the residents' maintenance charges.
  - c. The costs associated with the operation of the meals service are the responsibility of the entity that operates the optional meal service.
  - d. The borrower may receive payment from the operator of the meals service. In such cases, this revenue may not be included in the underwriting of the project, as this service is optional for each resident, thereby potentially producing a revenue stream that is both unpredictable and unreliable.
  - e. A determination should be made by the lender that the contract or agreement entered into with a third-party meal provider will not increase the project risk.
  - f. Any meal service must be operated by a meal provider licensed under State or local law and in compliance with current health and safety requirements for food service providers.
  - g. Local HUD Counsel must determine that the granting or revocation of any licensing required to operate a proposed meal service will not jeopardize the ability of the project to operate as Cooperative Housing in accordance with the requirements of the Regulatory Agreement.
  - h. Costs associated with the construction of an ancillary building to include meal services may be considered in a mortgage proposed to be insured under Section 223(f) subject to outstanding requirements limiting non-shelter space and commercial areas set forth in [Chapter 5](#) of the MAP guide.
6. **Owner Occupancy.** At least 75% of the total number of residential units must be owned and occupied by Cooperative members at the time of endorsement, and no more than 25% of the units may be owned by investors.
  7. **Vacancy Rate.** The project should not have a vacancy rate greater than 5% since a higher vacancy rate may indicate a weak or problematic project or market. If an application is presented with a higher vacancy rate, the underwriter must provide convincing market evidence to support the transaction in the Underwriting Summary. The vacancy/occupancy rate used in underwriting the loan should be based on the actual historic performance of the project, which can be 100%. This applies only to Criterion 5 based on actual operation as a Cooperative project.
  8. **Turnover Rate.** The sales history of the complex should display a healthy turnover rate to demonstrate that the project is viable and that there is demand for the units. If the turnover rate is less than 5% of the total number of owner-occupied units per year, the underwriter must determine the reasons for the low turnover rate and why it does not pose an unacceptable risk, which must be documented in the Underwriting Summary. However, it should be noted that a project and/or market area may have a historically low turnover rate due to its popularity as a source of affordable housing.

9. **Adequacy of the Proposed Carrying Charges.** The carrying charge must be sufficient to adequately maintain the project at a level that would make it suitable as security for a long-term mortgage. The Underwriting Summary must contain an analysis of the Appraiser's findings regarding the adequacy of the proposed carrying charge that will be in place after refinancing has occurred and a discussion of the Cooperative project's policy and history regarding increasing the carrying charge. The Cooperative's Bylaws or other appropriate organizational documents must contain a provision that requires an assessment and increase of carrying charges annually as may be required based upon operating history or at the direction of HUD, in order to address increases in operating expenses.
10. **Carrying Charge Increase.** In general, the debt service resulting from the proposed mortgage should not require a carrying charge increase of more than 5%, which may be exceeded, so long as all of the following requirements are met:
  - a. The carrying charge is below market for properly maintained similar projects and is not sufficient to adequately maintain the project.
  - b. The Board of Directors must approve the carrying charge increase in accordance with its By-laws the FHA Model Form of By-laws, FHA Form No. 3245.
  - c. An analysis of the demographic data in the appraisal report must indicate that the new carrying charge would be affordable for the typical resident.
  - d. Market analysis of the proposed maintenance carrying charge indicates that it is within market limits for similar projects in the subject's market area.
11. **Commercial Space Limitations.** The current Section 223(f) parameters must be followed.
12. **Ownership of Commercial Space/Parking.** Commercial and parking space at a Cooperative Housing project may or may not be owned by the Cooperative. Only those spaces that are owned by the Cooperative may be included as part of the collateral.
13. **Ground Leases.** Ground Leases must conform to the FHA Lease Addendum Form HUD-92070M. The term of the lease addendum may be varied to conform with applicable State and local law, except that the local HUD Closing Attorney must approve:
  - a. The legal need for any proposed lease term changes, and
  - b. That any term changes are consistent with the following requirements:
    - 1) Term is 99 years and is renewable, or
    - 2) Term is at least 50 years from the date the mortgage is executed (where a lease is on trust/other land on a reservation the HUD Closing Attorney must ensure that the lease provisions are coordinated with Bureau of Indian Affairs' requirements).

## 17.3 Program Requirements

- A. The Underwriting Summary must demonstrate compliance with all program requirements.

## 17.3.1 Loan Parameters

A. An equity take out from a refinancing loan is not permitted for Cooperative housing projects.

B. In accordance with [Chapter 3, Section 3.7.18](#), HUD will insure a mortgage for a maximum term of 35 years or 75% of the remaining economic life of the property, whichever is less. The maximum insurable mortgage amount shall be the lesser of the following parameters as they relate to the criteria in Form HUD-92264-A, "Supplement to Project Analysis":

1. **Criterion 1:** Mortgage or Loan Amount Requested in Application.
2. **Criterion 3: Amount Based on Value or Replacement Cost.** The market value of the cooperative valued as a market rate rental project multiplied by a loan ratio of 65%.
3. **Criterion 4: Amount Based on Limitations per Family Unit.** Use Section 207 statutory per unit limits, adjusted by the local PC High Cost Percentage for the locality. Follow the outstanding instructions for Criterion 4.
4. **Criterion 5: Amount Based on Debt Service Ratio.** A mortgage amount supported by 1.0 debt coverage based on the projected net operating income (NOI) as an existing Cooperative project based on its historic occupancy rate (up to 100%), which is NOI noted on line "5.e".
5. **Criterion 7.** Criterion 7 is not to be completed since acquisitions are ineligible.
6. **Criterion 10: Amount Based on Existing Indebtedness, Repairs and Loan Closing Charges.** Follow outstanding instructions. The cost to refinance includes funding, if applicable, the Initial Funding of the Replacement Reserve and the Initial Deposit to the General Operating Reserve (see [Section 17.3.3](#) below). Equity out is not permitted under Section 223(f) when refinancing Cooperatives, accordingly, the calculation for this criterion stops at line 10.g.
7. **Criterion 11: Amount Based on Deduction of Grants and Gifts and Loans.** Line 11.a shall be the cost to refinance plus FHA Mortgageable items taken from Line 10.g. Line 11.b shall be total of grants, gifts and loan intended to offset the cost of mortgageable items. Line 11.c shall be Line 11.a minus Line 11.b.

## 17.3.2 General Operating Reserve (GOR)

A. Cooperatives are required by the Regulatory Agreement, HUD-92466M with Rider incorporating cooperative requirements, to establish and maintain a GOR which is a percentage of the monthly carrying charges. The carrying charge is the sum of all project expenses, replacement reserve, taxes and debt service.

1. Requirements for the GOR are as follows:
  - a. The GOR is maintained by a monthly payment of 3% of the monthly carrying charges.
  - b. When the GOR account reaches 15% of the annual carrying charges, the monthly rate may be reduced to 2%.
  - c. When the GOR account reaches 25% of annual carrying charges, monthly accruals may be discontinued until the account is reduced below 25%.

- d. Anytime the GOR falls below the 25% level, monthly payments to the account shall be resumed at a 2% to 3% rate, as noted above, until the 25% level is restored.
2. In addition to any Initial Deposit to replacement reserve, the Cooperative borrower may be required to make an Initial Deposit to the GOR in an amount equal to 15% but not to exceed 25% of the annual carrying fee. The Initial Funding of the GOR using this provision may be included in the cost of refinancing in an amount not to exceed the percentage amount of the annual carrying fee as determined by the Cooperative borrower and included in the project underwriting.

### 17.3.3 Model Forms and Closing Documents

- A. Refer to Handbook 4550.3, Existing Construction – Cooperative Housing, Appendix III (modified for Section 223(f)).
- B. Cooperative Organizational forms and documents must be reviewed and approved for legal and programmatic compliance before the issuance of a Firm Commitment.
- C. Use FHA Required Closing Instruments, FHA Form No. 3257-B, also set forth in Handbook 4550.3, Appendix 3-10. The Regional Center or Satellite Office will provide the documents set forth in Handbook 4550.3.

## 17.4 Application Processing

- A. **Applications.** Applications for Cooperatives are processed in accordance with the current Section 223(f) instructions except as modified here.
- B. **Exhibits.** All exhibits normally required for a Section 223(f) application must be submitted with the following modifications and additions.
  1. **Rent Roll.** The Rent Roll should be modified to indicate each shareholder's name, unit location, mailing address, whether or not the unit is owner occupied, whether or not the unit is subsidized, date of occupancy, ownership percentage, amount of monthly maintenance charge, any special assessments and past due balances of 30 days or more. For any units subject to local rent control, the actual rent must be substituted for the carrying charge amount. The Rent Roll should be submitted as an Excel spreadsheet.
  2. **Cooperative Membership Exhibit.** Subsequent to issuance of the commitment and prior to closing, the lender must submit a statement of the cost to the borrower and the Cooperative Membership Exhibit, Form HUD-93203. The number of members must equal the percentage (or number) of the total number of units as specified in the commitment.
  3. **Original Project Prospectus** (if available). The prospectus is prepared at the time of the original public filing and contains a great deal of useful information for technical discipline processing by HUD as well as the underwriter and preparers of third-party reports.
  4. **Financial Statements for the Past Three Years.** Follow the current instructions contained in [Chapter 7, Section 7.8.2](#) and [Chapter 8, Section 8.4](#). The lender should review and evaluate any qualifications contained in the reviews to ensure the financial statements reliably represent the property's operating history and the assumptions relied on in the underwriting and should pay



particular attention to the history of total past due balances of carrying charges and special assessments. The total amount of the unpaid balance (30 days or more) for maintenance charges and special assessments as shown in the rent roll must not exceed 5% of the gross annual income.

5. Environmental Exhibits.
  - a. **Environmental Report.** Lenders must submit an environmental report to HUD using the HUD Environmental Review Online System (HEROS), as described in [Chapter 9](#). The environmental report must include and appropriately cite supporting documentation.
  - b. **Contamination Analyses.** The environmental report must include a Phase I Environmental Site Assessment (ESA), if necessary a Phase II ESA, and, if further necessary, a remediation plan with approval by the appropriate regulatory authority. See [Chapter 9](#).
6. **Additional Third-Party Reports.** HUD may require additional specialized reports to ascertain the safety and soundness of the property and its amenities as to their suitability as collateral for long-term financing.
7. **Organizational Documents and Minutes.** The Regional/Satellite office will identify the required documents set forth in Handbook 4550.3. The following additional exhibits are required:
  - a. Certificate of Incorporation FHA Form No. 3234-B.
  - b. Resolution of Board of Directors to Mortgage Cooperative.
  - c. Shareholders authorization to Mortgage Cooperative.
  - d. Resolution of Board of Directors adopting FHA Form No. 3245, "Model Form of By-laws."
  - e. Shareholders authorizing adoption of FHA Form No. 3245, "Model Form of By-laws."
  - f. Minutes of the last six Board of Directors meetings.
  - g. Resolution of Board of Directors adopting FHA Form No. 3237, "Model Form of Occupancy Agreement."
  - h. Resolution of Board of Directors adopting FHA Form No. 3237-A, "Model Form of Sublease." The Member cannot assign the Occupancy Agreement nor sublet the Dwelling Unit to any person without the prior written consent of the Cooperative on a form approved by HUD. Organizational documents must conform to HUD as well as any State or local required provisions.

## 17.5 Technical Processing

### 17.5.1 Architectural and Cost Processing

- A. Follow the current instructions for Section 223(f).
- B. A summary of these procedures is outlined below.
  1. **Architectural Analysis.** Lenders will submit and HUD will review deliverables as specified under the present guidance for Section 223(f) to the Regional Center or Satellite Office.



2. **Cost Processing.** The HUD Cost Analyst will review lender exhibits as required in [Chapter 5](#) and will recommend either acceptance or rejection of the Cost portion of the Firm submission.
3. **CNA.** The CNA E-Tool is required to be completed for all cooperatives insured under Section 223(f). The primary purpose of the CNA for a Cooperative project is to assess the Capital Needs of the project with the exception of any elements owned by the individual shareholders. So, it is very important to ascertain exactly what items are the sole responsibilities of the Cooperative. In some cases, appliances, kitchen cabinets, etc. may be owned by the Cooperative. The interior of individual units is still inspected in the same manner as with apartments. Any hazards or defects that would affect safety and marketability of the Cooperative should be noted even if it is an individual shareholder's responsibility. These items must be corrected at the shareholder's expense prior to endorsement. Mortgage proceeds must be used only for repairs of property owned by the Cooperative.

## 17.5.2 Valuation Processing: Appraisal Scope-of-Work

**A.** There can be great variation in how a Cooperative is structured. According to the Uniform Standards of Professional Appraisal Practice (USPAP), the determination of Scope-of-Work is an ongoing process in an assignment. Information or conditions discovered during the course of an assignment may cause the appraiser to reconsider the scope-of-work. Therefore, the guidance set forth below may be modified on a case-by-case basis to assure compliance with USPAP and that the results of the appraisal assignment will be reliable for making underwriting decisions.

**B.** There are three major elements for the appraisal assignment: General Requirements, Valuation as a Market Rate Rental Project, and Market Analysis for Continued Use as a Cooperative.

### 1. General Requirements.

- a. **Selection of the Appraiser.** The lender must select a qualified Appraiser in accordance with [Chapter 7](#). It should be noted that the appraisal of a Cooperative is very specialized. Lenders should base their selection of an Appraiser on their experience for this type of assignment and upon their familiarity with the subject's market area.
- b. **Value Definition.** Appraisers must use the following definition published by Federal Regulatory agencies:

"Market value means the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- 1) buyer and seller are typically motivated;
- 2) both parties are well informed or well advised and acting in what they consider their own best interests;
- 3) a reasonable time is allowed for exposure in the open market;
- 4) payment is made in cash or by financial arrangements comparable thereto; and
- 5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale."

The value shall be estimated assuming that all repairs have been completed as of the date of the appraisal.

- c. **Inspection of the Subject and Comparables.** The primary appraiser designated by the lender and accepted by HUD must physically inspect the subject (both exterior and interior) and all of the comparables used as part of the analysis and must sign the Certification within the appraisal report and the supporting HUD forms.
- 1) The primary appraiser must inspect at least one of each bedroom/unit type. The total number of units inspected must equal or exceed 5% of the total number of units for projects of up to 200 units, or 4% of the total number of units/beds for projects greater than 200 units. If the characteristics and/or condition of the subject indicate that a higher level of inspection is necessary, it is the appraiser's responsibility to expand the scope of the work as is necessitated by the observations made by the primary appraiser during the inspection of the subject. This is especially important where the improvements are high-rise structures whereby individual units within demonstrate varying degrees of light and view qualities. If there are hazardous conditions or other factors that preclude a thorough inspection of the interior, the appraiser must clearly indicate these circumstances in the appraisal report.
  - 2) **Large Projects.** For projects exceeding 500 units, the appraiser must consult with the processing office to agree on a reasonable number of units to be inspected. In addition, the appraiser may employ assistants to inspect individual units. The purpose of allowing assistants is to encourage a thorough inspection. The names and qualifications of these assistants must be disclosed in the appraisal report, but they are not required to sign the report.
  - 3) The primary appraiser must inspect all the comparables used in deriving an estimate of value, including land comparables (if applicable), improved comparables sales, expense comparables and rental comparables. The appraiser must verify the condition of the comparables at the time of transfer/rental with management or other personnel familiar with the property. Contact information must be documented in the appraisal report.
- d. **Required Appraisal Report Exhibits.** In accordance with the requirements of [Chapter 7](#) and the programmatic requirements of Section 223(f).
- e. **Review of the CNA and Environmental Report** (including the Phase 1 ESA). The appraiser must review the CNA and environmental report prior to completing the assignment, comment on any remarkable findings and their impact (if any) on value.
- f. **Required Approaches.** In accordance with the requirements of [Chapter 7](#) and the programmatic requirements of Section 223(f).
- g. **Estimation of Remaining Economic Life (REL).** In accordance with the requirements of [Chapter 7](#) and the programmatic requirements of Section 223(f).
- h. **HUD Forms.** All of the usual forms for Section 223(f) should be employed, (HUD-92264, 92264-A, 92273 and 92274) following the outstanding instructions for Section 223(f). The HUD-92264 shall be completed based on usage as rental apartments.

- i. **Additional Appraisal Work Required by the lender or other Intended Users.** The appraiser is bound by USPAP to complete the appraisal assignment in compliance with the requirements of the person or entity who ordered the report and to satisfy the needs of identified intended users.
        - j. **Reconciliation and Conclusion.** The appraiser must briefly reconcile the information presented; clearly indicating what data is the most relevant and supports the report's conclusions. The appraiser's conclusions must indicate whether or not the subject can expect to enjoy long-term use as a Cooperative; and whether or not the proposed carrying charge is within market limits and is affordable for the typical shareholder.
        - k. **Report Content and Format.** In accordance with the requirements of [Chapter 7](#).
2. **Valuation as a Market Rate Rental Project.** Follow all current procedures in [Chapter 7](#) for Section 223(f) Appraisal and Appraisal Review, including these additional instructions:
  - a. **Use of the Subject.** The appraiser shall assume a hypothetical use of the subject as a market rate rental project, except that income from any units subject to rent control will assume the current controlled rental amount.
  - b. **Estimate of Effective Gross Income.** The estimate of Effective Gross Income shall be made using market rental housing comparables that are equivalent to the subject in location, size and style. Actual rents should be used for any rented units in the Cooperative that are subject to rent control. Market rents must be used for any subsidized units. Vacancy and collection losses should also be market derived, but in no event will a residential occupancy rate greater than 93% and a commercial occupancy rate at the lesser of the actual occupancy rate or 90% be used.
  - c. **Expense Analysis.** The Expense analysis should accurately reflect usage as a market rate rental project. Appropriate weight should be given to the most recent three-year history for items such as repairs, maintenance and common utilities. Other items such as taxes and management expense should be based on rental apartment market data.
3. **Market Analysis for Continued Use as a Cooperative.** The appraisal report must also contain a Level A, Level B or Level C Market Analysis of the local market, depending on market complexity, with an emphasis on Cooperatives. The purpose of the analysis is to determine the ability of the subject to continue usage as a Cooperative Housing project. The detailed requirements for performing a Level A, B or C analysis can be found in "Market Analysis for Real Estate", published by the Appraisal Institute.
  - a. **Assumptions.** The study should assume that management has budgeting and operations under control, which can be demonstrated by an illustration of past year's maintenance charge history.
  - b. **Financial Statement Review.** Special Assessments should be explained, and a review of the last three years financial statements is required. The footnotes to the Cooperative's yearly financial statement are a typical source of details regarding past, current and upcoming issues. There should be a discussion of any material or atypical items as to their impact on value. In addition, the appraiser will complete a HUD-92274 using comparable Cooperative projects and also analyze the past three years of records and any unaudited records from the most current period, if deemed reliable, to ascertain if the proposed maintenance charge is adequate to continue operations.

- c. **Cost of Occupancy/Cost of Ownership Analysis.** The typical monthly maintenance charge by unit type should be compared to the competing project's monthly maintenance charges by unit type and will serve as a variable for Cost-of-Occupancy/Cost-of-Ownership calculations to ascertain and support market-oriented unit pricing. The appraiser will complete a HUD-92273 for each major Cooperative unit type using other units from other Cooperative projects as comparables to compare monthly carrying charges and to determine if the proposed monthly fee is realistic and affordable for the subject's market area.
4. **Appraisal Review.** HUD Multifamily Staff Appraisers will review the appraisal in accordance with USPAP Standard 3. The appraisal review must include a comparison of the subject's proposed monthly carrying charges based on the new financing to what the various units would rent for if the subject were operated as a rental project. A Cooperative Housing project's feasibility for continued use as a Cooperative is questionable if monthly carrying charges significantly exceed what units could actually rent for. A downward trend in rents versus no change or an upward trend in carrying charges is an indication of an unhealthy Cooperative Housing project/market.

### 17.5.3 Environmental Processing

- A. The HUD Review Appraiser will follow all applicable instructions in [Chapter 9](#).

### 17.5.4 Mortgage Credit Processing

- A. Follow the current procedures in [Chapter 8](#) for Section 223(f) modified as follows:

1. Determination of the Acceptability of the Cooperative Corporation.
  - a. **Board of Directors (BOD) Performance History.** In processing an application, the lender will take into account the BOD's ability and willingness to manage the Cooperative within the requirements of Section 223(f). The lender will also consider all applicable requirements contained in [Chapter 10, Management Analysis](#).
  - b. **Ability to Close.** It must be determined that the Cooperative organization has the ability to close the transaction in a satisfactory manner and that the sum of the monthly charges to members will be adequate to meet debt service and other ownership expense.
  - c. **Creditworthiness.** It must also be determined that participants have not been debarred or subject to a Limited Denial of Participation and are otherwise capable of meeting their ownership and management obligations. For the Single Asset Borrower Entity, its Officers and BOD Members, and the Management Agent, the review should include the HUD-2530 / Active Partners Performance System (APPS) Clearance (or successor form).
  - d. **Other Business Concerns.** List of other business concerns are required for the Officers of the BOD.
  - e. **Adequacy of Monthly/Annual Charges.** The underwriter must ensure that the sum of monthly charges, as listed on the Cooperative Membership Exhibit, converted to an annual basis, is sufficient to meet the HUD estimate of debt service, Cooperative operating expenses, taxes, special assessments and ground rents, if any, plus a general operating reserve of 3% of these items. In making these determinations of allowances for accessory income (if any), the allowance shall not exceed the Cooperative's estimate or the appraiser's estimate of accessory income, whichever is

the lesser. However, rental payables under duly executed acceptable leases for commercial space on the premises shall be used in lieu of estimates. These payables should be totaled to be sure all members have assurance that the total membership has their required minimum equity requirements. The HUD estimate of annual charges will include the following:

- 1) Debt service payments.
  - 2) Cooperative Operating Expenses, Reserve for Replacements, Taxes, Special Assessments and Ground Rent, if any.
  - 3) (Memorandum attached to HUD-92264). General Operating Reserve of 3% of Sum of Above.
- f. **Review of the Cooperative's Procedure for Approving New Members.** The procedures employed by the Cooperative in approving new members (cooperators) should be reviewed to ascertain if there is compliance with any income requirements and credit scores as contained in the Cooperative's bylaws or other related agreements. The subscription agreement and other individual underwriting documentation for anyone becoming a member in the three-month period immediately prior to the date the application for Firm Commitment was submitted must also be reviewed by the HUD processing office.
- g. **Carrying Charges.** The Regional Center or Satellite Office must review the procedures employed by the Cooperative in reviewing its budget, determining the adequacy of the carrying charge and to its history of carrying charge increases. The Cooperative's Bylaws or other appropriate organizational documents must contain a provision that requires an annual increase in the carrying charge based on inflation, in order to address increases in operating expenses. The total amount of the unpaid balance (30 days or more) for carrying charges and special assessments as shown in the rent roll must not exceed 5% of the gross annual income.
2. **Determination of Total Debt Service, Cooperative Operating Expense and GOR.** Total Debt Service will be calculated by multiplying the amount of the mortgage by the sum of initial curtail rate, interest rate and Mortgage Insurance Premium (MIP). Cooperative Operating Expense includes those operating expenses, reserve for replacements, taxes, special assessments and ground rents, if any, which are the responsibility of the Cooperative membership as a whole rather than of the individual members and will include the cost of occupancy of the units assigned to employee use. The GOR is calculated in accordance with the instructions in [Section 17.3.3](#) and is accumulated as a special reserve in order to meet possible contingencies.
  3. **Outstanding Debt.** Past due accounts payable and outstanding project liabilities must be cleared and released, or otherwise fully satisfied, prior to or at loan closing. Examples of such items include deferred management fees, overdue utility bills or real estate taxes, or trade payables. These items are not to be included in the eligible debt basis.
  4. **Completion of the HUD-92264-A and Determining the Maximum Insurable Mortgage.** Pages 1-2 of the HUD-92264-A shall be completed according to existing instructions, modified as noted in [Section 17.3.1](#).

## 17.5.5 Asset Management Processing

A. Asset management processing requirements for cooperatives are identical to those used in processing Section 223(f) applications for mortgage insurance. Therefore, current Section 223(f) processing

procedures for Cooperatives submitted under this Section of the MAP guide should be used in loan processing.

## 17.6 Loan Closing Procedures

A. Follow Section 223(f) closing procedures in the Multifamily Closing Guide and contact the Regional Center or Satellite Office for the FHA Required Closing Instruments, FHA Form No. 3257-B, set forth in Handbook 4550.3, Appendix 3-10.

**NOTE: The MAP Forms contained in this Appendix that are used by lenders and by HUD processing staff will be updated, revised and reissued in a Housing Notice after the Department has completed work that is currently underway to streamline application processing and program requirements. The Forms are otherwise unchanged.**

## Chapter 18 Section 223(a)(7)

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### 18.1 Introduction

A. This Chapter provides guidance on processing Section 223(a)(7) refinancing transactions for all currently insured multifamily properties. Programs administered by the Office of Healthcare Programs are not covered by this Chapter.

### 18.2 Purpose of Section 223(a)(7)

A. Section 223(a)(7) of the National Housing Act (NHA) permits refinancing of HUD-insured multifamily projects. Refinancing through Section 223(a)(7) results in prepayment of the existing mortgage, endorsement of a new mortgage and assignment of a new project number. Refinancing through Section 223(a)(7) typically reduces project debt service and increases operating cash flow by lowering the interest rate of the mortgage and/or by extending the amortization period. The increased project cash flow benefits properties and owners and reduces risk to the FHA Insurance Fund.

B. Section 223(a)(7) is applicable only to certain mortgages currently insured by FHA, as described below, and to HUD-held loans on projects subject to the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA). A mortgage refinanced pursuant to Section 223(a)(7) is insured under the same section of the NHA as was the mortgage originally insured under that Section of the Act. For example, a 223(a)(7) refinancing of a mortgage insured under Section 221(d)(4) or Section 207 pursuant to Section 223(f) would continue to be insured under the respective original Section.

C. Section 223(a)(7) refinancing is limited to existing properties in residential use. Section 223(a)(7) refinancing cannot include funds for new construction or expansion of the height or footprint of an existing building, or any repairs that involve ground disturbance. Section 223(a)(7) mortgage proceeds may be used to fund (a) the payoff of existing FHA-recognized indebtedness, (b) the cost of refinancing, (c) the cost of critical and non-critical repairs (as described in the required Capital Needs Assessment, subject to the cost limits, and (d) deposits to reserve for replacement accounts, as described in [Chapter 5, Section 5.10](#). Equity take-outs (often called “cash-out refinancing”) are not permitted under Section 223(a)(7).

### 18.3 Basic Program Requirements

#### 18.3.1 Standard Processing Time

A. In general, Section 223(a)(7) transactions should be processed expeditiously to reach a Firm Commitment decision within 30 calendar days of receipt of a complete application.



## 18.3.2 Inapplicable Mortgages

A. These instructions apply to the refinancing of multifamily properties with full insurance mortgages and previously coinsured mortgages converted to full insurance. Mortgages excluded from these instructions are:

1. risk share mortgages,
2. co-insured mortgages, and
3. Section 202 loans and other HUD-held mortgages (other than those subject to a debt restructuring under the Multifamily Assisted Housing Reform and Affordability Act (MAHRA)).

## 18.3.3 Maximum Mortgage

A. The mortgage may not exceed the lowest of the following Criteria described in Form HUD-92264-A:

1. **Criterion 1.** Amount that is lower than the lowest of the amounts derived in paragraphs 2, 3, and 4 of this [Section 18.3.3.A](#) below.
2. **Criterion 2.** Modified to read the “Original principal amount of the existing insured mortgage” that is to be refinanced (or the sum of the original principal amount of all mortgages to be refinanced if two or more mortgages on one single property are being refinanced).

NOTE: Both loans must be on one property with the same Single Asset Mortgagor Entity with identical legal descriptions (e.g., insured first mortgage coupled with a Section 241(a) loan). By statute, Section 223(a)(7) refinancing cannot be used to consolidate multiple loans on different projects secured by collateral with different legal descriptions that will remain separate, even if the sites are adjacent. See also [Chapter 3, Section 3.1.30, Scattered Sites](#), and [Section 18.3.13](#), Refinancing Partial Payment of Claim (PPC) Properties, for additional restrictions.

3. **Criterion 10.** Amount based on the cost to refinance the existing insured mortgage and other permitted debt, including any accrued but unpaid interest, permitted repairs, capital improvements, and loan closing charges. Specifically, the Criterion 10 Amount includes the unpaid principal balance of the existing insured mortgage (or mortgages if more than a single mortgage are being refinanced), plus a, b, and c below:
  - a. Loan closing charges, including the application fee, upfront Mortgage Insurance Premium (MIP), financing fee, total costs of prepayment penalties associated with the mortgage note, title and recording fees, and legal fees associated with the refinancing, and required deposits to the reserve for replacements.
    - 1) The cost of defeasance of any existing bond issue and bond discounts exceeding 10% of the proposed mortgage amount may not be included.
    - 2) The cost of any discounts may not be included in estimating the maximum mortgage amount.
  - b. Outstanding debt incurred in connection with capital improvements made to the property that are deemed acceptable to the Production Division Director of the Regional Office or other designated authority.

Not eligible for inclusion in calculating the maximum mortgage amount available for refinancing under Section 223(a)(7) is indebtedness incurred in connection with funding operating deficits, deferred management fees, deferred development fees or other non-capital costs (other than Section 223(d) loans) nor are past-due payables. See [Chapter 8, Section 8.5.1.2.G](#) for a discussion of clearing or resolving past-due payables at the time of closing.

- c. HUD-approved Critical and Non-critical repairs costs (as approved by the Production Division Director of the Regional Office or other designated authority).

For a discussion of permitted repairs, please see [Chapter 5, Section 5.1.3.A.1.](#), Eligible Construction Activities by Program, Class of Work, and [Chapter 5, Section 5.10.2](#), Processing for Refinance or Acquisition, Section 223(f) and 223(a)(7) and 241(a) for Repairs and Alterations.

- 1) Generally, Critical repairs must be completed prior to endorsement.
  - 2) Non-critical repairs may be deferred but should be completed within twelve months of endorsement. Generally, a 110% escrow will be established, which may be funded with a letter of credit. For further discussion. HUD may determine that a larger escrow is appropriate for projects with more extensive repairs or may waive the escrow for very minor replacement cost items.
4. **Criterion 5.** Amount based on debt service ratio. The amount that can be amortized by the applicable percentage described below of the project's estimated net operating income. The mortgage may exceed this amount by capitalizing the savings from any tax abatement that runs with the land. Physical occupancy assumptions used in calculating the project's estimated net operating income should be based on historical occupancy levels.

<b>Rent Structure</b>	<b>Minimum Debt Service Coverage Ratio (DSCR)</b>	<b>HUD-92264-A Criterion 5 loan ratio</b>
Projects with >90% of units assisted by Project-Based Section 8, and Cooperative Housing insured under Section 213	1.05	95.0%
All other projects	1.11	90.0%

### 18.3.4 Mortgage Term

**A.** The term of a new mortgage insured pursuant to Section 223(a)(7) may be extended up to 12 years beyond the maturity date of the existing, originally insured mortgage (extension limited by statute). The term cannot be extended beyond the lesser of (a) 75% of the remaining useful life of the project or (b) the maximum term permitted in the Section of the Act under which the existing mortgage is insured. If the existing mortgage is the result of a previous refinancing through Section 223(a)(7), or the combined balance of two loans, the longest allowable maturity date of the new mortgage is 12 years beyond the maturity date of the mortgage originally insured under the FHA insurance program, but notwithstanding this allowance, the term may not exceed 75% of remaining useful life of the project.

**B.** Example of Allowable Term/Maturity Date Extensions for a Section 223(a)(7) Refinancing of a Mortgage Currently Insured Under Section 223(f).

**Loan Requirements**  
Current loan program

**Loan Data**  
Section 223(f)

**Loan Requirements**

Maximum permitted term under the applicable program  
Assumed current loan amortization start date

**Loan Data**

35 years  
January 1, 2000

<b>Examples</b>	<b>Maturity date (original term)</b>	<b>New maximum maturity date if refinanced under 223(a)(7) on January 1, 2010</b>	<b>New maximum maturity date if refinanced for a second time under 223(a)(7) on January 1, 2013</b>
Example 1	January 1, 2035 (35 years)	January 1, 2045 (any later maturity would violate the maximum 35-year term limit under the applicable SOA, in this case 223(f))	January 1, 2047 (any later maturity would violate the maximum 12-year extension of the original mortgage's term)
Example 2	January 1, 2030 (30 years)	January 1, 2040 (any later maturity would exceed the 30-year term of the original mortgage)	January 1, 2042 (any later maturity would violate the maximum 12-year extension of the original mortgage's term)

**C. Example of Allowable Term/Maturity Date Extensions for a Section 223(a)(7) Refinancing of a Mortgage Previously Insured Under Section 221(d)(4)**

**Loan Requirements**

Original loan program  
Maximum permitted term under the 221(d)(4) program  
Assumed amortization start date of the Original 221(d)(4) loan  
Current loan program (see Example 3 and Example 4 below)

**Loan Data**

Section 221(d)(4)  
40 years  
January 1, 2000  
Section 221(d)(4) or Section 223(f)

**Examples of permitted term/maturity extensions for loans with different refinancing histories**

	<b>Maturity date (original term) as a Section 221(d)(4) project</b>	<b>New maximum maturity date if refinanced under 223(f) on January 1, 2010</b>	<b>New maximum maturity date if refinanced under 223(a)(7) on January 1, 2013</b>
Example 3 A (d)(4) loan is refi'd with a 223(f), and that is refi'd with an (a)(7)	January 1, 2040 (40 years)	January 1, 2045 (the maximum 35-year term limit under the applicable SOA, in this case 223(f))	January 1, 2048 (any later maturity would violate the maximum 35-year term limit under the applicable SOA, in this case 223(f))
Example 4 The same (d)(4) loan above is not refi'd with a 223(f) loan, but is refi'd with an (a)(7)	January 1, 2040 (40 years)	Not Applicable for this example (No 223(f) refinancing on this date)	January 1, 2052 (any later maturity would violate the maximum 12-year extension of the original mortgage's term)

**D.** If two or more existing FHA-insured multifamily loans (for a single property) are to be refinanced into a single Section 223(a)(7) loan, the term of the new Section 223(a)(7) mortgage may not exceed 12 years beyond the maturity date of the earliest-to-mature originally insured mortgage.

**E.** Any extension of the new mortgage term beyond the remaining term of the existing mortgage (or an additional mortgage per the paragraph immediately above) may not result in a mortgage term that exceeds 75% of the remaining useful life of the property.

### 18.3.5 Mortgage Insurance Premium

**A.** At endorsement, the borrower must pay an upfront MIP of 50 basis points for market rate housing; 25 basis points for Broadly Affordable housing; 35 basis points for Affordable housing; and 25 basis points for Green/Energy Efficient housing, or as subsequently revised in a Federal Register Notice. The mortgagee of record must submit Form HUD-9807, Request for Termination of Multifamily Mortgage Insurance, to obtain a refund for the borrower of a portion of the MIP paid pursuant to the original mortgage.

### 18.3.6 Environmental Review Requirements

**A.** HUD has determined programmatically that Section 223(a)(7) projects are categorically excluded, not subject to the laws and authorities (CENST) at 50.4 as per 24 CFR 50.19(b)(21) other than the flood insurance requirements. Transactions that require repairs in excess of routine maintenance are not appropriate for processing under Section 223(a)(7). (See [Chapter 9, Section 9.1.3.A](#).)

**B.** The Lender must submit a HEROS report at the CENST level of review and HUD must review and sign off in HEROS.

**C. Flood insurance.** The lender must determine if the property is located in a special flood hazard area (based upon the most recent Flood Hazard Map) per [Chapter 9, Section 9.6.5](#). If the site is determined to be in such an area, the borrower must obtain and maintain Flood Insurance coverage for the duration of the mortgage in the amount specified in [Chapter 3](#).

**D.** Compliance with MAP radon requirements is encouraged but not required.

### 18.3.7 Fees

**A. Application fee.** The non-refundable application fee paid to HUD is 15 basis points.

**B. Maximum fees.** Lenders may charge financing fees that may not exceed the amounts below. Fees may be increased for bond transactions to cover fees associated with costs of issuance. Lender legal fees are not included in Lender Fees for purposes of the calculations below.

New Loan Amount	Maximum Lender Fees (not bond transactions)	Maximum Lender Fees (bond transactions)
Portion of loan amount above \$2,000,000	2.00%	4.00%
Loan amount up to \$2,000,000	3.50%	5.50%

**C. Inspection fee.** There is no inspection fee even if there are deferred non-critical repairs.

### **18.3.8 Project Numbering**

A. Projects will be assigned the next FHA number under the same Section of the Act under which the project was originally insured.

### **18.3.9 Regulatory Agreement**

A. A new Regulatory Agreement must be executed at closing under the same Section of the Act as the original loan (including modifying the principal(s) in provision 50). Amending and restating the existing Regulatory Agreement is not permitted.

### **18.3.10 Cost Certification**

A. Cost certification is not required. As a condition of the Firm Commitment, HUD may require the borrower to produce information related to the cost and completion of Critical and Non-critical repairs and to provide appropriate documentation to HUD, including, at a minimum, invoices, receipts and photos, as repair funds are drawn from escrows. The need for site visits in connection with the completion of repairs or escrow draws will be determined by the Technical Branch Chief of the HUD office with jurisdiction over the property. Projects with minor repairs typically would require few, if any, site visits by HUD staff.

### **18.3.11 Commencement of Amortization**

A. Amortization will begin on the first day of the second month following the date of the initial/final endorsement of the mortgage note.

### **18.3.12 Source of Funds for Prepayment Penalty Costs**

A. Prepayment penalty costs are, as discussed in [Section 18.3.3.A.3.a](#) eligible mortgageable costs. The amount of the cost that is not supported by the refinancing must be paid from other sources.

B. The one exception to the general prohibition that lenders may not pay or otherwise provide funds for borrower costs is that in 223(a)(7) transactions lenders may pay that portion of prepayment penalty costs not covered by the controlling loan criterion.

C. The lender's application must include an estimated Sources and Uses statement specifying the amount of any lender fees or profit used to pay prepayment penalty costs and if the total prepayment penalty costs associated with the mortgage note(s) to be repaid exceed such amount, the amount of prepayment penalty costs to be paid from other sources, specifying such source(s).

D. The amounts of lender fees or profit and borrower or other funds used to pay prepayment penalties should be shown as sources in the project's Sources and Uses statement referenced in [Section 18.3.12.C](#), above.

E. The lender may not pay, either directly or indirectly, for repairs or costs other than the Prepayment Penalty as noted above. The source of funds for repairs and transactions costs must be accounted for separately in the project's Sources and Uses statement referenced in [Section 18.3.12.C](#), above.

### 18.3.13 Refinancing Partial Payment of Claim (PPC) Properties

**A.** A recast first mortgage loan and an associated Partial Payment of Claim (PPC) second mortgage may both be refinanced in a Section 223(a)(7) transaction so long as the new loan amount does not exceed the original principal amount of the recast first mortgage loan (i.e., the modified Mark to Market or PPC restructuring loan amount), and not the original principal amount prior to the PPC or the Mark to Market transaction, and it is clear the market or project conditions have improved to the point there is little risk the new loan will default.

**B.** HUD requires that the HUD-held second mortgage be (1) paid off in full or partially paid off; and (2) subordinated and remain secured. If the HUD-held second mortgage is partially paid off or remains unpaid, HUD will maintain the surplus cash split of 25% to owner and 75% to pay down the HUD-held second (statutory under MAHRA). Pursuant to the owner paying down (or paying off) the HUD-held second mortgage with available loan proceeds, mortgage proceeds must first be allocated to fund the reserve for replacement account (in the amount required by the CNA) and make needed repairs to assure the ongoing value and viability of the project.

**C.** Upon refinance, debt service payments may not exceed what is currently in place. Since these properties have previously undergone a PPC, HUD would not want them encumbered with additional debt that could negatively affect future financial stability. Consequently, the interest rate on the new mortgage must be competitive enough such that substantial savings in debt service payments will result.

**D.** The debt service coverage rate of 1.2x will be required to account for the additional risk inherent with a former PPC.

**E.** Processing of such a transaction would follow the same procedure as that of other multiple mortgages permitted to be wrapped into a single 223(a)(7) refinance transaction. HUD Regional Office Production staff should solicit particular input from Asset Management staff on these transactions.

### 18.3.14 Commitment, Regulatory Agreement and Closing

**A. Commitment.** The commitment should be in letter form listing the: a) insured mortgage amount, b) the Section of the Act with any appropriate further reference, e.g., Section 221(d)(4) pursuant to Section 223(a)(7) or Section 207/223(f) pursuant to Section 223(a)(7), c) loan terms and requirements, d) any required repairs, e) the requirement for executing a new Regulatory Agreement, f) the requirement that the owner notify the Office of Asset Management & Portfolio Oversight (OAMPO) when any repairs deferred until after endorsement are underway and/or completed, and g) any Special Conditions.

**B.** The commitment is valid for a period of 90 days. It is not anticipated that extensions will be necessary in a Section 223(a)(7) refinancing. However, the Regional Director may extend Section 223(a)(7) commitments for a maximum of three additional 30-day periods, provided that processing and underwriting conclusions are updated as necessary, so they are current at the time of any extension.

**C.** The commitment must require that the existing Reserve for Replacements be transferred in total to the new mortgage and specify the dollar amount of funds to be transferred and the amount of additional replacement deposits. To the extent that the CNA requires an initial deposit to the reserve for replacement account that is less than the current balance of the existing reserve account, then any immediate repairs

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required by the CNA may be paid from funds in the existing reserve account. (See [Chapter 8](#) for additional guidance).

**D. Closing.** Loans shall be closed in accordance with [Chapter 19, Closing Guide](#).

## 18.4 Processing

**A.** Eligible Section 223(a)(7) applications submitted by lenders approved to submit MAP applications must be processed under MAP. See [Chapter 1, Section 1.1](#) for additional guidance.

### 18.4.1 Project Analysis

**A.** Lenders must provide an analysis with their applications which provides details about the sizing of the Section 223(a)(7) mortgage consistent with this guidance and a Sources and Uses statement consistent with such mortgage sizing calculations. The following may serve as an example of the content and presentation of a submitted Project Analysis. Click the below link to the MAP Guide on HUD Clips, to review the example project analysis Excel spreadsheet called: “Example of 223(a)(7) Project Analysis required per Chapter 18.4 – Release 1.0 (5/4/2016)”:

[https://www.hud.gov/program\\_offices/administration/hudclips/guidebooks/hsg-GB4430](https://www.hud.gov/program_offices/administration/hudclips/guidebooks/hsg-GB4430)



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**B. The following is an example of a sample transaction – the data shown is for illustration purposes only.**

Section 223(a)(7) - Project Analysis - Mortgage Sizing and Sources and Uses Worksheet				Page 1
<b>To complete the worksheet, fill in only the blue cells.</b>				
Project Name	Oak Tree Manor Apartments	Project #	123-45678	
Project City, ST	Springfield, MO	Name of Mortgagor	Oak Tree Manor LP	
Lender	FHA Capital Mortgage, Inc.			
I. Lowest Mortgage Amount of criteria		\$ 4,800,000	Requested Amount = Lower Mtg by Choice	
1. Mortgage or Loan Amount Requested in Application	This is a manual input usually equal to the lowest of the three amounts below:		\$ 4,800,000	
2. Original Principal Amount of Mortgage(s) to be refinanced	Difference vs. request	\$200,000	\$ 5,000,000	Middle
5. Criterion 5. Amount Based on Debt Service Ratio (see calculation 5. details below)		\$1255,700	\$ 6,055,700	Highest
10. Criterion 10. Amount Based on the cost of refinancing (see calculation 10. details below)		\$1500	\$ 4,801,500	Lowest
<b>II. Total Requirements for Settlement</b>				
<u>Uses - Mortgageable Amounts</u>				
Current Unpaid Principal Balance of Existing Debt	\$	4,570,638		
Total Prepayment Penalty Costs	\$	137,119		
HUD approved debt to refinance via the A7	\$	-		
Critical repairs	\$	25,000		
Non critical repairs	\$	10,000		
Initial deposit to Reserve for Replacements	\$	12,000		
Fees	\$	-		
Financing fees (excluding Title&Rec., Leg&Org.)*	\$	112,800		
Title & Recording	\$	19,000		
Legal & organizational	\$	4,000		
Other permitted costs	\$	-		
(a). Total Mortgageable Uses of Cash	\$	<b>4,890,557</b>		
<u>Sources</u>				
FHA Mortgage Amount	\$	4,800,000		
Discount	\$	-		
Lender paid prepayment penalty costs	\$	48,000		
Grants & other sources to pay costs + de min Indr R4R de	\$	-		
Purchased and Transferred Reserves	\$	41,000		
(b). Total Sources of Cash	\$	<b>4,889,000</b>		
Note: net proceeds to pay borrower costs: \$ 4,848,000				
<u>Cash Requirement Calculation</u>				
(c)=(a)-(b). Mortgageable Uses of cash less Sources	\$	1,557		
(d). Non-mortgageable: Assurance of Completion Escrow	\$	2,000		
(e)=(c)+(d). Total Cash required	\$	<b>3,557</b>		
<b>III. Payback* calculations &amp; change in interest rate and maturity date</b>				
	<u>P&amp;I/mo.</u>		Transaction costs**	\$272,919
Refi'd Debt***	\$26,443		Divided by Annual P&I savings	\$53,565
New Mortgage	\$21,979		Equals Payback Period (in years)	<b>5.1</b>
P&I savings (monthly)	\$4,464		New 223(a)(7) interest rate:	4.250%
			Old interest rate:	5.375%
Annual P&I savings	\$53,565		Interest Rate reduction:	<b>1.125%</b>
			Maturity extension (yrs.):	7.3
Fin. Fees, pre-pmt penalties, T&R, and legal fees.				
* Payback period for is information only; it is not a program requirement. ** Includes incremental costs to third parties not incurred or incurable under existing operation.				
Chapter 18 - Section 223(a)(7) Project Analysis example		Example derived from: Section 223a7 Mortgage Sizing and Sources and Uses worksheet 9-24-15.xlsx		

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C. The following is an example of a sample transaction – the data shown is for illustration purposes only

Section 223(a)(7) - Project Analysis - Mortgage Sizing and Sources and Uses Worksheet				Page 2
Project Name	Oak Tree Manor Apartments	Project #	123-45678	
Project City, ST	Springfield, MO	Name of Mortgage	Oak Tree Manor LP	
Lender	FHA Capital Mortgage, Inc.			

**5. Amount Based on Debt Service Ratio**

a. Mortgage Interest Rate	4.250000%	
b. Mortgage Insurance Premium Rate	0.450000%	
c. Initial Curtail Rate @ term assumed (mos.)	420	1.244728%
d. Sum of Above Rates		5.944728%
e. Net Income	\$ 400,000 x 90.0%	\$360,000
f. Annual Ground Rent + Annual Spec. Assmt.		
g. Line e minus line f		\$360,000
h. Line g divided by line d		\$6,055,700
i. Annual Tax Abatement divided by		
j. Line h plus line i		\$6,055,700

Note: rounding down amount: \$86

**10. Amount Based on Existing Indebtedness, Repairs, and Loan Closing Charges\***

<p><i>To Calc max mortgage based on cost, follow the steps below:</i></p> <p><i>First, list known costs:</i></p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width: 40%;">Current Unpaid Principal Balance of Existing Debt</td> <td style="width: 10%; text-align: center;">\$ 4,570,638</td> <td style="width: 10%; text-align: center;">100.0%</td> <td style="width: 10%; text-align: center;">\$ 4,570,638</td> <td style="width: 20%;"></td> </tr> <tr> <td>Total Prepayment Penalty Costs</td> <td style="text-align: center;">\$ 137,119</td> <td style="text-align: center;">3.0%</td> <td></td> <td></td> </tr> <tr> <td>Prepmt pnltly pd by lender</td> <td style="text-align: center;">\$ 48,000</td> <td></td> <td>Prepmt pd from loan proceeds (calc't'd):</td> <td style="text-align: center;">\$89,119</td> </tr> <tr> <td>De min. R4R dep by lender</td> <td style="text-align: center;">\$ -</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Ttl. borrower costs pd by lend</td> <td style="text-align: center;">\$ 48,000</td> <td></td> <td></td> <td></td> </tr> <tr> <td>HUD approved debt to refinance via the A7</td> <td style="text-align: center;">\$ -</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Amount required to pay off existing debt</td> <td style="text-align: center;">\$4,707,757</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Critical repairs</td> <td style="text-align: center;">\$ 25,000</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Non critical repairs</td> <td style="text-align: center;">\$ 10,000</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Initial deposit to Reserve for Replacements</td> <td style="text-align: center;">\$ 12,000</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Fees</td> <td style="text-align: center;">\$ -</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Title &amp; Recording</td> <td style="text-align: center;">\$ 19,000</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Legal &amp; organizational</td> <td style="text-align: center;">\$ 4,000</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Other permitted costs</td> <td style="text-align: center;">\$ -</td> <td></td> <td></td> <td></td> </tr> <tr> <td>(a). Total known/fixed costs before other costs</td> <td style="text-align: center;">\$ 4,729,757</td> <td></td> <td></td> <td></td> </tr> <tr> <td><i>List known non FHA-loan sources that offset costs:</i></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>Grants &amp; other sources to pay costs</td> <td style="text-align: center;">\$ -</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Purchased and Transferred Reserves</td> <td style="text-align: center;">\$ 41,000</td> <td></td> <td></td> <td></td> </tr> <tr> <td>(b). Sum of known amounts to offset costs</td> <td style="text-align: center;">\$41,000</td> <td></td> <td></td> <td></td> </tr> <tr> <td>(c)=(a)-(b). Total known costs less known offset sources</td> <td style="text-align: center;">\$4,688,757</td> <td></td> <td></td> <td></td> </tr> </table> <p><i>Second, list unknowns, i.e., costs as %s of the final mortgage amount:</i></p> <table style="width:100%; border-collapse: collapse;"> <tr><td>FHA MIP</td><td style="text-align: center;">0.45%</td></tr> <tr><td>FHA exam</td><td style="text-align: center;">0.15%</td></tr> <tr><td>Financing Fee</td><td style="text-align: center;">0.50%</td></tr> <tr><td>Perm Placement fee</td><td style="text-align: center;">1.25%</td></tr> <tr><td>Allowance extra</td><td style="text-align: center;">0.00%</td></tr> <tr><td>Discount</td><td style="text-align: center;">0.00%</td></tr> <tr><td>Total of unknowns %s</td><td style="text-align: center;">2.35%</td></tr> <tr><td>(d). 1 minus % sum above is the gross up factor</td><td style="text-align: center;">97.65%</td></tr> </table> <p><i>Third, apply gross up factor based on unknowns</i></p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width: 40%;">(c)/(d). Calculated cost mortgage</td> <td style="width: 10%; text-align: center;">\$ 4,801,594</td> <td style="width: 10%;"></td> <td style="width: 10%;"></td> <td style="width: 20%;"></td> </tr> <tr> <td>Calculated cost mortgage rounded down</td> <td style="text-align: center;">\$ 4,801,500</td> <td></td> <td></td> <td></td> </tr> </table> <p><i>The figures below recategorize the figures above to show a traditional cost mortgage breakdown:</i></p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">a. Total Existing Indebtedness</td> <td style="width: 20%; text-align: center;">\$ 4,659,757</td> <td style="width: 20%;"></td> </tr> <tr> <td>b. Required Repairs</td> <td style="text-align: center;">\$ 35,000</td> <td></td> </tr> <tr> <td>c. Other Fees</td> <td style="text-align: center;">\$ -</td> <td></td> </tr> <tr> <td>d. Loan Closing Charges ** (see details below)</td> <td style="text-align: center;">\$ 147,835</td> <td></td> </tr> <tr> <td>e. Sum of line a through line d</td> <td style="text-align: center;">\$4,842,592</td> <td></td> </tr> <tr> <td>f. Enter the Sum of any Grant/Loan and Reserves for Replacement and Major Movable Equipment on Deposit</td> <td style="text-align: center;">\$41,000</td> <td></td> </tr> <tr> <td>g. Line e minus line f (rounded down)</td> <td style="text-align: center;">\$4,801,500</td> <td></td> </tr> </table> <p style="text-align: right; font-size: small;">Note: rounding down amount: \$92 consistency chk vs. M 108 (should be \$0)</p>	Current Unpaid Principal Balance of Existing Debt	\$ 4,570,638	100.0%	\$ 4,570,638		Total Prepayment Penalty Costs	\$ 137,119	3.0%			Prepmt pnltly pd by lender	\$ 48,000		Prepmt pd from loan proceeds (calc't'd):	\$89,119	De min. R4R dep by lender	\$ -				Ttl. borrower costs pd by lend	\$ 48,000				HUD approved debt to refinance via the A7	\$ -				Amount required to pay off existing debt	\$4,707,757				Critical repairs	\$ 25,000				Non critical repairs	\$ 10,000				Initial deposit to Reserve for Replacements	\$ 12,000				Fees	\$ -				Title & Recording	\$ 19,000				Legal & organizational	\$ 4,000				Other permitted costs	\$ -				(a). Total known/fixed costs before other costs	\$ 4,729,757				<i>List known non FHA-loan sources that offset costs:</i>					Grants & other sources to pay costs	\$ -				Purchased and Transferred Reserves	\$ 41,000				(b). Sum of known amounts to offset costs	\$41,000				(c)=(a)-(b). Total known costs less known offset sources	\$4,688,757				FHA MIP	0.45%	FHA exam	0.15%	Financing Fee	0.50%	Perm Placement fee	1.25%	Allowance extra	0.00%	Discount	0.00%	Total of unknowns %s	2.35%	(d). 1 minus % sum above is the gross up factor	97.65%	(c)/(d). Calculated cost mortgage	\$ 4,801,594				Calculated cost mortgage rounded down	\$ 4,801,500				a. Total Existing Indebtedness	\$ 4,659,757		b. Required Repairs	\$ 35,000		c. Other Fees	\$ -		d. Loan Closing Charges ** (see details below)	\$ 147,835		e. Sum of line a through line d	\$4,842,592		f. Enter the Sum of any Grant/Loan and Reserves for Replacement and Major Movable Equipment on Deposit	\$41,000		g. Line e minus line f (rounded down)	\$4,801,500	
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Refi'd Debt***	\$5,000,000	FHA #	123-45678	
Interest Rate	5.375%	Amort. Start date	6/1/2008	Maturity date
Maturity-ys.	35.0	Princ. Bal date	9/1/2015	Rmng.Term-mos.
Calc'd amort.	-\$429,362	8.6%	Month of refi	333
Calc'd bal.	\$4,570,638	9.14%	Year of refi (truncated)	87
				7

*Note: Repairs Escrow calculations*

\$10,000	a.	Non-critical repairs
20.0%	b.	% escrow
\$2,000	c.	\$ escrow

*Note: Total knowns excluding payoff*

\$ 70,000
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**D. The following is an example of a sample transaction – the data shown is for illustration purposes only.**

Section 223(a)(7) - Project Analysis - Mortgage Sizing and Sources and Uses Worksheet				Page 3
<i>Project Name</i>	Oak Tree Manor Apartments	<i>Project #</i>	123-45678	
<i>Project City, ST</i>	Springfield, MO	<i>Name of Mortgagor</i>	Oak Tree Manor LP	
<i>Lender</i>	FHA Capital Mortgage, Inc.			

**V. Condensed summary of Sources and Uses**

<u>Sources (summary)</u>		<u>Uses (summary)</u>	
New Section 223(a)(7) mortgage	\$ 4,800,000	Unpaid Principal Balance of existing mortgage	\$ 4,570,638
Lender payment of all or a portion of prepayment penalty	\$ 48,000	Initial deposit to Reserve for Replacements	\$ 12,000
LOC - Borrower funding of non-mortgageable Assurance of Completion escrow	\$ 2,000	Non-critical repairs	\$ 10,000
		Prepayment Penalty (entire amount due)	\$ 137,119
		Assurance of completion escrow (non-mortgageable)	\$ 2,000
Subtotal of selected Sources	\$ 4,850,000	Subtotal of selected Sources	\$ 4,731,757
All other Sources (includes transferred reserves, contributed cash & LOCs, + other trade. prem.)	\$ 40,557	All other Uses (includes fin. fees & costs, other refi'd debt, repairs, discnts. & misc.)	\$ 158,800
<b>Total Sources</b>	<b>\$ 4,890,557</b>	<b>Total Uses</b>	<b>\$ 4,890,557</b>

**V. Financing Charge details for Cost Based Criterion 10. mortgage and the Actual mortgage**  
*Note that the actual mortgage may be equal to the Cost Based Criterion Mortgage if this is the maximum permitted mortgage):*

Fees for the <u>Criterion 10 mortgage</u> of \$ 4,801,500	Fees based on the <u>actual mortgage amount</u> of \$ 4,800,000																																												
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**VI. Details of prepayment penalty and sources of payment**

	\$	% of new actual mtg. amt.
Total Prepayment Costs to be paid	\$137,119	2.857%
Total prepayment pnly to be paid from mortgage proce	\$89,119	1.857%
Total prepayment pnly to be paid by lender	\$48,000	1.000%
Any de minimus lender deposit into the Res. For Repl.	\$0	0.000%

## 18.4.2 Verification of Existing Borrower Debt

**A.** The lender must verify the amount and terms, including prepayment penalties and repayment terms, of existing insured mortgage debt and any other secured or unsecured debt of the borrower related to the project.

1. The application should include a copy of the mortgage note, and all documents evidencing other indebtedness.

2. The lender should compare the mortgage debt information submitted to the lender with information in the project's financial statements and the title search report. Any discrepancies should be explained in writing by the owner. Since the owner is prohibited from encumbering the project without HUD's written approval, if the owner is in violation of this provision, the violation should be brought to the attention of the Director of Asset Management in the HUD Regional Office with jurisdiction.
3. If the borrower has made a loan to fund repairs or betterments (whether or not evidenced on a HUD-approved promissory note), a determination must be made as to whether the debt is acceptable to HUD. If the debt is to be repaid as part of the 223(a)(7), it is not necessary for the debt to be on a HUD-approved form prior to closing. However, if the debt is to remain in place after closing to reduce cash requirements, the owner must evidence the debt on HUD-approved forms.
4. When additional indebtedness is associated with betterments made to the project and previously financed, the borrower must provide a list of betterments financed by that indebtedness.

### 18.4.3 CNA Requirement

A. A Capital Needs Assessment (CNA) is required for all Section 223(a)(7) applications. See [Chapter 5, Section 5.10.4](#). For purposes of Section 223(a)(7) refinancing, an existing CNA may be accepted if it conforms with current guidance for acceptability per [Chapter 5, Section 5.10.4](#) under Processing for Refinance or Acquisition, Section 223(f) and 223(a)(7) and 241(a) for Repairs and Alterations.

### 18.4.4 Site Visits

A. Site visits (by either the lender or HUD) may not be required, although in case of large loans or distressed loans regardless of size, a site visit by the lender (and/or HUD staff) may be appropriate and necessary.

### 18.4.5 Section 202 Mortgage Refinancing

A. Section 202 projects that are refinanced with an FHA-insured loan are exempt from Section 514(g) of MAHRA under Section 514(h)(2) of that Act, for as long as the first FHA refinance loan is outstanding. If that FHA loan is subsequently again refinanced (using Section 223(a)(7) for example), that Section 514(h)(2) exemption is no longer applicable. Thus, if the Section 8 rents were above market, a reduction of rents to market at the expiration of the Contract term is required, and the underwriting of the new loan must reflect rent levels which change from currently allowed rents to market rate rents in accordance with the expiration of the Contract. Such projects must be sent to the Office of Recapitalization for processing the rent reduction under the Mark-to-Market program.

B. Example of Underwriting a Section 202 Project Exempt Under MAHRA's Mark-to-Market Provisions

#### Loan Requirements

Original loan program

#### Section of the Act

Section 202

202 Loan Examples of rent-setting requirements for loans with different refinancing histories	Refinanced into an insured FHA loan in accordance with MAHRA	Exempt from Section 514(g) rent adjustment?	Subsequently refinanced	Exempt from Section 514(g) rent adjustment for underwriting/loan sizing under MAP?
Loan 1	Yes	Yes - Under Section 514(h)(2)	Yes	No - Section 514(h)(2) no longer applies; adjustments would apply at the HAP contract's expiration

### 18.4.6 Ownership and Property Management Changes

**A.** The lender must verify that any changes in ownership since the endorsement of the existing loan have been properly documented and approved through Previous Participation Review (e.g., submission of Form HUD-2530). Section 223(a)(7) applications should not be submitted until any required Previous Participation Reviews have been processed.

**B.** Any changes of ownership are subject to Transfer of Physical Assets (“TPA”) procedures. However, the TPA application may be processed concurrently with the 223(a)(7) transaction.

## 18.5 Application Requirements Checklist

**A.** See [Appendix 4, Section A.4.3](#) for the Section 223(a)(7) Application Requirements Checklist, at the following HUD Clips link: <https://www.hud.gov/sites/documents/4430GAPPHSGG-BM.PDF>.

## Chapter 19 Closing Guide

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### Part I: Introduction and Procedures

## 19.1 General Loan Closing Procedures

### 19.1.1 Applicability

A. This Chapter of the MAP Guide (“Guide”) applies to all FHA-insured Multifamily loan closings authorized under the National Housing Act (12 USC 1701 et. seq., the “Act” or “NHA”), whether processed through MAP or through Traditional Application Processing (TAP). This Chapter supersedes and replaces the FHA Multifamily Program Closing Guide (last revised February 2015).

#### 19.1.1.1 Objective

A. This Chapter is intended to:

1. Provide procedures and protocols for Lender, counsel for Lender (Lender’s Counsel), Borrower, counsel to the Borrower, the assigned closing attorney (HUD Closing Attorney) from the Office of General Counsel (OGC), the HUD Multifamily Regional Center Director (RC Director), and other Multifamily Housing Production (MHP) staff, to prepare, submit, and review closing packages and otherwise prepare for the closing of Multifamily loans; and
2. Promote uniformity in the requirements and procedures for HUD-closings held nationwide.

#### 19.1.1.2 Defined Terms

A. Capitalized terms used in this Chapter have the meanings provided in the Project Loan documents, including the Note (Multistate) (form HUD-94001M), Multifamily [Leasehold] (Mortgage, Deed of Trust, Deed to Secure Debt, or Other Designation as Appropriate in jurisdiction) Assignment of Leases and Rents and Security Instrument (form HUD-94000M) (the Security Instrument), and Regulatory Agreement for Multifamily Projects (form HUD-92466M) (the Regulatory Agreement), unless specifically defined in this Chapter.

B. As used in this Chapter, the term “Program Obligations” has the meaning set forth in the Regulatory Agreement.

C. For purposes of this Chapter, RC Director includes the RC Director’s designees, as appropriate and pursuant to the Office of Housing’s delegations of authority. The RC Director is the organizational position with delegated authority to make administrative policy determinations with respect to insuring an FHA loan for Multifamily projects, in accordance with Program Obligations.

## 19.1.2 Closing Document Review and Procedures

### 19.1.2.1 General

A. This [Section 19.1.2](#) outlines HUD's requirements and general procedures for review of draft closing documents, including Lender's submission of the draft documents and resolution of issues identified during application processing and closing review. The RC Director may request OGC legal assistance throughout the processing period, including when the RC Director identifies complex legal issues and determines that the resolution of a legal issue may be uncertain, problematic, or time-consuming, or may delay closing.

### 19.1.2.2 Firm Application

A. Upon Lender's submission of an application for Firm Commitment, the RC Director may request OGC legal assistance and consultation where complex legal issues have been identified, the resolution of which may be uncertain, problematic, or time-consuming, and such review would reduce impediments to or delays in closing after the Firm Commitment is issued.

B. Lenders and Lender's Counsel may contact the RC Director to request early legal review consistent with this subsection. The RC Director will evaluate the validity of each outside request and will consult with OGC when necessary.

### 19.1.2.3 After Firm Commitment Issuance and Prior to Package Submission

**A. Initial Communication.** Once the RC Director has issued a Firm Commitment, the RC Director will send an introductory or "Hello" communication to Lender within two (2) business days after the issuance of the Firm Commitment. The communication will provide:

1. The name and contact information for the assigned Closing Coordinator;
2. The name and contact information for an initial point of contact in OGC and information about when the actual HUD Closing Attorney will be assigned (as set forth below in [Section 19.1.2.3.B](#));
3. A request that Lender identify its preferred closing date;
4. A request that Lender provide a specific timeline for closing by its preferred target date based on HUD's established review times, set forth in this Chapter; and
5. A request that Lender identify any external deadlines relevant to closing (e.g., bond/tax credit deadlines).

**B. Lender's Introductory Response and Interim Communication:**

1. Lender must respond to the assigned Closing Coordinator in writing to provide the information requested in the introductory letter. The Closing Coordinator will distribute the Lender's response to the relevant staff within MHP and OGC.
2. If Lender requests a preferred closing date that is within 60 calendar days, OGC and the RC Director will review the information provided and mutually agree upon a Tentative Closing Date.
3. The Tentative Closing Date is preliminary, established only to manage expectations, and may be changed by HUD if Lender or Lender's Counsel fails to adhere to the review times prescribed in this



Chapter, including timely submission of a complete draft closing package and response to HUD comments. Additionally, any Tentative Closing Date remains subject to rescheduling by HUD due to exigent circumstances.

4. HUD will not transition from a Tentative Closing Date to a confirmed closing date until the RC Director and HUD Closing Attorney approve a substantially complete draft closing package, as set forth below.
5. If a Tentative Closing Date is set, OGC will assign a HUD Closing Attorney that is available for the Tentative Closing Date.
6. If a Tentative Closing Date is not set, OGC will maintain a Point of Contact for the convenience of all parties, and assign a HUD Closing Attorney when Lender submits the draft closing package to the Closing Coordinator.
7. OGC will endeavor to provide continuity by assigning the same HUD Closing Attorney for closing review that was assigned for any early legal review. The assignment of the HUD Closing Attorney remains within the discretion of OGC and may be adjusted, for example, where the workload of an individual attorney or an OGC office precludes assignment of the same attorney or office. Where a change in the attorney assignment occurs, OGC will advise all relevant parties as soon as possible.
8. The Closing Coordinator will promptly notify Lender and Lender's Counsel of any set Tentative Closing Date and provide contact information for the OGC Point of Contact, or HUD Closing Attorney, as applicable.

**C. Preparation and Delivery of Draft Closing Package.** Lender's Counsel is responsible for competently compiling the draft closing package for submission to HUD, which includes reviewing all documentation to correct errors and omissions prior to submission and complying with the document submission standards set forth in [Section 19.4.1](#). To facilitate the HUD Closing Attorney's review, Lender's Counsel may provide a written narrative outlining legal issues that will require negotiation or special attention of the HUD Closing Attorney. If any revision is made to a required document after submitting the draft closing package, Lender's Counsel must promptly email the HUD Closing Attorney to identify the revision(s) made and provide an explanation as to why the revision(s) are necessary or appropriate.

**D. Submission Deadlines for Tentative Closing Dates.** To maintain a Tentative Closing Date, Lender or Lender's Counsel must submit a draft closing package to the Closing Coordinator at least thirty (30) business days prior to any Tentative Closing Date. The Lender's failure to submit a draft closing package by this deadline may result in a change to a Tentative Closing Date, at the discretion of the RC Director. The Lender should take into consideration holidays, GNMA delivery schedule, bond closing and tax credit funding deadlines, and other known events that may affect review times.

#### 19.1.2.4 HUD Review of Closing Packages

**A. Preliminary Review by Closing Coordinator.** The Closing Coordinator will conduct a cursory review at the time of submission to determine whether the submission appears generally ready for substantive closing review. If the Closing Coordinator determines the submission is adequate to begin closing review, the Closing Coordinator will initiate the closing package review process outlined in this subsection.

**B.** The Closing Coordinator will notify the Lender when a package is determined to be inadequate to begin closing review, together with a list of deficiencies. Lender must resolve threshold deficiencies identified

by the Closing Coordinator, and update the draft closing package accordingly, before the Closing Coordinator will route the closing package for OGC and MHP closing review.

**C.** Tentative Closing Dates are subject to change at the RC Director's discretion for any Project where the draft package submission is determined by the Closing Coordinator to be inadequate to start closing review.

**D. Notice of Closing Review and Communication.** The Closing Coordinator will communicate with all relevant parties after the Closing Coordinator initiates the closing package review. If not yet assigned, OGC will promptly make a HUD Closing Attorney assignment once the Closing Coordinator initiates the closing package review.

**E.** The HUD Closing Attorney will contact Lender's Counsel within 2 business days following the Closing Coordinator's approval to start review. The HUD Closing Attorney will be available to participate in calls at the request of the RC Director, including when specific legal issues have been identified that require input from the HUD Closing Attorney (e.g., title issues that may require negotiation).

**F. Substantive Closing Review.** Assigned MHP staff and the HUD Closing Attorney will substantively evaluate each package routed for closing review by the Closing Coordinator and will endeavor to meet previously set Tentative Closing Dates subject to the limitations set forth in this section. The RC Director and HUD Closing Attorney will work collaboratively to review draft closing packages and maintain set Tentative Closing Dates.

**G.** The RC Director is primarily responsible for reviewing the substantive business terms of each document submitted, including without limitation, the review and consideration of requested closing document changes that relate to business and policy concerns, business implications of litigation, satisfaction of Firm Commitment conditions, insurance coverage, UCC filings, site plans, survey matters, title encumbrances, agreements related to construction, architectural work, and disbursement of funds. The RC Director may only accept changes to the HUD forms or deviations from the requirements of this Chapter that have been made in accordance with the procedures set forth in [Section 19.4.1](#).

**H.** The HUD Closing Attorney is primarily responsible for determining that the draft submission is legally sufficient, meaning:

1. The documents submitted do not reflect discernable violations of statute or regulation;
2. All standard form documents are accurate and complete (including duly approved changes);
3. Riders and boilerplate provisions required by Program Obligations are accurate and complete;
4. Evidence to satisfy Firm Commitment special conditions has been reviewed and approved by the RC Director, and is included in the submission; and
5. Documents are consistent with deal-specific requirements of the Firm Commitment, the applicable closing checklists, and determinations of the RC Director.

**I. HUD Comments and Lender Response/Resubmission.** After completing the initial substantive review, assigned MHP staff and the HUD Closing Attorney will provide the Closing Coordinator with comments identifying deficiencies in the package. The Closing Coordinator and/or the HUD Closing Attorney will electronically distribute HUD's comments to Lender and/or Lender's Counsel via email for consideration and response.

1. To maintain a Tentative Closing Date, Lender and Lender's Counsel must respond to HUD comments within 5 business days after the date comments were distributed.
2. Lender's response to HUD's comments must resolve identified deficiencies in a manner consistent with this Chapter and Program Obligations. Lender's Counsel must substantively address all HUD Closing Attorney comments and include corrected documents. Changes to previously submitted documentation must be presented in redline form whenever possible. Lender's Counsel may include a written narrative or imbed written responses in the HUD Closing Attorney's comment document to assist the HUD Closing Attorney in their review.

**J. Substantial Completeness.** Closing dates, including previously set Tentative Closing Dates, will not be confirmed until the Closing Coordinator and HUD Closing Attorney determine that the package is substantially complete, and any outstanding issues elevated to HUD HQ pursuant to this Chapter have been resolved. A substantially complete closing package means:

1. In accordance with Program Obligations, and except for the items addressed immediately below (in [Section 19.1.2.4.J.2.](#)): all documents required by the applicable Closing Checklist and the Firm Commitment are included; blanks, bracketed language, and other deal specific information in form documents are accurately completed; non-form documentation is accurately prepared in substantially final form for closing the transaction in accordance with this Chapter; and HUD's review comments are resolved in a manner consistent with this Chapter. This includes, but is not limited to, surveys (where applicable), documentation evidencing compliance with Firm Commitment conditions, a pro forma title policy and legible copies of all exception documents, rate-lock terms for the Note, and secondary financing loan documents. See [Section 19.4.1](#) for further guidance on the compilation and completion of closing documents.
2. A substantially complete closing package need not include completion of items specifically identified in this Chapter as appropriate for submission at or near the confirmed closing date, including time-sensitive form information (i.e., dates and recording information), Certificates of Good Standing, Foreign Status Certificates, UCC searches, fully issued building permits, cost-certification, closing statements, and LIHTC equity pay-in schedule. See Part II of this Chapter for document specific guidance.

**K.** The Closing Coordinator will confer with assigned MHP staff to determine when the package is substantially complete as to programmatic requirements. The HUD Closing Attorney will provide prompt written notice to the Closing Coordinator when the HUD Closing Attorney determines that the closing package is substantially complete as to legal requirements.

**L. Confirmation of Closing Date.** Once HUD determines the closing package is substantially complete, the Closing Coordinator will consult with assigned MHP staff, the HUD Closing Attorney, Lender, and Lender's Counsel to determine a closing date, which the Closing Coordinator will then confirm in writing. Until Lender receives the Closing Coordinator's confirmation of a closing date, any previously requested closing date, including a set Tentative Closing Date, remains tentative.

**M. Conditions for Maintaining a Confirmed Closing Date.** In addition to the threshold review criteria outlined above, a confirmed closing date is subject to the following conditions:

1. **Completion of Closing Package.** Pursuant to [Section 19.1.2.4.J.2.](#) above, Lender's Counsel must submit all remaining documents not yet reviewed or approved by HUD, at least four (4) business days

prior to the confirmed closing date for closings-by-mail and three (3) business days for in-person closings (unless later delivery is expressly permitted by this Chapter or elsewhere in this Guide). Any additional changes may result in a change to the confirmed closing date, at the RC Director's discretion and in consultation with the HUD Closing Attorney.

2. **Final Approval.** Lender and Lender's Counsel must resolve any additional deficiencies identified by HUD at least 1 business day prior to Lender's submission of the Closing Docket (defined in [Section 19.1.3.5](#)). Any resulting changes to closing documents must be submitted to and approved by the HUD Closing Attorney and RC Director prior to Lender's submission of the Closing Docket to HUD, except as permitted by the HUD Closing Attorney.

### 19.1.2.5 Changes to Tentative or Confirmed Closing Dates

A. Lenders Counsel may request to change to a set closing date (tentative or confirmed, depending on review stage). The request should be made in writing to the HUD Closing Attorney and include alternative dates for closing. The HUD Closing Attorney will consult with the RC Director to reset the closing date. Once reset, the HUD Closing Attorney will notify the applicable Regional Counsel that the closing date has been changed at the request of Lender's Counsel.

B. The HUD Closing Attorney and Closing Coordinator will seek the concurrence of the RC Director and the applicable Regional Counsel if they determine that the conditions of this [Section 19.1.2](#) are not met, or other exigent circumstances exist that necessitate a change to a set closing date (tentative or confirmed, depending on the stage of review). Upon concurrence, the Closing Coordinator will notify the Lender of the need to reschedule the set closing date. Lender's Counsel may then request a new preferred closing date. The HUD Closing Attorney will consult with the RC Director to reset the closing date and notify the Regional Counsel accordingly.

## 19.1.3 Closing Arrangements

### 19.1.3.1 Administrative Clearance to Close

A. On or before the confirmed closing date, the RC Director will provide the HUD Closing Attorney with administrative clearance to close the Loan, either by written memorandum or email. The RC Director's administrative clearance will include the following confirmations:

1. All special conditions of the Firm Commitment have been met;
2. The Loan is ready to be closed;
3. The documents submitted to the RC Director for the closing were fully examined and approved; and
4. The Firm Commitment is current.

### 19.1.3.2 HUD Signature Page

A. All documents that require HUD signature must be prepared and submitted by Lender's Counsel sufficiently in advance of the confirmed closing date. For each document signed in counterpart, HUD's signature page should be formatted to include the Project name, FHA project number, and the document title. Recordable documents must include notary blocks. These form completion changes are not considered substantive changes under [Section 19.4.1.6](#), and do not require explicit HUD approval.

### 19.1.3.3 Note Endorsement

A. When feasible, the RC Director will sign the Note for endorsement on the date of closing. If not feasible, the RC Director may sign the Note for endorsement prior to closing and OGC will hold the Note until the conclusion of the closing.

### 19.1.3.4 Circulation and Submission of Recordable Documents

A. The RC Director will only sign original recordable closing documents (e.g., the Regulatory Agreement) when HUD deems the closing package to be substantially complete. See [Section 19.1.2](#).

B. HUD will sign original recordable closing documents in counterpart when allowed under state and local law. If a recordable document is not signed in counterpart, Lender's Counsel must obtain the non-HUD signatures first, and then submit the original to the RC Director for HUD signature. HUD may permit the designated escrow officer (e.g., title agent) to hold HUD signed documents in escrow.

C. The designated escrow officer engaged to close the Loan must review all documents submitted for recording to ensure compliance with local recording requirements.

D. Closing documents requiring recordation must be recorded prior to or on the day of closing, and prior to HUD's delivery of the endorsed Note. The Regional Counsel and RC Director are authorized to deviate from this standard in jurisdictions where pre-recording or contemporaneous recording on the date of closing is not possible, or in other exigent circumstances. HUD generally permits pre-recording of documents (recorded prior to the HUD-approved closing date); Borrower and Lender assume all risk related thereto.

E. HUD requires two hard copies of each recorded document, except when instructed otherwise by the HUD Closing Attorney. The documents may be originals bearing evidence of recording from the recorder's office, or copies certified by the title company to be true and correct copies of the document that was recorded. Title certified copies should specify the date of recording, recording information (document number, book, and page, etc.), and recording location (i.e., the county recorder's office). Where documents are recorded post-Closing, Lender and Lender's Counsel are responsible for ensuring the documents have been recorded in the proper order and that the title policy is updated with all recording information, either by endorsement or other customary practice.

### 19.1.3.5 Form of Closing Docket Submission

A. For closing, Lender's Counsel must provide the HUD Closing Attorney with two (2) sets of all closing documents (the Closing Docket) in hard copy, except when instructed otherwise by the HUD Closing Attorney. Lender's Counsel is responsible for the administrative tasks necessary to compile the complete Closing Docket, except for internal HUD documents identified as such in the applicable Closing Checklist.

B. The first set of documents must include all originals required by the applicable closing checklist for submission to the Washington Docket. Lender's Counsel must identify which set is being submitted for the Washington Docket and which as the attorney docket.

C. Lender's Counsel is responsible for providing the RC Director and HUD Closing Attorney with an electronic copy of the Closing Docket within 14 calendar days after closing (preferably in searchable PDF format). The electronic copy must include separate files for each document, with file names that reflect

the title of the document and the order of the applicable closing checklist. Lender's Counsel is responsible for ensuring that the electronic copy is an accurate copy of the Closing Docket, as submitted and approved by the HUD Closing Attorney.

### **19.1.3.6 Restriction on Post-Closing Revision to Closing Docket**

**A.** After closing, the Closing Docket may not be revised or amended without the prior written approval of the RC Director and HUD Closing Attorney.

### **19.1.3.7 Closing Type: Mail or In-Person**

**A. Mail Closings.** A closing by mail will be scheduled at Lender's request, except as provided below. In requesting a closing by mail, Lender and Lender's Counsel agree to adhere to the mail closing procedures of this subsection.

1. **Standards for Denying a Request to Close by Mail.** The RC Director and the appropriate Regional Counsel have the authority to deny a Lender request to close by mail if they determine that the complexity of the transaction necessitates an in-person closing.
2. **Mail Closing Procedure.** When closing by mail, Lender's Counsel must follow these standards:
  - a. **Package Format.** Except as otherwise provided in this Chapter or when instructed otherwise by the HUD Closing Attorney, two (2) complete hard copy sets of the Closing Docket must be delivered to the HUD Closing Attorney at least two (2) business days in advance of the confirmed closing date (morning delivery unless the HUD Closing Attorney specifies otherwise). Lender's Counsel is responsible for compiling the closing packages before delivering to HUD (including documents generally within the control of other parties), except that the Title Policy, recorded documents, and final building permits may be delivered on closing day (first overnight delivery or morning delivery by courier).
  - b. **Availability by Telephone.** All parties to the transaction, including the RC Director, must be available by phone and email on closing day in case questions or issues arise.
  - c. **Failure to Close by Mail on HUD-Approved Closing Day.** If there are problems with the Closing Docket as delivered (e.g., delayed delivery, errors, or missing documents), the HUD Closing Attorney, in consultation with the RC Director and applicable Regional Counsel, will determine appropriate next-steps, which may include rejecting the entire closing package (Lender may request return of the package at Lender's expense), and/or rescheduling closing for another day. Lender's Counsel is solely responsible for ensuring that any package deficiencies are resolved.
  - d. **Endorsement and Delivery of Note.** HUD will not deliver the endorsed Note until all documents are presented to, and approved by, the RC Director and HUD Closing Attorney. In addition, a pre-addressed, pre-paid envelope and an appropriate cover letter must be provided for return delivery of the endorsed Note, or Lender's Counsel may make alternate arrangements, as approved by the HUD Closing Attorney, for in-person pick-up of the endorsed Note (e.g., courier service).

**B. In-Person Closing Procedures.** An in-person closing will be scheduled at Lender's request, or when the RC Director and Regional Counsel deny Lender's request for a mail closing. The RC Director, in consultation with the HUD Closing Attorney, determines the location of in-person closings. In-person



closings are generally held at the HUD office where the HUD Closing Attorney is located. HUD will not deliver an endorsed Note unless all documents are presented to, and approved by, the RC Director and HUD Closing Attorney. Lender's Counsel is solely responsible for ensuring that any deficiencies in the Closing Docket are resolved. If there are problems with the Closing Docket as submitted, the HUD Closing Attorney, in consultation with the RC Director and applicable Regional Counsel, will determine appropriate next steps, which may include rescheduling closing for another day.

### 19.1.4 Post-Closing Handling of Closing Dockets

**A. Retention of Closing Dockets.** After closing, the attorney docket is retained by OGC. The documents submitted for the Washington Docket are retained by HUD Headquarters.

**B. Multifamily Insurance System.** In connection with the Multifamily Insurance System (MFIS), the RC Director must complete the following items: Official Receipt (form HUD-27038), Schedule of Project Collections (form HUD-3416), and Closing Memorandum (form HUD-290).

**C. Transmittal.** When the RC Director determines that the entire Washington Docket is complete, the RC Director will mail the completed forms identified above, together with the Washington Docket, to HUD Headquarters at the following address:

U.S. Department of Housing and Urban Development  
Housing Records Management Office  
451 7th St., SW  
Ste. B-264  
Washington, D.C. 20410

## 19.2 Initial Loan Closing Procedures for New Construction and Substantial Rehabilitation

### 19.2.1 Initial Endorsement Activities

**A. Definition.** For purposes of this Chapter, "Initial Closing" means the closing at which HUD initially endorses the Note for insurance of advances for new construction and substantial rehabilitation.

**B. Pre-Construction Conference.** The pre-construction conference must be held prior to or concurrently with the Initial Closing and must be held before the start of construction. See [Chapter 12, Section 12.2](#) for instructions for conducting the pre-construction conference, and [Appendix 5, Section A.5.5](#) for administrative requirements related to plans and specifications. The RC Director is responsible for ensuring that the preconstruction conference includes all necessary parties, and for scheduling and reserving space for the meeting.

**C. Initial Draw of Loan Proceeds.** Initial draw of Loan proceeds may be made on the day of Initial Closing, provided that no draw may occur until HUD releases the endorsed Note to Lender.



## 19.2.2 Prevailing Wage Rates & Davis-Bacon Labor Standards

### 19.2.2.1 Davis Bacon Labor Standards (DBLS) Clearance Required

A. For all Projects subject to Davis-Bacon labor standards, the RC Director will not provide administrative clearance to close or endorse the Note until:

1. The RC Director has received clearance for closing from DBLS;
2. If applicable, any conditions of the DBLS clearance have been fully satisfied; and,
3. If applicable, the parties have submitted evidence that any conditions of Department of Labor (DOL) withholding letters, consent orders, or other DOL determinations and findings have been fully satisfied. The RC Director will include a copy of the DBLS closing approval in the RC Director's administrative clearance.

### 19.2.2.2 Procedures for Firm Application, Issuance, and Initial Closing

A. Prior to issuing a Firm Commitment, the RC Director will provide DBLS with a copy of each application for Firm Commitment (e.g., the first four pages of Application for Multifamily Housing Project (form HUD-92013)). Upon request from assigned DBLS staff, the RC Director will make other Project documentation in its possession available for DBLS review, in accordance with the information collection requirements of the Paperwork Reduction Act.

1. The RC Director will obtain written confirmation of the DBLS wage decision, including copies of selected general wage determination(s).
2. The RC Director and/or HQ MHP will review the DBLS wage decision and will consult with OGC if there are any legal questions.

B. After legal questions are resolved, the RC Director will forward the DBLS wage decision to the Lender and include any additional clarifying information provided by DBLS.

C. After Firm Commitment, and after HUD receives the draft closing package, the RC Director will notify assigned DBLS staff of any Tentative Closing Date (see [Section 19.1.2](#)) and provide a copy of the draft Construction Contract (form HUD-92442M), including exhibits.

1. DBLS will review the draft Construction Contract and provide written confirmation to the RC Director indicating whether the applicable wage rates and the Supplementary Conditions to the Construction Contract (form HUD-92554M) are included in the draft submission. If DBLS informs the RC Director that the wage rates included in the draft Construction Contract are inaccurate, the RC Director will provide corrective instructions to the Lender, with a copy to the HUD Closing Attorney.

D. The RC Director will notify assigned DBLS staff of a Project's confirmed closing date 3 to 5 business days in advance. See [Section 19.1.2](#). The RC Director will obtain written clearance from DBLS for the Initial Closing at least 1 business day in advance of the confirmed closing date (via email or memo). The RC Director will provide a copy of the DBLS clearance to the HUD Closing Attorney as soon as possible.

E. On the morning of Initial Closing, the RC Director will contact DBLS to confirm the effective modification number for the general wage determination(s) selected for the Project. See 24 CFR 200.33 and 29 CFR

1.6(c)(3)(ii). The RC Director will immediately notify Lender, Lender's Counsel, and the HUD Closing Attorney if there are any updates to the wage decision.

F. The RC Director will coordinate with DBLS to schedule the pre-construction conference and provide DBLS with contact information for the General Contractor. See [Chapter 12, Section 12.2](#).

### 19.2.2.3 Early Start of Construction

When the RC Director approves an early start of construction for a Project that is subject to Davis-Bacon labor standards, the requirements of [Section 19.2.2.2](#), immediately above, will be modified to accommodate the early start. The RC Director will work collaboratively with DBLS staff to ensure there is sufficient time to review Project documentation and select the applicable wage rates prior to the start of construction. See [Section 19.2.3](#) and [Chapter 5, Section 5.8.6](#); see also 29 CFR 1.6(c)(2)(i)(C).

### 19.2.2.4 Procedures for Final Closings

A. The RC Director will notify DBLS of a pending Final Closing as soon as practicable, and no later than 1 business day after the date the RC Director finalizes the Maximum Insurable Mortgage (form HUD-92580).

B. The RC Director will obtain a written determination from DBLS confirming either that:

1. All labor relations issues are resolved; or,
2. Appropriate mitigants are established to resolve outstanding issues.

C. The RC Director will obtain clearance for Final Closing from DBLS at least 5 business days in advance of a confirmed final closing date. The RC Director will immediately provide a copy of said clearance to the HUD Closing Attorney.

D. The DBLS clearance for Final Closing may be qualified:

1. If the DBLS clearance is conditional, the RC Director will ensure that the closing clearance includes notification of what, if any, documentation must be provided, or actions taken, to clear the conditions for Final Closing.
2. If issues remain that cannot be resolved in advance of Final Closing, the RC Director will ensure that the closing clearance includes either:
  - a. A deposit to the U.S. Treasury of an amount sufficient to meet any wage restitution and/or liquidated damages that have been or may be found due; or
  - b. A completed deposit agreement (Labor Standards Deposit Agreement (form HUD-4732)), a schedule for the deposit, and wire transfer instructions for the depositor's financial institution.
3. If the DBLS clearance for Final Closing is qualified, either by conditions or a deposit requirement, the RC Director will include a description of the applicable limitations in the RC Director's administrative clearance to close the Loan.

## 19.2.3 Early Start of Construction

**A. General Requirements.** Construction may not start before Initial Endorsement and recordation of the Security Instrument, except with the prior written approval of the RC Director. (Note that the

authority to give this approval may not be delegable.) In general, any construction work performed on the land after HUD's receipt of the application for Firm Commitment but before Initial Endorsement constitutes an early start of construction. Unless the RC Director indicates otherwise, demolition, environmental remediation, and off-site work does not constitute an early start to the construction of the Project; however, the RC Director must approve these activities in advance to address compliance with environmental review and Davis-Bacon wage requirements. Further, any work undertaken prior to Initial Endorsement must not impair the first lien priority of the Security Instrument.

**B. Early Start Date.** For Projects where HUD approves an early start to construction, the HUD-approved start date (the Early Start Date) will be used instead of the Initial Closing date for determining: the completion date in the Construction Contract; the date of the first amortized payment under the Note; and the completion date in the Building Loan Agreement. If HUD approves an early start, the Construction Contract and Payment and Performance Bonds (or other completion assurance) and any other closing documents required to be signed by the General Contractor must be dated no later than the Early Start Date.

**C. Document Submission and OGC Review.** The documents listed on the Early Start Checklist must be submitted, reviewed, and approved by HUD prior to the commencement of construction, as defined in the Request for Permission to Commence Construction Prior to Initial Endorsement (form HUD-92415). See [Section 19.4.1.4](#) for the online location of all HUD closing checklists.

## 19.2.4 Lender's Loan Assignment between Initial and Final Endorsement

### 19.2.4.1 HUD Prior Written Approval Needed

**A.** When a Lender wants to assign the FHA-insured Loan to another FHA-approved Lender during construction (after Initial Closing and prior to Final Closing) the Lender must request prior approval from HUD. Handbook 4435.1 Project Construction and Servicing Before Final Closing, par. 1-33, lists HUD's requirements for assignment of an insured mortgage loan prior to Final Endorsement, including that circumstances must warrant the assignment, and that the assignee must be an approved Lender.

### 19.2.4.2 Prior Document Review by HUD Counsel.

**A.** Lender or Lender's Counsel must submit complete draft documents to the RC Director for preliminary HUD review. The RC Director and OGC will review the documents submitted with a Lender's request for assignment, including the following:

1. Checklist and written narrative, drafted by Lender or Lender's Counsel, including the reason(s) for the assignment, and all documents being submitted to HUD for preliminary approval;
2. Note endorsement to assignee;
3. Assignment and Assumption of the *Security Instrument* to and by assignee, which must include the following provisions:
  - a. Assumption of Lender's obligations under the Contract of Mortgage Insurance;

- b. Assumption of the terms and conditions pertaining to all Project Loan documents, funds and escrow deposits required in connection therewith;
  - c. Assignee's agreement to be bound by the provisions of the Lender's Certificate (form HUD-92434M, at par. 3) that relate to the servicing of the Loan; and
  - d. Assignee's agreement to be bound by the provisions of the Agreement and Certification (form HUD-93305M) or Assignee's execution and delivery of such form to HUD;
4. UCC-3, Amendment of UCC-1 Financing Statement, to evidence the change in secured party thereunder;
  5. Assignment of Building Loan Agreement (form HUD-92441M) with Borrower's written consent;
  6. Assignment of the following types of assurance of completion, if applicable, with the written consent of Borrower and Contractor, as well as indemnitor or surety, including assignment of cash or letter of credit, and/or escrow agreements, if applicable:
    - a. Assurance of completion of construction; and
    - b. Assurance of installation of offsite facilities;
  7. Assignment of all escrow agreements and related transfers of funds held by the Lender for the benefit of the Project and/or Borrower;
  8. Opinion of assignee's counsel as to the validity of the assignment transaction and of the documents executed and delivered in connection therewith;
  9. Executed Mortgage Record Change (form HUD-92080);
  10. Endorsement to ALTA Loan Policy reflecting the Lender's assignment of the mortgage Loan and of any other recorded documents; and
  11. All other documents required (a) by state or local law; (b) by the HUD Closing Attorney (e.g., disbursement agreement, special condition documents, as applicable); and (c) the RC Director.

### **19.2.4.3 Implementation**

**A.** The RC Director will determine whether to approve a Lender's request for assignment, in consultation with the HUD Closing Attorney. HUD will issue approvals in writing. If HUD provides approval for assignment of the FHA-insured Loan, the Lender has 30 days to complete the assignment, and 7 days from the consummation of the assignment to submit a final set of assignment documents to HUD, including copies of filed and recorded documents, e.g.:

1. Assignment of the Security Instrument (must be recorded before the endorsement to the lender's title policy can be issued); and
2. Amendment of UCC-1 Financing Statements (state and county).

**B.** The RC Director may extend the 7-day deadline submission of final documents in jurisdictions where early or contemporaneous recording is not available, and in other exigent circumstances as determined by the RC Director.

## 19.3 Final Loan Closing Procedures for New Construction and Substantial Rehabilitation

### 19.3.1 Final Loan Closings

#### 19.3.1.1 Definitions

**A. Final Closing.** For purposes of this Chapter, “Final Closing” means the closing at which HUD finally endorses the Note for the full amount of the Loan, including the final advance of insured Loan proceeds.

**B. Project Completion.** For the purpose of Final Closing, “Completion” means that:

1. The Project has been completed in accordance with the drawings and specifications as indicated by the final HUD Representative’s Trip Report (form HUD-95379), except for RC Director-approved items of delayed completion covered by the Escrow Agreement for Incomplete Construction (form HUD-92456M); and
2. The entire Project has been accepted for occupancy by the local authorities having jurisdiction (as evidenced by a final Certificate of Occupancy or other evidence customarily provide in the jurisdiction), and by Lender and HUD (as evidenced by the Permission to Occupy Project Mortgages (form HUD-92485)).

#### 19.3.1.2 Assurance of Completion

**A.** See [Section 19.5.6](#) for HUD’s requirements for project completion assurance.

#### 19.3.1.3 Commencement of Preparation for Final Closing

**A.** Lender and Lender’s Counsel should begin to prepare for Final Closing upon the earlier of HUD’s determination that an advance of mortgage loan funds will be the last advance prior to disbursement of the contract retainage, or that the Project has achieved substantial completion.

#### 19.3.1.4 Prerequisites for Final Closing

**A.** Prior to final endorsement of the Note, the RC Director will confirm the following:

1. Construction has been completed (except as otherwise provided in this Chapter);
2. The RC Director has approved the *Cost Certification*, if applicable;
3. The RC Director issued the *Maximum Insurable Mortgage* (form HUD-92580) to the Lender; and
4. The HUD Closing Attorney has reviewed and approved the Final Closing package, including evidence of updated title insurance and an as-built survey.

#### 19.3.1.5 Final Closing Procedures

**A.** The submission and review standards in [Section 19.1.2](#), and the closing procedures of [Section 19.1.3](#) apply to Final Closings.

### 19.3.1.6 Internal Closing Forms

- A. The RC Director will prepare the following documents, and provide copies to the HUD Closing Attorney:
1. HUD Representative's Trip Report (form HUD-95379). The most recent inspection report must indicate if there are items of delayed completion and, if so, the amount of funds that must be escrowed for their completion.
  2. Maximum Insurable Mortgage (form HUD-92580). This document should specify if an escrow must be established, or funds must be disbursed from an existing escrow.
  3. Labor standards clearance from DBLS. See [Section 19.2.2](#).
  4. Any Request for Waiver of Housing Directive, form HUD-2, issued or approved by the RC Director since Initial Endorsement.
  5. Housing's administrative clearance to close. See [Section 19.1.3.1](#).

## 19.3.2 Final Endorsement

### 19.3.2.1 Request for Final Endorsement

- A. Lender must prepare the Request for Final Endorsement of Credit Instrument (form HUD-92023M):
1. The RC Director will compare the *Request for Final Endorsement* to each Application for Insurance of Advance of Mortgage Proceeds (form HUD-92403), and determine whether the amount of each advance is correctly stated in the *Request for Final Endorsement*, and to confirm that the total sum of advances on the *Request for Final Endorsement* equals the sum of all advances from each form HUD-92403. The RC Director will also review the title evidence already submitted with the statement of outstanding indebtedness in the Request for Final Endorsement, to confirm consistency between the two. If the RC Director identifies any error or issue with the Request for Final Endorsement, the RC Director will return it to Lender, together with a written explanation of deficiencies.
  2. The Request for Final Endorsement should not include any advance of escrowed funds required for completion of the Project (e.g., Escrow Agreement for Incomplete Construction (form HUD-92456M)).
  3. The Request for Final Endorsement requires full disclosure and certification by Borrower and General Contractor concerning payments, project completion, and unpaid obligations.
    - a. The Request for Final Endorsement Certificate of Borrower requires Borrower's disclosure of all unpaid obligations, including, as applicable, land acquisition, property acquisition, construction, and soft costs. The unpaid obligations listed by Borrower in the Request for Final Endorsement should not exceed the amount of the final advance. If the amount of unpaid obligations exceeds the final advance, Borrower must cover the difference between the unpaid obligations and the final advance either by (a) depositing sufficient funds in escrow, or (b) providing cash or other assurance of payment acceptable to the RC Director, in consultation with the HUD Closing Attorney. In either case, the RC Director will approve the amount and form of payment assurance before the RC Director approves the Request for Final Endorsement.
    - b. The Request for Final Endorsement Certificate of General Contractor requires General Contractor's disclosure of all unpaid obligations of the General Contractor under the Construction



Contract (form HUD-92442M), including amounts due to any sub-contractors. If the amount of unpaid obligations listed in the Request for Final Endorsement Certificate of General Contractor exceeds the amount certified by Borrower as owed to the General Contractor, the RC Director will urge the Lender to promptly resolve the dispute prior to Final Endorsement, and to obtain agreement between Borrower and General Contractor as to the amount owed to the General Contractor. If prompt resolution is unattainable, see [Section 19.3.2.A.3](#), and [Section 19.3.4](#). (for Final Closing procedures when Borrower and General Contractor are in dispute). Additionally, for Projects with an identity of interest between Borrower and General Contractor, the RC Director will not approve a Request for Final Endorsement and HUD will not proceed to Final Closing, until and unless Lender provides HUD with documentary evidence demonstrating that cash is available to cover the difference between the stated obligations.

4. The RC Director must obtain receipt of payments for unpaid obligations. The Request for Final Endorsement Certificates of Borrower and of General Contractor require payment of all listed unpaid obligations within prescribed time limits, and Lender must provide documentary evidence of such payment to the RC Director. Future compliance is certified by Borrower and General Contractor, subject to civil or criminal penalty for false claims or statements.
  - a. If Lender does not provide the required receipt and supporting evidence of Borrower's payment of listed unpaid obligations by the deadline prescribed in the *Request for Final Endorsement*, the RC Director will immediately make a written inquiry to the Lender to determine the status of payment(s).
  - b. If the RC Director does not receive the receipt for the payment of reported unpaid obligation(s) within fourteen (14) days from the date of the RC Director's inquiry, the RC Director will determine appropriate next steps.

### **19.3.2.2 Final Endorsement of the Note**

**A.** When the RC Director determines the Request for Final Endorsement is satisfactorily completed, HUD will proceed to Final Closing. The RC Director will not date their Final Endorsement of the Note prior to the date of Final Closing. The final amount of the Note must equal the amount of all insured advances to Borrower, as approved by the RC Director and shown in the Request for Final Endorsement, even if Final Endorsement occurs after the commencement of amortization.

### **19.3.2.3 Release of Final Advance**

**A.** Lender must not release the final advance until the HUD Closing Attorney confirms that Final Closing is complete and releases the finally endorsed Note. See [Section 19.3.3](#) and [Chapter 12, Section 12.8.6](#).

### **19.3.2.4 Release of Working Capital Deposit**

**A.** The balance of the working capital deposit attributable to the Construction Contingency Amount (as that term is defined in the Escrow Agreement for Working Capital (form HUD-92412M), if any, may be released to the Borrower upon Final Endorsement upon Borrower's request. Terms for the release of that portion of the working capital deposit attributable to the Working Capital Amount are set forth in paragraph 4 of the Escrow Agreement for Working Capital.



## 19.3.3 Final Advance

### 19.3.3.1 Requirements for Final Advance

A. Prior to approving the final advance of mortgage Loan proceeds, the RC Director will make the determinations required by Application for Insurance of Advance of Mortgage Proceeds (form HUD-92403), and [Chapter 12, Section 12.8.6](#), and notify the Lender of any deficiencies.

### 19.3.3.2 Application for Insurance of Advance of Mortgage Proceeds

A. When the final advance is in order, Lender and Borrower will execute the completed Application for Insurance of Advance of Mortgage Proceeds.

1. If all items of on-site construction are complete, the word “None” will appear in the Certificate of Mortgage Insurance (form HUD-92403), in the space provided for the amount of the escrow deposit.
2. If there are incomplete items of on-site construction, an escrow deposit will be required unless otherwise determined by the RC Director, in accordance with the Escrow Agreement for Incomplete Construction (form HUD-92456M). In addition, an itemized list of incomplete construction items must be attached to the Escrow Agreement for Incomplete Construction and the Application for Insurance of Advance of Mortgage Proceeds. The amount of the escrow deposit required for completion of incomplete items must be typed into the Certificate of Mortgage Insurance portion of form HUD-92403 in the space provided.
3. On or before Final Closing, the RC Director will deliver one executed original of the Application for Insurance of Advance of Mortgage Proceeds to the HUD Closing Attorney for inclusion in the Washington Docket, one copy for the attorney docket, and any remaining duplicate or original copies to the Lender, each including any attachment listing incomplete items. The RC Director will retain at least one copy of the Application for Insurance of Advance of Mortgage Proceeds for its records.

## 19.3.4 Final Closings when Disputes Arise

### 19.3.4.1 Disputes

A. Occasionally, Borrower and General Contractor dispute change orders, the quality or cost of completed construction work, or other matters related to project completion or payment. These disputes can delay Final Closing if the Contractor is unwilling to complete all of the required forms and provide required documentation of project costs and completion. If Borrower and Contractor enter into mediation, litigation, or both, the delay may be extensive. HUD’s expectation is that the Lender and Borrower will engage in a good faith effort to resolve disputes with the Contractor prior to requesting Final Endorsement.

B. However, if a dispute remains unresolved and results in extension fees or other hardship (e.g., Lenders need to convert the underlying financing of the mortgage Loan to permanent status), the Lender may request that HUD proceed to Final Closing while the dispute is pending. HUD will consider such requests on a case-by-case basis as outlined in this [Section 19.3.4](#). HUD’s priority in evaluating these requests is to ensure that Final Endorsement is statutorily and regulatorily compliant, that the construction of the Project is satisfactory, and that sufficient funds are made available to cover potential liabilities of the

Borrower thereby mitigating significant risk to (a) the Project (e.g., mechanic's liens) and (b) the viability of the FHA-insured Loan.

### 19.3.4.2 Relevant Issues for HUD's Consideration

A. The RC Director, in consultation with the HUD Closing Attorney, will consider the following factors related to a Lender's request to proceed to Final Endorsement without full participation of the Contractor, in addition to any other matters deemed necessary by the HUD Closing Attorney or the RC Director:

1. Has cost certification been completed? When cost certification is required, HUD will not proceed to Final Endorsement without Borrower's completion of the Mortgagor's Certificate of Actual Cost (form HUD-92330). See [Chapter 13](#) for HUD's requirements for cost certification.
  - a. Cost certification in cases of unresolved dispute(s) also facilitates HUD's review of requests to proceed to Final Endorsement by:
    - 1) Providing the factual basis for HUD to determine that the maximum insurable mortgage calculation does not exceed the statutory limit; and
    - 2) Illustrating what outstanding obligations are disputed, which helps establish that sufficient funds are escrowed (or otherwise available) to cover Borrower's potential liability and mitigate the risk of future construction-related liens against the Project.
2. Can the dispute result in a mechanic's lien that primes the HUD mortgage?
  - a. Have any liens been filed?
  - b. If no liens have been filed, has the statutory period for filing liens expired, or is it possible that liens could be filed in the future?
  - c. If future liens are possible, are the relevant program participants willing to sign lien waivers? Are such waivers enforceable under applicable state law?
  - d. If a lien waiver is conditional, is Borrower willing to provide assurances of payment in the event the dispute is resolved in the Contractor's favor?
  - e. If liens have been filed, is the final draw sufficient to pay such liens?
    - 1) If sufficient, will Borrower and Lender agree to escrow the mortgage Loan proceeds with the title company pending resolution of the dispute?
    - 2) If not sufficient, will Borrower furnish additional funds (or other assurances acceptable to the RC Director) to cover any liens and other pending obligations until the dispute is finally resolved?
3. What title coverage is available to bring the effective date of the policy forward to Final Endorsement? Is clean title available, with no liens shown as exceptions? Alternatively, if any mechanic's liens exist, is the title insurance policy providing affirmative coverage against those liens?
4. Is it possible for Borrower to bond over the liens, if any, or the litigation, if any, in order to free the project from the effects thereof and clear title to the project? (See, e.g., Colorado Revised Statutes § 38-22-131; other states may have similar procedures.)

5. Are there state laws that affect the dispute resolution process? For example, some states have statutes under which a claimant can force the disbursing of funds either to pay the claimed amount or hold all undisbursed mortgage Loan proceeds in escrow pending the outcome of the dispute. (See, e.g., Colorado Revised Statutes § 38-22-126.) If so, does state law provide or permit a process consistent with HUD's requirements?
6. What is the status of Labor Clearance for the Project? See [Section 19.2.2](#).

### **19.3.4.3 Closing Without Full Participation of the Contractor.**

**A.** If the RC Director, in consultation with the HUD Closing Attorney, determines that HUD is willing and authorized to approve a Lender's request to proceed to Final Closing with disputes pending, and without full participation of the General Contractor, the following matters must be addressed to the RC Director and HUD Closing Attorney's satisfaction:

1. Certain administrative requirements of [Chapter 12, Section 12.7.7, Final Advance](#), will not be met. The RC Director may waive non-statutory and non-regulatory requirements. HUD's expectation is that the requirements for Final Endorsement will be met to the greatest extent possible. For necessary deviations from this Chapter or elsewhere in this Guide, Lenders must adhere to the requirements of [Section 19.4.1](#).
2. All documents listed on the HUD Final Closing checklist must be submitted. Lenders must request form changes (e.g., a change to the Contractor's certification on the Request for Final Endorsement) following the procedures in [Section 19.4.1](#).
3. Lender must provide a written narrative to explain what good faith efforts were made by Lender and Borrower to resolve the outstanding dispute(s) prior to making the request to proceed to Final Endorsement with the dispute(s) pending.
4. Lender must provide evidence that all relevant parties (e.g., Contractor, Surety) were notified of the Lender's request to proceed to Final Closing while the dispute(s) between Borrower and Contractor are pending.
5. Potential liens and claims related to the dispute, and the authority of Borrower to proceed to Final Endorsement under the terms of the Construction Contract, including the A-201, must be addressed through a supplemental Opinion of Borrower's Counsel (form HUD-91725M). See e.g., the standard form Opinion of Borrower's Counsel opinion 7, and confirmations (c) and (e).
6. Cost certification must be satisfactorily completed by all required parties. See 24 CFR 200.96, [Chapter 12, Section 12.7.7.A.1](#), and [Chapter 13](#).
7. The title company must bring the policy forward to the date of Final Endorsement (typically through a date-down endorsement) or issue a new policy as of the date of Final Endorsement and provide affirmative coverage over all existing mechanic's liens.
8. [Chapter 12, Section 12.7.7.A.2](#) requires the Contractor to execute Contractor's Requisition and Contractor's Prevailing Wage Certificate (form HUD-92448), and HUD must receive the customary letter or memorandum from HUD's Office of Davis Bacon Labor Standards stating that the Project may be closed (the letter may be conditional, may be issued by DBLS or DOL, and may require specific mitigation to address unpaid obligations).

9. 24 CFR 200.101 requires Borrower to certify, among other matters, as to “all unpaid obligations in connection with the mortgage transaction, the purchase of the mortgaged property, the construction or rehabilitation of the project or the purchase of the equipment financed with mortgage loan proceeds.” See Request for Final Endorsement (form HUD-92023M), which may require modification to accurately reflect the parameters of the dispute while still providing the information required under 24 CFR 200.101.
10. [Chapter 12, Section 12.7.7.A.5](#), requires the Contractor to execute the *Request for Final Endorsement*, discussed more fully in [Section 19.3.2.A.2](#). This includes the Contractor’s certification as to its outstanding obligations, which may require modification to accurately reflect the parameters of the dispute.
11. [Chapter 12, Section 12.7.7.A.4](#), requires an escrow for items of delayed completion (see [Section 19.3.1](#)). If the dispute includes allegations of incomplete construction, this escrow must be established as part of the Final Closing.
12. The remaining mortgage Loan proceeds (as well as additional sums, if required) must be placed in escrow or otherwise made available (e.g., bonded, or letter of credit) pending the outcome of the dispute. See [Section 19.3.4.3.A.13](#), immediately below, and [Chapter 12, Section 12.15.5](#).
13. The terms for resolving the dispute, including release or advancement of funds to the prevailing participant, must be evidenced by an agreement (e.g., escrow agreement), and such terms must be satisfactory to the RC Director and HUD Closing Attorney. The agreement should, at a minimum, meet the following requirements:
  - a. Provide a mechanism for the payment of all *undisputed* outstanding obligations, such as amounts owed subcontractors, upon receipt of proper lien waivers;
  - b. Provide for funds disbursement to the prevailing parties upon resolution of the dispute, or upon a designated future date, etc.;
  - c. Include supplemental cost certification, if needed, for items of delayed completion, etc., to ensure that the Loan amount needs no further adjustment;
  - d. Address unique requirements (and compliance therewith) of state or local law regarding disbursement and payment;
  - e. Stipulate Borrower’s present or future right to any awards, payments, settlements or other compensation resulting from litigation involving the Project are deemed Mortgaged Property under the Regulatory Agreement; and
  - f. Ensure the agreement is entered into by the Lender and Borrower, and, if applicable, the title company, court, Contractor, and/or surety.

## 19.3.5 Workout Restructuring and Interim Closing

### 19.3.5.1 Introduction

- A. When problems occur during construction necessitating a workout or restructuring of a Project, an interim closing may be necessary.

1. Handbook 4435.1 along with [Chapter 12, Construction Period](#), and its appendices, provide HUD's administrative guidance for a Project's construction period. When serious problems arise during construction (see [Appendix 12, Section A.12.5](#)), the RC Director and HUD Closing Attorney will work with the Lender to resolve the serious construction problems in a manner that is consistent with HUD policy.
2. Handbook 4435.1, [Chapter 12, Section 12.3.5](#), and [Appendix 12, Section A.12.5](#) prescribe HUD's policies for managing serious construction problems and initiating workouts during the construction period.

### 19.3.5.2 Workouts

A. The RC Director has broad discretion under this Guide (e.g., [Chapter 12](#) and its appendices), and Handbook 4435.1, to approve the terms of an interim workout during the construction period to resolve serious construction problems that pose a risk of foreclosure and other hardship regardless of the cause. If negotiations are successful, there may be workout, disbursement, or settlement agreements to evidence the agreed upon resolution of the serious construction problem(s) (e.g., contractor default and abandonment). The RC Director and HUD Closing Attorney will review takeover agreements, settlement agreements, etc., that affect the documents from Initial Closing, including the Construction Contract. The RC Director, in consultation with the HUD Closing Attorney, will approve the terms of the workout, the takeover agreement, if applicable, and any changes to existing agreements from Initial Closing.

1. **Checklist.** The Interim Closing/Workout Checklist (see [Section 19.4.1.4](#)) functions as a guide for the RC Director and HUD Closing Attorney as to what documents may be required for a workout. The documents listed on the checklist are not mandatory by default, and each workout is case specific. The RC Director and HUD Closing Attorney determine what documents, if any, are necessary for HUD to approve a structured workout during construction. Some documents in the checklist may be appropriate for collection as part of the workout, even if they do not require amendment.
2. **Other Administrative Guidance.** Applicable Guidance elsewhere in this Chapter, in the remainder of this Guide, and in Handbook 4435.1, provide guidance in HUD's review of the terms of construction period workouts and interim closings, when appropriate.
3. **Mortgage Increase.** If the RC Director approves a mortgage increase in connection with the workout, HUD's requirements for Final Closing loan modification apply. See [Section 19.5.9.4](#). Lender's Counsel must provide a written certification from all relevant program participants, including the Surety when the bond(s) have been called, acknowledging the applicability of these Final Closing requirements, and compliance therewith as a condition of HUD's approval of the structured workout and/or interim closing. (a certification is acceptable).
4. **Contractor Default and Project Abandonment.** In cases of General Contractor default and abandonment, Lender's Counsel must coordinate with Lender, Borrower, HUD, and Surety to initiate the Surety's takeover of the Construction Contract under the performance bond. The workout may also require a call on the payment bond. HUD, Lender, Borrower, and Surety, as applicable, will negotiate the terms for completion of the project. This often results in extensive negotiation between the HUD Closing Attorney and Surety's counsel over the terms of the surety's takeover agreement, and a disbursement agreement between Lender, Borrower, and Surety. There may be additional costs and significant alterations to the Project, especially if the Project is less than 75% complete. Compliance

with this Chapter must be stipulated in the body of any takeover agreement. See also [Section 19.4.12](#), Final Closing when Contractor and Borrower are in Dispute.

5. **Litigation.** If litigation related to construction of the Project has been filed or is threatened, Lender and Borrower must disclose the litigation to the RC Director and the HUD Closing Attorney.
  - a. The HUD Closing Attorney will confer with their Regional Counsel and Associate Regional Counsel for Litigation to determine whether a litigation hold is necessary prior to HUD granting approval for any workout or interim closing.
  - b. The RC Director and the HUD Closing Attorney will also evaluate disclosed litigation and determine whether any risk mitigants related to the litigation should be included as terms of the workout. See [Section 19.3.4](#), Final Closings in Dispute, for further guidance on considerations and risk mitigants related to construction litigation.

## Part II: Closing Documents and Program-Specific Requirements

### 19.4 Document and Diligence Requirements

#### 19.4.1 General Requirements for Closing Documents

##### 19.4.1.1 Required Use of HUD Forms and Closing Protocols

A. The Firm Commitment conditions HUD's endorsement of the Note on the Lender's submission of all required documents. Lenders must use HUD forms when such forms exist, and, when no form exists, each document must be approved by HUD. Required documents are listed on the applicable closing checklists and in the Firm Commitment. HUD's endorsement is also conditioned on compliance with the procedures and requirements of this Chapter.

##### 19.4.1.2 Completion of HUD's OMB-approved Forms

A. HUD's OMB-approved form documents include blank spaces for insertion and bracketed alternatives to accommodate project specific information. Lender's Counsel is responsible for completing HUD's OMB-approved forms through insertions in blanks, the selection of bracketed language, formatting documents for signature and recordation (including separating and marking counterpart signature pages), and insertion of signature and notary blocks. Inapplicable provisions (e.g., inapplicable construction provisions in refinance transactions) should be shown as strikethroughs. These strikethroughs alert HUD and the Lender to modifications during the loan servicing period and mitigate shifting document numbers and paragraphs. For HUD closing documents that provide bracketed alternatives, the preparer may remove or strikethrough the alternatives that do not apply. For example, sections of Note (form HUD-94001M) provide bracketed alternatives for interest rate definitions, payment provisions, prepayment provisions, and endorsement panels. The form completion changes outlined in this [Section 19.4.1.2](#) are not considered substantive changes under [Section 19.4.1.6](#), and do not require explicit HUD approval.



### 19.4.1.3 Date of Documents

A. All closing documents must be dated with the same date, to the extent possible, which may be prior to the date the Note is endorsed by HUD for insurance. However, the following documents must be dated the date of endorsement (whether Initial, Initial/Final, or Final Endorsement, as applicable, as such terms are defined in the HUD Firm Commitment):

1. Title insurance policy;
2. Borrower's Incumbency Certificate for Borrower's Organizational Documents;
3. Opinion of Borrower's Counsel (form HUD-91725M);
4. Lender's Certificate (form HUD-92434M); and
5. Request for Endorsement of Credit Instrument and Certificate of Borrower, Lender and General Contractor (form HUD-92455M).

### 19.4.1.4 Closing Checklists

A. HUD's closing checklists will be updated from time to time for technical corrections and for any changes to Program Obligations. The most current version of the applicable checklist published to HUD's website must be used for each closing. Closing checklists can be found at:

[https://www.hud.gov/OGC\\_Multifamily\\_Closing\\_Documents\\_Checklist](https://www.hud.gov/OGC_Multifamily_Closing_Documents_Checklist).

B. Changes to the required checklist items are not permitted, except as required by local law or the Firm Commitment. Any such changes must be added to the end of the checklist in the section specifically identified for "Additional documents required by local law or the Firm Commitment." Lender's Counsel must also notify the HUD Closing Attorney of any such changes they have made to the checklist consistent with this paragraph.

### 19.4.1.5 Submission of Closing Documents

**A. Draft Submissions.** Lender's Counsel must submit two (2) complete sets of the draft closing package, one to the Closing Coordinator and the other to the HUD Closing Attorney.

1. Lender's draft submission must include all documents required by the Firm Commitment and applicable closing checklist, including documents previously submitted as part of an early legal review, and excepting those time-sensitive items for which later submission is expressly permitted (e.g., current status certificates).
2. Lender's submission must include clean versions of the HUD form closing documents and redlines of those drafts compared against the OMB-approved forms, together with the non-form documents required by the applicable checklist. See [Section 19.1.2](#) and [Section 19.1.3](#), supra, for HUD's closing review standards and procedures.

**B. Closing Docket Submission.** Lender's Counsel must ensure that the Closing Docket submitted to the HUD Closing Attorney at closing is consistent with the draft submission(s) previously reviewed and approved by the HUD Closing Attorney and the RC Director, and that no modifications to the closing documents (form and non-form) have been made without the HUD Closing Attorney's actual knowledge and prior approval.



**C. Exhibit of Document Changes.** The Request for Endorsement of Credit Instrument (form HUD-92455M), and Lender's Certificate (form HUD-92434M), require Lender to certify that the final closing documents submitted to HUD (with the exception of the Opinion of Borrower's Counsel) conform to the OMB-approved forms, and that those documents have not been "changed or modified in any manner except as specifically identified and approved by HUD as evidenced by the attached Exhibit." The exhibit must include an itemized list of changes to the OMB-form documents, excluding filled-in information, deletion of inapplicable bracketed language, changes for state addenda and riders already approved by HUD, and selection of alternatives.

### 19.4.1.6 Changes to Form Documents and Deviations from Closing Guide

**A.** HUD strongly discourages substantive changes to HUD forms and deviations from this Chapter. Substantive change requests will likely result in a longer closing package review time and may impact Tentative Closing Dates. Further, HUD's approval of any request should not be presumed.

- 1. Substantive Changes Requiring Project Specific Approval by HUD.** For purposes of this Chapter, a substantive revision to a HUD form means any modification to the provisions of an OMB-approved form that is not a matter of form completion (see [Section 19.4.1.2](#), supra). Substantive form revisions and any deviations from procedures of this Chapter require HUD's written approval on a case-by-case basis, except for substantive form revisions expressly provided for in this Chapter or elsewhere in this Guide (e.g., modifications to the Security Instrument to accommodate a 241(a) supplemental loan closing; HUD-approved templates required by state or local law for the Subordination Agreement – Public). For brevity, this Chapter refers to these substantive form revisions and deviations from this Chapter for which Project-specific HUD approval is required as "substantive changes." Lender and Lender's Counsel must request HUD's approval for any substantive change through the procedures set forth herein.
- 2. Narrative Submission to HUD Closing Attorney.** For all substantive change requests, Lender must submit a written justification supporting the request to the RC Director, and the HUD Closing Attorney, if a HUD Closing Attorney has been assigned for the Project. The Lender's justification must include either (a) an explanation of how the substantive change(s) are necessary to comply with state or local law, or (b) a transaction-specific justification for the request, whichever is applicable. The Lender's request should be submitted with the Firm Application whenever possible. Lender and Lender's Counsel should not directly contact HQ OGC or MHP regarding any submitted request except in coordination with the RC Director and the HUD Closing Attorney. Lender and Lender's Counsel are also responsible for providing any additional information and supporting documentation requested by HUD. Lender is responsible for identifying any related conflicts with other program directives and ensuring that a directives waiver request is properly submitted to the appropriate HUD program office.
- 3. Substantive Changes Related to Separate Housing Directive Waivers.** Often, a substantive change is necessary to effectuate a Lender's requested waiver of a program directive (e.g., a programmatic requirement found in other chapters of this MAP Guide). In such cases, Lender's request to waive the program directive must include written identification of the substantive change(s) necessary to effectuate the requested program directive waiver. Lender's Counsel is responsible for submitting the Lender's written request to the HUD Closing Attorney or OGC Point of Contact, as applicable. The RC Director will not approve a Lender's request to waive a housing directive until and unless the related substantive change(s) is approved by HUD in accordance with this [Section 19.4.1](#).

4. **Approval Authority.** The RC Director, in consultation with Regional Council, may approve requests for substantive changes that are necessary to comply with state and local law, provided that there is no statutory or regulatory conflict. Any change to an OMB-approved form associated with a state or local law request must be narrowly tailored to address the state or local law provision at issue. Lender's Counsel is responsible for providing the HUD Closing Attorney with legal citations and documentation to support any such request. All other substantive changes require a multi-tiered HUD review, detailed below at [Section 19.4.1.7](#).

### 19.4.1.7 Multi-Tiered Review of Requests for Substantive Changes

**A.** This tiered review is intended to facilitate uniformity, efficiency, and consistency among HUD offices, and HUD's fair and equal treatment of program participants. HUD will only approve such requests when HUD determines that the request is supported by a compelling deal-specific justification. All requests for substantive changes must be consistent with federal, state, and local law.

1. **Regional Review for Cause.** When Lender's Counsel submits a substantive change request, the HUD Closing Attorney will discuss the requested change with the RC Director. The RC Director is responsible for determining whether, as a matter of program policy, the request is warranted. If the RC Director determines that the change is not warranted, the RC Director will notify the Lender, Lender's Counsel and HUD Closing Attorney.
2. **Legal Conflicts Review.** If the RC Director determines that the substantive change is warranted as a matter of program policy, the RC Director will verify whether there is any need to waive related program directives and refer the request to OGC for legal conflict clearance. If not previously cleared for statutory and regulatory conflicts, the HUD Closing Attorney will complete the legal conflicts review in coordination with the appropriate Regional Council.
  - a. **No Conflicts.** If there are no statutory or regulatory conflicts related to the request, the HUD Closing Attorney will forward the request to HQ for final consideration.
  - b. **Regulatory Conflict.** If there is a regulatory conflict, the HUD Closing Attorney will discuss the regulatory conflict with the RC Director and HQ OGC. If the RC Director determines that it is in HUD's best interest to approve the requested change notwithstanding the regulatory conflict, the RC Director will prepare a draft regulatory waiver for referral to HQMHP.
  - c. **Statutory Conflict.** If there is a statutory conflict, the request will be rejected.
3. **Addressing Other Legal Concerns.** Once the request is evaluated for conflicts, the HUD Closing Attorney will determine if there are any other legal concerns (including impacts on other closing documents). If the HUD Closing Attorney identifies other legal concerns, they will document the concerns in writing and include the written explanation with their referral of the request to HQ.
4. **Referral to HQ.** The HUD Closing Attorney will refer the request via email to the Assistant General Counsel for the Multifamily Mortgage Division (MMD). The MMD is responsible for coordinating its review and the review of the HQ Office of Multifamily Housing Production (HQ MHP). The HUD Closing Attorney must ensure the following information is included in the referral to HQ:
  - a. A description of the substantive change(s) requested, including a reference to the relevant document(s) and/or policy. When applicable, a redline excerpt of the relevant document

- provision identifying the requested change(s) may be included in the submitted narrative (redline comparisons of entire documents will not be reviewed);
- b. Confirmation that the RC Director supports the request;
  - c. Confirmation that there are no identified statutory conflicts;
  - d. Explanation of regulatory barriers, if any;
  - e. An explanation of why the change is supportable, *i.e.*, the justification approved by the RC Director, including compelling deal-specific and unique circumstances underlying the requested change. The justification should include enough detail, context, and rationale to allow HQ MMD and MHP to make an informed determination, as well as to establish that HUD is not acting in an arbitrary and capricious manner in its decision-making;
  - f. An explanation of whether the requested substantive change relates to a separate request for waiver of a housing directive (form HUD-2), and if so, confirmation that the RC Director is willing and able to approve the related form HUD-2 waiver;
  - g. When available, –a copy of any related requests to waive a program directive;
  - h. An explanation of the extent to which such change impacts other documents;
  - i. A discussion of additional legal considerations and concerns, if any, including any reservations of the HUD Closing Attorney; and
  - j. A statement of any time constraints.
5. **HQ Review.** The MMD will respond to the HUD Closing Attorney in writing. HQ staff will make every attempt to respond within ten (10) business days, provided the submitted justification meets the requirements of this Chapter. Program participants should submit substantive change requests as early as possible, and well before their desired closing date. When the substantive change request involves matters of program policy, the MMD will solicit the review and decision of HQ MHP, which will make the final determination on behalf of HUD. The MMD will review and decide requests that are strictly legal in nature.
6. **Approved Substantive Change Requests.** The MMD will provide a copy of approved substantive change requests to the assigned HUD Closing Attorney and appropriate Regional Counsel. The HUD Closing Attorney will notify the RC Director. Approved substantive change requests will be noted by the RC Director in their administrative clearance to close.

## 19.4.2 Security Instrument

### 19.4.2.1 General Requirements

**A.** Multifamily (Mortgage, Deed of Trust, Deed to Secure Debt, or Other Designation as Appropriate in Jurisdiction), Assignment of Leases and Rents and Security Agreement (form HUD-94000M) (the Security Instrument) must be used to secure the FHA-insured Loan and grant the FHA Lender, and its successors and assigns, a first lien on the Mortgaged Property (except for 241(a) supplemental loans – see [Section 19.6.3](#)). The caption or title of the document must be revised as appropriate to reflect the appropriate designation in the Project jurisdiction.

### **19.4.2.2 Permitted Modifications for State Requirements and Practices**

**A.** Lender's Counsel must modify the Security Instrument to comply with local requirements relating to recording practices and enforceability. Preparers should attach a HUD-approved state addendum or rider, if applicable, and a recording cover sheet, if necessary. State-specific riders and modifications can be found on HUDClips at:

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/administration/hudclips/forms/hud9/riders-addendums](http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/forms/hud9/riders-addendums)

**B.** In certain jurisdictions (e.g., Florida and New York), Borrowers refinancing under Sections 223(a)(7) and 223(f) frequently request to modify the Security Instrument and Note to facilitate a reduction in mortgage recording taxes. The HUD Closing Attorney may accept this modification without HQ OGC review when the practice is permitted under applicable state law, and the RC Director determines that the change is consistent with HUD Program Obligations.

### **19.4.2.3 Supplemental, Consolidated, Amended or Restated Loan**

**A.** Lender's Counsel may revise the Security Instrument to accommodate supplemental, consolidated, amended, or restated mortgage loans. All revisions are subject to final approval by the HUD Closing Attorney, and the requirements of this Chapter. See also [Section 19.4.1](#), [Section 19.4.4.2](#), [Section 19.5.9](#) and [Section 19.6.3](#).

### **19.4.2.4 Ground Lease**

**A.** When all or part of the Mortgaged Property consists of a leasehold estate, the ground lease must include the provisions set forth in Lease Addendum (form HUD-92070M). The Lease Addendum provisions must be attached to the ground lease and incorporated into the ground lease by reference prior to the execution of the ground lease. If incorporation of the Lease Addendum prior to execution of the ground lease is not possible, the Lease Addendum must be separately executed by the Landlord and Tenant prior to HUD's endorsement of the Note, with an appropriate amendment to the ground lease. A rider to the Security Instrument relating to the ground lease is not required.

**B.** For 223(a)(7) refinancing transactions, a new Lease Addendum will not be required unless the ground lease has been materially modified from the version approved at the previous HUD-insured loan closing and without HUD approval, or the ground lease term does not comply with the National Housing Act .

### **19.4.2.5 Fee-Joinders**

**A.** In limited circumstances, HUD will allow use of a fee-joinder to establish Borrower's interest in the requisite fee or leasehold. OGC's Multifamily Mortgage Division maintains a template fee-joinder for use in these transactions; Lender's Counsel should contact the HUD Closing Attorney to obtain the most current version before drafting the Security Instrument.

## 19.4.3 UCC-1 Financing Statements

### 19.4.3.1 General Requirements

**A.** As set forth in the Security Instrument, Borrower must grant Lender a first lien security interest in the Mortgaged Property, including the personality associated with the project (except for 241(a) supplemental loans – see [Section 19.6.3](#)). FHA Lender must take any and all measures available under the Uniform Commercial Code (UCC) of the Project’s and Borrower’s jurisdictions and locations, including the filing of UCC financing statements, to ensure that it has and maintains an enforceable first-lien security interest in the Mortgaged Property for the entire duration of the FHA-insured mortgage Loan. See 24 CFR 207.258(b)(4). FHA Lender must also certify that these requirements have been met in Lender’s Certificate (form HUD-92434M) for new construction/substantial rehabilitation, or Request for Endorsement of Credit Instrument & Certificate of Lender, Borrower & General Contractor (form HUD-92455M) for refinances.

**B.** Additional UCC-1 Financing Statements and a separate legal opinion may be required if the construction advances include offsite storage of building components. See [Section 19.5.7](#).

**C.** Real property and any non-realty equipment, furnishings, and all other collateral covered by the Security Instrument, must be free and clear of all liens other than the FHA-insured Loan, liens for taxes and assessments that are not yet due and payable, and any other inferior liens that the RC Director approves in writing.

**D.** The legal description of the real property must be identical to the legal description in the Regulatory Agreement and in all other closing documents, including the Building Loan Agreement (form HUD-92441M) (the Building Loan Agreement), Security Instrument, title insurance policy, and survey. Minor differences, such as abbreviations or other non-substantive stylistic differences, are allowed.

**E.** The Secretary of Housing and Urban Development must be listed as an additional secured party, using the notice address for the Office of Housing in the Regulatory Agreement.

**F.** The name of the Project and FHA project number should be listed on the UCC-1 Financing statements for reference.

### 19.4.3.2 Description of Collateral

**A.** Lender must attach to the UCC-1 Financing Statement a description of the non-realty Mortgaged Property, as defined in the Security Instrument. Descriptions of non-realty collateral for the UCC-1 Financing Statement may differ from the language used in the definition of Mortgaged Property in the Security Instrument, if required to comport with state law.

**B.** Lender is responsible for ensuring that the UCC-1 description of collateral is sufficient to create an enforceable first-priority lien, as certified to in the Lender’s Certificate or Request for Endorsement, as applicable.

**C.** Appropriate after-acquired property and proceeds clauses must be included in the collateral description.

## 19.4.4 Promissory Note

### 19.4.4.1 General Requirements

A. Note (Multistate) (form HUD-94001M) (the Note), must be used. Any changes to the form must be approved by the procedure set forth in [Section 19.4.1](#). Preparers should attach a HUD-approved state addendum or rider, if applicable. State-specific riders and modifications can be found on HUDClips at:

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/administration/hudclips/forms/hud9/riders-addendums](http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/forms/hud9/riders-addendums)

B. The terms of the Note (e.g., maturity, payments of principal and interest, interest rate) must be consistent with the Firm Commitment.

C. A Loan may be evidenced by multiple Notes (i.e. tranches) when approved by the RC Director and memorialized in the Firm Commitment. In such cases, the Firm Commitment will provide the HUD-approved terms applicable to each Note.

### 19.4.4.2 Prepayment Provisions

A. The Note includes instructions for alternative prepayment and lockout provisions. To the extent a rider is necessary to set forth the prepayment terms, as called for in Alternative B to Section 9 of the Note, the rider must include only the prepayment restriction(s) and prepayment premium charge(s) (see [Chapter 11, Section 11.8.2](#)), and the statement, “This Rider 1 is subject to the restrictions and requirements for prepayment set forth in Paragraph 9 of the Note.” No other provisions to the prepayment Rider 1 are permitted.

### 19.4.4.3 Endorsement Panel

A. The Note form contains a separate endorsement panel for each section of the Act under which the mortgage Loan may be insured, and the various closing types covered by this Chapter. Lender’s Counsel must prepare the Note to include only the endorsement panel applicable to the loan being closed.

### 19.4.4.4 Late Charge Provision

A. When preparing the Note, Lender’s Counsel may include a denominated late charge amount. The late charge amount must comply 24 CFR 200.88 with the limitations in [Chapter 11, Section 11.8.4](#).

### 19.4.4.5 Changes to Loan Interest Rates

A. Any change to the interest rate prior to Initial Endorsement requires an amendment to the Firm Commitment.

1. **Amendment for Rate Reduction.** If the construction interest rate is reduced before Initial Endorsement and it is not feasible to reprocess the loan application, the Firm Commitment must be amended to state the proper interest rate and contain the following condition (see [Chapter 8, Section 8.15.2.C.1](#)):



- a. Any interest savings resulting purely from a differential between the HUD-processed interest rate and the actual, final interest rate may not be construed as excess funds that may be used to offset costs in other categories at the time of cost certification. Any such saving must be applied as a mortgage reduction.
2. **Reprocessing for Rate Increase.** If the construction and/or permanent interest rate increases before Initial Endorsement, the Firm Commitment must be amended, and the loan application reprocessed to reflect the higher rate.

#### **19.4.4.6 Change(s) to Permanent Financing After Initial Closing**

A. Re-processing of loans for changes to the permanent financing from the terms in the Firm Commitment after Initial Closing is generally prohibited by [Chapter 3, Section 3.1.4](#). Changes are only allowed in the limited situation of a bond deal, as the permanent interest rate may not be known at Initial Closing (see [Chapter 8, Section 8.15.2](#)). If the evidence submitted in preparation for Final Endorsement indicates that permanent financing is not available at the interest rate, term length, or mortgage loan amount identified in the Firm Commitment, then the Firm Commitment must be reprocessed accordingly.

#### **19.4.4.7 Supplemental, Consolidated, Amended or Restated Loan**

A. Lender's Counsel may revise the Note to accommodate supplemental, consolidated, amended, or restated mortgage loans. All revisions are subject to final approval by the HUD Closing Attorney, and the requirements of this Chapter. See also [Section 19.4.1](#), [Section 19.5.9](#), and [Section 19.6.3](#).

### **19.4.5 Regulatory Agreement**

#### **19.4.5.1 Form**

A. The Regulatory Agreement for Multifamily Projects (form HUD-92466M), is used to establish regulatory restrictions on the Project, Borrower's financial and project management obligations, and HUD's rights if the Regulatory Agreement is violated. Section 9 of the Security Instrument incorporates the Regulatory Agreement by reference.

#### **19.4.5.2 Notice Address for HUD**

A. In Section 46.b., the address for HUD will be the Multifamily Housing Regional Center or Satellite Office responsible for Asset Management of the Project (as identified in the Firm Commitment).

#### **19.4.5.3 Section 50**

A. Section 50 and the Section 50 Addendum of the Regulatory Agreement relate to the non-recourse nature of the indebtedness and indicate certain matters for which the parties may be held personally liable; the Firm Commitment will identify the party(ies) to be inserted in the Section 50 Addendum. Any party to Section 50 must execute the Addendum as indicated by the HUD form, separate from the Regulatory Agreement signature page and also with all formalities required for recording a deed to real estate according to the law of the Project jurisdiction.



### 19.4.5.4 Section 30 - Additional Occupancy Restrictions and Policies

A. Lender and Borrower must work closely with HUD during the application and closing process to ensure that any proposed occupancy restrictions are lawful and comply with Program Obligations.

1. Any occupancy restrictions required in connection with the FHA-insured Loan that are not already included in the *Regulatory Agreement* must be listed in Section 30.a.
2. Any other occupancy restriction imposed on the Project (separate from FHA requirements) may be listed in Section 30.b. If listed, the form language of Section 30.b. must be modified to state, “these non-FHA occupancy restrictions are listed for informational purposes only and are not required under the Loan.”

### 19.4.5.5 Residual Receipts Rider

A. In some cases, other HUD programs (such as Section 8 and Section 202 Supportive Housing for the Elderly) impose Residual Receipts requirements on non-profit owners. In such cases, a Project will be subject to Residual Receipts requirements even though the FHA mortgage insurance program does not impose these requirements.

1. The Regulatory Agreement requires projects subject to Residual Receipts requirements to attach a Rider to Regulatory Agreement for Residual Receipts Requirements (see [Section 19.9](#)) and indicate whether the Project is subject to such a rider on page 1 of the Regulatory Agreement. If the rider is attached and the “yes” blank is checked, the Surplus Cash provisions of the Regulatory Agreement are thereby modified, and the provisions of the attached rider indicate that Residual Receipts account requirements are imposed by another program. The rider must clearly define the source and duration of the Residual Receipts requirements, and indicate that upon expiration of these requirements, the terms in the Regulatory Agreement regarding Surplus Cash will control.
2. In the case of FHA-insured projects that receive rental assistance from a project-based Section 8 housing assistance payments (HAP) contract, the mortgage insurance documents, including the Regulatory Agreement, are separate and apart from the Section 8 HAP contract. Thus, the maturity or prepayment of the FHA-insured Loan and the resulting release of the Regulatory Agreement have no effect on the Section 8 HAP Contract, which continues in full force and effect until the date on which it expires, unless terminated for cause.

### 19.4.5.6 Additional Riders

A. Additional riders to the Regulatory Agreement may be required for certain transactions pursuant to the Firm Commitment and/or Program Obligations, including:

1. Rider to Regulatory Agreement for Affordable Projects, required when the Project benefits from reduced MIP as an Affordable project.
2. Rider to Regulatory Agreement, Borrower’s Obligation to Maintain Project’s Energy Performance as Consideration for MIP Reduction (form HUD-92466-R-5), required when the Project benefits from reduced MIP as a Green project.
3. Riders to Regulatory Agreement – Multifamily Housing Projects: for the Borrower, Master Tenant, Master Sub-lessee (Commercial Tenant), and the Master Sub-lessee (Residential Tenant) for master

lease structures used to accommodate multifamily tax credit sources pursuant to [Chapter 16](#) (forms HUD-92466-R1 to form HUD-92466-R4).

4. Section 213 Cooperative Program Rider to Regulatory Agreement for Multifamily Projects, which may be adapted for Section 207/223(f) cooperative refinances. See [Section 19.17](#).
5. Mark-to-Market HAP Contract Riders (FHA-First Mortgage and MRN CRN), for Projects with Section 8 Housing Assistance Payment Contracts participating in the Mark-to-Market Program. When applicable, the HUD Closing Attorney will contact the MMD for the most recent versions of these forms.

## 19.4.6 Borrower Entity's Organizational Documents

### 19.4.6.1 General

A. Organizational documents for the Borrower entity are required to be submitted for the following types of closings:

1. Initial Endorsement;
2. Final Endorsement, if any organizational documents have been modified since Initial Endorsement or additional authorization is necessary (see [Section 19.4.6.5](#)); and
3. Initial/Final Endorsements;

### 19.4.6.2 Borrower's Counsel Legal Review and Opinion

A. Opinion of Borrower's Counsel (form HUD-91275M) requires Borrower's Counsel to state that Borrower has the organizational authority needed to execute and deliver the Loan Documents, complete the transaction(s) called for thereunder, and perform its obligations accordingly. Depending on the Borrower's organizational structure, Borrower's Counsel must review organizational documents for controlling entities, and, in some cases, review and retain authorization(s) from controlling and/or upper-tier entities in order to provide and support Opinion 4 of Opinion of Borrower's Counsel. See also [Chapter 8, Section 8.3](#).

### 19.4.6.3 Required Organizational Documents for Borrower

A. The following organizational documents must be provided:

1. **Borrower's Incumbency Certificate.** A certificate dated the date of closing, and signed by the secretary or other authorized Borrower representative (which may be the individual executing the Loan documents), stating:
  - a. The organizational documents attached to the certificate are true and correct copies, and have not been amended, modified, rescinded, or revoked, and remain in full force and effect; and
  - b. The name(s) and title(s) of Borrower's officers and key principals, with specimen signature(s) of the individual(s) authorized to execute the Loan documents.

2. **Formation Documents.** Copies of Borrower's filed formation documents, including all amendments and subsequent filings, certified by the relevant jurisdiction's Secretary of State, or legal equivalent, within 60 days prior to closing, or such longer period approved by the HUD Closing Attorney.
3. **Governing Document.** Copy of Borrower's fully executed governing document, including any and all amendments, and including the HUD-Required Provisions in effect as of the date of Firm Commitment. See [Section 19.7](#).
4. **Authorization.** Evidence that the transaction is authorized, and that Borrower has authority to execute the Loan documents. If such authorization is not explicitly provided in the entity's governing document, this may take the form of a resolution, written consent, or other legal equivalent, consistent with local law, custom, and the entity's organizational documents.
5. **Status Certificate.** A status certificate from the Secretary of State, or legal equivalent, of the jurisdiction where Borrower is organized evidencing Borrower's authority to do business (e.g., a Certificate of Good Standing). This status certificate must be dated within 30 days prior to closing, or a longer period if approved by the RC Director. If Borrower is not organized in the state where the Project is located, a certificate from the Secretary of State, or legal equivalent, in the Project state evidencing Borrower's authority to conduct business in the Project jurisdiction (e.g., a Foreign Status Certificate).

#### 19.4.6.4 Tax Credit Transactions

A. In tax credit transactions, Borrower's governing document (or the governing document of Borrower's single-member, if Borrower is a single-member LLC and the equity will be paid-in to the single-member) must incorporate the tax-credit investor's equity pay-in schedule, as approved by the RC Director. The HUD Closing Attorney will confirm with the RC Director that the equity pay-in schedule is acceptable.

#### 19.4.6.5 Final Closings

- A. At Final Closing, a certification signed by the Secretary or other authorized representative, either:
1. Confirms no changes were made to the Borrower's organizational documents delivered to HUD at Initial Closing and that the authorizing resolution given at Initial Closing covers the Final Closing and is still in effect; or
  2. Identifies any changes made to the organizational documents delivered to HUD at Initial Closing and attaches copies of the amendments or other documents effecting such changes.
- B. An authorizing resolution may be required if the Borrower's governing organizational documents and previously delivered resolutions did not fully authorize the Final Closing or final Loan amount.

### 19.4.7 Title, Escrow, and Survey Requirements

#### 19.4.7.1 Logistics

A. **Closing Review.** After the Firm Commitment has been issued, the RC Director and HUD Closing Attorney review a pro forma title insurance policy, a survey of the Land, and the Survey Instructions and Surveyor's Report (form HUD-91073M), as submitted by Lender's Counsel in the draft closing package. HUD reviews to confirm that Borrower's interest in the real estate is not impaired by title or survey

matters that impermissibly impact the insurability, operation, financial viability, or marketability of the Project, and that title and survey are consistent with HUD Program Obligations.

**B. Closing.** At or before closing, Lender must provide the HUD Closing Attorney with an authenticated and enforceable title policy (see [Section 19.4.7.2](#), below for currently approved form). The policy must be effective as of the date of HUD's endorsement of the Note, in the form approved by the HUD Closing Attorney, and including all endorsements prescribed by this [Section 19.4.7](#).

### 19.4.7.2 Title and Survey Review Standards

**A.** HUD's currently approved form of title insurance policy is the American Land Title Association (ALTA) 2006 Loan Policy of Title Insurance – Lender's Policy, or state approved equivalent (Title Policy).

**B.** HUD may approve revised versions of the ALTA 2006 title policy or related forms as ALTA releases new versions. When approved, HUD will post the approval to HUD's external website.

### 19.4.7.3 Pro Forma Title Policy Submission

**A.** As part of the draft closing package, Lender's Counsel must submit a pro forma of the Title Policy, along with legible copies, or if illegible, certified transcripts, of all exception documents listed in Schedule B. If the title company cannot produce a legible copy or certified transcript of an exception document, the exception must be extinguished and removed from the Title Policy, or affirmatively covered, except where the RC Director, in consultation with the HUD Closing Attorney, determines that elimination is impossible or impracticable, and does not pose an unacceptable risk to HUD.

**B.** Lender's Counsel must thoroughly review the pro forma Title Policy prior to submission with the closing package and, when possible, obtain corrections to the pro forma to comply with the standards of this section prior to submitting the pro forma to HUD.

1. **HUD Closing Review.** The RC Director and HUD Closing Attorney have concurrent responsibility to review the pro forma Title Policy, for completeness, acceptability, and accuracy, as detailed below. Lender's Counsel is responsible for resolving deficiencies, whenever possible, and submitting a final Title Policy, that is consistent with the form and substance approved by the HUD Closing Attorney and RC Director.

a. RC Director Responsibilities. The RC Director will:

- 1) Review all subordinate liens and encumbrances for programmatic acceptability and compliance.
- 2) Review all title exceptions and survey matters for consistency with the proposed financing of the Project. Confirm that listed exceptions do not adversely affect the Project value or marketability, unless previously approved by HUD during Project underwriting. If the RC Director cannot determine acceptability, the RC Director will refer the issue to HQ MHP. See 24 CFR 200.61, 200.72, and 200.73.
- 3) If the Project's zoning compliance is established by title endorsement (see checklist), confirm that the Project's approved use under the applicable section of the NHA is consistent with the zoning endorsement. See 24 CFR 200.72.

- 4) Provide the HUD Closing Attorney and Lender with written comment identifying all title and survey matters deemed by the RC Director to be programmatically unacceptable. The RC Director will consult with the HUD Closing Attorney to resolve identified deficiencies.
  - 5) Ensure all identified deficiencies have been resolved to the RC Director's satisfaction prior to issuing the administrative clearance to close and assist Lender in resolving deficiencies as appropriate.
- b. HUD Closing Attorney Responsibilities. The HUD Closing Attorney will:
- 1) Confirm that the Title Policy reflects that the FHA-insured *Security Instrument* will be a valid and enforceable first lien against the insured Land (except for loans insured under sections 241 and 223(d)).
  - 2) Ensure the elimination of unacceptable title and survey matters, including covenants, restrictions, or exceptions that violate federal law, except where the RC Director, in consultation with the HUD Closing Attorney, determines that elimination is impossible or impracticable, or that the encumbrances can be insured over or otherwise adequately addressed.
  - 3) Identify all Schedule B items with rent, affordability, and/or use restrictions, including those imposed by state or local government(s) or instrumentalities. If the item reflects a restriction that is not approved in the Firm Commitment (e.g., secondary financing, see [Section 19.4.9](#)), disclose the matter to the RC Director in writing.  
  
Note: The HUD *Rider to Restrictive Covenants* (see [Section 19.15](#)) is required when the RC Director, in consultation with the HUD Closing Attorney, determines that the *Rider* is necessary to comply with the Project's underwriting or Program Obligations.
  - 4) Identify Schedule B and Survey matters that the RC Director should review for programmatic acceptability, including:
    - a) Indemnification provisions;
    - b) Private charges or assessments;
    - c) Options to purchase;
    - d) Rights of first refusal, or the prior approval of a future purchaser or occupant;
    - e) Tenant in possession under a recorded or unrecorded lease;
    - f) Air rights, whether they are part of the insured real property or reserved to a party other than Borrower;
    - g) Condominium rights;
    - h) Mineral rights, mineral reservations, and mineral leases;
    - i) Patent reservations;
    - j) Riparian rights;
    - k) Reversionary interest (conditional or unconditional);
    - l) Telecommunication leases and rooftop leases;

- m) Commercial leases; and
- n) Development agreements.

### 19.4.7.4 Title Policy Requirements

**A. Schedule A.** Schedule A details the coverage provided by the Title Policy.

1. **Effective Date.** The Title Policy effective date must be the same as the date of HUD's endorsement of the *Note*. If a time of day is included, the time must be end of the business day.
2. **Policy Amount.** The amount of the title insurance coverage, shown in Schedule A, must be the full amount of the FHA-insured Loan.

Note: For new construction and substantial rehabilitation loans, HUD requires that the Title Policy insure the full amount of the FHA-insured Loan (e.g., the amount of the *Note*); pending disbursement endorsements are permitted if the endorsements are consistent with the requirements of this Section. HUD insures all 223(f) transactions in full at the time of endorsement, thus pending disbursement endorsements are not permitted for 223(f) Title Policies.

3. **Named Insureds.** Schedule A, number 1 lists the insureds for the Title Policy. Lender "and/or the Secretary of Housing and Urban Development, and their successors and/or assigns, as their interests may appear" must be the named insureds on the Title Policy. No other parties, e.g., subordinate Lenders, may be named insureds.
4. **Estate or Interest in the Land.** Schedule A, number 2 identifies the type of estate encumbered by the *Security Instrument*. The identified estate must be consistent with the Firm Commitment. By statute, Borrower's estate or interest in the Land must be fee simple or an eligible leasehold. In addition, the Borrower's statutorily required interest, Schedule A, number 2 must also reference any appurtenant right, including beneficial easements. In such instances, Borrower's appurtenant right must be distinguished from Borrower's statutorily required interest (e.g., "fee simple as to [Borrower's fee simple or leasehold estate] and easement as to [beneficial easement]").
5. **Vested Title Holder.** Schedule A, number 3 identifies the entity that holds title to the Land. Generally, Borrower must be identified as the only vested title holder in Schedule A, number 3. If the Firm Commitment evidences HUD's approval of an alternative (e.g., air rights, bifurcated ownership, or public entity held fee subject or joined to the *Security Instrument*), the vested title holder in Schedule A, number 3, must be consistent with the Firm Commitment.
6. **Insured Mortgage.** Schedule A, number 4 describes the instrument(s) that create the mortgage insured in the Title Policy. Both the *Security Instrument* and the *Regulatory Agreement*, because it is incorporated into the *Security Instrument*, must be shown in Schedule A, number 4. The reference to the *Regulatory Agreement* must state that the *Regulatory Agreement* is incorporated by reference in the *Security Instrument* (other legally equivalent phrasing may be used, subject to HUD Closing Attorney approval).
7. **Legal Description.** The legal description of the Land used in the Title Policy must exactly match the legal description in the Firm Commitment, on the Survey, and in other closing documents except for minor stylistic differences or immaterial reference language. Appurtenant interests shown in Schedule A, number 2 may be listed as separate tracts, parts, or other legal equivalent.



**B. Schedule B.** Schedule B provides coverage of Exceptions.

1. **Standard Exceptions.** The Title Policy must not include standard exceptions on Schedule B, unless a standard exception cannot be deleted under applicable state law. Lender and Lender's Counsel are responsible for requesting deletion of standard exceptions from the Title Policy. Affirmative coverage over these matters is not permitted unless such coverage is the only available mitigation under applicable state law. Standard exceptions, sometimes called general exceptions, include, but are not limited to:
  - a. Rights or claims of parties in possession not shown by the Public Records;
  - b. Easements, or claims of easements, not shown by the Public Records;
  - c. Encroachments, overlaps, boundary line disputes, or other matters which would be disclosed by an accurate survey or inspection of the Land;
  - d. General exception for matters shown on survey, or that would be shown on survey;
  - e. Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records (aka mechanic's liens); and
  - f. Taxes or special assessments which are not shown as existing liens in the Public Records.
2. **Senior Record Exceptions.** Schedule B must list items identified by title in the land records. In most jurisdictions, title matters senior to the FHA-insured mortgage are shown on a Schedule B-I. Senior record exceptions must either be approved by the HUD Closing Attorney (in consultation with RC Director pursuant to the criteria in [Section 19.4.7.2](#) above), or extinguished and removed, affirmatively insured over, or otherwise mitigated to the satisfaction of the HUD Closing Attorney and RC Director, as appropriate. No monetary liens may supersede the FHA-insured mortgage, except supplemental loans insured under Section 241, which will be subordinate, and real estate taxes and assessments for current year that are not yet due and payable.
3. **Project Survey Exception.** While the general title exception for survey matters is prohibited (see [Section 19.4.7.2.A](#), above), minor survey matters expressly noted by the surveyor (e.g. a specific fence encroachment not affecting Borrower's use of or liability for the Land) may be listed as exceptions from coverage in Schedule B, subject to RC Director approval, which may require affirmative coverage if available under state law.
4. **Subordinate Record Exceptions.** In most jurisdictions, matters subordinate to the *Security Instrument* are shown on a Schedule B-II.
  - a. The UCC-1 Financing Statement recorded as a fixture filing in the real estate records of the Property jurisdiction must be shown in Schedule B as subordinate to the *Security Instrument*.

Note: HUD does not require that the UCC-1 Financing Statement filed with the Secretary of State, or legal equivalent, in the Borrower's organizational jurisdiction be shown on Schedule B.
  - b. If the Firm Commitment authorizes secondary financing, either from a governmental or private source, secured by a subordinate lien on the Project, such lien(s) must be shown in Schedule B as subordinate to the *Security Instrument*.
5. **Record Exceptions that Appear to Violate Federal Law or the Regulatory Agreement.** Exceptions that appear to violate Federal law or the Regulatory Agreement, in whole or in part, must



be extinguished as a matter of record and removed from the Title Policy, except where determined by the RC Director to be impossible or impracticable. If removal is impossible or impracticable, the HUD Closing Attorney will request that the Title Policy or the title company state that the conflicting provisions are unenforceable.

**C. Affirmative Coverage (Endorsements) and Deletions to the Title Policy.** The Title Policy must include the affirmative coverage (coverage added to the standard policy) and deletions listed below, and any other coverage required by the RC Director and the HUD Closing Attorney, except where prohibited by applicable state law.

1. **Affirmative Coverage, Endorsements.** Affirmative coverage extends the insurance provided through the Title Policy by covering additional risks of loss or damage. Affirmative coverage is added to the Title Policy by annotation (e.g., notation of additional coverage directly on a schedule), or through the title company's issuance of standard form endorsements. The affirmative coverage listed below is generally required. When a specific ALTA endorsement number is listed but not available in the Project jurisdiction, the HUD Closing Attorney may accept a state approved endorsement bearing a different form number, or alternative affirmative coverage, provided that the coverage is substantially similar. The RC Director, HUD Closing Attorney, and Lender are each permitted to require additional affirmative coverage not required by this section based on the specific characteristics of the transaction.

a. **Comprehensive Coverage over Restrictions, Encroachments, and Minerals.** ALTA Endorsements 9, 9-06, 9.7-06, 9.10-06 (also known as the *Series 9, Comprehensive Endorsement, or Comp 9*), as applicable, to provide affirmative coverage related to mortgage divestment, and violations of restrictions, encroachments, and minerals. In many jurisdictions, the comprehensive ALTA 9-06 is intended for use with improved residential property but may also be issued for unimproved property (e.g., new construction on vacant land). Other jurisdictions have authorized issuance of a series 9 endorsement specifically for unimproved property.

Note: Most of the ALTA series 9 endorsements specifically exclude certain Schedule B matters. For that reason, other affirmative coverage (notation or other endorsement) will be required to extend coverage over such items in Schedule B, as determined necessary by the RC Director and HUD Closing Attorney.

b. **Private Rights.** ALTA Endorsement 9.6.-06 – Loan Policy, to provide affirmative coverage against loss or damage resulting from options to purchase, rights of first refusal, rights of prior approval, and other private charges or assessments.

c. **Deletion of Arbitration.** The Title Policy must provide affirmative coverage that deletes Condition 13 of the ALTA jacket policy (arbitration). There is no published ALTA form number for this endorsement.

d. **Zoning.** ALTA Endorsements 3.1-06 (completed structure/improved land), or 3.2-06 (construction/unimproved land), as applicable, when Lender elects to use a zoning endorsement as the requisite evidence of zoning compliance. See Instructions to Opinion of Borrower's Counsel (form HUD-91725M-INST). When the ALTA 3.2-06 is used, the plans and specifications reference must be consistent with the Firm Commitment and the *Building Loan Agreement (i.e., the referenced plans and specs must be consistent with the HUD-approved version)*.

- e. **Environmental Protection Lien.** ALTA Endorsement 8.1-06, to provide coverage related to lien priority of the *Security Instrument vis-à-vis* environmental protection liens as defined in the endorsement. “None” should be inserted after the colon (:) in the endorsement paragraph (b). If any environmental protection liens are listed by title in paragraph (b), the HUD Closing Attorney must consult with the assigned HUD Environmental Officer.

Note: ALTA Endorsement 8.2-06 is not an acceptable alternative as it applies to commercial property.

- f. **Leasehold.** ALTA Endorsement 13.1-06 to provide additional coverage when the Project is secured by a HUD-approved ground lease.
- g. **Access and Entry.** ALTA Endorsements 17-06 (direct access), 17.1-06 (easement access), as applicable, to provide affirmative coverage related to property access and entry. The access endorsement must be consistent with the point(s) of access depicted on the Survey.
- h. **Tax Parcels.** ALTA Endorsement 18-06 (for Land consisting of a single parcel) or 18.1-06 (for Land consisting of multiple tax parcels or Land that includes insured easements), as applicable, to provide affirmative coverage related to tax parceling risk.
- i. **Contiguity.** ALTA Endorsements 19-06 and 19.1-06, as applicable, to provide additional coverage for Projects with contiguity risks (e.g., multiple or adjacent parcels, or beneficial easements).
- j. **Same as Survey.** ALTA Endorsement 25-06 or 25.1-06, as applicable, to provide coverage related to non-objectionable inconsistencies between the record legal description (Land in Schedule A) and the boundaries identified on the Project’s survey. The survey reference in the endorsement must be consistent with the date and number revision of the HUD-approved Survey.
- k. **Policy Authentication, Electronic Signature.** ALTA Endorsement 39-06, as applicable, to ensure coverage when the Title Policy will be issued electronically or without wet-ink signatures.
- l. **Pending Disbursements.** ALTA Endorsements 32-06 and 33-06, to provide alternative coverage when the title company will only insure a new construction or substantial rehabilitation loan by deleting Covered Risk 11(a) (mechanic’s lien coverage) during the construction of the Project. HUD only permits deletion of Covered Risk 11(a) and pending disbursements title coverage for loans closed as new construction/substantial rehabilitation *Insurance of Advances*. Pending disbursements coverage is prohibited when HUD insures the total Loan amount at endorsement (e.g., 223(f) projects with Expanded Work, see [Section 19.6.1.9](#)) or where mechanic’s liens relate back to the start of construction pursuant to state law.
- m. **Easements and Encroachments.** ALTA 28 Series Endorsements, as applicable, when easements or encroachments are shown on survey and listed as senior to the *Security Instrument* in Schedule B.
- n. **Minerals and Other Sub-Surface Substances.** ALTA Endorsement 35.1-06 (improved land), or ALTA Endorsement 35.3-06 (land under development), as applicable, to provide affirmative coverage over Schedule B exceptions for mineral or other sub-surface substance rights.

Note: The 35 series endorsements provide additional coverage that is not afforded by the *Series 9* comprehensive endorsement(s).



of closing. Lender's Counsel is responsible for obtaining any necessary updates to the CPL to ensure compliance with these requirements.

4. HUD will only accept third-party escrow services and related CPLs when such services and coverage are permitted by state law of the Project jurisdiction.

### 19.4.7.6 Survey, Survey Map/Plat and Surveyor's Report.

**A. Survey Map Plat.** The plat should contain the following:

1. **Form.** When a survey is required for closing (see applicable closing checklists and instructions elsewhere in this Guide), an ALTA/NSPS Land Title Survey map or plat (the Survey) and a surveyor's report supplementing the Survey must be submitted, and must conform to the instructions and form set forth in the Survey Instructions and Surveyor's Report (form HUD-91073M) (the Surveyor's Report), including the listed ALTA/NSPS Table A items and the required certification.
2. **Date.** The current Survey and *Surveyor's Report* must be signed and sealed by the surveyor not more than 180 days prior to closing. The date of the last site inspection/field work must be no more than 180 days prior to closing. The RC Director, in consultation with the HUD Closing Attorney, may extend the 180 timeframes at its reasonable discretion. If the RC Director allows for most recent fieldwork to be completed more than 180 days prior to closing, Lender must submit a *Survey Affidavit of No Change* from Borrower, in a format similar to the sample included at [Section 19.10](#). All references to 180 days in this paragraph are reduced to 120 days for as-built surveys submitted for final closing of a construction Loan. See [Section 19.5.9](#).
3. **All Identifiable Interests Must Appear.** The Survey must show all identifiable easements, apparent interests (including railroads), and encroachments on the Land, and from the Land onto contiguous parcels. All identified interests must be acceptable to the RC Director, in consultation with the HUD Closing Attorney. All plottable easements, restrictions and exceptions shown on the Title Policy, including existing maintenance, joint-use, easement, and other agreements, must be depicted on the Survey. Blanket easements that cannot be plotted must be listed with recording information, and notation "not plottable" or equivalent must appear next to the title exception.
4. **Access.** All access roads must be labeled as public or private, as applicable.
5. **Common Elements.** When a Project includes common facilities not exclusive to the Project, Borrower must provide for recordation of an agreement for the shared common use of applicable land and facilities (e.g., common drives, common lobbies, elevators, walkways, utility roads, parking structures, recreation facilities, storm water management facilities (retention ponds, detention ponds, swales, and culverts), or other common facilities). The agreement must grant shared rights to Borrower, with rights of use for tenants, and must run with the land. All common elements, including common elements located on adjacent parcels, must be depicted and labeled on the Survey, unless the RC Director determines that such depiction is not necessary.
6. **Declarations.** When the Project is subject to condominium, property/homeowner association, or other HUD-approved covenant or declaration, (e.g., documents providing for maintenance, access, or cost sharing) and the document(s) affect Borrower's interest in the Land (e.g., air rights), they must be shown or referenced on the Survey.

7. **New Agreements Required After Survey Review.** After survey review, the RC Director, in consultation with the HUD Closing Attorney, may determine that a recordable maintenance, joint use, easement, or other agreement is necessary to mitigate risk of identifiable rights or third-party use, etc. If so, the RC Director will notify the Lender of the need for a new agreement. Once created, any new agreement must be depicted (or referenced, if not plottable) on Survey, and recorded sufficiently in advance to allow for such depiction; the RC Director, in consultation with the HUD Closing Attorney, may deviate from this Survey requirement in exigent circumstances.

**B. Surveyor's Report.** The Survey must be supplemented with the Surveyor's Report. The Surveyor's Report must be signed and dated on or after the date of the last revision to the Survey, and must be completed by a licensed surveyor, not merely an engineer, and bear the surveyor's original signature (or other legally effective authentication), and professional seal.

## 19.4.8 Opinion of Borrower's Counsel

### 19.4.8.1 General

A. The Opinion of Borrower's Counsel (form HUD-91725M) provides HUD with a comprehensive transaction opinion letter from Borrower's Counsel. The Instructions to Opinion of Borrower's Counsel (form HUD-91725M-INST), explains the requirements for completion of the Opinion, including Exhibit A to Opinion of Borrower's Counsel, Certification of Borrower (form HUD-91725M-CERT) and additional required exhibits, and use of alternate provisions, as applicable. Inapplicable provisions in the form Opinion must be retained, and either stricken or replaced with the notation "Intentionally Omitted" in order to retain the numbering/lettering sequence in the Opinion.

### 19.4.8.2 Supplemental Opinions

A. Transactions may require a supplemental Opinion of Borrower's Counsel. Circumstances that may necessitate a supplemental opinion are discussed elsewhere in this Chapter. See e.g., [Section 19.3.4.3.A.5](#) and [Section 19.5.9.5](#).

### 19.4.8.3 Litigation Disclosure

A. Litigation docket searches for the Borrower and Borrower's general partner, managing member, or similar controlling person(s) or entity(ies), must be conducted in the state, federal district, and bankruptcy courts of the Project jurisdiction and in the jurisdiction of their principal places of business.

B. All litigation identified by a required docket search and any other claim threatened in writing and known to Borrower or Borrower's Counsel (including litigation arising after the date of the litigation docket search but prior to closing), must be disclosed to the HUD Closing Attorney in writing. This disclosure must be accompanied by an explanation from the Borrower and/or an assessment of risk by Borrower's Counsel to the reasonable satisfaction of the Lender and HUD. The explanation/assessment must describe the nature of the litigation or claim, the status of the proceeding, and whether insurance is/will cover potential liability. Lender's Counsel is responsible for obtaining any information requested by the HUD Closing Attorney or the RC Director.

## 19.4.9 Secondary Financing

### 19.4.9.1 General

**A.** Secondary financing must comply with the requirements in Section 8.9 (Secondary Financing), the NHA first-lien requirement, and 24 CFR Part 200, particularly 200.71 and 200.85). Approval of secondary financing is a Housing business decision, including whether it may be secured with a subordinate lien against the Project. Sections 8.9 and 14.12 discuss when the RC Director may approve secured, secondary financing.

**B.** The RC Director must ensure any approved secondary financing is consistent with Program Obligations and memorialized in the Firm Commitment, including: the name of source, whether it is private or public, amount\*, interest rate, whether it will be secured or unsecured, repayment terms, maturity date, financing instrument(s), and the name of maker on the Note.

**C.** To the extent the RC Director approves secondary financing for a transaction, Lender's Counsel must ensure, and HUD Closing Attorney will confirm, that the appropriate forms discussed below are used.

**D.** Any liens created by secondary financing must be shown on the Title Policy in Schedule B, Part II or otherwise shown as subordinate to the lien of the FHA-insured Security Instrument in conformance with state-specific practice and approved by the HUD Closing Attorney.

**E.** The Request for Endorsement of Credit Instrument (form HUD-92455M) and the Request for Final Endorsement of Credit Instrument (form HUD-92023M) require copies of all HUD-approved promissory notes be attached. The RC Director is responsible for confirming that only the promissory notes approved by HUD are attached.

**F.** Subordinate secondary financing may be secured by a collateral assignment of the Project's HAP contract, provided the proper documentation is used and approved by the RC Director and HUD Closing Attorney. See applicable Consent to Assignment of HAP Contract as Security for Financing, (e.g., form HUD-9649 and form HUD-9649a). If the HAP Contract, by its terms, already includes HUD's consent for collateral assignment of the contract as security for financing, HUD will not require additional documentation.

**G.** Additional secondary financing-related guidance may apply to the transaction, depending on the circumstances. See, e.g.:

1. [Chapter 2, Section 2.6.4.1](#). Identity of interest requirements for various secondary financing and tax credit scenarios
2. [Chapter 3, Section 3.1.16](#). Bridge or Gap Financing
3. [Chapter 3, Section 3.1.19](#). Tax Increment Financing
4. [Chapter 7, Section 7.16](#). Tax Abatement and Deferrals
5. [Chapter 8, Section 8.12](#). Firm Commitment Processing with Grants/Loans
6. [Chapter 8, Section 8.14](#). Determining the Estimated Cash Requirements for Completing the Project
7. [Chapter 8, Section 8.15](#). Bond Financed Projects and Tax-Exempt Agency Loans



8. [Chapter 14](#). LIHTC and Other Tax Credit Programs, particularly:
  - a. [Section 14.11](#). Structuring of Secondary Debt in Tax Credit Transactions
  - b. [Section 14.12](#). Developer Fees
  - c. [Section 14.13](#). Tax Credit Equity Pay-In Schedule
  - d. [Section 14.15](#). Equity Bridge Loans (EBLs) in Tax Credit Projects
9. [Appendix 12, Section A.12.1](#). Approval of Advances

### 19.4.9.2 Unsecured Secondary Financing

**A.** Promissory notes may be used to evidence subordinate Borrower debt approved by HUD. One of the two following forms must be used:

1. Surplus Cash Note (form HUD-92223M); or
2. Residual Receipts Note (form HUD-92908M), when Borrower's distributions are restricted through a Residual Receipts Rider to the Regulatory Agreement.

**B.** The foregoing forms may be used to evidence the following types of debt:

1. Discounts, financing fees, and/or extension fees paid by a third party on behalf of Borrower;
2. Secondary loans from a governmental or non-governmental source;
3. Deferral of the Developer's fee in return for Borrower's agreement to pay upon completion of the Project (deferred Developer fee), if: (1) disclosed by the parties before Initial Endorsement, and (2) the Firm Commitment does not provide for a Builder's and Sponsor's profit and risk allowance (BSPRA); and
4. Land acquisition costs that exceed HUD's warranted price of land fully improved.

**C.** Promissory notes are prohibited under the following circumstances:

1. For costs disallowed in the cost certification review;
2. To determine the distribution of surplus cash; and
3. To establish an equity interest, other than Equity Bridge Loans for tax credit projects, as discussed in [Section 19.4.9.6](#), below.

### 19.4.9.3 Secured Secondary Financing – Public Sources

**A. General.** Secondary financing from a public entity that will be secured with a lien against the Mortgaged Property, as memorialized in the Firm Commitment, must be subordinated through HUD's Subordination Agreement – Public (form HUD-92420M).

**Note: The Subordination Agreement – Public should not be used to subordinate HUD-held debt. Existing Mark-to-Market (M2M) debt should be subordinated using the form of subordination agreement from the HUD Office of Recapitalization attached to post-M2M approval memos. The HUD Closing Attorney will contact the MMD to advise on documentation required to subordinate other HUD-held debt, including Partial Claim and Flexible Subsidy loans.**



**B. The Subordination Agreement – Public.** This Agreement contains HUD-required language that must be inserted or incorporated by reference into the subordinate note (see Subordination Agreement – Public (form HUD-92420M), Section 3(c), Borrower’s and Subordinate Lender’s Representations and Warranties). The HUD Closing Attorney will review the subordinate note to confirm inclusion/incorporation of this required language. The form also contains bracketed alternative options for subordinate public debt that is forgivable.

**C. Negotiated Templates.** HUD will consider requested changes to the Subordination Agreement – Public if the change is necessary to comply with state or local law, in accordance with the procedures set forth below. HUD’s written acceptance of any changes will result in a template for a given jurisdiction and program. Pursuant to the Paperwork Reduction Act, HUD’s approval of any template expires upon implementation of the next OMB-approved version of the form, at which time public Lenders must again request HUD approval to modify the new OMB-approved version.

1. Requested changes are subject to the review of the HUD Closing Attorney, the RC Director, and the Regional Counsel.
2. Counsel to the governmental agency must separately identify each specific provision(s) of the *Subordination Agreement – Public* that needs to be modified in order to comply with specific provisions of state or local law. The request must include a narrative outline of the request in which each requested form change must be numbered, with a depiction of the change shown as redlined text compared to the HUD form, accompanied by a detailed description explaining why the change is necessary to comply with state or local law. Note that HUD will not consider non-substantive, stylistic changes. HUD will only approve requested changes that are accurate, sufficiently explained, and narrowly tailored to address the state or local law compliance issue(s). The requested changes and supporting justification must be submitted to the HUD Closing Attorney. The HUD Closing Attorney will independently analyze and confirm whether the justification and rationale are accurate and narrowly tailored to address compliance with the identified state or local law and confirm there are no statutory or regulatory barriers.
3. If the HUD Closing Attorney determines the requested changes are legally acceptable, the HUD Closing Attorney will submit the requested changes and justification to the RC Director and Regional Counsel. The RC Director and Regional Counsel will review the submission and render a final decision on programmatic and legal acceptability.

Note: The HUD Closing Attorney will be the sole point of contact for Lender’s Counsel and the government agency during HUD’s review of a template change of the *Subordination Agreement – Public*, unless the HUD Closing Attorney requests that outside parties communicate directly with other HUD staff.

4. The RC Director will provide a written statement to the requesting party evidencing its final decision.
5. If HUD approves the template, that version will be used for all transactions involving the same governmental program in that state or locality until the expiration of the current OMB-approved *Subordination Agreement – Public*.
6. The RC Director and applicable Regional Counsel will maintain copies of all approved negotiated templates.

**D. Deal-Specific Changes.** To further facilitate the use of other public funds, the RC Director is authorized to approve, on a case-by-case basis, the following changes to the Subordination Agreement – Public that may be necessary to accommodate affordable housing, and where there is minimal to no legal and business risk to HUD. Such business-driven changes may be made if the RC Director ensures that the changes are consistent with Program Obligations, are supported from a business and HUD mission perspective, and that resulting risks are appropriately underwritten.

1. Modification of Section 3(b) to allow the subordinate loan to mature prior to the FHA-insured Loan; and
2. Allowance of compounding of interest, which is otherwise prohibited by Section 3(c)(4).

Note: All other deal-specific deviations from the OMB-approved *Subordination Agreement – Public*, including business-driven changes in state and local templates approved for expired iterations of the form, constitute substantive changes subject to the review procedures in [Section 19.4.1.6](#) of this Chapter.

**E. Instructions for submission to the HUD Closing Attorney.**

1. **Draft Submissions.** The draft *Subordination Agreement – Public* submitted to the HUD Closing Attorney for review must include a clean version as well as a redline comparison to show any and all changes to the established state/local program-specific template (or standard form if there is no template), including any changes required by the HUD Firm Commitment.
2. **Closing Submissions.** A redlined version of the HUD approved *Subordination Agreement – Public* must be submitted at the closing table together with the clean version. All changes from the state/local program-specific template must be shown in the redline, including any inapplicable provisions, approved deal-specific changes, and changes required in the HUD Firm Commitment.

### 19.4.9.4 Secured Secondary Financing – Private

**A.** When the RC Director approves secured secondary financing from a private entity, that is secured with a lien against the Mortgaged Property consistent with Program Obligations and reflected in the Firm Commitment, the parties must use Subordination Agreement – Private (form HUD-92907M). Note that the Secondary Financing Rider is no longer in effect.

**B.** The conditions for secured secondary financing from a private entity differ depending on the section of the National Housing Act through which the mortgage is being insured, including whether it may be secured with a lien on the Project (see, e.g., Sections 8.7 and 14.14).

**C.** Section 3(c) of the Subordination Agreement – Private contains HUD-required language that must be inserted into the subordinate note. The HUD Closing Attorney should confirm inclusion of the required language.

### 19.4.9.5 Restrictive Covenants and Use Agreements for Secondary Financing

**A.** The sources of the secondary financing or of the Project's other approved financing structures (e.g., LIHTCs, tax-exempt bonds, etc.) may contain affordability restrictions on rents and occupancy based on tenant incomes. When imposed in connection with the HUD-approved financing, such affordability

restrictions (and the accompanying encumbrances on title, such as use agreements and other restrictive covenants) must be documented in the Firm Commitment and be consistent with Program Obligations.

**B.** The HUD Closing Attorney will ensure that the HUD Rider/Amendment to Restrictive Covenants (the Restrictive Covenants Rider, found in [Section 19.15](#)), is used. The Restrictive Covenants Rider ensures, in part, that nothing in the restrictive covenants prevents HUD from enforcing its Loan documents and Program Obligations, and further ensures that the agency's enforcement of the restrictive covenants will not conflict with the National Housing Act and related regulations. The document also provides that the use restrictions terminate upon foreclosure.

**C.** The affordability restrictions may be permitted to remain in place following a foreclosure of the FHA-insured Loan in one of the three following scenarios, keeping in mind that only pure restrictive covenants without lien rights may be recorded prior to the HUD Security Instrument under the NHA.

1. **Individual Transaction.** As long as any risks are appropriately mitigated from a business perspective, the RC Director may, on a case-by-case basis, permit affordability restrictions to remain in place after foreclosure. Such an exception to the termination requirement must be expressly provided for in the Firm Commitment, otherwise there is no guarantee that HUD will be able to accommodate last minute requests to permit the use restrictions ahead of the HUD-insured financing. Any approval under this section for an individual transaction is specific to that transaction only and does not obligate HUD to approve the same exception for affordability restrictions on a subsequent transaction.
2. HOME Program Use Restrictions. See 24 CFR 92.252.
3. HOME-like Use Restrictions. State and local affordable housing use restrictions that are substantially similar to the HOME Program may be recorded prior to the HUD Security Instrument, provided that:
  - a. The affordability levels are similar to the HOME program, and
  - b. The state or local program risks recapture of funds (i.e., statutory or regulatory required payback to HUD or other original funding source, such as a state treasury) in the event the use restrictions are terminated prior to the mandated use period.
4. Counsel for state or local programs seeking HOME-like use restriction treatment should send written requests to the RC Director and HQ MHP for a determination. Such requests must be accompanied by a detailed explanation of the state or local program and precisely how it is similar to the HOME program in terms of affordability restrictions and threat of recapture, including a discussion of the governing statutes and/or regulations. HUD will only consider requests for HOME-like designation of a program if the request is submitted with the Project loan application or earlier. If it is established that a state or local affordable financing program satisfies these conditions, as determined and approved by HUD in writing, HUD will permit the associated use restrictions to be recorded ahead of the HUD *Security Instrument* for that specific program.
5. Notwithstanding the foregoing, prior to determining that affordable use restrictions may be recorded in first position, the MAP Lenders and RC Directors must properly underwrite all secondary financing and related use restrictions for their impact on the Project viability and marketability.
6. When use restrictions or other restrictive covenants are permitted ahead of the HUD *Security Instrument*, the *Restrictive Covenants Rider* must still be used with appropriate modification (approved by the HUD Closing Attorney) of the form to remove the requirement that the restrictions

terminate upon foreclosure. No exceptions are permitted, as the *HUD Rider* serves other important objectives beside termination of use restrictions upon foreclosure. See [Section 19.4.1.6](#).

7. All other requested changes to the *HUD Rider* must be processed in Headquarters as requests for substantive changes under [Section 19.4.1.6](#).
8. If there are affordability use restrictions imposed on the Project that are not in connection with new secondary financing but remain from previous financing sources, the *Restrictive Covenants Rider* must be used when required by the Firm Commitment or when the RC Director and HUD Closing Attorney determine that the *Rider* is necessary to comply with the Project's underwriting or Program Obligations. Any request to allow the use restrictions to have recording priority ahead of the HUD *Security Instrument* must be addressed following the procedures found above.

### 19.4.9.6 Equity Bridge Loans (EBL) for Tax Credit Projects

A. HUD will address requirements for EBL terms in the Firm Commitment. The EBL documents must meet the requirements of [Chapter 14, Section 14.15](#), which must be memorialized in a rider attached to the EBL documents and reviewed and approved by the HUD Closing Attorney. See [Section 19.16](#), Equity Bridge Loan Rider – LIHTC Projects.

### 19.4.9.7 Deferred Developer Fees (DDF) for Low Income Housing Tax Credit (LIHTC) Projects

A. A DDF loan in connection with a LIHTC transaction may be documented as a promissory note using the Surplus Cash Note (form HUD-92223M) or as a defined obligation in the Borrower's organization documents. In either instance, language must be included specifying that repayment is restricted to Surplus Cash, as that term is defined in the Regulatory Agreement.

B. A DDF loan must not be secured by the Project, and its term may be shorter than the term of the FHA mortgage.

C. See [Chapter 14, Section 14.12.2](#) and [Appendix 3, Section A.3.2.1](#) and [Section A.3.2.2](#) for additional guidance for DDFs.

### 19.4.9.8 Secondary Financing That Is Unavailable at Initial Closing

**A. Secondary Financing from Federal, State or Local Government Agencies.** If grant or loan funds from government sources are being contributed as Project Completion Funds (as defined in Section 4(c) of the Building Loan Agreement) and are unavailable at Initial Endorsement, the FHA-insured mortgage proceeds must be disbursed in accordance with procedures set forth in Section 8.12 and memorialized in the disbursement agreement attached to the Building Loan Agreement (see 24 CFR 200.54).

**B. Grants or Loans from Private (Non-governmental) Sources.** If grant or loan funds from private, non-government sources are being contributed as Project Completion Funds but are not available at initial endorsement, HUD will require Borrower to escrow an equivalent amount with Lender before or at initial endorsement, and will require that such escrowed funds be disbursed in full prior to disbursement of any insured Loan proceeds. Unless approved in advance by the RC Director and FHA Lender, a mortgage or deed of trust for a private loan that is approved to be secured with a lien against the Project may not be recorded until the loan is disbursed.

**C. Tax Credit Exception.** Notwithstanding the foregoing subsections 1 and 2, HUD will not require an escrow of tax credit equity (e.g., proceeds from LIHTC, New Market Tax Credit Program, or historic rehabilitation tax credits), as dictated by the Housing and Economic Recovery Act of 2008 (HERA) and 24 CFR 200.54. See also [Section 19.4.9.6](#) and [Chapter 14, Section 14.15](#) for guidance regarding Equity Bridge Loans in tax credit projects.

## 19.4.10 Bond-Financed Projects

### 19.4.10.1 General

**A.** All private activity volume cap financing associated with an FHA-insured Project, whether new or previously issued, must be disclosed at the time of firm application and memorialized in the Firm Commitment. This financing may be structured as traditional private placement bonds, or as a tax-exempt loan, provided that the obligation arises from the allocation of a state's private activity volume cap.

**Note:** [Section 19.4.10](#) regularly uses traditional bond terminology for convenience but applies to all private activity volume cap financing associated with an FHA-insured Project.

### 19.4.10.2 Firm Commitment

**A.** The Firm Commitment will indicate if the bonds are taxable or tax-exempt, and if they are cash-collateralized. As a condition of the Firm Commitment, all bond documents must comply with HUD's legal and programmatic requirements for bond transactions. HUD will regularly review and collect the bond documents that appear on the applicable Closing Checklist and will conduct a limited review consistent with this [Section 19.4.10](#). Upon review, the RC Director and/or HUD Closing Attorney may request additional documents and information, when they determine that additional information is necessary to complete HUD's review.

### 19.4.10.3 Lender's Certificate

**A.** The use of bonds and, if paid with loan proceeds, the cost of issuance of the bonds, must be reflected in either the Lender's Certificate (form HUD-92434M) or the Request for Endorsement of Credit Instrument (Certificate of Lender) (form HUD-92455M). To use short-term, tax-exempt, cash collateralized bonds in connection with 4% Low Income Housing Tax Credits, the Lender must certify that the transaction complies with the National Housing Act. This certification appears as a subsection of both the Lender's Certificate and Request for Endorsement of Credit Instrument (Certificate of Lender). When bonds are structured as a tax-exempt loan, Lender's Counsel, subject to review and approval by the HUD Closing Attorney, is authorized to modify the bond terminology used in the applicable HUD certificate to be consistent with the terminology used in the tax-exempt loan documents.

### 19.4.10.4 Tax-Exempt Bond/IRS Code 142(d) Projects

**A.** Projects financed with the proceeds from tax-exempt bonds pursuant to the Internal Revenue Code, Section 142(d), must meet minimum low-income occupancy restrictions. Project owners will typically record restrictive covenants against the project to ensure compliance with occupancy and use requirements. Such restrictive covenants must be subordinated to the FHA Security Instrument, Regulatory Agreement and Program Obligations, as discussed below.

### **19.4.10.5 Restrictive Covenants/Tax Regulatory Agreement**

A. The HUD Rider must be included in any bond document containing a restrictive covenant, either by attaching and incorporating the form by reference, or by incorporating the form provisions into the bond document itself. In bond financing, such restrictive covenants are often contained in the tax regulatory agreement. Inclusion of the HUD Rider is HUD's uniform method for ensuring, consistent with Program Obligations, appropriate subordination, supremacy of HUD requirements, invalidity of any cross-default provisions, and that a default under the bond regulatory agreement will not result in a claim against the Project, mortgage Loan proceeds, Project rents, any reserve or deposit required by HUD in connection with the mortgage loan transaction, or other restricted income of the Project. See [Section 19.4.9.5](#) for further discussion.

### **19.4.10.6 Borrower's Counsel Opinion**

A. For all bond transactions, the Opinion of Borrower's Counsel must include opinion 10. Borrower's counsel may rely on the bond counsel's opinion to provide opinion 10, if bond counsel is able to provide opinion 10 according to the requirements listed in the following section, [Section 19.4.10.7](#). If the bond counsel opinion does not provide opinion 10 consistent with these requirements, Borrower's counsel may not rely on the bond counsel opinion and must undertake its own due diligence and provide opinion 10 without reference to a supplemental bond counsel's opinion.

### **19.4.10.7 Bond Counsel's Opinion**

A. In bond financed transactions, HUD requires submission of a bond counsel's opinion attesting to enforceability of the bonds, and the tax-exempt status of the bond financing (if applicable). The HUD Closing Attorney will review the bond counsel opinion on a limited basis to confirm the inclusion of these required confirmations. Additionally, when Borrower's counsel relies on the bond counsel's opinion in providing Opinion of Borrower's Counsel opinion 10, bond counsel must use the Opinion of Borrower's Counsel definitions of Primary Loan Documents and Source Documents in providing opinion 10. HUD does not require the bond counsel's opinion to be addressed to HUD or name HUD as a party relying on the opinion.

### **19.4.10.8 HUD Note – Prepayment Prohibitions**

A. For tax-exempt bond financings, the FHA Note may be drafted using the optional provisions that prohibit prepayment.

### **19.4.10.9 HUD-Required Language for Trust Indenture/Funding Loan Agreement**

A. The trust indenture/funding loan agreement must include the language required by 24 CFR 207.261. This required language obligates the bond trustee/fiscal agent to return certain excess funds held in bond accounts to the FHA Lender in the event of an FHA mortgage insurance claim. The HUD Closing Attorney will collect the trust indenture/funding loan agreement and conduct a limited review to confirm the inclusion of the required regulatory language and the primacy of HUD's requirements in the event of a conflict. See [Section 19.4.10.12](#), below.



### **19.4.10.10 Bond Disbursement Agreement and Bond Loan Agreement**

A. If the bond financing includes a separate disbursement agreement or loan agreement, the HUD Closing Attorney will collect the agreement(s), and conduct a limited review to confirm the supremacy of HUD's requirements, and that HUD's Loan documents control in the event of a conflict. See [Section 19.4.10.12](#), below.

### **19.4.10.11 Bond Note**

A. If the bond financing includes a separate promissory note, the HUD Closing Attorney will review the bond note for compliance with HUD requirements. As with all subordinate financing, HUD's surplus cash/residual receipt requirements and forms apply, except for bond financing that is cash-collateralized and therefore exempt from HUD's surplus cash/residual receipts requirements.

### **19.4.10.12 Supremacy of HUD Requirements and Conflicts**

A. HUD requires that HUD program obligations control over any conflicts in the bond financing documents. In addition to opinion 10 of the Opinion of Borrower's Counsel, the HUD Closing Attorney will complete a limited review of the bond financing documentation to verify that there are contractual provisions providing for the supremacy of HUD's requirements in the event of a conflict. Practically, this review may be achieved through review and confirmation of a conflicts provision in the trust indenture/funding loan agreement, alone, if all other bond financing documentation is incorporated therein (e.g., by reference). Alternatively, if some bond financing agreements stand alone, or involve different parties, the HUD Closing Attorney may require conflicts provisions in those agreements also. To assist the HUD Closing Attorney, Lender's Counsel and bond counsel may provide the HUD Closing Attorney with a written explanation as to what contractual provisions provide for the supremacy of HUD's Loan documents, and that the provisions in HUD's Loan documents control in the event of a conflict with the bond financing documents.

B. A sample Conflicts provision is provided below.

FHA Federal Laws and Requirements Control. Notwithstanding anything in this [title of agreement] to the contrary, the [Parties] to this [title of agreement] acknowledge that this [title of agreement] and any obligations of the [title of the Borrower under the bond financing documents] hereunder, are subject and subordinate to the [title used for the FHA-insured Loan documents]. In the event of a conflict between [title of agreement] and [title used for the FHA-insured Loan documents], the conflicting provisions in the [title used for the FHA-insured Loan documents] are controlling.

## **19.4.11 Low-Income Housing Tax Credit (LIHTC) Financed Projects**

### **19.4.11.1 Firm Commitment Condition**

A. The use of LIHTC in FHA-insured Multifamily loan transactions must be disclosed with the Project loan application. Additional Conditions to the Firm Commitment will include the tax-credit equity pay-in schedule and a requirement that all LIHTC documents be acceptable to HUD. See [Chapter 14, Section 14.5](#) and [Section 14.9](#). HUD will review and collect all LIHTC-related documents that appear on the Closing Checklists. Additional documentation will rarely be required, however, the RC Director and HUD Closing



Attorney may request additional documents and information, if, based on a review of the firm application or draft closing package, they determine that additional information is required to complete their review.

### 19.4.11.2 Subordination of Restrictive Covenants

A. As a condition of receiving an allocation of LIHTCs pursuant to Section 42 of the Internal Revenue Code, Borrower will execute and record a Land Use Restriction Agreement (LURA) or similarly named restrictive covenant imposing affordability restrictions on the Project. The LURA must incorporate the Rider to Restrictive Covenants (see [Section 19.15](#)), which subordinates the LURA among other objectives. See [Section 19.4.9.5](#) for further discussion. The LURA should be recorded no later than Final Endorsement or Initial/Final endorsement, as applicable. If the LURA cannot be recorded by Final (or Initial/Final), a draft LURA with the HUD Rider must be submitted with the closing package for HUD review and approval prior to Endorsement. Additionally, Borrower must certify to HUD that the approved draft will be recorded as soon as practicable. In such cases, Lender must include the certification and the approved draft LURA in the Closing Docket. If, between the time of HUD's approval and the recordation of the HUD Rider, the state financing agency allocating the tax credits requires further modifications to the previously reviewed draft, such changes must be resubmitted to the HUD Closing Attorney in blackline format for further review and consideration. Copies of the recorded LURA, consistent with the finally approved draft, must be submitted to the RC Director and HUD Closing Attorney as soon as possible after recording.

### 19.4.11.3 Borrower's Attorney's Opinion (Tax Credits)

A. All LIHTC transactions require opinion 11 of the Opinion of Borrower's Counsel. Borrower's counsel may rely on a tax credit counsel opinion that provides opinion 11 if, and only if, the tax credit counsel opinion uses the Opinion of Borrower's Counsel's definitions of Primary Loan Documents and Source Documents, and a copy of the tax credit counsel opinion is provided to HUD. If the tax credit counsel opinion does not provide opinion 11 in the form described above, Borrower's counsel must undertake its own due diligence and independently provide form opinion 11.

### 19.4.11.4 LIHTC Equity Pay-In

A. Pursuant to [Chapter 14, Section 14.13](#), the LIHTC investor must contribute at least 20% of the total tax credit equity to the project at the time of Initial Endorsement (with the remaining 80% to be subsequently available). Note that [Chapter 14, Section 14.13](#) allows 10% of the required total equity pay-in to be funded with an equity bridge loan at Initial Endorsement. The required minimum equity installment evidences the tax credit investor's commitment to the Project. Tax credit equity installments must be made in accordance with either the disbursement agreement attached to the Building Loan Agreement (form HUD-92441M) (for new construction and substantial rehabilitation), or the tax credit equity pay-in schedule attached to the Escrow Agreement for Deferred Repairs (form HUD-92476.1) (for loans closed pursuant to 223(f)).

1. Lender must submit satisfactory evidence of an agreement that obligates the tax credit investors to make timely and periodic payments to the Borrower of the tax credit equity (typically the limited partnership agreement), which Borrower will use for Project completion costs.
2. See [Section 19.4.9.6](#) and [Chapter 14, Section 14.15](#) for additional guidance on equity bridge loans.

3. Note: Pursuant to Housing and Economic Development Recovery Act of 2008 (HERA), and 24 CFR 200.54, HUD cannot require 100% of the tax credit equity be escrowed at closing.

### 19.4.11.5 Equity Investor Certification

A. LIHTC syndicators and equity investors (collectively, the Equity Investor) are not required to submit a Previous Participation Certification (form HUD-2530). In lieu of a Previous Participation Certification, Equity Investors may submit the Identification and Certification of Eligible Limited Liability Investor Entities (LLCI Certification), included in Housing Notice 2016-15, Processing Guide for Previous Participation Reviews of Prospective Multifamily Housing and Healthcare Programs Participants. Any Equity Investor submitting the LLCI Certification also must provide HUD with an organizational chart. Only the Equity Investor, and not its members or partners, is required to submit the LLCI Certification.

### 19.4.11.6 LIHTC Rider

A. The Rider to Security Instrument - LIHTC Projects (LIHTC Rider), found in [Section 19.8](#), may be used in any LIHTC transaction. The LIHTC Rider may be used regardless of whether the parties to the transaction request pre-approval of a special limited partner. Special Limited Partner (SLP) as used herein refers to any affiliated special limited partner, special investor member, or other entity seeking pre-approval. If pre-approval is not requested, the provisions relating to pre-approval of such entity must be stricken from the LIHTC Rider.

### 19.4.11.7 Pre-Approval of Special Limited Partners

A. A LIHTC investor may request HUD pre-approval for the SLP to take control of Borrower as the interim general partner or managing member (GP/MM) of Borrower under certain triggering default conditions set forth in Borrower's limited partnership agreement or operating agreement. Transfers of control of Borrower require HUD consent prior to transfer, however HUD approval may be given in advance subject to the requirements below.

**Note: This process is exclusively for SLPs seeking pre-approval. Unless Borrower requests pre-approval, HUD will treat the SLP as a passive investor. Once granted, pre-approval applies only to the SLP and the particular project for which pre-approval was requested and granted. HUD's pre-approval of the SLP as an Interim Replacement GP/MM (defined further below) is evidenced by the RC Director's and the Closing Attorney's approval of the Security Instrument with the LIHTC Rider attached, including pre-approval provisions.**

B. If HUD pre-approves a transfer of control to the SLP, no further HUD approval for the SLP's takeover at the time of removal of the existing GP/MM is required, subject to the limitations of the LIHTC Rider. As stated in the LIHTC Rider, HUD's pre-approval of the SLP to act as an interim GP/MM is for a limited duration. If the SLP seeks to act as a long-term replacement GP/MM, Borrower and Lender must apply for HUD approval through the transfer of physical asset (TPA) review process.

1. Requirements to Pre-Approve SLP.
  - a. **General.** Attaching the *LIHTC Rider* with pre-approval provisions included provides evidence of and gives effect to HUD's pre-approval. The pre-approval provisions may be included in an executed *LIHTC Rider* and attached to the *Security Instrument* if the items below are received and approved by the RC Director and the HUD Closing Attorney. The RC Director may waive receipt

of specified documents if HUD previously received the documents during pre-approval review of a different Project.

- b. **Synopsis of the Transaction.** Equity Investor must provide a written request for HUD to pre-approve the SLP as a temporary replacement GP/MM. This request must include an overview of the transaction and contain an organizational chart depicting the relationship between the proposed interim GP/MM and the parent organization requesting pre-approval. This request may be sent via email.
- c. **Previous Participation Review.** The SLP must submit all documents required for the Previous Participation Review (aka the 2530 review). See 200 CFR Part 200, Subpart H; and Notice H 2016-15, *Processing Guide for Previous Participation Reviews of Prospective Multifamily Housing and Healthcare Programs Participants*.
- d. Organizational Documents.
  - 1) **Organizational Documents of Borrower.** The SLP pre-approval request must include a reference list of the SLP takeover provisions in Borrower's organizational documents. The HUD Closing Attorney will review the takeover provisions, including triggering events, that permit the removal of Borrower's GP/MM and replacement of the GP/MM with the SLP. The HUD Closing Attorney will discuss the takeover provisions with the RC Director and confirm the RC Director's approval. The organizational documents must state that upon removal of the existing GP/MM the SLP will act as the Interim Replacement GP/MM in accordance with and subject to the terms of HUD's pre-approval of the SLP and the *LIHTC Rider*.
  - 2) **Organizational Documents of SLP.** The SLP pre-approval request must include the SLP's organizational documents. The Closing Attorney will review the SLP organizational documents to confirm the SLP's formation and good standing, that there is no identity of interest with Borrower's GP/MM, and there are no restrictions in the SLP organizational documents that would prohibit the SLP from acting as Borrower's interim GP/MM (e.g., neither the stated purpose of the entity nor any other provision restricts the SLP from taking control of Borrower as the interim GP/MM or restricts the SLP to passive real estate investment).
  - 3) **Legal Opinion.** Borrower/SLP must submit a legal opinion of Borrower's counsel giving the opinion that removal of the existing GP/MM and substituting in the SLP as the new GP/MM does not cause the dissolution of Borrower under applicable state law or the Borrower's organizational documents. The attorney giving the opinion must be licensed by the state bar in the state where the Borrower is organized and may not have an identity of interest with the Borrower.
- e. **Evidence of Determinative Criteria.** SLP must submit evidence of the determinative criteria, discussed below.

### 19.4.11.8 Determinative Criteria for SLP Pre-Approval

**A.** The RC Director will approve the SLP as a temporary replacement GP/MM unless the RC Director, with the advice of the HUD Closing Attorney, reasonably determines that the SLP would not be an appropriate temporary replacement general GP/MM, or that such pre-approval is otherwise not in HUD's interest. In

making such determination, the RC Director and the HUD Closing Attorney may consider the following factors:

1. The number of projects the SLP and/or affiliated entities have under asset management;
2. The number of times SLP and/or affiliated entities have replaced general partners/managing members and the results of such replacement. Specific examples should be provided and considered;
3. The SLP's process for monitoring projects and determining whether replacement of the general partner/managing member is appropriate; and
4. How the asset management unit of the SLP and/or affiliated entities is staffed in relation to the number of projects it oversees.

### 19.4.11.9 Post-Closing Requirements for HUD Pre-Approval of SLP

**A.** If the closing timeline does not allow for this process to be completed prior to closing, pre-approval can be granted, and documents submitted after closing. Because the modified language set forth below makes approval conditional, the language may be used even if some or all of the required information has not been submitted to HUD prior to closing.

1. **Requirements and Determinative Criteria.** The same requirements for HUD pre-approval apply both before and after closing.
2. **Revise *LIHTC Rider*.** Revise paragraph 2(c) of the *LIHTC Rider* to the following:
  - a. Borrower has requested that HUD and Lender pre-approve the temporary replacement of the Borrower's general partner/managing member (GP/MM) with [SPECIAL LIMITED PARTNER ENTITY] (Interim Replacement GP/MM) to act as an interim general partner/managing member in the event Equity Investor removes Borrower's GP/MM for cause in accordance with Borrower's organizational documents. If HUD grants Borrower's request, HUD will send a letter to Interim Replacement GP/MM giving effect to, and providing evidence of, such pre-approval. Approval of such Interim Replacement GP/MM is expressly limited to a period not to exceed 90 days, which commences on the date of such removal, provided that HUD, in its sole discretion, may extend such 90-day period by an additional 30 days.
3. **Notice of Decision.** If HUD grants Borrower's request and pre-approves the SLP, HUD will send the Investor and SLP a letter indicating such pre-approval. Sample language for an approval letter follows below. It is the Equity Investor's responsibility to safeguard such evidence of pre-approval. If HUD denies Borrower's request for SLP pre-approval, HUD will send written notice to the Equity Investor and SLP that the SLP has not been pre-approved and that paragraph 2 of the *LIHTC Rider* is inoperable as the preconditions of the paragraph have not been met. This notice does not preclude the SLP from curing any deficiencies and re-submitting a revised request for pre-approval.
4. **Sample language for post-closing letters.** The following sample language should be used, if necessary:
  - a. Sample language for letter granting SLP pre-approval post-closing:

This letter authorizes [Special Limited Partner Entity] to serve as the interim general partner/managing member of [Name of Borrower] (the Borrower) in accordance with the terms set forth in, and expressly limited by, the *Rider to Security Instrument LIHTC Properties* (LIHTC

Rider) attached to that certain [*Name of Security Instrument*] dated as of [date]. HUD's review of the request for pre-approval has been conducted in accordance with the SPL review process.

Should [Special Limited Partner Entity] wish to serve as general partner/managing member for more than the interim period specified in the LIHTC Rider, it must: (1) submit a request for approval to serve as replacement general partner/managing member, (2) certify that none of the documents submitted pursuant to this preapproval request have changed (*i.e.*, organizational documents have not been further amended, etc.), and (3) complete an updated Previous Participation Clearance through HUD's APPS system or form HUD-2530.

- b. Sample language for letter denying SLP pre-approval post-closing:

This letter denies pre-approval of [Special Limited Partner Entity] to serve as the interim general partner/managing member of [Name of Borrower] (the Borrower). [Special Limited Partner Entity] had requested such pre-approval in accordance with the terms set forth in the Rider to Security Instrument LIHTC Properties (LIHTC Rider) attached to that certain [Name of Security Instrument] dated as of [date]. [Special Limited Partner Entity] has not met the requirements necessary for such pre-approval. Accordingly, paragraph 2 of the LIHTC Rider to Security Instrument has no force or effect.

## 19.4.12 Escrow Agreements

### 19.4.12.1 General Requirements

A. As set forth in this Guide, certain escrow agreements may be required. See [Section 19.5.6.3](#) for guidance when letters of credit are used in lieu of cash to satisfy escrow agreement deposit requirements.

### 19.4.12.2 Escrow Agreement for Deferred Repairs (Form HUD-92476.1M)

A. For projects with non-critical or deferred repairs, Borrower must make a deposit with Lender into an escrow account for deferred repair costs to be established at Initial/Final Endorsement in an amount specified in the Firm Commitment. Lender must hold these escrowed funds as stated in the agreement until all required repairs are complete, which must be within 12 months (or other term approved by HUD) of the Initial/Final Endorsement. The Borrower may request release of these funds after completion of the repairs and with written approval of HUD. See [Chapter 12, Section 12.17](#).

B. In refinance transactions, the Escrow Agreement for Deferred Repairs may be modified, as described in the form, to serve as an Escrow Agreement for Latent Defects if there are no deferred repairs to be completed post-closing but the Firm Commitment requires a latent defects deposit. The Escrow Agreement for Deferred Repairs may also be modified as described in the agreement to accommodate LIHTC pay-in equity schedules consistent with programmatic requirements.

**Note: The New York Building Loan Agreement is used in place of the Escrow Agreement for Deferred Repairs (form HUD-92476.1M) for refinance transactions in New York, available at: [https://www.hud.gov/program\\_offices/administration/hudclips/forms/hud9/riders-addendums](https://www.hud.gov/program_offices/administration/hudclips/forms/hud9/riders-addendums).**

### **19.4.12.3 Escrow Agreement for Operating Deficits (Form HUD-92476a-M)**

A. If an operating deficit is anticipated, the Firm Commitment will require that Borrower make a deposit with Lender to establish an escrow for Operating Deficits. This form also includes a provision for a debt service reserve, which may be required for certain refinance transactions. See [Chapter 7, Section 7.14](#); [Chapter 8, Section 8.14.C.6](#); and [Chapter 12, Section 12.15.4](#).

### **19.4.12.4 Escrow Agreement for Working Capital (Form HUD-92412M)**

A. If required by the Firm Commitment, Borrower must make a deposit with Lender to establish an escrow for working capital. See [Chapter 8, Section 8.14.C.5](#) and [Chapter 12, Section 12.15.3](#).

### **19.4.12.5 Escrow Agreement for Incomplete Construction (Form HUD-92456M)**

A. At or before Final Endorsement, Borrower must deposit (or cause to be deposited with Lender) an amount not less than 150% of the estimated costs to complete all Incomplete Work (Items of Delayed Completion). This amount must not exceed two percent (2%) of the mortgage amount. The Lender must submit, and the RC Director will review and approve (or reject) the items to be completed as identified in the attachment to the Application for Insurance of Advanced of Mortgage Proceeds (form HUD-92403). See [Chapter 12, Section 12.7](#).

### **19.4.12.6 Escrow Agreement for Latent Defects (Form HUD-92414M)**

A. For New Construction or Sub-Rehabilitation Projects, at or before Final Endorsement, General Contractor must ensure the correction of any Latent Defects through the establishment of an escrow to cover the cost of repair or remediation of Latent Defects discovered within twelve months of the Date of Final Completion. See [Chapter 12, Section 12.16.S](#). HUD does not require the establishment of this escrow if the General Contractor has provided assurance for completion of latent defects using a performance bond (using form HUD-92452M). See [Chapter 12, Section 12.16.S.1](#).

### **19.4.12.7 Escrow Agreement of Sponsor to Furnish Additional Funds (Form HUD-92476M)**

A. For Insurance Upon Completion Projects, HUD may require the assurance of funds to meet an Operating Deficit in the form of a Sponsor Escrow (in the form of cash or irrevocable letter of credit) or a Sponsor Bond (in the form of a surety bond). The Sponsor must complete Agreement of Sponsor to Furnish Additional Funds (form HUD-92476M), and the Sponsor and Surety must complete Bond Guaranteeing Sponsor's Performance (form HUD-92477M). See [Chapter 12, Section 12.16.C.7](#).

## **19.4.13 Additional Closing Requirements**

### **19.4.13.1 Permits and Governmental Approvals**

A. Lender's Counsel must submit evidence satisfactory to the RC Director demonstrating that Borrower has obtained all building permits, other local permits, governmental approvals, and architectural plans required by the applicable building official(s) to construct or to rehabilitate the Project and/or



improvements. The permits, plans, and approvals must be final (issued by the date of closing) and unconditional, unless otherwise approved by the RC Director in consultation with the HUD Closing Attorney.

### 19.4.13.2 Zoning and Building Code Compliance

**A. Zoning Compliance.** Borrower must provide evidence that the applicable zoning laws and regulations permit the operation of multifamily housing of the type covered under the applicable section of the NHA. This evidence may take the form of a zoning endorsement to the title policy (e.g., ALTA Series 3 Endorsement, as appropriate) or a supplemental letter from appropriate local authorities stating that the Project is zoned for the applicable type of multifamily housing at the time of occupancy and that there are no known zoning violations associated with the Project. See also opinion 6 of the Opinion of Borrower's Counsel (form HUD-91725M).

**B. Building Code Compliance.** If required by the Firm Commitment or applicable closing checklist, Borrower must provide evidence of compliance with local building code requirements. HUD will accept a supplemental letter, deemed acceptable by the RC Director in consultation with the HUD Closing Attorney, from the building code enforcement office that there are no known building code violations and/or a certification from the Borrower or Project Architect that no changes have occurred since the issuance of certificates of occupancy.

**C. Samples.** Sample building code and zoning code assurance letters are included at Section 19.12 and 19.13, respectively. See also 24 CFR 200.72 and Part II of form HUD-91070M, Consolidated Certifications - Borrower.

**D. Certificate of Occupancy.** Borrower must provide a certificate of occupancy when required by the Firm Commitment, applicable closing checklist, or if a certificate of occupancy is issued for the Project and is not currently included in HUD's Washington Docket.

### 19.4.13.3 Evidence of Utility Access and Service

**A.** When required by the Firm Commitment or applicable closing checklist, Borrower must submit recent letters or agreements confirming utility services for the Project and a utility access endorsement to the Title Policy, where available. See [Section 19.4.7.4](#). See also Instructions to Opinion of Borrower's Counsel (form HUD-91725M-INST), and Request for Endorsement of Credit Instrument – Certificate of Borrower (form HUD-92455M).

### 19.4.13.4 Property Insurance

**A.** The RC Director will provide Lender with the Property Insurance Requirements (form HUD-92447) and Property Insurance Schedule (form HUD-92329) at issuance of the Firm Commitment.

1. Lender is solely responsible for determining whether the property insurance requirements set forth in *Property Insurance Requirements*, including public liability, vehicle liability, flood and casualty insurance requirements, have been satisfied. See [Chapter 3, Section 3.9](#). Lender must certify to compliance with the applicable insurance requirements in the Lender's Certificate and Request for Endorsement of Credit Instrument.



2. After issuance of the Firm Commitment and prior to Final Endorsement, the RC Director may determine that revisions to the *Property Insurance Schedule* are necessary due to changes in the plans, specifications or cost of construction. The RC Director will notify the Lender of the changes. Lender must then ensure that the proper property insurance is obtained, and that *Property Insurance Schedule* is properly updated and resubmitted to HUD.
3. If required by the Firm Commitment, Lender must provide evidence of payment of the flood insurance premium at least three (3) business days prior to closing.
4. At closing, the HUD Closing Attorney will not collect certificates of insurance, unless requested to do so by the RC Director.

### **19.4.13.5 UCC Searches**

**A.** UCC searches must be completed no more than 60 days before closing, and the resulting search reports must be submitted to the HUD Closing Attorney for review at least three (3) business days prior to closing. If a Lender requires other searches, the HUD Closing Attorney and/or RC Director may also request to review such searches. The RC Director may authorize the HUD Closing Attorney to rely on searches completed more than 60 days prior to closing when an unanticipated delay in closing results in stale searches. HUD requires but does not collect UCC searches for single-purpose Borrower entities formed within the 60-day period prior to closing.

**B.** UCC filing searches for the Borrower as debtor must be conducted in the official records of the county in which the Property is located (or other applicable jurisdiction for land records) and in the Office of the Secretary of State where Borrower is organized.

**C.** All UCC filings identified in the UCC search results will be evaluated by the RC Director and HUD Closing Attorney to determine whether the UCC filing(s) adversely impact the Loan (e.g., evidence conflicts with HUD's Program Obligations). Unless approved by HUD in writing, UCCs that are unrelated to the Loan must be terminated and must not be shown as exceptions to the Title Policy (e.g., the UCC filing from the loan(s) being refinanced with a 223(f) or (a)(7)). The FHA Lender's financing statement for the Loan may be filed in advance of closing, and if so, may be identified in the UCC search results.

### **19.4.13.6 Certifications**

**A.** The Closing Checklists include a variety of certifications that must be collected prior to HUD's endorsement of the Note, including:

1. Agreement and Certification (form HUD-93305M);
2. Borrower's Oath (form HUD-92478M);
3. Consolidated Certifications – Borrower (form HUD-91070M) (collected at closing if not collected by the RC Director at the time of Firm Application);
4. Lender's Byrd Certificate (using standard language for federally insured loans and loan guarantees).

**B.** Any agreement, undertaking, statement or certification required by this Chapter must specifically state that it is made, presented, and delivered for the purpose of influencing an official action of the FHA, and of the Commissioner, and may be relied upon by the Commissioner as a true statement of the facts contained therein. See 24 CFR 200.62.

C. If signed in counterpart, the signature page(s) of all required documents must include the following HUD warning language:

**WARNING: Federal law provides that anyone who knowingly or willfully submits (or causes to submit) a document containing any false, fictitious, misleading, or fraudulent statement/certification or entry may be criminally prosecuted and may incur civil administrative liability. Penalties upon conviction can include a fine and imprisonment, as provided pursuant to applicable law, which includes, but is not limited to: 18 USC 1001, 1010, 1012; 13 USC 3729, 3802; 24 CFR Parts 25, 28 and 30; and 2 CFR Parts 180 and 2424.**

### 19.4.13.7 Certified Closing Statement

A. Lender must submit a final detailed statement of all sources and uses identifying total development costs and disbursements (the Certified Closing Statement). This statement must be consistent with the Firm Commitment and be certified to and signed by Lender and Borrower. The statement must list the amounts to be paid to satisfy Borrower's obligations for existing or other indebtedness, acquisition, repairs, discounts, permits and approvals, financing fees, legal expenses, organizational expenses, title and recording costs, and like items, and any Lender-required escrows for taxes, insurance or other items. If funds are processed through a title company or other escrow officer, the escrow officer must sign the Lender's Certified Closing Statement or provide an additional Certified Closing Statement that is consistent with the Lender's Certified Closing Statement. The RC Director will review and approve the Certified Closing Statement prior to endorsing the Note and provide written notice to the HUD Closing Attorney of said approval. Lender's Counsel must provide the HUD Closing Attorney with two hard copies of the HUD approved Certified Closing Statement, except when instructed otherwise by the HUD Closing Attorney.

B. Borrower must disclose any additional agreements affecting the Project or the Loan. This requirement includes, but is not limited to, disclosure of:

1. Easements and joint use agreements;
2. Construction agreements between the Borrower and the General Contractor and other agreements that are required to be disclosed pursuant to the Identity of Interest Amendment to the *Construction Contract* and [Section 19.5.5.8](#);
3. Indemnifications, guarantees, and hold-harmless agreements executed by Borrower;
4. Rights of first refusal, options to purchase, reversionary interests, etc.; and
5. Any document or information that would otherwise require reprocessing of the HUD Firm Commitment, increase Borrower's cash requirements, or increase the General Contractor's bond requirement; and
6. Tax abatement and deferral agreements. See [Chapter 7, Section 7.16](#).

C. Lender's Counsel must provide copies of these agreements to HUD for approval prior to execution and executed copies must be submitted at closing. These agreements cannot alter or amend HUD form documents or alter the obligations of the parties thereto without the written approval of the RC Director.

## 19.5 Additional Requirements for Insurance of Advances

### 19.5.1 Building Loan Agreement

#### 19.5.1.1 General

A. The Building Loan Agreement (form HUD-92441M), sets out the agreement and terms under which Lender will loan funds to Borrower for insured advances for new construction and substantial rehabilitation (e.g., Section 221(d)(4)).

B. The RC Director determines whether the disbursement agreement and any Retainage Reduction Rider are consistent with Program Obligations, including 24 CFR 200.54 (discussed below), the Firm Commitment, and construction draw and progress schedules.

C. The Building Loan Agreement in Section 4(a) permits use of a Retainage Reduction Rider. The Retainage Reduction Rider may be used in certain situations approved by the RC Director. See [Chapter 12, Section 12.15.5](#). The Retainage Reduction Rider is not a HUD form, but it must be reviewed by the RC Director and HUD Closing Attorney for programmatic and legal sufficiency, respectively.

D. For Section 241 transactions not subject to prevailing wage requirements, the provisions of the Building Loan Agreement regarding prevailing wages may be stricken.

### 19.5.2 Project Completion Funds

A. Section 4(c) of the Building Loan Agreement implements the requirement of 24 CFR 200.54 concerning Project completion funding. Project Completion Funds are defined in Section 4(c) as the amount deemed by HUD to be sufficient, when added to Loan proceeds to assure completion of the Project and to pay the initial service charge, carrying charges, and legal and organizational expenses incident to the construction of the Project. The precise amount of Project Completion Funds must be shown in Section 4(c). Project Completion Funds must be escrowed with the Lender at closing and shown on the Lender's Certificate (form HUD-92434M) with the following two exceptions:

1. Under 24 CFR 200.54(d), HUD will not require the escrow of Project Completion Funds derived from (a) LIHTC equity or (b) New Markets Tax Credits or historic rehabilitation tax credit equity.
2. Under 24 CFR 200.54(a), the RC Director may accept a lesser amount (or an alternative to a cash deposit) for Project Completion Funds supplied by grants or loans from a Federal, State, or local government agency or instrumentality. [Chapter 8, Section 8.12.3](#) states that this alternative may take the form of an agreement entered among the governmental agency or instrumentality, the Lender, and the Borrower. This agreement must be reflected in the disbursement agreement referenced in Section 4(c) of the *Building Loan Agreement* (discussed in [Section 19.5.3](#) below) and comply with [Chapter 8, Section 8.12.3](#), including the requirement that the Lender has the following rights:
  - a. The right to approve construction advances after considering any reported noncompliance by the agency or instrumentality if the project is proceeding in compliance with approved plans and specifications.

- b. A joint review and agreement between the Lender and the governmental agency or instrumentality on the construction progress schedules and allocation of draws.
- c. Sole authority to resolve differences in the inspection process and the process of disbursing grant/loan proceeds.

## **19.5.3 Disbursement Agreement**

**A.** The Exhibit C disbursement agreement is generally required under 24 CFR 200.54(b), and must provide that Project Completion Funds are disbursed before Loan proceeds, except for funds from a grant or loan from a Federal, State or local government agency or instrumentality, or certain tax credit proceeds, including tax-credit related Equity Bridge Loans. See 24 CFR 200.54(b) and (c). These exceptions must be approved by the RC Director (consistent with the Firm Commitment) and must be reflected in the disbursement agreement.

**B.** The disbursement agreement is required in all new construction and substantial rehabilitation closings, except in certain limited situations, e.g., when all Project Completion Funds are already disbursed prior to Loan proceeds, as part of the initial draw. The disbursement agreement must list all charges referenced in Section 5 of the Building Loan Agreement.

**C.** If the RC Director determines that a disbursement agreement is not required, Building Loan Agreement Sections 4(c) and 5 still require an Exhibit C listing charges and items funded through Project Completion Funds and Loan proceeds. In those limited circumstances, Lender's Counsel is authorized to revise the Building Loan Agreement reference to Exhibit C to accurately describe the contents (such as disbursement charges rider or list of mortgageable costs).

**D.** All parties directly providing construction financing for the Project must be parties to the disbursement agreement. HUD, as an insurer, is not a party to the disbursement agreement.

**E.** The disbursement agreement must include a provision stating that in the event of a conflict between the disbursement agreement and Program Obligations, as defined in the Building Loan Agreement, HUD's Program Obligations are controlling in all respects.

## **19.5.4 Owner-Architect Agreement – New Construction/Substantial Rehabilitation**

### **19.5.4.1 General Requirements**

**A.** The AIA Document B108, Standard Form of Agreement Between Owner and Architect (Owner-Architect Agreement) must be used in new construction/substantial rehabilitation closings. The RC Director is responsible for reviewing the substantive terms of the Owner-Architect Agreement, including the review of any changes to the substantive terms negotiated by the parties. The arbitration provision and related references to such provision in the Owner-Architect Agreement must be deleted, unless such deletion is prohibited by state law. Any modifications that delete or reduce the basic design and construction administration services of the Project Architect are prohibited. Further, there must be no changes that reduce, delegate, or leave a gap in the basic responsibilities of the parties involved. In uncommon circumstances where it becomes necessary to address special negotiated arrangements, any requested modifications must be approved by the RC Director, and noted in the B108 by striking out any

inapplicable language, inserting additional provisions in Article 12, and must be shown in the form Additions and Deletions report. The proposed modifications must be supported by a detailed Project-specific written justification and submitted to the RC Director for review and consideration. The HUD Closing Attorney will be available to consult with the RC Director concerning any proposed modifications. See [Chapter 5, Section 5.2](#) and [Section 5.5](#) for HUD's requirements regarding the Owner-Architect Agreement.

#### **19.5.4.2 HUD Amendment to AIA Document B108 (Form HUD-92408M) (HUD Amendment)**

A. The HUD Amendment must be incorporated into the B108 Owner-Architect Agreement in Article 13.2. If the Design Architect and the Supervisory Architect are different, a separate B108 Owner-Architect Agreement and HUD Amendment must be executed for each Architect, with appropriate modifications to reflect the responsibilities of each Architect. If there is an identity of interest between the Owner and Design Architect, there must be an unaffiliated Supervisory Architect. See [Chapter 5, Section 5.2](#).

#### **19.5.4.3 Professional Liability Insurance**

A. The Firm Commitment and [Chapter 5, Section 5.2.3](#) require that the Design Architect and the Architect administering the Construction Contract each be covered by an errors and omissions liability insurance in an amount consistent with insurance industry practice and approved by the RC Director. An insurance agent's certificate of insurance, substantially in the form prescribed in [Appendix 5, Section A.5.8.3](#), must be provided at or prior to Initial Closing.

### **19.5.5 Construction Contract – New Construction/Substantial Rehabilitation**

#### **19.5.5.1 Construction Contract**

A. The Construction Contract (form HUD-92442M) must be used for new construction/substantial rehabilitation closings. The Construction Contract must be used in conjunction with the most recent edition of the AIA A201, General Conditions of the Contract for Construction (the AIA A201), approved for use in the HUD Multifamily programs. The RC Director will review the substantive terms of the construction contract documents. The AIA A201 may not be altered, except the standard binding arbitration provisions in the AIA A201 must be stricken, unless prohibited by applicable state law.

B. The Construction Contract provides alternative options for either Lump Sum or Cost Plus compensation.

1. Lump Sum may be used only when no identity of interest exists between Borrower and General Contractor.
2. Cost Plus may be used in any case and must be used when an identity of interest exists between Borrower and General Contractor.

### 19.5.5.2 Prevailing Wage Rates

A. The Supplementary Conditions to the Construction Contract (form HUD-92554M) is incorporated by reference in the Construction Contract. At Initial Closing, the HUD Closing Attorney will review the Closing Docket Construction Contract to confirm the DBLS selected wage rates, where applicable and applied in conformity with the National Housing Act, are attached and accurately referenced. See [Section 19.2.2](#), *infra*, for further guidance concerning wage decisions and MHP coordination with DBLS.

### 19.5.5.3 Identity of Interest Disclosure

A. The Construction Contract requires the attachment of an exhibit identifying any identity of interest relationship between the owner, contractor, subcontractor, or Architect. If there is no identity of interest, indicate “none” in the exhibit (see Appendix 8 of Handbook 4430.1 and the MAP Guide Appendices).

### 19.5.5.4 Cost Breakdown

A. The Contractor’s and/or Mortgagor’s Cost Breakdown (form HUD-2328) contains a schedule of values of classes of work, equipment, and materials, and must be incorporated into the Construction Contract as Exhibit B to the Building Loan Agreement (form HUD-92441M). The cost breakdown will be attached to the Firm Commitment.

### 19.5.5.5 Completion of Forms

A. The Construction Contract may be dated the same date as the other closing documents or any date prior to the endorsement date of the Note when adequate title coverage is provided. Where Contractor’s assurance of completion is provided in the form of performance and payment bonds, the Construction Contract must be dated on or before the date of the surety bonds.

B. The reference to drawings and specifications in Article 2.A of the Construction Contract must be identical to the reference in Section 2 of the Building Loan Agreement and will be taken from the Firm Commitment. However, if the drawings and specifications are modified subsequent to the issuance of the Firm Commitment and before Initial Closing, a reference to the most recent version that will govern construction and that is approved in writing by all necessary parties (including HUD) should be used in the Construction Contract and Building Loan Agreement. See [Chapter 5, Section 5.8.3.A.4](#) regarding the initialing and signing of drawing and specifications.

C. The completion date in Article 3 is the date determined using the number of months for construction stated in the Multifamily Summary Appraisal Report (form HUD-92264).

D. For Section 241 Loan transactions, the provisions of the Construction Contract regarding wage decisions may be deleted if Davis-Bacon Labor Standards do not apply. See [Section 19.6.3.3.B](#).

### 19.5.5.6 Liquidated Damages

A. Article 3.E of the Construction Contract calls for the insertion of a liquidated damages amount, as determined by the RC Director. The following calculations are set forth for informational purposes:

Liquidated damages shall equal 1 cent for each  $\frac{1}{4}$  per cent of construction interest rate for each \$1000 of mortgage amount divided by the number of units. Written arithmetically and expressed in dollars (not



cents), the formula should read:  $(\$0.01) \text{ (construction rate}/.0025) \text{ (mortgage amount}/1000) \text{ (number of units)} = \text{Liquidated Damages } \$/\text{Unit}/\text{Day}$ . This may be simplified and restated as:  $\$4 \times \text{construction rate} \times \text{mortgage amount}/1000/\text{number of units} = \text{Liquidated Damages } \$/\text{Unit}/\text{Day}$ .

**Note: The parties may negotiate and agree to a higher amount of liquidated damages.**

### 19.5.5.7 Cost Certification

A. If a cost certification is not required, the provisions set forth in Article 13 of the Construction Contract may be stricken. See [Chapter 13](#).

### 19.5.5.8 Side Agreements

A. Article 1 of the Construction Contract requires all side agreements, including documents defining business agreements between identity of interest parties on transactions involving Builder's and Sponsor's Profit and Risk Allowance (BSPRA), between the Borrower and General Contractor be disclosed to HUD and provided to the HUD Closing Attorney with the Construction Contract. Such side agreements must include language that in the event of a conflict between the side agreement and the Construction Contract, the Construction Contract will prevail. The HUD Closing Attorney will ensure the required conflicts language is included but will not otherwise review the side agreement.

**Note: HUD policy is that the A201 may not be altered or amended, except with regard to the arbitration provisions in the form. See [Section 19.5.5.1](#). As such, side agreements may only address matters outside of the material terms of the Construction Contract, and may not negate the rights, obligations, or any other material terms of the Construction Contract, including the form A201.**

## 19.5.6 Assurance of Completion and Related Requirements

### 19.5.6.1 General Requirements

A. Assurance of project completion by the General Contractor must be provided for the protection of HUD and Lender in an amount and means as specified in the Firm Commitment and to meet state and local requirements protecting material suppliers, mechanics, and subcontractors. Applicable assurances must be listed in the Lender's Certificate (form HUD-92434M). Lender or Borrower may impose additional or more stringent requirements than HUD.

1. **Performance Bond-Dual Obligee (form HUD-92452M).** Performance Bond-Dual Obligee protects against financial loss caused by the failure of the General Contractor to build the Project in accordance with the terms and conditions of the Construction Contract. The Performance Bond must name Lender and HUD as obligees. The RC Director, in consultation with the HUD Closing Attorney, may approve the addition of a subordinate Lender as an additional obligee on the Performance Bond. In such cases, an agreement setting forth the rights of, priorities of, and/restrictions on each Lender to call on the Performance Bond may be necessary. In all cases, the Lender and HUD must have the first priority right to call on the Performance Bond. When GNMA securities are issued in connection with the Project Loan, GNMA may be allowed as an additional obligee. No equity investor in the Borrower entity may be named as an obligee.



2. **Payment Bond (form HUD-92452A-M).** Payment Bond guarantees that certain labor and material bills associated with the project will be paid. The Payment Bond must name Lender, HUD, and Borrower as obligees. GNMA may be added as an additional obligee on the Payment Bond; however, subordinate Lenders and equity investors may not be included as additional obligees.
3. **Completion Assurance Agreement (form HUD-92450M).** As an alternative to performance and payment bonds, a Completion Assurance Agreement (form HUD-92450M) may be provided. It must be executed by the Borrower, Lender, and General Contractor. The General Contractor must fund its obligations with a cash deposit or letter of credit. The RC Director, in consultation with the HUD Closing Attorney, will review the substantive terms of any Completion Assurance Agreements.

### 19.5.6.2 Surety Requirements

A. Sureties must be on the accredited U.S. Treasury list, Circular 570, available online at [www.fms.treas.gov/c570/c570.html](http://www.fms.treas.gov/c570/c570.html), and published annually in the Federal Register on or about July 1. Bonds must not exceed limits listed in Circular 570. An original power-of-attorney from the surety company to its agent must be attached to each Performance and Payment Bond. A facsimile transmission (or PDF file sent via email) addressed to the HUD Closing Attorney must be received on the day of closing from the surety company (not local agent's office) confirming the agent's power-of-attorney to bind the surety company as of the date the bonds are executed and delivered to Lender and HUD. The facsimile or PDF transmission must identify the agent, date of bonds, amount of each bond, obligee(s), principal, FHA project name and number, and name and title of sender. The bonds cannot be dated prior to the date of the Construction Contract to which they refer, but they may be dated the same date as that contract or a later date.

### 19.5.6.3 Letters of Credit

A. Letters of credit may be used instead of cash for all assurances of completion and escrows required at Initial and Final Endorsement, or during construction, except for up-front cash escrows and the estimated costs of deferred Section 223(f) repairs that are required to be withheld in cash from mortgage Loan proceeds and placed in escrow. Acceptance of a letter of credit is at the Lender's option, but when used, copies of the letters of credit must be attached to the escrows and assurance agreements they collateralize. Lenders are responsible for ensuring that letters of credit are current. Enforceability and acceptability of letters of credit are the responsibility of the Lender, and HUD will neither review the letter of credit nor render an opinion on its sufficiency. See 24 CFR 200.63. Additional requirements for letters of credit are detailed in [Chapter 8, Section 8.4.4](#).

### 19.5.6.4 Assurance of Completion for Off-Site Improvements

A. When the Firm Commitment requires Borrower to fund construction of elements outside the Project's property boundaries, HUD may require submittal of one or more of the following items, each at the discretion of the RC Director and in such form and substance as may be acceptable to the RC Director:

1. Plans and specifications for the off-site improvements;
2. Contracts or other agreements governing the construction of the off-site improvements;
3. Off-Site Bond (form HUD-92479M);

4. Escrow Agreement for Off-Site Facilities (form HUD-91071M);
5. A letter of credit;
6. Evidence of the locality's plans for off-site improvements (if the municipality or other governmental locality will be responsible for completion of those improvements); and
7. Other evidence as deemed appropriate by the RC Director.

## **19.5.7 Building Components Stored Off-Site**

### **19.5.7.1 Introduction**

**A.** Generally, off-site construction is non-mortgageable and not included in the Construction Contract. See [Chapter 5, Section 5.11](#) and [Appendix 5, Section A.5.5](#). However, when building components are initially stored off-site but will be integrated on-site into the construction of the HUD-insured Project during the construction period, those components may be mortgageable, provided the program participants meet the requirements of this section and [Appendix 12, Section A.12.2](#) and [Section A.12.3](#).

### **19.5.7.2 HUD-Insured Advance Requirements for Building Components Stored Off-Site**

**A.** The HUD Closing Attorney's role includes, at the RC Director's request, review of legal documents submitted in connection with requests for approval of insured advances to pay for building components stored off-site.

**B.** The UCC Financing Statement(s) filed at Initial Endorsement must perfect a first-lien security interest in all existing building components stored offsite until the components are moved onsite and integrated into the building(s) construction. Borrower and Lender are responsible for determining if, and when, additional filings are necessary to maintain a first-lien security interest on components stored offsite, including components acquired after initial endorsement, and for ensuring that such filings are properly filed/and recorded.

**C.** The Construction Contract (form HUD-92442M) must include the rider entitled "Amendment to the Construction Contract for Components Stored Off-site," and be entered into at Initial Closing. See [Appendix 12, Section A.12.4](#).

**D.** The Construction Contract, including the offsites amendment, must be 100% secured by performance and payment bonds.

**E.** A bill of sale evidencing Borrower's title to the off-site components and an itemized invoice must be submitted with each request for payment for those components on the Contractor's Requisition Project Mortgages (form HUD-92448).

**F.** Lender must provide an unconditional written certification to HUD certifying that the Security Instrument and filed UCC Financing Statement(s) create a first lien on all building components stored off-site. This Lender's certification must be supported by an opinion from the Lender's Counsel stating that they have reviewed the Security Instrument, UCC-1 Financing Statements and any associated documents, as necessary, relating to the off-site building components, that such documents create a valid security

interest in the collateral, and that when the financing statements are duly filed, the secured and additional secured party will have the first lien on the building components.

G. Other HUD requirements for insured advances to pay for building components stored off-site are found in the [Appendix 12, Section A.12.2](#).

## **19.5.8 Lender’s Certificate for New Construction or Substantial Rehabilitation**

A. For new construction/substantial rehabilitation projects, the Lender must make certain certifications and acknowledgements to HUD, as set forth in the Lender’s Certificate (form HUD-92434M), dated as of the day of closing. As required by the Lender’s Certificate, the Lender must:

1. Make all required certifications and acknowledgements to HUD;
2. Properly disclose all required escrows, deposits, fees, charges, and financial obligations; and
3. Attach, or provide separately, all appropriate exhibits, addenda and related items, including but not limited to exhibits described in the *Lender’s Certificate*.

B. The RC Director is responsible for reviewing the Lender’s Certificate and determining that the financial amounts disclosed are appropriate and correct.

## **19.5.9 Final Closing Documents – General Requirements**

### **19.5.9.1 General Requirements**

A. The closing procedures of this Section apply to Final Closings (and supplement [Section 19.1.2](#) and [Section 19.4.1](#)).

### **19.5.9.2 Maximum Insurable Mortgage Form**

A. Maximum Insurable Mortgage (form HUD-92580), sets forth HUD’s determination of the maximum insurable mortgage and may also contain, without limitation, the following:

1. A listing of items from the Mortgagor’s Certificate of Actual Cost (form HUD-92330) that remain to be paid, and a description of the arrangements to hold such amounts in escrow pending resolution of any open matters (see Schedule 1(A) of form HUD-92580);
2. Any additional mortgage insurance premium, if there is a mortgage increase;
3. Any reduction to the Loan amount, if there is a mortgage decrease; and
4. A description and status of funds placed in escrow at Initial Closing.

### **19.5.9.3 Modifications to Original Loan Terms**

A. Modifications to the original Loan terms, such as an increase or decrease to the original Loan amount, require new documents, and must be submitted with the final closing package.

1. **RC Director's Authority.** The RC Director is authorized to approve modifications of the *Security Instrument* for Projects in development (*i.e.*, at or prior to Final Closing) where necessary to reduce the interest rate, reduce the mortgage Loan amount, correct the legal description, and for other purposes.
2. **HUD Closing Attorney's Role.** The HUD Closing Attorney will review proposed modifications to Loan documents and provide a written statement, which may be via e-mail, to determine whether the documents are legally sufficient.

#### 19.5.9.4 Modification Documents

**A. Modification/Consolidation Agreement.** Lender's Counsel must prepare a modification agreement (non-form), by and between Borrower and Lender, formatted for recordation, which includes the following:

1. A HUD acknowledgment signature block, which evidences HUD's acknowledgment and consent to the modification;
2. If the original Loan amount is increased, consolidation language to: (1) evidence that the original *Note* and the supplemental note (discussed below) represent and are deemed one indebtedness; (2) evidence that the initial *Security Instrument* and the supplemental security instrument (discussed below) represent and are deemed one security instrument; and (3) modify the original *Security Instrument* to provide for cross-default with the supplemental security instrument; and (4) evidence that the original *Security Instrument* retains first lien priority; and the following provisions (in all cases):
  - a. Nothing in this Modification Agreement waives, compromises, impairs or prejudices any right HUD may have to seek recourse for any breach of that certain Regulatory Agreement executed by the parties hereto, recorded on even date with the Security Instrument, which breach may have occurred prior to or may occur subsequent to the date of this Agreement. If HUD initiates an action for breach of said Regulatory Agreement and recovers funds, either on HUD's own behalf or on behalf of the Project or Borrower, HUD, in its sole discretion, may authorize those funds to be applied to the payment of amounts due and payable under the Note, or the Security Instrument, or as a partial prepayment of the Note.
  - b. Nothing in this Agreement in any way impairs the Note or the Security Instrument or any other security now held for the indebtedness evidenced by the Note, as amended, and secured by the Security Instrument, or alters, waives, annuls, varies, or affects any provision, conditions or covenants therein, nor affects or impairs any rights, powers or remedies under the Note, Security Instrument, or Regulatory Agreement, nor changes the priority of the lien created by the Security Instrument or the encumbrance of the Regulatory Agreement, except as specifically provided herein, it being the intent of the parties that the terms and provisions of the Note, Security Instrument, and the Regulatory Agreement continue in full force and effect except as modified hereby.

**B. Allonge (Mortgage Decrease).** If the amount of the original FHA-insured Loan is decreasing, state law may require an allonge to the Note. If so required, Lender's Counsel will prepare an allonge (non-form) and Lender is responsible for ensuring that the allonge is attached to the original Note. If state law does not require an allonge, the modification agreement can be used to modify the terms of the Note.

**C. Supplemental Note and Security Instrument (Mortgage Increase).** The following applies when the amount of the original FHA-insured loan is increasing:

1. **Supplemental Note.** If the amount of the FHA-insured Loan increases, Lender's Counsel must prepare a supplemental note using the form Note (form HUD-94001M) and captioned or titled "Supplemental Note." The supplemental note must contain a cross-default provision to the original Note. The principal amount of the supplemental note must be the increase to the FHA-insured Loan amount (not for the new total insured Loan amount). The amount of the monthly payments to principal in the supplemental note must be sufficient to amortize the increased amount over the Security Instrument term. The other terms and provisions of the supplemental note must be the same as those in the original Note.
2. **Supplemental Security Instrument.** If the amount of the FHA-insured Loan increases, FHA Lender must prepare a supplemental security instrument using the form Security Instrument (form HUD-94000M) and titled "Supplemental Security Instrument." The supplemental security instrument must contain a cross-default provision to the original Security Instrument. The supplemental security instrument secures repayment of the supplemental note and must encumber the entire Mortgaged Property. The reference to the Regulatory Agreement in the supplemental security instrument must be to the original Regulatory Agreement executed and recorded at Initial Closing. The other terms and provisions of the supplemental security agreement must be the same as those in the original Security Instrument.

### 19.5.9.5 Borrower's Attorney's Opinion

**A.** If there have been any modifications to the FHA Loan documents or other matters that require an attorney's opinion, particularly in the case of a mortgage increase, Borrower's attorney must give an opinion that specifically supplements the opinion given at Initial Closing and addresses any modifications to the Loan documents that the HUD Closing Attorney has found to warrant an updated opinion, including without limitation, the following:

1. The enforceability of the documents evidencing any modification to the insured Loan's terms, including a modification agreement, consolidation agreement, supplemental note, supplemental security instrument, supplemental UCC-1 Financing Statement, or any and all of the foregoing, and the continued first-priority position of the insured Loan's lien;
2. Any land use restrictive agreements or extended use agreements, or any other restrictive covenants, that have been placed on the property since Initial Closing, including those connected with LIHTC, if not covered in the initial opinion; and
3. Disclosure of any material modifications to the documents covered by the opinion given at Initial Closing, including any amendments or changes to the legal description.

### 19.5.9.6 Title Evidence at Final Endorsement

**A.** Prior to Final Endorsement, FHA Lender must present to HUD a new title insurance policy or a date-down title endorsement (such endorsement or policy must be submitted as a pro forma for HUD's review prior to Final Closing). Any endorsement package must extend title insurance coverage to the date of the Final Endorsement of the Note and assure continuing first-lien priority of the Security Instrument. The

required title evidence must be delivered to Lender, with a duplicate original and one copy delivered to the HUD Closing Attorney. The required title evidence must do the following:

1. Show what, if any, matters have been recorded against title to the insured property since Initial Closing; copies of such items must be submitted to HUD for review prior to Final Closing. The RC Director and HUD Closing Attorney will review any exception to title not shown in the Title Policy accepted at Initial Closing to determine whether it affects the value, marketability, or insurability of the Loan. Any new title exception that is deemed unacceptable by the RC Director must be extinguished as a matter of record and removed from the title insurance policy, or its effect insured over through affirmative title coverage (notation, endorsement, etc.) acceptable to the RC Director;
2. Bring the effective date of the title policy forward to the day of Final Endorsement;
3. List any modification agreement or supplementary Loan documents on Schedule A of the title policy and insure the full amount of the FHA-insured Loan, inclusive of amounts secured by the *Security Instrument* and any supplements and/or modifications, in first lien position. Should the title insurance company be unable to provide such endorsement, or should the endorsement show any lien intervening between the original FHA-insured *Security Instrument* and the Supplemental Security Instrument, HUD will not endorse the Note for insurance at the increased amount;
4. Delete or amend any other matters covered by the initial title insurance policy, as appropriate, such as updating the exception for unpaid property taxes and deleting the pending disbursements clause; and
5. Adjust the amount of title policy coverage, if the mortgage Loan amount has changed.

### **19.5.9.7 Final As-Built Survey & Surveyor's Report**

A. The as-built Survey and the Surveyor's Report must show that the most recent field work was made, or last updated, no more than 120 days prior to final closing. The survey must be prepared, signed, and sealed by a licensed surveyor and include the certification required by the HUD Survey Instructions and Surveyor's Report (form HUD-91073M).

### **19.5.9.8 Updated Organizational Documents of Borrower**

A. Borrower must provide the following documents:

1. A certification signed by the Borrower as to incumbency, which does one of the following:
  - a. Confirms that no changes have been made to the Borrower's organizational documents, including incumbency, delivered to HUD at Initial Closing; or
  - b. Identifies any changes made to the Borrower's organizational documents that were delivered to HUD at Initial Closing and attaches copies of the amendments or other documents effecting such changes.
2. Current authorizing resolution, if required, or certification by an appropriate officer of Borrower that the authorizing resolution given at Initial Closing covers the Final Closing and is still in effect (including any increase in the Loan amount).



### 19.5.9.9 Lender's Current Payment Letter and Certification

- A. Lender must submit a letter dated the day of Final Endorsement confirming the following:
1. The loan is current;
  2. No event has occurred that, with the giving of notice or passing of time, will constitute an Event of Default under the HUD Loan Documents; and
  3. Any required confirmations from the Lender's Certificate (form HUD-92434M) that Lender could not make at Initial Closing.

### 19.5.9.10 Guarantee Following Completion

A. Construction Contract (form HUD-92442M) contains guarantees against any defects due to faulty materials or workmanship that appear within one year following substantial completion. See Sec. 19.2.16 for discussion of requirements at Initial Closing.

B. The Contractor must provide assurance of performance under such guarantee, as follows:

1. **Bond.** If the Performance Bond-Dual Obligee (form HUD-92452M) was used, no action is required, as it remains in effect for two (2) years from the date on which final payment under the construction contract becomes due. As a part of this assurance, the surety will be required to perform when the General Contractor fails to refund any overpayment to Borrower, a requirement of the Construction Contract (form HUD-92442M) at Article 4.C (Option 1 for Cost Plus Contract).
2. **Cash/Letter of Credit Assurance.** If the Completion Assurance Agreement (form HUD-92450M, CAA), was used at Initial Closing, the remaining escrow funds may be released in accordance with its terms, except that any amounts held to protect against latent defects must remain in escrow during the latent defects period, also pursuant to the terms of the CAA.

C. The guarantee funds are to be kept separate from any escrow that may have been provided to assure completion of any incomplete construction items.

## 19.5.10 When On-Site Facilities Are Incomplete

### 19.5.10.1 Conditions for Approval of Final Advance of Mortgage Loan Proceeds

A. It is desirable that all on-site construction be 100% complete before approval of a final advance of mortgage Loan proceeds. There may, however, be circumstances in which it is desirable that approval of a final advance occurs before 100% completion of on-site construction, as discussed below.

### 19.5.10.2 Exceptions to General Rule

A. When the completion and installation of on-site facilities is adequately assured at the discretion of the RC Director, and the RC Director believes the Borrower will diligently pursue the completion of the on-site facilities, the RC Director may approve the final advance of mortgage Loan proceeds, if all of the following are true:

1. All on-site sewer, water, electrical, and gas facilities are completely installed and connected.



2. Other on-site facilities such as streets, walks, curbs, and gutters are useable and safe, if incomplete, and all buildings have all weather vehicular and pedestrian access.
3. Adequate facilities for ingress and egress are provided.
4. Applicable escrow agreements are in force to assure the completion of the facilities.

### **19.5.10.3 Application for Insurance of Advance of Mortgage Proceeds**

A. Application for Insurance of Advance of Mortgage Proceeds (form HUD-92403) is used both during construction and at the conclusion of construction for the final advance. When construction is not yet complete, any form of Application for Insurance of Advance of Mortgage Proceeds submitted for processing will not be treated as approval of a final advance, nor will the submission of the Request for Final Endorsement of Credit Instrument (form HUD-92023M) be in order. Instead, Application for Insurance of Advance of Mortgage Proceeds may be treated as an ordinary application for advance of mortgage Loan proceeds and approved in an amount which, when added to previous advances of mortgage Loan proceeds, will not exceed 90% of the total advances to which the Borrower will be entitled at 100% completion (or such greater percentage as may be permitted pursuant to any Retainage Reduction Rider attached to the Building Loan Agreement).

### **19.5.10.4 Approval of a Final Advance**

A. If minor items of on-site construction are incomplete, approval of a final advance will be given only under the following circumstances:

1. All on-site items in the entire Project are completed, based on the final *HUD* Representative's Trip Report (form HUD-95379), except those which qualify as items of delayed completion because:
  - a. They are minor; and
  - b. The RC Director determines that immediate completion is inadvisable or impossible, due to weather or other conditions beyond control of the contractor.
2. Funds are placed in escrow to assure completion of such minor items as provided in the certificate of mortgage Loan insurance on Application for Insurance of Advance of Mortgage Proceeds and in the footnote on form Request for Final Endorsement of Credit Instrument (form HUD-92023M); and
3. All off-site utilities such as sewer, water, electrical, and gas facilities are installed and connected, the buildings are served by safe and adequate all-weather facilities (either permanent or temporary) for the ingress and egress of pedestrians and vehicular traffic, including fire apparatus, and all other construction requirements have been acceptably accomplished or acceptably assured; and
4. The aggregate estimated cost of completing the above items does not exceed 2% of the principal amount of the mortgage Loan.

### **19.5.10.5 Escrow for Completion**

A. With respect to all incomplete items, the amount held in escrow for completion must be at least one and one-half (1 ½) times the estimated cost of completion. The amount of any escrow must be sufficient to assure an incentive to complete the work, taking into consideration a possible rise in cost. The escrow will be held by Lender in accordance with the terms of Escrow Agreement for Incomplete Construction

(form HUD-92456M) (see [Section 19.4.12.5](#)) and the RC Director will ascertain that the items to be completed are properly identified by the attachment to the Escrow Agreement for Incomplete Construction.

## **19.5.11 When Off-Site Facilities Are Incomplete**

### **19.5.11.1 General Rule**

A. Unless all off-site utilities and facilities are completely installed and connected, as applicable, and the required ingress and egress is provided, HUD will not process a request for the final advance of mortgage Loan proceeds. In such cases, the RC Director will invoke the provisions of the Building Loan Agreement (form HUD-92441M) and Construction Contract (form HUD-92442M) which states that the required holdback will be retained until 100% completion of facilities, including off-site facilities, will be endeavored to obtain completion at the earliest possible time.

### **19.5.11.2 Exception to General Rule**

A. If the RC Director determines, in their sole discretion, that the completion and installation of off-site facilities is adequately assured (see [Section 19.5.6.4](#)), the RC Director may approve the final advance of mortgage Loan proceeds, if the Borrower, through its contractor, diligently pursues the completion of off-site facilities and if the following conditions are met:

1. All off-site sewer, water, electrical, and gas facilities are completely installed and connected;
  2. Other off-site facilities such as streets, walks, curbs, and gutters are useable and safe, even if incomplete, and all buildings have all weather vehicular and pedestrian access;
  3. Adequate facilities for ingress and egress are provided; and
- Applicable escrow agreements are in force to assure the completion of the facilities

B. Borrower, through its contractor, must provide the RC Director with written confirmation of off-site completion under terms consistent with applicable escrow agreements.

## **19.6 Requirements for Acquisition/Refinance and Other FHA Insurance Programs**

### **19.6.1 223(f) Loans**

#### **19.6.1.1 General**

A. Section 223(f) of the National Housing Act authorizes insurance of mortgages for acquisition of an existing project or refinance of existing indebtedness and may involve limited repairs or alterations to the Project. See [Chapter 14](#) and [Chapter 17](#), [Chapter 5, Section 5.1.3](#) and [Section 19.4.13](#).

### 19.6.1.2 Promissory Note (Form HUD-94001M)

**A. Endorsement of Note.** In a Section 223(f) closing, there is one Initial/Final closing at which HUD endorses the Note for the total sum of the Loan to be disbursed.

**B. Endorsement Panel.** Note that for a 223(f) project, the total sum of the Loan will be listed on the endorsement panel. Additionally, the correct designation of a Section 223(f) loan is “Insured under Section 207 pursuant to Section 223(f) of the National Housing Act, as amended”.

**C. Prepayment Provisions.** Loans insured under 223(f) must include Section 9(h), which prohibits prepayment of the Note within five years of endorsement unless approved by HUD, as required by statute. [Chapter 3, Section 3.7.10, Prepayment Provisions and Prohibition](#), also includes conditions under which Housing may override any prepayment prohibitions. Lenders may include their own prepayment provisions, schedules, and limitations in Rider 1 that are consistent with Program Obligations, and must include the following language at its outset: “This Rider 1 is subject to the restrictions and requirements for prepayment set forth in Paragraph 9 of the Note.” See also [Chapter 11, Section 11.8.2](#) and [Section 11.8.3](#).

**D. Loan Term.** The Loan term is set forth in the Firm Commitment. See also [Chapter 3, Section 3.1.6](#) and [Chapter 8, Section 8.9](#).

### 19.6.1.3 Evidence of Zoning and Building Code Compliance

**A.** If required by the Firm Commitment or applicable closing checklist, the evidence of zoning and building code compliance must comport with the requirements of [Section 19.4.13](#), supra.

### 19.6.1.4 Utilities

**A.** Assurance of utility access is not required for Section 223(f) loan closings, unless required by the Firm Commitment or applicable closing checklist. See [Section 19.4.13](#) for guidance on evidencing utilities when required.

### 19.6.1.5 Request for Endorsement of Credit Instrument (Form HUD-92455M)

**A.** This form is used for Section 223(f), 223(a)(7) and Insurance Upon Completion projects. It includes the Certificate of Lender, a Certificate of Borrower, and a Certificate of General Contractor, and should be modified to strike the Certificate of General Contractor and references to construction for Section 223(f) transactions.

### 19.6.1.6 Short-Form Cost Certification

**A.** Borrowers with a Loan value exceeding 80% LTV must submit a modified form of cost certification (Borrower’s Certificate of Actual Cost (form HUD-2205-A)) prior to endorsement. See [Chapter 13, Section 13.4](#) (projects with LIHTC financing are Exempt from Cost Certification Requirements) and [Section 13.12](#) (no cost certification is required for Section 223(f) transactions where the mortgage is 80% of value or less).

### 19.6.1.7 Repairs and Alterations

A. See [Chapter 5](#) for definitions:

1. **Life Safety Repairs.** Life Safety repairs address hazards to life and health and must be completed prior to endorsement. See [Chapter 5, Section 5.10.8.G](#). Lender and Lender's Counsel must submit evidence documenting that all Life Safety repairs identified in the *Firm Commitment* have been completed, and the RC Director must determine sufficiency of the documentation prior to closing.
2. **Accessibility Repairs.** Accessibility repairs correct accessibility deficiencies. If accessibility repairs are identified in the Firm Commitment, they must be completed as soon as possible. See [Chapter 5, Section 5.10.8.G](#) for additional guidance. When HUD permits the completion of Accessibility repairs after endorsement, the repairs must be covered by the Escrow Agreement for Deferred Repairs (form HUD-92476.1M) (use New York Building Loan Agreement in New York state).
3. **Non-Critical Repairs.** If Non-critical repairs are identified in the Firm Commitment, Borrower must complete them prior to closing or establish an escrow with Lender and execute the Escrow Agreement for Deferred Repairs (use New York Building Loan Agreement in New York state).
4. **Architects and General Contractors.** HUD requires the hiring of Architects and General Contractors for Projects as required in [Chapter 5, Section 5.3.3](#). Additional documentation may also be required by the Firm Commitment. See [Section 19.6.1.9](#), below, for form documentation requirements related to these services.
5. **Substantial Rehabilitation.** Construction work that constitutes Substantial Rehabilitation as defined in [Chapter 5, Section 5.1.4](#) must be processed in accordance with [Chapter 3, Section 3.2](#).
6. **Architectural Issues.** See [Chapter 5, Section 5.2](#), [Section 5.3](#), and [Section 5.10](#).
7. **Cost.** See [Chapter 5, Section 5.12](#) for cost estimation guidance for 223(f) transactions.

### 19.6.1.8 Latent Defects Guarantee

A. The Firm Commitment will include a condition requiring a guarantee against latent defects when the total cost of repair, inclusive of Critical, Non-Critical and Deferred Repairs, exceeds Housing's minimum threshold to require assurances. See [Chapter 5, Section 5.10.8.H](#) (the minimum repair threshold at the time of publication was \$400,000.) The RC Director should inform the HUD Closing Attorney when the cost of repairs exceeds the current Latent Defect Guarantee threshold.

B. When a Latent Defect Guarantee is required, the Lender must withhold an amount equal to 2½ percent (or greater percentage if required by the Firm Commitment) of the total repair cost from the Deferred Repair Escrow in accordance with the terms of Escrow Agreement for Deferred Repairs (form HUD-92476.1M). If the Firm Commitment does not require a Deferred Repair Escrow, the Latent Defect Assurance must be funded by cash or letter of credit, or a surety bond, in an amount equal to 2½ percent of the total repair cost (or greater percentage if required by the Firm Commitment) of the total repair cost.

C. If Borrower provides for the Latent Defects Guarantee with a surety bond, they must use Surety Bond Against Defects Due to Defective Materials and/or Faulty Workmanship (form HUD-3259), and a surety that is on the U.S. Treasury Listing of Approved Sureties with adequate bonding capacity (Department Circular 570). The surety bond must run for a period of at least two years from the date of completion of repairs.

### 19.6.1.9 Projects with Expanded Work

A. Section 223(f) transactions involving Level 2 or Level 3 Alterations or per-unit repair and alteration costs of \$15,000 or more (223(f) with Expanded Work), often involving LIHTC, are closed as standard 223(f) transactions, with the following possible additional requirements as set out in the Firm Commitment. Projects meeting this expanded work criteria must be closed using the Expanded Work Closing Checklist.

1. **Construction Contract.** If a General Contractor is required by [Chapter 5, Section 5.3.3](#), Lender's Counsel must submit the AIA Document A107-2017 Owner-Contractor Agreement, with the additions and deletions report attached. The HUD Closing Attorney will review for completeness (dates, parties, signatures, description of work) and for material additions and deletions to the contract that should be reviewed by the RC Director for programmatic acceptability. Deletions that absolve one party from primary responsibility are not permitted.
2. **Owner/Architect Agreement.** If a Project Architect is required by [Chapter 5, Section 5.3](#), Lender's Counsel must submit AIA Document B104-2017 Owner-Architect Agreement, with the additions/deletions report attached. The HUD Closing Attorney will review for completeness (dates, parties, signatures, description of work), and for material additions and deletions to the contract that should be reviewed by the RC Director. The AIA B104 form may not be altered in general, except for the deletion of binding arbitration and mediation provisions. Deletions that absolve one party from primary responsibility are not permitted. If there is an identity of interest between the owner and design Architect, there must be an unaffiliated Supervisory Architect with a separate AIA Document B104-2017 agreement between the Borrower/Owner and the non-IOI Supervisory Architect. See [Chapter 5, Section 5.2](#).
3. **Dimension Drawings.** The Lender will collect and distribute the drawings and specifications in the same fashion as the instructions stated in [Chapter 5, Section 5.8.5](#).
4. **Building Permits.** Lender's Counsel must submit evidence satisfactory to the RC Director demonstrating that Borrower has obtained all building permits, other local permits, governmental approvals, and architectural plans required by the applicable building official(s) to complete the Expanded Work. The HUD Closing Attorney will review for completeness (finality, dates, parties, signatures, description of work). The permits, plans, and approvals must be final (issued by the date of closing) and unconditional, unless otherwise approved by the RC Director in consultation with the HUD Closing Attorney.
5. **Other Closing Requirements.** The following guidance addresses common questions regarding HUD's policy and form completion for 223(f) transactions with Expanded Work. See *also* Section 223(f) with Expanded Work Closing Checklist.
  - a. **Regulatory Agreement.** Selections in paragraphs 2, 5, 7, and 8 are to be selected as for a Refinance.
  - b. **Request for Endorsement of Credit Instrument (form HUD-92455M).** Any references to construction and the Certificate of General Contractor are to be stricken.
  - c. **Agreement and Certification (form HUD-93305M).** The General Contractor should not be a party to the Agreement and Certification.
  - d. Borrower's Oath (form HUD-92478M). Paragraph 4 shall be stricken.

- e. **Davis- Bacon Wage Rate Determination.** Davis-Bacon prevailing wages are not required under the National Housing Act.
- f. **Escrow Agreement for Deferred Repairs (form HUD-92476.1M).** This agreement is used to assure completion of repairs and alterations and may be revised as appropriate to incorporate a disbursement agreement or LIHTC equity pay-in schedule where the escrow is not being fully-funded at the closing.
- g. **Surety.** Payment and Performance Bonds are generally not required unless otherwise indicated by the Firm Commitment.

**B.** Additional requirements may be applicable depending on the transaction. See e.g., [Chapter 3, Section 3.7](#).

## 19.6.2 223(a)(7) Loans

### 19.6.2.1 General

**A.** Section 223(a)(7) of the National Housing Act authorizes refinancing of an existing FHA-insured Loan. The 223(a)(7) Loan can be used to reduce the interest rate, provide funds for repairs, or extend the term of the Loan. The rationale for the latter two objectives must be documented by HUD.

**B.** Loans financed pursuant to Section 223(a)(7) are insured under the same section of the National Housing Act as the original loan, i.e. Section 221(d)(4), pursuant to Section 223(a)(7). Therefore, the original principal amount of the 223(a)(7) Loan cannot exceed the original unpaid principal balance of the FHA-insured loan being refinanced. If there has been a partial payment of claim on the FHA-insured loan, the 223(a)(7) cannot exceed the amount of the modified FHA-insured loan. Further instructions for 223(a)(7) loan applications are included in [Chapter 18](#).

### 19.6.2.2 Five-Year Lockout

**A.** Projects with loans insured under Section 223(f) are eligible for refinancing under Section 223(a)(7). However, if the Project's statutory 5-year prepayment lockout period has not expired at the time of refinance from 223(f) to 223(a)(7), Borrower must enter into HUD's form Use Agreement (Section 207 Use Agreement pursuant to Section 223(f), Rental Housing Prepayment, subject to Section 223(f)(3) (form HUD-93150)) in order for HUD to permit the prepayment and refinancing of the existing 223(f) loan.

### 19.6.2.3 Refinances of Second Mortgages.

**A.** Section 223(a)(7) may be used to refinance an FHA-insured subordinate mortgage (e.g., 241(a)). For projects with FHA-insured first, and one or more subordinate mortgages, HUD will permit the refinancing of multiple loans into a single Section 223(a)(7) loan.

### 19.6.2.4 Differences from Section 223(f) Procedures

**A.** Generally, underwriting and closing of the Section 223(a)(7) loan is similar to the procedures used for Section 223(f). Closing procedures for Section 223(a)(7) loans that differ from Section 223(f) include the following:



1. Previous Participation Clearance using the Previous Participation Certification (form HUD-2530), is not required for existing principals and affiliates who have already obtained clearance. New Controlling Participants must obtain form HUD-2530 clearance.
2. A new project number is assigned to the Section 223(a)(7) project.
3. Standards for the maximum mortgage and the mortgage term are set forth in Section 18.3(B). Note that if expenses exceed those allowed for Section 223(a)(7) underwriting, the application must be converted to a Section 223(f) loan or, for substantial rehabilitation, a Section 221 loan. Use form HUD-92476.1M when establishing an escrow for deferred repairs and require a 110% deposit (i.e., the required Additional Deposit Amount is to be 10% of the estimated cost of the Repair Work; in contrast, for 223(f) loans, the required Additional Deposit Amount is to be 20% of the estimated cost of the Repair Work).
4. A new Regulatory Agreement must be executed at closing, referencing the same Section of the Act as the original loan, with the addition of “pursuant to Section 223(a)(7).”
5. The Section 223(a)(7) program is based upon the premise that the original insurance obligation is transferred to the new Section 223(a)(7) Loan. Please see the note in form HUD-94001M, in which the endorsement panel for Section 223(a)(7) loans contains provisions specific to Section 223(a)(7), including the transfer of the Contract of Insurance from the prior FHA project number to the new Loan and the following:
  - a. 207/223(f) becomes “§ 207/§ 223(f) pursuant to § 223(a)(7)”; and
  - b. 221(d)(4) becomes “§ 221(d)(4) pursuant to § 223(a)(7)”.
6. Survey Affidavit of No Change. Notwithstanding the other provisions of this Chapter relating to survey requirements, a new survey and Surveyor’s Report is not required if:
  - a. The title company will issue the policy with no new survey exceptions;
  - b. A copy of the HUD-approved as-built survey is available in the original HUD loan file (or provided by Borrower); and
  - c. Either (a) no changes have been made to the land or buildings since the original survey was filed, or (b) minor changes are proposed to the land and/or buildings, and the RC Director determines that such changes are acceptable without a new survey.
7. If the RC Director does not require a new survey, Lender’s Counsel must submit a *Survey Affidavit of No Change* certifying to no material change, in a format similar to the sample included at [Section 19.10](#), to document the lack of changes, together with a copy of the survey from the original loan file.

## 19.6.3 Section 241(a) Supplemental Loans

### 19.6.3.1 Introduction

A. Section 241(a) of the NHA, 12 U.S.C. § 1715z-6(a), authorizes FHA-insurance of supplemental loans to finance project improvements, additions, and equipment. A Section 241(a) loan provides subordinate financing without altering the first-lien priority of the existing FHA-insured loan. See [Chapter 3, Section 3.6](#) for additional details.



**B.** Except as discussed in this Section, closing procedures are generally the same for loans insured pursuant to Section 241(a) as they are for Section 221(d)(4) closings. Some loan documents may not be applicable, depending upon the facts of the transaction. The RC Director will determine inapplicability of documents, if any, in consultation with the HUD Closing Attorney.

### 19.6.3.2 Effect on Existing Financing

**A. First Lender's Consent to Secondary Encumbrance.** The lender in any existing FHA-insured loan (First Lender) must provide written consent for the Borrower to obtain the supplemental loan, even when the First Lender is also the Lender of the supplemental loan. The consent must grant Borrower permission to further encumber the First Lender's security with the subordinate loan (including the supplemental loan Security Instrument, UCC-1 Financing Statements, and HUD Regulatory Agreement) and any other new secondary financing (i.e., HOME funds, etc.).

**B. Consent of Existing Subordinate Lenders.** If any existing subordinate financing on the Project requires written consent from the subordinate Lender before Borrower may further encumber the Project, Lender's Counsel must submit copies of such written consent evidencing the subordinate Lender's authorization for the Borrower to obtain the 241(a) supplemental loan..

**C. Modification of Legal Description in Underlying First Loan Documents.** If the supplemental loan will finance construction on or acquisition of a separate parcel of land, the additional parcel(s) must be made part of the legal description for the land on the first loan. This addition of land requires modification of the first loan documents to expand the legal description wherever it appears, i.e., in the Security Instrument, Regulatory Agreement, UCC-1 Financing Statements (both county-recorded and state-filed), and Lender's title policy (which itself must be modified both to reflect the modification of the existing loan and to revise the legal description). The same expanded legal description will be used for the supplemental loan.

**Note: No change in the legal description is necessary if no new land is being added, e.g., adding floors to an existing building, expanding the existing building into an area already included under the first mortgage, or rehabilitation of existing units**

### 19.6.3.3 Additional Requirements for 241(a) Supplemental FHA Loans

**A. GNMA Requirements.** If the first loan was securitized through GNMA, Lender's Counsel must provide written assurance from the First Lender that it has complied with all GNMA requirements for the addition of the supplemental loan.

**B. Davis-Bacon Requirements.** Under NHA Section 241(b)(5), supplemental loans are subject to Davis-Bacon labor standards if: (a) the existing loan is FHA-insured and subject to Davis-Bacon labor standards (e.g., the first lien mortgage is currently insured as a 221(d)(4)), or (b) the existing loan is a HUD-held mortgage originally insured under a program that was subject to Davis-Bacon labor standards. Conversely, supplemental loans are not subject to Davis-Bacon labor standards if the existing loan is currently FHA-insured under a section of the act that is not subject to Davis-Bacon wage rates under Section 212 of the NHA (e.g., loans currently insured as 223(f)s or (a)(7)s).

**C. Cross-Default Clause in Supplemental Loan Documents.** The Firm Commitment will require a cross-default clause in the supplemental loan Note and Security Instrument providing that a default under

the first lien mortgage is a default under the supplemental mortgage. See NHA 241(b)(6) and 24 CFR 241.555(a). Conversely, the supplemental loan is not cross-defaulted to the first lien mortgage.

### 19.6.3.4 HUD Form Documents for 241(a) Supplemental Loans

A. Lender's Counsel is responsible for preparing the Section 241(a) closing documents to address the supplemental nature of the 241(a) Loan, including that the 241(a) Security Instrument will be subordinate to the lien of the existing FHA-insured loan. Modifications are necessary to remove certain references (i.e., the absence of other liens) to clarify that the supplemental loan does not violate the terms of HUD's form documents and to highlight that various rights of a subordinate Lender may be subject to the prior rights of a senior Lender (even when the two Lenders are the same), etc.

**Note: The OGC Multifamily Mortgage Division will maintain a set of template documents for use in 241(a) transactions while HUD prepares the documents for OMB approval through the PRA process. Lender's Counsel may contact the MMD to obtain the current templates. Templates include the supplemental security instrument, Lender's certificate, note, building loan agreement, agreement and certification, and regulatory agreement. Once published with an OMB approval number, preparers should use the OMB-approved forms.**

## 19.6.4 Section 213 Cooperative Housing Loans

A. Mortgage insurance for cooperative housing projects insured under Section 213 of the National Housing Act is underwritten and closed through Traditional Application Processing (TAP). The provisions of this Chapter apply to the closing of a Section 213 loan.

B. Lender's Counsel should prepare the draft closing submission based on the Section 213 checklist posted to HUD's website: [https://www.hud.gov/OGC\\_Multifamily\\_Closing\\_Documents\\_Checklist](https://www.hud.gov/OGC_Multifamily_Closing_Documents_Checklist).

C. When a share sale waiver is requested prior to Firm Commitment, the RC Director will request and OGC will assign a HUD Closing Attorney to complete a legal review of the required documentation.

**Note: The authorizing statute for Section 213 insurance is codified at 12 USC 1715e. Regulations governing the Section 213 program are located at 24 CFR Part 213. Basic administrative requirements for cooperative housing insurance and more specific requirements for specialized types of cooperative housing are published in HUD Handbooks 4550.1 through 4550.6.**

## 19.6.5 Insurance Upon Completion Loans for New Construction and Substantial Rehabilitation

### 19.6.5.1 General

A. Insurance Upon Completion (IUC) involves new construction or substantial rehabilitation where FHA insurance is not provided until the project's construction is completed – there are no insured advances during the construction period. Consequently, many requirements are different than a typical 221(d)(4) Initial Closing with insurance of advances. FHA may insure a loan under Sections 220, 221(d)(4) and 231 of the NHA as an Insurance Upon Completion (IUC) loan once Certificates of Occupancy have been issued for all units in the Project.

### 19.6.5.2 Firm Commitment

A. HUD must issue a Firm Commitment with IUC-specific conditions prior to the start of construction. The Firm Commitment will remain valid and outstanding until Final Endorsement of the permanent mortgage loan. There is no Initial Closing. Required documents for IUC closings are listed in [Chapter 12, Section 12.16.C](#).

### 19.6.5.3 Construction Requirements

A. Prior to commencement and during construction, Borrower is responsible for ensuring that the project complies with both HUD new construction/substantial rehabilitation Program Obligations, and applicable state and local laws, including zoning. See 24 CFR 200.72 and Part II of Consolidated Certifications - Borrower (form HUD-91070M). The Borrower and Borrower's counsel must be able to confirm compliance at Final Endorsement. See Opinion 6 of Opinion of Borrower's Counsel (form HUD-91725M), and Section (4) of Borrower's Oath (form HUD-92478M).

B. At least 21 days prior to the start of construction, Lender's counsel must submit drafts of the following documents for HUD review and approval:

1. Construction Contract (form HUD-92442M), including the attachments to the Construction Contract (the AIA-201 and Supplementary Conditions to the Construction Contract (form HUD-92554M));
2. Evidence of site control, and the right to legally access the site for purposes of construction;
3. HUD-approved set of contract drawings and specifications (see [Appendix 5, Section A.5.5](#)); and
4. Agreement and Certification (form HUD-93305M).

C. The HUD Closing Attorney and the RC Director will review and approve the required pre-construction documentation.

D. The HUD pre-construction conference must be completed prior to the start of construction, wherein HUD staff will review the applicable Davis-Bacon wage rates and labor documentation requirements and procedures. See [Chapter 12, Section 12.2](#) and [Section 19.2.3](#).

E. Assurance of Completion is not required for IUC closings. See [Chapter 8, Section 8.13.A.4](#). At final endorsement, the General Contractor must address latent defects with Escrow Agreement for Latent Defects (HUD 92414M).

F. Contractor Guarantee Required. Between Project Substantial Completion and endorsement of the Note, Contractor's work must be covered by a guarantee against defects due to faulty materials and/or poor workmanship. Article 3.B. of the Construction Contract (form HUD-92442M) defines Project Substantial Completion and Article 3.D. stipulates warranties commence with completion of each portion of the work.

G. Building Loan Agreement (form HUD-92441M) is not required for IUC closings.

### 19.6.5.4 Closing

A. **Preparation for Insurance Upon Completion Closings.** HUD's administrative requirements for IUC closings are detailed in [Chapter 8, Section 8.13](#) and [Chapter 12, Section 12.16](#). Final Endorsement occurs

after completion of construction, cost certification, and issuance of Certificates of Occupancy for all units. See [Chapter 13](#) for HUD's Cost Certification requirements.

**B. Form Document Requirements Specific to IUC Closings.** This section supplements [Chapter 8, Section 8.12](#) and [Chapter 12, Section 12.16](#) of this MAP Guide.

1. **Checklist.** The complete list of documents required for IUC closings is provided in the Insurance Upon Completion Checklist, available on HUD's website at:

[https://www.hud.gov/OGC\\_Multifamily\\_Closing\\_Documents\\_Checklist](https://www.hud.gov/OGC_Multifamily_Closing_Documents_Checklist).

2. **Security Instrument.** The term of the *Security Instrument* commences on the date of HUD's endorsement. The Security Instrument is not recorded prior to completion of construction.

*Note.* The *Note* must be dated the same date as the Security Instrument. The amount of the *Note* cannot exceed the principal balance of the mortgage loan that would have been outstanding if all payments to principal due before the date of Final Endorsement (including required advance amortization payments, if any) had been paid.

3. **Endorsement of Note.** At the Initial/Final Endorsement of an IUC loan, FHA will endorse the Note form HUD-94001M) for the total sum of the insured Loan. HUD is not insuring advances on a construction loan, so there is no Initial Endorsement of the *Note*. The *Note* contains a separate endorsement panel for IUC closings. The RC Director will not endorse the *Note* until the Lender provides written evidence that all principal payments due and payable on the existing loan have actually been paid and the existing mortgage loan is otherwise current.
4. **Title Policy.** The title insurance policy must be dated the same day as the endorsement of the Note.
5. **Regulatory Agreement.** The Regulatory Agreement must be recorded immediately following recordation of the Security Instrument.
6. **Builder's Warranty.** In addition to the Construction Contract, the General Contractor must enter into Escrow Agreement for Latent Defects (form HUD-92414M) with Lender and Borrower for the benefit of HUD and provide one of the following at endorsement to assure correction of any latent defects:
  - a. **Cash Escrow.** A cash escrow deposit equal to 2.5% of the principal amount of the Security Instrument, to be retained in escrow by Lender for a period of 15 months; or
  - b. **Letter of Credit.** An irrevocable, unconditional letter of credit issued to Lender by a banking institution; or
  - c. **Surety Bond.** Surety Bond Against Defects Due to Defective Materials and/or Faulty Workmanship (form HUD-3259), by a surety on the U.S. Department of Treasury's Listing of Approved Sureties (Department Circular 570), in the amount of 10% of the Construction Contract, and effective for two years after Project Substantial Completion.
  - d. **RC Director Discretion.** In cases when the latent defect escrow amount is small because total repair cost is minimal (e.g., \$200,000 or less), the RC Director has the discretion to waive the assurance for latent defects.
7. **Request for Endorsement.** Request for Endorsement of Credit Instrument, Certificate of Lender, Borrower and General Contractor (form HUD-92455M) is required. The form Certification of General Contractor must be given.

8. **Operating Deficit Escrow.** If an operating deficit is projected on Multifamily Summary Appraisal Report (form HUD-92264), the Sponsors, at closing, must provide funds to meet the deficit in the manner set forth in [Chapter 8, Section 8.14](#). Escrow Agreement for Operating Deficits (form HUD-92476a-M) must be used and requires a specified sum to be held for a limited number of months after closing, in accordance with Program Obligations.
9. **Contractor's Prevailing Wage Certificate.** The Contractor must submit Contractor's Requisition Project Mortgages (form HUD-92448) to Lender, with the section entitled "Contractor's Prevailing Wage Certificate" completed.
10. **Cost Certification.** The Borrower's cost certification is reviewed by the RC Director, who will prepare Maximum Insurable Mortgage (form HUD-92580) to determine the final amount of the Note. See [Chapter 13](#) for further guidance.
11. **Ancillary Agreements.** Other ancillary agreements are required as set forth in remainder of this MAP Guide and in IUC Checklist.
12. **Excess (Unused) Mortgage Proceeds.** Provisions for excess or unused proceeds are included in Agreement and Certification (form HUD-93305M).
13. **Labor Relations.** The RC Director must confer with the Office of Davis-Bacon and Labor Standards (DBLS) and provide OGC the RC Director with written confirmation of DBLS's approval to proceed to closing. See [Section 19.2.2](#) for further guidance.
14. **Subordination of Restrictive Covenants.** HUD has specific requirements concerning restrictive covenants resulting from bond financing and low-income housing tax credit financing (See [Section 19.4.10](#) and [Section 19.4.11](#), respectively). Regardless of the timing of recordation of such covenants and related documents, HUD requires that they meet FHA requirements before Final Endorsement of the Note for insurance, even if compliance requires amendment of already existing agreements. Consequently, Borrower and Lender should ensure that these documents, if applicable, meet FHA requirements before commencement of construction.

## Part III: Sample Language, Certifications, and Riders

### 19.7 HUD-Required Provisions for Borrower's Organizational Documents

The Borrower's organizational governing document (partnership agreement, operating agreement, or by-laws, as applicable) must provide that the Borrower will be in existence at least as long as the term of the Loan and must include the following provisions (that may automatically terminate when the Loan is no longer insured or held by HUD):

Notwithstanding any clause or provision in the [identify both the formation document(s) and the governing document(s)] to the contrary, and so long as the United States Department of Housing and Urban Development ("HUD"), or its successors or assigns, insures or holds any loan to [Borrower] ("the HUD-insured Loan"), including the loan secured by a [insert type of security instrument used in Project state,

e.g., mortgage] lien on [insert project's name and FHA project number] in [insert city, county and state] (the Project) the following provisions apply:

The terms listed below shall have the following definitions:

"Borrower" means [insert name of FHA Borrower].

"Lender" means the entity identified as "Lender" in the first paragraph of the Security Instrument, or any subsequent holder of the HUD-insured Note.

"HUD Regulatory Agreement" means the Regulatory Agreement between Borrower and HUD with respect to the Project, as the same may be supplemented, amended or modified from time to time.

"Security Instrument" means the mortgage or deed of trust from Borrower in favor of Lender, as the same may be supplemented, amended, or modified.

"HUD-insured Note" means the Note executed by Borrower, and described in the Security Instrument, including all schedules riders, allonges and agenda, as such Note may be amended from time to time.

Requirements.

1. If any of the provisions of Borrower's organizational documents conflict with the terms of the HUD-insured Note, Security Instrument, or HUD Regulatory Agreement ("HUD Loan Documents"), the provisions of the HUD Loan Documents shall control.
2. No provision required by HUD to be inserted into the organizational documents may be amended without HUD's prior written approval. Additionally, if there is a conflict between any HUD-required provisions inserted into this Agreement and any other provision of this Agreement, the terms of the HUD-required provisions will govern; and if there is a conflict between any of the provisions in the [insert appropriate document, i.e., Articles of Organization] and any HUD-required provisions of this Agreement, the HUD-required provisions will govern.
3. Unless otherwise approved in writing by HUD, Borrower's business and purpose shall consist solely of the acquisition, ownership, operation and maintenance of the Project and activities incidental thereto. Borrower shall not engage in any other business or activity. The Project shall be the sole asset of the Borrower entity, which shall not own any other real estate other than the aforesaid Project.
4. None of the following will have any force or effect without the prior written consent of HUD:
  - a. Any amendment that modifies the term of Borrower's existence;
  - b. Any amendment that triggers application of the HUD previous participation certification requirements (as set forth in Form HUD2530, Previous Participation Certification, or 24 CFR § 200.210, *et seq.*);
  - c. Any amendment that in any way affects the HUD Loan Documents;
  - d. Except as permitted under section 10 below, any amendment that would authorize any member, manager, partner, owner, officer or director, other than the one previously authorized by HUD, to bind the Borrower entity for any matters concerning the Project which require HUD's consent or approval;
  - e. A change that is subject to the HUD TPA requirements contained in Chapter 13 of HUD Handbook 4350.1 REV-1;
  - f. Any change in a guarantor of any obligation to HUD (including those obligations arising from violations of the HUD Regulatory Agreement); and
  - g. Any grant of a security interest in any of Borrower's assets or mortgaged property.



5. Borrower is authorized to execute a Note and Security Instrument in order to secure a loan to be insured by HUD and to execute the HUD Regulatory Agreement and other documents required by the Secretary in connection with the HUD-insured loan.
6. Any incoming member/partner/owner of Borrower must, as a condition of receiving an interest in the Borrower entity, agree in writing to be subject to the HUD Loan Documents and all other documents required in connection with the HUD-insured loan, to the same extent and on the same terms as the other members/partners/owners.
7. Upon any dissolution, no title or right to possession and control of the Project, and no right to collect the rents from the Project, shall pass to any person or entity that is not bound by the HUD Regulatory Agreement in a manner satisfactory to HUD.
8. The key principals of Borrower identified in the HUD Regulatory Agreement are liable in their individual capacities to HUD to the extent set forth in the HUD Regulatory Agreement.
9. Borrower shall not voluntarily be dissolved or converted to another form of entity without the prior written approval of HUD.
10. Borrower has designated \_\_\_\_\_ [insert name, individual must be 2530 Previous Participation Certified] as its official representative for all matters concerning the Project that require HUD consent or approval. The signature of this representative will bind Borrower entity in all such matters. Borrower may, from time to time, appoint a new representative to perform this function, provided that the individual so appointed is 2530 Previous Participation Certified, and within three business days of doing so, will provide HUD with written notification of the name, address, and telephone number of its new representative. When a person other than the person identified above has full or partial authority with respect to management of the Project, Borrower will promptly provide HUD with the name of that person and the nature of that person's management authority.
11. Any obligation of the [Corporation / Partnership / Limited Liability Company] to provide indemnification under this [Operating Agreement / Partnership Agreement / Bylaws] shall be limited to (i) amounts mandated by state law, if any, (ii) coverage afforded under any liability insurance carried by the [Company / Partnership] and (iii) available surplus cash of the Borrower as defined in the HUD Regulatory Agreement. Until funds from a permitted source for payment of indemnification costs are available for payment, the [Corporation / Partnership / Limited Liability Company] shall not (a) pay funds to any members, partners, officers and directors, or (b) pay the deductible on an indemnification policy for any members, partners, officers and directors.
12. [To be included in Projects with LIHTC financing, only] No amendment or change to the obligations or rights of the tax credit investor(s), as approved by HUD, [insert title of the entity or individuals, or defined term used in the governing doc.], may be made without the prior written consent of HUD and Lender.



## 19.8 Rider to Security Instrument – LIHTC Projects

This Rider (“Rider”) is attached to and amends the Security Instrument entered into between [Borrower] and [Lender], dated as of [Date] (“Security Instrument”).

To the extent any provisions of this Rider conflict with any provisions in the body of the Security Instrument, the provisions of this Rider shall prevail. Any terms in the body of the Security Instrument not in conflict with the provisions of this Rider remain in full force and effect.

Notwithstanding anything else in the Security Instrument to which this Rider is attached, Lender and Borrower agree as follows:

1. *Definitions.* The following terms shall be added to Section 1 (Definitions) of the Security Instrument:
  - a. Any capitalized terms not defined in this Rider shall have the meaning given in the body of the Security Instrument.
  - b. “Equity Investor” means \_\_\_\_\_.
  - c. “Borrower’s GP/MM” means \_\_\_\_\_.

### Removal of Borrower’s GP/MM

2. [Include this section 2 only if pre-approval of a special limited partner entity as an interim replacement general partner/managing member has been requested and approved. Use in accordance with separately provided guidance on the pre-approval process.]
3. Equity Investor may remove the Borrower’s GP/MM in accordance with the terms of the Borrower’s organizational documents, subject to the following conditions:
  - a. Lender and HUD shall receive prior written notice of any such removal and replacement.
  - b. HUD and Lender have approved such organizational documents, including any and all amendments thereto, but only to the extent HUD approval of the Borrower’s organizational documents is required by Program Obligations.
  - c. HUD and Lender have approved the replacement of the Borrower’s GP/MM in accordance with Program Obligations. At Borrower’s request, HUD and Lender have approved [**SPECIAL LIMITED PARTNER ENTITY**] (“Interim Replacement GP/MM”) to act as a temporary replacement general partner/managing member of Borrower, in the event Equity Investor removes Borrower’s GP/MM for cause in accordance with Borrower’s organizational documents. Approval of such Interim Replacement GP/MM is expressly limited to a period of 90 days that commences on the date of such removal, provided that HUD in its sole discretion may extend such 90-day period by an additional 30 days.
  - d. HUD and/or Lender may at any time by written notice to Equity Investor revoke the approvals given in this Section 2 if HUD or Lender becomes aware of any conditions or circumstances that would disqualify or compromise the ability of Interim Replacement GP/MM from acting as an interim general partner/managing member pursuant to Program Obligations.
  - e. After such interim period, any proposed permanent replacement for the Borrower’s GP/MM is subject to HUD’s consent pursuant to Program Obligations, including any applicable procedure for the transfer of physical assets or transfer of ownership interests.

4. *Transfer of Equity Investor.* Equity Investor may transfer all or part of its interests in Borrower upon the following conditions:
  - a. HUD approves any transferee in accordance with Program Obligations, provided that if such transferee is a limited liability investor, as such term is defined in Program Obligations, HUD shall receive the same certifications and organizational charts required by Program Obligations for the admission of a limited liability investor at a transaction’s closing.
  - b. HUD and Lender receive prior written notice of such transfer.
  - c. HUD and Lender receive executed copies of (and, to the extent, if at all, required by Program Obligations, have previously approved drafts of), any and all documents necessary to affect such transfer, including any and all amendments to Borrower’s organizational documents.
  
5. Notice.
  - a. Lender agrees that, as long as Equity Investor is a member or partner of Borrower, Lender shall endeavor as a courtesy to Equity Investor to deliver to Equity Investor a copy of any notice of default that is delivered to Borrower. Equity Investor’s address for such notice purposes is:  
  
\_\_\_\_\_  
  
\_\_\_\_\_  
  
\_\_\_\_\_Equity Investor may change the address to which notices intended for it are to be directed by means of written notice given to Lender.
  - b. Any cure of any default by Borrower offered by Equity Investor shall be treated the same as if offered by Borrower.
  
6. *Communication.* Borrower agrees that Lender and/or HUD may communicate directly with Equity Investor, when, in Lender and/or HUD’s sole discretion, Lender and/or HUD determine that such communication is in the best interest of the Project.

**BORROWER**

**LENDER**

By: \_\_\_\_\_

By: \_\_\_\_\_

## 19.9 Rider to Regulatory Agreement for Residual Receipts Requirements

This sample Rider is drafted for projects subject to residual receipts requirements established through a Section 8 HAP contract. In the event residual receipts requirements are established through another program or document, such as the Section 202 program, revise this Rider as necessary to reflect deal specifics. This Rider is intended to amend the Regulatory Agreement related to the insured mortgage loan, not to alter specific program residual receipts requirements.

This Rider to Regulatory Agreement for Residual Receipts Requirements (“Rider”) is attached to and amends the Regulatory Agreement for Multifamily Projects entered into between (“Borrower”) and the United States Department of Housing and Urban Development, acting by and through the Secretary, his or her successors, assigns or designates (“HUD”), dated as of [Date] (“Regulatory Agreement”).

To the extent any provisions of this Rider conflict with any provisions in the Regulatory Agreement, the provisions of this Rider shall prevail. Any terms in the body of the Regulatory Agreement not in conflict with the provisions of this Rider remain in full force and effect.

Notwithstanding anything else in the Regulatory Agreement to which this Rider is attached, Borrower and HUD agree as follows:

1. Any capitalized term used herein and not defined has the meaning given to it in the Regulatory Agreement.
2. Borrower has entered into a [**Housing Assistance Payment Contract** (“HAP Contract”) identified by HAP Contract No. [**HAP Contract No.**], as amended, renewed and/or assigned from time to time].
3. While the Regulatory Agreement would otherwise allow Borrower to make Distributions of Surplus Cash in accordance with the provisions of the Regulatory Agreement, the HAP Contract further limits such Distributions and requires Borrower to maintain a Residual Receipts account, as Residual Receipts is defined in the HAP Contract.
4. Borrower shall establish and/or maintain a Residual Receipts account, and make required deposits into said Residual Receipts account, in accordance with the HAP Contract.
5. Notwithstanding any provision of the HAP Contract, the Residual Receipts account shall be subject to the control of Lender and shall be maintained in accordance with any applicable requirements of Ginnie Mae, and withdrawals may be made only with the prior written approval of HUD. These funds shall be held in an interest-bearing account, whether in the form of a cash deposit or invested in obligations of, or fully guaranteed as to principal by, the United States of America, or in such other investment as may be allowed by HUD, which shall be insured or guaranteed by a federal agency and in accordance with Program Obligations.
6. Funds deposited in the Residual Receipts account shall be held in trust for the Project and shall continue to be held in trust for the benefit of the Project upon any sale or transfer of the Project, pursuant to the HAP Contract. Upon termination of the requirement to maintain a Residual Receipts account, any funds held in the Residual Receipts account shall be subject to HUD’s direction.
7. In the event that the HAP Contract is terminated or is otherwise no longer of any force or effect with respect to the Project, this Rider shall terminate and be of no further force or effect.

The statements and representations contained in this rider and all supporting documentation thereto are true, accurate, and complete. This certification has been made, presented, and delivered for the purpose of influencing an official action of HUD in insuring a multifamily loan, and may be relied upon by HUD as a true statement of the facts contained therein.

**Warning: Federal law provides that anyone who knowingly or willfully submits (or causes to submit) a document containing any false, fictitious, misleading, or fraudulent statement/certification or entry may be criminally prosecuted and may incur civil administrative liability. Penalties upon conviction can include a fine and imprisonment, as provided pursuant to applicable law, which includes, but is not limited to, 18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802, 24 C.F.R. Parts 25, 28 and 30, and 2 C.F.R. Parts 180 and 2424.**

**BORROWER**

(insert signature block)

**UNITED STATES DEPARTMENT OF HOUSING  
AND URBAN DEVELOPMENT,**  
acting by or through the Secretary

(insert signature block)

## 19.10 Survey Affidavit of No Change

State of \_\_\_\_\_

County of \_\_\_\_\_

The undersigned ("Affiant") being first duly sworn on oath does hereby depose, represent and say to the U.S. Department of Housing and Urban Development ("HUD"): as follows:

Affiant is the [insert title] \_\_\_\_\_ of \_\_\_\_\_ ("Borrower") and is fully and well acquainted and knowledgeable concerning the physical characteristics and condition of the real estate legally described on Exhibit A attached hereto and made a part hereof and the buildings, structures and improvements (collectively the "Improvements" ) located thereon;

Said real estate and Improvements are part of the HUD Project named \_\_\_\_\_ and designated HUD Project Number \_\_\_\_\_;

On \_\_\_\_\_, \_\_\_\_\_ ("Surveyor") surveyed said real estate and Improvements and produced a written survey dated \_\_\_\_\_ and identified as job, survey or order number \_\_\_\_\_ of the surveying firm of \_\_\_\_\_ whose address is \_\_\_\_\_ ("Survey"). On \_\_\_\_\_ an original of said Survey was delivered to HUD;

On \_\_\_\_\_, the Affiant reviewed said Survey and physically inspected said real estate and Improvements including, without limitation, the perimeter boundaries of said real estate;

The Survey accurately and fully depicts the observable physical conditions of said real estate and the location and condition of all Improvements and any above ground physical indicia of any easements, licenses, roadways, paths or other physical usage located on said real estate as of \_\_\_\_ [the date of Affiant's said inspection] including, without limitation, all encroachments thereof on or into easements and set back lines and by Improvements primarily located on adjoining real estate onto the real estate described on Exhibit A hereto; EXCEPT [if none, state "NONE"] \_\_\_\_\_.

Affiant hereby certifies that the statements and representations contained in this instrument and all supporting documentation thereto are true, accurate, and complete. This instrument has been made, presented, and delivered for the purpose of influencing an official action of HUD in insuring a multifamily loan, and may be relied upon by HUD as a true statement of the facts contained therein.

**Warning: Federal law provides that anyone who knowingly or willfully submits (or causes to submit) a document containing any false, fictitious, misleading, or fraudulent statement/certification or entry may be criminally prosecuted and may incur civil administrative liability. Penalties upon conviction can include a fine and imprisonment, as provided pursuant to applicable law, which includes, but is not limited to, 18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802, 24 C.F.R. Parts 25, 28 and 30, and 2 C.F.R. Parts 180 and 2424.**

**AFFIANT:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that \_\_\_\_\_, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that (s)he signed and delivered the said instrument as his/her free and voluntary act and purposes therein set forth.

GIVEN under my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(SEAL)

\_\_\_\_\_  
Notary Public

## 19.11 Certification of Architectural/Engineering Fees

[Address to Regional Center Director]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear \_\_\_\_\_:

The undersigned hereby certifies that all architectural, engineering, drafting, land surveyor, testing, laboratory and related services fees and fee balances for the analysis of the property, preparation of reports, and for the project design and preparation of plans and specifications have been fully paid, except as listed below. The undersigned further certifies that there are no other disputed or undisputed claims for such services.

Firm: \_\_\_\_\_

Service: \_\_\_\_\_

Fee: \_\_\_\_\_

Balance: \_\_\_\_\_

Firm: \_\_\_\_\_

Service: \_\_\_\_\_

Fee: \_\_\_\_\_

Balance: \_\_\_\_\_

Firm: \_\_\_\_\_

Service: \_\_\_\_\_

Fee: \_\_\_\_\_

Balance: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



The statements and representations contained in this certification and all supporting documentation thereto are true, accurate, and complete. This certification has been made, presented, and delivered for the purpose of influencing an official action of HUD in insuring a multifamily loan, and may be relied upon by HUD as a true statement of the facts contained therein.

**Warning: Federal law provides that anyone who knowingly or willfully submits (or causes to submit) a document containing any false, fictitious, misleading, or fraudulent statement/certification or entry may be criminally prosecuted and may incur civil administrative liability. Penalties upon conviction can include a fine and imprisonment, as provided pursuant to applicable law, which includes, but is not limited to, 18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802, 24 C.F.R. Parts 25, 28 and 30, and 2 C.F.R. Parts 180 and 2424.**

**BORROWER**

(insert signature block)

## 19.12 Building Code Verification

This will confirm that an apartment project known as \_\_\_\_\_, located at \_\_\_\_\_, built in \_\_\_\_\_, and consisting of \_\_\_\_\_ units, which are housed in \_\_\_\_\_ buildings and situated on \_\_\_\_\_ acres ( \_\_\_\_\_ square feet), was built in accordance with the applicable codes at the time of construction and has no code violations on record, except for: [Specify violation, remedy, and status (open/closed). If none, write "None."]

---

---

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---

{-----Insert name of GOVERNING AUTHORITY}:

By: \_\_\_\_\_

Name:

Title:

Date:

Phone: (    )

This letter must be signed by an individual with binding authority to provide the confirmations set forth therein, such as the Chief Planner, *etc.*

An inspection of the project is not required.

The intent of this certification is to notify HUD that the project, as it stands today, is not under the scrutiny of the governing authority and does not have any violations recorded against it which jeopardize the project's existence. If any violations have existed or do exist, the governing authority should specify the violation and the remedial action taken or required.

Your assistance in this matter is greatly appreciated.

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## 19.13 Zoning Letter

\*This letter may be provided in lieu of a zoning endorsement in accordance with [Section 19.8](#) above.

This will confirm that an apartment project known as \_\_\_\_\_, located at \_\_\_\_\_, built in \_\_\_\_\_, and consisting of \_\_\_\_\_ units, which are housed in \_\_\_\_\_ buildings and situated on \_\_\_\_\_ acres (\_\_\_\_\_ square feet), was adequately zoned as a multifamily project at the time of occupancy and that there are no known zoning violations, except for: [Specify violation, remedy, and status (open/closed). If none, write "None."]

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

{-----Insert name of GOVERNING AUTHORITY}:

By: \_\_\_\_\_

Name:

Title:

Date:

Phone: ( )

This letter must be signed by an individual with binding authority to provide the confirmations set forth therein, such as the Chief Planner, *etc.*

An inspection of the project is not required.

The intent of this certification is to notify HUD that the project, as it stands today, is not under the scrutiny of the governing authority and does not have any violations recorded against it which jeopardize the project's existence. If any violations have or do exist, the governing authority should specify the violation and the remedial action taken or required.

Your assistance in this matter is greatly appreciated.

## 19.14 Third Party Oblige Certification

Use when Lender, bond issuer or bond Underwriter exercises the option to defer collection of discounts, financing fees, etc., as approved in writing by HUD. Such deferred collection of these items must be an obligation of a third party and may not be an obligation of the Borrower. See [cross-reference to MAP Guide once finalized.]

[Address to Regional Center Director]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear \_\_\_\_\_:

The undersigned hereby certifies that, under an agreement dated \_\_\_\_\_ between the undersigned and \_\_\_\_\_, a discount or other financing charge of \$ \_\_\_\_\_ in addition to the initial service charge will be paid by \_\_\_\_\_. The undersigned does not now have and will not later assert any claim against the Borrower, Mortgaged Property, mortgage loan proceeds, any reserve or deposit made with the undersigned or another required by HUD in connection with the mortgage transaction, or against the rents or other income from the Mortgaged Property for payment of any part of such discount.

The statements and representations contained in this certification and all supporting documentation thereto are true, accurate, and complete. This certification has been made, presented, and delivered for the purpose of influencing an official action of HUD in insuring a multifamily loan, and may be relied upon by HUD as a true statement of the facts contained therein.

**Warning: Federal law provides that anyone who knowingly or willfully submits (or causes to submit) a document containing any false, fictitious, misleading, or fraudulent statement/certification or entry may be criminally prosecuted and may incur civil administrative liability. Penalties upon conviction can include a fine and imprisonment, as provided pursuant to applicable law, which includes, but is not limited to, 18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802, 24 C.F.R. Parts 25, 28 and 30, and 2 C.F.R. Parts 180 and 424.**

LENDER:

By: \_\_\_\_\_

Name:

Title:

Date:

The undersigned does not now have and will not later assert any claim against the Borrower, Mortgaged Property, mortgage loan proceeds, any reserve or deposit made with the undersigned or another required by HUD in connection with the mortgage transaction, or against the rents or other income from the Mortgaged Property for payment of any part of such discount.

LENDER:

By: \_\_\_\_\_

Name:

Title:

Date:

## 19.15 HUD [Rider / Amendment] To Restrictive Covenants

Use as a Rider when the Restrictive Covenants are executed in connection with a new insured loan closing; use as an Amendment for existing Restrictive Covenants.

**Note: This document has been submitted to OMB for PRA approval. Once published, preparers should use the OMB-approved form and discontinue use of this sample document.**

This [RIDER] [AMENDMENT] TO RESTRICTIVE COVENANTS is made as of [\_\_\_\_\_, 20\_\_], by \_\_\_\_\_ (“Borrower”) and \_\_\_\_\_ (“Agency”).

WHEREAS, Borrower has obtained financing from \_\_\_\_\_ (“Lender”) for the benefit of the project known as \_\_\_\_\_ (“Project”), which loan is secured by a [name of security instrument] (“Security Instrument”) dated as of \_\_\_\_\_, and recorded in the [Recorder’s Office or other land records office] of \_\_\_\_\_ County, \_\_\_\_\_ (“Records”) on \_\_\_\_\_ as Document Number \_\_\_\_\_, and is insured by the United States Department of Housing and Urban Development (“HUD”);

WHEREAS, Borrower has received [a loan] [an allocation of Low Income Housing Tax Credits] [HOME funds] [tax-exempt bond financing] [other- describe] from the Agency, which Agency [is requiring] [has required] certain restrictions be recorded against the Project; and

[Use if the Restrictive Covenants have already been entered into: WHEREAS, Borrower entered into that certain [\_\_\_\_\_ Insert name of restrictive covenants document] (“Restrictive Covenants”) with respect to the Project, as more particularly described in Exhibit A attached hereto, dated as of [\_\_\_\_\_] and recorded in the Records;]

WHEREAS, HUD requires as a condition of its insuring Lender’s financing to the Project, that the lien and covenants of the Restrictive Covenants be subordinated to the lien, covenants, and enforcement of the Security Instrument; and

WHEREAS, the Agency has agreed to subordinate the Restrictive Covenants to the lien of the Mortgage Loan in accordance with the terms of this [Rider] [Amendment].

NOW, THEREFORE, in consideration of the foregoing and for other consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

(a) In the event of any conflict between any provision contained elsewhere in the Restrictive Covenants and any provision contained in this [Rider] [Amendment], the provision contained in this [Rider] [Amendment] shall govern and be controlling in all respects as set forth more fully herein.

(b) The following terms shall have the following definitions:

"Code" means the Internal Revenue Code of 1986, as amended.

"HUD" means the United States Department of Housing and Urban Development.

"HUD Regulatory Agreement" means the Regulatory Agreement between Borrower and HUD with respect to the Project, as the same may be supplemented, amended or modified from time to time.

"Lender" means \_\_\_\_\_, its successors and assigns.

“Mortgage Loan” means the mortgage loan made by Lender to the Borrower pursuant to the Mortgage Loan Documents with respect to the Project.

“Mortgage Loan Documents” means the Security Instrument, the HUD Regulatory Agreement and all other documents required by HUD or Lender in connection with the Mortgage Loan.

“National Housing Act” means the National Housing Act, 12 USC § 1701 *et seq.*, as amended.

“Program Obligations” has the meaning set forth in the Security Instrument.

“Residual Receipts” has the meaning specified in the HUD Regulatory Agreement.

“Security Instrument” means the mortgage or deed of trust from Borrower in favor of Lender, as the same may be supplemented, amended or modified.

“Surplus Cash” has the meaning specified in the HUD Regulatory Agreement.

- (c) Notwithstanding anything in the Restrictive Covenants to the contrary, [*use for tax credit transactions only*: except the requirements in 26 U.S.C. 42(h)(6)(E)(ii), to the extent applicable,] the provisions hereof are expressly subordinate to (i) the Mortgage Loan Documents, including without limitation, the Security Instrument, and (ii) Program Obligations (the Mortgage Loan Documents and Program Obligations are collectively referred to herein as the “HUD Requirements”). Borrower covenants that it will not take or permit any action that would result in a violation of the Code, HUD Requirements or Restrictive Covenants. In the event of any conflict between the provisions of the Restrictive Covenants and the provisions of the HUD Requirements, HUD shall be and remains entitled to enforce the HUD Requirements. Notwithstanding the foregoing, nothing herein limits the Agency’s ability to enforce the terms of the Restrictive Covenants, provided such terms do not conflict with statutory provisions of the National Housing Act or the regulations related thereto. The Borrower represents and warrants that to the best of Borrower’s knowledge the Restrictive Covenants impose no terms or requirements that conflict with the National Housing Act and related regulations.
- (d) [*Use for tax credit transactions only*: In accordance with 26 U.S.C. 42(h)(6)(E)(i)(1), in] In the event of foreclosure (or deed in lieu of foreclosure), the Restrictive Covenants (including without limitation, any and all land use covenants and/or restrictions contained herein) shall automatically terminate, [*use for tax credit transactions only*: with the exception of the requirements of 26 U.S.C. 42(h)(6)(E)(ii) above, to the extent applicable, or as otherwise approved by HUD.]
- (e) Borrower and the Agency acknowledge that Borrower’s failure to comply with the covenants provided in the Restrictive Covenants will does not and will not serve as a basis for default under the HUD Requirements, unless a separate default also arises under the HUD Requirements.
- (f) [Except for the Agency’s reporting requirement,] in enforcing the Restrictive Covenants the Agency will not file any claim against the Project, the Mortgage Loan proceeds, any reserve or deposit required by HUD in connection with the Security Instrument or HUD Regulatory Agreement, or the rents or other income from the property other than a claim against:
- i. Available surplus cash, if the Borrower is a for-profit entity;
  - ii. Available distributions of surplus cash and residual receipts authorized for release by HUD, if the Borrower is a limited distribution entity; or
  - iii. Available residual receipts authorized for release by HUD, if the Borrower is a non-profit entity[.];
- or



- iv. A HUD-approved collateral assignment of any HAP contract.]
- (g) For so long as the Mortgage Loan is outstanding, Borrower and Agency shall not further amend the Restrictive Covenants, with the exception of clerical errors or administrative correction of non-substantive matters, without HUD’s prior written consent.
- (h) Subject to the HUD Regulatory Agreement, the Agency may require the Borrower to indemnify and hold the Agency harmless from all loss, cost, damage and expense arising from any claim or proceeding instituted against Agency relating to the subordination and covenants set forth in the Restrictive Covenants, provided, however, that Borrower’s obligation to indemnify and hold the Agency harmless shall be limited to available surplus cash and/or residual receipts of the Borrower.
- (i) [***Use only with Low-Income Housing Tax Credits:*** Notwithstanding anything to the contrary contained herein, it is not the intent of any of the parties hereto to cause a recapture of the Low Income Housing Tax Credits or any portion thereof related to any potential conflicts between the HUD Requirements and the Restrictive Covenants. Borrower represents and warrants that to the best of Borrower’s knowledge the HUD Requirements impose no requirements which may be inconsistent with full compliance with the Restrictive Covenants. The acknowledged purpose of the HUD Requirements is to articulate requirements imposed by HUD, consistent with its governing statutes, and the acknowledged purpose of the Restrictive Covenants is to articulate requirements imposed by Section 42 of the Code. In the event an apparent conflict between the HUD Requirements and the Restrictive Covenant arises, the parties and HUD will work in good faith to determine which federally imposed requirement is controlling. It is the primary responsibility of the Borrower, with advice of counsel, to determine that it will be able to comply with the HUD Requirements and its obligations under the Restrictive Covenants. [***Use only with tax-exempt bonds:*** No action shall be taken in accordance with the rights granted herein to preserve the tax exemption of the interest on the notes or bonds, or prohibiting the owner from taking any action that might jeopardize the tax-exemption, except in strict accord with Program Obligations.]

The statements and representations contained in this rider and all supporting documentation thereto are true, accurate, and complete. This certification has been made, presented, and delivered for the purpose of influencing an official action of HUD in insuring a multifamily loan, and may be relied upon by HUD as a true statement of the facts contained therein.

**Warning: Federal law provides that anyone who knowingly or willfully submits (or causes to submit) a document containing any false, fictitious, misleading, or fraudulent statement/certification or entry may be criminally prosecuted and may incur civil administrative liability. Penalties upon conviction can include a fine and imprisonment, as provided pursuant to applicable law, which includes, but is not limited to, 18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802, 24 C.F.R. Parts 25, 28 and 30, and 2 C.F.R. Parts 180 and 2424.**

BORROWER:

AGENCY:

By:

By:

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that on this \_\_\_\_\_, \_\_\_\_\_, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that (s)he signed and delivered the said instrument as his/her free and voluntary act and the free and voluntary act of \_\_\_\_\_ for the purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

[seal]

\_\_\_\_\_  
Notary Public

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that on this \_\_\_\_\_, \_\_\_\_\_, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that (s)he signed and delivered the said instrument as his/her free and voluntary act and the free and voluntary act of \_\_\_\_\_ for the purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

[seal]

\_\_\_\_\_  
Notary Public

[Attach Exhibit A – Legal Description]

## 19.16 Equity Bridge Loan Rider – LIHTC Projects

Use to meet the requirements of [Chapter 14, Section 14.15](#) and [Section 19.4.9.6](#) for equity bridge loans used as a substitute for deferred tax credit equity pay-in as approved by HUD in the Firm Commitment.

This Rider (“Rider”) is attached to and made part of [insert name of equity bridge loan note] (“EBL Note”), made as of \_\_\_\_\_, 20\_\_ by [insert name of equity bridge loan Borrower] (“EBL Borrower”) to \_\_\_\_\_ (“Bridge Lender”).

WHEREAS, [insert name of HUD Borrower on the HUD Loan] (“HUD Borrower”) has obtained financing from [insert name of FHA Lender] (“FHA Lender”) for the benefit of the project known as [insert project name], FHA No: [insert project number] (“Project”), which loan is secured by a [name of security instrument] (“Security Instrument”) dated as of \_\_\_\_\_, and recorded in the [Recorder’s Office or other land records office] of \_\_\_\_\_ County, \_\_\_\_\_ on \_\_\_\_\_ as document number \_\_\_\_\_, and is insured by the United States Department of Housing and Urban Development (“HUD”);

WHEREAS, EBL Borrower has obtained equity bridge loan financing from the Bridge Lender to defer HUD Borrower’s required equity pay-in for the Project;

WHEREAS, as a condition of approving the EBL Note and insuring FHA Lender’s financing for the Project, HUD requires that the terms of the EBL Note and related documents executed by the EBL Borrower (collectively, the “EBL Documents”) be made subject to HUD Requirements, as that term is further defined below.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

- (a) In addition to the terms defined above, the following terms have meanings set forth below:
- i. “HUD Loan Documents” means the HUD-insured Note, Security Instrument, HUD Regulatory Agreement, and all other documents executed in connection with the HUD Loan.
  - ii. “HUD Regulatory Agreement” means the Regulatory Agreement for Multifamily Projects (form HUD-92466M) entered into by and between HUD Borrower and HUD with respect to the Project, as the same may be supplemented, amended or modified from time to time.
  - iii. “HUD Requirements” means, collectively, the HUD Loan Documents, this Rider, and Program Obligations.
  - iv. “HUD Loan” has the same meaning as “Loan” as such term is defined in the Security Instrument.
  - v. “Mortgaged Property” has the meaning specified in the Security Instrument.
  - vi. “Program Obligations” means (1) all applicable statutes and any regulations issued by the Secretary pursuant thereto that apply to the Project, including all amendments to such statutes and regulations, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and (2) all current requirements in HUD handbooks and guides, notices, and mortgagee letters that apply to the Project, and all future updates, changes and amendments thereto, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and provided that such future updates, changes and

amendments shall be applicable to the Project only to the extent that they interpret, clarify and implement terms in this Security Instrument rather than add or delete provisions from such document. Handbooks, guides, notices, and mortgagee letters are available on “HUDCLIPS,” at [www.hud.gov](http://www.hud.gov).

- vii. “Residual Receipts” has the meaning specified in the HUD Regulatory Agreement.
  - viii. “Surplus Cash” has the meaning specified in the HUD Regulatory Agreement.
- (b) In the event of any conflict between (i) the EBL Documents and (ii) the HUD Requirements, the HUD Requirements are controlling in all respects.
  - (c) The EBL Documents and all amounts now or hereafter advanced thereunder or secured thereby are specifically subordinate to the HUD Loan Documents and all amounts now or hereafter advanced thereunder or secured thereby.
  - (d) The loan evidenced by the EBL Note is nonrecourse to the HUD Borrower and is not secured by a lien or security interest in the Mortgaged Property.
  - (e) Any payments due under the EBL Documents shall only be payable from [insert if applicable: capital contributions from [partners] [members] of the HUD Borrower, or] non-Project assets. The restriction on payment imposed by this paragraph does not excuse any default caused by failure of the EBL Borrower to pay the indebtedness evidenced by the EBL Note.
  - (f) [For non-IOI: “Bridge Lender may not”] or [For IOI Bridge Lender: “Neither [Bridge Lender] nor [HUD Borrower’s] [limited partners] [members] may”] assert any claims, even in an event of default, against the following items without the prior written permission of HUD:
    - i. the Project;
    - ii. the proceeds of the HUD Loan;
    - iii. the Mortgaged Property;
    - iv. any reserve or deposit with respect to the Project required by Program Obligations; or
    - v. any Developer fee.
  - (g) If HUD acquires title to the Project by foreclosure or deed in lieu of foreclosure, the Bridge Lender hereby consents to the discharge of all obligations of the HUD Borrower, if any, under the EBL Documents, and to the termination of the EBL Documents as to the HUD Borrower. The discharge of the HUD Borrower’s obligations under this paragraph neither: (1) excuses or relieves any co-signer, guarantor or any other party from the obligation to repay the indebtedness evidenced by the EBL Note; nor, (2) affects, limits, or impairs the Bridge Lender’s ability to seek a monetary judgment and pursue other remedies against any co-signer, guarantor or other party.
  - (h) The loan evidenced by the EBL Note may last through the construction or rehabilitation period provided for in the HUD Loan Documents, but will be paid in full no later than: [select the appropriate option and strikethrough remaining inapplicable options]  
  
\_\_\_ [EBL provided by private, for-profit Lender [on a 221(d)(4)/220 loan] no later than one year after HUD’s final endorsement of the HUD Loan;

\_\_\_ [EBL provided by private, for-profit Lender on a 223(f) loan] no later than one year after 100% completion of repairs;

\_\_\_ [EBL provided by not-for-profit, public sector, or quasi-public sector entities on a 221(d)(4)/220 loan] no later than ten years after HUD’s final endorsement of the HUD Loan;

\_\_\_ [EBL provided by not-for-profit, public sector, or quasi-public sector entities on a 223(f) loan] no later than ten years after HUD Borrower’s 100% completion of repairs required by the HUD Loan Documents.

- (i) The EBL Documents may not be amended, assigned, transferred, sold, or otherwise held without the prior written consent of HUD.
- (j) Neither the Bridge Lender nor any of its participants (if any) will have any lien upon or right of set-off against any assets of the HUD Borrower that serve as collateral for the HUD Loan.

The statements and representations contained in this rider and all supporting documentation thereto are true, accurate, and complete. This certification has been made, presented, and delivered for the purpose of influencing an official action of HUD in insuring a multifamily loan, and may be relied upon by HUD as a true statement of the facts contained therein.

**Warning: Federal law provides that anyone who knowingly or willfully submits (or causes to submit) a document containing any false, fictitious, misleading, or fraudulent statement/certification or entry may be criminally prosecuted and may incur civil administrative liability. Penalties upon conviction can include a fine and imprisonment, as provided pursuant to applicable law, which includes, but is not limited to, 18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802, 24 C.F.R. Parts 25, 28 and 30, and 2 C.F.R. Parts 180 and 2424.**

EBL BORROWER:

BRIDGE LENDER:

By:

By:

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

[Jurats to be added]

## 19.17 Section 213 Cooperative Program Rider to Regulatory Agreement for Multifamily Projects

### Section 213 Cooperative Program Rider to Regulatory Agreement for Multifamily Projects

A. The following definition is hereby inserted as subsection mm of Article 1, Section 1 of the foregoing Regulatory Agreement for Multifamily Housing Projects:

1. “mm: ‘General Operating Reserve Account’ shall mean the account where the funds identified in Section 51 of Rider 1 to this Agreement are held.”

B. The following provisions are hereby inserted as Section 51, 52, and 53, respectively, of the foregoing Regulatory Agreement for Multifamily Housing Projects. To the extent the provisions of the foregoing Regulatory Agreement and this Rider 1 shall conflict, the provision of this Rider 1 shall prevail:

1. “51. Commencing with occupancy, the Borrower shall establish and maintain a General Operating Reserve Account by allocation and payment thereto monthly of a sum equivalent to not less than 3 percent of the monthly amount otherwise chargeable to the members pursuant to their Occupancy Agreements. Upon accrual in the General Operating Reserve Account of an amount equal to 15 percent of the current annual amount otherwise chargeable to the members pursuant to their Occupancy Agreements, the rate of such monthly allocations may, by appropriate action of the Borrower, be reduced from 3 percent to 2 percent; provided, however, that in the event withdrawals from such Account reduce it below said 15 percent accrual, the rate of such monthly deposits shall immediately be restored to 3 percent. At any time thereafter upon accrual in said General Operating Reserve Account of an amount equal to 25 percent of the current annual amount otherwise chargeable to the members pursuant to their Occupancy Agreements, such monthly deposits may, by appropriate action of the Borrower, be discontinued and no further deposits need be made into the General Operating Reserve Account so long as said 25 percent level is maintained and provided, further, that upon any reduction of such reserve below said 25 percent level, monthly deposits shall be made at the 3 percent rate until the 25 percent level is restored. The General Operating Reserve Account shall remain in a special account and may be in the form of a cash deposit or invested in obligations of, or fully guaranteed as to principal by, the United States of America, and shall at all times be under the control of the Borrower. The General Operating Reserve Account is intended to provide a measure of financial stability during periods of special stress and may be used to meet deficiencies from time to time as a result of delinquent payments by individual members, to provide funds for the re-purchase of membership interests of withdrawing members, and other contingencies. Disbursements totaling in excess of 20 percent of the total balance in the reserve as of the close of the preceding annual period may not be made during any annual period without the consent of HUD.
2. The Borrower shall establish and collect monthly carrying charges pursuant to the conditions set forth hereinafter. Monthly carrying charges charged to members shall be made by the Borrower in accordance with a schedule of charges filed with and approved in writing by HUD prior to endorsement of the Note. Such charges shall be in an amount sufficient to meet HUD’s estimate of cooperative management expense, operating expense and maintenance expense, debt service, taxes, special assessments and ground rents, if any, reserves, and all other expenses of the Borrower.

Thereafter, charges made by the Borrower for its accommodations shall be in accordance with a schedule of charges filed with and approved in writing by HUD and shall be in amounts sufficient to meet the Borrower's estimate of expenses set forth in an operating budget which shall be prepared and submitted to the HUD 60 days prior to the beginning of each fiscal year. The operating budget shall set forth the anticipated income of the project and a sufficiently detailed estimate of expenses which will include separate estimates for administration expense, operating expense, maintenance expense, utilities, hazard insurance, taxes and assessments, ground rent, interest and amortization, mortgage insurance premium, replacement reserve and operating reserve."

3. Borrower shall not, without the written consent of HUD:
  - a. Permit the occupancy of any of the residential units except at the charges established in Section 51, and pursuant to an Occupancy Agreement in a form approved by HUD.
  - b. Permit the occupancy of any of the residential units except by members of the Borrower, or sublessees approved by the Borrower, and pursuant to a sublease in a form approved by HUD.
  - c. Consolidate or merge the Borrower into any other corporation; liquidate or dissolve the Borrower, enter into any reorganization of the Borrower, change the capital structure of the Borrower, or alter or amend the Bylaws of the Borrower.
  - d. [For new construction] Contract for the sale of any membership interest or shares of the Borrower except in accordance with a subscription agreement in a form approved by HUD.
4. [Insert as applicable: 54. Cooperative projects regulated under State or local law must comply with Program Obligations as well as any and all State or local regulatory requirements.]

The statements and representations contained in this rider and all supporting documentation thereto are true, accurate, and complete. This certification has been made, presented, and delivered for the purpose of influencing an official action of HUD in insuring a multifamily loan, and may be relied upon by HUD as a true statement of the facts contained therein.

**Warning: Federal law provides that anyone who knowingly or willfully submits (or causes to submit) a document containing any false, fictitious, misleading, or fraudulent statement/certification or entry may be criminally prosecuted and may incur civil administrative liability. Penalties upon conviction can include a fine and imprisonment, as provided pursuant to applicable law, which includes, but is not limited to, 18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802, 24 C.F.R. Parts 25, 28 and 30, and 2 C.F.R. Parts 180 and 2424.**

BORROWER

(insert signature block)



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## Chapter 20 Glossary

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To be provided.

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## Appendix 2 Quality Control Plans and Identity of Interest

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### A.2.1 Lender Quality Control Plans and Identity of Interest Examples

#### A.2.1.1 Lender Quality Control Plan Guidelines

##### A.2.1.1.1 Background

**A.** As a condition of receiving or continuing to receive both Title II lending and MAP lending privileges, MAP Lenders must adopt and maintain a Quality Control Plan (QC Plan) for the origination, underwriting, closing, construction loan administration and loan servicing, if applicable, of FHA insured mortgages processed under the MAP program and procedures. Each MAP Lender must develop and maintain an acceptable QC Plan and conduct quality control using the guidelines below.

**B.** On December 30, 2016, the Department issued HUD Handbook 4000.1, Single Family Housing Policy, in which Chapter 1A: Doing Business with FHA; FHA Lenders and Mortgagees, and Chapter V A-E: Quality Control, Oversight and Compliance; Quality Control of Lenders and Mortgagees, apply to multifamily MAP Lenders and are incorporated herein by reference. All MAP Lenders must also comply with the applicable provisions of HUD Handbook 4000.1 and with the QC provisions in Chapter 2 and in this Appendix.

##### A.2.1.1.2 Submission and Compliance

**A.** A QC Plan is a required exhibit in the Lender's application package for MAP approval and must be included as Exhibit M and be submitted in electronic PDF format, signed by an authorized signatory of the Lender. The MAP Lender must annually review and update its QC Plan and, whenever the plan is revised, the Lender must send updated PDF copies to Counterparty Oversight Branch (COB).

**B.** The Lender must comply with its QC Plan and with the underwriting, monitoring and servicing requirements of the MAP program on a continuous basis to maintain MAP eligibility. Failure to comply with these requirements or with its QC Plan may result in revocation of MAP privileges and/or other administrative sanctions.

##### A.2.1.1.3 Policy Objectives

**A.** The primary objectives of the QC Plan are to assure that:

1. The MAP Lender operates at a high-performance level in the origination, underwriting, closing, construction loan administration and servicing (as applicable) of MAP processed loans.
2. The MAP Lender operates in full compliance with the National Housing Act (NHA), HUD-FHA and MAP requirements, and with its own internal policies and procedures.



3. The MAP Lender adheres to the MAP Guide policies and procedures, clarifications and revisions in Frequently Asked Questions (FAQ), applicable regulations, Mortgagee Letters, HUD Notices and HUD Handbooks, and its own internal controls. These policies and procedures must be distributed to and consistently followed by the Lender's personnel and must be supported internally by appropriate training and staff development activities.
4. The MAP Lender's third-party contractor(s) involved in a MAP loan are familiar with, understand and adhere to the MAP Lender's own policies and procedures regarding quality control.
5. The MAP Lender's operating procedures are revised in a timely manner to:
  - a. Accurately reflect any changes in HUD-FHA and MAP regulations, policies, directives or instructions;
  - b. Keep all affected, accountable personnel informed and trained so as to guarantee compliance therewith; and
  - c. Assure that all employees and third-party contractors are held accountable for performance failures, errors and omissions.
6. The MAP Lender utilizes a program of internal and/or external audits that provide for an independent review by Lender's staff and/or contractor(s) who are knowledgeable and have no direct MAP loan origination, underwriting, construction loan administration, and/or loan servicing responsibilities, as applicable.

#### **A.2.1.1.4 General Requirements of a QC Plan**

**A.** The QC Plan must clearly describe the requirements for MAP loan origination, underwriting, closing, construction loan administration and loan servicing (as applicable), and must describe the actions the MAP Lender will take to assure acceptable oversight of and risk management in the MAP lending process.

**B.** Each office of the MAP Lender, including its branches, must maintain or have direct access to copies of the NHA and all HUD issuances, including Part 24 CFR regulations, HUD handbooks, Mortgagee Letters, HUD Notices, the MAP Guide, MAP Frequently Asked Questions (FAQs), etc., which are relevant to the MAP Lender's origination, underwriting, closing, construction loan administration and loan servicing activities (as applicable). These documents must be accessible to all employees and third-party contractor(s) and must be periodically reviewed with them.

**C.** The QC Plan must confirm that the Lender's operations are conducted in a professional, business-like environment, that its office is properly and clearly identified, it has adequate office space and equipment, it is separated from any other business entity by walls or partitions and it is accessible to persons with mobility impairments.

#### **A.2.1.1.5 Required Notifications and Certifications**

**A.** The MAP Lender must notify COB of any change in the MAP Lender's:

1. Point-of-contact for the MAP procedures;
2. Contact information for Asset Management/Loan Servicer;
3. Name;

4. Address;
5. Email address;
6. Telephone and/or FAX numbers;
7. MAP Underwriter(s);
8. Construction loan administrator(s), if applicable; and
9. Authorized signatory(s).

**B.** The MAP Lender must provide annual certifications signed by an authorized signatory of the MAP Lender and submitted to COB electronically in PDF format no later than June 30th of each year. The certification must include:

1. The names of the Lender's approved MAP Underwriter(s), construction loan administrator(s) and authorized signatory(s) to bind the Lender on MAP loan applications. Servicing Lenders must also list the name(s) of the primary servicing point of contact.
2. The names of the Lender's originators.
3. A statement that the MAP Lender is currently a HUD-approved multifamily mortgagee.
4. A description of any corrective actions taken as a result of its most recent QC reviews.
5. A summary of loans underwritten by new MAP Underwriters (who were approved within the last fiscal year).
6. Contain the following language: "WARNING: Federal law provides that anyone who submits (or causes to submit) a document containing any false, fictitious, misleading, or fraudulent statement/certification or entry may be criminally prosecuted and may incur civil administrative liability. Penalties upon conviction can include a fine and imprisonment, as provided pursuant to applicable law, which includes, but is not limited to, 18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802, 24 C.F.R. Parts 25, 28 and 30, and 2 C.F.R. Parts 180 and 2424. The signatory certifies that the information provided herein is true and accurate."

#### **A.2.1.1.6 Suspension, Debarment, and Limited Denial of Participation**

1. The MAP Lender must maintain, have access to and regularly review the latest Limited Denial of Participation (LDP) list, which is available at the following website: [https://www5.hud.gov/Ecpcis/main/ECPCIS\\_List/main/ECPCIS\\_List.jsp](https://www5.hud.gov/Ecpcis/main/ECPCIS_List/main/ECPCIS_List.jsp).

The MAP Lender must also maintain, have access to and regularly review the government- wide list of excluded parties for persons or entities who have been suspended or debarred by the federal government. This information is found in the System for Award Management (SAM) online at the following website: <https://www.sam.gov/SAM/pages/public/index.jsf>.

2. The MAP Lender may not:
  - a. Conduct FHA-HUD related business with any persons, as defined in 2 CFR Part 2424 and 24 CFR Part 24, who are debarred, suspended or subject to a Limited Denial of Participation.
  - b. Employ or have contact with any individuals or firms to perform FHA-HUD related services in origination, processing and underwriting or construction loan servicing who are restricted from

participation in HUD/FHA programs. The MAP Lender must check their employee list and third-party contractors every six months to ensure compliance with this requirement.

### **A.2.1.1.7 Independence of QC Reviews and Reviewers**

A. The QC review function must be independent of the Lender's loan origination, processing and servicing functions, and may be accomplished in several ways. QC review functions may be performed by using:

1. **In-house staff.** Lenders may establish a special unit that is dedicated solely to QC. Staff performing QC reviews must not be involved in the day-to-day processes that they are reviewing.
2. **Outside firms.** MAP Lenders may use knowledgeable outside, independent firms to prepare the QC reviews.
  - a. Services provided by an outside firm must comply with the Department's QC requirements and must provide written reports to the MAP Lender's senior management. The MAP Lender is responsible for ensuring these requirements are met.
  - b. The firm working on the QC review may not be used by the Lender in underwriting MAP loans.
  - c. Certified Public Accounting (CPA) firms may perform the QC review, which would be considered non-audit services. However, the same CPA firm cannot also provide auditing services for the MAP Lender since the CPA firm will be reviewing its own work, in part, which is a violation of the Independence standard of the Auditing Standards.
  - d. Any agreement with the outside review firm must be in writing, state the roles and responsibilities of each party and be available for review by COB.

### **A.2.1.1.8 QC Reviews**

A. The QC reviewing official(s) must document all positive and negative findings in writing and present its QC Review at the Lender's next designated senior management committee meeting.

1. The senior management committee must meet on a semiannual basis to hear the findings and recommendations of the QC Review, or more frequently if serious quality control issues are present.
2. Committee members must receive written notification of any deficiencies found as a result of a QC Review before the meeting.
3. At the meeting, the committee must carefully review and analyze the findings of the QC Review and undertake corrective actions as necessary, including:
  - a. Prompt initiation of corrective actions to address all deficiencies, including any procedural problems identified.
  - b. Formal documentation of the corrective actions taken by citing each deficiency, identifying the cause of the deficiency and providing management's response or actions taken.
  - c. Notification, in writing, of affected third party contractor(s), employees and departments of such findings and the corrective actions taken to assure senior management that repeated or recurring actions will not reoccur.

- d. Prompt distribution to all MAP loan origination, underwriting, closing and construction loan administration personnel and/or servicing personnel, as applicable, including contractor(s), of the corrective instructions for the identified deficiencies.
  - e. Promptly implement training for the prevention of such activities in the future.
  - f. Review all remedial actions for compliance at the next regularly scheduled committee meeting.
4. The MAP Lender must report the results of its QC Reviews to COB, including the corresponding corrective action plans, and must provide assurance that the information being reported is accurate, complete and has been reported promptly. The MAP Lender must also report to COB the minutes of the senior management committee meeting that reviewed the QC Review and of any follow up meetings.

The MAP Lender must promptly notify COB of any violation of law or regulation, false statements or program violations by the Lender, its employees, its contractors or any other party to the transaction that was found during the QC Review. A MAP Lender's QC Plan must ensure that findings discovered by employees during the normal course of business and by the QC staff during reviews/audits of MAP loans are reported to COB within 60 days of their initial discovery. If there is a finding of fraud or other serious violation, the finding must be submitted in writing to COB. If HUD staff is suspected of involvement, the Lender should refer the matter to the Office of Inspector General, Department of Housing and Urban Development, 451 7th Street, SW, Room 8256, Washington, DC 20410.

5. The MAP Lender must retain any QC Reviews and follow-ups, including the review findings, corrective actions taken and procedural information about the review (such as the percentage of loans reviewed, the basis for the selected loans and who performed the review) for a period of 7 years and must be made available to HUD on request. The MAP Lender must retain a copy of the entire case file pertaining to each MAP loan origination, underwriting and/or construction loan administration, for at least 7 years from the Final Endorsement date, either in hard copy or in a generally accepted electronic storage format.

#### **A.2.1.1.9 Specific Requirements of a QC Plan**

##### **A. For MAP origination and underwriting functions:**

1. The QC Plan must address how quality control is integrated into the MAP Lender's loan production process. For example, before sending the AE&C analyst and the appraiser out to perform a review, a pre-performance meeting should be held, which is an important first step to document how the Lender is enforcing QC in the production process. At a minimum, the following functions must be addressed in the QC Plan and the loan file must include documentation supporting any decisions made for these functions.
2. The QC Plan must address how the MAP Lender will exercise prudence and due diligence in determining that the mortgagor is an acceptable credit risk, and with the project's ability to make payments on the loan obligation.
3. The QC Plan must address how the MAP Lender will exercise prudence and due diligence in determining that the General Contractor, if applicable, is an acceptable credit risk, with a reasonable expectation of completing construction of the project.

4. The QC Plan must address how the MAP Lender will exercise prudence and due diligence in determining that the property's estimated value, market demand, income potential, operating expenses and warranted cost of the property will be analyzed to ensure that they are adequate to support a long-term HUD insured mortgage.
  5. The QC Plan must address how the MAP Lender will exercise prudence and due diligence in determining that new construction/substantial rehabilitation project's design meets all applicable design standards and usability by the intended resident population.
  6. The QC Plan must address how the MAP Lender will exercise prudence and due diligence in determining that the project's construction/rehabilitation or repair costs are reasonable.
  7. The QC Plan must address how the MAP Lender will exercise prudence and due diligence in assuring that it has not established minimum loan amounts or "floors," below which they will not lend since this is a violation of Section 535 of the National Housing Act.
  8. The QC Plan must address how the MAP Lender will exercise prudence and due diligence in determining that it is in compliance with [Chapter 2, Section 2.6](#) of the MAP Guide dealing with prohibited Identity of Interest relationships. Identity of Interest relationships that have been approved by COB must be properly documented in the QC plan, and evidence of the approvals must be provided with the application for the HUD processing office's review.
  9. The QC Plan must address how the MAP Lender will exercise prudence and due diligence in assuring that the Lender's loan originators cannot:
    - a. Perform the role of Underwriter for projects they originate.
    - b. Hire contractors on behalf of the Underwriter.
    - c. Interact with, or otherwise act to influence, the preparation or conclusions of third-party contractors' reports (including the Lender's internal staff tasked with third-party like duties).
    - d. Have an Identity of Interest with a third-party contractor, the Borrower or Borrower entity.
  10. The QC Plan shall require that all of the MAP Lender's loan originators certify for each loan that no conflicts-of-interest exist with the proposed mortgagor or other transaction participants.
  11. The QC Plan must stipulate that all HUD approved MAP Underwriters are full-time employees of the MAP Lender.
  12. The QC Plan must address how the MAP Lender will exercise prudence and due diligence in assuring that the MAP Lender's technical staff and/or third-party contractor(s) are knowledgeable about HUD's requirements. Where required by state or local law or regulation, the technical staff or third-party contractor must be properly licensed in the jurisdiction where the project is located.
- B. For MAP construction loan administration function:**
1. The QC Plan must address how the MAP Lender will exercise prudence and due diligence in determining that construction loan administration is performed in accordance with accepted practices of prudent lending institutions and with HUD's requirements.
  2. The QC Plan must stipulate that the HUD approved MAP construction loan administrator(s) is a full-time employee of the MAP Lender.

3. The QC Plan must provide for a review of the construction loan administration function in order to:
  - a. Determine that construction loan administration records are promptly established and maintained after loan closing and that the servicing records contain the information necessary to properly service the loan.
  - b. Determine that inquiries from Borrowers concerning their individual loan accounts are responded to promptly.

### **A.2.1.1.10 Quality Control Reviews**

#### **A. Scope, timing and format of QC Reviews.**

1. QC audits or reviews of the Lender's MAP operation are to be performed annually. The review must be a written, self-contained analysis prepared by a competent, knowledgeable and properly licensed professional and should be sufficient in scope to enable the Lender to evaluate the performance of its MAP operation and its compliance with MAP program requirements. The review should provide an independent evaluation of the MAP Lender's origination, underwriting, closing, construction loan administration and loan servicing processes and procedures. The reviews must document whatever deficiencies are found, as well as any significant oversights and/or deficiencies in loan servicing which are found as a result of problem loan reviews. The scope of a QC review should be expanded where instances of alleged misrepresentation or fraudulent activities by the Borrower team, or patterns of serious deficiencies in the Lender's underwriting, construction loan administration or loan servicing, are identified. The annual QC review must also address the following:
  - a. Track all MAP loans presented by individual loan originators and Underwriters.
  - b. Evaluate the Lender's overall QC Plan for adequacy and the Lender's operation for compliance with its QC Plan.
  - c. Perform audits of individual loan transactions.
2. The appraisal review must be prepared by a Certified General Appraiser who is competent and licensed in the appropriate jurisdiction and must be prepared to USPAP review standards.
3. Cost/architectural reviewers must meet MAP experience requirements found in the Guide. The underwriting and cost/A&E and loan servicing reviews should contain sufficient information to ascertain the level of analysis performed and the conclusions reached by the reviewer.
4. The underwriting review must provide sufficient documentation to confirm that the reviewer has evaluated the Underwriter's analysis of the project strengths, weaknesses, risks and mitigants in all technical areas, as well as an overall assessment.

#### **B. Production tracking:**

1. As part of the annual QC review, MAP Lenders must track all MAP loans presented or processed by individual loan originators and Underwriters. The term loan originator includes mortgage broker, loan correspondent or loan consultant. No later than June 30th of each year, the MAP Lender must submit an electronic copy of its production tracking report to COB. Annual production tracking reports for each Underwriter must include the following information:
  - a. FHA number;

- b. Project name (identification);
- c. Initial/ Final Endorsement Dates;
- d. Mortgage Insurance Program (MIP);
- e. Original principal balance;
- f. Loan Servicer;
- g. Loan status;
- h. Whether the loan has any of the following issues:
  - 1) Waivers
  - 2) Master Lease
  - 3) Is located in an Underserved Area
  - 4) Criterion 5 (debt service) controlled mortgages
  - 5) Any government housing subsidies (i.e. LIHTC, Section 8, etc.)

**C. QC Plan reviews**

1. The QC Plan review must evaluate the Lender's overall QC Plan for adequacy. It should include an analysis of:
  - a. The Lender's operation and its compliance with the QC Plan;
  - b. Whether the Lender's QC Plan incorporates a system that is adequate to ensure that FHA underwriting and servicing requirements are followed;
  - c. Whether the Lender is following the QC Plan it has adopted;
  - d. Whether the Lender has completed the correct number of loan audit reviews; and
  - e. Whether the Lender is adequately staffed to implement the QC Plan.

**D. QC loan file and commitment reviews:**

1. The QC review must include reviews of individual loan files and commitments, as follows:
  - a. For MAP Lenders with a total of 20 or more MAP Firm Commitments in the applicable year of review, reviews must be completed for 5% of all closed loans. The maximum number of required loan reviews will be the lesser of 5% of all closed loans or three reviews.
  - b. MAP Lenders with fewer than 20 Firm Commitments in the applicable year of review must perform one QC loan review.
  - c. The required number of QC reviews will be performed on loans with the greatest Risk Assessment Score as defined below.
2. MAP Lenders are not required to perform a QC review for each Section of the National Housing Act used.



3. MAP Lenders are not required to perform a QC review for each Underwriter, so long as the minimum prescribed number of loans is reviewed. QC reviews shall evaluate the quality of work performed by the MAP originators, Underwriters, and technical staff and/or third-party contractor(s).
4. All appraisals reviewed must receive a field review performed by either a qualified senior staff member not involved in origination or underwriting or by a review appraiser employed on a contract basis.
5. For QC reviews involving new construction/substantial rehabilitation projects, the review should provide an analysis of whether MAP construction loan servicing policies and requirements have been met.
6. The review appraiser or appraisal firm performing the QC appraisal review may not have provided appraisal services for any MAP loans underwritten by the Lender.

**E. QC loan ranking factors and review selection:**

1. The QC reviewer will assign a risk assessment score to each loan originated in the previous reporting cycle and loan reviews will be targeted to loans with the highest scores that therefore represent the greatest degree of risk to the Department. Points are cumulative and will be assigned for the following risk indicators:

<b>Risk Indicators</b>	<b>Scores</b>
Loans that are troubled, defaulted or assigned	20 Points
Mortgage amounts over \$15,000,000	15 Points
Mortgage amounts over \$10,000,000	10 Points
Mortgage amounts over \$5,000,000	5 Points
Mortgage amount over \$1,000,000	1 Point
New Construction Loans	15 Points
Substantial Rehabilitation Loans	10 Points
Acquisition Loans	5 Points
Refinance Loans	1 Point
Loans that are not typical in size (low or high number of units)	5 Points
Loans in which Criterion 5, Debt Service Coverage, established the Maximum Loan Amount	5 Points
Loans underwritten by MAP Underwriters who were initially approved within the last three years	10 Points
Loans underwritten by MAP Underwriters with a loan default in the previous three reporting cycles	10 Points
Loans that have waivers	5 Points
Unsubsidized, market rate properties	5 Points
Properties with a Master Lease	10 Points

**F. QC Reviews of assigned or problem loans**

1. In addition to the above review requirements, as part of the QC review process, the originating MAP Lender must also undertake a comprehensive review and re-examination of any MAP loan it underwrote that is assigned either during construction or within four years after Final Endorsement.

This must be done in all cases, including those in which the MAP Lender no longer has the loan in its portfolio. If the originating Lender does not initiate the review, COB may direct that the review be performed. In addition to all other requirements of a QC review outlined herein, reviews of assigned loans shall include the following:

- a. A timeline spanning application engagement to assignment of the loan, and should identify the dates of pertinent actions and events, such as the date of engagement, application submission, firm commitment, initial endorsement and should identify the date of the events that are determined to have contributed to the assignment (for ex, loss of the Management Agent, contractor walk-off, etc.).
- b. Identification of all parties or entities involved in preparing and processing the application, including:
  - 1) Principals of the Borrower, sponsoring entity(ies), and development team members;
    - a) The property Management Agent;
    - b) The Lender's originator(s) or loan correspondent(s);
    - c) The Lender's Underwriter(s); and
    - d) Third party contractors that worked on the application.
- c. An analysis of the probable cause of the assignment, including identifying all relevant contributory factors. To the extent possible, the reviewer should interview the project's owner, the originating Lender's Underwriter and the HUD processing center familiar with the application and include an analysis of each party's opinion of the probable cause of default, reconciled with the reviewer's opinion of the cause. The review and re-examination must include a re-underwriting of the loan given the currently known facts and circumstances that contributed to the assignment and discuss the lessons learned from the assignment.

#### **G. Specific Requirements for QC Reviews of Loan Underwriting**

1. Each individual loan review must be a written, self-contained analysis whose purpose is to determine the accuracy and completeness of the underwriting conclusions, third-party deliverables and loan documentation. Each portion of the review should contain sufficient information to ascertain the level of analysis performed and the conclusions developed. The appraisal review is to be prepared to USPAP review standards. The underwriting review must provide sufficient documentation to ascertain that the reviewer has evaluated the Underwriter's identification of the project strengths, weaknesses, risks and mitigants in all technical areas and overall. For the underwriting portion of the review, at a minimum, the following requirements must be met for loans underwritten using the MAP procedures:
  - a. All processing and underwriting must comply with the applicable provisions of the NHA, Title 24 of the Code of Federal Regulations, the MAP Guide and MAP FAQs.
  - b. All Identity of Interest certifications were properly filed. Review the loan closing statement to determine if any inappropriate inducements or prohibited IOI disbursements were paid.
  - c. Determine whether each loan file contains all HUD required loan processing, underwriting and legal documents including supporting reports, and that all required documents were provided to HUD with the application.

- d. Determine if there was a violation of the Department's prohibition of referral fees paid to a party who is not a loan consultant, loan correspondent or mortgage broker.
- e. Determine if anything of value was paid directly or indirectly to any person or entity who has received any other compensation from the mortgagor, seller, builder or any other person for services related to the transaction or related to the purchase or sale of the mortgaged property. Exceptions can be made where services were actually rendered, the name of the broker is furnished and there is no Identity of Interest between the mortgagee and the broker or the mortgagor and the broker. The broker's fee must be included on the Mortgage Certificate.
- f. Determine if staff allowed third parties to represent the MAP Lender in meeting(s) with the HUD area office to discuss specific MAP project issues.
- g. Determine if excess and unallowable fees are being charged to mortgagors. Examples include charging discount points not disclosed on the Mortgagee's Certificate, form HUD-2434, or at Firm Commitment, or charging higher fees than are permitted by HUD/FHA.
- h. If new construction or substantial rehabilitation, did the pre-application submission include an acceptable narrative summary of the market study and the extent of market competition, and describe any features of the proposal which may present issues, such as zoning, ground leases and environmental conditions?
- i. Did the Lender's pre-application submission list the proposed MAP Lender reviewers? Were any proposed reviewers rejected by the Regional Office, and, if so, why?
- j. In the application for the Firm Commitment, did the Lender provide a narrative analysis which discussed the characteristics of the project for which mortgage insurance was sought, presenting the reasons that the Lender recommended the loan for mortgage insurance?
- k. Did the Lender's narrative analysis for the Firm Commitment application discuss the risk factors?
- l. Did the narrative analysis for the Firm Commitment application properly evaluate the multifamily housing experience and financial capacity of the principals of the Borrower?
- m. If the application is for a refinancing or purchase loan, did the narrative provide a satisfactory description of the property?
- n. Did the Lender's narrative provide a satisfactory analysis of the market, the rents, expenses and, for new construction projects, the estimated rent-up costs and operating deficit?
- o. Did the Lender determine the adequacy of the reserve for replacement?
- p. Did the Underwriter recommend any changes to the appraisal or technical reports' findings, conclusions and/or recommendations? If so, what were they, what was the justification and was it documented fully and supported by data?
- q. At the Lender's request, were any waivers requested from the HUD area office for any MAP requirements? If so, was the request approved or rejected, what requirements were waived and what were the justifications for the waivers?
- r. Did the Lender obtain the necessary certifications from the individual reviewers?
- s. Did the Lender certify that the proposed loan represented an acceptable risk to the Department (Section 220, or 221d3, 221d4 or 231) or is economically sound (Section 223(f)), based upon the

Lender's analysis, and that the loan complied with all FHA statutory, regulatory and administrative requirements?

- t. Did the Lender prepare a Master HUD 92264 signed by the Lender's Underwriter?
- u. Did the Lender submit an application for a Firm Commitment within 120 days of the date of the invitation letter? If not, did it request an extension and provide justification for the request?
- v. Were credit reports obtained on all businesses, individuals and on all required principals who are parties to the transaction?
  - 1) Determine whether the loan file contains a comprehensive analysis of the borrowing entity to identify the business and individual credit report(s) that are required on the appropriate principals of the borrowing entity, Sponsor, mortgagor and General Contractor, if applicable.
  - 2) Determine if more than one credit report was ordered on the same principal/company and, if so, whether the most current credit reports were submitted with the loan application.
  - 3) Determine whether any outstanding judgments shown on the credit report(s) were accompanied by an explanation and supporting documentation. If delinquent Federal debt existed, the Lender must have included a letter from the Federal agency in accordance with [Chapter 8, Section 8.3.3](#) of the MAP Guide.
- w. Determine whether verifications of deposit and trade references were sent, received and considered in the project underwriting.
- x. Determine whether all conflicting information or discrepancies were reconciled and properly documented in writing.
- y. Determine that the loan file contains a financial statement(s) on the principals, Sponsor, and on the mortgagor. If the project involved new construction or substantial rehabilitation, determine if a financial statement was obtained from the General Contractor.
- z. Determine that the financial statements were analyzed following generally accepted business practices to determine financial capability.
- aa. Verify that the MAP Underwriter determined that the Sponsor and/or General Contractor had a sufficient level of experience for the type and/or size of project that was approved.
- bb. Determine if all material negative information about the project and individuals or entities involved in the transaction was disclosed to HUD in the Underwriter's written summary.
- cc. Determine if the MAP Underwriter performed QC over the work of the MAP Lender's other staff and/or third-party contractors which participated in underwriting the project, and determine if:
  - 1) The preparers of the forms/reports/reviews are qualified as required by the MAP Guide, and have insurance, if required by the Guide.
  - 2) The forms/reports/reviews were prepared in the manner required by the MAP Guide and that the forms/reports/reviews are complete and accurate.
  - 3) The proposed loan represents an acceptable risk based on the Underwriter's review and analysis.

- 4) The required reports and documentation flowed in a timely manner from one discipline to another.
- dd. Determine whether the Underwriter analyzed the project's proposed management plan, including a review of the Management Agent's past experience, capacity and track record, to assure that the development would be managed in a prudent, efficient and cost-effective manner.
- ee. Determine if the Underwriter verified that the professional used in the environmental review was qualified for the assigned responsibilities.
- ff. Determine if the Underwriter provided HUD with a narrative report and supporting documentation that addressed all HEROS (HUD Environmental Review Online System) requirements, including the Phase I Environmental Site Assessment (ESA) and the Phase II ESA, if required.
- gg. Determine if the loan met the criteria for a reduced MIP for Green Building loans.
- hh. Determine the scope of any deficiencies that were identified by the HUD review staff. Did the initially submitted Firm Commitment and/or closing package substantially meet HUD's requirements or were significant revisions required? Did any deficiencies they identified significantly impact the overall processing?

#### **H. Specific Requirements for QC Reviews of Appraisals:**

1. For the appraisal review portion of the QC review, the following must be performed:
  - a. Determine if the appraiser was properly certified in the appropriate jurisdiction where the property is located. (Temporary certifications may be acceptable so long as the appraiser meets all competency requirements).
  - b. Provide the review appraiser's opinion as to the completeness of the material under review.
  - c. For Section 220, 221(d), 231 or 241 appraisal processing, determine the following:
    - 1) Does the appraiser meet the qualification and competence requirements outlined in the MAP Guide?
    - 2) Is the appraisal a narrative self-contained report that is inclusive of and supportive of all required HUD form Documentation (forms HUD-92264, HUD-92264-A, HUD-92264-T, HUD-92273 and HUD-92274)?
    - 3) Does the appraisal have an effective date within 120 days before the date of the Firm Commitment?
    - 4) Does the appraisal include the appraiser's USPAP required certification?
    - 5) Did the primary appraiser designated by the Lender perform the property inspection and sign the appraisal report and supporting form documentation?
    - 6) Did the appraisal include photographs of the subject, the comparable sales and comparable rentals?
    - 7) Does the appraisal adequately describe and analyze the geographic area, neighborhood, rental competition, sales comparables, the site and the subject improvements?

- 8) Does the appraisal establish the project's "Replacement Cost" in accordance with [Chapter 7, Section 7.4](#) of the MAP Guide, and form HUD-92264?
- 9) For Substantial Rehabilitation projects, does the appraisal include a supplemental form HUD-92264 that identifies the "As Is" and "As Complete" Values of the improvements, supported by the income and direct sales comparison approaches, as defined in HUD Handbook 4465.1 and the MAP Guide?
- 10) For New Construction project, does the appraisal identify the "Warranted Price of Land" as defined in HUD Handbook 4465.1 and the MAP Guide?
- 11) Does the appraisal identify the "Estimate of Market Rent by Comparison," as of the appraisal date, arrayed in the included form HUD-92273 and as defined in the Form's instructions?
- 12) Does the appraisal identify the project's estimated potential gross income and stabilized occupancy ratio in the included form HUD-92264 ?
- 13) If commercial facilities are located within the project, does the appraisal include a separate analysis of the effect the commercial space will have on the project, as outlined in the MAP Guide, and does the commercial space meet the income and floor area limitations outlined in the MAP Guide?
- 14) If any comparables have rent concessions, did the appraisal account for them in the market rental analysis as required by the MAP Guide?
- 15) Does the appraisal identify the project's estimated operating expenses, based upon at least three expenses comparables arrayed in the included form HUD-92274 and as required by the Form's instructions?
- 16) Does the appraisal properly update the expense comparables, meet disclosure requirements for the comparables, and have the subject property's expenses been trended to the date of the appraisal per form HUD-92274 instructions?
- 17) Does the appraisal identify the estimated operating deficit and replacement reserve requirements, as defined in the MAP Guide?

**I. Specific Requirements for QC Reviews of Section 223(f) appraisals include determination of the following:**

1. Does the appraiser meet the qualification and competence requirements outlined in the MAP Guide?
2. Is the appraisal a narrative self-contained report that is inclusive of and supportive of all required HUD form Documentation (forms HUD-92264, HUD-92264-A, HUD-92264-T, HUD-92273 and HUD-92274)?
3. Does the appraisal have an effective date within 120 days before the date of the submission of the application?
4. Does the appraisal include the appraiser's USPAP certification?
5. Did the primary appraiser designated by the Lender and approved by HUD perform the property inspection and sign the appraisal report and supporting form documentation?
6. Did the appraisal include photographs of the subject, the comparable sales and comparable rentals?

7. Does the appraisal adequately describe and analyze the geographic area, neighborhood, rental competition, sales comparables, the site and the subject improvements?
8. Does the appraisal establish the project's fair market value supported by reconciliation of the cost, income and sales comparison approaches in accordance with the MAP Guide and Form HUD-92264?
9. Does the appraisal establish a total estimated replacement cost (if warranted due to the age of the property) and apply all applicable forms of depreciation for use in the final reconciliation process?
10. Does the appraisal identify the "Warranted Price of Land" as defined in HUD Handbook 4465.1 and the MAP Guide?
11. Does the appraisal identify the "Estimate of Market Rent by Comparison," as of the appraisal date, arrayed in the included form HUD-92273 and as defined in the form's instructions?
12. Does the appraisal include the current rent roll, a statement of current occupancy and does it identify the project's estimated potential gross income and stabilized occupancy ratio in the included form HUD-92264?
13. If commercial facilities are located within the project, does the appraisal include a separate analysis of the effect the commercial space will have on the project and does the commercial space meet the income and floor area limitations outlined in the MAP Guide?
14. If any comparables have rent concessions, did the appraisal account for them in the market rental analysis as required by the MAP Guide?
15. Does the appraisal present at least three years of historic expenses and have the forecasted expenses been based upon the historic operation of the property supported by at least three expense comparables arrayed in the included form HUD-92274 and as required by the form's instructions?
16. Does the appraisal properly update the expense comparables, meet disclosure requirements for the comparables, and have the subject property's expenses been trended to the date of the appraisal per form HUD-92274 instructions?
17. If applicable, does the appraisal identify the estimated operating deficit and replacement reserve requirements, as defined in the MAP Guide?

**J. Specific Requirements for QC Reviews of Market Studies:**

1. For the Market Study review, the review appraiser should provide their opinion as to the completeness of the material under review and determination of the overall compliance with market study processing requirements and determine the following:
  - a. Does the market analyst meet the qualification and competence requirements outlined in the MAP Guide?
  - b. Is the market study a narrative self-contained report?
  - c. Does the market study have an effective date within 120 days before the date of submission of the pre-application or, for a refinancing, within 120 days of submission of the application for a Firm Commitment?
  - d. Does the market study adequately describe and analyze the geographic boundaries and general characteristics of the market area, specific market conditions, characteristics of projects under



construction and in the planning stages, and contain a supply and demand estimate and analysis and estimated absorption time (if applicable)?

- e. Is the market study prepared in accordance with the information supplied by the MAP Lender as described in the appropriate MAP Guide Appendix?
- f. Is the market study prepared in accordance with the format prescribed in the appropriate MAP Guide Appendix?
- g. Does the market study include the market analyst's certification?
- h. Provide the review appraiser's opinion as to the adequacy and relevance of the market data and the propriety of any adjustments made to the data.
- i. Provide the review appraiser's opinion as to the appropriateness of the analysis methods and techniques used by the market analyst.
- j. Provide the review appraiser's opinion as to the market analyses, opinions and conclusions.

**K. Specific Requirements for QC Reviews of the Architectural Review:**

- 1. For the architectural portion of the QC review of Sections 220, 221(d), 231 or 241, Lender's Architectural Analyst review report, determine the following:
  - a. Does the Architectural Analyst meet the qualification and competence requirements outlined in the MAP Guide?
  - b. Has the Architectural Analyst determined that the mortgagor's Architect (or other persons or organizations providing architectural services) is qualified to provide the design services to the project and to administer the construction contract?
  - c. Review the Owner-Architect Agreement (AIA Document B108); indicate if separate Agreements are required for design and construction services.
    - 1) Are all necessary services included without deletion?
    - 2) Is the compensation other than a fixed fee?
  - d. In review of Architectural Standards, does the Lender's Architectural Analyst review report address:
    - 1) HUD minimum property standards?
    - 2) Applicable building codes?
    - 3) Accessibility laws: Fair Housing Act; UFAS (if Section 504 is applicable); 2010 ADA Standards (if Title II or III of the ADA are applicable)?
    - 4) Energy efficiency?
  - e. Does the report address the mortgagor's A&E exhibits?
    - 1) Are drawings and specs complete and correct?
    - 2) Are utility services available?
  - f. In reviewing the experience and qualifications of the General Contractor:

- 1) Did the Lender's Architectural Analyst prepare a written review of the General Contractor?
- 2) Does the review indicate acceptance?
- g. Did the Lender's Architectural Analyst perform an IOI review as required by the MAP Guide?
  - 1) Is there a description of any and all IOIs that exist between the owner's Architect or engineer, the owner and the General Contractor?
  - 2) Is there a description of any and all IOIs that exist between the General Contractor, subcontractor(s) and material supplier(s)?
  - 3) If no IOIs exist, is this stated?
- h. Does the site visit report address:
  - 1) Physical features (existing construction, topography, drainage, etc.)?
  - 2) Unusual site conditions, demolition, offsite construction?
  - 3) Environmental conditions/hazards?
- i. In establishing an architectural liaison with the mortgagor's Architect:
  - 1) Is there a processing record of architectural/engineering actions?
  - 2) Is there an acceptable journal of architectural actions?
  - 3) Is there an organized file of HUD applications, forms and documents?
  - 4) Is there a record of meetings and contacts with the mortgagor's Architect?
  - 5) Is there clear documentation?
- j. Did the liaison with HUD labor relations staff verify the applicable Davis-Bacon wage rates?
- k. Was there a liaison established with the Lender's cost analyst?
- l. In reviewing the Firm Commitment architectural/engineering exhibits:
  - 1) Is there a clear and complete exhibit review list?
  - 2) Is there a statement indicating that the Firm Commitment architectural exhibits are acceptable without condition, and that all deficiencies have been acceptably corrected?
  - 3) Does the report address:
    - a) Completeness of contract documents?
    - b) Conformance to local building codes and HUD standards?
    - c) Accessibility for persons with disabilities?
    - d) Site design?
    - e) Building design?
- m. In reviewing the preparation of the architectural portions of form HUD-92264:
  - 1) Is there a form HUD-92264 with all architectural portions complete?
    - a) Section A – Architectural portions

- b) Section B - Architectural portions
- c) Section C - Unit breakdown with net areas
- d) Section D - Architectural portions
- 2) Has the Architectural Analyst signed the form?
- n. In reviewing the report to the Lender's Underwriter:
  - 1) Has the Architectural Analyst submitted a report on the project to the Underwriter?
  - 2) Does the report contain an analysis of the project?
  - 3) Does the report recommend: acceptance or negotiated changes with the mortgagor or rejection?
- o. Did the Lender's Architectural Analyst submit a Standard Certification (MAP Guide [Chapter 11, Section 11.2.3](#))?
- p. Is there a Design Architect's Certification (MAP Guide [Appendix 5, Section A.5.8](#))?
- q. For substantial rehabilitation projects:
  - 1) Has the Lender's Architectural Analyst submitted a report of the Joint Inspection?
  - 2) Does the report indicate that a complete and thorough inspection was conducted on all features of the project site and on a sufficient number of living units?
  - 3) Has the Lender's Architectural Analyst prepared a report on the mortgagor's Architect's Detail Work Write-up?
  - 4) Does the report address:
    - a) All general or specific work requirements?
    - b) Clarity or vagueness of work requirements?
    - c) Historic requirements?
  - 5) Has the Lender's Architectural Analyst indicated whether there are engineering reports?
  - 6) Has the mortgagor been notified of any requirements?
  - 7) Has the exact nature of the engineering report been covered?
  - 8) Were there any special tests, such as seismic resistance in applicable seismic zones?
- L. Specific Requirements for QC Reviews of the Lender's Architectural Analyst review report:
  - 1. Liaison with Lender's cost analyst. Is there documentation of contacts regarding:
    - a. Nature and cost of repairs?
    - b. Replacement reserve items?
  - 2. Lender review of property's Capital Needs Assessment (CNA). Does the Physical Inspection Report (PIR) address:
    - a. Adequacy of number of dwelling units inspected?

- b. Condition of project?
  - c. Repair work write-up?
  - d. Critical and Non-critical repairs?
  - e. Expected component replacement and major maintenance needs for the near term, long term and remaining useful life?
  - f. Compliance with accessibility laws and standards, including the Fair Housing Act (for projects designed and constructed for first occupancy after March 13, 1991 built after 3/13/1991); UFAS (for projects with federal financial assistance); 2010 ADA Standards (for projects that are a program or activity of a state or local government or a place of public accommodation)?
3. Statement of Resources and Needs. Does the statement address:
    - a. Review and possible adjustment to the PIR?
    - b. Identification of Critical and Non-critical repairs?
  4. Critical repairs. Is there evidence that all Critical repairs have been adequately completed and inspected?
  5. Mortgagor's exhibits. Note evidence of the following:
    - a. Has Lender's Architectural Analyst prepared a review report of mortgagor's exhibits?
    - b. Does the report indicate whether exhibits are complete and correct?
  6. Preparation of architectural portions of form HUD-92264. Note whether the following were addressed:
    - a. Is there a form HUD-92264 with all architectural portions complete, including:
      - 1) Section A – Architectural portions;
      - 2) Section B - Architectural portions;
      - 3) Section C - Unit breakdown with net areas; and
      - 4) Section D - Architectural portions.
    - b. Has the Architectural Analyst signed the form?
  7. Report to the Lender's Underwriter. Note whether the following were addressed:
    - a. Has the Architectural Analyst submitted a report on the project to the Lender's Underwriter?
    - b. Does the report contain an analysis of the project?
    - c. Does the report recommend acceptance, negotiated changes with the mortgagor or rejection?
  8. Has the Lender's Architectural Analyst submitted a Standard Certification (MAP [Chapter 11, Section 11.2.4](#))
- M. Specific Requirements for QC Reviews of the Cost Review.**

1. For the Cost Review of Sections 220, 221(d), 231 or 241 loans, Lender's Cost Analyst review report: Did the Lender hire a qualified construction cost estimator with experience in multifamily cost estimating?
2. A detailed independent cost estimate must provide the following:
  - a. Documentation of the method of estimation and data source.
  - b. To be summarized on form HUD-92326:
    - 1) Detailed structure(s) and land improvement cost estimates, and costs of any unusual site development
    - 2) Contractor's general requirements
    - 3) Contractor's general overhead
    - 4) Contractor's profit (for non-BSPRA cases)
    - 5) Architect's design and supervision fees
    - 6) Bond premium and mortgagor's and contractor's Other Fees
    - 7) Onsite demolition costs
    - 8) Offsite improvements costs
    - 9) Project's Cost Not Attributable (CNA) to dwelling use
    - 10) For sub rehab projects, complete Rehab CNA Worksheet (MAP Guide [Appendix 5, Section A.5.10](#)).
3. Preparation of cost portions of form HUD-92264:
  - a. Is there a form HUD-92264 with all cost portions completed?
    - 1) Section G – Cost portions
    - 2) Section M
  - b. Has the cost analyst signed the form?
4. Review of form HUD-2328, Contractor's and/or Mortgagor's Cost Breakdown:
  - a. Is form HUD-2328 complete and signed by all parties?
  - b. Has Lender's cost reviewer prepared a comparison of HUD-2328 and the independent cost estimate on form HUD-92326?
    - 1) Line item comparison on form FHA-2331-B?
    - 2) Written documentation of resolution of significant differences in Lender's form HUD-92326 and contractor's form HUD-2328 cost estimates?
    - 3) Has Lender's cost reviewer prepared a written recommendation of approval or disapproval of contractor's form HUD-2328?
5. Review of the Property Insurance Schedule, form HUD-92329:
  - a. Has form HUD-92329 been prepared and signed?

- b. Is there a backup worksheet indicating how the Insurable Value(s) of the project structure(s) were determined?

**N.** Specific Requirements for QC Reviews of the Identity of Interest (IOI) Review should determine the following:

1. Has the Lender's cost reviewer been supplied with IOI information by Lender's architectural reviewer?
2. For an identified General Contractor:
  - a. Does the cost estimate indicate "BSPRA" under Builder's Profit?
  - b. Has the 50-75% rule been applied to determine whether the contractor qualifies for general overhead and profit or BSPRA, or should it be replaced by the dominant subcontractor?
3. For identified subcontractors and/or material suppliers:
  - a. Is there documentation that the IOI subcontract(s) were submitted to HUD for prior approval of overhead and profit?
  - b. If any subcontract(s) were not submitted, has overhead and profit been deleted from the accepted contract amount?
  - c. Have letter(s) of approval/disapproval been prepared for the mortgagor and General Contractor?

**O.** Specific Requirements for QC Reviews of the Report to the Underwriter should determine the following:

1. Has the cost analyst submitted a report on the project to the Lender's Underwriter?
2. Did the report contain an analysis of the project costs?
3. Did the report recommend acceptance, negotiated changes with the mortgagor or rejection?
4. Did the Lender's cost analyst submit a Standard Certification (MAP Guide [Chapter 11, Section 11.2.3](#))?

**P.** Specific Requirements for QC Reviews of Substantial Rehabilitation projects should include the following:

1. Joint Inspection Report and Architect's detailed work write-up, which should determine the following:
  - a. Does the Lender's cost analyst have a copy of the Joint Inspection report?
  - b. Does the Lender's cost analyst have a copy of the mortgagor's Architect's Detailed Work Write-up?
  - c. Do the Joint Inspection Report and Architect's Detailed Work Write-up include Reserve for Replacement (R4R) items?
  - d. Is there an itemized breakdown of R4R items?
  - e. Does the breakdown indicate the age and remaining useful life of the R4R items?
2. Detailed Cost Estimate, which should ascertain if the Lender's cost analyst's detailed cost estimate clearly reflect all the scope of work items in the Detailed Work Write-up.:
3. Reserve for Replacement estimate:, which should determine the following:

- a. Has the Lender's cost analyst provided an R4R cost estimate?
  - b. Is the R4R cost estimate itemized and incorporate the remaining useful life for the R4R items?
  - c. Is there a replacement schedule for the R4R items?
- Q.** Specific Requirements for QC Reviews of Section 223(f) loans should answer or include the following:
1. Are the qualifications of the Cost Analyst and Needs Assessor acceptable?
  2. Is there documentation of contacts regarding the CNA?
  3. Summary of cost estimate for hypothetical "as new" building:
    - a. Documentation of method of estimation and data source.
    - b. Summary "bottom-line" cost estimate:
      - 1) Structure(s) and land improvement cost estimates, for hypothetical "as new" building;
      - 2) Contractor's General Requirements
      - 3) Contractor's General Overhead
      - 4) Contractor's Profit
      - 5) Architect's Design and Supervision fees; and
      - 6) Bond premium and Mortgagor's and Contractor's Other Fees.
  4. Preparation of cost portions of form HUD-92264:
    - a. Is there a form HUD-92264 with all cost portions complete?
      - 1) Section G – Cost portions (hypothetical "as new" costs).
      - 2) Section M must be blank.
      - 3) Are Critical and Non-critical repair costs summarized in Section O?
      - 4) Has the cost analyst signed the form?
  5. Review of CNA.
    - a. Did the Lender's cost analyst prepare a written report reviewing:
      - 1) Cost portions of Project Inspection Report (PIR), including the costs of Critical and Non-critical repairs?
      - 2) For all deferred non-Critical repairs, estimate the required escrow amount.
    - b. Expected cost of expected component replacement and major maintenance needs for:
      - 1) Near term; and
      - 2) Long term.
    - c. Statement of Resources and Needs recommending:
      - 1) Initial Deposit to the Reserve for Replacement, if any;
      - 2) Annual (or monthly) deposit to the Reserve for Replacement (RfR) account; and



- 3) Near term replacement schedule indicating annual deposits, itemized expenditures and remaining funds at the end of each year.
  6. Documented advice to Lender concerning the PCNA, which should include:
    - a. The Lender's cost analyst must provide opinions and recommendations for acceptance or change to the PCNA regarding cost items:
      - 1) Critical and Non-critical repairs; and
      - 2) Funding schedules in near Term and long-Term items in the Reserve for Replacement account.
  7. Property Insurance Schedule, form HUD-9232:
    - a. Has the Lender's cost analyst prepared and signed form HUD-92329?
    - b. Is there a backup worksheet indicating how the Insurable Value(s) of the project structure(s) were determined?
  8. Report to Lender's Underwriter.
    - a. Did the cost analyst submit a report on the project to the Underwriter?
    - b. Does the report contain an analysis of the CNA?
    - c. Does the report recommend acceptance, negotiated changes with the mortgagor or rejection?
  9. Has the Lender's cost analyst submitted a Standard Certification (MAP Guide [Chapter 11, Section 11.2.4](#))?
- R. Specific Requirements for QC Reviews of Construction Loan Administration**
1. The QC review of the Lender's construction loan administration must, at a minimum, meet the following requirements:
    - a. Analyze loans for general compliance with the construction loan administration requirements found in the MAP Guide and MAP FAQs.
    - b. Analyze escrow administration to assure that the escrows are properly funded and that the funds are only used for their intended purposes.
    - c. Analyze procedures for collection and recordation of payment receipts, escrow bills, disbursements from escrow and claim submissions.
    - d. Analyze procedures that were used for handling any letters of credit.
    - e. Analyze procedures that were used for handling the investment of construction loan escrows.
    - f. Analyze the procedures for processing construction loan advances, change orders and notification of surety, cost certifications and post endorsement escrows.
    - g. Analyze any delinquent loans and loans in foreclosure to determine compliance with HUD-FHA fiscal requirements and procedures, such as timely assignments and extension requests, property preservation requirements and inspections.

- h. Review any claim submissions on projects that have not reached final endorsement to assure that all efforts have been exhausted to “work-out” the loan and that all claims are properly documented, supported and filed in accordance with HUD-FHA requirements.

## A.2.2 Identity of Interest Examples

### A.2.2.1 MAP Lender’s and Borrower’s Team

- A. Example 1.** The Borrower’s spouse is an employee of the MAP Lender. A prohibited IOI is created.
- B. Example 2.** The Management Agent is owned by the Borrower. A prohibited IOI is not created, but the IOI must be disclosed.
- C. Example 3.** The General Contractor has an ownership interest in the Borrower. A prohibited IOI is not created. The relationship must be disclosed, whether or not the loan includes BSPRA (versus Builder Profit).
- D. Example 4.** A principal of the Borrower owns 1,000 shares of a large publicly traded bank at \$50 per share. A subsidiary of the bank is acting as the MAP Lender. This is not considered an IOI as the ownership interest is de minimis.
- E. Example 5.** A MAP Lender recommends an attorney to Borrowers (as Borrower counsel) to facilitate closing because of their familiarity with HUD requirements. The attorney has represented the Lender on other transactions. This is not an IOI, unless the attorney is also advising the Lender on this transaction, or has a direct financial or family relationship with, or is, an employee or principal of the Lender.

#### A.2.2.1.1 Secondary Financing Relationships

- A.** A Bank Holding Company that is an affiliate of the MAP Servicing Lender wants to offer a Borrower a Letter of Credit to meet the cash requirements of an FHA insured new construction project. This creates a conflict of interest: during the construction period, the MAP Lender’s responsibility is representing FHA, not providing credit to meet Borrower cash requirements.

#### A.2.2.1.2 Bridge Loans and Balance Sheet Loans

- A.** An affiliate of a MAP Lender made a short-term loan to a Borrower on a property with a cap rate of 3 in a strong market. The market crashed, cap rates went up dramatically and vacancy rates skyrocketed. The Borrower was not able to pay the debt off when it matured and it was extended indefinitely with a high interest rate and unpaid amounts accruing. The MAP Lender has a conflict of interest in the property’s valuation and thus has an IOI. The MAP Lender must disclose the relationship in the underwriting to COB and particular attention will be paid to the valuation analysis.

#### A.2.2.1.3 Inducements

- A.** An IOI is created when there exists or comes into being any side deals, agreements, contracts or undertakings entered into or contemplated, that would amend, alter, negate or cancel any provision of the HUD-required closing documents.

#### A.2.2.1.4 Gifts

**A. Example 1.** A bill at dinner celebrating a closing would not be considered a prohibited gift that could create an IOI so long as the amount of the bill was customary and typical.

**B. Example 2.** A Non-Profit Borrower is considering proposals for refinancing their transactions. A MAP Lender gives a board member of a Non-Profit Borrower an expensive Swiss wristwatch so the Borrower will be influenced to select the Lender to process the MAP transaction. COB would conclude that this is a prohibited inducement.

**C. Example 3.** For Christmas, the principals of a MAP Lender and of a Borrower exchange inexpensive gifts because they have been friends for 20 years and often do activities together with their families. There is an exemption for gifts that are clearly demonstrated to be based on a longstanding or purely personal relationship, which would appear to be the situation here. Factors to be considered are the reciprocal nature of the relationship, timing and whether the amounts involved are de minimis and typical of social relationships outside of the industry.

#### A.2.2.1.5 Charitable Donations

**A. Example 1.** A \$10,000 donation given by the MAP Lender to a charity run by the wife of a principal in the Borrower's entity around the time of a project's application engagement or closing, would be presumed to create a prohibited IOI. The MAP Lender would have to prove that such an IOI does not exist.

**B. Example 2.** A MAP Lender donated \$5,000 to a charity run by the Borrower 10 years ago. An IOI would likely not be created.

**C. Example 3.** A Map Lender donates money to a charitable foundation researching health care or seniors aging issues. A Non-profit Borrower has a substantial interest in the foundations and its work. The Lender's contributions were \$2,000 each of the past four years. The Lender intends to continue such donations. Such a contribution would not be a prohibited IOI.

**D. Example 4.** A MAP Lender donated \$100,000 to a museum. The MAP Lender made no prior donations to the museum. The museum is a charitable organization in which a principal of the Borrower or one of their close relations has an active and significant participation as a volunteer, board member or donor. This would be presumed to create a prohibited inducement and a conflict of interest, which the MAP Lender would have to prove does not exist.

### A.2.3 MAP Lender Representation and Warranty

#### A.2.3.1.1 Instructions for Representations when the Lender and Syndicator are Affiliated

**A.** The MAP Lender's Representation and Warranty must state:

1. With respect to any tax credit project loan that it will process under MAP:
  - a. No officer or employee of \_\_\_\_\_ (insert the name of the affiliated tax credit equity syndicator or investor) or any director or parent thereof will have any loan-specific or decision

making control or influence in \_\_\_\_\_'s (insert the name of MAP Lender) underwriting of the MAP loan except by providing factual information to \_\_\_\_\_ (insert the name of MAP Lender) in the same manner as would be provided by an unaffiliated syndicator).

- b. \_\_\_\_\_ (insert name of MAP Lender) will not condition its agreement to provide such financing on \_\_\_\_\_ (insert the name of affiliated tax credit equity syndicator or investor) being selected as the tax credit equity syndicator or investor for the project to be financed by the MAP loan.
2. \_\_\_\_\_ (insert the name of MAP Lender) will notify HUD promptly, in writing, during application processing of any change or event which causes the foregoing Representation or Warranty to be materially untrue or inaccurate.

“WARNING: Federal law provides that anyone who submits (or causes to submit) a document containing any false, fictitious, misleading, or fraudulent statement/certification or entry may be criminally prosecuted and may incur civil administrative liability. Penalties upon conviction can include a fine and imprisonment, as provided pursuant to applicable law, which includes, but is not limited to, 18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802, 24 C.F.R. Parts 25, 28 and 30, and 2 C.F.R. Parts 180 and 2424. The signatory certifies that the information provided herein is true and accurate.”

**B.** The MAP Lender's affiliated tax credit equity syndicator's or investor's Representation and Warranty must state:

1. In the regular course of its business it syndicates or invests in tax credit equity investments in multifamily affordable housing projects.
2. With respect to any project loan that is to be underwritten by \_\_\_\_\_ (insert name of MAP Lender) and in which \_\_\_\_\_ (insert name of affiliated tax credit equity syndicator or investor) intends to make an equity investment or sell equity to other investors:
  - a. No officer or employee \_\_\_\_\_ (insert name of MAP Lender) will have any loan-specific control or influence in \_\_\_\_\_'s (insert name of affiliated tax credit equity syndicator or investor) processing of the Sponsor's application for tax credit equity syndication or investment except by providing factual information to \_\_\_\_\_ (insert the name of affiliated tax credit equity syndicator or investor) in the same manner as would be provided to an unaffiliated MAP Lender.
  - b. \_\_\_\_\_ (insert the name of affiliated tax credit equity syndicator or investor) will not condition its commitment to syndicate or invest in the project equity on debt financing for such a project being provided by \_\_\_\_\_ (insert name of MAP Lender).
  - c. Except during the interim period prior to the placed in service date during which \_\_\_\_\_ (insert name of affiliated tax credit equity syndicator or investor) may make an equity bridge loan to the project, neither \_\_\_\_\_ (insert the name of affiliated tax credit equity syndicator or investor) nor any affiliate or subsidiary thereof will hold greater than a 25 percent interest in the 99 percent investor limited partnership entity (or an equivalent percentage if owned as an LLC) of the Borrower.

**“WARNING: Federal law provides that anyone who submits (or causes to submit) a document containing any false, fictitious, misleading, or fraudulent statement/certification or entry may be criminally prosecuted and may incur civil administrative liability. Penalties upon**

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Appendix 2 Quality Control Plans and Identity of Interest

A.2.3 MAP Lender Representation and Warranty

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**conviction can include a fine and imprisonment, as provided pursuant to applicable law, which includes, but is not limited to, 18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802, 24 C.F.R. Parts 25, 28 and 30, and 2 C.F.R. Parts 180 and 2424. The signatory certifies that the information provided herein is true and accurate.”**

## Appendix 3 Program Specifications and Limitations

### A.3.1 Specifications and Limitations by Program

#### A.3.1.1 New Construction/Substantial Rehabilitation

New Construction/Substantial Rehabilitation				
Section of Act (SOA)	220	221(d)(4)	231	241(a)
Minimum # of Units	5	5	8	5
Criterion 3 (maximum % of cost except as noted)	90% - Projects with 90% or greater rental assistance. 87% - Projects meeting the Affordable Housing definition and for which the achievable tax credit rents are at least 10% below market. 85% - Market rate projects or tax credit projects without a significant rent advantage (i.e., achievable rents are at least 10% below market.)		Same as Section 221(d)(4) except for Substantial Rehabilitations, which will be controlled by the applicable percentage of "as rehabilitated" value.	90% of the HUD-estimated value of the improvements, additions or equipment. The cost of the repairs and transaction costs will be recognized as the value, so long as any additional land purchased or contributed is no more than the fair market value (FMV).
Criterion 4 (Statutory Limit on loan amount per unit)	Where percentages are required, enter the same percentage applied under Criterion 3. See Chapter 8 for complete details and the MF Housing website: <a href="http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/hicost/hicost">http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/hicost/hicost</a> on information for per family unit limits and the high cost percentage (HCP) by jurisdiction.			The Supplemental Loan, when added to the outstanding balance of the mortgage covering the project or facility, may not exceed the maximum Statutory Limit Applicable to the building and unit type for the Section of Act (SOA) under which the existing first mortgage is insured.
Criterion 5 (maximum % of NOI allowed for debt service incl MIP)	90% (1.11 DSCR) -Projects with 90% or greater rental assistance. 87% (1.15 DSCR) -Projects that meet the Affordable Housing definition and for which the achievable tax credit rents are at least 10% below market. 85% (1.176 DSCR) -Market rate projects or tax credit projects without a significant rent advantage (i.e., achievable rents are at least 10% below market.)			90% (1.11 DSCR) for combined debt service.
Minimum Vacancy and Collection Loss Rates	3% - Projects with Housing Assistance Payments (HAP) contracts covering 90% or more of the units. 5% - Properties meeting at least the minimum LIHTC set aside requirements with or without income averaging, (20% of the units set aside for tenants earning not more than 50% of area median income; 40% of the units set aside for tenants			

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New Construction/Substantial Rehabilitation				
Section of Act (SOA)	220	221(d)(4)	231	241(a)
	earning no more than 60% of area median income), and attainable tax credit rents at least 10% below market. 7% - LIHTC properties with any percentage of units set aside but without a 10% discount to market; or market rate properties.			
Occupancy Restrictions	Section 231 insured mortgages are restricted to elderly person (aged 62 or older) and/or persons with disabilities. See <a href="#">Chapter 3, Section 3.5</a> for definition of disabled persons. Age Restricted Projects Not Eligible for Section 220.			
Underwritten Commercial Physical Occupancy	The lesser of 80% or that is indicated by market.			N/A
Commercial Space Limit	25%	25%	25%	25%
Commercial Income Limit (% of effective Gross Income)	30%	15%	15%	15%
BSPRA/SPRA Allowances	<ul style="list-style-type: none"> <li>Available for Section 220, 221 and 231 for profit motivated Borrowers and limited distributions Borrowers</li> <li>For Section 231, allowed on New Construction if no Developer fee; n/a for Section 231 Substantial Rehabilitation Deals.</li> </ul>			BSPRA/SPRA is not available.
HUD Application Fee	<ul style="list-style-type: none"> <li>\$3.00 per \$1,000 of required mortgage amount. For market rate projects, one half of the application fee is due at pre-application and the other half is due with the application for Firm Commitment.</li> <li>For affordable projects the entire amount is paid at the Firm Commitment stage, regardless of whether or not a Pre-Application is filed with HUD. Refer to <a href="#">Chapter 3, Section 3.1.36</a> for Application fees for Opportunity Zone projects.</li> </ul>			
HUD Inspection Fee	\$5 per thousand of the mortgage amount for new construction and \$5 per thousand of the total of all improvement costs for substantial rehabilitation. The inspection fee is no longer calculated on BSPRA and SPRA.			
Maximum Lender Fees and Charges	3.5% of the mortgage amount, (this calculation may consist of any combination of origination, financing, and permanent placement fees as long as it also includes the Lender's legal fee). Financing and placement fees up to 5.5% are permissible in bond transactions. Third party costs (e.g., appraisal, market study, capital needs assessment, 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.			

### A.3.1.2 Refinance/Acquisitions

Refinance/Acquisitions			
SOAs	223(f) Refinance	223(f) Acquisition	223(a7)
Minimum # of Units	5	5	8 for Section 231, 5 for all other programs



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Refinance/Acquisitions			
SOAs	223(f) Refinance	223(f) Acquisition	223(a7)
Criterion 2	N/A		Original principal amount of the existing insured mortgage that is to be refinanced (or the sum of the original principal amount of all mortgages to be refinanced if two or more mortgages on one single property are being refinanced).
Criterion 3 (maximum % of value)	90% -Projects with 90% or greater rental assistance. 87% -Projects meeting the Affordable Housing Definition and have achievable rents 10% below market rents. 85% -Market rate projects or LIHTC projects without a significant rent advantage (i.e., the achievable rents are at least 10% below market.)		N/A
Criterion 4 (Statutory Limit on Loan Amount per unit)	Where percentages are required, enter the same percentage applied under Criteria 3. See <a href="#">Chapter 8, Section 8.10.1.A</a> for complete details and the Multifamily Housing website for the latest high cost factors: <a href="https://www.hud.gov/program_offices/housing/mfh/hicost/hicost">https://www.hud.gov/program_offices/housing/mfh/hicost/hicost</a>		N/A
Criterion 5 (Maximum % of NOI allowed for debt service incl MIP)	90% of NOI (1.11 DSCR) –Projects with 90% or greater rental assistance. 87% of NOI (1.15 DSCR) –Projects that meet the definition of Affordable Housing and for which the achievable Tax Credit rents are at least 10% below market rents. 85% of NOI (1.176 DSCR) -Market rate projects or tax credit projects without a significant rent advantage (i.e., the achievable rents are at least 10% below market.)		95% of NOI (1.05 DSCR)- <ul style="list-style-type: none"> <li>• Projects with greater than 90% of units assisted by Project-based Section 8 rental assistance (PBRA) and Cooperative Housing insured under Section 213</li> </ul> 90% of NOI (1.11 DSCR)- <ul style="list-style-type: none"> <li>• All other projects.</li> </ul>
Criterion 7 (maximum % of acquisition cost)	For Acquisition Projects: 90% –Projects with 90% or greater rental assistance. 87% –Projects meeting the Affordable Housing Definition and for which the achievable Tax Credit rents are at least 10% below market rents. 85% –Market rate projects or Tax Credit projects without a significant rent advantage (i.e., the achievable rents are at least 10% below market.)		N/A
Criterion 10	For refinancing, the greater of: 80% of value, allowing cash out if mortgage amount exceeds actual costs; or		Amount based on the cost to refinance the existing insured mortgage and other permitted

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<b>Refinance/Acquisitions</b>			
<b>SOAs</b>	<b>223(f) Refinance</b>	<b>223(f) Acquisition</b>	<b>223(a7)</b>
(actual cost or maximum % of value for cash out)	Actual cost of refinancing eligible debt, repairs and alterations, and loan origination and closing charges.		debt, permitted repairs, and loan origination and closing charges. Cash out is not permitted.
Minimum Vacancy and Collection Loss rates	3% -Projects with HAP contracts covering 90% or more of the units. 5% -Properties meeting at least the minimum LIHTC set aside requirements with or without income averaging, (20% of the units set aside for tenants earning not more than 50% of area median income; 40% of the units set aside for tenants earning no more than 60% of area median income); and attainable tax credit rents at least 10% below market. 7% -Market rate properties or LIHTC properties with any percentage of units set aside but without a significant rent advantage (i.e., the achievable rents are at least 10% below market.)		Actual Occupancy
Appraised Residential Physical Occupancy	Based upon operating history and prevailing market conditions (See <a href="#">Chapter 7, Section 7.5.7</a> for detailed discussion).		
Underwritten Commercial Physical Occupancy	The lesser of 90%, the actual occupancy rate of the of the subject or that indicated by market.		
Appraised Commercial Physical Occupancy	Based upon operating history and prevailing market conditions.		
Commercial Space Limit	25%		Existing commercial space only
Commercial Income Limit (% of Effective Gross Income)	20%		Existing commercial income only
Repair threshold calculations	Total aggregate cost of rehabilitation (including contingencies or allowances) as defined in <a href="#">Chapter 5, Section 5.1.2</a> .		Repairs limited to \$1,600 per unit (Refer to <a href="#">Chapter 5, Section 5.1.5.D</a> ).
HUD Application Fee	\$3.00 per \$1,000 of requested mortgage amount. Refer to <a href="#">Chapter 3, Section 3.1.36</a> for Opportunity Zone project fees.		\$1.50 per \$1,000 of requested mortgage amount.
HUD Inspection Fee	For loans insured pursuant to Section 207/223(f), the inspection fee is the following: <ul style="list-style-type: none"> <li>• \$30 per unit where the repairs/improvements are greater than \$100,000 in total but \$3,000 or less per unit.</li> <li>• The greater of \$30 per unit or 1% of the cost of repairs or \$1,500, where the</li> </ul>		No Inspection Fee

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Refinance/Acquisitions			
SOAs	223(f) Refinance	223(f) Acquisition	223(a7)
	repairs/improvements are more than \$3,000 per unit. • \$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.		
Maximum Lender Fees and Charges	3.5% of the mortgage amount, this calculation may consist of any combination of origination, financing, and permanent placement fees as long as it also includes the Lender's legal fee. Financing and placement fees up to 5.5% are permissible in bond transactions. Third party costs (e.g., appraisal, market study, PCNA, 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 <a href="#">Chapter 18, Section 18.3.7</a> .

## A.3.2 Developer Fees by Program

### A.3.2.1 Section 223(f) Program

Developer Fees - Section 223(f)				
Development Type	Basis for Fee Calculation		Amount	Mortgageable/ Non Mortgageable
Market	N/A		N/A	Not Mortgageable
LIHTC	Allocation Agency Allowed Fee		Agency Fee Limit	Mortgageable
RAD - Non LIHTC	Total Budget	(Note 1)	10%	Mortgageable
RAD - LIHTC	Allocation Agency Allowed Fee		Agency Fee Limit	Mortgageable
202 Refinance - Non LIHTC	Total Acceptable Development Cost	(Note 2)	15%	Mortgageable
202 Refinance - LIHTC	Allocation Agency Allowed Fee		Agency Fee Limit	Mortgageable
202 Re-Refinance - Non LIHTC	N/A		N/A	Not Mortgageable
202 Re-Refinance - LIHTC	Allocation Agency Allowed Fee		Agency Fee Limit	Mortgageable

NOTE 1 - Fee is based on total budget amount (not including acquisition, reserves or Developer fee).

NOTE 2- Acceptable Development cost includes cost of acquisition, rehabilitation, loan prepayment, reserves and transaction costs.

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General Notes - For Section 236 or other assisted, non LIHTC Projects, follow general guidelines for Developer fee for both 223(f) and 221(d)(4) loan programs. The 223(a)(7) program prohibits a Developer fee in all cases.

### A.3.2.2 New Construction/Substantial Rehabilitation Programs

Developer Fees – New Construction (NC)/Substantial Rehabilitation (SR)				
Development Type	Basis for Fee Calculation	Amount		Mortgageable/Non Mortgageable
Market/For Profit Owner	BSPRA	10%	(Note 1)	BSPRA is Mortgageable
Market/ Non-profit Owner as Single Asset Mortgagor Entity	Mortgage Amount	8%	(Note 2)	Mortgageable
LIHTC	Allocation Agency Allowed Fee	Agency Fee Limit		Mortgageable (so long as no BSPRA or SPRA)
RAD - Non LIHTC	Total Budget	10%	(Note 3)	Mortgageable
RAD - LIHTC	Allocation Agency Allowed Fee	Agency Fee Limit	(Note 4)	Mortgageable
202 Rehab - Non LIHTC	Total Acceptable Development Cost	15%	(Note 5)	Mortgageable
202 Rehab – LIHTC	Allocation Agency Allowed Fee	Agency Fee Limit		Mortgageable
202 Rehab- 2nd Refinance Non LIHTC	N/A	0%		N/A
202 Rehab-2nd Refinance LHITC	Allocation Agency Allowed Fee	Agency Fee Limit		Non-Mortgageable

General Note: For purposes of this Matrix, NC/SR includes 221(d)(4), 220, 231 NC and, except as to BSPRA, 241(a)

## A.3.3 Sample Senior Housing Waiver Certification Form

**U.S. Department of Housing  
and Urban Development  
Office of Housing  
Federal Housing Commissioner**

### **Certification of Compliance with the Fair Housing Act**

(For use only in conjunction with age restrictions in FHA-insured properties)

Applicant must check appropriate options (*i.e.*, For a refinance, 1; For substantial rehabilitation, 2):

#### 1. Refinance

\_\_\_\_\_ If the application is for a refinance loan, Owner/Borrower certifies that the housing identified in the application for FHA-insured financing is not required by a HUD program to provide housing to non-elderly persons (including children and persons with disabilities), and meets all elderly and/or age use restrictions imposed by the relevant federal, state or local program. In addition, Owner/Borrower certifies that the housing is operated consistent with the Fair Housing Act, 42 U.S.C. §§ 3601-3619, and its regulations, 24 C.F.R. parts 100 and 103. Owner/Borrower does not discriminate based on race, color, religion, national origin, sex, or disability. Owner/Borrower is operating the housing as housing for older persons, as defined in the Fair Housing Act, 42 U.S.C. § 3607(b)(2), allowing it to exclude families with children under the age of 18. Owner/Borrower certifies that for at least 3 years the housing in its entirety has been:

Intended and operated for occupancy by persons 55 years of age or older, pursuant to 42 U.S.C. § 3607(b)(2)(C); 24 C.F.R. § 100.304-100.307, specifically:

- i. at least 80% of the occupied units are occupied by at least one person who is 55 years of age or older, pursuant to 42 U.S.C. § 3607(b)(2)(C)(i); 24 C.F.R. § 100.305; and
- ii. the housing facility or community publishes and adheres to policies and procedures that demonstrate the intent to be housing for persons 55 years or older, pursuant to 42 U.S.C. § 3607(b)(2)(C)(ii); 24 C.F.R. § 100.306; and
- iii. the housing facility or community complies with HUD's rules for verification of occupancy, including conducting and maintaining a record of reliable surveys and affidavits at least once every two years showing that at least 80% of the occupied units are occupied by at least one person who is 55 years of age or older, and producing such surveys and affidavits upon request, pursuant to 42 U.S.C. § 3607(b)(2)(C)(iii); 24 C.F.R. § 100.307.

#### 2. Substantial Rehabilitation

\_\_\_\_\_ If the application is for a substantial rehabilitation loan, Owner/Borrower certifies that the housing identified in the application for FHA-insured financing is not required by a HUD program to provide housing to non-elderly persons (including children and persons with disabilities), and meets all elderly and/or age use restrictions imposed by the relevant federal, state, or local program. In addition, Owner/Borrower certifies that the housing is operated consistent with the Fair Housing Act, 42 U.S.C. §§ 3601-3619, and its regulations, 24 C.F.R. parts 100 and 103. Owner/Borrower does not discriminate based on race, color, religion, national origin, sex, or disability. Owner/Borrower operates the housing as

housing for older persons, as defined in the Fair Housing Act, 42 U.S.C. § 3607(b)(2), allowing it to exclude families with children under the age of 18. Owner/Borrower certifies that for at least 3 years the housing in its entirety has been:

Intended and operated for occupancy by persons 55 years of age or older, pursuant to 42 U.S.C. § 3607(b)(2)(C); 24 C.F.R. § 100.304-100.307, specifically:

- i. at least 80% of the occupied units are occupied by at least one person who is 55 years of age or older, pursuant to 42 U.S.C. § 3607(b)(2)(C)(i); 24 C.F.R. § 100.305; and
- ii. the housing facility or community publishes and adheres to policies and procedures that demonstrate the intent to be housing for persons 55 years or older, pursuant to 42 U.S.C. § 3607(b)(2)(C)(ii); 24 C.F.R. § 100.306; and
- iii. the housing facility or community complies with HUD's rules for verification of occupancy, including conducting and maintaining a record of reliable surveys and affidavits at least once every two years showing that at least 80% of the occupied units are occupied by at least one person who is 55 years of age or older, and producing such surveys and affidavits upon request, pursuant to 42 U.S.C. § 3607(b)(2)(C)(iii); 24 C.F.R. § 100.307.

(Type or clearly print the following information):

**Owner/Borrower:** \_\_\_\_\_

**Project Name:** \_\_\_\_\_

**Location of the Project:** \_\_\_\_\_  
\_\_\_\_\_

**Section of the Act under which FHA Insurance is sought:** \_\_\_\_\_

**BY: Signature:** \_\_\_\_\_

**Authorized Agent:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Warning: Any person who knowingly presents a false, fictitious, or fraudulent statement or claim in a matter within the jurisdiction of the U.S. Department of Housing and Urban Development is subject to criminal penalties, civil liability, and administrative sanctions.**

## A.3.4 Senior's Housing: Definitions

Term	Definition for Guidance Purposes (See <a href="#">Chapter 3, Section 3.11</a> )
Mixed-Population	An occupancy scheme allowing for heads of household who are either 62 years of age or older or non-elderly persons with disabilities. Used in the context of the age threshold eligibility waiver for FHA refinancing.
Elderly	A general term referring to persons or households headed by persons who are over age 55 or 62, depending on the context of the reference.
"62+ HOH"	Refers specifically to households in which at least one person is or must be age 62 or older and may include children. Properties operating under statutes or regulations defining "elderly family" as 62+HOH cannot exclude families with children in their admission and occupancy policies. "HOH" refers to "head of household" as shorthand, but should be understood to encompass a head, co-head, or spouse member of the family, any of whom are age 62 or older.
62+ age-restriction and "62+"	Refers to restrictions imposed by statute or regulation that define "elderly person" as a person who is 62 years of age or older, whereas the term "62+ HOH" refers to the applicable definition of "elderly family." When used in the guidance, these terms are merely meant to convey that the applicable age restriction is 62 years of age or older without conveying whether the property in question may exclude children in admission and occupancy policies.
"55+"	Refers specifically to properties or occupancy schemes that intend to limit eligibility to households that meet the requirements of the Fair Housing Act's exemption for persons age 55 and older.

## A.3.5 Details Required in Relocation Plans

### A.3.5.1 Qualifications of Relocation Consultant

**A.** Given the importance of implementing tenant relocation properly and on schedule, and the risk to tenants and the construction schedule if there is a failure to meet relocation obligations, a qualified independent relocation consultant should be hired to plan, manage, and implement relocation of tenants.

**B.** If the Sponsor has a qualified relocation consultant on staff, the Sponsor may submit their experience and qualifications to the Lender and HUD for consideration. To be approved, their experience, skills, and credentials must be equivalent to a third-party relocation consultant. The relocation consultant shall have a proven track record of successfully relocating residents and must exercise independent professional judgment concerning the displacing effects of project activities on tenants both able bodied and those with special needs.

**C.** Depending on the size and scope of the relocation, the relocation consultant must designate a relocation liaison to be the point of contact at the property for tenants during relocation and rehabilitation. If experienced, the liaison may be the property manager. The resident liaison and/or the relocation consultant must attend the construction site meetings to facilitate communication and coordination.



## A.3.5.2 Relocation Plans

**A.** The relocation plan must address specific details, schedule, funding, and management of the relocation of residents. At the time of the loan application submission, a plan developed by a qualified relocation consultant must be submitted for the Lender and HUD's initial review and approval. After the Firm Commitment is issued and prior to the Closing, final minor adjustments to the plan, schedule, or budget may be considered.

**B.** For a relocation plan to be reliable and acceptable, it must adequately address and include the following elements:

1. **Communication:** The plan must describe how the owner and/or property management will establish and maintain timely and effective communication with the tenants and exactly who will be responsible for such communications, both messages or announcements, to all tenants or groups of tenants as well as one-on-one meetings or interviews with tenants. In addition, the plan must show the form and manner of any notices, advisories or agreements proposed as a means of documenting the information communicated to and received by tenants and tenants' responses, or agreements related to the date, time, and duration of displacement and tenant's acceptance of owner provided services or accommodations or tenant's discretionary choice of alternative accommodations.
2. **Resident Interviews:** The plan must have specific information about the resident's needs (medical, disability, pets), based on up-to-date one-on-one interviews with the residents performed by the relocation consultant. The plan must explain how these needs will be met.
3. **Packing, Moving and Storage:** The plan must describe how and who is responsible for any packing, moving, and storage. A professional moving company that can be relied on to meet the relocation schedule and having the appropriate workers compensation and damage and loss insurance, is required.
4. **Move-Out and Move-In Inspections:** The plan must describe who on the relocation consultant's team will perform the move-out and move-in inspections to make sure the unit is ready for the Contractor to begin work, and then ready for the tenant to return once work is complete.
5. **Relocation Schedule:** The plan must include a relocation schedule identifying which residents are moving out or into which specific units and when. A detailed relocation schedule with specific dates for each unit, sequenced and coordinated with the Contractor's Construction Schedule, is required. This schedule is required whether residents are relocated on site (in "vacant units"), offsite in a hotel, or other offsite locations.
  - a. The relocation schedule must identify when (date & time) the units to be rehabilitated (by unit number), and when any other common or project areas, will be turned over to the Contractor – for their control and performance of the work. The schedule must also show when the units will be inspected and reoccupied after rehabilitation by the Contractor is complete.
  - b. The relocation schedule and the construction schedule must be reviewed by the Lender to assure that they are coordinated. Prior to closing, the Lender must provide a written acceptance by the Contractor of the owner's relocation schedule with a dated copy of the relocation schedule attached to the letter.
  - c. The final approved relocation schedule, along with the final approved construction schedule, must be attached to and made part of the relocation escrow agreement (see below).

6. **Security and Safety:** The plan must provide adequate security and safety during construction. Typically, the Contractor is responsible for and focused on the safety and security of the property, materials, equipment, employees, and subcontractors during construction. However, for construction in occupied properties, the Owner is responsible for the security of tenants. Accordingly, safety and security of tenants and their personal property must be addressed in the relocation plan. The relocation plan should describe a comprehensive approach to tenant safety and security (appropriate to the property location) in addition to measures normally provided. The relocation consultant should be knowledgeable of the actual condition and safety of the premises for any housing or lodging accommodations recommended to or arranged for displaced tenants. Such housing or lodging accommodations must be decent, safe, and sanitary.
7. **Claims and Complaints Procedures:** The plan must describe how tenant claims or complaints, and any damage to personal items, will be addressed in a timely manner.
8. **Reimbursement Procedures:** The plan must include the procedures for timely reimbursement to tenants for per diem rates, all reasonable out of pocket expenses necessary to meet special needs of tenants resulting from displacement, including but not limited to packing, moving, storage, transportation, or increased housing costs. Reimbursement for relocation expenses must coincide with the relocation and construction draw schedules.
9. **Elderly Housing & Disabled:** Temporary relocation of elderly or disabled residents and families with young children must avoid unnecessary stress and protect their wellbeing, health, and safety.
  - a. The degree of the resident's expressed preference to stay in the units during construction, while considered, are not the only or principal indicators of the impact of the scope of rehabilitation work on tenants. Rather, the qualified independent relocation consultant must objectively evaluate the impacts of the scope of the work on the residents, and make determinations based principally on resident safety and wellbeing.
  - b. The HUD Minimum Property Standards (MPS) requires elevators in housing of three stories or more that serve the elderly. The resident relocation plan must take this into account and make sure the elevator operation is maintained for the residents throughout the rehabilitation (and if not, relocate the residents). The duration of the elevator outage based on the scope of the upgrade or repairs, the identification of residents impacted and their relocation, need to be addressed well in advance of construction by the development and relocation teams.

### A.3.5.3 Resident Relocation Budget and Escrow

- A. An acceptable relocation plan must provide accurate costs of the relocation. These costs are then included in the loan and used to establish a relocation budget. The relocation plan and budget must align with the approved relocation and construction schedule and both must be attached to the Relocation Escrow Agreement (see [Appendix 3, Section A.3.6](#)).
- B. Adequate budgets will ensure that the Lender will have enough funds to perform the planned relocation should the owner fail to perform and prevent construction delays. Establishing accurate timing and amount of costs of relocation is critical because if the relocation escrow becomes unbalanced or proves insufficient to cover costs, the owner must fund any shortfall.

### A.3.5.4 Resident Relocation – Implementation & Reporting

A. The relocation consultant is the lead for organizing and implementing the relocation plan. The consultant must plan, manage, and implement the relocation of the tenants. The relocation plan and schedule are reviewed during the HUD preconstruction conference. The HUD Inspector must report in their HUD Trip Report the status of the approved relocation plan and schedule, the performance of the relocation consultant, and sign the relocation escrow requests before the Lender submits them to HUD for approval.

B. The Supervisory Architect and the HUD Inspector must report any delays to the construction schedule in their Field Report/Trip Report respectively, including those resulting from lack of access to the units or spaces to perform prescribed work due to the owner’s failure to relocate tenants in accordance with the approved relocation schedule.

C. The Lender shall monitor these reports. If the tenant relocation is not adequately performed or is off the relocation schedule, then the Lender must immediately notify HUD, promptly address these performance problems with the owner, and work to get the relocation back on schedule.

### A.3.6 Tenant Relocation Escrow Agreement (guide form)

**THIS TENANT RELOCATION ESCROW AGREEMENT** entered into as of the \_\_\_ day of \_\_\_\_\_ by and between \_\_\_\_\_ (hereinafter called the “Borrower”); and \_\_\_\_\_ (hereinafter called the “Lender”).

**WITNESSETH:**

**WHEREAS**, the Lender has made a mortgage loan to the Borrower in the original principal amount of \$\_\_\_\_\_ (hereinafter called the “Loan”), which Loan is insured by the Secretary of Housing and Urban Development acting by and through the Federal Housing Commissioner (“HUD”) for the purpose of refinancing and renovation or financing the acquisition and/or rehabilitation or renovation of a multifamily housing rental apartment project known as “\_\_\_\_\_” and located at \_\_\_\_\_ (the “Project”) in the city and state of \_\_\_\_\_; and

**WHEREAS**, on \_\_\_\_\_, HUD issued a certain Commitment for Insurance or Commitment for Insurance of Advances (as amended, the “FHA Commitment”) to insure the Loan under Section \_\_\_\_\_ of the National Housing Act, as amended, pursuant to which FHA Commitment the Borrower is required to provide from either its own funds and/or from loan proceeds a deposit with the Lender in the amount of \$\_\_\_\_\_ to meet the cost of providing relocation services and other appropriate activities for tenants of the Project (the “Relocation Deposit”) in accordance with the Relocation Plan attached as Exhibit “A” hereto and made a part hereof (the “Relocation Plan”); and

**WHEREAS**, the Borrower has executed and delivered to the Lender a certain HUD Multistate Note (the “Note”) in the principal amount of the Loan, a Multifamily Deed of Trust, Assignment of Leases and Rents and Security Agreement (the “Mortgage”) securing the Note, a Regulatory Agreement, and certain other agreements, documents and certificates (which Note, Mortgage, Regulatory Agreement, agreements,

documents and certificates are hereinafter collectively called the “FHA Loan Documents”) in connection with the Initial/Final Endorsement by HUD of the Note; and

**WHEREAS**, in order to induce the Lender to advance proceeds of the Loan and HUD to insure the Loan, the Borrower provided said Relocation Deposit and Relocation Plan.

**NOW, THEREFORE**, in consideration of the foregoing, the terms, covenants and conditions set forth herein, and other good and valuable considerations, the receipt and sufficiency of which is hereby mutually acknowledged, the parties agree as follows:

1. In order to establish the Relocation Deposit, the Borrower has furnished or caused to be furnished to the Lender cash in the amount of \$\_\_\_\_\_ (the “Escrow Fund”), the receipt of which is hereby acknowledged by the Lender. The Escrow Fund shall be held by the Lender for application or release as hereinafter set forth.
2. The Escrow Fund shall be held by the Lender for a period beginning on the date hereof until the date of completion of construction at the Project (as such date of completion may be extended by the Lender or HUD, the “Escrow Period”). Upon the expiration of the Escrow Period, any balance remaining in the Escrow Fund may be allocated with HUD’s approval to meet other program financial requirements when funds available for such purposes have been exhausted. Thereafter any further balance remaining which was not funded from mortgage proceeds shall be returned to the Borrower and any additional remainder that was funded from mortgage proceeds shall be deposited into the Project’s replacement reserve account. If the Relocation Deposit consisted of both the Borrower’s funds and loan proceeds, then the Borrower’s funds shall be deemed as first used or disbursed.
3. Subject to the provisions of Paragraph 6 hereof, the Escrow Fund may be disbursed for meeting the cost of providing certain relocation costs and other appropriate programs to residents of the Project according to the Relocation Plan. In connection with any request by the Borrower for disbursement of the Escrow Fund, the Borrower shall provide such documentation and information as the Lender and HUD may require. Further, and to the extent the Lender deems it necessary, all disbursements shall be subject to receipt by the Lender of satisfactory documentation evidencing HUD’s approval.
4. Any portion of the Escrow Fund consisting of cash shall be maintained in one or more accounts insured or fully guaranteed as to principal by the United States of America, shall at all times be under the control of the Lender, and shall be held by the Lender in a manner that conforms to standards established by HUD.
5. This Agreement is entered into by the parties hereto for the benefit of the Lender (or any subsequent holder of the Note) and HUD, either of which shall have the right to act as Depository and/or enforce the provisions hereof.
6. The Escrow Fund shall be subject to immediate application to the mortgage debt in the event of a default under the Note or Mortgage at any time prior to the expiration of the Escrow Period; provided, however, that the Escrow Fund shall be subject to the control and direction of HUD in the event that the Lender submits a claim to HUD for the payment of insurance benefits.
7. In the event of any conflict or inconsistency between this Agreement and the FHA loan documents, rules, regulations, and administrative procedures, the FHA loan documents, rules, regulations, and administrative procedures shall govern and be controlling.
8. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date hereinabove first written.

**[SIGNATURE PAGE]**

*(Type or clearly print the following information):*

**Owner/Borrower:** \_\_\_\_\_

**Project Name:** \_\_\_\_\_

**Location of the Project:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Section of the Act under  
which FHA Insurance is  
sought:**

**By Signature:** \_\_\_\_\_

**Authorized Agent:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Warning: Any person who knowingly presents a false, fictitious, or fraudulent statement or claim in a matter within the jurisdiction of the U.S. Department of Housing and Urban Development is subject to criminal penalties, civil liability, and administrative sanctions.**

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Appendix 3 Program Specifications and Limitations  
A.3.6 Tenant Relocation Escrow Agreement (guide form)

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**EXHIBIT "A"**  
**RELOCATION PLAN**  
**INTENTIONALLY LEFT BLANK**

## A.3.7 Opportunity Zone Map Locations

A. Lenders must provide a screen shot or other photo options that would capture a picture of the property address located in the designated opportunity zone. Community Development Financial Institute (CDFI) maintains a list of all of the designated opportunity zones. The CDFI has an interactive map of the designated opportunity zones and a user guide for navigating the geographical map to locate a specific property address.

B. For each property located in a qualified opportunity zone census tract, the Lender must submit a picture to capture the property's address and the eleven-digit census tract number. The tab that indicates a YES for the census tract is a qualified opportunity zone.

C. The Lender may be able to capture the census tract name and the property address on the same tab, otherwise it may require two separate tabs to capture the property address and the corresponding qualified census tract number.

D. For Opportunity Zone locations refer to the following link: <https://opportunityzones.hud.gov/>

## A.3.8 Affordable & Green MIP Rate Categories

### A.3.8.1 General

A. FHA's Mortgage Insurance Premium ("MIP") rate categories changed under a final rule published in the Federal Register dated March 31, 2016. The rule reduced MIP rates for projects meeting Broadly Affordable Housing, Affordable Housing, and Green and Energy Efficient Housing definitions. These rate categories aim to preserve and increase affordable, quality rental housing across the country by encouraging capital financing of affordable and energy-efficient apartments. The effective date was April 1, 2016 for firm commitments issued or reissued. The definition of these categories and the corresponding MIP rates are as follows:

### A.3.8.2 Broadly Affordable Housing

A. Annual MIP is 25 basis points for all multifamily FHA-insured loan types that meet the criteria in this section.

B. These projects must either:

1. Have at least 90 percent of units covered by a Section 8 Project Based Rental Assistance (PBRA) contract or other federal rental assistance program contract serving very low-income residents, with a remaining term of at least 15 years; or
2. Have at least 90 percent of units covered by an affordability use restriction under the Low Income Housing Tax Credit (LIHTC) program or similar state or locally sponsored program, with achievable and underwritten tax credit rents at least 10 percent below comparable market rents, and with a recorded regulatory agreement in effect for at least 15 years after final endorsement and monitored by a public entity.



C. To ensure that the benefits of these MIP rates directly benefit the affordable housing properties and residents, Lenders submitting applications for loans using this MIP rate are limited in the total loan fees they may charge on any loan greater than \$2 million, to no more than 5 percent of the insured loan amount. Loan fees include: (a) origination and placement fees as permitted by this MAP Guide; *plus* (b) trade profit, trade premium, or marketing gain earned on the sale of the Government National Mortgage Association (GNMA) security at a value above par, even if the security sale is delayed until after endorsement, *minus* (c) loan fees applied by the Mortgagee to its legal expenses incurred in connection with loan closing. However, Section 223(a)(7) applications are exempt from the Lender fee limitation to the extent that trade premium is used to offset prepayment penalties on the existing insured loan.

D. Owners of properties that fall under the category of Broadly Affordable with voucher holding residents must continue to accept vouchers. There is no requirement to sign a rider in this instance.

E. For Section 220, 221(d)(4) or 223(f) loans, the appraisal should evidence the market rents and confirm the achievable Tax Credit results used in underwriting are at least 10% below comparable rents.

F. For a Section 223(a)(7) LIHTC refinance where there is no project-based Section 8 rental assistance, a Rent Comparability Study is required including a form HUD-92273-S8 completed by an appraiser retained as a third-party professional by the Lender. If the project is both LIHTC and Section 8 rental assisted, then the requirements of the HAP contract or its renewal or amendment govern whether a Rent Comparability Study is required.

### A.3.8.3 Affordable Housing

A. Annual MIP for this category is 35 basis points for all multifamily FHA-insured loan types. To qualify, the property must provide a set-aside of affordable units that meets one of the definitions below, and agree to accept voucher holders.

1. Inclusionary Zoning, Density Bonus Set-asides, and Other Local Affordability Restrictions: Property owners shall submit with the FHA mortgage insurance application evidence of a deed covenant or housing ordinance on “inclusionary zoning” at the subject property to evidence the requirement for affordable unit set-asides. A minimum of 10 percent of the units must be affordable to, at most, a family at 80 percent AMI, with rents sized to be affordable at 30 percent of the income at that level. The affordability set-aside must be on site, in effect for at least 30 years after final endorsement of the FHA-insured mortgage, be monitored by public authority, be recorded in a regulatory agreement addressing both the affordability requirements and on-going public authority monitoring, and must be approved by the locality consistent with the specific zoning or local ordinances enacted to require or support affordable multifamily housing.

For an owner to meet the public authority monitoring requirement, the owner should negotiate the monitoring capability with the local Housing Authority and/or the local municipality that administers the affordability restriction. This agency must provide the owner with formal written documentation describing its agreement to monitor the property, which is then included in the recorded regulatory agreement. A description of this arrangement must be provided in the Underwriter Narrative.

2. Project has between 10 percent and 90 percent of units covered by a Section 8 PBRA contract or other state or federal rental assistance program contract serving very low-income residents, with a remaining term of at least 15 years.

3. Project has between 10 percent and 90 percent of units covered by an affordability use restriction under the Low Income Housing Tax Credit program or similar state or locally sponsored program, with rents sized at no greater than 30 percent of the income eligible for occupancy under the Low Income Housing Tax Credit program, with a recorded regulatory agreement in effect for at least 15 years after final endorsement and monitored by a public entity.
- B.** Any project that is neither subject to a LIHTC affordability restriction nor a Section 8 HAP Contract but is subject to another federally-based affordable use agreement must meet or exceed the LIHTC affordability requirements for not less than 10% up to 90% of the units.
- C.** The project owner must also agree to accept voucher holders under the Section 8 Housing Choice Voucher program or other federal program voucher holders as residents for vacancies in units not covered by project-based Section 8.
- D.** There is no affordable rent advantage evidence required, and Lender fees are not constrained by this category's requirements.

#### **A.3.8.4 Green and Energy Efficient Housing**

- A.** Green and Energy Efficient Housing has an annual MIP rate category of 25 basis points and applies to projects committed to industry-recognized green building standards coupled with a commitment to demonstrate continuing performance with an ENERGY STAR® score of not less than 75.
- B.** Detailed requirements for meeting the green building standard certification requirement and the continuing performance requirement for this MIP Rate are described in MAP Guide [Chapter 6](#).
- C.** To ensure that the benefits of this MIP rate directly benefit the properties and residents, Lenders submitting applications for loans using this MIP rate are limited in the total loan fees they may charge on any loan greater than \$2 million, to no more than 5 percent of the insured loan amount. Loan fees include: (a) origination and placement fees as permitted by this MAP Guide; *plus* (b) trade profit, trade premium or marketing gain earned on the sale of the Government National Mortgage Association (GNMA) security at a value above par, even if the security sale is delayed until after endorsement; *minus* (c) loan fees applied by the Mortgagee to its legal expenses incurred in connection with loan closing. However, Section 223(a)(7) applications are exempt from the Lender fee limitation to the extent that trade premium is used to offset prepayment penalties on the existing insured loan.

#### **A.3.8.5 Calculating Upfront or Capitalized MIP**

- A.** The upfront capitalized and annual MIP rate is applied to the full loan amount. Lenders and Borrowers will calculate the appropriate MIP based upon the affordability/green and energy efficient standards applicable to each specific project. The basis for the use of the selected MIP must be described in the Underwriting Narrative.
- B.** Refer to the Federal Register Final Rule FR-5876-N-03, issued March 31, 2016, which describes the upfront or capitalized MIP basis points per program type.

### **A.3.8.6 Documentation Requirements**

**A.** Form HUD-92013-D is a required document for any application proposing MIP rates for Broadly Affordable, Affordable, and Green and Energy efficient housing. The purpose of the form is for the Borrower to certify that it will comply with the qualifying requirements for the selected MIP category. The Borrower's election of one of these MIP rate categories and methods for meeting the specific requirements should be described in the Underwriters Narrative.

**B.** In addition, at or before endorsement the Borrower must execute the Consolidated Certifications. Included in the certification for the Affordable MIP rate category is a further requirement that the Borrower execute a rider to the FHA Regulatory Agreement in a form acceptable to HUD evidencing the Borrower's agreement to accept Section 8 vouchers for the life of the Regulatory Agreement.

**C.** Any applicant for the Green and Energy Efficient Housing MIP rate category must execute a different rider, form HUD-92466-R5, which details requirements for future achievement and delivery of an identified green building certification as well as the requirements for demonstrating continuing performance. (See MAP Guide [Chapter 6](#).)

### **A.3.8.7 Other Considerations**

**A.** Some properties may qualify for more than one MIP rate category, but Borrowers must elect only one and must conform to the requirements of the category selected.

**B.** For Section 241(a) supplemental loan applications where the Borrower selects an MIP rate category, the requirements associated with the selected category apply to the entire property notwithstanding whether the intended use of the supplemental loan proceeds is limited to an addition, or some portion rather than the whole of the property.

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## Appendix 4 Application Processing Documents

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A. [Appendix 4](#) provides application checklists and submission protocols for FHA multifamily mortgage insurance program (excluding Risk Share programs) applications and concept meetings. [Appendix 4](#) also provides a sample MAP Invitation Letter, Firm Commitment templates, and instructions for requesting an FHA Project Number and paying Multifamily program fees on the Pay.gov website.

### A.4.1 General Application Submission Instructions

#### A.4.1.1 Application Submission Instructions

A. HUD is currently developing an online portal that will soon be used for electronic submissions of applications and other documents to HUD. A Mortgagee Letter with details and revised application submission instructions will be issued when the portal is ready for implementation. Until then, the instructions in [Appendix 4](#) should be followed.

B. All pre-applications and Firm Commitment applications submitted under Multifamily Accelerated Processing (MAP) or Traditional Application Processing (TAP) must follow the below submission protocol:

1. One electronic copy on a removable USB flash drive (encrypted, if possible) must first be submitted via mail to the appropriate HUD Office

C. Once the application has been screened for completeness, accepted into processing, and assigned to a HUD Underwriter, the HUD Office will provide instructions for mailing the following supplemental hard copies:

1. One complete original
2. One additional hard copy with a separately-bound mortgage credit package

#### A.4.1.2 Application Exhibit Checklists

A. All MAP and TAP applications under Section 223(f), 223(a)(7), and the New Construction/Substantial Rehabilitation programs must use the applicable application exhibit checklist below.

##### A.4.1.2.1 Instructions for Using the Checklists

A. Please indicate whether each application exhibit is included in the application or not applicable (N/A) by placing a checkmark in the appropriate column. If the N/A column is grayed-out, that exhibit is required for applications under that program and phase and must be submitted. For exhibits specified as N/A by the Lender, please also place a filler page labeled "N/A" in that tab in the original and hard copy of the application.

### A.4.1.2.2 Tabs and File Names

A. The original and hard copy of the application should be tabbed according to the tab numbering protocol on the applicable checklist below. The electronic copy should also be organized with a folder structure matching the tab numbering system.

B. Create as many additional Section 5: Mortgage Credit folders as needed for Principals, the General Contractor, and/or Management Agent, and include the entity's or individual's name in the folder name.

C. Electronic files for each exhibit should be named according to the file naming convention specified in the checklist (see the "File Name" column). If additional files must be included, please follow the guidelines below for file names:

1. Use no more than 40 characters;
2. Avoid using special characters (e.g., \ / : \* ? " < > | # { } % ~ &);
3. Avoid using spaces; use an underscore ("\_") or hyphen ("-") instead;
4. Avoid adding the FHA # to the file name, as it only adds characters.

D. For example: Instead of "Tab 1-2.A. HUD-92013-A Lender's Underwriter's Narrative 171-22000" (65 characters), use "1-2A\_LndrNarr" (only 13 characters).

E. See below in each section for screenshots of the checklist. Microsoft Excel versions of the below application checklists can be downloaded at:

[https://www.hud.gov/program\\_offices/administration/hudclips/guidebooks/hsg-GB4430](https://www.hud.gov/program_offices/administration/hudclips/guidebooks/hsg-GB4430).

### A.4.1.3 Concept Meeting Checklists

A. Concept Meetings are discussed in [Chapter 4](#). If a Concept Meeting is required or requested, use the below Concept Meeting Checklists and follow the HUD Office's instructions for submitting the required Concept Meeting exhibits.

## A.4.2 Section 223(f) Refinance/Acquisition Checklists

### A.4.2.1 Concept Meetings

A. The following information/exhibits must be included in all Section 223(f) Concept Meeting packages:

1. HUD-92013 "Application for Multifamily Housing Project", completed to the extent possible;
2. Project name and address;
3. Number of units (market-rate and affordable);
4. Section of the Act and activity (refinance or acquisition);
5. Projected mortgage amount;
6. Mortgage term and estimated remaining economic life;

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7. Basic information on developer and principals;
8. Management company;
9. Previous HUD experience;
10. Geographic location with map;
11. Photographs of the subject and immediate surroundings;
12. Actual and effective property age, class;
13. Physical condition (CNA e-Tool not required at this point);
14. Prior/proposed renovations (per unit cost);
15. Discuss eligibility for Section 223(f) versus substantial rehabilitation;
16. Amenities;
17. Existing debt/cash out;
18. Current occupancy (physical/economic);
19. Income and expenses;
20. Green/sustainability issues;
21. General market conditions, competitive properties and comparable;
22. Environmental issues;
23. Actual/potential risks and mitigating factors;
24. Any anticipated waiver requests.

### A.4.2.2 Firm Applications

A. The following checklist should be used for all Section 223(f) Firm Applications:

**Project Name:** \_\_\_\_\_  
**FHA Project #:** \_\_\_\_\_

#### Section 223(f) Refinance/Acquisition Firm Application Exhibit Checklist

Tab	No.	Exhibit Name	File Name	Incl.	N/A
<b>Section 1: Underwriting</b>					
1-1.	A.	Application Fee Pay.gov Receipt	PayGov	<input type="checkbox"/>	
	B.	Transmittal Letter	TrsLtr	<input type="checkbox"/>	
	C.	Completed Application Exhibit Checklist	Chklst	<input type="checkbox"/>	
1-2.	A.	HUD-92013-A Lender’s Underwriter’s Narrative	LndrNarr	<input type="checkbox"/>	
	B.	Lender Due Diligence Certification	LndrCert	<input type="checkbox"/>	
	C.	Lender’s Certification Regarding Lobbying (24 CFR Part 87 Appendix A), and Disclosure Form (Appendix B), if applicable.	LndrByrdCert	<input type="checkbox"/>	
	D.	Lender Identity-of-Interest Disclosure	IOIDiscl	<input type="checkbox"/>	
	E.	HUD-92013-C FHA Summary Report (Excel)	FHARpt	<input type="checkbox"/>	
1.3.		Lender’s Underwriting HUD Forms			

**Section 223(f) Refinance/Acquisition  
Firm Application Exhibit Checklist**

Tab	No.	Exhibit Name	File Name	Incl.	N/A
	A.	HUD-92013 Application for Multifamily Housing Project	92013	<input type="checkbox"/>	
	B.	HUD-92013-D Reduced MIP Certification	92013D	<input type="checkbox"/>	<input type="checkbox"/>
	C.	HUD-92264 Multifamily Summary Appraisal Report (Lender's version)	Lndr92264	<input type="checkbox"/>	
	D.	HUD-92264-A Supplement to Project Analysis	92264A	<input type="checkbox"/>	
	1.	List of Borrower's Other Fees	OtherFee	<input type="checkbox"/>	<input type="checkbox"/>
1-4.		Wavier Requests			
	A.	HUD-2 Request for Wavier	HUD2	<input type="checkbox"/>	<input type="checkbox"/>
	B.	Supporting Documentation	HUD2Doc	<input type="checkbox"/>	<input type="checkbox"/>
1-5.		Miscellaneous/Other Underwriting Documents	MisUW	<input type="checkbox"/>	<input type="checkbox"/>
<b>Section 2: Third Party Reports</b>					
2-1.		Appraisal Report with Supporting Forms (HUD-92273 & 92274) (Appraiser's version)	Appraisal	<input type="checkbox"/>	
	A.	Hud-92264-T Rent Estimates for Low/Moderate Income Units, if applicable	99264T	<input type="checkbox"/>	<input type="checkbox"/>
2-2.		Market Study, if required	MktRpt	<input type="checkbox"/>	<input type="checkbox"/>
2-3.		Environment Review			
	A.	HUD Environmental Review Online System (HEROS) Submission Confirmation Email	HEROS	<input type="checkbox"/>	
	B.	Phase I Environmental Site Assessment (ESA)	PhaseI	<input type="checkbox"/>	
	C.	Phase II ESA, if applicable	PhaseII	<input type="checkbox"/>	<input type="checkbox"/>
2-4.		Capital Needs Assessment (CNA)			
	A.	CAN e-Tool Submission Confirmation E-Mail	eTool	<input type="checkbox"/>	
	B.	Plans and Specifications, if required	PlanSpec	<input type="checkbox"/>	<input type="checkbox"/>
	C.	Relocation Plan, if applicable	ReloPlan	<input type="checkbox"/>	<input type="checkbox"/>
2-5.		Specialty Reports, if any	SpclRpts	<input type="checkbox"/>	<input type="checkbox"/>
<b>Section 3: Management Agent</b>					
3-1.		Organizational Chart (only if Identity-of-Interest)	MgmtOrgCht	<input type="checkbox"/>	<input type="checkbox"/>
3-2.		HUD Management Forms			
	A.	Resume of Management Agent including Schedule of Managed Properties	MgmtRes	<input type="checkbox"/>	
	B.	HUD-9832 Management Entity Profile	9832	<input type="checkbox"/>	
	C.	HUD-9839-A, B, or C Certification	9839	<input type="checkbox"/>	
	D.	Management Plan and Sample Lease	MgmtPln	<input type="checkbox"/>	
	E.	Management Agreement	MgmtAgmt	<input type="checkbox"/>	
	F.	Evidence of Fidelity Bond Insurance	FidelityIns	<input type="checkbox"/>	
3-3.		Miscellaneous/Other Management Documents	MiscMgmt	<input type="checkbox"/>	<input type="checkbox"/>
<b>Section 4: Property Documents</b>					
4-1.	A.	If Refinance:			
	1.	Certification of Outstanding Obligations/Existing Indebtedness	CertOutOb	<input type="checkbox"/>	<input type="checkbox"/>
	2.	Pay-Off Statement for each Obligation	PayOffStmt	<input type="checkbox"/>	<input type="checkbox"/>
	3.	HUD-9807 Prepayment Authorization, if applicable	9807	<input type="checkbox"/>	<input type="checkbox"/>
	B.	If Acquisition			
	1.	Purchase & Sale Agreement with Amendments and Extensions	SaleCtrt	<input type="checkbox"/>	<input type="checkbox"/>
	2.	Last Arm's Length Certification	LALStmt	<input type="checkbox"/>	<input type="checkbox"/>



**Section 223(f) Refinance/Acquisition  
Firm Application Exhibit Checklist**

Tab No.	Exhibit Name	File Name	Incl.	N/A
4-2.	Title & Survey			
A.	Preliminary Title Report	Title	<input type="checkbox"/>	
B.	Easement and Maintenance Agreements (Existing and Proposed)	EaseMainAgt	<input type="checkbox"/>	<input type="checkbox"/>
C.	ALTA/ACSM Land Title Survey	Survey	<input type="checkbox"/>	
D.	HUD-91073M Surveyor's Report	SurvRpt	<input type="checkbox"/>	
E.	Location Maps and Photographs	MapPhoto	<input type="checkbox"/>	
4-3.	Evidence of Site Control (e.g. Deed, Lease)	SiteCtrl	<input type="checkbox"/>	
4-4.	Evidence of Zoning Compliance	Zoning	<input type="checkbox"/>	
4-5.	Certificate of Occupancy or Final Inspection Report	COO	<input type="checkbox"/>	
4-6.	Current Certified Rent Roll	RentRoll	<input type="checkbox"/>	
4-7.	Miscellaneous property documents, as applicable			
A.	Section 8 HAP Contract and Rent Schedule	HAP	<input type="checkbox"/>	<input type="checkbox"/>
B.	Evidence of Real Estate Tax Abatement/Exemption	TaxAbtExp	<input type="checkbox"/>	<input type="checkbox"/>
C.	Commercial Lease(s)	CmlLse	<input type="checkbox"/>	<input type="checkbox"/>
D.	Master Lease	MstLease	<input type="checkbox"/>	<input type="checkbox"/>
E.	Report from Official if Private Water/Sewer	WrtSwr	<input type="checkbox"/>	<input type="checkbox"/>
F.	Other property documents	MiscProp	<input type="checkbox"/>	<input type="checkbox"/>
<b>Section 5: Mortgage Credit (separately bound)</b>				
<b>MC Folder 1 - Borrower</b>				
5-1.	Organizational Chart	OrgCht	<input type="checkbox"/>	
A.	List of Principals	Principal	<input type="checkbox"/>	
B.	Resumes	Resume	<input type="checkbox"/>	
5-2.	Organizational Documents (provide Draft if LIHTC)			
A.	Articles of Incorporation/Organization, Partnership Agreement, or Operating Agreement	OrgDocs	<input type="checkbox"/>	
5-3.	Previous Participation Certification			
A.	Active Partners Performance System (APPS) Submission or Form HUD-2530	Apps	<input type="checkbox"/>	
5-4.	Credit Report			
A.	Credit Report	CrdtRpt	<input type="checkbox"/>	
B.	HUD-92013-Supp Supplement to Application	92013S	<input type="checkbox"/>	
C.	Verification of EIN/SSN	EIN	<input type="checkbox"/>	
D.	Verification of Cash to Close	VOD	<input type="checkbox"/>	<input type="checkbox"/>
5-5.	Property Financial Statements			
A.	Audited/Certified Financial Statement (past 3 years)	FinSmt	<input type="checkbox"/>	
B.	Certified YTD Financial Statement, if required	FinSmtYTD	<input type="checkbox"/>	<input type="checkbox"/>
C.	CPA Review of most recent unaudited Financial Statements, if required	CPARvw	<input type="checkbox"/>	<input type="checkbox"/>
5-6.	HUD-91070M Consolidated Borrower Certifications	ConsolCert	<input type="checkbox"/>	
5-7.	Other Funding Sources (Grants/Loans/Tax Credits), if applicable			
A.	Commitment Letter(s)	CmLtr	<input type="checkbox"/>	<input type="checkbox"/>
B.	Tax Credit Equity Pay-In Schedule	TCEqSch	<input type="checkbox"/>	<input type="checkbox"/>
C.	Executed Tax Credit Reservation Letter	TCRes	<input type="checkbox"/>	<input type="checkbox"/>
D.	Source and Uses Statement	SUStmt	<input type="checkbox"/>	<input type="checkbox"/>
E.	HUD-2880 Applicant/Recipient Disclosure Report	2880	<input type="checkbox"/>	<input type="checkbox"/>

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**Section 223(f) Refinance/Acquisition  
Firm Application Exhibit Checklist**

Tab	No.	Exhibit Name	File Name	Incl.	N/A
	F.	Bridge Loan Agreement(s)	Bridge	<input type="checkbox"/>	<input type="checkbox"/>
	G.	Subsidy Layering Review, if required	SLR	<input type="checkbox"/>	<input type="checkbox"/>
5-8.		Miscellaneous/Other mortgage credit documents	MicsMC	<input type="checkbox"/>	<input type="checkbox"/>
<b>MC Folder 2 (create as many as needed) – Principal, GC, or Management Agent</b>					
5-1.		Organizational Chart	OrgCht	<input type="checkbox"/>	<input type="checkbox"/>
	A.	List of Principals	Princpl	<input type="checkbox"/>	<input type="checkbox"/>
	B.	Resumes	Resume	<input type="checkbox"/>	<input type="checkbox"/>
5-2.		Organizational Documents			
	A.	Articles of Incorporation/Organization, Partnership Agreement, or Operating Agreement	OrgDocs	<input type="checkbox"/>	<input type="checkbox"/>
5-3.		Previous Participation Certification			
	A.	Active Partners Performance System (APPS) Submission or Form HUD-2530	APPS	<input type="checkbox"/>	<input type="checkbox"/>
5-4.		Credit Reports			
	A.	Credit Report	CrdtRpt	<input type="checkbox"/>	<input type="checkbox"/>
	B.	HUD-922013-Supp Supplement to Application	92013S	<input type="checkbox"/>	<input type="checkbox"/>
	C.	Verification of EIN/SNN	EIN	<input type="checkbox"/>	<input type="checkbox"/>
5-5.		Financial Statements			
	A.	Audited/Certified (or CPA-Reviewed, if unaudited) Financial Statement (most recent full year) or HUD-92417 for individuals	FinSmt	<input type="checkbox"/>	<input type="checkbox"/>
	B.	Certified YTD Financial Statement, if required	FinSMtYTD	<input type="checkbox"/>	<input type="checkbox"/>
	C.	REO Schedule & Schedule of Mortgage Debt	REODebt	<input type="checkbox"/>	<input type="checkbox"/>
	D.	Other Business Concerns	BusCncrns	<input type="checkbox"/>	<input type="checkbox"/>
5-6.		Miscellaneous/Other mortgage credit documents	MicsMC	<input type="checkbox"/>	<input type="checkbox"/>

## A.4.3 Section 223(a)(7) Refinance Checklists

### A.4.3.1 Concept Meetings

A. Concept Meetings are generally not necessary for 223(a)(7) applications. See [Chapter 4](#) for more details, and contact the HUD Office with questions.

### A.4.3.2 Firm Applications

A. The following checklist should be used for all Section 223(a)(7) Firm Applications:

**Project Name:** \_\_\_\_\_  
**FHA Project #:** \_\_\_\_\_

**Section 223(a)(7) Refinance  
Firm Application Exhibit Checklist**

Tab	No.	Exhibit Name	File Name	Incl.	N/A
<b>Section 1: Underwriting</b>					
1-1.	A.	Application Fee Pay.gov Receipt	PayGov	<input type="checkbox"/>	<input type="checkbox"/>

**Section 223(a)(7) Refinance  
Firm Application Exhibit Checklist**

Tab	No.	Exhibit Name	File Name	Incl.	N/A
	B.	Transmittal Letter	TrsLtr	<input type="checkbox"/>	
	C.	Completed Application Exhibit Checklist	Chklst	<input type="checkbox"/>	
1-2.	A.	Lender's Underwriter's Narrative Summary	LndrNarr	<input type="checkbox"/>	
	B.	Lender Due Diligence Certification	LndrCert	<input type="checkbox"/>	
	C.	Lender's Certification Regarding Lobbying (24 CFR Part 87 Appendix A), and Disclosure Form (Appendix B), if applicable.	LndrByrdCert	<input type="checkbox"/>	
	D.	Lender Identity-of-Interest Disclosure	IOIDiscl	<input type="checkbox"/>	
	E.	Completed Project Analysis (Excel)	FHARpt	<input type="checkbox"/>	
1.3.		Lender's Underwriting HUD Forms			
	A.	HUD-92013 Application for Multifamily Housing Project	92013	<input type="checkbox"/>	
	B.	HUD-92013-D Reduced MIP Certification	92013D	<input type="checkbox"/>	<input type="checkbox"/>
1-4.		Wavier Requests			
	A.	HUD-2 Request for Wavier	HUD2	<input type="checkbox"/>	<input type="checkbox"/>
	B.	Supporting Documentation	HUD2Doc	<input type="checkbox"/>	<input type="checkbox"/>
1-5.		Miscellaneous/Other Underwriting Documents	MisUW	<input type="checkbox"/>	<input type="checkbox"/>
<b>Section 2: Third Party Reports</b>					
2-1.		Capital Needs Assessment (CNA)			
	A.	CAN e-Tool Submission Confirmation E-Mail	eTool	<input type="checkbox"/>	
2-2.		Specialty Reports, if any (i.e., LBP)	SpclRpts	<input type="checkbox"/>	<input type="checkbox"/>
<b>Section 3: Management Agent</b>					
3-1.		Required Management exhibits, if new Management Agent	MiscMgmt	<input type="checkbox"/>	<input type="checkbox"/>
<b>Section 4: Property Documents</b>					
4-1.		Existing Indebtedness			
	A.	Certification of Outstanding Obligations/Existing Indebtedness	CertOutOb	<input type="checkbox"/>	
	B.	Pay-Off Statement for each Obligation	9807	<input type="checkbox"/>	
	C.	HUD-9807 Prepayment Authorization, if applicable	PayOffStmt	<input type="checkbox"/>	<input type="checkbox"/>
	D.	Current HUD-94001M Note	MtgNote		
	E.	Certified Statement of Escrow Balances	EscrwBal	<input type="checkbox"/>	
4-2.		Title & Survey			
	A.	Current Tile Report	Title	<input type="checkbox"/>	
	B.	Easement and Maintenance	EaseMainAgt	<input type="checkbox"/>	<input type="checkbox"/>
	C.	Survey Affidavit, if appliable	SurvAfdv	<input type="checkbox"/>	<input type="checkbox"/>
	D.	ALTA/ACSM Land Title Survey, if required	Survey	<input type="checkbox"/>	<input type="checkbox"/>
	E.	HUD-91073M Surveyors Report, if required	SurvRpt	<input type="checkbox"/>	<input type="checkbox"/>
4-3.	A.	Current and Prior Certified Rent Rolls (last 6 months)	RentRoll	<input type="checkbox"/>	
	B.	Occupancy History, by Quarter (last 3 years)	OcopyHstry	<input type="checkbox"/>	
4-4.		Miscellaneous property documents, as applicable			
	A.	Section 8 HAP Contract and Rent Schedule	HAP	<input type="checkbox"/>	<input type="checkbox"/>
	B.	Evidence of Real Estate Tax Abatement/Exemption	TaxAbtExp	<input type="checkbox"/>	<input type="checkbox"/>
	C.	Commercial Lease(s)	CmlLse	<input type="checkbox"/>	<input type="checkbox"/>
	D.	Other property documents	MiscProp	<input type="checkbox"/>	<input type="checkbox"/>
<b>Section 5: Mortgage Credit (separately bound)</b>					
5-1.		Identification of Principals for Regulatory Agreement Section 50 provision	Sec50Reg	<input type="checkbox"/>	
5-2.		HUD-92013-Supp Supplement to Application	92013S	<input type="checkbox"/>	

**Section 223(a)(7) Refinance  
Firm Application Exhibit Checklist**

Tab No.	Exhibit Name	File Name	Incl.	N/A
5-3.	Property Financial Statements			
	A. Audited/Certified Financial Statements (past 3 years)	FinSmt	<input type="checkbox"/>	
	B. Certified YTD Financial Statement, if required	FinSmtYTD	<input type="checkbox"/>	<input type="checkbox"/>
5-4.	HUD-91070M Consolidated Borrower Certifications	ConsolCert	<input type="checkbox"/>	
5-5.	Required MC exhibits, if new Principal(s)	MiscMC	<input type="checkbox"/>	<input type="checkbox"/>

## A.4.4 Sections 221(d)(4), 220, 231, and 241(a) Checklists

### A.4.4.1 Concept Meetings

The following information/exhibits must be included in Concept Meeting packages for all New Construction or Substantial Rehabilitation proposals:

1. Form HUD-92013 “Application for Multifamily Housing Project”, completed to the extent possible;
2. Project name and address;
3. Number of units (market-rate and affordable);
4. Section of the Act and activity (new construction or substantial rehabilitation);
5. Projected mortgage amount;
6. Mortgage term;
7. Basic information on developer and principals;
8. Management company;
9. General contractor;
10. Previous HUD experience;
11. Geographic location with map;
12. Photographs of the subject and immediate surroundings;
13. Site improvements (existing/proposed);
14. Commercial component – discuss potential tenants;
15. Amenities;
16. Community/city/state support;
17. Green/sustainability issues;
18. Development status (e.g., have any permits/approvals been obtained?);
19. General market conditions, competitive properties, and comparable;

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- 20. Environmental issues;
- 21. Actual/potential risks and mitigating factors;
- 22. Any anticipated waiver requests.

## A.4.4.2 Pre-Applications

A. The following checklist should be used for all New Construction or Substantial Rehabilitation:

**Project Name:** \_\_\_\_\_  
**FHA Project #:** \_\_\_\_\_

### New Construction/Substantial Rehabilitation--Section 221(d)(4), 220, 231, and 241(a) Pre-Application Exhibit Checklist

Tab	No.	Exhibit Name	File Name	Incl.	N/A
<b>Section 1: Underwriting</b>					
1-1.	A.	Application Fee Pay.gov Receipt	PayGov	<input type="checkbox"/>	
	B.	Transmittal Letter	TrsLtr	<input type="checkbox"/>	
	C.	Completed Application Exhibit Checklist	Chklst	<input type="checkbox"/>	
1-2.	A.	HUD-92013-A Lender's Underwriter's Narrative	LndrNarr	<input type="checkbox"/>	
	B.	Lender Due Diligence Certification	LndrCert	<input type="checkbox"/>	
	C.	Lender's Certification Regarding Lobbying (24 CFR Part 87 Appendix A), and Disclosure Form (Appendix B), if applicable.	LndrByrdCert	<input type="checkbox"/>	
	D.	Lender Identity-of-Interest Disclosure	IOIDiscl	<input type="checkbox"/>	
	E.	HUD-92013-C FHA Summary Report (Excel)	FHARpt	<input type="checkbox"/>	
1.3.	Lender's Underwriting HUD Forms				
	A.	HUD-92013 Application for Multifamily Housing Project	92013	<input type="checkbox"/>	
	B.	HUD-92013-D Reduced MIP Certification	92013D	<input type="checkbox"/>	<input type="checkbox"/>
	C.	HUD-92264 Multifamily Summary Appraisal Report (Lender's version)	Lndr92264	<input type="checkbox"/>	<input type="checkbox"/>
	1.	Operating Deficit Calculation	IODCalc	<input type="checkbox"/>	<input type="checkbox"/>
	2.	List of Borrower's Other Fees	OtherFee	<input type="checkbox"/>	<input type="checkbox"/>
	3.	List of Contractor's Other Fees	GCOtherFee	<input type="checkbox"/>	<input type="checkbox"/>
	D.	HUD-92264-A Supplement to Project Analysis	92264A	<input type="checkbox"/>	<input type="checkbox"/>
1-4.	Wavier Requests				
	A.	HUD-2 Request for Wavier	HUD2	<input type="checkbox"/>	<input type="checkbox"/>
	B.	Supporting Documentation	HUD2Doc	<input type="checkbox"/>	<input type="checkbox"/>
	C.	If Section 220, evidence of eligibility	220Elig	<input type="checkbox"/>	<input type="checkbox"/>
1-5.	Miscellaneous/Other Underwriting Documents		MisUW	<input type="checkbox"/>	<input type="checkbox"/>
<b>Section 2: Third Party Reports</b>					
2-1.	Appraisal Report with Supporting Forms (HUD-92273 & 92274) (Appraiser's version)		Appraisal	<input type="checkbox"/>	
	A.	Hud-92264-T Rent Estimates for Low/Moderate Income Units, if applicable	99264T	<input type="checkbox"/>	<input type="checkbox"/>
2-2.	Market Study		MktRpt	<input type="checkbox"/>	<input type="checkbox"/>
2-3.	Environment Review				
	A.	HUD Environmental Review Online System (HEROS) Submission Confirmation Email	HEROS	<input type="checkbox"/>	

**New Construction/Substantial Rehabilitation–Section 221(d)(4), 220, 231, and 241(a)  
Pre-Application Exhibit Checklist**

Tab	No.	Exhibit Name	File Name	Incl.	N/A
	B.	Phase I Environmental Site Assessment (ESA)	PhaseI	<input type="checkbox"/>	
	C.	Phase II ESA, if applicable	PhaseII	<input type="checkbox"/>	<input type="checkbox"/>
2-4.		Capital Needs Assessment (CNA)			
	A.	CAN e-Tool Submission Confirmation E-Mail	eTool	<input type="checkbox"/>	<input type="checkbox"/>
	B.	Relocation Plan, if applicable	ReloPlan	<input type="checkbox"/>	<input type="checkbox"/>
2-5.		Architectural & Cost Analysis Report	ArchCostRpt	<input type="checkbox"/>	<input type="checkbox"/>
2-6.		Engineer or Specialty Reports, if any	SpclRpts	<input type="checkbox"/>	<input type="checkbox"/>
<b>Section 3: Management Agent</b>					
3-1.		Organizational Chart (only if Identity-of-Interest)	MgmtOrgCht	<input type="checkbox"/>	<input type="checkbox"/>
3-2.		HUD Management Forms			
	A.	Resume of Management Agent including Schedule of Managed Properties	MgmtRes	<input type="checkbox"/>	<input type="checkbox"/>
	B.	HUD-9832 Management Entity Profile	9832	<input type="checkbox"/>	<input type="checkbox"/>
	C.	HUD-9839-A, B, or C Certification	9839	<input type="checkbox"/>	<input type="checkbox"/>
	D.	Management Plan and Sample Lease	MgmtPln	<input type="checkbox"/>	<input type="checkbox"/>
	E.	Management Agreement	MgmtAgmt	<input type="checkbox"/>	<input type="checkbox"/>
	F.	Evidence of Fidelity Bond Insurance	FidelityIns	<input type="checkbox"/>	<input type="checkbox"/>
	G.	HUD-935.2A Affirmative Fair Housing Marketing Plan (AFHMP)	AFHMP	<input type="checkbox"/>	<input type="checkbox"/>
3-3.		Miscellaneous/Other Management Documents	MiscMgmt	<input type="checkbox"/>	<input type="checkbox"/>
<b>Section 4: Property Documents</b>					
4-1.	A.	If Refinance:			
	1.	Purchase & Sale Agreement with Amendments and Extensions	SaleCttr	<input type="checkbox"/>	<input type="checkbox"/>
	B.	If Purchased in the last 3 years			
	1.	Purchase Contract or Settlement Statement	RecntPrch	<input type="checkbox"/>	<input type="checkbox"/>
	2.	Last Arm's Length Certification	LALStmt	<input type="checkbox"/>	<input type="checkbox"/>
	C.	Certification of Outstanding Obligations/Existing Indebtedness	CertOutOb	<input type="checkbox"/>	<input type="checkbox"/>
4-2.		Title & Survey			
	A.	Preliminary Tile Report	Title	<input type="checkbox"/>	<input type="checkbox"/>
	B.	Easement and Maintenance Agreements (Existing and Proposed)	EaseMainAgt	<input type="checkbox"/>	<input type="checkbox"/>
	C.	ALTA/ACSM Land Title Survey	Survey	<input type="checkbox"/>	<input type="checkbox"/>
	D.	HUD-91073M Surveyor's Report	SurvRpt	<input type="checkbox"/>	<input type="checkbox"/>
	E.	Location Maps and Photographs	MapPhoto	<input type="checkbox"/>	
4-3.		Evidence of Site Control (e.g. Deed, Lease)	SiteCtrl	<input type="checkbox"/>	
4-4.		Evidence of Zoning Compliance	Zoning	<input type="checkbox"/>	<input type="checkbox"/>
4-5.		Multiple Services and Utility Assurance Letters (if New Construction)			
	A.	Electricity	Electric	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	B.	Natural Gas or Oil	Gas	<input type="checkbox"/>	<input type="checkbox"/>
	C.	Telephone	Phone	<input type="checkbox"/>	<input type="checkbox"/>
	D.	Cable Television	Cable	<input type="checkbox"/>	<input type="checkbox"/>
	E.	Internet	Internet	<input type="checkbox"/>	<input type="checkbox"/>
	F.	Water and Sewer Service, or Report from Official if Private Water/Sewer	WtrSwr	<input type="checkbox"/>	<input type="checkbox"/>

**New Construction/Substantial Rehabilitation–Section 221(d)(4), 220, 231, and 241(a)  
Pre-Application Exhibit Checklist**

Tab	No.	Exhibit Name	File Name	Incl.	N/A
	G.	Garbage Collection	Trash	<input type="checkbox"/>	<input type="checkbox"/>
	H.	Storm Sewer	StormSwr	<input type="checkbox"/>	<input type="checkbox"/>
4-6.		Miscellaneous property documents, as applicable			
	A.	Section 8 HAP Contract and Rent Schedule	HAP	<input type="checkbox"/>	<input type="checkbox"/>
	B.	Evidence of Real Estate Tax Abatement/Exemption	TaxAbtExp	<input type="checkbox"/>	<input type="checkbox"/>
	C.	Commercial Lease(s)	CmlLse	<input type="checkbox"/>	<input type="checkbox"/>
	D.	Master Lease	MstLease	<input type="checkbox"/>	<input type="checkbox"/>
	E.	Other property documents	MiscProp	<input type="checkbox"/>	<input type="checkbox"/>
<b>Section 5: Mortgage Credit (separately bound)</b>					
<b>MC Folder 1 – Borrower</b>					
5-1.		Organizational Chart	OrgCht	<input type="checkbox"/>	<input type="checkbox"/>
	A.	List of Principals	Principal	<input type="checkbox"/>	
	B.	Resumes	Resume	<input type="checkbox"/>	
5-2.		Organizational Documents (provide Draft if LIHTC)			
	A.	Articles of Incorporation/Organization, Partnership Agreement, or Operating Agreement	OrgDocs	<input type="checkbox"/>	<input type="checkbox"/>
5-3.		Previous Participation Certification			
	A.	Active Partners Performance System (APPS) Submission or Form HUD-2530	Apps	<input type="checkbox"/>	
5-4.		Credit Report			
	A.	Credit Report	CrdtRpt	<input type="checkbox"/>	<input type="checkbox"/>
	B.	HUD-92013-Supp Supplement to Application	92013S	<input type="checkbox"/>	<input type="checkbox"/>
	C.	Verification of EIN/SSN	EIN	<input type="checkbox"/>	<input type="checkbox"/>
	D.	Verification of Cash to Close	VOD	<input type="checkbox"/>	<input type="checkbox"/>
5-5.		Property Financial Statements			
	A.	Audited/Certified Financial Statement (past 3 years)	FinSmt	<input type="checkbox"/>	<input type="checkbox"/>
	B.	Certified YTD Financial Statement with Supporting Schedules, if required	FinSmtYTD	<input type="checkbox"/>	<input type="checkbox"/>
	C.	CPA Review of most recent unaudited Financial Statements, if required	CPARvw	<input type="checkbox"/>	<input type="checkbox"/>
5-6.		HUD-91070M Consolidated Borrower Certifications	ConsolCert	<input type="checkbox"/>	<input type="checkbox"/>
5-7.		Other Funding Sources (Grants/Loans/Tax Credits), if applicable			
	A.	Commitment Letter(s)	CmLtr	<input type="checkbox"/>	<input type="checkbox"/>
	B.	Tax Credit Equity Pay-In Schedule	TCEqSch	<input type="checkbox"/>	<input type="checkbox"/>
	C.	Executed Tax Credit Reservation Letter	TCRes	<input type="checkbox"/>	<input type="checkbox"/>
	D.	Source and Uses Statement	SUStmt	<input type="checkbox"/>	<input type="checkbox"/>
	E.	HUD-2880 Applicant/Recipient Disclosure Report	2880	<input type="checkbox"/>	<input type="checkbox"/>
	F.	Bridge Loan Agreement(s)	Bridge	<input type="checkbox"/>	<input type="checkbox"/>
	G.	Subsidy Layering Review, if required	SLR	<input type="checkbox"/>	<input type="checkbox"/>
5-8.		Miscellaneous/Other mortgage credit documents	MicsMC	<input type="checkbox"/>	<input type="checkbox"/>
<b>MC Folder 2 (create as many as needed) – Principal, General Contractor, or Management Agent</b>					
5-1.		Organizational Chart	OrgCht	<input type="checkbox"/>	<input type="checkbox"/>
	A.	List of Principals	Prncpl	<input type="checkbox"/>	<input type="checkbox"/>
	B.	Resumes	Resume	<input type="checkbox"/>	<input type="checkbox"/>
5-2.		Organizational Documents			



**New Construction/Substantial Rehabilitation–Section 221(d)(4), 220, 231, and 241(a)  
Pre-Application Exhibit Checklist**

<b>Tab</b>	<b>No.</b>	<b>Exhibit Name</b>	<b>File Name</b>	<b>Incl.</b>	<b>N/A</b>
	A.	Articles of Incorporation/Organization, Partnership Agreement, or Operating Agreement	OrgDocs	<input type="checkbox"/>	<input type="checkbox"/>
5-3.		Previous Participation Certification			
	A.	Active Partners Performance System (APPS) Submission or Form HUD-2530	APPS	<input type="checkbox"/>	<input type="checkbox"/>
5-4.		Credit Reports			
	A.	Credit Report	CrdtRpt	<input type="checkbox"/>	<input type="checkbox"/>
	B.	HUD-922013-Supp Supplement to Application	92013S	<input type="checkbox"/>	<input type="checkbox"/>
	C.	Verification of EIN/SNN	EIN	<input type="checkbox"/>	<input type="checkbox"/>
5-5.		Financial Statements			
	A.	Audited/Certified (or CPA-Reviewed, if unaudited) Financial Statement (most recent full year) or HUD-92417 for individuals	FinSmt	<input type="checkbox"/>	<input type="checkbox"/>
	B.	Certified YTD Financial Statement, if required	FinSMtYTD	<input type="checkbox"/>	<input type="checkbox"/>
	C.	REO Schedule & Schedule of Mortgage Debt	REODebt	<input type="checkbox"/>	<input type="checkbox"/>
	D.	Other Business Concerns	BusCncrns	<input type="checkbox"/>	<input type="checkbox"/>
5-6.		Miscellaneous/Other mortgage credit documents	MicsMC	<input type="checkbox"/>	<input type="checkbox"/>
<b>Section 6. Construction and Architectural Documents</b>					
6-1.		Plans and Specifications			
	A.	Plans (PDF)	Plans	<input type="checkbox"/>	<input type="checkbox"/>
	B.	Specification Manual	Specs	<input type="checkbox"/>	<input type="checkbox"/>
6-2.		State, City, or County Approval of Plans, if available	PlnApprvl	<input type="checkbox"/>	<input type="checkbox"/>
6-3.		Soils Report and Foundation Analysis	SoilRpt	<input type="checkbox"/>	<input type="checkbox"/>
6-4.	A.	HUD-2328 Contractor’s Cost Breakdown	2328	<input type="checkbox"/>	<input type="checkbox"/>
	B.	Identity-of-Interest Disclosure and 50/75% Rule Disclosure	IOIDis5075	<input type="checkbox"/>	<input type="checkbox"/>
6-5.		Furniture, Fixtures & Equipment Schedule and Budget	FFE	<input type="checkbox"/>	<input type="checkbox"/>
6-6.		Early Commencement Documents	ErlyStrt	<input type="checkbox"/>	<input type="checkbox"/>
6-7.		Assurance of Completion			
	A.	Commitment Letter from Surety	SuretyLtr	<input type="checkbox"/>	<input type="checkbox"/>
	B.	Commitment Letter from Bank for Letter of Credit	LOCCmt	<input type="checkbox"/>	<input type="checkbox"/>
6-8.		Owner-Architect Agreement (AIA Form B108) and HUD Amendments			
	A.	Project Architect	B108	<input type="checkbox"/>	<input type="checkbox"/>
	B.	Supervisory Architect	SupvB108	<input type="checkbox"/>	<input type="checkbox"/>
6-9.	A.	Off-site Storage of Approved Building Materials	OffSiteStg	<input type="checkbox"/>	<input type="checkbox"/>
	B.	Off-site Improvements/Construction	OffSiteImp	<input type="checkbox"/>	<input type="checkbox"/>
6-10.		Design Architect Certification	DsgnArchCert	<input type="checkbox"/>	<input type="checkbox"/>

### A.4.4.3 Firm Applications

A. The following checklist should be used for all New Construction or Substantial Rehabilitation:

**Project Name:** \_\_\_\_\_  
**FHA Project #:** \_\_\_\_\_

**New Construction/Substantial Rehabilitation–Section 221(d)(4), 220, 231, and 241(a)  
Firm Application Exhibit Checklist**

Tab	No.	Exhibit Name	File Name	Incl.	N/A
<b>Section 1: Underwriting</b>					
1-1.	A.	Application Fee Pay.gov Receipt	PayGov	<input type="checkbox"/>	
	B.	Transmittal Letter	TrsLtr	<input type="checkbox"/>	
	C.	Completed Application Exhibit Checklist	Chklst	<input type="checkbox"/>	
1-2.	A.	HUD-92013-A Lender’s Underwriter’s Narrative	LndrNarr	<input type="checkbox"/>	
	B.	Lender Due Diligence Certification	LndrCert	<input type="checkbox"/>	
	C.	Lender’s Certification Regarding Lobbying (24 CFR Part 87 Appendix A), and Disclosure Form (Appendix B), if applicable.	LndrByrdCert	<input type="checkbox"/>	
	D.	Lender Identity-of-Interest Disclosure	IOIDiscl	<input type="checkbox"/>	
	E.	HUD-92013-C FHA Summary Report (Excel)	FHARpt	<input type="checkbox"/>	
1.3.	Lender’s Underwriting HUD Forms				
	A.	HUD-92013 Application for Multifamily Housing Project	92013	<input type="checkbox"/>	
	B.	HUD-92013-D Reduced MIP Certification	92013D	<input type="checkbox"/>	<input type="checkbox"/>
	C.	HUD-92264 Multifamily Summary Appraisal Report (Lender’s version)	Lndr92264	<input type="checkbox"/>	
	1.	Operating Deficit Calculation	IODCalc	<input type="checkbox"/>	<input type="checkbox"/>
	2.	List of Borrower’s Other Fees	OtherFee	<input type="checkbox"/>	<input type="checkbox"/>
	3.	List of Contractor’s Other Fees	GCOtherFee	<input type="checkbox"/>	<input type="checkbox"/>
	D.	HUD-92264-A Supplement to Project Analysis	92264A	<input type="checkbox"/>	
1-4.	Wavier Requests				
	A.	HUD-2 Request for Wavier	HUD2	<input type="checkbox"/>	<input type="checkbox"/>
	B.	Supporting Documentation	HUD2Doc	<input type="checkbox"/>	<input type="checkbox"/>
	C.	If Section 220, evidence of eligibility	220Elig	<input type="checkbox"/>	<input type="checkbox"/>
1-5.	Miscellaneous/Other Underwriting Documents		MisUW	<input type="checkbox"/>	<input type="checkbox"/>
<b>Section 2: Third Party Reports</b>					
2-1.	Appraisal Report with Supporting Forms (HUD-92273 & 92274) (Appraiser’s version)		Appraisal	<input type="checkbox"/>	
	A.	Hud-92264-T Rent Estimates for Low/Moderate Income Units, if applicable	99264T	<input type="checkbox"/>	<input type="checkbox"/>
2-2.	Market Study		MktRpt	<input type="checkbox"/>	<input type="checkbox"/>
2-3.	Environment Review				
	A.	HUD Environmental Review Online System (HEROS) Submission Confirmation Email	HEROS	<input type="checkbox"/>	
	B.	Phase I Environmental Site Assessment (ESA)	PhaseI	<input type="checkbox"/>	
	C.	Phase II ESA, if applicable	PhaseII	<input type="checkbox"/>	<input type="checkbox"/>
2-4.	Capital Needs Assessment (CNA)				
	A.	CAN e-Tool Submission Confirmation E-Mail	eTool	<input type="checkbox"/>	
	B.	Relocation Plan, if applicable	ReloPlan	<input type="checkbox"/>	<input type="checkbox"/>

**New Construction/Substantial Rehabilitation–Section 221(d)(4), 220, 231, and 241(a)  
Firm Application Exhibit Checklist**

Tab	No.	Exhibit Name	File Name	Incl.	N/A
2-5.		Architectural & Cost Analysis Report	ArchCostRpt	<input type="checkbox"/>	<input type="checkbox"/>
2-6.		Engineer or Specialty Reports, if any	SpclRpts	<input type="checkbox"/>	<input type="checkbox"/>
<b>Section 3: Management Agent</b>					
3-1.		Organizational Chart (only if Identity-of-Interest)	MgmtOrgCht	<input type="checkbox"/>	<input type="checkbox"/>
3-2.		HUD Management Forms			
	A.	Resume of Management Agent including Schedule of Managed Properties	MgmtRes	<input type="checkbox"/>	<input type="checkbox"/>
	B.	HUD-9832 Management Entity Profile	9832	<input type="checkbox"/>	
	C.	HUD-9839-A, B, or C Certification	9839	<input type="checkbox"/>	
	D.	Management Plan and Sample Lease	MgmtPln	<input type="checkbox"/>	
	E.	Management Agreement	MgmtAgmt	<input type="checkbox"/>	
	F.	Evidence of Fidelity Bond Insurance	FidelityIns	<input type="checkbox"/>	
	G.	HUD-935.2A Affirmative Fair Housing Marketing Plan (AFHMP)	AFHMP	<input type="checkbox"/>	
3-3.		Miscellaneous/Other Management Documents	MiscMgmt	<input type="checkbox"/>	<input type="checkbox"/>
<b>Section 4: Property Documents</b>					
4-1.	A.	If Purchase:			
	1.	Purchase & Sale Agreement with Amendments and Extensions	SaleCtrt	<input type="checkbox"/>	<input type="checkbox"/>
	B.	If Purchased in the last 3 years			
	1.	Purchase Contract or Settlement Statement	RecntPrch	<input type="checkbox"/>	<input type="checkbox"/>
	2.	Last Arm's Length Certification	LALStmt	<input type="checkbox"/>	<input type="checkbox"/>
	C.	Certification of Outstanding Obligations/Existing Indebtedness	CertOutOb	<input type="checkbox"/>	<input type="checkbox"/>
4-2.		Title & Survey			
	A.	Preliminary Tile Report	Title	<input type="checkbox"/>	
	B.	Easement and Maintenance Agreements (Existing and Proposed)	EaseMainAgt	<input type="checkbox"/>	<input type="checkbox"/>
	C.	ALTA/ACSM Land Title Survey	Survey	<input type="checkbox"/>	
	D.	HUD-91073M Surveyor's Report	SurvRpt	<input type="checkbox"/>	
	E.	Location Maps and Photographs	MapPhoto	<input type="checkbox"/>	
4-3.		Evidence of Site Control (e.g. Deed, Lease)	SiteCtrl	<input type="checkbox"/>	
4-4.		Evidence of Zoning Compliance	Zoning	<input type="checkbox"/>	
4-5.		Multiple Services and Utility Assurance Letters (if New Construction)			
	A.	Electricity	Electric	<input type="checkbox"/>	<input type="checkbox"/>
	B.	Natural Gas or Oil	Gas	<input type="checkbox"/>	<input type="checkbox"/>
	C.	Telephone	Phone	<input type="checkbox"/>	<input type="checkbox"/>
	D.	Cable Television	Cable	<input type="checkbox"/>	<input type="checkbox"/>
	E.	Internet	Internet	<input type="checkbox"/>	<input type="checkbox"/>
	F.	Water and Sewer Service, or Report from Official if Private Water/Sewer	WtrSwr	<input type="checkbox"/>	<input type="checkbox"/>
	G.	Garbage Collection	Trash	<input type="checkbox"/>	<input type="checkbox"/>
	H.	Storm Sewer	StormSwr	<input type="checkbox"/>	<input type="checkbox"/>
4-6.		Miscellaneous property documents, as applicable			
	A.	Section 8 HAP Contract and Rent Schedule	HAP	<input type="checkbox"/>	<input type="checkbox"/>
	B.	Evidence of Real Estate Tax Abatement/Exemption	TaxAbtExp	<input type="checkbox"/>	<input type="checkbox"/>

**New Construction/Substantial Rehabilitation-Section 221(d)(4), 220, 231, and 241(a)  
Firm Application Exhibit Checklist**

Tab	No.	Exhibit Name	File Name	Incl.	N/A
	C.	Commercial Lease(s)	CmlLse	<input type="checkbox"/>	<input type="checkbox"/>
	D.	Master Lease	MstLease	<input type="checkbox"/>	<input type="checkbox"/>
	E.	Other property documents	MiscProp	<input type="checkbox"/>	<input type="checkbox"/>
<b>Section 5: Mortgage Credit (separately bound)</b>					
<b>MC Folder 1 - Borrower</b>					
5-1.		Organizational Chart	OrgCht	<input type="checkbox"/>	
	A.	List of Principals	Principal	<input type="checkbox"/>	
	B.	Resumes	Resume	<input type="checkbox"/>	
5-2.		Organizational Documents (provide Draft if LIHTC)			
	A.	Articles of Incorporation/Organization, Partnership Agreement, or Operating Agreement	OrgDocs	<input type="checkbox"/>	
5-3.		Previous Participation Certification			
	A.	Active Partners Performance System (APPS) Submission or Form HUD-2530	Apps	<input type="checkbox"/>	
5-4.		Credit Report			
	A.	Credit Report	CrdtRpt	<input type="checkbox"/>	
	B.	HUD-92013-Supp Supplement to Application	92013S	<input type="checkbox"/>	
	C.	Verification of EIN/SSN	EIN	<input type="checkbox"/>	
	D.	Verification of Cash to Close	VOD	<input type="checkbox"/>	
5-5.		Property Financial Statements			
	A.	Audited/Certified Financial Statement (past 3 years)	FinSmt	<input type="checkbox"/>	
	B.	Certified YTD Financial Statement with Supporting Schedules, if required	FinSmtYTD	<input type="checkbox"/>	<input type="checkbox"/>
	C.	CPA Review of most recent unaudited Financial Statements, if required	CPARvw	<input type="checkbox"/>	<input type="checkbox"/>
5-6.		HUD-91070M Consolidated Borrower Certifications	ConsolCert	<input type="checkbox"/>	
5-7.		Other Funding Sources (Grants/Loans/Tax Credits), if applicable			
	A.	Commitment Letter(s)	CmLtr	<input type="checkbox"/>	<input type="checkbox"/>
	B.	Tax Credit Equity Pay-In Schedule	TCEqSch	<input type="checkbox"/>	<input type="checkbox"/>
	C.	Executed Tax Credit Reservation Letter	TCRes	<input type="checkbox"/>	<input type="checkbox"/>
	D.	Source and Uses Statement	SUSmt	<input type="checkbox"/>	<input type="checkbox"/>
	E.	HUD-2880 Applicant/Recipient Disclosure Report	2880	<input type="checkbox"/>	<input type="checkbox"/>
	F.	Bridge Loan Agreement(s)	Bridge	<input type="checkbox"/>	<input type="checkbox"/>
	G.	Subsidy Layering Review, if required	SLR	<input type="checkbox"/>	<input type="checkbox"/>
5-8.		Miscellaneous/Other mortgage credit documents	MicsMC	<input type="checkbox"/>	<input type="checkbox"/>
<b>MC Folder 2 (create as many as needed) - Principal, General Contractor, or Management Agent</b>					
5-1.		Organizational Chart	OrgCht	<input type="checkbox"/>	<input type="checkbox"/>
	A.	List of Principals	Prncpl	<input type="checkbox"/>	<input type="checkbox"/>
	B.	Resumes	Resume	<input type="checkbox"/>	<input type="checkbox"/>
5-2.		Organizational Documents			
	A.	Articles of Incorporation/Organization, Partnership Agreement, or Operating Agreement	OrgDocs	<input type="checkbox"/>	<input type="checkbox"/>
5-3.		Previous Participation Certification			
	A.	Active Partners Performance System (APPS) Submission or Form HUD-2530	APPS	<input type="checkbox"/>	<input type="checkbox"/>
5-4.		Credit Reports			
	A.	Credit Report	CrdtRpt	<input type="checkbox"/>	<input type="checkbox"/>

**New Construction/Substantial Rehabilitation-Section 221(d)(4), 220, 231, and 241(a)  
Firm Application Exhibit Checklist**

<b>Tab</b>	<b>No.</b>	<b>Exhibit Name</b>	<b>File Name</b>	<b>Incl.</b>	<b>N/A</b>
5-5.	B.	HUD-922013-Supp Supplement to Application	92013S	<input type="checkbox"/>	<input type="checkbox"/>
	C.	Verification of EIN/SNN	EIN	<input type="checkbox"/>	<input type="checkbox"/>
	A.	Audited/Certified (or CPA-Reviewed, if unaudited) Financial Statement (most recent full year) or HUD-92417 for individuals	FinSmt	<input type="checkbox"/>	<input type="checkbox"/>
	B.	Certified YTD Financial Statement, if required	FinSMtYTD	<input type="checkbox"/>	<input type="checkbox"/>
	C.	REO Schedule & Schedule of Mortgage Debt	REODebt	<input type="checkbox"/>	<input type="checkbox"/>
5-6.	D.	Other Business Concerns	BusCncrns	<input type="checkbox"/>	<input type="checkbox"/>
		Miscellaneous/Other mortgage credit documents	MicsMC	<input type="checkbox"/>	<input type="checkbox"/>
<b>Section 6. Construction and Architectural Documents</b>					
6-1.		Plans and Specifications			
	A.	Plans (PDF)	Plans	<input type="checkbox"/>	
6-2.	B.	Specification Manual	Specs	<input type="checkbox"/>	
		State, City, or County Approval of Plans, if available	PlnApprvl	<input type="checkbox"/>	<input type="checkbox"/>
6-3.		Soils Report and Foundation Analysis	SoilRpt	<input type="checkbox"/>	
6-4.	A.	HUD-2328 Contractor's Cost Breakdown	2328	<input type="checkbox"/>	
	B.	Identity-of-Interest Disclosure and 50/75% Rule Disclosure	IOIDis5075	<input type="checkbox"/>	
6-5.		Furniture, Fixtures & Equipment Schedule and Budget	FFE	<input type="checkbox"/>	<input type="checkbox"/>
6-6.		Early Commencement Documents	ErlyStrt	<input type="checkbox"/>	<input type="checkbox"/>
6-7.		Assurance of Completion			
	A.	Commitment Letter from Surety	SuretyLtr	<input type="checkbox"/>	
6-8.	B.	Commitment Letter from Bank for Letter of Credit	LOCCmt	<input type="checkbox"/>	<input type="checkbox"/>
		Owner-Architect Agreement (AIA Form B108) and HUD Amendments			
6-9.	A.	Project Architect	B108	<input type="checkbox"/>	
	B.	Supervisory Architect	SupvB108	<input type="checkbox"/>	<input type="checkbox"/>
6-10.	A.	Off-site Storage of Approved Building Materials	OffSiteStg	<input type="checkbox"/>	<input type="checkbox"/>
	B.	Off-site Improvements/Construction	OffSiteImp	<input type="checkbox"/>	<input type="checkbox"/>
		Design Architect Certification	DsgnArchCert	<input type="checkbox"/>	

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## A.4.5 Sample MAP Invitation Letter

<Date>  
Mr./Ms.<Name>  
<Title>  
<Address>  
< >  
< >

Dear Mr./Ms. <Name>.:

Subject: MAP Invitation Letter  
Project No:<XXX-XXXX>  
Section <SOA>  
<Project Name>  
<City, State>

This is to inform you that our staff has reviewed the Pre-application materials for the subject proposal and finds it to be worthy of further consideration should you decide to submit a Firm Commitment application for mortgage insurance. There is a market for the proposal based upon our review of the appraisal and market study subject to updating all market assumptions before Firm Commitment. Subject to later confirmation or completion of the HUD environmental review, the site appears acceptable based on our preliminary inspection and the information provided.

In the event that you desire to continue with this project and submit an application for Firm Commitment, it is understood that the project will have the following characteristics:

Type of Unit	Sq. Ft.	Number	Monthly Market Rental
Efficiency	_____	_____	_____
One Bedroom	_____	_____	_____
Two Bedroom	_____	_____	_____
Three Bedroom	_____	_____	_____
Four Bedroom	_____	_____	_____
Total	_____	_____	_____

Equipment and Services included in the rent are:

Number of Parking Spaces: Enclosed \_\_\_\_\_ Open \_\_\_\_\_

Estimated Monthly Parking Rental \$ \_\_\_\_\_

Residential Accessory Income \$ \_\_\_\_\_

Commercial Area \_\_\_\_\_ sq. ft. Estimated Monthly Rental \$ \_\_\_\_\_

The operating expense estimate of \$\_\_\_\_\_ per unit per annum is preliminarily acceptable subject to updated and relevant data before the Firm Commitment. The total for all improvements appears to be within a reasonable range. Attached is the current wage decision for this area. Please go to <https://beta.sam.gov/> for any updates while preparing your Firm Commitment application.

Land value/as-is value will be determined at the Firm Commitment stage. Excess costs resulting from any unusual site conditions identified in the construction cost estimate at the Firm Commitment stage will be deducted from the land value fully improved (with offsite improvements installed). The HUD environmental review and environmental assessment and HUD previous participation (Form HUD-2530) will not be completed until the Firm Commitment package is submitted to HUD.

It is important to understand that this letter is not to be construed as a commitment on the part of FHA to insure a mortgage for your proposal. It is intended only to establish general agreement on the basic concept, market, rents, and expenses for your proposal. If the Firm Commitment application submitted is consistent with the Pre-application submission, does not trigger the thresholds for a more extensive review, and no problems arise because of environmental or previous participation issues, HUD should be able to complete its review within the scheduled time. If there are significant changes from the concept agreed to at the Pre-application submission, HUD will need more time to complete an extensive review and will not be bound by the scheduled review time and could result in rejection of the Firm Commitment application. Significant changes would include changes in location, building type, project market, rents, unit number, unit mix or gross project area that could cause a change in income, expense and demand assumptions and/or require a new market study and HUD review.

Therefore, you are invited to submit a Firm Commitment application for mortgage insurance on Form HUD-92013, "Application for Multifamily Housing Project", along with the required MAP lender deliverables, by *<insert date 120 days after the date of the letter>*. Under MAP, HUD requires an application fee of \$3 (30 basis points) per thousand of the mortgage amount; \$2 per thousand for market-rate and affordable properties located in qualified opportunity zones, or \$1.50 per thousand for broadly affordable properties located in qualified opportunity zones<sup>69</sup>. The balance due for the application fee must be paid at the Firm Commitment stage, with evidence of payment submitted with the Firm Commitment application.

The lender must advise HUD in writing within 30 days of the date of this letter of invitation whether or not it plans to submit an application for the particular project. If the lender fails to notify HUD within the time required, the invitation letter expires, and the lender will be required to repeat the Pre-application process.

The application for a Firm Commitment must be submitted within 120 days of the date of the letter of invitation. The Regional or Satellite Office may authorize extensions of up to 90 days past this 120-day limit, but there is no requirement that the extensions be approved. The HUD office will review the circumstances reported by the lender to justify an extension of time. The lender must certify and the Regional or Satellite Office must determine that the request to extend beyond 120-days is not likely to change the underwriting data on which the invitation was based or to undermine the feasibility of the project due to a change in the market or other factors determined at Pre-application. A request for an extension of time beyond the 90-days may be allowed with justifiable cause. These requests must be submitted by the Regional Director to the Director of the Office of Multifamily Development (Headquarters) or his/her designee. The authorization request must provide the additional time requested, the Regional or Satellite Office's recommendation, and the reasons the extension is needed.

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<sup>69</sup> Housing Notice 2019-07 Incentives for FHA Mortgage Insurance for Properties Located in Opportunity Zones, allows reduced application fees for properties located in qualified opportunity zones. Broadly affordable and affordable in this context are defined in HUD's Federal Register notice dated March 31, 2016 (81 FR 18473).



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Sincerely,  
<Space for ink signature>  
< >  
< >  
<Underwriter Name>  
<Job Title>  
<Office>

## A.4.6 Firm Commitment Templates

A. HUD staff will use the most current versions of the standard Firm Commitment templates published by HUD. Updated versions of the standard Firm Commitment templates for Sections 220, 221(4), 223(a)(7), 223(f), 231, and 241(a) can be found on HUDCLIPS in Housing Notice 2018-03. Further changes to these templates will be announced in future HUD Notices.

## A.4.7 FHA Project Number and Fees on Pay.gov

### A.4.7.1 Requesting an FHA Project Number

A. To request an FHA Project Number for a new application for FHA multifamily mortgage insurance, the Lender must email a completed FHA Project Number Request Form (see below) or the below information on company letterhead to the appropriate HUD Office.

B. It is expected that the full application will be submitted within 30 calendar days of the request for the FHA Project Number.

C. All requests must include the below information:

1. Application Purpose & Type;
  - a. Section of the Act – specify the applicable SOA/program (e.g., 221(d)(4), 223(f), 223(a)(7), etc.);
  - b. Activity – specify the applicable activity (e.g., new construction, substantial rehabilitation, purchase, refinance, improvements, additions);
  - c. Timing of Insurance – specify Insurance of Advances or Insurance Upon Completion;
  - d. Application Phase – specify Pre-Application or Firm Commitment Application;
  - e. MAP or TAP – specify MAP or TAP;
  - f. If 223(f), provide the date of the final Certificate of Occupancy from the project’s construction or most recent sub rehab;
  - g. If 241(a), provide the Parent/Primary FHA Project Number of the underlying insured first mortgage loan;
  - h. Is the property currently HUD insured, held, or owned? – Yes or No;

- 1) If yes, provide the Superseded FHA Project Number(s) for the existing insured mortgage loan(s) being refinanced;
- i. Does the property have a current Section 8 HAP Contract or PRAC? – Yes or No;
  - 1) If yes, provide the Section 8 HAP Contract or PRAC Number
2. Mortgage Information:
  - a. Borrower Type – specify the applicable borrower type (e.g., Profit-Motivated, Non-Profit, Cooperative, etc.);
  - b. Lender Name – provide the Lender’s name;
  - c. Lender ID Number – provide the Lender’s 5-digit Lender ID Number;
  - d. Mortgage Amount – provide the proposed mortgage amount (subject to change);
  - e. Permanent Interest Rate – provide the proposed interest rate (subject to change);
  - f. If 223(f), is Cash Out being requested? – Yes or No;
    - 1) If yes, provide the proposed Cash Out amount (subject to change).
3. Property Information:
  - a. Project Name – provide the project name (this is the name that will be used for loan closing and servicing);
  - b. Primary Street Address – provide the primary street address of the project (if the proposed project does not yet have a street address, specify the nearest intersection or provide another location identifier);
  - c. City – provide the name of the city where the project is located;
  - d. State – provide the name of the state or commonwealth where the project is located;
  - e. ZIP Code – provide the ZIP Code where the project is located;
  - f. County – provide the name of the county where the project is located;
  - g. Is the project comprised of multiple/scattered sites? – Yes or No;
    - 1) If yes, provide the number of sites and an address for each site;
  - h. Congressional District – identify the Congressional District where the project is located.
4. Unit Breakdown:
  - a. Revenue Units – provide the number of revenue units;
  - b. Non-Revenue Units – provide the number of non-revenue units;
  - c. Total Units – provide the total number of units;
  - d. Facility Type – specify Apartments or Cooperative.
5. Special Characteristics:
  - a. Is the project receiving a Low-Income Housing Tax Credit (LIHTC) equity investment or does it currently have LIHTC use restrictions? – Yes or No;

- 1) If yes, specify one:
    - a) 4% LIHTC/Tax Exempt Bonds; or
    - b) 9% LIHTC;
  - 2) If yes, also specify one:
    - a) New credits; or
    - b) Existing/prior credits but still under use restriction;
  - 3) If new credits, is the application being submitted under the LIHTC Pilot? (see Notice H 2019-03) – Yes or No;
    - a) If yes, specify one:
      - i. Expedited Track; or
      - ii. Standard Track.
  - b. Is the project located in a qualified Opportunity Zone? (see Notice H 2019-10) – Yes or No;
    - 1) If yes, is the project receiving an equity investment from a Qualified Opportunity Fund? – Yes or No;
  - c. MIP Category – specify the applicable MIP category (refer to the Federal Register) by selecting one:
    - 1) Market;
    - 2) Market/Green;
    - 3) Affordable;
    - 4) Affordable/Green;
    - 5) Broadly Affordable;
    - 6) Broadly Affordable/Green.
  - d. Upfront MIP % – specify the applicable Upfront MIP %;
  - e. Annual MIP % – specify the applicable Annual MIP %;
  - f. Is the project undergoing a simultaneous Rental Assistance Demonstration (RAD) conversion? (see Notice H 2019-09) – Yes or No;
  - g. Is the project receiving HOME funds as a source of a financing? – Yes or No;
  - h. Is the project receiving CDBG funds as a source of a financing? – Yes or No;
- D.** A Microsoft Excel version of the FHA Project Number Request Form can be downloaded at: [https://www.hud.gov/program\\_offices/administration/hudclips/guidebooks/hsg-GB4430](https://www.hud.gov/program_offices/administration/hudclips/guidebooks/hsg-GB4430).
- E.** HUD is currently developing an online portal that will soon be used for FHA Project Number requests, as well as electronic submissions of applications and other documents to HUD. A Mortgagee Letter with details and revised instructions will be issued when the portal is ready for implementation. Until then, the instructions in [Appendix 4](#) should be followed.

## A.4.7.2 Paying Multifamily Fees on Pay.gov

A. Pay.gov must be used for the online payment of the following Multifamily Fees for all FHA multifamily mortgage insurance applications:

1. Application/Exam Fee;
2. Reopening Fee, if required;
3. Upfront MIP;
4. Inspection Fee.

### A.4.7.2.1 Creating a User Account

A. Lenders are to establish their own internal procedures for paying Multifamily Fees through Pay.gov. These procedures will not be dictated by HUD; however, Lenders that are planning to access the Pay.gov public form on a recurring basis may find it useful to create a Pay.gov user account through the self-enrollment process. To create an account, click the “Create an Account” button in the upper right corner at the following website and follow the instructions: <https://www.pay.gov/public/home>

### A.4.7.2.2 Completing the Payment Form

A. To pay a Multifamily Fee, visit the following website and complete the HUD Office of Multifamily Production Programs Fees form: <https://www.pay.gov/public/form/start/67950760>.

B. The following fields must be carefully completed on the form:

1. Transaction Type – select “Lender”;
2. Transaction Date – this will be populated automatically;
3. FHA Lender Name – enter the Lender’s name (up to 200 characters);
4. FHA Lender Number – enter the Lender’s 5-digit Lender ID Number;
5. FHA Project Number – enter the 8-digit FHA Project Number;
6. Project Name – enter the project name (up to 200 characters);
7. Project City – enter the name of the city where the project is located;
8. Project State – enter the name of the state or commonwealth where the project is located;
9. Program Type – select the appropriate SOA/program type from the pull-down menu;
10. Project Type – select the appropriate activity/project type from the pull-down menu (Note: this selection can only be made after the Program Type has been selected);
11. Does the project have new or existing Low-Income Housing Tax Credits (LIHTC)? – select one:
  - a. Yes – 4% LIHTC / Tax Exempt Bonds;
  - b. Yes – 9% LIHTC;
  - c. No.

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12. Is the project located in an Opportunity Zone? – select one:
    - a. Yes – Market or Affordable;
    - b. Yes – Broadly Affordable;
    - c. No.
  13. Section of the Act – this 3-digit SOA code will be populated automatically after the Program Type and Project Type have been selected.
  14. Fee Type – select the appropriate fee type from the pull-down menu:
    - a. Application/Exam Fee (fee type 7);
    - b. Reopening Fee (fee type 6);
    - c. Upfront Mortgage Insurance Premium (MIP) (fee type 2);
    - d. Inspection Fee (fee type 6).
  15. Fee Amount – enter the correct fee or Upfront MIP amount;
  16. Fund – this will populate automatically after the Program Type, Project Type, and Fee Type have been selected.
- C.** After the information has been submitted and accepted, Pay.gov will provide the submitter a receipt of the transaction which includes the information entered into the form and a Pay.gov Tracking ID. The receipt confirms that a payment was processed through Pay.gov but does not confirm that the funds have cleared. ACH transactions generally require one banking business day to settle. In instances of insufficient funds, a supplemental payment will be required. A copy of the receipt must be included in the application or closing package submitted to the HUD Office. If it is later discovered that any of the information that was entered into Pay.gov is incorrect, the lender should notify the HUD Office so that it can be corrected.

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## Appendix 5 Architectural and Construction Analysis

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### A.5.1 Property Standards and Survey Criteria

#### A.5.1.1 Minimum Property Standards (HUD Handbook 4910.1)

A. The Minimum Property Standards (MPS) for Housing requirements are applicable as follows:

1. New construction and Substantial Rehabilitation. design must meet all of the MPS.
2. Existing Buildings design must meet the requirements shown below.
  - a. Properties that were originally constructed or substantially rehabilitated under Section 221(d)(4) must meet all of MPS when being acquired or refinanced under Section 223(f), refinanced under Section 223(a)(7) or altered or repaired under Section 241(a).
  - b. Other properties being acquired/refinanced under Section 223(f) or 223(a)(7), or submitted under Section 241(a) may meet only the following sections of the MPS:
    - 1) Chapter 1, Section 100-3, Requirements for Accessibility to Physically Disabled People;
    - 2) Chapter 2, The General Acceptability Criteria (all of Chapter 2); and
    - 3) No other sections of the MPS apply retroactively for existing buildings.
3. Local Building codes or nationally recognized building codes accepted or designated by the local HUD Office are part of the MPS.
  - a. The Field Office enforces and interprets accepted local building codes for HUD; and
  - b. The Field Office does not enforce local building codes for the local Government.
4. Minimum Design Standards for Community Sewerage (HUD Handbook 4940.3) requirements must be met for community sewage systems design and construction.

#### A.5.1.2 Commercial Use and Daycare Facilities

A. The term "Commercial" <sup>70</sup> is applied to any space or facility permitted and acceptable for "Nonresidential Use" from which income is derived or anticipated. However, facilities such as swimming pools and garages to be used solely by tenants are not considered commercial even though fees may be collected.

1. Generally, the nature and extent of nonresidential uses should serve the commercial needs of tenants and residents of the neighborhood in which the property is located.
2. The aggregate commercial floor area may not exceed the percentage limits established by program as described in [Chapter 3](#) of the MAP Guide. When calculating commercial space as a percent of floor

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<sup>70</sup> The term "Commercial" is not the same in definition or in reference to the term used in International Building Code or a term that may exist in other building standards.

area, the numerator is the aggregate commercial area including corridors, stairs, elevators, lobbies, garage parking, and other service areas used for commercial purposes, but excludes laundry space, project storage space, and resident garage parking. The denominator is building area for all uses.

3. Design of commercial facilities must be harmonious with the project and conform to standards of design and construction and local zoning and building codes.
4. Do not include fixtures, equipment, furnishings, or finish for commercial spaces in the mortgage unless customarily provided in competitive projects. But a commercial lease build-out allowance may be needed and may be required as a required escrow. In addition, future commercial tenant build-out costs (for releasing after initial lease-up) may be budgeted as part of future capital costs and included in the Reserve for Replacements.
5. Space for day care facilities must be adequate, appropriate to the market need, and conform to local and state requirements. In processing, it is considered as commercial space.

### **A.5.1.3 Equipment**

**A.** Equipment included as part of the mortgage security must be acknowledged by the Borrower and Lender to be part of the real estate and:

1. Be essential for successful operation and market acceptance.
2. Have qualities in design, construction, materials and finishes that are not subject to early deterioration or obsolescence.
3. Be appropriate to the location, the design of the building, and the anticipated occupants.

**B.** Equipment needed for operation and market acceptance, such as ranges and refrigerators, should be included. The equipment should be durable and selected to balance current capital cost against the need to fund future replacements.

1. Replacement is paid for from a reserve for replacements account sized in the CNA prepared in the CNA e-Tool and funded annually from project income.
2. Market-based expectations for Borrower-furnished equipment change over time. If doubts arise as to legal precedent concerning whether an item is chattel or real estate, essential and required items may be covered by a security agreement or chattel mortgage, as well as being covered by the mortgage on the real estate if deemed necessary by the Lender and its attorneys.

### **A.5.1.4 Ineligible Equipment**

**A.** Ineligible equipment includes supply items, utensils, tools, vehicles, mowers and tractors, portable equipment, furniture, furnishings, or accessories normally provided by residents or management and maintenance firms. But furniture, furnishings, and equipment (FFE) for tenant common use spaces (e.g., recreation and gym facilities, lobbies, tenant entertainment or hospitality spaces, etc.) may be allowed as chattel items and budgeted as described in [Chapter 5, Section 5.11](#).



### **A.5.1.5 Air Conditioning**

A. Air Conditioning of residential spaces is required for all properties except in markets located in climate zones where new units without air conditioning are commonly accepted. Where air conditioning is required to provide year-round indoor comfort, assure continued marketability, and prevent premature obsolescence, projects must be air-conditioned. Particular attention should be given to the need for air conditioning and ventilation in elevator structures, especially for senior citizens.

### **A.5.1.6 Water and Sewer**

A. Public water and sewerage facilities are generally required for multifamily projects. Lack of public water and sewer service is an indicator of the local jurisdiction's inability or unwillingness to provide such services and in most cases is a bar to new development. Construction of private water and sewer facilities may be considered only when such services can be provided at reasonable rates including consideration of long-term capital needs and when such facilities are supported and supervised by state or local authorities with jurisdiction. Existing properties relying on private water and sewer facilities must meet the same test of reasonable cost including long-term capital needs and local government support and supervision.

B. Water and/or sewerage facilities must:

1. Provide a sufficient supply of water with adequate pressure and satisfactory purification, anti-bacterial and chemical qualities approvable by municipality; and
2. Provide a sanitary waste system with adequate collection, treatment and final disposal of domestic waste that requires minimum maintenance and will not endanger the public health.

### **A.5.1.7 Duplicate Water and Sewerage Systems**

A. Duplicate water and sewerage systems are not acceptable, except where it is determined that the construction of a single system will be infeasible due to the topography of the site.

### **A.5.1.8 Individual Septic or Sewerage Systems**

A. Individual septic systems or sewerage systems designed to dispose of effluent by subsurface soil absorption methods are generally not suited for multifamily construction because of maintenance problems. Satisfactory operation can be expected only under unusually favorable soil conditions. When these methods of sewerage disposal are proposed, an environmental (sanitary) engineer, with no other interest in the project, should be hired by the Borrower to investigate soil and site conditions and make recommendations. A copy of the report must be available to the Project Architect and be included in the exhibits submitted for review by the Lender's Construction Analyst. When an existing property relies on a septic system, the Lender and Needs Assessor must conduct an intrusive examination by a qualified third party (environmental or sanitary engineer) who must investigate the maintenance history of the septic system and recommend current and future repairs, alterations, or replacements needed to assure continued satisfactory operation. An Operations and Maintenance Plan must be prepared as guidance to management and tenants on routine care and maintenance of the septic system

### **A.5.1.9 Privately Owned Offsite Water and Sewerage Systems**

A. Evidence of acceptable control are:

1. Certificate of Convenience and Necessity from the State Utility Regulatory Commission;
2. Franchise from local unit of Government;
3. Trust Deed;
4. Third Party Beneficiary Agreement; and
5. An incorporated non-profit owner's association.

B. If control of continuity of service and the equitability of the service rate schedule is other than (a) above, all legal documents and other appropriate exhibits must be acceptable to HUD's Counsel.

C. All community systems and privately-owned systems must meet local health authority or U.S. Environmental Protection Agency Maximum Contaminant Level (EPA MCL) standards.

### **A.5.1.10 Subsurface Exploration**

A. For new construction proposals, reliable information about subsurface conditions and foundation recommendations must be available to the Project Architect and the Lender's Construction Analyst prior to foundation design. In some cases, subsurface exploration may be needed for existing buildings.

1. The Project Architect must advise the owner of the scope and type of soils information and/or subsurface investigation required for structural design.
2. The Borrower must provide the services of a registered design professional for determining subsurface conditions. These services shall be provided in accordance with the Owner-Architect Agreement.
3. The Lender's Construction Analyst will assess that the Architect has comprehensive, well documented soils information and that project foundation design follows the report recommendations. When necessary, the Lender's Construction Analyst should consult an engineer specializing in reviewing soil reports and related designs.
4. Soils investigation shall be in accordance with Chapter 18 of the International Building Code, except that an investigation and report is required for every project involving new construction, whether or not required by the building official.
5. In some cases, observed conditions at existing properties (e.g., foundation failure, history or indications of sink holes in the immediate vicinity) may require subsurface exploration. In such cases the Lender and Needs Assessor must retain the services of a licensed professional/engineer to conduct intrusive examination to identify the nature of subsurface problems and recommend appropriate action.

### **A.5.1.11 ALTA Survey General Requirements (see [Chapter 19](#))**

A. An ALTA/NSPS Land Title Survey is required and must conform to the instructions set forth on the form HUD-91073M, *HUD Survey Instructions and Surveyor's Report* (including the Table A items listed and

certification set forth in the form), which instructions relate both to form HUD-91073M, *HUD Survey Instructions and Surveyor's Report*, and to the Survey that the surveyor must produce. The Survey shall be dated, signed and sealed within 180 days before initial closing, meaning that the field work was performed or updated no earlier than 180 days prior to closing. Local discretion, in accordance with local waiver procedures as applicable, is given to the HUD Director to waive the 180-day limit. (Download the 2016 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Survey at [https://cdn.ymaws.com/www.nsp.us.com/resource/resmgr/ALTA\\_Standards/2016\\_Standards.pdf](https://cdn.ymaws.com/www.nsp.us.com/resource/resmgr/ALTA_Standards/2016_Standards.pdf) ).

**B.** The Survey shall show all easements, apparent interests (including railroads), or encroachments upon the property or from the property onto contiguous parcels of land. These easements or encroachments must be acceptable to HUD.

1. All easements, restrictions and exceptions on the title policy shall be shown. Blanket easements that cannot be plotted shall be listed with their recording information.
2. Maintenance, joint use, easement, and other agreements may be required. In cases where common facilities exist between the insured parcel and an adjacent parcel, the Borrower must provide for recordation of an agreement for the common use of land and facilities (e.g., common drives, common lobbies, elevators, walkways, utility roads, parking structures, recreation facilities, storm water management facilities (retention ponds, detention ponds, swales and culverts), or other common facilities). The agreement must grant rights to the HUD project site and its tenants to use the common facilities and provide for an equitable and certain method for funding shared costs for repair and replacement of common facilities.
3. If the HUD project is subject to condominium and property/homeowner association documents, these documents may provide for maintenance, access, and cost sharing.
4. All access roads must be labeled as public or private roads.
5. Lender must provide form HUD-91073M, *HUD Survey Instructions and Surveyor's Report*, signed within 180 days before initial closing by a licensed surveyor, not by an engineer, and bearing the surveyor's original signature and professional seal. Local discretion, in accordance with local waiver procedures as applicable, is given to the Regional Center/Satellite Office director to waive the 180-day limit. The Surveyor's Report supplements the ALTA/NSPS Land Title Survey and must describe with specificity where the conditions described in the Surveyor's Report are physically observed on the property.
6. In the event that proposed alterations and repairs in a proposed refinancing include site grading or site utility work to remedy an observed drainage or other problem related to site elevations, then the HUD office may require Item 5 of Table A (topographic contour intervals) of the 2016 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Survey.

## A.5.2 Accessibility for Persons with Disabilities

### A.5.2.1 Statutory Requirements

**A.** Most properties proposed for multifamily mortgage insurance are subject to and must observe one or more accessibility statutes and related regulatory and architectural requirements. Lenders must ensure

that accessibility requirements are accurately applied to projects by Borrowers, design professionals, Needs Assessors and Lender Construction Analysts and Underwriters. Persons engaged in preparing applications must be knowledgeable in relevant Federal, State and local statutes and standards, which include:

1. **The Fair Housing Act Design and Construction requirements.** These apply to all covered multifamily dwellings built for first occupancy after March 13, 1991 (details in [Section A.5.2.3](#)).
2. **Section 504 of the Rehabilitation Act of 1973.** This applies to all Federally assisted programs, services and activities, including housing (details in [Section A.5.2.4](#)).
3. **The Americans with Disabilities Act of 1990 (ADA).** Title III of the ADA applies to public accommodations and commercial facilities and to any such portion of a multifamily property. Title II obligates all state and local government organizations (including state and local housing and community development agencies) to make their programs and facilities, including multifamily housing programs and facilities, accessible in accordance with certain regulatory and architectural requirements (details in [Section A.5.2.5](#)).
4. **State and Local Accessibility Laws.** State and Local codes and standards may require greater accessibility than the Federal standards listed above. Where State or Local requirements exceed or vary from the Federal standards, the provisions applicable to particular elements of facilities that provide greater accessibility for persons with disabilities will prevail.

**B.** The following table summarizes the applicable Federal and HUD<sup>1</sup> accessibility requirements applicable to multifamily properties proposed for mortgage insurance.

**Summary requirements for Insured Multifamily Properties**

Activity & Year Built	Market Rate Apartments	Affordable (not assisted, e.g. LIHTC's)	Federally Assisted <sup>3</sup>
Projects built for 1 <sup>st</sup> occupancy <sup>2</sup> after 3/13/1991	Fair Housing Act Requirements	Fair Housing Act Requirements	Fair Housing Act Requirements & Sec 504 (UFAS or Deeming Notice <sup>4</sup> )
Projects built from 7/11/1988 to 3/13/1991	None	None	Sec 504 (UFAS or Deeming Notice 4)
Sub-rehab or Refinance of projects built prior to 7/11/1988 or built prior to becoming assisted <sup>5</sup>	None	None	Sec 504 (UFAS or Deeming Notice <sup>4</sup> ) (Load-bearing wall and financial/administrative burden exceptions)
All Public Accommodations (Designed and built for 1 <sup>st</sup> occupancy <sup>2</sup> or altered after 1/26/1993	ADA Title III	ADA Title III	ADA Title III & Sec 504 (UFAS or Deeming Notice <sup>4</sup> )
State or Local Government Programs or Assistance, e.g., LIHTCs with construction start after 1/26/1992	ADA Title II <sup>6</sup>	ADA Title II <sup>6</sup>	ADA Title II & Sec 504 (UFAS or Deeming Notice <sup>4</sup> )

<sup>1</sup> Unlike the Fair Housing Act where Congress assigned regulatory and enforcement authority to HUD, Section 504 of the Rehabilitation Act of 1973 obligates various Federal Agencies to develop implementing regulations.

<sup>2</sup> 1<sup>st</sup> occupancy means a building that was never used for any purpose.

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- <sup>3</sup> “Federally assisted” projects include those financed or assisted by Project Based Vouchers, 202/811, HOME, HOPWA, Rent Supplements, 236, TCAP, BMIR, etc. LIHTC alone does not constitute Federal assistance unless aforementioned funds are utilized.
- <sup>4</sup> See HUD’s Alternative Accessibility Standard set forth in HUD’s notice at 79 Fed. Reg. 29,671 (May 23, 2014) (“Deeming Notice”), permitting HUD recipients of Federal financial assistance to use an alternative standard for purposes of complying with Section 504 and HUD’s implementing regulation at 24 CFR part 8. The Deeming Notice provides HUD recipients the option of using the 2010 ADA Standards (with certain exceptions) as an alternative to UFAS for new construction or alterations commencing on or after May 23, 2014.
- <sup>5</sup> See [Section A.5.2.4.5](#) for a discussion on projects built before July 11, 1988, or before the date of Federal assistance.
- <sup>6</sup> State and local governments are required to describe specific measures to make programs accessible. Such measures vary especially in reference to existing properties. Appropriate state and local officials must be consulted, particularly in reference to LIHTC transactions.
- <sup>7</sup> **Adaptable Does Not Mean Deferrable.** A common misinterpretation of the Fair Housing Act design and construction requirements holds that the term “adaptable” contemplates a delay or deferral of the time when “features of adaptable design” required by the statute or regulations may be completed. This is inaccurate. The “features of adaptable design” described in the Fair Housing Act design and construction standards are required at original design and construction. Adaptable for purposes of Section 504 is defined at 24 CFR 8.3 and contemplates limited future physical changes to meet specific needs of particular persons with disabilities.

## A.5.2.2 Implementing and Applying Accessibility Requirements

**A.** For new construction, all persons or parties involved in design and construction, including but not limited to Borrowers, Project Architects, and General Contractors are jointly responsible for compliance. When construction is proposed, design professionals, Lenders, and contractors are obligated to assure that plans, specifications, and contract documents describe work that will result in such compliance.

**B.** When developing a scope of work for existing structures, Needs Assessors, registered Architects when involved, and Lenders must identify the statutes and standards applicable to the property (or particular buildings or spaces thereof) and describe all deficiencies and violations and specify the work needed to remedy deficiencies.

**C.** Lenders must retain persons or firms with particular experience and expertise in the recognition and evaluation of accessibility issues in the design of new construction or substantial rehabilitation projects as well as in the preparation of the CNA for existing properties.

1. For substantial rehabilitation, observed deficiencies at existing properties must be itemized and clearly listed in the Cover Sheet of the plans (or, where General Notes are listed). The plans and specs must reflect proposed remedies addressing each of the deficiencies.
2. For other existing properties (e.g., Section 223(f) with repairs and alterations), observed deficiencies and proposed remedies must be described as Accessibility Critical Repairs in the CNA e-Tool. Accessibility Critical Repairs must:
  - a. Address all accessibility deficiencies.
  - b. Specify what accessibility requirement is not met in the ‘Scope of Accessibility Compliance’ field.
  - c. Describe the remedies with enough details demonstrating that the remedies are appropriate. The description must be specific enough to be easily inspectable. Describe in the ‘Scope of Required Replace/Refurbishment’ field.

- d. Describe when the work will be completed as ‘Months to Complete.’ When the work involves a General Contractor, a detailed construction schedule must be submitted as an attachment in the CNA e-Tool.
- e. Provide any additional information and clarifications in the ‘Comments’ field. For example, describe any circumstance where the implementation of a remedy to a deficiency would compromise other architectural design requirements, (e.g., requires the elimination of closet space).
- f. The Lender must ensure that the schedule requested for corrective action is the minimum possible given the physical characteristics of the remedies and the reasonably anticipated impact of the repairs on tenants and or the costs of displacement.

**D.** In unusual circumstances (e.g., extensive displacement or large scope of work or excessive costs) accessibility remedies may require more than 12 months to complete. Any corrective work requiring more than 12 months for completion must be referred to HUD Headquarters to the attention of the Director of Technical Support (in the case of new applications) or to the Director of the Office of Asset Management and Portfolio Oversight (in the case of corrective action plans prepared after Endorsement).

**E.** When completion of remedies for accessibility deficiencies is deferred, the funds required (including amounts assuring completion) should be provided and disbursed in accordance with the applicable escrow requirements for Non-critical repairs for new applications under Sections 223(f) or 223(a)(7) of the National Housing Act or, when no new insured financing is proposed, in accordance with HUD Handbook 4350.1.

**F.** Where a deficiency is identified arising from a state or local accessibility requirement that exceeds the applicable Federal standard(s) and the proposed corrective action does not result in full compliance with that state or local requirement, it is the responsibility of the owner and/or the Lender to obtain written confirmation that the proposed corrective work is acceptable to the state or local entity with enforcement jurisdiction.

**G.** The Lender must ensure that the professional preparing the plan has skill and experience commensurate with the scale of work required (see [Chapter 5, Section 5.3.1](#)). When compliance with multiple statutes and standards is required or when design documents are needed, the scope of work must be prepared by other qualified professionals (e.g., a registered Architect, engineer) retained either by the owner or the Lender provided that the identity and qualifications of the author(s) are fully disclosed. All resulting reports and drawings should be attached to the CNA when it is submitted via the CNA e-Tool.

**H.** Accessibility Critical repairs listed in the CNA e-Tool does not constitute a safe harbor for compliance with the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973 or the ADA. Proposed remedies in the CNA e-Tool do not preclude an individual from filing a fair housing complaint with the Department and do not preclude the Department from investigating a complaint or pursuing administrative or legal action under applicable civil rights accessibility laws and regulations to ensure full compliance. Similarly, any corrective action described in the e-Tool does not preclude the Department of Justice from investigating or filing a lawsuit for Fair Housing Act, Section 504, or ADA violations.

**I.** The Fair Housing Act, Section 504 of the Rehabilitation Act of 1973 and the American with Disabilities Act require owners to make reasonable accommodations (that is, exceptions to or changes in rules,



policies, practices, or services) and/or reasonable modifications (physical changes to premises) for persons with disabilities. These requirements are separate and distinct from the requirement to address accessibility deficiencies identified in a CNA. Reasonable accommodations and modifications will not be addressed in CNA reports or corrective action plans. References to detailed guidance on reasonable accommodations and modifications may be found in [Section A.5.2.3.3](#).

## **A.5.2.3 Summary of Fair Housing Act Requirements**

### **A.5.2.3.1 Fair Housing Act Design and Construction Requirements**

**A.** The Fair Housing Act established certain design and construction requirements for covered multifamily dwellings built for first occupancy after March 13, 1991. The obligation to comply is permanent. Compliance must be maintained through any subsequent repairs, replacements, alterations, or rehabilitation. If covered multifamily dwellings (and any associated common areas) are built for first occupancy after March 13, 1991 as an addition to an existing property, the added dwellings and common areas must meet the Fair Housing Act design and construction requirements.

**B.** Note that “first occupancy” means that the building has never before been used for any purpose. Thus, the requirements do not apply to any building converted to multifamily use from any other use nor to any substantial rehabilitation of multifamily buildings that were occupied before March 13, 1991. See 42 USC 3604(f)(3)(C), 24 CFR 100.205 and HUD’s Fair Housing Act Design Manual published at 56 Federal Register 9472-9515 [Mar. 6, 1991]. “Covered multifamily dwellings” is defined at 42 U.S.C. 3604(f)(7) and 24 C.F.R. 100.201 and means all units in buildings consisting of 4 or more dwelling units if such buildings have one or more elevators; and ground floor units in other buildings consisting of 4 or more units. A “ground floor” is a floor of a building with a building entrance on an accessible route. A building may have more than one ground floor. Buildings consisting of 1, 2 or 3 units do not contain any “covered multifamily dwellings.”

**C.** All covered multifamily dwellings must be designed and constructed to have at least one building entrance on an accessible route unless it is impractical to do so because of the terrain or unusual characteristics of the site. The burden of establishing impracticality because of terrain or unusual site characteristics is on the person or persons who designed or constructed the housing facility. Even if a property meets the impracticability standard for some or all units, it is not wholly exempt from the design and construction requirements. See 24 CFR 100.205(a).

**D.** There are seven design and construction requirements under the Fair Housing Act as follows:

1. Accessible building entrance on an accessible route.
2. Accessible and usable public and common use areas.
3. Usable doors (all the doors allowing passage into and within the units are sufficiently wide to allow passage by persons in wheelchairs).
4. Accessible route into and through the covered dwelling unit.
5. Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations.



6. Reinforced walls for grab bars in bathrooms (i.e., to allow for later installation of grab bars around the toilet, tub, shower, stall, and shower seat, where such facilities are provided).
7. Usable kitchens and bathrooms (i.e., such that an individual in a wheelchair can maneuver about the space).

**E.** The Needs Assessor must measure clear door openings, wheelchair maneuverability areas, slopes and cross slopes of sidewalks and other accessible routes, and other dimensioned aspects of the housing to determine compliance with the Fair Housing Act Accessibility Guidelines or another identified safe harbor standard recognized by HUD. Measurements should be made in typical or representative units of each unit type and of typical common spaces and these must be noted and reported. The use of templates or rods of fixed dimension to confirm measurements not less than (or greater than) required is acceptable. Photographs are encouraged. It is insufficient to merely state that a project, building, or a particular feature “appears to” or “seems to” meet (or not meet) the design and construction requirements.

### **A.5.2.3.2 HUD Recognized Safe Harbors**

**A.** Presently there are ten HUD-recognized safe harbors for compliance with the Act’s design and construction requirements as listed below. Any one of the referenced safe harbors may be relied upon, but only when used in its entirety without the designer or builder selecting provisions from more than one safe harbor or a variety of sources and without any waiver(s) of provisions as might be obtained from a state or local agency. (See HUD’s final rule Design and Construction Requirements, Compliance with ANSI A117.1 Standards, published in the Federal Register on October 24, 2008. See Resources, [Section 5.2.3.2.A.5](#), below). When conducting an assessment for a building, the Needs Assessor should use the safe harbor standard referenced in the original design documents whenever the identity of the standard is known. If unknown, the Fair Housing Accessibility Guidelines (safe harbor # 1 below) should be used. The Needs Assessor must name the standard used in the CNA Narrative Section 7.1 of the CNA e-Tool. The ten safe harbors are as follows:

1. HUD’s March 6, 1991, Fair Housing Accessibility Guidelines and the June 28, 1994, Supplemental Notice to Fair Housing Accessibility Guidelines: Questions and Answers About the Guidelines.
2. ANSI A117.1-1986 – Accessible and Usable Buildings and Facilities, used in conjunction with the Act, HUD’s Regulations and the Guidelines.
3. CABO/ANSI A117.1-1992 – Accessible and Usable Buildings and Facilities, used in conjunction with the Act, HUD’s Regulations, and the Guidelines.
4. ICC/ANSI A117.1-1998 - Accessible and Usable Buildings and Facilities, used in conjunction with the Act, HUD’s Regulations, and the Guidelines.
5. HUD’s Fair Housing Act Design Manual published in 1996 and revised in 1998.
6. Code Requirements for Housing Accessibility 2000 (CRHA), approved and published by the International Code Council (ICC), October 2000.
7. International Building Code (IBC) 2000, as amended by the IBC 2001 Supplement to the International Codes.
8. 2003 International Building Code (IBC), with one condition. Effective February 28, 2005, HUD determined that the IBC 2003 is a safe harbor, conditioned upon the International Code Council

publishing and distributing the following statement to jurisdictions and past and future purchasers of the 2003 IBC:

- a. ICC interprets Section 1104.1, and specifically, the exception to Section 1104.1, to be read together with Section 1107.4, and that the Code requires an accessible pedestrian route from site arrival points to accessible building entrances, unless site impracticality applies. Exception 1 to Section 1107.4 is not applicable to site arrival points for any Type B dwelling units because site impracticality is addressed under Section 1107.7.
9. ICC/ANSI A117.1-2003 - Accessible and Usable Buildings and Facilities, used in conjunction with the Act, HUD's Regulations, and the Guidelines.
  10. 2006 International Building Code, published by ICC, January 2006, with the 2007 erratum (to correct the text missing from Section 1107.7.5), and interpreted in accordance with relevant 2006 IBC Commentary.

### **A.5.2.3.3 Resources for Fair Housing Act Requirements**

**A.** The Fair Housing Act is codified at 42 U.S.C. §§ 3601-3619. It is posted at:

<http://www.justice.gov/crt/about/hce/title8.php> with implementing regulations, including 24 C.F.R. Part 100, posted at: <http://www.archives.gov/federal-register/index.html>. In particular, see 24 C.F.R. §§ 100.203-100.205 for the sections on reasonable modifications of existing premises, reasonable accommodations, and the design and construction requirements.

**B.** Final Fair Housing Accessibility Guidelines, 56 Fed. Reg. 9472 (Mar. 6, 1991), is available at: [https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp/disabilities/fhefhag](https://www.hud.gov/program_offices/fair_housing_equal_opp/disabilities/fhefhag).

**C.** Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers about the Guidelines, 59 Fed. Reg. 33,362-68 (June 28, 1994), is available at: [https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp/disabilities/fhefhasp](https://www.hud.gov/program_offices/fair_housing_equal_opp/disabilities/fhefhasp).

**D.** Fair Housing Act Design Manual (August 1996, Revised April 1998), is available at: <https://www.huduser.gov/portal/publications/PDF/FAIRHOUSING/fairfull.pdf>.

**E.** For how to use the safe harbor standards, see HUD's final rule Design and Construction Requirements, Compliance with ANSI A117.1 Standards, published in the Federal Register on October 24, 2008, Section IV, HUD Policy Regarding HUD-Recognized Safe Harbors for Compliance with the Fair Housing Act's Design and Construction Requirements. See 24 CFR 100.205(e) for a list of safe harbors. See 73 Fed. REG. 63610-63616, October 24, 2008 which may be found at: <http://www.gpo.gov/fdsys/pkg/FR-2008-10-24/pdf/E8-23785.pdf>.

**F.** For specific guidance on the Fair Housing Act's design and construction requirements, see Joint Statement of the Department of Housing and Urban Development and the Department of Justice, Accessibility Design and Construction Requirements for Covered Multifamily Dwellings Under the Fair Housing Act, April 30, 2013, available at: <https://www.hud.gov/sites/documents/jointstatement.pdf>.

**G.** For specific guidance on reasonable accommodations in rules, policies, practices, or services for particular tenants, see Joint Statement of the Department of Housing and Urban Development and the Department of Justice, Reasonable Accommodations under the Fair Housing Act (May 17, 2004), available at: [https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/joint\\_statement\\_ra.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/joint_statement_ra.pdf).

**H.** For specific guidance on tenant requests for physical modifications to premises see the Joint Statement of the Department of Housing and Urban Development and the Department of Justice, Reasonable Modifications under the Fair Housing Act (Mar. 5, 2008), available at:

[https://www.hud.gov/sites/documents/reasonable\\_modifications\\_mar08.pdf](https://www.hud.gov/sites/documents/reasonable_modifications_mar08.pdf)

**I.** For Federally Assisted Housing or programs, see also 24 CFR §§ 8.20 to 8.33. For additional technical assistance, see the Fair Housing Act Accessibility FIRST website at [www.fairhousingfirst.org](http://www.fairhousingfirst.org) or call the Fair Housing Accessibility First assistance line at 888-341-7781 on weekdays from 9 a.m. to 5 p.m. ET.

**J.** See also HUD Office of Fair Housing and Equal Opportunity's disabilities website at:

[https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp](https://www.hud.gov/program_offices/fair_housing_equal_opp)

## **A.5.2.4 Section 504 Requirements for Assisted Housing**

### **A.5.2.4.1 Definition of Assisted Housing**

**A.** Section 504 of the Rehabilitation Act of 1973 applies to recipients of Federal financial assistance (Assistance). The Section 504 regulations define "recipient" as any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity or any person to which Federal financial assistance is extended for any program or activity directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance (24 CFR 8.3). Multifamily housing facilities receiving Assistance from HUD (Assisted Housing) are subject to HUD's Section 504 regulations, including all program accessibility requirements.

1. "Federal financial assistance" is broadly defined to include, among many things, grants, loans, contracts, or other arrangements which may take the form of funds, services from Federal personnel, community development grants, and the use of real or personal property (24 CFR 8.3). A few but not exhaustive examples of Assisted Housing subject to Section 504 requirements relevant to FHA loan transactions include:
  - a. HUD funded Section 811 or Section 202 developments and any developments that have project-based rental certificates or vouchers (i.e., rent supplement, rental assistance program, Section 8 project-based assistance).
  - b. A HUD mortgagor receiving a subsidy through the Section 221(d)(3) Below Market Interest Rate Program or the 236 Rental Housing Program.
  - c. Any project assisted with Community Development Block Grant (CDBG), Neighborhood Stabilization Program (NSP), HOME, or HOPWA (Housing Opportunities for Persons With AIDS) funds or any contribution of Federal land or services.
  - d. As of 2009, the American Recovery and Reinvestment Act (ARRA) and the Tax Credit Assistance Program (TCAP), which had become added sources of Federal financial assistance for some multifamily properties.
2. Assistance is provided to the entire property and not to particular buildings or a subset of units, even when the result of the Assistance is the designation of, or a set-aside of, portions of the property for affordable housing or other federal objectives. Accordingly, Section 504 requirements apply to the property as a whole. A property owner's receipt of housing assistance payments from a recipient on

behalf of eligible families under a housing assistance payment or voucher program, i.e., tenant-based rental assistance, does not make a project assisted (24 CFR 8.3). However, a recipient of federal financial assistance administering tenant-based assistance must, among other requirements, assist tenants in locating accessible dwelling units (24 CFR 8.28).

3. Owners of Assisted Housing are required to make and pay for physical changes as reasonable accommodations at the request of tenants or prospective tenants unless doing so would impose an undue financial or administrative burden on the housing provider (24 CFR 8.4, 8.20, 8.21, 8.24, 8.33).

#### **A.5.2.4.2 Section 504 Requirements for Assisted Housing**

**A.** Federally assisted multifamily housing projects must comply with the requirements in 24 CFR Part 8. Such properties include properties that were originally built with Assistance or became Assisted regardless of the time of original construction or receipt of Assistance. HUD's Section 504 regulations require that periodic repair and replacement actions and alterations completed at such projects contribute to a gradual process of change until such time that compliance is achieved. Given that a significant number of years have passed since the enactment of the law, the assisted properties have had much time to undergo a gradual process of change to be in full compliance, regardless the date of original construction.

1. All Federally assisted properties must be either in full compliance with 24 CFR 8.22 requirements for accessibility or brought to full compliance by remedying the deficiencies identified through the loan transaction. Such properties must provide:
  - a. A minimum of 5% of the units or at least one unit, whichever is greater, for residents with mobility disabilities;
  - b. An additional minimum of 2% of the units or at least one unit, whichever is greater, for residents with sensory disabilities; and
  - c. Accessible common areas and facilities readily usable by persons with disabilities. See 24 CFR 8.21(b); 8.23(b)(1).
2. HUD may prescribe a higher percentage or number upon demonstration of greater need (see 24 CFR 8.22(c)). Compliance with the Uniform Federal Accessibility Standards (UFAS) is deemed to comply with the accessibility requirements of Section 504 and 24 CFR §§ 8.21, 8.22, 8.23 and 8.25 (24 CFR 8.32). Departures from particular technical and scoping requirements of the UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided (24 CFR 8.32). Additionally, the Deeming Notice (79 Fed. Reg. 29,671 (May 23, 2014)) permits HUD recipients to use an alternative standard for purposes of complying with Section 504 by using the 2010 ADA Standards (with certain exceptions) as an alternative to UFAS for new construction or alterations commencing on or after May 23, 2014.
3. An exception to the requirements stated above is that for existing properties, an owner is "never required to undertake a degree of accessibility which would impose undue financial and administrative burdens" but when alterations were (are) undertaken, accessibility was (is) required "up to the point of infeasibility or undue financial and administrative burdens." (53 Fed. Reg. 20216, 20224 (June 2, 1988)). In addition, measures to achieve compliance with UFAS which had "little likelihood of being accomplished without removing or altering a load-bearing structural member," are not required. See 24 CFR 8.32(c).

- a. When considering the term “undue financial and administrative burden,” Borrowers and Lenders should understand that the scope of the exemption is narrowly construed. Burden is measured against the resources not only of the mortgagor entity but also of its Sponsors and members.
  - b. The term is also intended to exclude possible remedies that would require an owner to engage in activities beyond those normal for an owner of multifamily property, e.g. hiring personal aides to assist tenants in climbing stairs or overcoming similar obstacles to accessibility.
4. Accordingly, the Needs Assessor or inspector should identify deficient accessibility features as measured against the requirements for new construction described at 24 CFR 8.22. The Lender must review and evaluate the identified accessibility deficiencies and propose remedies unless the Lender demonstrates that:
- a. The remedy cannot be accomplished without “removing or altering a load-bearing structural member”<sup>71</sup> or;
  - b. The remedy would impose an “undue financial and administrative burden,”

#### **A.5.2.4.3 When Both Section 504 and the Fair Housing Act Apply**

**A.** With respect to physical accessibility requirements, both Section 504 (applies to programs or activities that receive Federal financial assistance) and the Fair Housing Act (applies to covered multifamily dwellings designed and constructed for first occupancy after March 13, 1991) may apply. Recipients subject to both laws must be aware of, and comply with, the requirements of both laws and their implementing regulations. (See Notice H 01-02).

#### **A.5.2.4.4 ADA 2010 Standards as an Alternative to UFAS**

**A.** In March 2011, the Department of Justice (DOJ), pursuant to its coordination authority under Section 504, advised Federal agencies that they may permit covered entities to use the 2010 ADA Standards for Accessible Design (the “2010 Standards”) as an alternative to UFAS until such time as agencies update their regulation implementing the Federally assisted provisions of Section 504. Accordingly, on May 23, 2014, HUD published a notice (the “Deeming Notice”) permitting HUD recipients of Federal financial assistance to use the 2010 Standards (along with certain additional requirements found in 24 CFR Part 8) for purposes of complying with Section 504 for new construction, substantial alterations, and other alterations commenced on or after May 23, 2014. (See citation for the Deeming Notice in Subsection G, Resources, #2, below.) The Deeming Notice is particularly useful for designers and owners of projects required to meet both the requirements of Section 504 as well as the 2010 Standards under the ADA, (e.g., LIHTC deals with Federal assistance such as HOME or Section 8.)

#### **A.5.2.4.5 Section 504 and UFAS Resources**

**A.** The Uniform Federal Accessibility Standards may be found at United States Access Board: <http://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-aba-standards/ufas#intro>.

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<sup>71</sup> The Lender must consult with licensed structural engineer or an Architect for the determination.

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**B.** The Deeming Notice was published in the Federal Register on May 23, 2014 at 79 Fed Reg. 29,671 and may be seen at: <https://www.regulations.gov/document?D=HUD-2014-0042-0001>.

**C.** Further information on Section 504 may be found at:

[https://portal.hud.gov/hudportal/HUD?src=/program\\_offices/fair\\_housing\\_equal\\_opp/disabilities/sect504](https://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/disabilities/sect504).

**D.** A useful Field Inspection checklist and guide may be found at:

<https://www.hudexchange.info/resource/796/ufas-accessibility-checklist/>.

## **A.5.2.5 The Americans with Disabilities Act (ADA)**

### **A.5.2.5.1 Title III**

**A.** Title III of the ADA applies to any portion of an insured multifamily property that is a public accommodation, i.e., a portion of the facility owned, operated, or leased to or by a private entity for use by, and open to, the general public. This includes any leasing office or facility together with public restrooms and public lobbies.

1. Common areas available only for use by tenants or the guests of tenants are not subject to the ADA (but are subject to the Fair Housing Act and/or Section 504).
2. Any commercial uses included in an insured multifamily property are also covered by the ADA. This includes any retail, office, hotel, or special purpose facility, such as a day care center, senior center, etc.
3. When evaluating physical characteristics of leased commercial space at insured multifamily projects, tenant improvements and/or furnishings should not be considered, as they are not a responsibility of the mortgagor. Particular attention should be given to aspects of accessibility related to the structure, means of ingress, egress, and public safety (e.g., emergency warnings, exits, etc.).

**B.** The regulations implementing Title III of the ADA are found at 28 CFR Part 36 and extensive regulatory and technical assistance is available at <http://www.ada.gov/>.

**C.** ADA information and technical assistance is available at 800-514-0301 (voice) and 800-514-0383 (TTY).

### **A.5.2.5.2 Title II**

**A.** Title II of the ADA obligates state and local governments to make all public programs and facilities readily accessible to and useable by persons with disabilities if construction or alteration of facilities began on or after January 26, 1992. This includes the activities and programs of state and local government housing and community development entities such as state housing finance agencies. A significant factor is that state housing finance agencies allocate Low Income Housing Tax Credits (LIHTCs), a funding resource common in the multifamily marketplace. For a time, state and local governments had a choice of standards to be used to measure compliance but now are required to use the 2010 ADA Standards. The change in options available over time has resulted in an inventory of LIHTC (and some other properties) that may have different standards for compliance depending on the year built and the state or local agency involved. The possible standards and dates are as follows:



<b>Date of Construction or Alteration</b>	<b>Applicable Standards</b>
January 26, 1992 to September 15, 2010	1991 ADA Standards or UFAS
On or after September 15, 2010, and before March 15, 2012	1991 ADA Standards, UFAS, or 2010 ADA Standards
On or after March 15, 2012	2010 ADA Standards

**B.** Current requirements for new construction are readily discernable: the 2010 ADA Standards. But requirements that may apply currently to existing properties or that may have applied to existing properties at the time of construction may be uncertain. When preparing a needs assessment for an application for a property assisted by a state or local program, the Lender and Needs Assessor should consult the relevant Qualified Allocation Plan (for LIHTCs) or other state/local program guidance to determine the standard to be applied and/or directly inquire of the relevant agency concerning the accessibility requirements applicable to the property.

**C.** In all cases involving the accessibility requirements of state and local programs, the role of the Lender and Needs Assessor is to compare the conditions at a specific property to the requirements imposed upon the state/local program. Whether or not the state or local program properly addresses the requirements of ADA Title II is not an issue to be determined when underwriting or preparing a CNA for a particular property.

## **A.5.2.6 Accessibility and Features of Adaptive Design**

### **A.5.2.6.1 Definition of Accessible**

**A.** For purposes of Section 504, “accessible,” when used with respect to the design, construction, or alteration of a facility or a portion of a facility other than an individual dwelling unit, means that the facility or portion of the facility can be “approached, entered and used by individuals with physical handicaps. The phrase *accessible to and usable by* is synonymous with accessible”. 24 CFR 8.3.

**B.** In reference to the Fair Housing Act, 24 CFR 100.201 defines “accessible,” when used with respect to the public and common use areas of a building containing covered multifamily dwellings, with the same language as Section 504. However, the Fair Housing Act definition of “accessible” references different standards (the safe harbor standards, not UFAS) and the premises within the dwellings must include certain “features of adaptive design” as described in this [Appendix 5, Section A.5.2.3](#) above.

### **A.5.2.6.2 Accessible Routes**

**A.** For purposes of the Fair Housing Act, an accessible route is defined as a “continuous unobstructed path connecting accessible elements and spaces in a building or within a site” negotiable by a person with a severe disability using a wheelchair and that is also safe and usable by persons with other disabilities. 24 CFR 100.201. Any route that complies with ANSI A117.1-1986 or a comparable standard is an *accessible route*. For Section 504, 24 CFR 8.3 defines an accessible route as a continuous unobstructed path connecting accessible elements and spaces in a building or facility that complies with the space and reach requirements of applicable standards prescribed by § 8.32. Currently UFAS is the standard under 8.32.



### A.5.2.6.3 Accessible Units

**A.** In regard to dwelling units, the Fair Housing Act requires that all “covered multifamily dwellings” (see [Section A.5.2.3](#)) with a building entrance on an accessible route have accessible public and common use areas and doors wide enough to allow passage into and within the premises by persons in wheelchairs. Unit interiors must have the following “features of adaptive design:” an accessible route into and through the dwelling; light switches, electrical outlets, thermostats and other environmental controls in accessible locations; reinforcements in bathroom walls to allow later installation of grab bars; and usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space. 24 CFR 100.205(c).

**B.** By contrast, HUD’s Section 504 regulations require that multifamily housing projects contain a minimum of 5% of units or at least one unit, whichever is greater, accessible for persons with mobility impairments and an additional 2% of units or at least one unit, whichever is greater, accessible for persons with hearing or vision impairments. In circumstances where greater need is shown, HUD may prescribe higher percentages. Further, accessible units must, to the maximum extent feasible and subject to reasonable health and safety requirements, be distributed throughout projects and sites and shall be available in a sufficient range of sizes and amenities so that a qualified individual with disabilities’ choice of living arrangements is, as a whole, comparable to that of other persons eligible for housing assistance under the same program. 24 CFR 8.26. An accessible dwelling unit is defined as a unit “on an accessible route and adaptable and otherwise in compliance with the standards set forth in Section 8.32”.

### A.5.2.6.4 Adaptability

**A.** HUD’s Section 504 regulations permit recipients to construct or convert “adaptable” units. A dwelling unit is “accessible” when: 1) is on an accessible route, as defined by HUD’s Section 504 regulations and UFAS; and 2) is adaptable and otherwise in compliance with the standards set forth in 24 CFR § 8.32. “Adaptable” or “adaptability” means the ability to add or alter certain building spaces and elements (e.g., kitchen counters, sinks, and grab bars) to accommodate the needs of either the disabled or nondisabled persons, or to accommodate the needs of persons with different types or degrees of disability. “Adaptability,” as defined for Section 504 purposes, does not contemplate adding or altering features in a manner requiring construction. But for Section 504, “adaptable” does include the concept that a unit designed in compliance with UFAS may lack certain particular items needed by a tenant (e.g. grab bars or countertops at a different elevation) and when required by a tenant, such particular items must be provided at no cost to the tenant.

**B.** As noted above, the Fair Housing Act requires that the interior of covered units have certain “features of adaptive design”. The phrase “features of adaptive design” must not be confused with “adaptability” as defined in HUD’s Section 504 regulations and UFAS. The “features of adaptive design” required by the Fair Housing Act must be accomplished at the time of construction and not later as alterations or on an “as needed” basis. Accordingly, needs assessors must not describe any construction required to remedy accessibility deficiency as “adaptation” and thereby omit from the Critical repairs list, or defer to a later or “as needed” time.

## A.5.3 Seismic Resistance and Fire Protection

### A.5.3.1 Seismic Resistance Standards for Existing Buildings

#### A.5.3.1.1 General

**A.** To improve seismic safety in older buildings and to preserve existing housing, project applications for substantial rehabilitation and refinance/acquisition must comply with the relevant standards published by the American Society of Civil Engineers (ASCE) and its affiliate, the Structural Engineering Institute (ASCE/SEI). The relevant standard is ASCE 41-13 Seismic Evaluation and Retrofit of Existing Buildings.

**B.** For all applications, the Earthquake Spectral Response Acceleration Parameters  $S_{XS}$  and  $S_{X1}$  values for hazard level BSE-1E must be entered in the CNA e-Tool. The values for  $S_{XS}$  and  $S_{X1}$  may be obtained from a Seismic Design Map obtained from tools available online. The US Geological Survey website lists third-party Graphical User Interfaces (GUIs) available to use: <https://www.usgs.gov/natural-hazards/earthquake-hazards/design-ground-motions>

**C.** The values generated should be entered in the identified spaces for  $S_{XS}$  and  $S_{X1}$  in the CNA e-Tool and a report printout in “.pdf” file format should be attached and uploaded in the e-Tool. The following are the parameters for generating the  $S_{XS}$  and  $S_{X1}$  values that will be used for determining whether a seismic evaluation will be required:

1. Building Code Reference Document, which must be “ASCE 41-13”.
2. Earthquake Hazard Level analysis procedure, which should be “BSE-1E,” whereas the hazard level applied in the seismic analysis shall be per ASCE 41-13 requirements.
3. Site Soil Classification, which should be entered as one of the five International Building Code defined possibilities (1-hard rock, 2-rock, 3-very dense soil and soft rock, 4-stiff soil, 5-soft clay), which may be obtained from the relevant local building code official with jurisdiction.
4. Latitude & Longitude (or site address) of the property.

**D.** A seismic hazard and building performance analysis report (Seismic Report) must be submitted with the loan application unless the property is exempt as described in [Section A.5.3.1.2](#) below.

1. The Seismic Report should include an examination of the structure for continuity, ductility, and resistance to lateral forces.
2. The analysis shall assume a building performance objective of “life safety” as defined by ASCE 41-13.
3. Mitigation must be provided to meet minimum life safety requirements. In general, this means that for a design earthquake (i.e. a measure of the anticipated event), the building may be expected to avoid partial or total structural collapse, or damage to nonstructural components which damage would be life threatening, e.g., damage leading to fire, blocked egress, release of hazardous materials, etc.

**E.** Section 223(a)(7) applications. A new Seismic Report is not required if such study was done as part of the original insurance application. A new report must be submitted with the application if the property site’s Design Earthquake Spectral Response Acceleration Parameters exceeds the threshold for exempt buildings as defined below in [Section A.5.3.1.2](#) and no Report was completed previously.

### A.5.3.1.2 Exempt Properties

**A. Benchmark Buildings.** A “benchmark building” is an existing building originally built to or later retrofitted to an identified design code that equals or exceeds the standards defined by ASCE 41-13. A licensed design professional experienced with lateral force design must determine whether a building is a “benchmark building.” The design professional must review the plans (if available) and perform a site visit to confirm that the building does, in fact, meet the benchmark building code. If a determination cannot be made by this means, a Seismic Report must be completed.

**B. Exempt Buildings.** Many buildings are exempt from the seismic hazard and building performance analysis required by ASCE 41-13. A property composed of exempt buildings as defined below do not require a Seismic Report:

1. Any single-story, wood or steel frame building with total building area equal to or less than 3,000 square feet.
2. Any single-story accessory building (i.e., no dwellings in structure).
3. Any detached or semi-detached structure where the Design Earthquake Spectral Response Acceleration Parameter  $S_{XS}$  for hazard level BSE-1E is less than .400 g.
4. Any building on a site with both Design Earthquake Spectral Response Acceleration Parameters of:
  - a.  $S_{XS}$  for hazard level of BSE-1E is less than .330 g; and
  - b.  $S_{X1}$  for hazard level of BSE-1E is less than .133 g.

### A.5.3.1.3 Fire Protection

**A. Fire/smoke detection, alarm, and communication systems** must comply with the Life Safety Code, NFPA 101, for the entire project.

1. The 2006 NFPA 101, paragraph 31.3.4.5.1, states that “approved single station smoke alarms shall be installed outside every sleeping area in the immediate vicinity of the bedrooms and on all levels of the dwelling unit, including basements”, and the regulation in 24 CFR 200.76 requires that smoke detectors must also be installed inside each sleeping area.
2. Accordingly, smoke detectors must be installed:
  - a. Inside all bedrooms;
  - b. Outside every sleeping area in the immediate vicinity of the bedrooms,; and
  - c. On all levels of the dwelling unit, including basements.
3. For Section 223(f) & 223(a)(7) projects, installation of required smoke detectors is a Critical repair.
4. The regulation does not specify whether the required smoke detectors must be hard wired or battery powered. However, Section 3.3.9.1 of NFPA 101 permits a battery-operated device.
  - a. For substantial rehabilitation projects, regardless of the scope of work, hard-wired (for power) smoke detectors with interconnectivity are required.

- b. Considering the difficulty, time, and expense of feeding electrical wiring through the walls of existing buildings, battery-operated smoke detectors are acceptable in Section 223(f) and 223(a)(7) projects.
- c. If battery powered, the smoke detectors must have power cells with the following characteristics:
  - 1) The cells must have a ten-year life.
  - 2) The cells must be tamper resistant.
  - 3) The cells cannot be used in any other toy or appliance.
  - 4) The smoke detector may have a manual (but not automatic) silencing device to clear unwanted alarms such as cooking smoke.
  - 5) Smoke detectors as described above must appear to meet the intent of the smoke alarm requirements in Section 9.6.2.10 of NFPA 101.

**B.** Any new construction must have a sprinkler system as required by NFPA 101.

**C.** For substantial rehabilitation, Level 3 Alterations must comply with NFPA 101 fire protection provisions for new construction.

**D.** New additions must be separated from existing structures, even if the entire facility is included under one mortgage. Separation must equal or exceed:

- 1. Two-hour rated firewall;
- 2. One and one half (1 ½) hour protected openings; and
- 3. Class B labeled fire doors;

**E.** New construction of additions in substantial rehabilitation projects must comply with standards for new construction.

## **A.5.4 Construction/Architectural Documents for Firm Commitment**

### **A.5.4.1 Required Exhibits for New Construction**

**A.** Property site related exhibits must include the following

- 1. Location map;
- 2. Aerial photograph or satellite images for each site showing existing conditions and full site labeled by property name and site address;
- 3. Soils investigation, geotechnical and foundation design report,;
- 4. USGS Seismic Threshold Report;
- 5. Municipal and utility company letters of confirming availability of service; and

6. Documents evidencing site ingress and egress and other general criteria per MPS (Handbook 4910.1) Chapter 2.
- B. Property legal exhibits must include the following:**
1. Zoning compliance and Building Department Review permit, including Fire Department approval;
  2. City/County Health Officer's report/permit, where private water supply or sewage treatment systems are involved; and
  3. Drafts of proposed joint use, access, and maintenance agreements where common use easements are anticipated.
- C. Construction Documents must include:**
1. Drawings and Specifications conforming to [Section A.5.5](#); and
  2. Offsite Construction descriptions conforming to [Section A.5.5](#).
- D. Contracts and Certifications must include:**
1. AIA B108 with HUD Amendment to AIA Document B108 (form HUD-92408-M);
  2. [Section A.5.8.1](#) Architect's Certification;
  3. Form HUD-92442M, Construction Contract; and
  4. AIA A201 with HUD Supplementary Conditions to the Contract for Construction (HUD 92554M).
- E. Architectural and cost analysis report, with cost related exhibits must include:**
1. Architectural Analysis Report;
  2. Cost Analysis Report;
  3. Form HUD-2328, Contractor's and/or Mortgagor's Cost Breakdown;
  4. Form HUD-92326, Project Cost Estimate; and
  5. Form HUD-92331-B, Cost Certification Review Worksheet.
- F. The CNA e-Tool must include required data to produce the following:**
1. Completed physical inventory of the property to be constructed (i.e., assessment entry screens for Sites, Buildings, Unit Types, Units and Common Spaces, Parking, Components, Alternatives and Recommendations, and Financial Factors);
    - a. Units Inspected and Narrative Sections are not required to be completed.
    - b. TCO (Total Cost to Operate) and Energy-related fields are required only for Green MIP and underwriting energy savings transactions.
  2. Estimate of Replacement Costs (form HUD-92329, Schedule of Insurable Values Report) related information; and
  3. Financial Factors, Future Needs, and Financial Schedule/Estimate Period Recap for Reserve for Replacement escrow deposit amounts.

## A.5.4.2 Required Exhibits for Substantial Rehabilitation

### A. Property Site Related Exhibits must include the following:

1. Location map;
2. Aerial photograph or satellite images for each site showing all structures and full site labeled by property name and site address.;
3. USGS Seismic Threshold Report; and
4. A seismic report per [Section A.5.3](#) for existing properties if the values for SXS and SX1 exceed prescribed parameters.

### B. Property Legal Exhibits must include the following:

1. Certificate of Occupancy or Final Inspection Report, if available, or a statement from the jurisdiction with building and/or zoning code enforcement authority recognizing any legal non-conforming use;
2. Municipal Code Violation Report/Clear Report, and Fire Marshall's Report/Clear report;
3. City/County Health Officer's report/clear report where private water supply or sewage treatment systems are involved; and
4. Zoning compliance and Building Department Review permit, including Fire Department approval for the proposed rehabilitation.

### C. Property Physical Condition Related Exhibits must include the following:

1. Set of as-built plans, if available. This may be submitted separately if the file size is prohibitive or included in the plans and specs;
2. Joint Inspection Report (per [Chapter 5, Section 5.9.2.A.2](#)) and Scope of Work Summary (per [Chapter 5, Section 5.9.3.A.3](#));
3. Any O&M plans in use or proposed for use at the property (e.g., Lead Based Paint, Asbestos Containing Material); and
4. The Borrower's written narrative describing the operational policy to distinguish capital needs versus operating expense items for maintenance (see [Section A.5.7.1](#)) when the Borrower proposes or claims to include capital expenditure items in the operating expense.

### D. Construction Documents must include:

1. Drawings and Specifications conforming to [Section A.5.5](#); and
2. Offsite Construction descriptions conforming to [Section A.5.5](#).

### E. Contracts and Certifications must include:

1. AIA B108 with HUD Amendment to AIA Document B108 (form HUD-92408-M);
2. [Section A.5.8.1](#) Architect's Certification;
3. Form HUD-92442M, Construction Contract; and
4. AIA A201 with HUD Supplementary Conditions to the Contract for Construction (HUD 92554M).

**F. Architectural and Cost analysis report, with cost related exhibits must include:**

1. Architectural analysis report;
2. Cost analysis report;
3. Form HUD-2328, Contractor's and/or Mortgagor's Cost Breakdown;
4. Form HUD-92326, Project Cost Estimate; and
5. Form HUD-92331-B, Cost Certification Review Worksheet.

**G. The CNA e-Tool must include required data to produce the following:**

1. Completed physical inventory of the property to be constructed (i.e., assessment entry screens for Sites, Buildings, Unit Types, Units and Common Spaces, Parking, Components, Alternatives, and Recommendations, and Financial Factors);
  - a. Units Inspected and Narrative Sections are not required to be completed.
  - b. TCO (Total Cost to Operate) and Energy-related fields are required only for Green MIP and underwriting energy savings transactions.
2. Estimate of Replacement Costs (form HUD-92329, Schedule of Insurable Values Report) related information; and
3. Financial Factors, Future Needs and Financial Schedule/Estimate Period Recap for Reserve for Replacement escrow deposit amounts.

### **A.5.4.3 Required Exhibits for Refinance or Acquisition**

**A. Property site related exhibits must include:**

1. Location map;
2. Aerial photograph or satellite images for each site showing all structures and full site labeled by property name and site address;
3. USGS Seismic Threshold Report; and
4. A seismic report per [Section A.5.3](#) for existing properties, if the values for SXS and SX1 exceed prescribed parameters.

**B. Property Legal Exhibits must include:**

1. Certificate of Occupancy or Final Inspection Report, if available, or a statement from the jurisdiction with building and/or zoning code enforcement authority recognizing any legal non-conforming use;
2. Municipal Code Violation Report/Clear Report, and Fire Marshall's Report/Clear report; and
3. City/County Health Officer's report/clear report where private water supply or sewage treatment systems are involved.

**C. Property Physical Condition Related Exhibits that must be attached to CNA e-Tool are as follows:**

1. Set of as-built plans, if available. This may be submitted separately if the file-size is prohibitive;



2. Supporting documents and Reports for describing the condition of the property such as Intrusive Inspection Reports, etc., as relevant;
  3. While photos or text documents may be attached to address a particular component or topic, it is recommended that the Needs Assessor and/or Lender assemble photography and comments in a single or multiple pdf documents organized by Need Category, i.e., by ASTM outline, e.g., 3.2 Site, 3.3 Mechanical & Electrical Systems, etc. These attachments should cover all Need Categories identified at the property. See the Standard Estimated Useful Life Table for Need Categories. Annotated photography for existing properties must show and be organized as follows:
    - a. Sites and buildings, unique and typical common spaces, each unit type (but not model units used for marketing purposes), including all rooms and baths, and typical conditions together with any photos necessary to document specific locations and/or the nature or content of immediate repairs. Photos of unit types should include any common areas (hallway, breezeway, elevator) that must be transited to access the unit;
    - b. If Fair Housing Act units or designated UFAS accessible units are present, photographs of one unit of each unit type that is covered or designated. These photos should include documentation of compliance (or not) with dimensional requirements;
    - c. Where distinct conditions characterize groups of units, (e.g., renovated units vs. un-renovated units), photos of the unit of each distinct condition as though the distinct condition defined a separate unit (e.g., 1-BR/1-BA renovated vs. 1-BR/1-BA unrenovated); and
    - d. Annotated or labeled photos indicating the location (building and/or unit or location on site) as well as the description of the photographed object and relevant comments, if any.
  4. Any O&M plans in use or proposed for use at the property (e.g., Lead Based Paint, Asbestos Containing Material); and
  5. The Borrower's written narrative describing the operational policy to distinguish capital needs versus operating expense items for maintenance (see [Section A.5.7.4.1](#)), when the Borrower proposes or claims to include capital expenditure items in the operating expense.
- D. Hired Third-Party and Professionals Related Exhibits must include the following:**
1. A statement of qualifications and experience for the Needs Assessor unless such a statement has been entered on the "Narrative" section of the CNA e-Tool;
  2. Third-party certifications for the Lender's Needs Assessor consistent with [Chapter 11, Section 11.2.3](#);
  3. If a Project Architect has been retained, include:
    - a. The Architect's resume and other supporting documents evidencing qualification
    - b. The Owner-Architect Agreement, AIA B104;
    - c. The Project Architect's certification for a refinancing transaction substantially in the form of [Section A.5.8.2](#);
    - d. Plans and Specifications, file size permitting (otherwise, submit separately);

- e. The plans and specifications, to be submitted at the time of closing in the same manner as the requirements described for new construction or substantial rehabilitation applications. (See [Chapter 5, Section 5.8.3.A.4](#) and [Section 5.8.3.A.5](#)); and
  - f. Lender's 223(f) Repairs & Alterations Cost Worksheet (See [Section A.5.12](#)).
4. If a General Contractor has been retained, submit the following:
- a. The General Contractor's resume and other supporting documents evidencing qualification;
  - b. The Owner-Contractor Agreement, AIA A104, which incorporates the lists of repairs and alterations as well as the Project Architect's plans and specs by reference;
  - c. Detailed Construction Schedule, in addition to the "Months to Complete" entries for the listed repairs in the CNA e-Tool. Note that repairs that correct accessibility deficiencies must be completed as soon as possible, notwithstanding the standard 12-month term of the Repair Escrow; and
  - d. The contractor's cost breakdown of the total estimate that is consistent with [Chapter 5, Section 5.3.3.5](#).
- E. The CNA must be fully completed within the CNA e-Tool, per [Appendix 5, Section A.5.7](#).

## A.5.5 Firm Commitment Drawings and Specifications

### A.5.5.1 New Construction and Substantial Rehabilitation

A. A cover sheet must include the following:

1. Project name and identification number;
2. Spaces for signatures of Project Architect, Architect administering contract, owner, contractor, Lender, and bonding company;
3. Tabulation of units, buildings, and parking spaces with gross square footages and net rentable square footages, including:
  - a. Number of units for each type;
  - b. Number of units and type in each building;
  - c. Non-rental living unit; and
  - d. Number of parking spaces, open, covered, common area garage spaces, in-unit garage spaces (garage part of dwelling unit and available only to tenant of that unit), and accessible standard, van and covered spaces.

B. The package must include an index of drawings by name, numbered consecutively, with date of preparation and latest revision date. Consecutive numbering is required for each drawing category (Architectural, Land Improvements, Structural, Plumbing, HVAC, Electrical, etc., shown as A-1, A-2, A-3... L-1, L-2, L-3, etc.), but absolute consecutive numbering of the entire set is optional and would appear only in addition to the categorical numbering.

**C.** ALTA/ACSM Land Title Survey including items 5 and 6a and 6b of Table A of the ALTA/ACSM Minimum Standard Detail Requirements at a scale of 1" = 40' dated not more than 6 months prior to the date of application for Firm Commitment must also be included. Note that the survey and the HUD 91073M must be updated and certified not earlier than 120 days before initial endorsement.

**D.** A proposed plot plan/site plan at a scale not less than 1" = 40'- 0" must be included, which shows the following:

1. Land boundaries, dimensions, and North Point;
2. Streets, alleys, or roads adjacent or within the property boundaries, together with walks, curbs, pavements, steps, ramps, play areas, parking areas, and drying yards, and utilities such as gas, water, electric, and sewer lines:
  - a. Dimension or size with distance from location points, material indication for such items as walks and pavements, and extent of each; and
  - b. Indications of "new" or "existing" and public dedication of any streets or alleys in the project;
3. Buildings, building designations, location dimensions, and overall dimensions;
4. Elevations of first floor, elevations of finish and existing grade at building corners and entrances, elevations of curbs and streets, and invert elevations of main sewer and direction of flow;
5. Utilities servicing the property, or distance to point of connection and utility lead-ins of service connections; yard lighting; lawn hydrants and lawn sprinkler systems with the pipe sizes and controls; drains; and fire hydrants;
6. Retaining and garden walls, fences, guard rails, garages and accessory structures, with dimensions; and
7. Existing trees and other natural features and whether they are to be removed or preserved.

**E.** Grading and drainage plan at a scale not less than 1" = 40'- 0" when essential information cannot be clearly shown entirely on the plot plan/site plan must show the following:

1. Grade elevations at all building corners and at entrances, walks, drives, parking areas, terraces, yards, walls and steps, and first floor elevations. Existing and proposed grading contours at appropriate intervals; and
2. Yard and roof drainage with controlling grades and dimensions of drainage lines, culverts, catch basins, drainage inlets, gutters, curbs, drainage disposals, and any existing facilities.

**F.** A planting plan at a scale not less than 1" = 20'- 0," must include the following:

1. Outline of buildings and other improvements with physical features of the site to establish the location and relationship of planting and landscape construction;
2. Distribution of plant material, location, quantity, and key number of each general species in each group; outline of planting beds, primary lawn areas, secondary lawn areas, and existing trees to be preserved or transplanted; and
3. List of plant material using English and Latin names, key number for each variety for reference to plan, and the size, quality or other description.

**G.** Basement plans for each building type at a scale not less than  $1/8'' = 1' - 0''$  (foundation plans when no basements) must include the following:

1. Dimensions and names indicating use of spaces, with the layout of permanent equipment;
2. Location of structural elements with dimensions or notes as to thickness and size; windows; vents; areaways; doors; lights and switches; drains; sumps; etc. Unless there is a separate foundation plan, this plan must show locations and size of footings, piling, and other substructure work; and
3. Large-scale drawings or details of spaces not clearly shown.

**H.** Floor plans must include the following

1. Unit floor plans at a scale not less than  $1/4'' = 1' - 0''$  for each basic type living unit and any major variation. Separate unit plans are not required when the general floor plans are provided at  $1/4$ -inch scale and contain all essential information:
  - a. Partitions to scale; rooms, closets and hall dimensions; over-all dimensions; window locations and type designations referring to schedule showing design, thickness, and size; and dimensioned stair locations, runs and width, landings and handrails;
  - b. Plumbing fixtures; soil and vent stacks; kitchen cabinets and equipment; electric lights; switches, receptacles, and special power outlets; closet shelving and clothes rods; radiators or other heating devices, chimneys, and all other such items;
  - c. Location of structural elements such as columns, lintels, joists, beams, girders, and bearing partitions. Show sizes, spacing and direction of members. Separate structural drawings are required where the structural information would obscure other information;
  - d. All conditions where units are to join other units; end-unit conditions; and
  - e. Identification of living unit types by a number or letter.
2. General floor plans at a scale not less than  $1/8'' = 1' - 0''$  must be included, which show the following:
  - a. Dimensional relation of living and building units with over-all dimensions of building units and buildings, partition arrangement and fenestration of end units, units at corners and units at offsets; other partitions as necessary to show variations from the typical unit plans and relation of rooms in adjacent living units; wall separating building units; and their material and thickness; and
  - b. Buildings and those units identified by numbers or letters.

**I.** Roof plans at a scale not less than  $1/8'' = 1' - 0''$  must include the relation of intersection of the various building unit roofs; direction of slopes; parapets, chimneys, vents, and other projections; and downspout locations and sizes. Omit where the essential information can be shown clearly on the plot plan or other drawings.

**J.** Elevations:

1. General elevations at a scale not less than  $1/8'' = 1' - 0''$ . Exterior design of all sides of buildings with existing and proposed grades at buildings, floor lines and elevations, floor height dimensions, roofs, attic vents, parapets, cornices, downspouts, openings, material notes, and other essential features.

2. Typical elevations at a scale not less than  $\frac{1}{4}'' = 1' - 0''$  to show portions of facade with a special exterior design. Show materials, jointing, special features, windows, doorways, cornices, parapets, and details.

**K.** Plans must describe sections as follows:

1. Outline sections at a scale not less than  $\frac{1}{4}'' = 1' - 0''$ . Show various height conditions, cross-sectional characteristics, and floor level relations, when other drawing information is not adequate;
2. Detail sections at a scale not less than  $\frac{3}{8}'' = 1' - 0''$ . Show each type of exterior wall and bearing wall or partition, from footings to roof; and
3. Exterior wall sections at a scale not less than  $\frac{3}{8}'' = 1' - 0''$ . Show complete construction of walls with thickness at various stories, floors, furring, waterproofing, ceilings, roofs, including pitch and flashings, room heights, anchorage and bearings, cornice and gutter, insulation, vapor barrier, foundation walls and footings, conditions at various basement depths, basement floors or access space, roof space, and attic and foundation vents.

**L.** Details at a scale not less than  $\frac{3}{8}'' = 1' - 0''$  must be provided as shown below except where such features do not occur:

1. Front and rear entrances, plan of each with elevations and sections;
2. Stair plans and sections showing stringers, treads, risers, newels, balusters, handrails, rise, run, and headroom;
3. Kitchen cabinet plans, elevations, and sections;
4. Bathroom plans with elevations showing accessories and cabinets;
5. Standard location and elevation for electrical outlets, switches, and controls;
6. Entrance lobbies;
7. Platforms and areaways; and
8. Special exterior and interior details, such as bay windows, dormers, cupolas, vents, fireplaces, and built-in furniture.

**M.** Schedules must include the following

1. Door schedule that indicates the size, thickness, material, and design of each door, with plan identification. For fire doors, the rating must be shown;
2. Window schedule that indicates the size, thickness, materials and design of each window, with plan identification; and
3. Finish schedule that indicates the material and type finish of floors, base or wainscot (with height), walls, ceilings, and trim for various rooms or spaces.

**N.** Drawings and details as appropriate, with complete structural information, must be provided when such information cannot be shown on general drawings without obscuring other information.

**O.** Mechanical/Electrical/Plumbing (MEP) plans must be provided, including for heating, , cooling, plumbing and electrical layouts on separate drawings unless the systems are simple enough to be shown on other drawings. Include all pertinent design data. Show special mechanical installations separately.

1. Heating drawings for each system:
  - a. Location and size of boilers, furnaces, or heaters; the make, model number or type of fuel input and net heat output of each;
  - b. Layout, location, and sizes of supply and return piping, ducts, risers, and branches, and insulation locations;
  - c. Location, sizes and output in BTU of radiators, registers, grille, and panel surfaces, valves, vents, traps, dampers, and other accessories, as well as make, model number or type of each;
  - d. Make, model number, and firing rate of all firing equipment, and similar detailed data on other components of each system, such as controls, pumps, blowers, and filters.
  - e. Location, type, manufacturer's name, and model number of domestic water heating and related equipment including storage, arrangement and sizes of connecting piping; make and model number and other pertinent information for control equipment and safety devices;
  - f. Design data for the system, including outside design temperature, boiler operating temperature, BTU output, pressure or temperature drops, air temperatures at registers, pump or fan capacities, volumes, and velocities; heat loss of each building and total calculated heat load connected to each heating system; net output in BTU of each boiler and system; and
  - g. Design data for each domestic hot water system and, when connected to a heating system, the additional heat load included in the total for the connected system.
2. Plumbing drawings:
  - a. Horizontal sewer and drain systems with soil, waste, and vent stacks; branch wastes and vents; drains, cleanouts, traps, sump pumps, etc., connections to sewer, sizes of lines and stacks. Diagram of typical stack including soil, waste, and vents;
  - b. Cold water distribution system, size of mains and branches, location of hose bibs, valves, and drains;
  - c. Hot water distribution system together with circulating lines and pumps, valves, sizes of mains, and branches; and
  - d. Gas distribution system, size of mains and branches, meters, etc.
3. Electrical drawings:
  - a. Service lines, primary distribution and secondary distribution, service characteristics and wire sizes;
  - b. Meter and panel locations and manner of mounting;
  - c. Interior distribution and wiring of typical units;
  - d. Lights, receptacles, switches, special purpose outlets, and connections to equipment if not on the architectural plans;
  - e. Yard and grounds lighting and lighting of all public and common spaces and controls;
  - f. Power riser diagram and switchboard schedule;
  - g. Fire detection and alarm system riser diagram and schedule; and

- h. Symbol list.
- 4. Air conditioning drawings:
  - a. Locations, cooling capacity, and horsepower of compressor; cooling tower condensing units; and individual cooling units. Include make, model number, and rating of each;
  - b. Layout of system including ducts, grilles, registers, diffusers, pipe sizes, and location of valves, vents, dampers and controls;
  - c. BTU load for each space, size, and rating of equipment;
  - d. Design data for the system, including: CFM space requirements; blower ratings, type condenser cooling; inlet and outlet water temperature; and GPM water-flow rate; and
  - e. Electric wiring layout, location of motors, fans, pumps, switches, and their load requirements.
- P.** Drawings and specifications for any new construction and/or substantial rehabilitation projects require at Firm Commitment must include other drawings required by Lender.
- Q.** Appropriate general and supplementary conditions and Davis-Bacon wage rates (where applicable) must be included.
- R.** Contract specifications must be included, using a currently supported version of CSI Master Format specifications of the Construction Specifications Institute (CSI):
  - 1. Describe all materials, equipment, and construction and include two, and preferably three, comparable products where practicable, or specify by performance characteristics;
  - 2. Include the latest edition of the “General Conditions of the Contract for Construction”, AIA Document A201;
  - 3. Fully describe all materials, including alternatives, and do not use general references to HUD’s Minimum Property Standards. Do not include the words “or equal”;
  - 4. Divide into sections separately describing the work to be done by each trade essential to project completion. Consecutive page numbering is required for each trade category (Concrete, Masonry, Metals, etc.), but absolute consecutive numbering of the entire specification is optional and would appear only in addition to the trade numbering. Include the following items:
    - a. A cover sheet including the title of project, the Lender, project number, project location, and a signature block setting forth:

IDENTIFICATION	(Print Name) by (Signature)
Architect	Print Name) by (Signature and Title)
Owner	(Print Name) by (Signature and Title)
Contractor	(Print Name) by (Signature and Title)
Lender	(Print Name) by (Signature and Title)
Bonding Co.	(Print Name) by (Signature and Title)
Date	_____
    - b. An index, including:
      - 1) Divisions with name:



- a) Trade, name and page number; and
- b) Trade section, name and page number; and
- 2) Pages numbered consecutively.
- c. Conditions, including:
  - 1) General Conditions of the Contract for Construction, AIA Document A201, latest edition;
  - 2) Supplementary Conditions of the Construction Contract, form HUD-2554, latest edition; and
  - 3) Architect's supplementary conditions, if any.
- d. Trade sections, which must include:
  - 1) Complete description of all work to be performed. This will include scope of work, materials, and workmanship; and
  - 2) Necessary specific instructions for coordinating the work with other trades.
- e. Methods of Specifying the following
  - 1) **Performance.** List required qualities of products and assemblies and end result.
  - 2) **Reference Standards.** Incorporate references to nationally recognized standards published by industry associations, testing organizations and government, such as American National Standards Institute (ANSI), Underwriters' Laboratories (UL), and Department of Commerce (DOC).
  - 3) **Proprietary.** List products and assemblies by manufacturer or brand name, and grade or model.
    - a) Include at least two comparable.
    - b) Use a single brand only if there is no comparable.
- f. Not acceptable.
  - 1) Use of the words "or equal".
  - 2) Reference to HUD or HUD publications, such as:
    - a) Minimum Property Standards (MPS),
    - b) Materials Bulleting (UM),
    - c) Materials Releases (MR), and
    - d) Structural Engineering Bulleting (SEB).
  - 3) Cash or lump sum allowances.

## S. Offsite Drawings and Specifications

- 1. Offsite improvements are those required to service the project but outside of the property boundary lines:
  - a. Include utilities, walks, curbs, gutters, streets, drainage structures, landscaping, and similar improvements beyond the property lines; and

- b. Do not include short extensions of utilities, walks, drives, drainage structures and similar improvements beyond the property lines which connect with those next to the property lines.
  2. Offsite improvements may be included in the overall contract drawings and specifications, but the extent must be clearly defined on the plot plan and in the specifications.
  3. While offsite information may be included in the overall contract drawings and specifications, a set of complete separate offsite drawings and specifications are preferred.
- T. For utility analysis, see [Chapter 6](#).

## A.5.6 HUD Architectural Review Report Format

A. The following review reports formats are to be used to document Technical Reviews. The Technical Support Division Branch Chiefs and Production Division Directors have discretion to approve modifications or alternative formats.

### A.5.6.1 Pre-Application Exhibits

A. HUD Architectural Review Report for Pre-Application Exhibits

HUD Office Name: \_\_\_\_\_  
Pre-Application Submission Date: \_\_\_\_\_  
Project Name: \_\_\_\_\_  
Project Location (City, State): \_\_\_\_\_  
MAP Lender Name: \_\_\_\_\_

B. Summary of HUD Architectural Review:

1. Architectural/Engineering exhibits (including Project Architect's draft Scope of Work Summary and Joint Inspection Report per [Chapter 5, Section 5.9.2](#) for substantial rehabilitation projects). *If incomplete or unacceptable, specify and indicate reasons.*
2. Development team (e.g. Borrower, design professionals, General Contractor) experiences and qualifications. *If not acceptable, indicate reasons.*
3. Conformance to HUD Standards as listed in [Chapter 5, Section 5.4](#). *If not acceptable, indicate reasons.*
4. Site conditions:
  - a. Placement of residential building(s).
  - b. Site ingress and egress related issues, including easements.
  - c. Access to public utilities, including required offsite work.
  - d. Unusual site conditions.
  - e. Applicable accessibility requirements and any prohibitive conditions.

*If not acceptable, indicate reasons.*
5. Residential building(s):

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- a. Lobby floor.
- b. Typical floor.
- c. Typical apartment layout(s):
  - 1) Size and marketability (determined by appraiser); and
  - 2) Acceptability of design.
- d. Structural system.
- e. Exterior finish.
- f. Rehabilitation of roof/roofing (for substantial rehabilitation).
- g. Applicable accessibility requirements.

If not acceptable, indicate reasons.

C. I have reviewed the subject project and hereby make the following recommendation(s):

**Reviewer:**

Name of Reviewer:

Signature and Date of Review: \_\_\_\_\_ Date: \_\_\_\_\_

**Concurrence:**

Name of Team Leader:

Signature and Date of Concurrence: \_\_\_\_\_ Date: \_\_\_\_\_

## A.5.6.2 Lender’s Architectural Analyst’s Report for Firm Exhibits

### A.5.6.2.1 New Construction

A. HUD Architectural Review of Lender’s Architectural Analyst’s Report for Firm Exhibits–New Construction.

HUD Office Name: \_\_\_\_\_  
Firm Commitment Submission Date: \_\_\_\_\_  
Project Name: \_\_\_\_\_  
Project Location (City, State): \_\_\_\_\_  
MAP Lender Name: \_\_\_\_\_

B. Include [Section A.5.6.1](#) ([Section A.5.6.1.B.2](#) and [Section A.5.6.1.B.3](#)) if processing direct to Firm Commitment Application.

C. Summary of HUD Architectural Review:

- 1. Architectural/Engineering exhibits, per [Section A.5.4.1](#). *If incomplete or unacceptable, specify and indicate reasons.*
- 2. Architectural Analysis and Review Reports by Lender’s Construction Analyst (per [Chapter 5, Section 5.7.3.A.16](#)):

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- a. Site design and conditions;
- b. Building and building systems design;
- c. Design features unusual for the particular structure type and/or system; and
- d. Accessibility:
  - 1) Any noncompliance with Fair Housing Act Design and Construction requirements?
  - 2) Any noncompliance with UFAS or the Deeming Notice for assisted housing?
  - 3) Any noncompliance with Title III of the ADA?

If not acceptable, indicate reasons.

3. CNA e-Tool data entries (see [Chapter 5, Section 5.7.3.A.11](#)):

- a. Review of Architecture and Engineering (A/E) portion of Lender's completed form HUD-92264 and the CNA e-Tool entries for accuracy with respect to property characteristics and other A/E related.
- b. Physical inventory (e.g., sites, buildings, units, components, and replacement alternatives) consistent with the Architect's plans and specs.
- c. Estimate of replacement costs (form HUD-92329, Schedule of Insurable Values).
- d. Financial plan for funding future capital replacement needs, per [Section A.5.7](#). Future replacements are consistent with owners proposed distinctions between capital items and operating expense.

If not acceptable, indicate reasons.

4. Review of Construction Contracts:

- a. AIA B108 and Amendments and Project Architect's certification, per [Chapter 5, Section 5.2.3](#).
- b. Owner Contractor Agreement, Supplementary Conditions, Construction Contract, per [Chapter 5, Section 5.5](#).
- c. Identities of interest disclosed and acceptable.

If not acceptable, indicate reasons.

5. Energy related requirements per [Chapter 6](#). *If not acceptable, indicate reasons.*

**D.** I have reviewed the subject project and hereby make the following recommendation(s).

**Reviewer:**

Name of Reviewer:

Signature and Date of Review: \_\_\_\_\_ Date: \_\_\_\_\_

**Concurrence:**

Name of Team Leader:

Signature and Date of Concurrence: \_\_\_\_\_ Date: \_\_\_\_\_

### A.5.6.2.2 Substantial Rehabilitation

A. HUD architectural review of Lender’s Architectural Analyst’s report for firm exhibits – substantial rehabilitation:

HUD Office Name: \_\_\_\_\_  
Firm Commitment Submission Date: \_\_\_\_\_  
Project Name: \_\_\_\_\_  
Project Location (City, State): \_\_\_\_\_  
MAP Lender Name: \_\_\_\_\_

**NOTE: The following summary of Section 504 applies to any housing that has ever received Federal assistance, such as Project-Based Section 8, CDBG, HOME funds, etc. (see [Section A.5.2](#) for definition of “Federally assisted.”)**

B. Summary of Section 504 of the Rehabilitation Act of 1973 and 24 CFR Part 8 - Uniform Federal Accessibility Standards (UFAS) Requirements or the Deeming Notice (See [Section A.5.2](#)):

Any property built with assistance, or became assisted prior to July 11, 1988 has been obligated since such time to bring the property into compliance with UFAS or the Deeming Notice requirements (including 5% of total units as mobility accessible and 2% of total units as sensory accessible units) through any replacements and alterations that took place over time, unless particular elements of compliance required alteration of a load-bearing wall or would have caused an undue financial and administrative burden (see 24 CFR 8.23).

In the decades since 1988 significant compliance should have been achieved. Some existing properties may have become assisted after 1988 and compliance should, (but may not), have been achieved at the time of assistance and these properties also must make all replacements and alterations conform so as to achieve compliance over time as well as addressing the needs of disabled tenants. No assisted property is exempt. All must either be in compliance or must be progressing toward compliance subject only to forbearance for particular items of non-compliance by reason of the “load bearing wall” and the “undue financial and administrative burden” exemptions.

C. If processing direct to Firm Commitment Application, include [Section A.5.6.1](#) ([Section A.5.6.1.B.2](#) and [Section A.5.6.1.B.3](#)).

D. Summary of HUD Architectural Review:

1. Architectural/Engineering exhibits, per [Section A.5.4.2](#). *If incomplete or unacceptable, specify and indicate reasons.*
2. Review of Physical Conditions and Scope of Work.
  - a. Physical conditions:
    - 1) Condition of project and assessed RUL of components justified; photography supports assessment, level of investigation consistent with age, type of construction and condition of the buildings.
    - 2) If Seismic risk thresholds are exceeded and a seismic analysis and report are required per [Section A.5.3](#), recommended retrofits have been included in scope of work.
  - b. Rehabilitation Scope of Work:

- 1) Proposed rehabilitation work as described in Scope of Work Summary address identified deficiencies, repair needs, obsolescence and other improvement needs consistent with Joint Inspection Report and other due diligence reports.
- 2) Plans and specs describe all the proposed work, consistent with Scope of Work Summary and in compliance with [Section A.5.5](#).
- 3) Expected future repair, replacement, and major maintenance needs account for proposed rehabilitation as well as assessed condition of all other capital items not repaired or replaced as part of the rehabilitation.

If not acceptable, indicate reasons.

3. Architectural Analysis and Review Reports by Lender's Construction Analyst (per [Chapter 5, Section 5.7.3.A.16](#)).
  - a. Site design and conditions.
  - b. Building and building systems design.
  - c. Design features unusual for the particular structure type and/or system.
  - d. Accessibility:
    - 1) Any noncompliance with Fair Housing Act Design and Construction requirements?
    - 2) Any noncompliance with UFAS or the Deeming Notice for assisted housing?
    - 3) Any noncompliance with Title III of the ADA?

If not acceptable, indicate reasons.

4. CNA e-Tool data entries.
  - a. Complies with the requirements in [Chapter 5, Section 5.7.3.A.11](#).
  - b. Complies with the requirements in [Chapter 5, Section 5.9.3.A.4](#) and [Section 5.9.3.A.6](#).
  - c. Review of Architecture and Engineering (A/E) portion of Lender's completed form HUD-92264 and the CNA e-Tool entries for accuracy with respect to property characteristics and other A/E related exhibits.
  - d. Physical inventory (e.g., sites, buildings, units, components and replacement alternatives) consistent with the Architect's plans and specs.
  - e. Estimate of replacement costs (form HUD-92329, Schedule of Insurable Values).
  - f. Financial plan for funding future capital replacement needs, per [Section A.5.7](#). Future replacements are consistent with owners proposed distinctions between capital items and operating expense.

If not acceptable, indicate reasons.

5. Review of Construction Contracts.
  - a. AIA B108 and Amendments and Project Architect's certification, per [Chapter 5, Section 5.2.3](#).

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- b. Owner Contractor Agreement, Supplementary Conditions, Construction Contract, per [Chapter 5, Section 5.5](#).
- c. Identities of interest disclosed and acceptable.

If not acceptable, indicate reasons.

6. Energy related requirements per [Chapter 6](#). *If not acceptable, indicate reasons.*

**E.** I have reviewed the subject project and hereby make the following recommendation(s):

**Reviewer:**

Name of Reviewer: \_\_\_\_\_

Signature and Date of Review: \_\_\_\_\_ Date: \_\_\_\_\_

**Concurrence:**

Name of Team Leader: \_\_\_\_\_

Signature and Date of Concurrence: \_\_\_\_\_ Date: \_\_\_\_\_

**A.5.6.2.3 Section 223(f)**

**A.** HUD Architectural Review of Lender’s Architectural Analyst’s Report for Firm Exhibits - Section 223(f)

HUD Office Name: \_\_\_\_\_  
Firm Commitment Submission Date: \_\_\_\_\_  
Project Name: \_\_\_\_\_  
Project Location (City, State): \_\_\_\_\_  
MAP Lender Name: \_\_\_\_\_

**NOTE: The following summary of Section 504 applies to any housing that has ever received Federal assistance, such as Project-Based Section 8, CDBG, HOME funds, etc. (see [Section A.5.2](#) for definition of “Federally assisted.”)**

**B.** Summary of Section 504 of the Rehabilitation Act of 1973 and 24 CFR Part 8-Uniform Federal Accessibility Standards (UFAS) or Deeming Notice Requirements (See [Section A.5.2](#)):

Any property built with assistance, or became assisted prior to July 11, 1988 has been obligated since such time to bring the property into compliance with UFAS or the Deeming Notice requirements (including 5% of total units as mobility accessible and 2% of total units as sensory accessible units) through any replacements and alterations that took place over time, unless particular elements of compliance required alteration of a load bearing-wall or would have an undue financial and administrative burden (see 24 CFR 8.23).

In the decades since 1988 significant compliance should have been achieved. Some existing properties may have become assisted after 1988 and compliance should, (but may not), have been achieved at the time of assistance and these properties also must make all replacements and alterations conform so as to achieve compliance over time as well as addressing the needs of disabled tenants. No assisted property is exempt. All must either be in compliance or must be progressing toward compliance subject only to forbearance for particular items of non-compliance by reason of the “load bearing wall” and the “undue financial and administrative burden” exemptions.

**C.** Summary of HUD Architectural Review:



1. Firm Commitment deliverables.
  - a. Lender's Capital Needs Assessment with attachments delivered in the CNA e-Tool.
  - b. Attachments to the CNA:
    - 1) Certificate of Occupancy or final inspection report, if available, or a statement from the Building Code/Zoning Code official recognizing any non-conforming use.
    - 2) Municipal code violation report, fire marshal's report, both clear
    - 3) Local health officer's report/clear report for any private water supply or sewer treatment system.
    - 4) Property/site location map(s).
    - 5) Aerial photography or satellite view of site.
    - 6) As-built plans if available.
    - 7) Annotated photography of property conditions and any other due diligence reports, e.g. intrusive examinations by third parties, lead based paint, or asbestos.
    - 8) O&M plans proposed or in place.
    - 9) If a Project Architect is engaged:
      - a) The owner/Architect agreement, AIA B104.
      - b) The Project Architect's certification, [Section A.5.8.2](#).
      - c) Drawings/sketches for reconfigured spaces and/or altered site improvements.
    - 10) If a General Contractor is engaged:
      - a) The owner contractor agreement, AIA A104.
      - b) The contractor's cost breakdown, form HUD 92328.
    - 11) The Borrower's chart of accounts (or relevant portions) describing capitalized vs operating expense items.
    - 12) A seismic report per [Section A.5.3.1](#), if threshold values for SXs and SX1 are exceeded.
    - 13) A statement of the Needs Assessor's and other third-party examiner's (e.g. energy professional, intrusive examiner, seismic engineer) qualifications (if not included in CNA e-Tool narrative screen).
    - 14) Supporting energy reports and documents (e.g. ASHRAE Level 2 Energy Audit) required for qualifying Green MIP projects, per [Chapter 6, Section 6.6](#).

If incomplete or unacceptable, specify and indicate reasons.

  2. Review of CNA.
    - a. Physical Inspection, which should include the following verification:
      - 1) Accuracy of A/E portion of form HUD-92264 as reported in CNA e-Tool.

- 2) Condition of project and assessed RUL of components justified, photography supports assessment, level of investigation consistent with age, type of construction and condition of the buildings.
- 3) Description of project replacement needs and repair scope of work must address and/or include the following
  - a) Immediate repair needs, both Critical and Non-critical, are detailed, cost estimated, with estimated months to complete for those which can be deferred beyond endorsement.
  - b) Dimensioned sketches or drawings are provided for reconfigured spaces sufficient to confirm accessibility and to support inspection of completed work.
  - c) Expected future repair, replacement, and major maintenance needs reflect assessed condition of all capital items at property consistent with owner's distinction between capital items and operating expense.
  - d) Scope of work described in CNA e-Tool addresses all accessibility deficiencies by describing the deficiency, prescribing and costing a remedy, identifying the applicable statute(s) and accessibility standard(s), and estimating the time in months for completion of the remedy (corrective action plan).
  - e) Lender's 223(f) Repairs and Alterations Cost Worksheet, per [Chapter 5, Section 5.10.4](#).
- b. Financial factors and 20-year RfR plan:
  - 1) Inflation adjustments to capital costs, short-term interest rates on balances and percentage changes in ADRR are realistic and consistent, with no large, lump sum increases in ADRR from one year to the next.
  - 2) Financial plan meets the requirements described in MAP Guide [Section A.5.7.4.3](#).
- c. Accessibility for persons with disabilities:
  - 1) CNA identifies and documents accessibility deficiencies by describing the deficiency, prescribing and costing a remedy, identifying the applicable statute(s) and accessibility standard(s) and estimating the time in months for completion of the remedy, (corrective action plan).
  - 2) If time to complete exceeds 1 year or deficiencies cannot be corrected within the underwriting parameters of Section 223(f), submit corrective action plan to Director of Technical Support at HUD Headquarters in Washington, DC.

If not acceptable, indicate reasons.

**D.** I have reviewed the subject project and hereby make the following recommendation(s):

**Reviewer:**

Name of Reviewer:

Signature and Date of Review: \_\_\_\_\_ Date: \_\_\_\_\_

**Concurrence:**

Name of Team Leader:

Signature and Date of Concurrence: \_\_\_\_\_ Date: \_\_\_\_\_

## A.5.7 Capital Needs Assessments

### A.5.7.1 What is a Capital Needs Assessment?

#### A.5.7.1.1 General

**A.** A Capital Needs Assessment (CNA) is a due diligence report describing the physical inventory of multifamily property and characterizing the condition and expected durability of that inventory for the purpose of budgeting future capital repairs and replacements. A CNA includes a financial plan or annual schedule of anticipated capital costs and corresponding funding needed to meet expected capital expenses. The period of years covered by the financial plan is called the Estimate Period. The financial plan should be periodically updated and revised to recognize actual results during the life of an asset, and for this reason, a new CNA is required for insured properties at intervals of not greater than 10 years. This “10-year update” requirement applies to all properties insured under Section 223(f) since the first publication of the MAP Guide in 2002 and to properties insured under Sections 220, 221, 223(a)(7), and 231 since the effective date of Mortgagee Letter 2010-21 (Risk Mitigation, September 6, 2010).

**B.** When prepared for a property to be built as new construction or substantially rehabilitated, a CNA is only an inventory of the proposed construction (buildings, units, components, quantities) and an estimate of the expected durability of the proposed (and existing for substantial rehabilitation) construction components with a corresponding plan to finance future capital needs as they are expected to occur.

**C.** When prepared for an existing property for which physical changes that are contemplated are considered less than Substantial Rehabilitation, a CNA requires an on-site physical inspection. Accordingly, it is the primary means of identifying immediate physical needs or deficiencies and specifying the nature, location, and expected cost of the repairs, replacements and/or alterations required to address immediate needs.

**D.** CNAs of existing buildings prepared for HUD must at a minimum meet the requirements of ASTM E2018-15 for the preparation of needs assessments. Numerous additional requirements may apply to particular properties or programs as described herein.

#### A.5.7.1.2 CNA e-Tool

**A.** CNA e-Tool is HUD’s current automated mechanism for preparation, submission, and review of CNAs. HUD requires that all CNAs prepared for HUD-FHA insured multifamily properties be prepared, submitted, and reviewed using the CNA e-Tool. See [Chapter 5, Section 5.3](#) for the use of CNA e-Tool by construction activity and program.

**B.** Technical information, instructions on how to access and use the CNA e-Tool, and related information are published and periodically updated at HUD’s CNA e-Tool home page:

[https://www.hud.gov/program\\_offices/housing/mfh/cna](https://www.hud.gov/program_offices/housing/mfh/cna)

## A.5.7.2 When CNAs are Required

### A.5.7.2.1 Applications for New Construction or Substantial Rehabilitation

A. Applications for projects to be insured under Sections 220, 221, and 231 (and any Section 241(a) supplemental loan funding new construction or substantial rehabilitation) require a CNA, but except as noted below, these CNAs are to be prepared by the Lender's Construction Analyst in collaboration with the Borrower's Project Architect.

1. **New Construction.** The purposes of the CNA prepared for new construction are to provide a permanent, standardized description of the physical inventory of the proposed project and to plan for future repairs and replacements. Since the CNA is based on a physical inventory to be built, no on-site inspection of sampled units are required in the CNA e-Tool for new construction.
  - a. The Lender's Construction Analyst completes the CNA (exclusive of the Financial Factors) based on the construction drawings and specifications submitted and approved for Firm Commitment.
  - b. In the case of streamlined processing, the construction documents should be complete enough to estimate future repairs and replacements.
  - c. The completion of the Financial Factors and the development of a balanced financial plan funding anticipated capital repairs and replacements during the Estimate Period are the responsibilities of the Lender's Underwriter. This task must be completed prior to submitting a CNA to HUD for review.
2. **Substantial Rehabilitation.** The purposes of the CNA prepared for substantial rehabilitation are similar to new construction except that in substantial rehabilitation, significant portions of the existing property may be retained, and the CNA must describe the existing components and their conditions. The CNA also must account for any new components and construction as described in the drawings and specifications.

### A.5.7.2.2 Applications for Refinancing or Acquisition of Existing Properties

A. The purposes of the CNA prepared for refinancing or acquisition transactions (or for supplemental loans funding repairs and alterations) are not only to describe the physical inventory and to plan for future repairs and replacements but also to assess current conditions and identify, specify, and estimate immediate repair needs. Immediate repairs must be classified as either Critical or Non-critical.

1. **Critical repairs.** Critical repairs are of two types.
  - a. Remedies that correct the following conditions that must be completed prior to initial endorsement:
    - 1) Endanger the health and safety of residents, visitor or passer-by.
    - 2) Endanger the physical security of the property.
    - 3) Pose obstacles to ingress or egress from units, buildings or the site.
    - 4) Prevent the project from reaching sustaining occupancy.
    - 5) Any deficiencies that are in violation with applicable and relevant building code, standards and regulations.

- b. Accessibility remedies for noncompliance with one or more of the accessibility statutes that apply to the property or to any of the buildings. Such remedies must be completed *as soon as possible*. The time period must be specified as a number of months ranging from “0” (which indicates prior to endorsement) up to “12” (which means 12 months after endorsement). In rare instances where accessibility remedies cannot be completed within 12 months, additional time may be permitted only when explicitly approved by the Division of Technical Support in the Office of Multifamily Production at HUD Headquarters. See [Section A.5.2](#) for a description of accessibility requirements.
2. **Non-critical Repairs.** Non-critical repairs are repairs, replacements or alterations that address current and imminent physical needs, notwithstanding whether any such needs may be described as deferred maintenance.
    - a. “Imminent,” in this context, means work reasonably expected to be needed within the first two years of the mortgage, except that this shall not be construed as requiring an immediate repair any work that would normally occur at unit turnover.
    - b. Non-critical repairs may include work likely to restore, improve, or enhance the quality, suitability, marketability, and operating efficiency of the property.
    - c. Non-critical repairs must be completed within 12 months after endorsement unless otherwise specifically permitted by HUD.

### **A.5.7.2.3 10-Year Updates or Other CNAs Required by Asset Management**

A. CNAs prepared to meet the periodic update requirement at intervals of not greater than 10 years or to support other asset management functions are subject to guidance and supervision by the Office of Asset Management and Portfolio Oversight (OAMPO), a division of the Office of Multifamily Housing, and are subject to Handbook 4350.1, as amended. This includes the timing, funding, and management of any Critical or Non-critical repairs identified. Such CNAs must be prepared by an independent third-party Needs Assessor hired by the Servicing Lender<sup>72</sup> consistent with the qualifications for assessors described in [Chapter 5, Section 5.2](#). The Servicing Lender is responsible for reviewing, certifying and submitting the CNA for review by HUD-OAMPO account executives and/or HUD MF Production Technical Branch staff.

### **A.5.7.3 Guidance for Key Values on CNA e-TOOL Entries**

A. For detailed instructions on how to use the CNA e-Tool software, see the instruction manual provided on the CNA e-Tool home page. [Section A.5.7](#) defines HUD policy requirements on specific values or responses that CNA preparers and submitters must provide.

#### **A.5.7.3.1 CNA Summary and Scope Information**

A. **Approving Agency.** HUD is the approving agency for all CNAs prepared for properties with insured mortgages. This includes RAD transactions with mortgage insurance.

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<sup>72</sup> The owner may hire and pay the third-party Needs Assessor when CNAs are required for Asset Management oversight of properties with no insured mortgage, such as budget-based rent increase events where no Servicing Lender is involved.

**B. Property ID, FHA numbers.** For existing FHA insured properties, enter the Property ID (commonly referred to as “iREMS” number) in addition to FHA numbers. Lenders should verify that these numbers are accurate prior to submission.

**C. Seismic  $S_{XS}$ ,  $S_{X1}$  values.** These values are required for all existing properties and should be obtained and entered in accordance with the instructions in [Section A.5.3](#). For new construction, enter zero (0) for each value. For scattered sites, enter the values for the particular site with the highest values in the CNA e-Tool. A seismic hazard and building performance analysis report must be submitted for all the buildings on the sites that are not exempt, per [Section A.5.3.1.2](#).

**D. Federally Assisted.** The Needs Assessor must answer this question “yes” or “no” and must know the correct answer for the subject property prior to conducting any on-site inspection. It is the responsibility of the Lender to know the correct definition of “assisted housing” (See [Section A.5.2](#)) and to apply the definition to the subject property and advise the Needs Assessor accordingly. Failure to correctly identify a federally assisted property and to document compliance with Section 504 of the Rehabilitation Act of 1973 is not acceptable.

**E. Vacant Units.** The actual number of vacant units at the time of the on-site visit should be entered. This means all units present at the property, and not occupied by a tenant, resident manager, or management employee, or in use by management as an office or display unit. Units used for storage or “offline” units are “vacant units.” For new construction projects, enter zero “0”.

**F. Minimum Sample.** For existing properties under Section 223(a)(7), 223(f) and 241(a) programs, the Needs Assessor must enter the minimum percentage of all units that must be inspected. HUD requires the following:

1. For properties built and occupied as new construction within 10 years of the CNA, not less than 10 percent of units must be inspected.
2. For all other properties, not less than 25 percent of units must be inspected.
3. In all cases, the selection of units must be proportionally distributed among unit types, buildings, and floor levels and otherwise random.
4. It is the Lender’s responsibility to examine rent rolls, operating statements, and due diligence reports to determine whether excessive or disproportionate patterns of vacancy require that the Needs Assessor inspect a greater sample of units and to advise the Needs Assessor accordingly. Minimum percentage inspection requirements specified above do not relieve the Needs Assessor and Lender from addressing circumstances where more units should be inspected, such as:
  - a. A property with a history of vacancy exceeding 15 percent. For such property, not less than 50 percent of vacant units, including those already selected for an inspection per [Section A.5.7.2.2.A.2.a-c](#) above should be inspected.
  - b. A property with particular units, floors of buildings, or buildings vacant for 6 or more of the previous 12 months. Such vacancy may be due to adverse physical conditions or to remodeling and either circumstance requires inspection of the relevant units, floors, or buildings.

**G. ASHRAE Energy Audit.** Indicate “yes” or “no” whether an ASHRAE Energy Audit has been completed and used to inform the utility usage characteristics of components and alternatives. If “yes,” identify the name and relevant professional credential of the energy auditor. (For required credentials see [Chapter 6](#),

[Section 6.4.10.](#)) The Lender must attach the energy auditor’s report to the CNA at submission. See MAP Guide [Chapter 6](#) for instructions on energy and water utility conservation.

**H. Additional Tests.** Indicate “yes” or “no” whether the CNA relied upon or required any additional testing or special inquiry. Name or identify the test, inquiry, or resulting report in the comment section. Examples of an additional test in this context may include a seismic analysis, a radon test and report, an intrusive examination by a professional or contractor other than the Needs Assessor, a lead-based paint inspection or risk assessment report, a mold assessment report, or similar tests or reports. The Lender must attach such results or reports to the CNA at submission

**I. Date of Site Visit.** This is the date the Needs Assessor intends as the time when observations of physical conditions are represented as true and correct. This date is the commencement of any maximum shelf life for a CNA report. For new construction or substantial rehabilitation proposals where the CNA is prepared by the Project Architect or the Lender’s Construction Analyst, this date is the anticipated date of the final endorsement.

### **A.5.7.3.2 Buildings – Year Built**

**A.** The year built must be reported for each building. Generally, exact dates are not required, and year built may be determined based on readily available, credible evidence. However, in some cases, exact dates are critical because of the effective dates of statutory or regulatory requirements. Among such requirements are those for design and construction of multifamily buildings in the Fair Housing Act (42 USC 3604(f)(3)(C), and 24 CFR 100.205). The design and construction requirements apply to any building first occupied after March 13, 1991, unless a building permit for that building was issued on or before June 15, 1990. Since these requirements apply to buildings and not properties, and properties often have multiple buildings with different building permit and or occupancy permit dates, the e-Tool obligates the preparer to identify a specific year built for each building. If the year built is outside the range of years 1990, 1991, and 1992, no specific dates for occupancy or building permits are required as entries on the Buildings screen. However, if the year built is 1990, 1991, or 1992, then the Needs Assessor must confirm and enter the actual date of the first occupancy, usually with an occupancy permit, as well as the date of the building permit. The e-Tool uses this data together with other user responses to identify covered units among those inspected and requires the Needs Assessor to determine (yes or no) whether the covered units inspected conform to the design and construction requirements. (Note that these are not the only requirements for which specific dates are consequential. For example, lead based paint testing is required for buildings constructed before January 1, 1978. But accessibility requirements are the only rule based and date related elements built into the logic of the CNA e-Tool.)

### **A.5.7.3.3 Buildings – Building/Construction Types & Replacement Cost**

**A.** The “Buildings” screen requires the preparer to identify specific characteristics of each building. These include the same characteristics and definitions of characteristics that are used on forms HUD-92013 and HUD-92264.

1. Replacement Cost must be estimated for each building and provided by the user. Replacement cost is expressed as dollars per square foot of building area, including all units and common areas. The e-Tool auto-calculates the building areas and apply the replacement cost per square foot estimate to determine the estimated replacement cost for each building.



2. The e-Tool auto-calculates the building area by aggregating the square footages of the unit types and common spaces assigned to the building.
3. The preparer is required to justify or support the estimated replacement cost in the comment box labeled “Source of Replacement Cost Data.” The replacement cost estimate for existing buildings should be based on the current cost of replacing the building with current construction practices and assemblies as nearly comparable to the existing building as possible, but not including any cost of replicating obsolete methods, materials, or historic artifacts.
4. For new construction applications, the Lender’s Construction Analyst should use the estimated per square foot cost of construction excluding site improvements.
5. The CNA e-Tool will use this input to generate results for the form HUD-92329, Schedule of Insurable Values.

#### **A.5.7.3.4 Standard Estimated Useful Life (EUL)**

**A.** A key feature of CNA e-Tool is the Standard Estimated Useful Life Table of a typical site and building components. The term “Estimated Useful Life” (EUL) refers to a period of years in which a given component of standard quality under average conditions may be expected to remain serviceable for its intended purpose. Remaining Useful Life (RUL) is the result obtained by subtracting the actual age of a component from its EUL.

**B.** The Standard Estimated Useful Life Table is organized in accordance with the ASTM E2018-15 outline for needs assessments. Each site or building component is identified with the following three sub-categories in broad to narrower order: Need Categories; Need Items; Component Types. Each Component Type is assigned a particular average standard EUL, depending on whether the property is designated as “family” or “elderly.” Every component present or to be installed at the property must be associated with a Component Type and given a specific name referred to as “Component ID” in the e-Tool.

#### **A.5.7.3.5 Assessed Remaining Useful Life**

**A.** When observing actual conditions at a property or specifying actual products or methods to be used in construction, Needs Assessors may recognize any expected variations from the Standard EUL. For any proposed or existing components with durability and/or quality yielding a useful life greater or lower than the Standard EUL, the Needs Assessor should enter an “Assessed” RUL representing the assessor’s best professional judgment concerning the number of years the component will be serviceable from the date of the CNA. This method allows the preparer to recognize superior or inferior performance, local conditions of use (e.g. climate, exposure, student occupancy, etc.), and maintenance or product quality of the component. All Assessed RULs must be justified in the “Remaining Useful Life Comments” box with adequate explanations.

#### **A.5.7.3.6 Components with EUL or RUL Longer than the Estimate Period**

**A.** Many building components are quite durable and, based on the date installed, may be expected to remain in place without replacement in entirety well past the end of the Estimate Period. The CNA e-Tool will schedule costs of repair or replacement of components only when the time for such capital expense falls within the Estimate Period. Therefore, it is up to the discretion of the Needs Assessors to list durable components in the e-Tool when it is beneficial to describe the construction and condition of the property.

### A.5.7.3.7 Repair Replace Recommendation – When, Duration, and Action

A. An “Action” in the Recommendations screen for a component describes the action with which the alternative to that component will be carried out. The choices for “Action” are “repair,” “replacement,” “one-time repair,” or “add new.” CNA preparers must determine “When” an action will occur for each component and selected alternative in the e-Tool by choosing one of the two available options of “Now” or “End of cycle” (End of cycle refers to the end of the default RUL of the component, or the Assessed RUL if entered).

B. When installing a new component not currently existing at a property, the following steps are required:

1. The user first creates the item as a new Component ID and enters “0” as the assessed RUL in the Components screen and adds an alternative for that component ID in the Alternatives screen.
2. In the Repair Replace Recommendation for, select “Add New” for the alternative recommended for this component and enter the expected EUL for the added item.
3. The “When” response should be “End of cycle” for the new component/alternative, which permits a component (e.g., a dishwasher) to be added as an Immediate Repair and then located among future repairs and replacements as appropriate on the Estimate Period schedule.

C. A particular component (usually in quantities greater than 1) can be scheduled for replacement over a span of time rather than in a single year by entering a number for “Duration” in the e-Tool. The whole number entered for Duration indicates the number of years before and after the “End of cycle” year over which the component will be replaced. (e.g., a Duration entry of 1 spreads the cost of a repair/replace action equally over three years; 1 year before the end of a cycle; the indicated end of cycle year; and 1 year after the end of a cycle.) Duration is intended to recognize that RUL and EUL periods are estimates of average durability and that actual results will vary.

### A.5.7.3.8 Repair Replace Recommendation for Existing Components

A. **One-time repairs.** Typically, “repairs” are actions applied to an existing component and therefore the Component Type identifies the object of the repair (e.g., wood window) and the Component ID should describe the actual repair needed for that window (e.g., replace broken sash).

1. Needs Assessors should identify all repairs or replacements that are immediate repairs even when these might normally be treated as operating expense. For example, the Needs Assessor may observe conditions that require a mere repair to restore a component to normal use (e.g., a broken windowpane, or a tree that requires trimming, or a wiring repair, drywall damage or a broken lock in particular units.)
2. When identifying the repair or replace recommendation, the Needs Assessor should identify “When?” as “Now” and the “Action” as “One-time repair.”
3. The “One-time repair” action restores the component to the EUL/RUL that would otherwise prevail. The repair will appear only once and only among immediate repairs. The Component Type name and the Alternative replacement for that component should already have been identified and a separate recommendation can be made to replace the component (e.g., windows, landscaping, wiring, wall finish, or doors) in the future.

**B. Repeating or Periodic Repairs.** Some repairs may be regular and periodic (e.g., water proofing or tuckpointing exterior masonry). When a repair is periodic in nature, the Component ID describes the repair, and an assessed RUL sets the time when the repair should first occur. The Alternative describes the actual repair work and the EUL entered for the Alternative indicates the frequency of the repair (e.g., “5” means every 5 years). The “When” is “now” or “end of cycle” depending on the assessed RUL entered. The Action is “Repair,” meaning a repeating repair.

### **A.5.7.3.9 Repair Replace Recommendation for Accessibility Deficiencies**

**A.** Accessibility repairs may be prepared in the CNA e-Tool by using the Repair Replace Recommendation screen as follows:

- 1. Accessibility Indicator.** If a repair, replacement or alteration is recommended to correct an identified accessibility deficiency, then this indicator should be answered “yes,” in which event items 2, 3, 4 and [Section A.5.7.3.10](#) below must be completed. If the accessibility indicator is “no,” then these entries may be left blank. A “yes” answer places the item on the Critical accessibility repairs.
- 2. Time to Complete.** If accessibility indicator is “yes” then the time to complete must be entered as a number of months that should be specific to the particular recommendation and not to all accessibility remedies in general. Each remedy is to be implemented or completed as soon as possible, notwithstanding any different schedule as may be necessary for other remedies.
- 3. Accessibility Statute.** If the accessibility indicator is “yes” then the Needs Assessor must indicate which statute defines the deficiency, or if the recommendation addresses a deficiency under multiple statutes, identify the statute with the most stringent requirement.
- 4. Scope of Accessibility Compliance.** If the accessibility indicator is “yes,” then the Needs Assessor must provide a short text description of the particular accessibility requirement that is missing or violated (e.g. usable kitchen). This description should include any relevant dimensions or physical measurements. Sketches or drawings with appropriate photographs may be provided by the Needs Assessor and attached to the CNA for submission.

### **A.5.7.3.10 Scope of Repair or Alteration**

**A.** All Critical and Non-critical repairs and alterations must be described in detail sufficient to bid costs accurately and to inspect work in progress or when completed. This scope should be described succinctly in the text entry for Class of Work (Scope). In addition, the scope should indicate the class of work for the item, that is, a “repair,” “Level 1 Alteration,” etc.

### **A.5.7.3.11 Repair Replace Recommendation for Time to Complete**

**A.** For refinancing applications proposing immediate repairs, repairs and alterations must be scheduled. Accordingly, the planned sequence and timing of immediate repairs should be described in the CNA e-Tool by using the “Time to Complete” entry, which should be a number of months (immediate repairs and alterations are those for which the answer to the question “when?” equals “now.”) The entered number of months to complete each task is reported on the List of Non-critical Repairs (as well as the list of accessibility repairs). Critical repairs that must be completed prior to closing should show “0” for the number of months entered as “Months to Complete.”

### A.5.7.3.12 Needs Assessor's Narrative and Attachments

A. The Narrative screen of the e-Tool allows the user to enter a written narrative for each of the outline topics as listed in ASTM E 2018-15. Brevity is encouraged, but other supporting documents, photography or exhibits may be provided as attachments associated with specific outlined topics in the CNA when submitted. See instructions to Lenders concerning attachments in [Section A.5.7.4.4.B](#).

## A.5.7.4 Lender Review of Capital Needs Assessments

### A.5.7.4.1 Capital Costs vs. Operating Expense

A. A key principle of both financial accounting and planning for future capital costs is a clear, and consistently applied distinction between items that are operating expense, and those that are capital costs. While most work on building or site components is clearly one or the other, many work items may be classified as either expense or capital depending on the Borrower's policy. This policy should be in writing and remain constant until amended in writing. Thus, for example, replacement of roofs, windows, siding, and similar items on a building is always a capital cost and should be included in planning for future capital needs. Meanwhile cleaning windows, changing air filters, cleaning or repairing carpets, and similar tasks are always operating and maintenance costs. By contrast, repainting, re-carpeting, and similar renovation of unit interiors at turnover or at standard time intervals may be treated as either operating expenses or capital costs at the Borrower's discretion.

B. The Lender must determine that the Borrower's written policy defining capital costs and operating expense is consistent with HUD's Asset Management Handbook 4350.1, [Chapter 4, Section 4.1](#) through [Section 4.3](#) and that all repair or replacement of components defined as capital costs are included in the CNA by identifying them as components and recommending an alternative. The Lender must ensure that any items (e.g., carpet, interior painting) not identified as components (i.e., not listed among components on the components tab) in the CNA e-Tool are accounted for in operating expenses (i.e. if carpets exist and are not listed among components, then carpet repair and replacement must be budgeted as an operating expense). The Lender must compare the maintenance costs reported in the prior three years of project operating history to the repairs and replacements described as future costs in the reserve for replacement schedule. Costs omitted from the schedule should appear in the maintenance history.

### A.5.7.4.2 Lender's General Review and Underwriting Duty

A. Prior to submission of a CNA, it is the duty of the Lender to review, address, or correct each of the following:

1. **Complete CNA.** Assure that the Preparer (generally the Needs Assessor or Lender's Construction Analyst) has completed the CNA e-Tool in accordance with the MAP Guide and that all the required information is correct and complete.
2. **Repair/Replace Recommendations and Decisions.** Review and accept the CNA preparer's Repair Replace Recommendation, or if the recommendation is not accepted and requires modification, specify a revised decision on the Repair Replace Decision screen.
3. **Immediate Repairs.** Assure that any immediate repair is described specifically with a quantity, cost, and location, as well as any applicable and necessary qualitative or product specific information such

as size, model, product performance standard, level or nature of the finish, and/or brand name, if applicable. When useful to understanding and comprehension, annotated photography may be attached to the CNA at the submission to pinpoint the nature, extent, or location of a repair/replacement action.

4. **Accessibility Critical repairs.** Review the Accessibility Critical repairs and ensure that statutes and regulations are correctly applied, deficiencies identified, appropriate remedies specified, and that implementation of each remedy is scheduled for completion as soon as possible.
5. **Utility Conservation Metrics.** When proposing Green Mortgage Insurance Premium (MIP) rates or reductions in historic operating expense resulting from proposed utility conservation measures, the Needs Assessor and Lender must complete the utility rates, utility type and component consumption fields of the CNA e-Tool. See MAP Guide [Chapter 6](#) for instructions on energy and water conservation.
6. **Financial Factors.** Enter financial factors and variables and prepare a balanced financial plan for funding anticipated capital costs. “Balanced,” in this context, means that the combination of any existing Reserve for Replacement sums carried forward plus any initial and annual deposits plus periodic interest earned on balances equals or exceeds the projected capital costs plus any minimum balance requirement for years 3 through 10 in the Estimate Period. Also, in the second ten years, any deficit below the required minimum balance does not exceed (in dollar amount) 50% of the cumulative amortization of the insured loan balance for the year in which the deficit occurs. (See “Lender’s Financial Plan”, [Section A.5.7.4.3](#) below.)
7. **Lender Validation and Submission.** The Lender validates and submits CNAs by accessing the CNA e-Tool for submission. The submission portal is a secured web address that may be accessed only by authorized submitters using appropriate credentials (login IDs) and passwords. The website link to the portal is provided on the CNA e-Tool Home Page. For applications for mortgage insurance, a submitter should submit a CNA only at the time that a full application for mortgage insurance has been filed and requisite fees paid.
8. **Addressing Flags.** Needs Assessors may send CNAs to Lenders even when there are flags upon validation. Typically, the Needs Assessor will have already corrected any flags that do not involve underwriting judgment. Flags that remain (other than severe flags that must be corrected) may not require a change in the CNA if the Lender provides an appropriate explanation of why the matter flagged is not a circumstance or result inconsistent with the MAP Guide or sound underwriting. Such explanations are entered as the “Submitter Response” under flag notes (a text box) that the Submitter may add next to each flag listed in the validation results. If after submission HUD disagrees with the CNA as submitted, the objection will be expressed in a flag note. The CNA will be returned to the Submitter, who will be notified by an automatic e-mail that the submitted CNA has been returned by HUD. The Submitter may then address the flag notes and/or modify the CNA and submit the revised CNA. The use of flags and flag notes enables HUD and Lenders to exchange comments and resolve issues using successive versions of the same CNA.
9. Version Control for CNAs.
  - a. **From application to Firm Commitment.** Each CNA e-Tool submission is assigned with a system-generated unique identification number called “Assessment ID” as a way of version control. The Assessment ID is a six-digit number composed of the calendar year followed by a six-digit number (yyyy-#####). At any point in time, only one CNA for a particular property (as identified by

FHA # and/or REMS #) may have the status of “Submitted,” “Under Review” and “Saved as a Draft.” An unlimited number of versions may have the status of “Returned,” but only one version will advance from the “Under Review” status to “Approved.” The approved CNA is the version that will be used at Firm Commitment to produce a list of required repairs, relevant construction documents/schedules, amounts required for repair escrows and assurances of completion and required initial and annual deposits to the Reserve for Replacement escrow.

- b. **Amendments after Firm Commitment.** Sometimes unforeseen circumstances or uncorrected errors require amendment of a Firm Commitment. If required changes concern aspects of the CNA (e.g. the list of immediate repairs, the amount of the initial or annual deposit to the reserve for replacements, etc.), HUD may authorize an amended CNA by choosing to “Undo Approval,” changing the status to “Under Review,” whereupon HUD will return the CNA to the submitter. The submitter will receive an e-mail message indicating the returned CNA. Then a revised CNA may be resubmitted to be reviewed and approved by HUD. When again “Approved,” the resulting version is the “Amended” CNA current as of the date of its amendment. It is the intent of the CNA e-Tool to capture for a permanent record the CNA approved for Firm Commitment and any amended CNA to reflect the actual requirements for Endorsement.

10. **Intrusive Examination.** The Lender must assure that the Needs Assessor has used a level of inquiry appropriate to the age and condition of the property in order to report with confidence the nature of existing components, their condition, and their assessed RUL even when the level of inquiry required by observed circumstances exceeds the minimum “Non-Intrusive” standard of inspection defined by ASTM E2018-15. If such intrusive examination is conducted by a third party other than the Needs Assessor, the Needs Assessor must provide, and the Lender must submit any resulting reports or observations as an attachment to the CNA.

#### **A.5.7.4.3 Lender’s Financial Plan - the Financial Factors Screen**

**A.** The Lender’s financial plan is developed by using the Financial Factors screen of the CNA e-Tool. The first entry on this screen identifies the Estimate Period as a number of years. The financial factors enable an auto-calculation of the financial plan for each year in the Estimate Period. Years are identified as relative years (RY) beginning with “1” and ending with the number of years in the Estimate Period, typically “20”. Calendar years are associated with the years following the date of inspection (for Section 223 applications) or the estimated date of final endorsement (for Sections 220, 221, 231 and 241(a)). Other entries define two sets of parameters, which are external variables and property-specific variables.

1. **Estimate Period.** The Estimate Period for all HUD mortgage insurance programs is the lesser of 20 years or 2 years plus the remaining term of any insured mortgage.
2. **External Variables.** External variables are economic variables in the financial plan reflecting the actual economic conditions. These are the annual rate of inflation of the costs of repairs and replacements during the Estimate Period, and annual interest earnings on the balances held in reserve for replacement escrow accounts. Because current economic conditions often depart from historical norms or averages, the financial factors screen displays the current rate of inflation for capital needs and a current interest rate on short-term deposits or certificates of deposit. These are called the “initial” rates and will reflect current business conditions and indices. The Financial Factors screen also provides for a second, or “additional” rate that reflects long-term averages for the particular rate (inflation or short-term interest). As a practical matter, long-term rates are static since they reflect



the average value for each rate over 40 or more years. Because these external variables are the same for all CNAs at any given time, HUD's Office of Multifamily Production will publish the values for these variables from time to time based on the following sources for inflation rates. HUD will rely on price indices published by the Department of Labor. HUD will determine short-term rates based on rates for 90-day maturities as published by the Federal Reserve Board, the [Wall Street Journal](#), or comparable entities. The intent of this method of describing rates is to allow more realistic modeling of economic projections. Note that any characterization of inflation used in the Financial Factors screen should also be reflected in the Lender's projections of operating expense.

3. **Property-Specific Variables.** Property-specific variables are values that are unique to the property. Except for the required minimum balance calculation, it is expected that Lenders will make repeated adjustments to these variables based on Validation Engine results as a means of perfecting an optimum combination of factors needed to balance the financing plan consistent with other underwriting considerations such as anticipated rents and operating expenses.
  - a. **Initial Deposit.** The initial deposit is the amount that may be carried forward from an existing reserve for replacement escrow (e.g., in a 10-year update CNA or refinancing of an existing insured asset) and/or the amount of any lump sum deposit that may be required at the endorsement.
  - b. **Year 1 Annual Deposit Per Unit.** The sum estimated as the first annual contribution to the reserve for replacement escrow divided by the number of units in the property. Expressing this figure as an annual per unit number of dollars supports the common industry practice of estimating operating expenses on a per unit per annum (PUPA) basis. In no event may this figure be less than \$250 for any property.
  - c. Per Annum Rate of Change in the Annual Deposit.<sup>73</sup>
    - 1) The Lender will set the value of this rate of change in the annual deposits. The Lender may propose an initial rate of change followed by an additional rate of change to be applied in a specified relative year, which need not be the same relative year as indicated for either of the external variables.
    - 2) When proposing a rate of change for the annual deposit, the Lender must demonstrate by means of a stress test that the expected rents and expenses (including the annual deposit) do not reduce the debt service coverage ratio below underwriting requirements.
    - 3) In no event may the proposed rate of change exceed the rate of inflation applied to capital needs in any relative year of the Estimate Period.
  - d. **Minimum Balance.** When balancing the financial plan, the reserve account must maintain an estimated minimum balance. The CNA e-Tool provides two methods for estimating the minimum balance. The two methods are: a minimum balance as a number of dollars per unit; and a

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<sup>73</sup> Historically, HUD has required or encouraged annual deposits in amounts fixed for long periods or even for the term of a mortgage. While very safe and consistent with HUD's long-term fixed rate mortgage programs, fixed annual deposits do not support realistic assessments of physical conditions nor realistic financial planning to address these conditions over time. Accordingly, graduated changes in annual deposits are encouraged and should be expressed as annual percentage rates of change. Mathematically, the rate of change in the annual deposit is similar to the external variables for inflation and short-term interest, but the Lender will set the value of this rate of change in the annual deposits.



minimum balance expressed as a percentage of total uninflated needs for the Estimate Period. Only the second is used for HUD purposes. In the latter case, the CNA e-Tool auto-calculates the percentage as the inverse of the number of years in the Estimate Period (e.g., Estimate Period equals “20” then the minimum balance equals “1/20” or 5%). The effect of this calculation is a minimum balance equal to the average cost of needs for one year. It is important that all users understand that the minimum balance is established only as a means of planning for an adequate reserve. It is not intended as a limit on disbursements as repair and replacements actually occur. The intent of the minimum balance is to provide a contingency for unanticipated costs and to trigger an asset management review when actual needs result in a remaining balance that falls below the planned minimum. When applying the minimum balance, the Lender should do or consider the following:

- 1) Define a combination of Initial and/or Annual Deposits resulting in year-end balances that equal or exceed the required minimum balance for each of the first 10 years in the Estimate Period. When considering applications for mortgage insurance, a positive balance, but not the minimum balance, is required in the first 2 years of the Estimate Period.
- 2) In any year after Year 10 of the Estimate Period, a remaining balance less than the minimum balance, even a negative balance, may be allowed provided that the difference (a deficit) between the required minimum balance and the projected remaining balance does not exceed 50% of the cumulative amortization of the proposed loan for the relevant year.
- 3) If the dollar amount of the projected deficit in any year after Year 10 exceeds 50% of the cumulative amortization of the mortgage, then the deficit is excessive and must be mitigated by increasing the funding proposed for the reserve for replacement escrow.
- 4) The Lender submits a CNA based on a 20-year Estimate Period using the proposed funding (initial and annual deposits) determined in items “2” and “3” above. The result is that negative balances, if any, may not exceed 50% of the accumulated amortization of the mortgage loan balance.
- 5) The Lender should prepare and attach to the CNA at submission a spreadsheet comparing the results of the reserve for replacement schedule and the amount of amortization on the insured mortgage indicating the scale of any negative balance as a percentage of the cumulative amortization for each year, 11 through 20. When considering applications for mortgage insurance, the minimum balance is not required in the first 2 years of the Estimate Period.
- 6) It is the Lender’s responsibility to perform the reserve analysis and set the funding schedule that meets the requirements. The Needs Assessors prepare the components schedule of replacements and the anticipated costs in the CNA e-Tool but not the funding schedule (i.e. deposit amounts, etc.).

#### **A.5.7.4.4 Validation and Submission of CNAs**

**A.** After completing its review and financial planning tasks, the Submitter must validate the CNA a final time as a requisite to submission, recognizing that any severe flags appearing on the final validation will prohibit submission.

**B.** After correcting remaining severe flags and/or addressing any other flags, the Submitter should attach documents that are either required or useful to communicate or document CNA information. Each exhibit should be a separate file with a descriptive file name to make each attachment readily recognizable to the reviewer. (See [Chapter 5, Section 5.10.6](#) for detailed descriptions of the attachments.)

**C.** After validation and selection of attachments, the submitter must enter his/her name and e-mail address. Submitters should exercise care when submitting inasmuch as the CNA e-Tool will permit only a single CNA submitted for review for any property (i.e., for any FHA # or Property ID #). The CNA cannot be amended or updated after submission unless it is first returned to the Submitter by HUD. The submitter will see an immediate message indicating whether the submission is successful and will see the CNA “assessment ID” number. The submitter should make a note of the assessment ID number as a means of locating the CNA among those submitted by the same Lender and also as a means of locating the CNA in the event that troubleshooting assistance is required. The submitter will also receive an automatic e-mail response confirming that the CNA is successfully submitted and again providing the assessment ID number. By submitting, the user certifies as follows:

*By submitting this Capital Needs Assessment, I certify as follows:*

*I am authorized to bind my firm and to submit Capital Needs Assessments via the web portal for the CNA e-Tool. We have reviewed the Capital Needs Assessment and all relevant attachments submitted with it. Neither my firm nor its employees have a financial interest, or family relationship with the principals, officers, directors, stockholders, partners or affiliates of the Borrower/owner of the multifamily property which is the subject of this Capital Needs Assessment or with any construction contractors or property managers employed by the Borrower/owner or its principals. Our review included an evaluation of the qualifications and experience of the Needs Assessor and the Needs Assessor firm (or Architect or engineer or other professional evaluator or related firm as appropriate here and elsewhere in this Certification) retained to complete the needs assessment or portions thereof and we conclude that these qualifications and experience are appropriate for the size and location of the multifamily property and the construction technologies used at the site. The needs assessment, together with all relevant forms, tables, and exhibits, has been prepared in the manner required by the MAP Guide and is complete and accurate. The Needs Assessor and/or the Needs Assessor firm are independent third parties whose compensation is not contingent upon any result except the competent completion of the needs assessment in accordance with the MAP Guide. Except as disclosed, there are no other side deals, agreements, or financial considerations between ourselves and the Needs Assessor or Needs Assessor firm. We have no identity of interest with the Needs Assessor or the Needs Assessor firm, and we have no business or personal relationships that might present a conflict of interest. The Needs Assessor and/or the Needs Assessor firm have evidenced to us that they possess qualifications and experience appropriate to the size, location and construction technology of the subject multifamily property and have no identity of interest, financial or family relationship with the principals, officers, directors, stockholders, partners or affiliates of the Borrower/owner or any construction contractors or property managers employed by them.*

### **A.5.7.5 Documents for Firm Commitment**

**A.** After a CNA is approved by HUD, the following documents will be produced by the CNA e-Tool as attachments to Firm Commitments and /or Regulatory Agreements:

1. Critical repairs for Existing Properties. A schedule of Critical repairs composed of two detailed lists of repair/replacement items, described in quantities, location, cost, and relevant thumbnail specifications.
  - a. One list will describe Critical repairs classified as “life safety.”

- b. The second will describe all remedies for accessibility deficiencies.
  - c. The accessibility deficiencies listed with “Months to Complete” greater than “0” may be considered as the “Corrective Action Plan.”
2. Non-critical Repairs for Existing Properties. A schedule of Non-critical Repairs, Repairs, and Alterations described in quantities, location, cost, and relevant thumbnail specifications, together with such sketches or drawings as may have been determined necessary for clear communication and adequate inspection
  3. Simple Construction Schedules. For transactions where a construction schedule is useful, but the critical path and/or task dependencies are not required, the lists of immediate repairs can be sorted by “time to complete” resulting in a list of repairs grouped by the number of months required to complete them. This simple construction schedule applies to Section 223(a)(7) and Section 223(f) transactions where Project Architect or a General Contractor are not employed.
  4. Form HUD-92329 Property Insurance Schedule. For existing, proposed, and substantial rehabilitation properties a schedule of insurable values by building, i.e., replacement cost as new.
  5. Schedule of Initial and Annual Deposits. For existing, proposed, and substantial rehabilitation properties, a schedule of deposits to the reserve for replacement escrow account including both an initial deposit, if any, and annual deposits.

## A.5.8 Design Professional Certifications

### A.5.8.1 Certification for New Construction and Substantial Rehabilitation

#### A. Project Architect’s Certification for New Construction and Substantial Rehabilitation

HUD Project Name: \_\_\_\_\_  
HUD Project Number: \_\_\_\_\_  
Borrower: \_\_\_\_\_

**B.** I, the undersigned Project Architect, to the best of my knowledge, belief and professional judgment, hereby certify that the proposed construction in accordance with the drawings and specifications prepared for the subject Project:

1. Is permissible under the applicable zoning, building, housing, and other codes, ordinances and/or regulations, as modified by any waivers obtained from appropriate officials;
2. Complies with the HUD Minimum Property Standards and meets or exceeds the HUD minimum energy codes which are the International Energy Conservation Code (IEEC 2009), or for any buildings greater than 3 stories above grade, the American Society of Heating, Refrigerating and Air Conditioning Engineers Standard 90.1 (ASHRAE 90.1, 2007);
3. Allows for site soils limitations and incorporates design recommendations included in the foundation soils report and any other geotechnical reports;

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4. For any structures first occupied or to be first occupied after March 13, 1991, the structures and site improvements conform to the design and construction requirements of the Fair Housing Act (42 USC 3604(f)(3)(C), and 24 CFR 100.205);
5. For any portion of the construction that is a public accommodation, conforms with the requirements of Title III of the Americans with Disabilities Act; and
6. Conforms with any state or local government requirements for accessibility for persons with disabilities including state or local measures to implement Title II of the Americans with Disabilities Act concerning state and local programs.
7. You have informed me that the project (check one):
  - a.  has never been and will not be federally assisted or
  - b.  has been/will be federally assisted

If the project has been or is proposed to be federally assisted the proposed construction meets the requirements of Section 504 of the Rehabilitation Act of 1973 as implemented by 24 CFR Part 8;

8. You have informed me that the project must be designed to achieve a green building certification consistent with [Chapter 6](#) of the MAP Guide: Yes  or, No  (check one).

If no, enter “not applicable” in the next line and proceed to item (i) below, if yes enter the following:

Name of Certification: \_\_\_\_\_

Standard-keeper’s name: \_\_\_\_\_

Address of Standard-keeper: \_\_\_\_\_

Name of Standard-keeper’s Verifier: \_\_\_\_\_

Address of Verifier: \_\_\_\_\_

Proposed Level of Achievement<sup>74</sup>: \_\_\_\_\_

Point Score for Energy<sup>75</sup>: \_\_\_\_\_ out of a possible: \_\_\_\_\_

Is this certification a HUD recognized green building certification (see MAP Guide 6.3.A or 6.3.B)?  
Yes , or No . (check one).

If no, the following description of the certification must be true (see MAP Guide 6.3.C):

The certification requires the project design to achieve a 25% reduction in energy use when compared to the same project designed to meet the applicable HUD minimum energy code or for an existing property with benchmarked energy consumption history a 15% reduction in energy use compared to the benchmarked use; and

---

<sup>74</sup> e.g., bronze, silver, gold, or similar grades of achievement.

<sup>75</sup> If applicable, most standard keepers assign a level of achievement based on numbers of points assigned to design or siting features as part of a scoring system. Typically, categories of features have a total number of points possible for the category. This question asks for the number of points scored for the category of energy use or efficiency and the total number of points possible for that category.

The certification requires independent verification of energy conservation measures and sustainable products and methods by the verifier’s review of plans and specifications at the conclusion of design, by the verifier’s onsite inspection of all construction completed prior to closing cavity walls and by the verifier’s onsite inspection of construction after completion; and

The standard keeper provides or requires the verifier to provide to me and to the Borrower timely written documentation of results or conclusions resulting from the verifier’s review of plans and specifications and each on-site inspection leading to and including the final award (or denial) of the certification.

The selected certification and level of achievement is applicable to the design and construction methods proposed for the project. The project design is consistent with all the requirements of the selected certification at the specified level of achievement and the project is designed to achieve an ENERGY STAR® Score not less than 75.

9. Waivers of codes etc., were obtained as listed in attachment (identify):

Signed by: \_\_\_\_\_  
Date: \_\_\_\_\_  
Architect’s Name: \_\_\_\_\_  
Business Address: \_\_\_\_\_  
License Number: \_\_\_\_\_

C. Warning: Title 18 U.S.C. 1001, provides in part that whoever knowingly and willfully makes or uses a document containing any false, fictitious, or fraudulent statement or entry, in any manner in the jurisdiction of any department or agency of the United States, shall be fined not more than \$10,000 or imprisoned not more than five years or both

## A.5.8.2 Project Architect’s Certification for Refinancing

- A. Project Architect’s certification for refinancing when a Project Architect is engaged.

HUD Project Name: \_\_\_\_\_  
HUD Project Number: \_\_\_\_\_  
Borrower: \_\_\_\_\_

B. I, the undersigned Project Architect, to the best of my knowledge, belief and professional judgment, hereby certify that the proposed construction in accordance with the drawings and specifications prepared for the subject Project:

1. Is permissible under the applicable zoning, building, housing, and other codes, ordinances and/or regulations, as modified by any waivers obtained from appropriate officials;
2. Complies with the HUD Minimum Property Standards as applicable to existing buildings;
3. For any structures first occupied or to be first occupied after March 13, 1991, the reconfigured spaces and/or alterations to site improvements (excluding spaces not reconfigured and unaltered improvements) conform to the design and construction requirements of the Fair Housing Act (42 USC 3604(f)(3)(C), and 24 CFR 100.205) and if not, then any nonconforming elements have been identified and described in the drawings and specifications;

4. For any reconfigured portion of the construction, which is a public accommodation, conforms with the requirements of Title III of the Americans with Disabilities Act, and if not, then any nonconforming elements have been identified and described in the drawings and specifications; and
5. For any reconfigured spaces or alterations of site improvements conform with any state or local government requirements for accessibility for persons with disabilities including state or local measures to implement Title II of the Americans with Disabilities Act concerning state and local programs, and if not, then any nonconforming elements have been identified and described in the drawings and specifications.
6. You have informed me that the project (check one):
  - a. \_\_\_has never been and will not be federally assisted or
  - b. \_\_\_has been/will be federally assisted.

If the project has been or is proposed to be federally assisted the proposed reconfigured spaces or alterations of site improvements meet the requirements of Section 504 of the Rehabilitation Act of 1973 as implemented by 24 CFR Part 8, and if not, then any nonconforming elements have been identified and described in the drawings and specifications.

7. You have informed me that the repairs and alterations at the project must be designed to achieve a green building certification consistent with [Chapter 6](#) of the MAP Guide?  
Yes \_\_\_\_, or No \_\_\_\_. (check one).

If no, enter “not applicable” in the next line and proceed to item (h) below, if yes enter the following:

Name of Certification: \_\_\_\_\_

Standard-keeper’s name: \_\_\_\_\_

Address of Standard-keeper: \_\_\_\_\_

Name of Standard-keeper’s Verifier: \_\_\_\_\_

Address of Verifier: \_\_\_\_\_

Proposed Level of Achievement<sup>76</sup>: \_\_\_\_\_

Point Score for Energy<sup>77</sup>: \_\_\_\_\_ out of a possible: \_\_\_\_\_

Is this certification a HUD recognized green building certification applicable to existing buildings (see MAP Guide 6.3.B)? \_\_\_ Yes, or \_\_\_ No (check one).

If no, the following description of the certification must be true (see MAP Guide 6.3.C):

The certification requires the project design to achieve a 15% or greater reduction in energy use compared to the benchmarked use; and

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<sup>76</sup> e.g., bronze, silver, gold, or similar grades of achievement.

<sup>77</sup> If applicable, most standard keepers assign a level of achievement based on numbers of points assigned to design or siting features as part of a scoring system. Typically, categories of features have a total number of points possible for the category. This question asks for the number of points scored for the category of energy use or efficiency and the total number of points possible for that category.

The certification requires independent verification of energy conservation measures and sustainable products and methods by the verifier’s review of plans and specifications at the conclusion of design, by the verifier’s onsite inspection of all construction completed prior to closing any opened cavity walls and by the verifier’s onsite inspection of construction after completion; and

The standard-keeper provides or requires the verifier to provide to me and to the Borrower timely written documentation of results or conclusions resulting from the verifier’s review of plans and specifications and each on-site inspection leading to and including the final award (or denial) of the certification.

The selected certification and level of achievement is applicable to the design and construction methods proposed for the project. The project design is consistent with all the requirements of the selected certification at the specified level of achievement and the project repairs and alterations will earn the specified certification and are designed to achieve an ENERGY STAR® Score not less than 75.

8. Waivers of codes etc., were obtained as listed in attachment (identify):

Signed by: \_\_\_\_\_  
Date: \_\_\_\_\_  
  
Architect’s Name: \_\_\_\_\_  
Business Address: \_\_\_\_\_  
License Number: \_\_\_\_\_

**C. Warning:** Title 18 U.S.C. 1001, provides in part that whoever knowingly and willfully makes or uses a document containing any false, fictitious, or fraudulent statement or entry, in any manner in the jurisdiction of any department or agency of the United States, shall be fined not more than \$10,000 or imprisoned not more than five years or both.

### A.5.8.3 Certificate of Professional Liability Insurance

#### A. Certificate of Professional Liability Insurance

HUD Project Name: \_\_\_\_\_  
HUD Project Number: \_\_\_\_\_  
Borrower: \_\_\_\_\_

#### B. To: Lender and Secretary of Housing and Urban Development

C. I certify that \_\_\_\_\_ (Name of Architect/ Engineer/ Design Professional) is insured in the amount of \$\_\_\_\_\_ under \_\_\_\_\_ (Name of Insurer) Policy No. \_\_\_\_\_ of Architect and/or Engineers Professional Liability Insurance.

D. This Policy shall be maintained up through acceptance of the 12-month warranty inspection for the subject HUD Project.



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Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Insurer's Name: \_\_\_\_\_

Business Address: \_\_\_\_\_

**E. Warning:** Title 18 U.S.C. 1001, provides in part that whoever knowingly and willfully makes or uses a document containing any false, fictitious, or fraudulent statement or entry, in any manner in the jurisdiction of any department or agency of the United States, shall be fined not more than \$10,000 or imprisoned not more than five years or both.

## A.5.9 HUD Cost Reviewer Reports Format

**A.** The following review reports formats are to be used to document Technical Reviews. The Technical Support Division Branch Chiefs and Production Division Directors have discretion to approve modifications or alternative formats.

### A.5.9.1 Cost Review Report for Pre-Application

**A.** Cost Review Report for Pre-Application:

HUD Office Name: \_\_\_\_\_

Pre-Application Submission Date: \_\_\_\_\_

Project Name: \_\_\_\_\_

Project Location (City, State): \_\_\_\_\_

MAP Lender Name: \_\_\_\_\_

**B.** Summary of HUD cost review:

1. Cost exhibits. If not acceptable, indicate reasons.
  - a. Mortgagor's Architect's sketch plans
  - b. Form HUD-92013
2. For Substantial Rehabilitation projects, include the following. *If not acceptable, indicate reasons.*
  - a. Mortgagor's Architect's Scope of Work Summary
  - b. Mortgagor's summary cost estimate for substantial rehabilitation (based on Scope of Work Summary)
3. HUD Cost Estimate determination. If not acceptable, indicate reasons.
  - a. Structure type (from sketch plans):
  - b. Gross floor area (from sketch plans):
  - c. Estimated Total Structures cost (from cost data):

- d. For Substantial Rehabilitation, indicate major trade item groups (if required), and subtotals:
- e. Estimated Total Land Improvements cost (from cost data):
- f. Estimated General Requirements (from cost data):
- g. Estimated fee items (from cost data):
  - 1) General Overhead
  - 2) Builder's Profit
  - 3) Architectural Fees
  - 4) Bond Premium
  - 5) Other Fees
- 4. Review of mortgagor's form HUD-92013. *If not acceptable, indicate reasons.*
  - a. Percentage difference between mortgagor's Total Structures cost (Section G, Line 8) and HUD Cost Estimator's Total Structures cost:
  - b. Percentage difference between mortgagor's Total Land Improvements cost (Section G, Line 3) and HUD Cost Estimator's Total Land Improvements cost:
  - c. Percentage difference between mortgagor's General Requirements and fees (Section G, Lines 10 through 19) and HUD Cost Estimator's General Requirements and fees:

C. I have reviewed the subject project and hereby make the following recommendation(s):

**Reviewer**

Name of Reviewer:

Signature and Date of Review: \_\_\_\_\_ Date: \_\_\_\_\_

**Concurrence**

Name of Team Leader:

Signature and Date of Concurrence: \_\_\_\_\_ Date: \_\_\_\_\_

## **A.5.9.2 Cost Review of Construction Analyst Cost Review Report**

### **A.5.9.2.1 New Construction and Substantial Rehabilitation**

A. HUD cost review of Lender's Construction Analyst cost review report for firm exhibits new construction and substantial rehabilitation:

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HUD Office Name: \_\_\_\_\_  
Firm Commitment Submission Date: \_\_\_\_\_  
Project Name: \_\_\_\_\_  
Project Location (City, State): \_\_\_\_\_  
MAP Lender Name: \_\_\_\_\_

**B. Summary of HUD cost review:**

1. Firm Commitment deliverables (Review for completeness only). *If not acceptable, indicate reasons.*
  - a. Lender's Cost Analyst Cost Review Report:
    - 1) Lender's detailed cost estimate
    - 2) Comparison of Lender's and General Contractor's cost estimates
    - 3) Prior approval of Identity of Interest subcontracts
    - 4) Property Insurance schedule
    - 5) For substantial rehabilitation projects, include the Lender's estimate for Annual Deposit to the Replacement Reserve.
  - b. Completed Forms with signatures:
    - 1) Form HUD-92264
    - 2) Form HUD-92326
    - 3) Form HUD-92331-B
    - 4) Form HUD-92329
    - 5) Form HUD-2328
  - c. Subcontracts for Identity of Interest subcontractors
2. HUD Cost Review. If not acceptable, indicate reasons.
  - a. Comparison of Lender's cost estimate and contractor's form HUD-2328 with HUD cost data:
    - 1) Total Structures
    - 2) Total Land Improvements
    - 3) General Requirements
    - 4) Fee items
    - 5) Cost Not Attributable items
  - b. Examination of Lender-contractor variance report (form HUD-2331-B)
  - c. Examination of:
    - 1) Identity of Interest relationships
    - 2) Applications for prior approval of Identity of Interest subcontractor overhead and profit
    - 3) 50%-75% Rule compliance

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d. Examination of Property Insurance Schedule

C. I have reviewed the subject project and hereby make the following recommendation(s):

**Reviewer**

Name of Reviewer: \_\_\_\_\_

Signature and Date of Review: \_\_\_\_\_ Date: \_\_\_\_\_

**Concurrence**

Name of Team Leader: \_\_\_\_\_

Signature and Date of Concurrence: \_\_\_\_\_ Date: \_\_\_\_\_

### A.5.9.3 Section 223(f) & 223(a)(7)

A. HUD cost review of Lender's Construction Analyst cost review report for firm exhibits, Section 223(f) & 223(a)(7):

HUD Office Name: \_\_\_\_\_

Firm Commitment Submission Date: \_\_\_\_\_

Project Name: \_\_\_\_\_

Project Location (City, State): \_\_\_\_\_

MAP Lender Name: \_\_\_\_\_

B. Summary of HUD cost review:

1. Firm Commitment deliverables. If not acceptable, indicate reasons.
  - a. Lender's Capital Needs Assessment and Replacement Reserve Escrow (CNA) Report
  - b. Completed form HUD-92264 with signatures
2. HUD cost review. If not acceptable, indicate reasons.
  - a. Examination of Lender's CNA Report:
    - 1) Critical repairs to be completed before endorsement
    - 2) Non-critical repairs to be completed after endorsement and estimated repair costs
    - 3) Expected repair replacement and major maintenance items over a specified period of time
    - 4) Initial Deposit to Replacement Reserve, if any
    - 5) Monthly Deposit to Replacement Reserve
    - 6) Lender's 223(f) Repairs & Alterations Cost Worksheet (See [Section A.5.12](#)), per [Chapter 5, Section 5.10.4](#).
  - b. Lender's Property Insurance Schedule (form HUD-92329 from CNA e-Tool)

C. I have reviewed the subject project and hereby make the following recommendation(s):

HUD Office Name: \_\_\_\_\_

Project Name: \_\_\_\_\_

Project Location (City, State): \_\_\_\_\_

MAP Lender Name: \_\_\_\_\_

## A.5.10 Costs Not Attributable for New Construction

### A.5.10.1 Cost Not Attributable for New Construction

**A.** For new construction projects, costs not attributable is calculated as a percentage. The percentage consists of the ratio of the cost of the non-attributable spaces and facilities (abbreviated “B”) to the total cost of land improvements and structures (abbreviated “A”), known as the B over A ratio, or simply B over A.

**B.** Costs are generally based on gross floor area of the building, area of exterior site improvements, and/or lump sums.

1. To calculate “B” costs:

- a. Prepare a worksheet describing by category each item considered in Cost Not Attributable, showing the calculation of the cost of each item. Do not include General Requirements or fees in the calculation.
- b. Show the basis of measurement and the unit price.
- c. Summarize the categories and total in form HUD-92326 and Section M of form HUD-92264.

2. To calculate “A” costs:

- a. “A” is the sum of Total Structures and Total Land Improvements, before General Requirements or fees are added. To calculate “A”, add the amounts in lines 36c and 41 in Section G of form HUD-92264.

3. To calculate B over A:

- a. Divide the “B” costs by the “A” costs. Express as a percentage and enter in Section M of form HUD-92264.

**C.** There are two main categories of Costs Not Attributable: Residential and Commercial. Each is calculated independently of the other and each has a maximum limit of 15%, resulting in a total cost not attributable of up to 30% (see the example in [Section A.5.10.1.C.2](#) below). Every use must be categorized either as Residential or Commercial, but not both.

1. **Residential Costs Not Attributable.** This consists of non-attributable items solely for the use of residents of the project. Items to consider as not attributable to dwelling use are:

- a. Parking areas and the walks and driveways specifically leading to them and serving them. Do not include public roads and streets or walks and driveways that lead to and serve the building entrance.
- b. Garages, garage spaces, and covered parking, and the walks and driveways leading to them, excluding public roads and streets.

- c. Other improvements include:
  - 1) Community space, such as: multipurpose rooms, game rooms, lounges, libraries, and hobby or craft rooms, including furniture or movable equipment.
  - 2) Project administrative and maintenance spaces, such as: offices, repair shops, employee toilets, and janitor or cleaning closets, including furniture or movable equipment.
  - 3) Storage facilities that are not for tenant use.
  - 4) Recreational facilities, such as: swimming pools, tennis courts, basketball courts, and tot lots, including furniture or movable equipment.
  - 5) Works of art that are fixed in place, such as wall murals or permanent ornamental fountains.
- d. Special Exterior Land Improvements are features unusual or in excess of those typical in projects for similar occupancy.
  - 1) Include such items as patios, sitting areas, and gazebos for the use of all project occupants. Include fountains and pools, exterior works of art, unusual trees and shrubs, and ornamental lighting and fencing.
  - 2) Do not include typical earthwork, roads and walks leading to and serving the dwellings, typical lawns and plantings, private balconies and patios, utility lines, retaining walls, or security lighting and fencing.
2. **Commercial Costs Not Attributable.** This consists of areas or buildings and improvements intended for the use of the public as well as project residents. The most common commercial uses in residential developments are:
  - a. Shops,
  - b. Offices, and
  - c. Public parking.

Include only the basic and permanent structural improvements typical in vacant commercial space. Do not include equipment, fixtures, movable partitions, special finishes, etc., for a specific business.

#### D. Limitation on Cost Not Attributable

1. **Residential:** The B over A ratio for residential costs not attributable should not exceed 15%. This is exclusive of any commercial space in the project, which will have a separate commercial cost not attributable.
2. **Commercial:** Commercial costs not attributable applies to commercial space such as shops that are in a residential structure but serve the general public as well as the residents. This is calculated separately from residential costs. The B over A ratio for commercial costs not attributable should not exceed 15 percent. The Lender's Underwriter should be aware of the higher risk inherent in commercial space and take special care to evaluate the commercial market in order to determine the maximum commercial space that can be included in the project without imposing undue risk. **Example:** A project has residential Cost Not Attributable of 12% and commercial Cost Not Attributable of 7%. Each Cost Not Attributable category is within the 15% guidelines. Total Cost Not Attributable for the project is 12% residential plus 7% commercial, equaling 19%.

**E. Items not to be included in Costs Not Attributable:**

1. **Dwelling units.** No portion of any dwelling unit, or any balcony or patio solely for the private use of the resident of the individual dwelling unit, is to be included in costs not attributable.
2. **Utility rooms.** Do not include utility rooms or portions of basements devoted to utilities such as boilers or furnaces, hot water heaters, water and sewer mains, gas mains, or electrical panels or closets.
3. **Circulation elements.** Do not include entrances, lobbies, halls, corridors, stairs, and elevators used by the occupants to enter and leave dwelling units. Do not include roads and walks that lead to and serve the dwellings.
4. **Prorating of circulation elements.** A prorating of circulation elements between dwelling use and any category in costs not attributable is not permitted.
5. Minor movable items that are not part of the real estate.
6. **Commercial costs not attributable.** Do not include equipment, fixtures, movable partitions, special finishes, etc., for a specific business.

## A.5.10.2 Example: Calculating Cost Not Attributable--New Construction

**A.** A 50-unit apartment building has a gross floor area of 30,000 sf and a footprint of 7,200 sf. It has a Total Structures cost of \$1,665,000, and a Total Land Improvements cost of \$250,000. It has a community room on the ground floor, a parking lot, an exterior patio with benches, tables, and ornamental shrubs, and a playground with swings and slides. Using the architectural drawings, determine the area of the community room, parking lot, patio, and playground, and the number of benches, tables, ornamental shrubs, swings and slides. Calculate the cost of each item.

**B. Unit quantities:**

Community room:	650 sf
Asphalt parking lot for 50 cars:	15,000 sf
Concrete Patio:	400 sf
Playground:	900 sf
5 ft concrete patio benches:	6 count
3 ft x 3 ft concrete patio tables:	6 count
Ornamental shrubs:	12 count
Playground swing sets:	2 count
Playground slides:	2 count

**C. Unit costs:**

1. The community room is part of the structure, while the rest of the non-attributable features are exterior. The unit cost for the community room will be the Total Structures cost per gross square foot of building area. In form HUD-92264, divide \$1,665,000 (Line 41 of Section G) by 30,000 sf (Line 33 of Section C), giving a cost per gross square foot of \$55.50.



2. Determine unit costs for exterior features from the Office benchmark data bank or a published data source. The exterior unit costs used in this example are typical.

**D. Parking lot:**

Asphaltic concrete parking lot paving:	\$1.25 per sf
Concrete perimeter curbing (500 lin. ft.):	\$10.50 per lin. ft.
Concrete parking bumpers:	\$30 ea.
Stormwater catch basins (4):	\$1,500 ea.
Storm drain line (350 lin. ft.):	\$27 per lin. ft.
Parking lot striping:	\$4 per car

**E. Patio:**

Concrete patio paving:	\$4 per sf
Concrete patio benches:	\$500 ea.
Concrete patio tables:	\$1,000 ea.
Ornamental shrubs:	\$100 ea.

**F. Playground:**

Asphalt paving:	\$2 per sf
Rubber safety surface:	\$3 per sf
Swing sets:	\$500 ea.
Slides:	\$1000 ea.

**G. Cost Calculations:**

1. "B" Costs. These are summarized according to category in Section M of the form HUD-92264.

**M.10–Parking**

Parking lot paving:	15,000 sf x 1.25	18,750
Parking lot curbing:	500 lin. ft. x 10.50	+5,250
Parking bumpers:	50 x 30.00	+1,500
Catch basins:	4 x 1500.00	+6,000
Storm drain:	350 lin. ft. x 27.00	+9,450
Striping:	50 x 4.00	+200
Summary Cost		= \$41,150

**M.13–Special Exterior Land Improvements**

Patio paving:	400 sf x 4.00	1,600
Patio benches:	6 x 500.00	+3,000
Patio tables:	6 x 1000.00	+6,000
Ornamental shrubs:	12 x 100.00	+1,200
Playground paving:	900 sf x 2.00	+1,800
Safety surface:	900 sf x 3.00	+2,700
Swing sets:	2 x 500.00	+1,000
Slides:	2 x 1000.00	+2,000

Summary Cost = \$19,300

**M.14–Other**

Community room: 650 sf x \$55.50 = \$36,075

Total Summary Costs = M.10 + M.13 + M.14 = **Total “B” Costs = \$96,525**

Enter summary costs and breakdown in Section M.

2. “A” Costs

Total Structures (form HUD-92264, line \$1,665,000  
G.41)

Total Land Improvements (line G.3 5c) +250,000

TOTAL “A” COSTS = \$1,915,000

3. Cost Not Attributable (B over A):

a. “B” costs @ \$96,525 divided by “A” costs @ \$1,915,000 = 0.0504 = **5.04 percent**

b. Enter the percentage in Section M of form HUD-92264.

## A.5.11 Costs Not Attributable for Existing Properties

### A.5.11.1 Instructions for Cost Not Attributable for Existing Properties

**A.** Steps 1 through 8 of the Worksheet below are intended for determining Rehabilitation Cost Not Attributable, and “As-Is” Cost Not Attributable, for existing building structures. If the building structure contains a parking garage within its footprint, the cost and floor area of the garage should be included in Steps 1 through 8. In addition, if the property contains a Cost Not Attributable use within an enclosed building that is separate from the residential structure(s), e.g. a small community building, the cost and floor area of such a Cost Not Attributable use should be included in Steps 1 through 8 of the Worksheet.

**B.** However, if there is no parking garage, but rather an open-air parking lot (and/or other open-air non-attributable use, such as a tennis court) separate from the building, the following procedure should be used:

1. The cost to rehabilitate the parking lot (and/or other open-air use) should be included in Total Rehab Cost (Step 1) and Rehab Cost Not Attributable (Step 2).
2. However, the area of the parking lot (and/or other open-air use) should **not** be included in the Project Structures Not Attributable Square Feet nor the Total Project Structures Gross Square Feet (Step 3).
3. The area(s) of the parking lot (and/or other open-air use) will be entered in Step 9 and multiplied by the Estimated Value of Land without Improvements and divided by the area of the project site.
4. Step 10 adds the amount in Step 9 to the subtotal in Step 8, to arrive at a total Rehabilitation Cost Not Attributable to Residential Use.

**C.** Rehabilitation Cost Not Attributable to Residential Use Worksheet

1. Total Rehab or Repairs Cost:
  - a. Without fees - Lines G 36c + G41 from form HUD-92264); or (Critical repairs + =\$  
 Non-critical repairs costs without fees \_\_\_\_\_
2. Rehab/Repairs Cost Not Attributable\*:
  - b. Dollar amounts without fees for Structures and Land Improvements = \$ \_\_\_\_\_  
 \* From Cost Analyst
3. Ratio of Not Attributable\*
  - a. Project Structures Not Attributable Square Feet (Structure(s) only) \_\_\_\_\_ sf \*
  - b. Total Project Structures Gross Square Feet (Structure(s) only) \_\_\_\_\_ ÷ sf\*
  - c. "3.a" divided by "3.b" = Ratio of Not Attributable \_\_\_\_\_ = % \_\_\_\_\_  
 \* From Cost Analyst
4. "As-Is" Not Attributable:
  - a. Total "As-Is" Value (from Line G.73b of form HUD-92264) \_\_\_\_\_ \$
  - b. Ratio of Not Attributable ("3.c" above) \_\_\_\_\_ x % \_\_\_\_\_
  - c. "4.a" multiplied by "4.b" = "As-Is" Not Attributable \_\_\_\_\_ = \$ \_\_\_\_\_
5. Total Cost Not Attributable:
  - a. "As-Is" Not Attributable ("4.c" above) \_\_\_\_\_ \$
  - b. Rehab Cost Not Attributable ("2" above) \_\_\_\_\_ + \$
  - c. "5.a" plus "5.b" = Total Cost Not Attributable \_\_\_\_\_ = \$ \_\_\_\_\_
6. Total Cost Without Fees:
  - a. Total Rehab Cost Without Fees ("1" above) \_\_\_\_\_ \$
  - b. Total "As-Is" Value (from Line G.73b of form HUD-92264) \_\_\_\_\_ + \$
  - c. "6.a" plus "6.b" = Total Cost Without Fees \_\_\_\_\_ = \$ \_\_\_\_\_
7. The Percentage Not Attributable:
  - a. Total Cost Not Attributable ("5.c" above) \_\_\_\_\_ \$
  - b. Total Cost Without Fees ("6.c" above) \_\_\_\_\_ ÷ \$
  - c. "7.a" divided by "7.b" = The Percentage Not Attributable \_\_\_\_\_ = % \_\_\_\_\_
8. Rehab Cost Not Attributable for Project Structures
  - a. Total Estimated Replacement Cost of Project (Line G.74) \_\_\_\_\_ \$
  - b. The Percentage Not Attributable ("7.c" above) \_\_\_\_\_ x % \_\_\_\_\_
  - c. "8.a" multiplied by "8.b" = Rehab Cost Not Attributable for Project Structures \_\_\_\_\_ = \$ \_\_\_\_\_
9. "As-Is" Not Attributable for Open-Air Parking Lots and Other Open-Air Uses

a. Total Open-Air Non-Attributable Area	sf *
b. Estimated Value of Land Without Improvements	x \$
c. Site Area	÷ sf *
d. "9.a" multiplied by "9.b" divided by "9.c" = "As-Is" Not Attributable for Open-Air Parking Lots and Other Open-Air Uses	= \$

\* From Cost Analyst

10. Total Rehabilitation & Repairs Cost Not Attributable to Residential Use

a. Rehab Cost Not Attributable for Project Structures ("8.c" above)	\$
b. "As-Is" Not Attributable for Open-Air Parking Lots and Other Open-Air Uses ("9.d" above)	+ \$
c. "10.a" plus "10.b" = Total Rehab/Repairs Cost Not Attributable to Residential Use	= \$

### A.5.11.2 Example of Calculating Cost Not Attributable for Substantial Rehabilitation and Repairs

A. Apartment building containing community space and commercial space, a separate athletic club building, and an open-air parking lot.

Units:	50
Gross Floor Area:	50,000 sf (residential structure) 1,000 sf (athletic club building)
Total Site Area:	25,000sf

B. Form HUD-92264 Section G:

Rehab/Repair cost for Structures:	\$1,020,000
Rehab/Repair cost for Land Improvements:	+ \$125,000
Rehab/Repair Gen. Requirements:	+ \$225,000

**Soft Costs**

Carrying Charges, Financing, Legal, Organizational, Audit.	+ \$400,000
Contingency Reserve:	+ \$100,000

**"As-Is" Value**

Residential Structure:	+ \$3,000,000
Athletic Club Building:	+ \$50,000
Land (25,000 sf @ \$20/sf):	+ \$500,000

Total = Line G.74 = \$5,420,000

**C. Non-attributable Areas:**

**Residential Structure**

Community Room = 1,000 sf  
 Commercial Space = 2,000 sf  
 Athletic Club Building = 1,000 sf

**Open-air Lot**

Parking Lot for 50 cars = 15,000 sf

**D. Rehabilitation/Repairs Cost Not Attributable (without Fees):**

**Residential Structure Rehab/Repair Costs**

Community Room: 1,000 sf @ \$20/sf = \$20,000  
 Commercial Space: 2,000 sf @ \$30/sf = \$60,000  
 Athletic Club Building Rehab/Repair Cost: 1,000 sf @ \$20/sf = \$20,000

**Open-air Lot Rehab/Repair Costs**

Patch and re-stripe parking lot: 15,000 sf @ \$1/sf = \$15,000

**A.5.11.2.1 STEP A: “B” over “A” Test**

**A. “A” (Rehab/Repair Costs for Structures and Land Improvements:**

Rehab/Repair cost for Structures:		\$1,020,000
Rehab/Repair cost for Land Improvements:	+	\$125,000
<hr/>		
Total	=	\$1,145,000

**B. “B” for Non-commercial Uses:**

Community Room Rehab/Repair Cost:		\$20,000
Athletic Club Building Rehab/Repair Cost:	+	\$20,000
Open-air Lot Rehab/Repair Costs:	+	\$15,000
<hr/>		
Total	=	\$55,000

**C. “B” for Commercial Uses:**

Commercial Space Rehab/Repair Cost:	=	\$60,000
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**D. “B” over “A” for Non-commercial Percentage**

B divided by A (\$55,000 / \$1,145,000 = 0.048) = 4.80 Percent **Acceptable**

**E. "B" over "A" for Commercial Percentage**

B divided by A (\$60,000 / \$1,145,000 = 0.0524) = 5.24 Percent Acceptable

**A.5.11.2.2 STEP B: Rehab/Repairs Cost Not Attributable Worksheet**

**A. Step 1: Total Rehab/Repairs Cost:**

Land and Structures = \$1,145,000

**B. Step 2. Rehab/Repairs Cost Not Attributable:**

= \$20,000 + 60,000 + 20,000 + 15,000 = \$115,000

**C. Step 3. Ratio of Not Attributable:**

Use only the areas within the residential structure and enclosed non-attributable buildings for project not attributable and project gross square feet.

**Project Structures Not Attributable Square Feet**

Community Room		1,000sf
Commercial Space	+	2,000sf
Athletic Club Building	+	1,000sf
	Total =	4,000sf

**Project Structures Gross Square Feet**

Gross Floor Area of Residential Structure	+	50,000sf
Athletic Club Building	+	1,000sf
	Total =	51,000sf

**Ratio:** [4,000 sf] divided by [51,000 sf] = 0.0784 = 7.84%

**D. Step 4. "As-Is" Not Attributable:**

**Total "As-Is" Value:**

Residential Structure:		\$3,000,000
Athletic Club Building:	+	\$50,000
Land (25,000 sf @ \$20/sf):	+	\$500,000
	Total =	\$3,550,000

**"As-Is" Not Attributable:**

Total "As-Is" Value:		\$3,550,000
Ratio of Not Attributable (Step 3):	x	7.84 %

[Total “As-Is” value] multiplied by [Ratio of Not Attributable]:	=	<u>\$278,320</u>
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**E. Step 5. Total Cost Not Attributable:**

“As-Is” Not Attributable (Step #4):		\$278,320
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Rehab/Repairs Cost Not Attributable (Step #2):	+	<u>\$115,000</u>
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[“As-Is” Not Attributable] plus [Rehab/Repairs Cost Not Attributable]:	=	<u>\$393,320</u>
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**F. Step 6. Cost Without Fees:**

Total Rehab/Repairs Cost (without Fees) (Step #1):		\$1,145,000
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Total “As-Is” Value:	+	<u>\$3,550,000</u>
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[Total Rehab/Repairs Cost] plus [Total “As-Is” Value]:	=	<u>\$4,695,000</u>
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**G. Step 7. The Percentage Not Attributable:**

Total Cost Not Attributable (Step #5):		\$393,320
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Cost without Fees (Step #6):	÷	<u>\$4,695,000</u>
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[Total Cost Not Attributable] divided by [Cost without Fees]:	=	8.38 %
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**H. Step 8. Rehab/Repairs Cost Not Attributable for Project Structures:**

Total Estimated Replacement Cost of Project (Line G.74):		\$5,420,000
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Percentage Not Attributable (Step #7)	x	<u>8.38 %</u>
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[Total Estimated Replacement Cost] multiplied by [Percentage Not Attributable]:	=	\$454,196
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**I. Step 9. “As-Is” Not Attributable for Open-Air Parking Lots and Other Open-Air Uses:**

Total Open-Air Non-Attributable Area (parking lot):		15,000 sf
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Estimated Value of Land Without Improvements:	x	\$500,000
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Site Area:	÷	<u>25,000 sf</u>
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[Total Open-Air Non-Attributable Area] multiplied by [Estimated Value of Land divided by Site Area]:	=	<u>\$300,000</u>
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**J. Step 10. Total Rehabilitation Cost Not Attributable to Residential Use**

Rehab/Repairs Cost Not Attributable for Project Structures (Step #8):		\$454,196
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“As-Is” Not Attrib. for Open-Air Parking Lots and Other Open-Air Uses (Step #9):	+	<u>\$300,000</u>
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[Rehab/Repairs Cost Not Attributable] plus ["As-Is" Not  
Attrib. Open-Air Parking Lot / Other Uses]: = \$754,196

## A.5.12 223(f) Repairs and Alterations Cost Worksheet

### WORKSHEET FOR SUM OF COSTS OF REPAIRS & ALTERATIONS IN 223(f) APPLICATIONS

(When hard costs exceed \$15,000/per unit or include Level 2 or Level 3 Alterations)

**Project Name:** Honest Acres

**Address/City/State/Zip:**

**# All Units:** 164

**FHA #:**

Category or Description of Cost	When Incurred		C \$ Total Cost	D % of Total Cost
	A \$ Before Endorsement (Note 1)	B \$ After Endorsement (Note 2)		
<b>A. REPAIRS HARD COSTS</b>				
1. Critical Repairs				
a. Life Safety (see CNA e-Tool list of repairs)	7,600		\$7,600	
b. Accessibility (see CNA e-Tool list of repairs)	4,200	\$17,000	\$121,200	
c. Subtotal All Critical	11,800	\$117,000	\$128,800	
2. Non-critical Repairs (see CNA e-Tool list of repairs)	\$-	2,587,000	<b>\$2,587,000</b>	
3. <b>Total Hard Costs</b>	<b>\$11,800</b>	<b>\$2,704,000</b>	<b>\$2,715,800</b>	
<b>B. REPAIRS SOFT COSTS</b>				
4. General Contractor				
a. Overhead		\$27,000	\$27,000	0.99%
b. Profit		\$270,000	\$270,000	9.94%
c. Subtotal GC Fees (4a + 4b)		\$297,000	\$297,000	10.94%
5. GC's General Requirements (itemize, Note 3)		\$20,600	\$20,600	
6. Architect's Fees (Note 4)				
a. Design	\$30,000		\$30,000	1.10%
b. Supervision		\$15,000	\$15,000	0.55%

Category or Description of Cost	When Incurred		C \$ Total Cost	D % of Total Cost
	A \$ Before Endorsement (Note 1)	B \$ After Endorsement (Note 2)		
Subtotal Architect's Fees c. (6a + 6b)	\$30,000	\$15,000	\$45,000	1.66%
7. Other Fees (itemize, Note 3)	\$60,800	\$325,000	\$385,800	
<b>8. Total Soft Costs</b>	<b>\$90,800</b>	<b>\$657,600</b>	<b>\$748,400</b>	
<b>C. CALCULATIONS TOTAL</b>				
<b>9. TOTAL COSTS</b>	<b>\$102,600</b>	<b>\$3,361,600</b>	<b>\$3,464,200</b>	
<b>10. Total Cost per Unit (Line 9/# units; Note 4)</b>			<b>\$21,123</b>	
<b>D. MISC. CALCULATIONS</b>				
11. Assurance of Completion % (10%)			\$346,420	
12. Total Amount of Repair Escrow (line 9 + line 11, col. C)			\$3,810,620	
13. Section 223(f) Cost Ceiling: Sub Rehab+ Threshold				
Enter Base \$ Per Unit				
a. Limit:	15,933			
Enter Local High Cost				
b. Multiplier:	262%			
c. Adjusted Per Unit Limit:			<u>\$41,744</u>	
Total cost/unit at completion, no matter how funded, may not exceed sum on line 13c, Col A.				
Note 1: Mortgageable costs, reimbursable at Endorsement subject to available proceeds.				
Note 2: Mortgageable costs, reimbursable only from Repair Escrow.				
Note 3: Attach additional sheets as required.				
Note 4: % calculated is fee/(hard costs + GC fees + General Requirements).				
Note 5: May not exceed base cost per unit x area high cost factor.				

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## Appendix 6 Energy Modeling and Water Conservation

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**A.** Building energy modeling, (BEM) also known as building performance simulation, refers to systematic procedures for estimating the results of operating and maintaining a building for its intended use in the environment at its location. Fundamentally, the object of BEM is to measure inputs necessary to maintain a desired interior environment in a building given the use and location of the building and the siting, design, equipment and construction methods employed in its construction. The U.S. Department of Energy (DOE) and the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) are primary sources of modeling standards and methods.

**B.** Any BEM software acceptable for use in modeling building performance in a mortgage application must be industry recognized and must comply with industry standards, notably ASHRAE 90.1 Appendix G, for any building where ASHRAE 90.1 is applicable, or for single family, townhouse or small structures with no common space, the RESNET Home Energy Rating System (HERS). For modeling purposes, the guidance for modeling in these referenced standards must be from the most recent available version. For example, the current most recent version of ASHRAE 90.1 Appendix G is part of the ASHRAE 90.1 2016 version and it is this version that must be used for modeling even though the HUD minimum code is ASHRAE 90.1 2007.

**C.** Building energy modeling is used for two main purposes:

- 1. Comparing a building to an alternative version of itself.** This is the purpose of BEM when perfecting a proposed building design or comparing the costs and benefits of alternative designs, equipment and construction methods. The object is to answer the question: how much more (or less) efficient is a building built per design “A” versus design “B.” BEM is essential to the use of performance-based codes and standards as opposed to prescriptive codes. Prescriptive codes set minimum performance, quality or construction methods for each component or assembly in a building and each requirement must be met. Performance based codes allow the design to exceed minimum prescriptions for some components or assemblies to compensate for less than the prescribed performance of other components, a much more flexible approach to design and construction. Many green building certifications have both performance-based and prescriptive options. Choosing a performance option requires the use of building energy modeling.
- 2. Estimating expected results for a building in operation or after it is placed in service.** This is the purpose of BEM when estimating the energy usage and costs for a building when it is occupied and operating normally.

While closely related, these two purposes embody a key distinction relevant to multifamily practice. Estimating actual results for a property requires modeling no matter whether the design conforms to a performance or a prescriptive code. When comparing a building to an alternative version of itself, the comparison is valid as long as all the loads, environmental conditions, and anticipated uses, are held constant (e.g. assumed interior hi/lo temperatures are fixed) with only alternatives for design, construction and equipment changing from one modeled result to another. When estimating expected results for an existing or designed building, all inputs are fixed and must be consistent with actual conditions for the property in operation. Examples illustrate this distinction. Set temperatures for heating and cooling seasons are inputs to a modeled result. When comparing a building to an alternative of itself, these temperatures are set in accordance with modeling standards or guidance,

e.g. ASHRAE 90.1 Appendix G. When estimating results for a building in operation or to be placed in operation, these set temperatures may be different from Appendix G, reflecting actual tenant behavior. When estimating energy use in an existing property or a designed building the heating season set temperature should not be lower than 70° F versus the Appendix G minimum of 68°F. Similarly, the cooling season set temperature should not be higher than 75°F, not the Appendix G maximum of 78°F. In this example, Appendix G merely describes an acceptable range for comparative modeling purposes, not a range most likely in an occupied multifamily unit. Another, similar example is the different loads applicable to a family with children versus those likely for an elderly couple. Modeling to estimate actual results in a multifamily property must reflect the expected tenant profile and tenant behavior for the subject property.

BEM software is divided into two basic categories: simulation engines; and data entry and consolidation forms. The Department of Energy has developed and provided free and foundational simulation engines used by others to develop or elaborate copyrighted add-ons or overlays including user friendly data entry user interface and reports generating features. DOE's simulation engines are known as EnergyPlus and Spawn-of-EnergyPlus. DOE has also published OpenStudio, an open source software development kit for energy modeling with EnergyPlus. Information on these software products, resources for modelers and stakeholders and many other aspects of building energy modeling is available at DOE's website for emerging technologies-building energy modeling website: <https://www.energy.gov/eere/buildings/building-energy-modeling>

A complete and searchable inventory of energy modeling software is available at the Building Energy Software Tools website: <https://www.buildingenergysoftwaretools.com/>

Modelers working with green MIP applications should use a software product listed on this website selecting one of these products specifically identified as appropriate for "multifamily" properties. If the proposed green MIP project is composed of single family, duplex, four family or other small buildings with no common spaces, a software listed as appropriate for "residential" may be appropriate.

Some listed software are narrow in scope, for example, limited to Manual J air conditioning load and sizing calculations or to water consumption metrics. These may be useful for their limited purposes, in particular water analytics, apart from water heating energy, may be severable from energy efficiency.

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## Appendix 7 Valuation Processing

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### A.7.1 HUD Review Appraiser Scope of Work

**A. SUBJECT:** How the Uniform Standards of Professional Appraisal Practice (USPAP) Relates to HUD Multifamily Appraisals, MAP Lenders, MAP Appraisers, and HUD Review Appraisers

#### A.7.1.1 Purpose

**A.** This appendix provides direction to HUD Appraisers, Underwriters, and other Production staff and managers reviewing applications for multifamily mortgage insurance. It addresses USPAP and appraisals completed for HUD-insured multifamily mortgage applications. The Appraisal Foundation was consulted in the process of preparing this guidance.

#### A.7.1.2 USPAP Background

**A.** The purpose of USPAP is to promote and maintain a high level of public trust in appraisal practice by establishing requirements for appraisers. USPAP is published by the Appraisal Standards Board (ASB) of The Appraisal Foundation. It is revised every two years.

**B.** The Appraisal Foundation was formed by major appraisal professional associations in the 1980s as a result of the savings and loan crisis which occurred in that decade. It is authorized by Congress as the source of appraisal standards and appraiser qualifications. It is not a governmental body and has no enforcement authority.

**C.** The Foundation's activities are monitored and partially funded by a governmental agency known as the Appraisal Subcommittee-Federal Financial Institutions Examination Council, more commonly known as the ASC, whose members include representatives of the Federal Reserve System, Office of the Comptroller of the Currency, Federal Housing Finance Agency, Consumer Financial Protection Bureau, Federal Deposit Insurance Corporation, and the National Credit Union Administration. HUD is also a member.

**D.** The ASC provides federal oversight of State appraiser regulatory programs and a monitoring framework for the Appraisal Foundation and the Federal Financial Institutions Regulatory Agencies in their roles to protect federal financial and public policy interests in real estate appraisals utilized in federally related transactions.<sup>78</sup> Enforcement of Appraisal Standards (i.e., USPAP) is accomplished by State Regulatory Agencies.

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<sup>78</sup> Although it is possible that some HUD-insured mortgages may not technically be federally related, there is a statutory requirement for the Department to evaluate collateral using licensed or certified appraisers. This requirement can be met through the use of either licensed staff appraisers or third-party appraisers.

### A.7.1.3 Applicability of USPAP to HUD/FHA

A. The Department has statutory authority (12 USC 1708(g)) to prescribe standards for the appraisal of all property to be insured by the Federal Housing Administration. Such appraisals shall be performed in accordance with generally accepted standards<sup>79</sup> by individuals who have demonstrated competence and whose professional conduct is subject to effective supervision. Under the MAP Program, HUD relies on the MAP Approved Lender to provide such supervision and their third-party appraisal may be relied upon to meet the statutory requirement. Additionally, the Department requires a USPAP-Compliant appraisal review by a HUD staff appraiser for all high- or medium-risk transactions.

B. The HUD Review Appraiser is required to opine on the quality of the appraisal and its reliability for use in underwriting a HUD-insured mortgage. A concurrence with the value or the development of an alternate value is not necessarily required.

C. USPAP consists of five sections: 1) Definitions, 2) Preamble, 3) Rules, 4) Standards and Standards Rules, and 5) Statements on Appraisal Standards. The ASB also publishes Advisory Opinions, which although are not a part of USPAP, provide illustrations of the applicability of Standards in specific situations and offer advice from the ASB for the resolution of specific appraisal issues and problems. Advisory Opinions 3, 14, and 16 are cited in the MAP Guide.

D. All of the Rules in USPAP apply to MAP Appraisers and HUD Review Appraisers. They consist of the Ethics Rule, Record Keeping Rule, Competency Rule, Scope of Work Rule, and Jurisdictional Exception Rule.

#### A.7.1.3.1 Ethics Rule

A. This rule specifies the personal obligations and responsibilities of the individual appraiser as well as an appraiser employed by a group or organization. The Ethics Rule is divided into three sections: Conduct, Management, and Confidentiality. The Department has addressed the issue of confidentiality in [Chapter 7, Section 7.6.12](#) of this MAP Guide. Management is addressed in the certification that the review appraiser makes when completing a review assignment.

B. With respect to conduct, all employees are expected perform assignments with impartiality, objectivity, and independence, and without accommodation of personal interests.

#### A.7.1.3.2 Record Keeping Rule

A. This rule specifies record-keeping procedures for appraisers. The rule does not mandate that an appraiser have possession of assignment work files. The Department does not permit permanent or personal possession of records relating to a Review Appraiser's work. However, the Department retains these records for far more than the time required under USPAP and will, with due process of law, cooperate with appraiser regulatory agencies and professional peer review committees, and assist with obtaining a professional designation.

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<sup>79</sup> The Statute states: "...in accordance with generally accepted appraisal standards, such as the appraisal standards promulgated by The Appraisal Foundation."

### **A.7.1.3.3 Competency Rule**

**A.** This rule essentially states that an appraiser must be competent to perform the assignment, acquire the necessary competency to perform the assignment, or decline or withdraw from the assignment. In all cases, the appraiser must perform competently when completing the assignment. Competency also relates to familiarity with a given market.

**B.** Some assignments may raise concerns about the competency requirement. For example, a transaction may have a large commercial space/income component, or a transaction may involve a project that is far from the HUD Review Appraiser's geographic area. A number of HUD's appraisers have extensive commercial experience and can be consulted.<sup>80</sup> Reviewer Appraisers may be able to obtain sufficient market information from other HUD staff and online sources of data (e.g., HUD and/or commercial) in order to complete their review. In some cases, a site visit and/or additional time might be needed to research an unfamiliar area.

**C.** The need to withdraw from an assignment should be rare and HUD Review Appraisers are expected to work with management to arrange for timely completion of review assignments.

### **A.7.1.3.4 Scope of Work Rule**

**A.** The Scope of Work Rule is essentially problem-solving guidance that includes property identification, extent of inspection, the type and extent of data researched, and the kind of analysis needed to arrive at opinions or conclusions. The rule also states that appraisers have broad flexibility and significant responsibility in determining the appropriate scope of work for an appraisal or appraisal review assignment.

**B.** According to USPAP, appraisers (including HUD Review Appraisers) are responsible for determining the scope of work. However, as an employer who is also the client, the Department may issue guidance as to what is the extent of an assignment for a review appraisal. It is not a violation of USPAP for an appraiser to accept an assignment, in which a limited scope of work is appropriate, so long as the assignment and scope of work are clearly defined, produces credible results, and is performed objectively without bias.

**C.** HUD Review Appraisers may have to expand the scope of work and do additional research in performing an assignment. The Review Appraiser should discuss such situations with management in order to determine whether additional work by HUD staff is appropriate, or if the application should be rejected or approved with conditions.

**D.** According to USPAP, if relevant information is not available because of assignment conditions that limit research opportunities (such as conditions that place limitations on inspection or information gathering), an appraiser must withdraw from the assignment unless the appraiser can still develop credible assignment results. For example, they may be able to modify the assignment conditions to expand the

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<sup>80</sup> There may be times when consulting other appraisers rises to the level of "significant appraisal review assistance" and the name of the person providing that assistance must be stated in the certification.



scope of work to include gathering the information or use an extraordinary assumption<sup>81</sup> about such information.

**E.** Workload Sharing arrangements may require HUD Review Appraisers to perform reviews without the benefit of being able to do a physical inspection. In these cases, the assignment will generally be completed with the Review Appraiser making certain assumptions, such as the condition to be consistent with the photographs and other reports.

**F.** HUD Review Appraisers may be required to provide consultation with Senior Underwriters and other staff who have been asked to review an appraisal.

### **A.7.1.3.5 Jurisdictional Exception Rule**

**A.** This rule provides a saving or severability clause intended to preserve the balance of USPAP if compliance with one or more of its parts is precluded by the law or regulation of a jurisdiction. When an appraiser properly follows this rule in disregarding a part of USPAP, there is no violation of USPAP.

**B.** USPAP defines law as including constitutions, legislative and court-made law, administrative rules, and ordinances. Regulations include rules or orders having legal force, which are issued by an administrative agency (such as HUD.) This would include Handbooks, Notices, and the MAP Guide. Instructions from an attorney or a client do not establish a jurisdictional exception

**C.** The need to exercise a Jurisdictional Exception should be rare. If it is needed, the appraiser or Review Appraiser must specifically cite the law or regulation and the portion of USPAP that is affected. Verbal direction from management is not sufficient to justify a Jurisdictional Exception. HUD Review Appraisers must cite a citation from the MAP Guide or other appropriate authority.

### **A.7.1.4 USPAP Standards**

**A.** The USPAP Standards that are the most applicable to HUD Multifamily are: Standard 1- Real Property Appraisal Development; Standard 2- Real Property Appraisal Reporting; and Standard 3- Appraisal Review, Development, and Reporting.

#### **A.7.1.4.1 Standard 1**

**A.** “..... an appraiser must identify the problem to be solved, determine the scope of work necessary to solve the problem, and correctly complete research and analyses necessary to produce a credible appraisal.”

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<sup>81</sup> An Extraordinary Assumption is an assumption, directly related to a specific assignment, as of the effective date of the assignment results, which, if found to be false, could alter the appraiser’s opinions or conclusions. Extraordinary assumptions presume as fact otherwise uncertain information about: 1) physical, legal, or economic characteristics of the subject property; or 2) conditions external to the property, such as market conditions or trends; or 3) the integrity of data used in an analysis.

### **A.7.1.4.2 Standard 2**

A. “...In reporting the results of a real property appraisal, an appraiser must communicate each analysis, opinion, and conclusion in a manner that is not misleading.” This standard also sets forth the required format for the appraiser to certify his/her work.

### **A.7.1.4.3 Standard 3**

A. This standard addresses the substantive aspects of developing a credible opinion about the quality of another appraiser’s work that was performed as part of an appraisal or appraisal review assignment.

B. This standard also addresses the content and level of information required in a report that communicates the results of an appraisal review assignment. Standard 3 does not dictate the form, format, or style of Appraisal Review Reports. The substantive content of a report determines its compliance. Like Standard 1, Standard 3 requires the development of a work file.

C. When a HUD Review Appraiser changes rents or adjust values, he/she is producing an appraisal and must develop a work file that complies with Standard 1. Generally, the HUD Review Appraiser is expected to opine on the quality of the appraisal under review and determine whether or not it is suitable for use in underwriting a HUD-insured mortgage.

D. The Multifamily Hub Director has waiver authority to rely on the Lender's appraisal review without a HUD staff appraiser review. Exercise of such authority may be appropriate for low-risk transactions in which the application is complete and reliable. The appraisal report must still be reviewed by a HUD staff member. The staff assigned to this task must have adequate training and must ensure that the appraisal report under review is USPAP-compliant and also follows the requirements outlined in [Chapter 7](#) of this MAP Guide.

### **A.7.1.5 Conclusion**

A. HUD Review Appraiser assignments are to be completed in accordance with USPAP and in accordance with workload norms to support production. HUD Review Appraisers are responsible for advising management and documenting their findings and recommendations (including non-concurrences, if applicable) as to the acceptability of MAP Lender third-party appraisals and applications.

## **A.7.2 HUD Review of Appraisal and Market Study**

### **A.7.2.1 Technical Review of Multifamily Accelerated Processing**

#### **A.7.2.1.1 Pre-Application Section 220, 221(d)(4), and 231**

A. This review of appraisal/consulting work product is to be completed in accordance with Standard 3 of the USPAP currently in effect. The reviewer’s client and intended user is the U. S. Department of Housing and Urban Development. The purpose of the review is to ascertain if the appraisal/consulting work product under review meets the applicable requirements of the USPAP and HUD, and that the work product has produced well-supported conclusions that can be relied on for the purpose of making a

recommendation to issue, or not issue, an invitation to apply for a Firm Commitment for HUD mortgage insurance. The sample format in this Appendix may be used in its entirety, modified by the HUD Review Appraiser to reflect their scope of work on any particular transaction, or a field office may use their own format so long as the reviewer's signature and license number are included and their report is compliant with USPAP.

**SAMPLE APPRAISAL REVIEW FORMAT**

Month Day, Year

**Memorandum For:** Underwriter Name, Senior Underwriter

**Through:** Appraiser

**From:** Technical Branch Chief

**Project:**

Name:	
FHA #:	
SOA:	
Type:	NC or Sub-Rehab or Refi or Acquisition
Stage:	Firm or Pre-App
#Units:	
Address:	
City:	
County:	
State:	

The review of the Project has been completed and the following text describes the review completed.

**Client and Other Intended Users of the Review:** The client is the United States Department of Housing and Urban Development (HUD); the intended users are HUD staff involved in the FHA mortgage insurance underwriting process, and no others.

**Intended Use of the Reviewer:** This assignment is intended to be used for mortgage insurance decision making purposes, and no other use.

**Purpose of the Review:** To determine if the risks associated with the Project are acceptable to HUD. Furthermore, and as a byproduct of the risk determination, the purpose is to determine acceptability of the work under review for use in mortgage insurance underwriting purposes. The reviewer’s opinions and conclusions are limited to the work under review. The review does not include a development of the reviewer’s own opinion of value.

**Hypothetical Conditions:** The work under review (with the exception of the environmental documents) and the review assignment both assume that all necessary property improvements and/or repairs are complete, and that the property has stabilized occupancy as of the effective date of the appraisal.

**Extraordinary Assumptions:** There are no extraordinary assumptions specific to this assignment; however, extraordinary assumptions were contained in the appraisal under review.

**Jurisdictional Exception:** Per Federal Register Volume 59, Number 190 (Monday, 10/3/1994), FR Doc No: 94-24327, Part XI, Department of Housing and Urban Development, Office of the Assistant Secretary for Housing--Federal Housing Commissioner, 24 Part 200 et al., Appraisals and Property Valuation; Final Rule – (in summary) and OMB Bulletin No. 92-06 - Federal employees who are state-licensed or certified

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real estate appraisers need only be licensed or certified in one state or territory to perform real estate appraisal duties as Federal employees in all states and territories.

**Scope of work:** A full or limited scope review was completed for the following:<sup>1</sup>

Appraisal <sup>2</sup>	Market Study	EMAD	Underwriting <sup>3</sup>	Phase I <sup>4</sup>
<input type="checkbox"/> Full	<input type="checkbox"/> Full	<input type="checkbox"/> Full	<input type="checkbox"/> Full	<input type="checkbox"/> Full
<input type="checkbox"/> Limited	<input type="checkbox"/> Limited	<input type="checkbox"/> Limited	<input type="checkbox"/> Limited	<input type="checkbox"/> Limited
<input type="checkbox"/> None	<input type="checkbox"/> None	<input type="checkbox"/> None	<input type="checkbox"/> None	<input type="checkbox"/> None

<sup>1</sup> The review would incorporate and include any and all follow-up or additional information submitted after the application submission and prior to the completion of this review.

<sup>2</sup> The ownership interest in the work under review is Fee Simple.

<sup>3</sup> Includes Lender's narrative, forms (i.e. 92264), and any other information supplied by the Lender.

<sup>4</sup> Includes all other environmental reports (i.e. Phase II, various O&M Plans, etc.).

**Work under review:**

Work	Person Completed	Date of Report	Date of Site Inspection	Effective Date
Appraisal				
Market Study				
EMAD				
Phase I				
Underwriting				

**As part of the review process the following has occurred:**

<input type="checkbox"/> I have <input type="checkbox"/> I have not	inspected the Project (consists of site, neighborhood, and improvements if applicable).
<input type="checkbox"/> I have <input type="checkbox"/> I have not	inspected a sampling of the comparables (consists of random sampling of rent, expense, land sale, and improved sale comparables).
<input type="checkbox"/> I have <input type="checkbox"/> I have not	conducted any additional research (consists of iREMS, OPPIS, REIS, other HUD available data, external websites, market professionals).
<input type="checkbox"/> I have <input type="checkbox"/> I have not	other: N/A

The topics reviewed are identified in the left-most column and the remaining columns summarize the conclusion(s) of the review completed. A narrative follows which covers the critical pieces and will assist in the mortgage insurance decision making process:

Review Topic	Acceptable	Not Acceptable	Mitigation Recommended	Mitigation Required	Not Applicable
<b>Market Study and/or Appraisal</b>					
<input type="checkbox"/> Improvements	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Rent Structure	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Location	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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<b>Review Topic</b>	<b>Acceptable</b>	<b>Not Acceptable</b>	<b>Mitigation Recommended</b>	<b>Mitigation Required</b>	<b>Not Applicable</b>
<input type="checkbox"/> Waivers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Housing Market Area ("HMA")	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Economics and Demographics	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Competition/Comparables	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Pipeline	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Target Market	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Demand (including any commercial)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Absorption	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Initial Operating Deficit	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> EMAD's Review	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Other - [Modify OR delete this text]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Appraisal</b>					
<input type="checkbox"/> Sales Comparison Approach	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Land Comparison Approach	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Remaining Economic Life	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Cost Approach	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Income Approach	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Rents (including any commercial)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Other Income	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Vacancy (including any commercial)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Expenses (including any commercial)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> NOI	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Capitalization Rate	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Value	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Reconciliation of Value	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Debt Service Analysis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Rents (including any commercial)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Other Income	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Vacancy (including any commercial)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<b>Review Topic</b>	<b>Acceptable</b>	<b>Not Acceptable</b>	<b>Mitigation Recommended</b>	<b>Mitigation Required</b>	<b>Not Applicable</b>
<input type="checkbox"/> Expenses (including any commercial)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> NOI	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Tax Abatement	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Ground Lease	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Other – Modify OR Delete Text	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Underwriting</b>					
<input type="checkbox"/> Underwriting	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Rents (including any commercial)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Other Income	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Vacancy (including any commercial)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Expenses (including any commercial)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> NOI	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Waivers:** *(Discuss any waivers that would be in the purview of the HUD appraiser and provide a recommendation for approval or not.)*

[Type the waiver narrative here.]

**Market Narrative:** *(For all project types, describe: the Primary Market Area (PMA); demographic, economic, and market trends; and demand. Also, discuss the subject property in relation to the competing properties in the PMA and discuss the status of the overall sub-market.*

*For New Construction or Sub Rehab, also describe the material variances between the Market Study and the Economic Market Analysis Division (EMAD); specifically address the differences in the conclusions of the two reports and the reasons for conclusions contained in this review. Also discuss lease-up projections, including the Absorption Period and Rate, Penetration Rate, and Capture Rate.*

*Generally, the narrative section should not exceed 1½ pages, the bulleted strength and weaknesses sections should typically contain 2 to 4 bullets, respectively, and reflect the most important market-related strengths or weaknesses.*

*The objective of the review is to provide a recommendation and provide the insight as to why the recommendation was made, rather than to summarize the appraisal, market study, and/or the underwriting [including the Lender’s narrative]. For example, explain why the market is acceptable or not acceptable.)*

[Type the market narrative here.]



### **Market Strengths:**

- [Type market strengths here.]
- [Type market strengths here.]
- [Type market strengths here.]
- [Type market strengths here.]

### **Market Weaknesses:**

- [Type market weaknesses here.]
  - [Type mitigants here, if applicable.]
- [Type market weaknesses here.]
  - [Type mitigants here, if applicable.]
- [Type market weaknesses here.]
  - [Type mitigants here, if applicable.]
- [Type market weaknesses here.]
  - [Type mitigants here, if applicable.]

**Valuation Narrative:** *(Discuss all of the following that are applicable for the project type: the land value analysis, cost approach, sales comparison approach, income approach to value [be sure to discuss the income, vacancy, expenses, and capitalization rates in the income approach to value discussion], reconciliation of value, and debt service analysis [be sure to discuss the income, vacancy, and expenses in the debt service analysis discussion].*

*Furthermore, be certain to discuss any differences between the appraisal and the underwriting, especially in regard to the value and debt service analysis, and provide an indication if the differences in the underwriting are acceptable or not. Also, be sure to discuss tax abatements, ground leases, IOD's, or any other topic [e.g., remaining economic life] where a concern may exist, if applicable.*

*Generally, the narrative section should not exceed 1½ pages, the bulleted strength and weaknesses sections should typically contain 2 to 4 bullets, respectively, and reflect the most important value-related strengths or weaknesses.*

*The objective of the review is to provide a recommendation and provide the insight as to why the recommendation was made, rather than to summarize the appraisal, market study, and/or the underwriting [including the Lender's narrative].. For example, explain why the rents are acceptable or not acceptable.)*

[Type valuation narrative here.]

### **Valuation Strengths:**

- [Type valuation strengths here.]
- [Type valuation strengths here.]
- [Type valuation strengths here.]

- [Type valuation strengths here.]

**Valuation Weaknesses:**

- [Type valuation weaknesses here.]
  - [Type mitigants here, if applicable.]
- [Type valuation weaknesses here.]
  - [Type mitigants here, if applicable.]
- [Type valuation weaknesses here.]
  - [Type mitigants here, if applicable.]
- [Type valuation weaknesses here.]
  - [Type mitigants here, if applicable.]

**Environmental Narrative:** *(Discuss all Reportable Environmental Conditions and discuss the mitigation plan for each. Also, discuss any other environmental issue or concern such as radon, lead based paint, asbestos, towers, wetlands, noise, adjacent site concerns, groundwater flow, flood plains, etc. and any mitigation plan or processes undertaken [i.e. Section 106 process, 8-step Process, Operations & Maintenance Plan, etc.] to mitigate the issue or concern. The narrative section should focus on the conclusion drawn and any prominent concerns.*

*Generally, the narrative section should not exceed 1 page, the bulleted strength and weaknesses sections should typically contain 2 to 4 bullets, respectively, and reflect the most important environmental-related strengths or weaknesses.*

*The objective of the review is to identify any environmental concerns and discuss the mitigants. rather than to summarize the Phase I and or the underwriting [including the Lender’s narrative]. For example, there are noise concerns, but all interior space and common area exterior space has been mitigated to below acceptable levels.)*

<b>Environmental Consultant's Name:</b>	
<b>Date of Assessment:</b>	
<b>Report complete?</b>	

Potential Hazards	Acceptable?		RECs?		Mitigation or O&M Plan Required <sup>5</sup> ?	
	Yes	No	Yes	No	Yes	No
Environmental setting	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Airport Hazards	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
CBRS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Flood Insurance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Air Quality	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
CZM	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Contamination and Toxic Substances	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Endangered Species	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Explosive and Flammable Hazards	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Floodplain Management	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Historic Preservation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Noise	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
SSA	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Wetlands	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Wild and Scenic Rivers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lead-Based Paint	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Asbestos	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Radon	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Environmental Justice	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<sup>5</sup> If mitigation or an O&M plan is required or occurred, provide a discussion below.

[Type environmental narrative here.]

**Environmental Strengths:**

- [Type environmental strengths here.]
- [Type environmental strengths here.]
- [Type environmental strengths here.]
- [Type environmental strengths here.]

**Environmental Weaknesses:**

- [Type environmental weaknesses here.]
  - [Type mitigants here, if applicable.]
- [Type environmental weaknesses here.]
  - [Type mitigants here, if applicable.]
- [Type environmental weaknesses here.]

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- [Type mitigants here, if applicable.]
- [Type environmental weaknesses here.]
  - [Type mitigants here, if applicable.]

**Certification:** I certify that, to the best of my knowledge and belief:

- The statements of fact contained in this report are true and correct.
- The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- I have no present or prospective interest in the property that is the subject of the work under review and no personal interest with respect to the parties involved.
- I have performed no services, as an appraiser or in any other capacity, regarding the property that is the subject of the work under review within the three-year period immediately preceding acceptance of this assignment.
- I have no bias with respect to the property that is the subject of the work under review or to the parties involved with this assignment.
- My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- My compensation is not contingent on an action or event resulting from the analyses, opinions, or conclusions in this review or from its use.
- My compensation for completing this assignment is not contingent upon the development or reporting of predetermined assignment results or assignment results that favors the cause of the client, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal review.
- My analyses, opinions, and conclusions were developed, and this review report was prepared, in conformity with the *Uniform Standards of Professional Appraisal Practice*.
- I have (have not) made a personal inspection of the subject of the work under review.
- No one provided significant appraisal or appraisal review assistance to the person signing this certification.

<b>Substantive Review Appraiser Signature:</b>	
<b>Substantive Review Appraiser Name:</b>	
<b>State and Certification Number:</b>	
<b>Certification Date:</b>	

*Adapted from USPAP 2016-2017 Edition.*

## Appendix 8 Mortgage Credit Requirements

### A.8.1 Required Loan Application Documents

A. The guidance provides instructions on the type of required financial documents the Underwriter must prepare for the loan application. The collection of the applicable documents should meet the requirements on the Underwriter checklist. A Borrower (if fully capitalized), principal(s), and a General Contractor must furnish current financial statements. This includes: a balance sheet, income and expense statement, supporting schedules, a Real Estate Owned (REO) schedule and a schedule of mortgage debt. The most recent three years of federal tax returns may be required, if submitted financial statements are determined to be underdeveloped or not acceptable.

1. Individuals must submit either:
  - a. Personal Financial and Credit Statement, form HUD-92417 shall cover a period of no less than the most current 12-month period:
    - 1) The spouse of married Sponsors or principals must also sign the form;
    - 2) If a spouse's signature cannot be obtained, the principal must prepare the form reflecting only those assets that are solely in their name and any liability, including those joint liabilities, for which they have any responsibility, or
  - b. A substitute statement, which contains at a minimum the information contained on form HUD-92417. This form must contain the following certification and criminal warning:
    - 1) I HEREBY CERTIFY that the foregoing figures and statements contained herein submitted by me as agent of the Borrower [owner] for the purpose of obtaining mortgage insurance under the National Housing Act are true and give a correct showing of \_\_\_\_\_'s (Name of Borrower or owner) financial position as of \_\_\_\_\_ (the financial statement must include the most recent twelve month period).
    - 2) Signed this \_\_\_ day of \_\_\_\_\_, 20\_\_\_. Signature of authorized agent with name printed or typed under signature \_\_\_\_\_.
    - 3) Warning – HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)
    - 4) For married individuals, the spouse also must sign certification.
2. Business entities must submit the following separate statements and supporting documents for the last 3-years or the length of their existence. If less than 3 years, an authorized officer of the organization must provide the statements and supporting documents with a signed statement that there has been no material adverse change since the date of the statements.
  - a. Balance Sheet which:
    - 1) Provides a breakdown of current and non-current assets; a list of all other assets including the market value of each asset, the basis for calculating value (for real estate owned assets

- this will be shown on the schedule of real estate), and any notes receivable from related entities;
- 2) Identifies restricted and non-restricted funds;
  - 3) Provides a breakdown of current and non-current liabilities; identifies the current portion of long-term debt; contingent liabilities, including debts under secured or unsecured lines of credit or letters of credit, personal guaranties, obligations to limited partnerships and other obligations payable in the future, including the amount and duration of the obligation; and
  - 4) Lists details of any factors that may materially affect the Borrower's or Sponsors financial position now or during the term of the mortgage.
- b. Income and Expense Statement that reflects:
- 1) Income from normal operations;
  - 2) Investment income;
  - 3) Other income; and
  - 4) Total expenses.
- c. For audited statements, a Statement of Changes in Financial Position (or if a fund accounting system is used, a Statement of Changes in Fund Balance), and all notes.
- d. Supporting Schedules:
- 1) An Aging Schedule of Accounts Receivable that provides the name, type of account (trade, affiliate, employee, relative or other), payment terms, amount and aging information;
  - 2) An Aging Schedule of Notes Receivable that provides the name, type of account, payment terms, maturity date, current portion (due within 1 year or one operating cycle of the business, whichever is less), past due amounts and non-current amounts;
  - 3) Schedule of Pledged Assets, if applicable. Identify the pledged asset, the amount pledged and the offsetting liability;
  - 4) Schedule of Marketable Securities that provides name, number of shares, current market values as of the date of the statement, and the exchange where the shares are listed;
  - 5) Schedule of Accounts Payable that provides name, type of account (trade, affiliate, employee, relative or other), payment terms, amount and aging information;
  - 6) Schedule of Notes and Mortgages Payable that provides name, type of account, payment terms, maturity date, current portion (due within 1 year or one operating cycle of the business, whichever is less), past due amounts and non-current amount;
  - 7) Schedule of Legal Proceedings, if applicable;
  - 8) In addition to the applicable schedules in the above paragraphs, general contracting firms must submit a schedule of jobs (work) in progress that identifies the:
    - a) Original contract price;
    - b) Construction start date;

- c) Construction completion date; and
- d) Percentage of completion.
- e. The REO schedule must contain the following information for each physical property listed:
  - 1) Borrower/ principal's name;
  - 2) Property name and address;
  - 3) Type of property and number of units;
  - 4) Property acquisition date;
  - 5) Ownership role and interest;
  - 6) Percent of current occupancy;
  - 7) Annual net operating income;
  - 8) Present market value;
  - 9) Existing mortgage lien holder (FHA or Conventional) and maturity dates;
  - 10) If FHA insured, project number;
  - 11) Interest rate and dates;
  - 12) Sum of existing loan balances of mortgages and liens;
  - 13) Current property equity;
  - 14) Annual effective gross rental and commercial income (after deducting concessions and vacancy loss);
  - 15) Annual operating expenses;
  - 16) Annual debt service;
  - 17) Debt service coverage ratio; and
  - 18) Pending judgments, legal suits/actions or bankruptcy against the property.
- f. A Schedule of Mortgage Debt is applicable only when the event of mortgage maturity is in the next five (5) years or the property is a troubled asset. Provide the following for each property listed:
  - 1) Name of creditor/ lien holder;
  - 2) Type of debt (e.g. FHA mortgage (project number), conventional mortgage, bridge loan, balloon);
  - 3) Original mortgage amount or debt amount and origination date;
  - 4) Interest rate and origination date (i.e. fixed, fixed bonds, variable, etc.);
  - 5) Unpaid principal balance or current debt amount and origination date;
  - 6) Maturity dates for all debt;
  - 7) Monthly payment;
  - 8) Balloon payment;



- 9) Collateral (describe the security type for repayment of the mortgage or debt); and
  - 10) Status of debt as current or delinquent.
- g. Combined or consolidated financial statement(s), if applicable:
  - h. Other financial data necessary to determine the financial responsibility and capacity of the sponsorship or General Contractor:
  - i. An authorized official of the company must sign and date the certification. The certification must reference the name of the business and the date of the financial statement(s).

## A.8.2 How to Analyze Financial Statements

A. Please follow the instruction below to correctly analyze financial statement(s) when determining the financial capability of the Borrower, Sponsor, General Contractor, and or Manager.

1. Current assets are cash and other assets convertible into cash during the normal operating cycle of business operations or 1 year, whichever is less.
  - a. When reviewing cash, take into consideration compensating balances, which would limit the amount of cash actually available.
  - b. Determine the current value of readily marketable stocks and bonds.
  - c. Evaluate the accounts receivable and classify the following as noncurrent.
    - 1) Amounts due from officers and employees.
    - 2) Amounts advanced to subsidiary, affiliated or associated companies.
    - 3) Disputed accounts receivable.
    - 4) Accounts receivable past due for more than 60 days. Funds from a local, State or Federal source past due beyond this period may be considered if evidence is provided that source is historically late, and it can be expected that these funds will be received before initial closing.
      - a) Using a Schedule of Accounts Receivable by Age determine if the amount allowed for doubtful accounts, if any, is adequate.
      - b) Recognize only syndication proceeds from other projects and notes receivable to be collected during the normal operating cycle or 1 year, whichever is less.
      - c) If the statement is audited, evaluate inventory and establish its liquidation value, relying on the accountant's review. Do not consider inventory, if statement is unaudited.
      - d) Recognize only prepaid expenses for the project.
      - e) Do not include:
      - f) Equity in the proposed site, since consideration is given on form HUD-92264-A, Part A.
      - g) Cash equity in land and/or properties unless they are readily marketable and intended for the sale market.
      - h) Anticipated profits from business ventures.

- i) Equity in real estate encumbered by high ratios of loan to value mortgages, unlisted stocks, goodwill, and other intangible assets.
2. Current liabilities are payables due during the normal operating period or 1 year, whichever is less.
  - a. Include as current liabilities, regardless of term, those relating to marketable land and completed properties that were treated as current assets.

NOTE: If the balance sheet does not reflect the amounts required to complete construction in progress, the Sponsor/General Contractor must submit a supplementary statement of such amounts, which contains the truth and accuracy certification. For a cross reference, see [Chapter 8, Section 8.5.1.3.D-E](#).
  - b. Consider amounts due to officers, employees, affiliates or stockholders as current liabilities unless the obligations have a definite long-term maturity.
  - c. Consider amounts needed to satisfy broker's margin account (brokerage account allowing customers to buy securities with money borrowed from the broker).
  - d. Consider current portion of long-term liabilities.
  - e. Current year income tax payable. Normally, deferred income taxes are not considered current as long as the economic outlook of company does not appear to be in an adverse trend.
  - f. Do not include the amount outstanding on the project land, since this obligation is considered on form HUD-92264-A, Part A.
3. Working capital is the excess of current assets over current liabilities. If current liabilities exceed current assets, precede the difference with a minus sign to show a deficit. The Underwriter must adjust the net working capital to consider the following:
  - a. Effects of contingent liabilities.
  - b. Financial needs of other projects in the planning stage or under construction.
4. When a Sponsor's financial interests are represented by a number of corporations, the Underwriter must do the following:
  - a. Require a certification from the Board of Directors, which evidences their willingness to make the required funds available.
  - b. Establish the availability of funds from such corporations. Consider whether:
    - 1) Individual corporations have any operating capital to spare.
    - 2) Laws under which they are incorporated and/or their banks permit:
      - a) Withdrawals, loans or advances to owners or Sponsors.
      - b) Stock investment in affiliated corporations.
      - c) Guarantee of debts of associated corporations.
    - 3) In analyzing financial statement:
      - a) Do not consider interlocking debts, receivables and investments between all affiliated corporations.

- b) Consider only those assets readily available for investment by the Borrower.
  - c) Do not consider the operating capital and/or net worth of rental project holding corporations as assets available for closing.
5. If funds are being provided by a parent company or affiliate of the Sponsor, the Underwriter must do the following:
- a. Require a certification from the Board of Directors or authorized agent which specifies the funds the parent company/affiliate is willing to commit.
  - b. Establish the availability of funds from parent company/affiliate.
  - c. Require the parent company/affiliate to submit a certification indicating that the lending institution will not make any claim against the mortgaged property, mortgage proceeds, any reserve or deposit required by HUD, or against the rents or other income from the mortgaged property for payment of the loan. This certification must contain the criminal warning reflected in [Section A.8.1](#).

## A.8.3 Prior Credit Approval

### A.8.3.1 Determination

A. In determining whether a principal meets the threshold of insured loans totaling \$500,000,000 or more, lenders must include all FHA insured loans in the total, including healthcare loans, but excluding any state or local housing finance agency or GSE Risk Sharing loans. Lenders should not adjust insured loan balances to account for a principal's fractional ownership interests. It is the lender's responsibility to determine whether a principal to a proposed transaction(s) has or will have insured principal balances exceeding the threshold. This requirement for prior approval will not be waived.

### A.8.3.2 Lender's Analysis and Scope of Review

A. The lender must conduct a complete mortgage credit review of active principals and prepare an analysis of the Sponsors' character, capacity and creditworthiness, including a review of all observed risks and prospective mitigating factors together with a recommendation for credit approval. The review must describe any material changes in the active principals' financial position expected during the 24 months following the date of the credit submission as well as any additional periods of time required for the stabilization of new developments or troubled assets. An essential element of the review is an assessment of the Sponsors' ability to meet reasonably anticipated financial and management demands during the period when applications are under consideration and continuing through stabilization. HUD consideration of requests for prior approval does not relieve the lender of the responsibility to submit a properly underwritten MAP application for each project proposed for insured financing, nor does such consideration obligate any Regional Center or Satellite Office to reach a conclusion on the merits of any particular project application other than the creditworthiness of the active principals which already will have been reviewed and approved.

### A.8.3.3 Signatures for Prior Approval Decisions

A. HUD Headquarters' Technical Support Division will review risk applications and the credit authority to approve decision memorandums will be based upon the requested unpaid loan balance. The signature(s) on the decision memorandum for risk reviews will be based upon the level of exposure. Risk reviews approved:

1. Below \$800 million are to be conducted by the Technical Support Division and the signature for each decision memorandum may be signed by the Director of Technical Support.
2. Exceeding \$800 million but less than \$1.2 billion are to be jointly reviewed by the Technical Support Division and the Multifamily Asset Counterparty Oversight Division (COB). The decision memorandum and approval amount are jointly approved and signed by the Deputy Assistant Secretary for Multifamily Programs and the Deputy Assistant Secretary for the Office of Risk Management and Regulatory Affairs (ORM). In the event of a disagreement on an approval, the Borrower's request and review will be elevated to the FHA Commissioner or his or her Designee for decision.
3. Exceeding \$1.2 billion are to be jointly reviewed by the Technical Support Division, COB, and ORM with the signature of the decision memorandum and approval authority reserved to the FHA Commissioner or its Designee.
4. Exceeding \$2.4 billion will be subject to additional levels of review and approval with the signature of the decision memorandum and approval authority reserved to the FHA Commissioner or its Designee.

### A.8.3.4 Maximum Insured Balance Limit

A. Maximum Insured Balance Limit. A maximum insured balance limit above \$1.2 billion for any Borrower will be determined on a case by case basis with criteria that include metrics such as the amount of loan balance of existing, FHA insured projects as a percentage of a Borrower's total portfolio, ratio of level of liquid assets to overall net worth, equity, geographic concentration of insured assets, ranked performance metrics, and other metrics as may be determined in the context of specific credit approval requests.

### A.8.3.5 Submission

A. The lender should deliver the prior approval submission to the HUD Regional Center most relevant current and future application activity. The Regional Center will then forward this presentation to HUD Headquarters Office of Multifamily Housing Production for review.

B. Requests for prior approval may contemplate multiple project applications in varying locations over a period of time. The following steps are required for submission:

1. **Designation of lender, lead lender.** The Sponsor must select a MAP lender to prepare and underwrite its request for prior approval. If the Sponsor has or proposes to have individual project applications prepared by more than one MAP lender, then the MAP lender preparing the request for prior approval shall be the lead lender. The Sponsor must disclose the identity of the lead lender to each of the other lenders and must authorize and direct the lead lender to share with any other lenders its request for prior approval and any HUD response to such requests.

2. **Form of submission.** The lender shall provide an original (with original signatures), a hard copy and a reproducible electronic version of the request for prior approval. REO and mortgage debt schedules must be provided in both a fixed, not editable form as well as in a legible sortable excel spreadsheet form allowing easy analysis of data.
3. **Regional Center/Satellite administrative action.** The office receiving the lender's request for prior approval shall retain the original and forward the hard copy and the reproducible electronic version of the request to the Director, Technical Support Division of the Office of Multifamily Housing Production. The Director of Technical Support will copy the office on all correspondence arising from the request for prior approval. The office must retain the original of the lender's submission together with all relevant correspondence with the docket for the first project application it receives pursuant to any prior approval, and if there is no approval, then the submission must be retained consistent with the office's practice for rejected project applications. The Technical Support Division will retain the electronic version at headquarters.

### **A.8.3.6 Authority, Conditions and Duration of Prior Approval**

**A.** The Technical Support Division of the Office of Multifamily Production will review lender requests for prior approval. The Technical Support Division will notify Regional Center Directors of its determination of the principal's creditworthiness and will specify a date when the prior approval expires. Depending on the applicant's financial strength and credit history, the Director of Technical Support will approve the request, approve with conditions, or disapprove the request. When appropriate to specific circumstances the Director of Technical Support may condition an approval with conditions including, but not limited to, one or more of the following:

1. A list of particular named projects for which new insurance applications may be submitted,
2. Certain types of projects (e.g., refinance, but not new construction) or to specific markets or particular geography,
3. A maximum amount of new insurance commitments for which the principal may apply,
4. A maximum liquidity amount that may be required by new insurance commitments, or a minimum liquidity amount that the Sponsor must maintain, or
5. Requirements for specific measures or remedies to address identified credit issues.

**B.** The principal's continued credit worthiness will be confirmed during processing of each new Firm Commitment application, but normally, and absent material and adverse changes in the principal's financial condition, the prior approval will be effective and may be relied upon for 24 months or lesser period specified by HUD, from the date of the credit approval.

### **A.8.3.7 Process for Prior Approval**

**A.** The lender's request for prior approval should provide all the exhibits and analyses required for active principals as described in 8.3 with the exception Previous Participation Certification (APPS/ form HUD-2530) which must be provided with each individual insured application. Except in cases where a Sponsor or their affiliate(s) propose to act as General Contractor, credit review for principals who are not Sponsors (i.e., General Contractors, property managers) should be completed with individual applications.

### **A.8.3.8 Decision**

**A.** Upon receipt of the request for prior approval, the Technical Support Division will review the submission and within 45 days issue a decision that will:

1. Explain the reasons for the decision, identifying areas or issues of strength and/or weakness.
2. Define the terms and conditions, if any, which may attach to the decision.
3. If adverse, define remedies or conditions which would allow reconsideration.
4. Quantify the net worth and liquidity available to the principal(s) in light of analysis of the principal's existing business operations and pending transactions.
5. Identify specific projects proposed for insurance (or alternatively, when specific projects are yet to be determined, the location(s) and kinds of insured transactions, e.g. refinancing, new construction, etc.) which are given prior approval and the estimated aggregate sum of the principal's cash or other liquid assets required to close these transactions.
6. Identify FHA insured multifamily and/or healthcare projects currently in process within HUD's production offices indicating location, types of transactions, proposed loan amount and estimated aggregate sum of the principal's cash to close the transactions.
7. Identify steps, if any, that Regional/Satellite Offices and lenders must take to coordinate completion of the proposed schedule of applications and resulting commitments and closings.
8. Describe the process to be followed by the lender in the event of any appeal of the decision on the request for prior approval.

**B.** The Director of the Technical Support Division will send the written decision to the lender and to the originating Multifamily Regional Center/Satellite office as well as to each other office with jurisdiction for any of the named projects proposed for insurance. In addition, the decision will be made available to all other Multifamily Regional Center/Satellite offices at the HUD Multifamily SharePoint site.

### **A.8.3.9 Project Applications after Prior Approval**

**A.** Upon receipt of the prior approval, the lender(s) may file applications with the relevant Regional Center/Satellite for projects consistent with HUD's decision on the request. For each application, the mortgage credit exhibits shall include:

1. A copy of the prior approval decision.
2. Original, written certification(s) signed by each principal who is a subject of the prior approval decision stating that no material changes have occurred in the circumstances of the principal or the portfolio as described in the request for prior approval except as are fully described. The Sponsor must disclose any and all loan applications filed, commitments issued, and transactions closed as well as loan delinquencies, modifications, settlements or forbearance agreements concluded or any other change bearing on its ability to execute the transactions for which prior approval was requested. In the event that material changes have occurred, the principal shall also certify to the accuracy and completeness of the description of the material changes. The certification must contain the following language: "HUD will prosecute false claims and statements. Convictions may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012, 31 U.S.C. 3729, 3802)".

3. The lender's updated review and analysis of the creditworthiness of the principals in light of any materially changed circumstances. This review must consider all changed circumstances and describe how and why the lender concluded the changes were or were not material.
4. The lender's updated or adjusted financing plan showing the Sponsors available liquidity and how the Sponsor's resources have been or will be used to meet cash requirements arising from existing or proposed assets in accordance with HUD's prior approval decision.
5. In the event of a material change arising only from changes in the capital requirements of pending transactions, and not from altered and adverse performance of assets or the creditworthiness or behavior of the principal(s), then the lender may reallocate the principal's available resources to meet the cash requirements for particular projects, provided that the aggregate cash requirements do not exceed limits described in the prior approval. Any such reallocations must be documented in the updated financing plan. Such adjustments may result in the deletion of a project(s) proposed for financing and given prior approval, but additional or substitute transactions are not permitted unless additions or substitutions are authorized in the prior approval decision.
6. In the event that material changes arise from altered and adverse performance of existing assets, adverse credit behavior of the principal(s) or adverse events arising from Sponsors' acts (or inaction), or failure to meet terms and conditions of the prior approval decision, then the Regional Center/Satellite shall refer the description of the material changes, the lender's updated review and updated financing plan to the Director, Technical Support Division. The Division of Technical Support will:
  - a. Confirm or amend the prior approval decision in light of the material changes and allow the subject application and/or further applications, to proceed in accord with the confirmed or amended prior approval, or:
  - b. Terminate the prior approval, in which event, the subject application and any further applications for mortgage insurance will require a new request for prior approval.
  - c. The Director of the Technical Support Division will send the lender and/or the lead lender and the Regional Center/Satellite(s) written notice of any confirmed, amended or terminated prior approval decision and any such notice will also be posted to the HUD Multifamily SharePoint site at <http://hudsharepoint.hud.gov/sites/DASMFH/OMHD/CRD/default.aspx>.
  - d. In the event that the prior approval decision is terminated due to the behavior of the principal(s) and such behavior gives rise to an enforcement action, no new request for prior approval will be accepted until such enforcement action is resolved.

### **A.8.3.10 Prior Approval and Loan Committee Actions**

- A. Prior approval of principals does not alter thresholds for required Regional Center or National Loan Committee review and approval of insurance applications for specific projects.

### **A.8.3.11 Lender Fees for Prior Approval**

- A. Lenders may charge a reasonable fee for preparing a Sponsor's prior approval package for submission to HUD. Subject to existing MAP limits on lender fees and charges on individual loan applications, the fee charged by the lender for preparing a request for prior approval, together with any third-party costs



incurred, are mortgageable and may be allocated or prorated among one or more of the projects submitted for new insurance commitments at the discretion of and subject to the mutual agreement of the applicant and the lender(s).

### **A.8.3.12 Lender Appeals of Prior Approval Decisions**

**A.** If the lead lender disagrees with HUD’s determination with respect to a prior approval decision, the lender may appeal. Any such appeal must be filed within 30 days of the date of HUD’s written decision on the prior approval request and must be documented with an electronic, a hard original and one hard copy of the appeal.

1. The appeal should be filed with the same Regional Center/Satellite office to which the original request for prior approval was submitted. The Regional Center/Satellite will retain the original appeal with the docket file and forward the electronic and hard copies to the Director, Office of Multifamily Housing Production.
2. The lender’s appeal shall:
  - a. Cite the specific cause or issue which is the occasion of the appeal.
  - b. State the specific change requested in the decision of the Technical Support Division.
  - c. Cite any published guidance, standard industry underwriting practice, or evidence of error which supports the change.
  - d. Provide any other new or additional evidence not previously presented to HUD.
3. The Director of Multifamily Production must review the appeal and within 15 business days after receipt by HUD of the lender’s appeal (30 days if the lender’s appeal offers new or additional evidence not previously presented), the Director will prepare and send a written decision to the lender, with a copy to the Regional Center/Satellite Director.
4. When conducting the review of the appeal, the Director of Multifamily Production must ensure a wholly independent review and, except for ascertaining matters of fact, rely only on staff with no prior engagement or participation in the initial decision on the request for prior approval.
5. The decision of the Director of Multifamily Production on the appeal shall be dispositive and shall detail in writing the substance of and the reasons for any denial of the appeal or revision of any earlier decisions and will be posted to the same HUD Multifamily SharePoint site as original prior approval decisions.
6. The Multifamily Regional Center will retain the original of the appeal submission and related materials. If a lender’s appeal is approved, then the Regional Center will retain the original materials with the docket for the initial project application received pursuant to the prior approval. If denied, the submission must be retained consistent with the Regional Center’s practice for rejected project applications. The Office of Multifamily Production will retain the electronic version at headquarters.

### **A.8.3.13 Detailed Guidance for Exhibits and Analysis**

**A.** The location of the required exhibits shall be identified by the Lender’s Table of Contents. The following groups of items represent the suggested guidance for preparing a prior credit approval request:

1. Group 1: Lead Lender's Request and Summary
  - a. A cover letter, signed by the lead lender, summarizing the request to HUD.
  - b. The letter should explicitly state the requested total dollar amount of authority, based on the proposed FHA projects, rounded up to the nearest \$5 million (i.e. existing balances are \$450 million, proposed FHA loans are \$67 million, then the request should be for \$520 million).
  - c. The letter should identify each principal scoped within the request, and if the request is mandatory or voluntary (see MAP Guide [Chapter 8, Section 8.6](#)).
2. Group 2: Role and Experience of Active Principal(s)
  - a. A narrative analysis of the Active Principal's experience. The narrative should disclose exactly what role causes the principal to be subject to mortgage credit analysis (e.g. managing member of Borrower, etc.).
  - b. Include a description of expertise areas or resources the Active Principal contributes to the portfolio (e.g. the principal is relied on for his expertise in acquisition sourcing, ownership structuring, and affordable housing regulatory compliance).
  - c. Include a description of the Active Principal's experience, emphasizing commercial/multifamily real estate experience. Include summary metrics (e.g. developed 10 projects with 2,000 units since 1995).
  - d. Include a description of the Active Principal's high-level experience with HUD programs (i.e. general experience is a given because this is prior credit review, so this should segment experience such as construction, market rate vs affordable rents, FHA healthcare projects, etc.).
3. Group 3: Credit Analysis of Active Principal(s) and/or Related/Affiliated Organizations
  - a. A narrative analysis of the Active Principal's and/or Related/Affiliated Organizations financial history and strength, credit history and related credit worthiness (e.g. residential and/or business credit reports, OFAC searches, etc.).
  - b. Include a specific conclusion as to the underwritten net worth, current liquidity and cash flow of the Active Principal(s) and the Related/Affiliated Organization(s) and whether financial resources are adequate to meet anticipated needs during the 24 month period following the request for prior approval and any additional period required to stabilize new developments or troubled assets.
  - c. Active Principals or Guarantors and/or Related/Affiliated Organizations providing the FHA insured multifamily project with all or a sufficient portion of the required capital must submit reviewed, compiled, and/or consolidated financial statements prepared in accordance with Generally Accepted Accounting Principles (GAAP) financial statements for the most recent three-year period and Y-T-D prepared by a third-party independent CPA Audited or certified financial statements prepared by a third-party independent CPA may be submitted, but are optional and not required.
  - d. Individual financial statements (form HUD-92417) must show a reporting period of no less than the most recent twelve-month period, the reporting period shall be documented in the, "Date of Statement" (e.g. 1/1/18 to 12/31/18). The most recent three years of federal tax returns may be

required, if individual financial statements are underdeveloped and are not prepared by a third-party.

- e. The Active Principal's providing required capital into the proposed transactions should be able to show at least a minimum of two percentage (2%) of working capital in relationship to the total development costs of each proposed FHA-insured projects. Passive Principals contributing a majority of equity to the Active Principal(s) and/or Related Entities/Affiliates shall be subject to a financial and credit analysis.
4. Group 4: Succession Plan
    - a. A succession plan of the active principal(s), which should describe the provisions made by the principals to assure continuity and orderly succession in leadership and/or orderly disposition of assets in the event of any incapacity of the principal. This description must include a brief summary of partner buy/sell agreements, provisions for key person insurance and/or similar measures sufficient to evidence careful planning for these contingencies. Descriptions of prior changes in leadership, if any, should be provided if they document how the principal would deal with future changes.
  5. Group 5: Ownership and Equity Analysis
    - a. Lender's narrative describing the principal's approach to ownership strategy and construct of this strategy. The strategy described should be internally consistent with other exhibits, such as affiliate entities and the source of revenue on financial statements.
    - b. Organizational Chart for the typical ownership entity and an Organizational Chart for the parent company with the Active Principals identified with accompanying percentage of ownership and roles clearly defined. See [Chapter 8, Section 8.3.2.E-F](#) for organization chart guidance.
  6. Group 6: REO/Mortgage Debt Analysis
    - a. A REO schedule listing all FHA insured projects with accompanying project numbers, HUD's Section 8 subsidized/assisted projects, insured healthcare projects and conventional projects.
    - b. A status report for FHA insured projects currently in process with the local Regional/Satellite Production Office, projects in lease-up and the percentage of completion of all FHA insured loans in construction.
    - c. The REO must include a full year of operational history, a disclosure of mortgage debt, e.g. type, maturity, age, interest rate, vacancy rate, NOI, LTV, DSCR and a financial plan for mortgage debt maturing within five years of submission of the prior approval credit package. The REO schedule must also include a financial chart indicating an analysis of the occupancy change, NOI change, revenue change, expense change, the lowest 10% (DSCR) and the highest 10% (LTV) over the latest 3-year period. (For an example of the suggested format for the analysis of the REO schedules, see [Section A.8.7](#))
    - d. A narrative addressing geographic concentration risk. Describe potential circumstances that would impact the stability of the principals' portfolio such as mitigating factors if the primary market area is experiencing slower lease-up periods (longer than 18 months) or the over saturation of available rental units in the primary market area because of new projects coming on line, the existence of declining market values, or regional economic distress.

7. Group 7: Proposed FHA Projects & Financing Plan

- a. The project name or a description of properties that are proposed for FHA insurance with an estimate of the cash requirements for closing each transaction and indicating whether the properties proposed for insurance are already held in the principal's portfolio, the purpose of the anticipated financing (refinance, rehabilitation, new construction) and the rationale and criteria used for selection of the proposed new insured properties (e.g. potential for cash flow or physical improvement, asset type, size, target market, geography, etc.). Generally, proposed projects should be specifically named and identified by address, but where acquisition, development or refinancing targets are to be determined, tentative or contingent, projects may be described generically.
- b. Financing plan disclosing equity/cash requirements for new construction, acquisition and substantial rehabilitation projects at the time of anticipated loan closing and future cash requirements of the existing REO portfolio for the period of time covered in the prior approval request.

8. Group 8: Management Agent Analysis & REAC Inspections

- a. Narrative summary of the Management Agent of the Multifamily portfolio. If concentrated, identify the firm of the Management Agent(s) representing the concentration. Describe the Management Agent's experience in high-level metrics (e.g. 5,000 units under management among 25 properties in 6 states) and key staff. If an Identity of Interest (IOI) relationship or an equity interest exists between the management entity and the Active Principal(s) and/or Affiliates a business credit report shall be required. A financial analysis may be required if there is a concern about the capacity of the Management Agent to perform its assigned role.
- b. Narrate the current physical condition and REAC scores in summary form (ranges, least favorable scores, etc.) of the active Principal's existing FHA insured and/or HUD's assisted/subsidized properties. Provide narrative explanations for any REAC scores of 65 or below.

## A.8.4 Mortgage Credit Underwriting Documentation Matrix

Table A8-1. FHA/MAP Mortgage Credit documentation Matrix

Participant/Role	LLCI	Resume	Org. Docs. (1)	Financial Stmtts	VOD/Bank Stmtts	REO/Mortgage Debt
Mortgagor	N/A	No	Yes	Yes	No	N/A
<b>Active Principal (5,6)</b>						
Entity (Par 50)	N/A	Yes	Yes	Yes	Yes	Yes
Individual (Par 50)	N/A	Yes	N/A	Yes	Yes	Yes
Entity (Non-Par 50)	N/A	Yes	Yes	Yes	No (2)	No
Individual (Non-Par 50)	N/A	Yes	N/A	Yes	No (2)	No
Foreign National Non-Par 50 (entity or individual)	N/A	Yes	Yes	Yes	No (2)	No
Large Borrower Non-Par 50 (entity or individual)	N/A	Yes, if entity	Yes	Yes	No (2)	Yes
<b>Passive Principal (5,6)</b>						
Board Members or Officers of Non-Profits	No	No	No	No	No	No
Public Housing Authority	No	No	No	No	No	No
Tax Credit Investor	Yes	No	No (3)	No	No	No
Special Limited Partner	Yes	No	No (3)	No	No	No
> 25% (or 10%, if Corp.) Interest with Passive Ownership	No	No	No	No	No	No
Foreign National Passive Principal (entity or individual) (5)	N/A	Yes	Yes	Yes	No	Yes
Large Borrower Passive Principal (entity or individual)	N/A	Yes	No	Yes	No	Yes
<b>Other Deal Participants</b>						
General Contractor	N/A	Yes (A305)	No	Yes, include work in progress and A/R Report	Yes	No
Management Agent (no Identity of Interest)	N/A	Yes (Company Brochure)	No	No	No	No

Participant/Role	LLCI	Resume	Org. Docs. (1)	Financial Stmts	VOD/Bank Stmts	REO/Mortgage Debt
Management Agent (Identity of Interest)	N/A	Yes (Company Brochure)	Yes	No	No	No

**Table A8-2. Mortgage Credit Underwriting Documentation Matrix Continues**

Other Business Concerns	92013-Supp (4 questions only)	APPS/ 2530	EIN/SSN Verification	Credit Authorization	Credit Report	Trade References
N/A	Yes	Yes	Yes	Yes	Yes	See Credit Report
Yes	Yes	Yes	Yes	Yes	Yes	See Credit Report
Yes	Yes	Yes	Yes	Yes	Yes	See Credit Report
No (6)	Yes	Yes	Yes	Yes	Yes	See Credit Report
No (6)	Yes	Yes	Yes	Yes	Yes	See Credit Report
Yes	Yes	Yes	Yes	Yes	Yes	See Credit Report
Yes	Yes	Yes	Yes	Yes	Yes	See Credit Report
No	No	No (5)	No	No	No	No
No	No	No	No	No	No	No
No	No (3)	No (3)	No (3)	No (3)	No (3)	No (3)
No	No (3)	No (3)	No (3)	No (3)	No (3)	No (3)
No	No	No	No	No	No	No
Yes	Yes	Yes	Yes	Yes	Yes	See Credit Report
Yes	Yes	Yes	Yes	Yes	Yes	See Credit Report
No	Yes	Yes	Yes	Yes	Yes	See Credit Report

## A.8.4.1 Mortgage Credit Underwriting Documentation Matrix Legion

A. Organizational Documents include the following:

1. Corporation - Articles of Incorporation & Bylaws; Authorizing Resolution.
2. Partnership - Certificate of Partnership & Limited Partnership Agreement; Authorizing Resolution.
3. LLC - Articles of Organization & Operating Agreement; Authorizing Resolution.
4. Trust Documents. All Document Amendments are required.

B. VOD/ Bank Statements (must include a three-month average balance for VOD or three months of consecutive bank statements) may be requested by the Lender's Underwriter for the non-par 50 Participants to ensure there is enough cash to close, if required.

C. If a Passive Participant (Entity) does not want to provide an "*Identification and Certification of Limited Liability Investor Entities*" (click to view *Certification*) they must submit in place of the certifications the following items: Organizational Documents, form HUD-92013-Supp, Credit Authorization, EIN Verification, Credit Report.

D. Board Members and Officers are not required to do 2530s unless the Board Member also has a controlling role in the corporation (i.e. Executive Director, Manager, or Director of Non-Profit).

E. In addition to requirements applicable to all Active and Passive Principals, the MAP Lender must perform a thorough and independent background evaluation of foreign national Principals and Domestic Principals as described in Housing Notice 2019-01. II.A.2 and II.A.3, respectively.

F. Instructions for submission of concentrated risk or large Borrower review is found in Housing Notices 2018-09 and MAP Guide [Section A.8.3](#) and [Section A.8.6](#).

## A.8.5 Payoff Letter for Existing Mortgage

**Name and Address Bank:** \_\_\_\_\_

**Madam/ Sir:** \_\_\_\_\_

**Subject:** \_\_\_\_\_

**Name and Address of Project:** \_\_\_\_\_

**Borrower's Account No.:** \_\_\_\_\_

This office has received an application for FHA mortgage insurance for the subject project. We are advised that your firm is the mortgagee. Please provide us with the following information.

**Date of Mortgage:** \_\_\_\_\_

**Original Amount:** \$ \_\_\_\_\_ **Monthly Payment Amount:** \$ \_\_\_\_\_





2. Section C.1 only is applicable to FHA insured projects that are subsidized under Section 202/811, 236, 221(d) (3) BMIR, or FHA insured projects with Project Based Rental Assistance.

C. A predictable, stable income stream from commercial leases with high quality, credit worthy commercial tenants provides a benefit to a property's operating stability, particularly if the commercial tenants are nationally recognized or have national brands. FHA benefits by allowing Borrowers the latitude to negotiate with the widest pool of credit qualified commercial tenants. A stronger tenant increases the certainty of the commercial income stream, enhances the property's marketability and decreases risk to the FHA Insurance Fund.

D. Permitting the use of SNDAs is necessary to induce higher quality commercial tenants to rent in insured properties. Therefore, guidance permits the use of SNDAs when a commercial lease is negotiated at a property with an existing insured mortgage, for a new property with a newly originated insured loan, or when a building owner with existing commercial tenants seeks an insured loan for refinancing.

## A.8.6.2 Background

A. Prior to the issuance of Mortgagee Letter H 2011-14, HUD's policy on SNDAs was based on a concern over lack of flexibility in the event of a mortgage default, since an SNDA gives a commercial tenant the right to remain in its space under the existing lease terms and conditions after a loan default and foreclosure. If there were a Borrower approved SNDA, HUD would be bound to continue the commercial lease even after assignment of the insured loan. Because of HUD's prohibition on SNDAs, Borrowers were negotiating into commercial leases the required lease termination language, were leasing to commercial tenants that would not insist on an SNDA or were deciding not to apply for financing under the FHA insurance programs.

B. In many cases, the tenant incurs costs to design and build out their unique tenant improvements, which costs must be amortized over the lease term. Nor does the tenant want to lose the good will and customer base associated with continuing to operate on the premises. Indeed, MAP lenders report that most national retail chains require an SNDA and will not execute a long-term lease without the non-disturbance assurance.

## A.8.6.3 Implementation

A. A sample form of SNDA is attached. This form should be used for all SNDAs approved by Satellite Offices and Regional Centers.

B. For guidance related to underwriting commercial rents and commercial tenants and the reviewing and setting rents for commercial space in insured and assisted properties, see [Chapter 7, Section 7.7](#).

1. SNDAs are permitted for Rooftop, Cell Phone Tower, Cable Television and Internet Access Leases on all properties with an existing insured mortgage or on all properties applying for an insured mortgage subject to the following:
  - a. New, existing or renegotiated rooftop leases (including for cell phone towers, cable television or internet access) in all properties with currently insured mortgages, in all properties applying to refinance, or in all new construction or substantial rehabilitation properties, may use an SNDA. In those cases, the commercial lease and income that is or will be in place is a benefit to the property, while imposing little or no additional property operating expense. The presence of a rooftop cell

phone tower or cable access to the building should not negatively affect the residents, the marketability of the units or HUD's recovery value on the note in the event of a default.

- b. With respect to all such leases, the underwriting and review process should ensure that there are no exclusivity requirements under the leases that would prevent the owner from attracting competing services for the benefit of the residential tenants in the future.
2. SNDAs are permitted for Commercial Leases, other than Rooftop, Cell Phone Tower, Cable Television or Internet Access Leases on all non-assisted or non-subsidized properties with an existing insured mortgage or on all non-assisted or non-subsidized properties applying for an insured mortgage subject to the following:
- a. New, existing or renegotiated commercial leases with commercial tenants in properties with currently insured mortgages, in properties applying to refinance, or in new construction or substantial rehabilitation properties may use an SNDA.
  - b. A lease may be approved if the lease calls for a fair market rent in the local area and the activities to be conducted by, or the structures and equipment to be installed by, the proposed tenant will not have an adverse effect on the residents.
  - c. If any IOI relationship (defined as a financial interest or family relationship with the officers, directors, stockholders, or partners of the Borrower) exists between the Borrower as lessor and the commercial tenant as lessee, an SNDA is not permitted.
  - d. The commercial tenant must be appropriate for a residential building.

#### **A.8.6.4 Approval**

- A.** Satellite Offices and Regional Center Directors are authorized to approve all SNDAs for rooftop, cell phone tower, cable television and internet access leases.
- B.** For any property applying for a new mortgage insurance commitment, the Satellite Offices and Regional Center Directors will review and approve of the commercial lease terms and the form of SNDA when processing the application for Firm Commitment.
- C.** For existing properties with insured mortgages, the Satellite Offices and Regional Center Directors may approve the proposed SNDA between the property owner and the commercial tenant.
- D.** The following is the typical supporting documentation, although depending on the circumstances, additional documentation may also be required:
1. Proposed commercial lease and SNDA agreement.
  2. Forms HUD-92458 and HUD-92264.
  3. Commercial market rent study.
  4. Details of any proposed build out or finish of the commercial space or rooftop tower.
  5. Disclose the existence of any related documents such as: Memorandum of Lease, Guaranty of Lease, Tenant Estoppels' Certificate, Lease Guaranties or Amendments, etc.

SNDA

**U.S. Department of Housing and Urban Development** OMB Approval #2502-0029  
Exp. (xx/xx/xxxx)  
Office of Housing  
Federal Housing Commissioner

**RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:**

\_\_\_\_\_  
(Space above this line for Recorder's Use)

**SUBORDINATION, NON-DISTURBANCE  
AND ATTORNMENT AGREEMENT**

THIS AGREEMENT, made as of this \_\_ day of \_\_\_\_, 20\_\_, by and between \_\_\_\_\_ ("Owner" or "Lessor"), as lessor under the lease hereinafter described, and \_\_\_\_\_ ("Operator" or "Lessee"), lessee under the aforementioned lease, in favor of \_\_\_\_\_ ("FHA Lender"), the owner and holder of the Mortgage hereinafter described.

**WITNESETH:**

WHEREAS, Lessor has executed, or will execute that certain Mortgage/Deed of Trust with Assignment of Rents, dated as of \_\_\_\_, 20\_\_ (the "Mortgage"), in favor of FHA lender and covering certain real property (the "Property") located in the City of \_\_\_\_\_ County of \_\_\_\_\_, State of \_\_\_\_\_, with a legal description as set forth in Exhibit "A" attached hereto and incorporated herein by this reference, and covering the improvements situated thereon (the "Improvements"); and

WHEREAS, Lessor and Lessee entered into that certain unrecorded Lease dated \_\_\_\_, 20\_\_, and all amendments thereto (the "Lease"), covering the Improvements for the term and upon the conditions set forth therein; and

WHEREAS, the parties hereto now desire to enter into this Agreement to establish certain rights and obligations with respect to their interests, and to provide for various contingencies as hereinafter set forth.

NOW, THEREFORE, in consideration for the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and of the mutual benefits to accrue to the parties hereto, it is hereby declared, understood and agreed that the Lease, all terms and conditions set forth in the Lease, the leasehold interests and estates created thereby, and the priorities, rights, privileges and powers of Lessee and Lessor there under shall be and the same are hereby, and with full knowledge and understanding of the effect thereof, unconditionally made subject and subordinate to the lien and charge of the Mortgage, all terms and conditions contained therein, any renewals, extensions, modifications or replacements thereof, and the rights, privileges and powers of the trustee and FHA lender there under, and shall hereafter be junior and inferior to the lien and charge of the Mortgage. The parties further agree as follows:

1. It is expressly understood and agreed that this Agreement shall supersede, to the extent inconsistent herewith, the provisions of the Lease relating to the subordination of the Lease and the leasehold interests and estates created thereby to the lien or charge of the Mortgage.

2. FHA lender consents to the Lease.
3. In the event FHA lender or any other purchaser at a foreclosure sale or sale under private power contained in the Mortgage, or by acceptance of a deed in lieu of foreclosure, succeeds to the interest of Lessor under the Lease by reason of any foreclosure of the Mortgage or the acceptance by FHA lender of a deed in lieu of foreclosure, or by any other manner, it is agreed as follows:
  - a. Lessee shall be bound to FHA lender or such other purchaser under all of the terms, covenants and conditions of the Lease for the remaining balance of the term thereof, with the same force and effect as if FHA lender or such other purchaser were the lessor under such Lease, and Lessee does hereby agree to attorn to FHA lender or such other purchaser as its lessor, such attornment to be effective and self-operative without the execution of any further instruments on the part of any of the parties to this Agreement, immediately upon FHA lender or such other purchaser succeeding to the interest of Lessor under the Lease.
  - b. Subject to the observance and performance by Lessee of all the terms, covenants and conditions of the Lease on the part of the Lessee to be observed and performed, FHA lender or such other purchaser shall recognize the leasehold estate of Lessee under all of the terms, covenants and conditions of the Lease for the remaining balance of the term (as the same may be extended in accordance with the provisions of the Lease) with the same force and effect as if FHA lender or such other purchaser were the lessor under the Lease and the Lease shall remain in full force and effect and shall not be terminated, except in accordance with the terms of the Lease or this Agreement; provided, however, that FHA lender or such other purchaser shall not be (i) liable for any act or omission of Lessor or any other prior lessor, (ii) obligated to cure any defaults of Lessor or any other prior lessor under the Lease which occurred prior to the time that FHA lender or such other purchaser succeeded to the interest of Lessor or any other prior lessor under the Lease, (iii) subject to any offsets or defenses which Lessee may be entitled to assert against Lessor or any other prior lessor, (iv) bound by any payment of rent or additional rent by Lessee to Lessor or any other prior lessor for more than one (1) month in advance, (v) bound by any amendment or modification of the Lease made without the written consent of FHA lender or such other purchaser, or (vi) liable or responsible for or with respect to the retention, application and/or return to Lessee of any security deposit paid to Lessor or any other prior landlord, whether or not still held by Lessor, unless and until FHA lender or such other purchaser has actually received for its own account as lessor the full amount of such security deposit.

Lessee hereby agrees that it will not exercise any right granted it under the Lease, or which it might otherwise have under applicable law, to terminate the Lease on account of a default of Lessor there under or the occurrence of any other event without first giving to FHA lender prior written notice of its intent to terminate, which notice shall include a statement of the default or event on which such intent to terminate is based. Thereafter, Lessee shall not take any action to terminate the Lease if FHA lender (a) within thirty (30) days after service of such written notice on FHA lender by Lessee of its intention to terminate the Lease, shall cure such default or event if the same can be cured by the payment or expenditure of money, or (b) shall diligently take action to obtain possession of the leased premises (including possession by receiver) and to cure such default or event in the case of a default or event which cannot be cured unless and until FHA lender has obtained possession, but in no event to exceed ninety (90) days after service of such written notice on FHA lender by Lessee of its intention to terminate.

1. Lessor and Lessee hereby certify to FHA lender that the lease as previously submitted to FHA lender has not been further amended.
2. For the purposes of facilitating FHA lender's rights hereunder, FHA lender shall have, and for such purposes is hereby granted by Lessee and Lessor, the right to enter upon the Property and the Improvements thereon for the purpose of affecting any such cure.
3. Lessee hereby agrees to give to FHA lender concurrently with the giving of any notice of default under the Lease, a copy of such notice by mailing the same to FHA lender in the manner set forth herein below, and no such notice given to Lessor which is not at or about the same time also given to FHA lender shall be valid or effective against FHA lender for any purpose.
4. Subordination of Lease to Mortgage and Regulatory Agreements and Regulation by the U.S. Department of Housing and Urban Development ("HUD").
  - a. The Lease and all estates, rights, options, liens and charges therein contained or created under the Lease are and shall be subject and subordinate to the lien or interest of (i) the Mortgage on the Lessor's interest in the Property in favor of FHA lender, its successors and assigns insofar as it affects the real and personal property comprising the Property (and not otherwise owned, leased or licensed by Lessee) or located thereon or therein, and to all renewals, modifications, consolidations, replacements and extensions thereof, and to all advances made or to be made there under, to the full extent of amounts secured thereby and interest thereon, and (ii) that certain Regulatory Agreement for Multifamily Housing Projects between Lessor and HUD to be recorded against the Property.
  - b. The parties to the Lease agree to execute and deliver to FHA lender and/or HUD such other instrument or instruments as the FHA lender and/or HUD, or their respective successors or assigns, shall reasonably request from time to time to reconfirm the status of the lease and to effect and/or confirm the subordination of the Lease to the lien of the Mortgage and the above-described Regulatory Agreements. To the extent that any provision of the Lease shall be in conflict with the HUD Program Obligations (as such term is defined below), the HUD Program Obligations shall be controlling.
  - c. In the event HUD, at a foreclosure sale or sale under private power contained in the Mortgage, or by acceptance of a deed in lieu of foreclosure, succeeds to the interest of Lessor under the Lease by reason of any foreclosure of the Mortgage or the acceptance by HUD of a deed in lieu of foreclosure, or by any other manner, it is agreed as follows:
    - 1) HUD can terminate the Lease for any violation of the Lease that is not cured within any applicable notice and cure period given in the Lease.
    - 2) As used in this Agreement "**Program Obligations**" means (1) all applicable statutes and any regulations issued by the Secretary pursuant thereto that apply to the Project, including all amendments to such statutes and regulations, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and (2) all current requirements in HUD handbooks and guides, notices, and mortgagee letters that apply to the Project, and all future updates, changes and amendments thereto, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and provided that such future updates, changes and amendments shall be applicable to the

Project only to the extent that they interpret, clarify and implement terms in this Agreement rather than add or delete provisions from such document. Handbooks, guides, notices, and mortgagee letters are available on HUD's official website: (<http://www.hud.gov/offices/adm/hudclips/index.cfm>, or a successor location to that site).

- d. To the extent there is any inconsistency between the terms of this Subordination, Non-Disturbance and Attornment Agreement, and the Lease, the terms of this Subordination, Non-Disturbance and Attornment Agreement shall be controlling.
- 5. For purposes of any notices to be given to FHA lender hereunder, the same shall be sent by U.S. certified mail, return receipt requested, postage prepaid, to FHA lender at the following address:  
[Insert Address] or to such other address as FHA lender may hereafter notify Lessee in writing by notice sent to Lessee as aforesaid at Lessee's address at the Property, or such other address as FHA lender may hereafter be advised of in writing by notice sent to FHA lender as aforesaid.
- 6. The agreements contained herein shall run with the land and shall be binding upon and inure to the benefit of the respective heirs, administrators, executors, legal representatives, successors and assigns of the parties hereto.
- 7. This Agreement may be executed in one or more counterparts, all of which when taken together shall constitute a single instrument.
- 8. This Agreement shall, in all respects, be governed by and construed and interpreted in accordance with the laws of the \_\_\_\_\_.

**SIGNATURES**

**OWNER (or LESSOR)**

**OPERATOR (or LESSEE)**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**FHA LENDER**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_



## A.8.7 Financial & Performance Metrics for Concentrated Risk REO Schedules

A. Not all items apply to all financial situations and the order/sequence of items is for illustrative purposes only.

Underwriting Factor	Yr X	Yr Y	%<>	YR Z	%<>	Comment/Conclusion
DSCR Insured Assets	#	#	%	#	%	
DSCR All Assets	#	#	%	#	%	
DSCR (lowest 10%)	#	#	%	#	%	
LtV Insured Assets	#	#	%	#	%	
LtV All Assets	#	#	%	#	%	
LtV (highest 10%)	#	#	%	#	%	
Quick Ratio	#	#	N/A	#	N/A	
Projected Liquidity-Lowest Quick Ratio				#		(applies only when future cash projection is deemed required metric, only some cases.)
Short-Term Maturities (\$ owed)	\$	\$	N/A	\$	N/A	
Short-Term Maturities- Estimated \$ Surplus (deficit)	\$	\$	N/A	\$	N/A	
Occupancy % Insured Assets	%	%	N/A	%	N/A	
Occupancy % All Assets	%	%	N/A	%	N/A	
Occupancy (lowest 10%, 3 years)	%	%	N/A	%	N/A	
NOI \$	\$	\$	%	\$	%	
Revenue	\$	\$	%	\$	%	
Expense	\$	\$	%	\$	%	

Dev - Lease Up: Prior Targets Met	Yes or No	Comments?	
Const: Prior Targets Met	Yes or No	Comment?	
REAC Insp < 65	Yes or No	#	Comments?
Unfunded Repairs*	\$	\$/unit:	Comments
Character: Credit Events	Yes or No	#	If Yes, explain in narrative.
Full Disclosure	Yes or No	If no, explain in narrative.	

## A.8.8 Addendum: Identification and Certification of Limited Liability Investor Entities (ILLC)

The following certification is to be submitted as part of the FHA loan application from each entity which claims to be a limited liability investor.

**Project Name:** \_\_\_\_\_

**FHA Project #:** \_\_\_\_\_

I, [***name of authorized signer***], am authorized to certify on behalf of [***name of investor entity***] to each and every item stated below.

I certify that [***name of investor entity***] is:

1. Investing in [***name of owner/mortgagor entity***], which anticipates receiving [list applicable tax credits, e.g.: Low-Income Housing Tax Credits pursuant to Section 42 of the Internal Revenue Code].
2. A limited liability company, an investor corporation, an investor limited partnership, an investor limited liability limited partnership or other similar entity with limited liability; and
3. An investor with limited or no control over routine property operations or HUD regulatory and/or contract compliance, unless it should take control of the ownership entity or assume the operating responsibilities in the event of the default of the operating partner or upon specific events defined in the [***name of owner/mortgagor entity***]'s [operating agreement / partnership agreement / organizational documents].

I further certify that should any of the facts or circumstances that support the certifications above change or the entity for which this certification is made withdraws from participation in the owner/mortgagor, I will notify HUD immediately in writing, providing full disclosure and explanation of the change(s).

## Appendix 9 Environmental Analysis

### A.9.1 Baseline Pipeline Impact Radius Tables

The following Baseline Pipeline Impact Radius tables are referenced in [Chapter 9, Section 9.6.19.B.1](#).

#### A.9.1.1 High-Pressure Pipelines Transferring Flammable and Combustible Liquids

**Table A9-1. Diesel Thermal Radiation ASDs (feet)**

Diameter (in)	ASD (feet)
4	536
6	634
8	713
10	782
12	843
14	898
16	949
18	996
20	1,040
22	1,081
24	1,121

**Table A9-2. Gasoline Thermal Radiation ASDs (feet)**

Diameter (in)	ASD (feet)
4	508
6	600
8	676
10	741
12	798
14	851
16	899
18	943
20	985
22	1,024
24	1,061

**Table A9-3. Crude Oil Thermal Radiation ASDs (feet)**

<b>Diameter (in)</b>	<b>ASD (feet)</b>
4	521
6	616
8	693
10	759
12	819
14	872
16	921
18	967
20	1,010
22	1,050
24	1,089
26	1,125
28	1,160
30	1,193
32	1,225
34	1,256
36	1,286
38	1,315
40	1,343
42	1,369
44	1,397
46	1,423
48	1,448

## A.9.1.2 High-Pressure Pipelines Transferring Flammable and Combustible Gases (Thermal Radiation)

Table A9-4. Natural Gas Pipeline Thermal Radiation ASDs (feet)

Diameter (in)	Pipeline Pressure (psi)															
	60	120	240	360	480	600	720	840	960	1,080	1,200	1,320	1,440	1,560	1,680	1,800
4	71	100	142	173	200	224	245	265	283	300	317	332	347	361	375	388
6	106	150	212	260	300	336	368	397	425	450	475	498	520	541	562	581
8	142	200	283	347	400	448	490	530	566	601	633	664	693	722	749	775
10	177	250	354	433	500	560	613	662	708	751	791	830	867	902	936	969
12	212	300	425	520	601	671	736	794	849	901	950	996	1,040	1,083	1,124	1,163
14	248	350	495	607	701	783	858	927	991	1,051	1,108	1,162	1,214	1,263	1,311	1,357
16	283	400	566	693	801	895	981	1,059	1,132	1,201	1,266	1,328	1,387	1,444	1,498	1,551
18	318	450	637	780	901	1,007	1,103	1,192	1,274	1,351	1,424	1,494	1,560	1,624	1,685	1,744
20	354	500	708	867	1,001	1,119	1,226	1,324	1,415	1,501	1,583	1,660	1,734	1,804	1,873	1,938
22	389	550	779	953	1,101	1,231	1,348	1,456	1,557	1,651	1,741	1,826	1,907	1,985	2,060	2,132
24	425	601	849	1,040	1,201	1,343	1,471	1,589	1,699	1,802	1,899	1,992	2,080	2,165	2,247	2,326
26	460	651	920	1,127	1,301	1,455	1,594	1,721	1,840	1,952	2,057	2,158	2,254	2,346	2,434	2,520
28	495	701	991	1,214	1,401	1,567	1,716	1,854	1,982	2,102	2,216	2,324	2,427	2,526	2,622	2,714
30	531	751	1,062	1,300	1,501	1,679	1,839	1,986	2,123	2,252	2,374	2,490	2,600	2,707	2,809	2,907
32	566	801	1,132	1,387	1,601	1,790	1,961	2,119	2,265	2,402	2,532	2,656	2,774	2,887	2,996	3,101
34	602	851	1,203	1,474	1,702	1,902	2,084	2,251	2,406	2,552	2,690	2,822	2,947	3,067	3,183	3,295
36	637	901	1,274	1,560	1,802	2,014	2,207	2,383	2,548	2,702	2,849	2,988	3,121	3,248	3,371	3,489
38	672	951	1,345	1,647	1,902	2,126	2,329	2,516	2,689	2,853	3,007	3,154	3,294	3,428	3,558	3,683
40	708	1,001	1,415	1,734	2,002	2,238	2,452	2,648	2,831	3,003	3,165	3,320	3,467	3,609	3,745	3,876
42	743	1,051	1,486	1,820	2,102	2,350	2,574	2,781	2,973	3,153	3,323	3,486	3,641	3,789	3,932	4,070
44	779	1,101	1,557	1,907	2,202	2,462	2,697	2,913	3,114	3,303	3,482	3,652	3,814	3,970	4,120	4,264

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Diameter (in)	Pipeline Pressure (psi)															
	60	120	240	360	480	600	720	840	960	1,080	1,200	1,320	1,440	1,560	1,680	1,800
46	814	1,151	1,628	1,994	2,302	2,574	2,819	3,045	3,256	3,453	3,640	3,818	3,987	4,150	4,307	4,458
48	849	1,201	1,699	2,080	2,402	2,686	2,942	3,178	3,397	3,603	3,798	3,984	4,161	4,331	4,494	4,652
50	885	1,251	1,769	2,167	2,502	2,798	3,065	3,310	3,539	3,753	3,956	4,150	4,334	4,511	4,681	4,846

**Table A9-5. Hydrogen Pipeline Thermal Radiation ASDs (feet)**

Diameter (in)	Pipeline Pressure (psi)															
	60	120	240	360	480	600	720	840	960	1,080	1,200	1,320	1,440	1,560	1,680	1,800
4	58	83	117	143	165	185	202	219	234	248	261	274	286	298	309	320
6	88	124	175	215	248	277	304	328	350	372	392	411	429	447	464	480
8	117	165	234	286	330	369	405	437	467	496	522	548	572	596	618	640
10	146	207	292	358	413	462	506	546	584	620	653	685	715	745	773	800
12	175	248	350	429	496	554	607	656	701	743	784	822	858	894	927	960
14	204	289	409	501	578	647	708	765	818	867	914	959	1,002	1,042	1,082	1,120
16	234	330	467	572	661	739	809	874	935	991	1,045	1,096	1,145	1,191	1,236	1,280
18	263	372	526	644	743	831	911	984	1,051	1,115	1,176	1,233	1,288	1,340	1,391	1,440
20	292	413	584	715	826	924	1,012	1,093	1,168	1,239	1,306	1,370	1,431	1,489	1,545	1,600
22	321	454	643	787	909	1,016	1,113	1,202	1,285	1,363	1,437	1,507	1,574	1,638	1,700	1,760
24	350	496	701	858	991	1,108	1,214	1,311	1,402	1,487	1,567	1,644	1,717	1,787	1,855	1,920

**Table A9-6. Ethane Pipeline Thermal Radiation ASDs (feet)**

Diameter (in)	Pipeline Pressure (psi)															
	60	120	240	360	480	600	720	840	960	1,080	1,200	1,320	1,440	1,560	1,680	1,800
4	87	123	174	213	246	275	301	325	348	369	389	408	426	443	460	476
6	130	184	261	319	369	412	451	488	521	553	583	611	639	665	690	714
8	174	246	348	426	492	550	602	650	695	737	777	815	851	886	920	952
10	217	307	434	532	614	687	752	813	869	922	971	1,019	1,064	1,108	1,149	1,190
12	261	369	521	639	737	824	903	975	1,043	1,106	1,166	1,223	1,277	1,329	1,379	1,428
14	304	430	608	745	860	962	1,053	1,138	1,216	1,290	1,360	1,426	1,490	1,551	1,609	1,666
16	348	492	695	851	983	1,099	1,204	1,300	1,390	1,475	1,554	1,630	1,703	1,772	1,839	1,904
18	391	553	782	958	1,106	1,236	1,354	1,463	1,564	1,659	1,749	1,834	1,916	1,994	2,069	2,142
20	434	614	869	1,064	1,229	1,374	1,505	1,626	1,738	1,843	1,943	2,038	2,128	2,215	2,299	2,380
22	478	676	956	1,171	1,352	1,511	1,655	1,788	1,912	2,028	2,137	2,242	2,341	2,437	2,529	2,618
24	521	737	1,043	1,277	1,475	1,649	1,806	1,951	2,085	2,212	2,332	2,445	2,554	2,658	2,759	2,856



### A.9.1.3 High-Pressure Pipelines Transferring Flammable and Combustible Gases (Blast Overpressure)

Table A9-7. Natural Gas Blast Overpressure ASDs (feet)

Diameter (in)	Pipeline Pressure (psi)								
	60	240	600	720	840	960	1,200	1,560	1,800
4	42	87	141	156	168	180	204	234	252
6	96	147	237	261	282	303	342	390	423
8	144	318	525	555	603	645	729	834	906
10	186	429	705	774	840	894	1,005	1,131	1,209
12	237	546	888	981	1,056	1,119	1,239	1,398	1,488
14	288	666	1,080	1,170	1,257	1,338	1,479	1,662	1,767
16	345	798	1,254	1,365	1,464	1,551	1,716	1,923	2,046
18	390	930	1,434	1,554	1,668	1,770	1,950	2,184	2,328
20	465	1,056	1,611	1,749	1,866	1,983	2,187	2,454	2,610
22	525	1,173	1,788	1,938	2,073	2,196	2,424	2,721	2,898
24	585	1,293	1,965	2,127	2,274	2,415	2,664	2,991	3,192
26	660	1,416	2,139	2,319	2,481	2,631	2,904	3,270	3,492
28	720	1,530	2,316	2,508	2,685	2,853	3,153	3,558	3,804
30	780	1,653	2,493	2,703	2,895	3,078	3,408	3,852	4,125
32	840	1,770	2,673	2,901	3,111	3,306	3,669	4,161	4,461
34	915	1,887	2,856	3,102	3,330	3,546	3,939	4,479	4,815
36	975	2,007	3,042	3,309	3,555	3,789	4,221	4,815	5,184
38	1,050	2,127	3,234	3,519	3,789	4,041	4,512	5,163	5,808
40	1,110	2,244	3,429	3,738	4,029	4,302	4,818	5,808	6,336
42	1,170	2,370	3,630	3,963	4,278	4,575	5,133	6,336	7,392
44	1,230	2,493	3,837	4,194	4,533	4,854	5,280	7,392	8,448
46	1,290	2,616	4,047	4,434	4,800	5,148	6,336	7,920	9,504
48	1,350	2,742	4,266	4,683	5,076	5,280	6,864	8,976	10,560
50	1,470	2,871	4,491	4,938	5,280	6,336	7,920	10,032	11,616

**Table A9-8. Hydrogen Blast Overpressure ASDs (feet)**

Diameter (in)	Pipeline Pressure (psi)					
	350	800	1,100	1,400	1,700	1,800
4	300	465	549	621	687	708
6	510	792	924	1,038	1,137	1,167
8	747	1,119	1,296	1,458	1,593	1,635
10	981	1,452	1,680	1,881	2,055	2,109
12	1,212	1,788	2,070	2,316	2,535	2,604
14	1,449	2,130	2,475	2,778	3,048	3,135
16	1,686	2,493	2,907	3,270	3,603	3,711
18	1,935	2,874	3,366	3,804	4,209	4,338
20	2,187	3,279	3,858	4,380	4,866	5,022
22	2,454	3,711	4,389	5,004	5,808	6,336
24	2,730	4,167	4,956	6,336	7,392	8,448
26	3,018	4,656	5,808	7,920	8,976	9,504

**Table A9-9. Ethane Blast Overpressure ASDs (feet)**

Diameter (in)	Pipeline Pressure (psi)					
	60	120	240	360	480	600
4	39	54	90	102	126	135
6	87	108	141	177	210	240
8	117	165	243	279	354	393
10	153	222	324	399	444	474
12	192	279	402	498	507	534
14	228	336	462	564	558	621
16	267	393	513	594	681	747
18	309	447	594	684	783	867
20	366	486	666	789	891	1,002
22	396	540	759	885	1,017	1,167
24	432	600	858	990	1,164	1,305

\*Ethane is a liquid above 600 psi.

## A.9.2 Section 106 Delegation Memo

A. The following Section 106 Delegation Memo is referenced in [Chapter 9, Section 9.6.4.E.2](#).



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-7000

**EFFECTIVE DATE:**

**MEMORANDUM FOR:** State Historic Preservation Officers (SHPO) and Tribal Historic Preservation Officers (THPO), MAP- and OHP-approved Lenders

**FROM:** Danielle Schopp, Director, Office of Environment and Energy  
Department Environmental Clearance Officer

**SUBJECT:** **Authorization of MAP- and OHP-approved Lenders and Their Authorized Representatives to Initiate Section 106 Consultation for HUD Office of Housing Programs**

The Office of Housing at the U.S. Department of Housing and Urban Development (HUD) operates the Federal Housing Administration (FHA), providing mortgage insurance on mortgages for Single Family homes, Multifamily properties, and Healthcare facilities. Within Housing, the Office of Multifamily Housing Programs is responsible for the overall management, development, direction and administration of HUD's Multifamily Housing Programs, and the Office of Health Care Programs is responsible for the administration of HUD's Residential Care programs and Hospital Programs. HUD's FHA Programs are identified by section of the National Housing Act. (The Act.) Sections 220, 221(d)(4), 231, 213 and 241(a) of the Act provide FHA multifamily mortgage insurance for the new construction or substantial rehabilitation of multifamily rental housing. Sections 232 and 242 provide FHA mortgage insurance for new construction or substantial rehabilitation of healthcare facilities and hospitals. The Section 207/223(f) program insures mortgages for the purchase or refinancing of existing rental housing or healthcare facilities which may have been financed originally with conventional mortgages or equity. The Section 223(a)(7) program provides for streamlined refinancing of currently insured FHA loans.

All Housing FHA programs (except single family, 1-4 unit properties, which are generally categorically excluded from review under the National Environmental Policy Act (NEPA), not subject to related laws and authorities specified in HUD's environmental regulations) must comply with provisions of Section 106 of the National Historic Preservation Act (NHPA) and its implementing regulations, 36 CFR Part 800. In these projects, HUD receives applications from lenders and is responsible for completing environmental and Section 106 reviews under HUD's environmental regulations in 24 CFR Part 50 as part of its underwriting process. Early consideration of Section 106 is necessary to meet program timelines which often overlap with other funding and tax credit deadlines. In order to facilitate the review process, HUD has determined that it is consistent with 36 CFR 800.2(c)(4) for the lenders applying for mortgage insurance under these Programs to initiate Section 106 consultation with State Historic Preservation Officers (SHPO) and other consulting parties, except for Indian Tribes. HUD must conduct consultation with Indian Tribes. For the purposes of this Memorandum, Section 106 consultation may begin once HUD has issued an FHA number.

Effective immediately, the Department authorizes MAP- and OHP-approved lenders and their authorized representatives to act on behalf of HUD to consult with SHPOs to initiate the Section 106 review process, identify and evaluate historic properties, and assess effects. Lenders using this option must include a copy of this Memorandum with their submission to SHPO.

If a project involves demolition of a building over 45 years old, new construction in or adjacent to a historic



OFFICE OF COMMUNITY PLANNING  
AND DEVELOPMENT

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-7000

district, substantial ground disturbance<sup>1</sup>, or exterior rehabilitation of a building more than 45 years old, lenders must retain a Qualified Historic Preservation Professional<sup>2</sup> in the discipline relevant to the project activities to prepare submissions to SHPO and manage consultation with interested parties and the public, as well as coordinate with HUD on HUD's consultation with Indian Tribes.

When consulting with the SHPO and others, the lenders or authorized representatives shall identify their project by the HUD program followed by the section of the Act and provide an appropriate contact person at both the lender's organization and the authorized representative hired to coordinate the review. Lenders and authorized representatives must consider timely comments received by HUD from Indian Tribes before reaching final determinations of effect.

The lender or authorized representative shall prepare documentation that meets 36 CFR 800.11 (d) or (e) and submit to SHPO for review and concurrence. If SHPO concurs with the finding of effect, the lender may enter the concurrence and supporting documentation into HUD's Environmental Review Online System (HEROS) and consider Section 106 complete, unless any of the considerations below apply.

HUD Office of Housing will remain legally responsible for all findings and determinations. HUD Office of Housing will participate in and complete the Section 106 review when:

- It is determined during review that, in accordance with the *Criteria of Adverse Effect*, there may be an adverse effect on a historic property;
- There is a disagreement between the lender or their authorized representatives and the SHPO and/or THPO regarding identification and evaluation of historic properties and/or assessment of effects;
- There is an objection from tribes, consulting parties or the public regarding their involvement in the review process, recommended Section 106 findings and determinations, or the implementation of agreed upon provisions;
- There is the potential for a foreclosure situation per 36 CFR 800.9(b) or anticipatory demolition as specified in Section 110(k) of the National Historic Preservation Act; or
- There is government-to-government consultation with Indian tribes, or
- HUD deems the consultation record inadequate.

It is important that Section 106 reviews be conducted within the timeframes set forth in 36 CFR Part 800 and in the Housing Multifamily and Healthcare FHA programs and that the exchange of documentation and consultations between the consulting parties be carried out in a consistent and predictable manner. To this end, HUD will coordinate with its MAP- and OHP-approved lenders to carry out the process set forth in this memorandum. HUD will provide guidance and periodic training on the implementation of the authorization. HUD will also monitor compliance with the authorization and prepare an annual report that summarizes the activities conducted under this authorization and make it publicly available on the HUD website.

<sup>1</sup> Does not include minor ground disturbance for installing posts for a fence, deck, ramp, handrail, etc.; routine landscaping; or repaving a parking lot or sidewalk.<sup>2</sup> A Qualified Historic Preservation Professional is one who meets the Secretary of the Interior's Professional Qualifications Standards for Archeology, History, Architectural History, Architecture, or Historic Architecture and has substantial experience in conducting Section 106 reviews of historic properties. Detailed information found at [https://www.nps.gov/history/local-law/arch\\_stnds\\_9.htm](https://www.nps.gov/history/local-law/arch_stnds_9.htm).

## Appendix 12 Construction Period

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### A.12.1 Approval of Advances

A. Insurance of advances is the process of releasing FHA-insured mortgage proceeds and other funds necessary for the construction, acquisition, and/or refinancing of the project. [Chapter 12, Section 12.7 Insurance of Advances and Related Matters](#) explains the general criteria to advance the mortgage proceeds and other funds. [Section A.12.1](#) and [Section A.12.2](#) provide the procedures and the HUD Forms (form HUD-92403 and form HUD-92448) required to request the initial and interim monthly advances of mortgage proceeds by the MAP Lender, Borrower, and the General Contractor.

#### A.12.1.1 Approving Advances

A. Before any FHA-insured mortgage proceeds are advanced, funds provided by the Borrower must be disbursed in full for project work, material, and incidental charges, and expenses from other available funding sources in the following order:

1. All funds from the cash escrow established by the Borrower for: onsite construction, fees, carrying charges (e.g. taxes, insurance MIP, exam fee, inspection fee, Government National Mortgage Association (GNMA) fee, title and recording), and financing (front money escrow).
2. Grant/loan proceeds furnished by a national, regional, or local community service organization or a private source.
3. Grant/loan proceeds furnished by a government agency or instrumentality, low-income housing tax credit syndication proceeds, historic tax credits syndication proceeds, or new market tax credit proceeds, need not be fully disbursed before the disbursement of mortgage proceeds as long as the Regional or Satellite Office Director has previously approved a pro-rata agreement for governmental source funds and tax credits per 24 CFR 200.54. In the case of mortgage insurance for construction or rehabilitation, and the purchasing or refinancing of a multifamily tax credit project, HUD may not require the escrowing of tax credit equity or any other form of security, such as a letter of credit.

B. The amount approved for a requested item cannot exceed the amount claimed by the Borrower. Release of the front money cash escrow may not be targeted to the completion of specific on-site improvements.

C. The MAP Lender will state on form HUD-92403 the cumulative total of all advances made to the Borrower, including the advance under consideration. Reconcile any discrepancies before recommending approval of the advance.

D. MAP Lender-approved disbursement amounts shall not exceed the sum of the amounts approved:

1. For mortgage insurance;
2. For funding from the Borrower's cash escrow; and
3. For funding from available grant/loan proceeds.



**E.** The Housing and Economic Development Recovery Act of 2008 (HERA) provides that if the project will receive the benefit of equity from the sale of low-income housing tax credits (LIHTC) syndication proceeds, historic tax credits syndication proceeds, or new markets tax credit proceeds, HUD may not require the escrowing of the equity, or accept any form of security in place thereof, such as a letter of credit. Therefore, the Borrower will deposit cash with the MAP Lender that is sufficient, when added to the proceeds of the insured mortgage, to assure completion of the project and to pay the initial service charge, carrying charges, and legal and organizational expenses pertaining to the construction of the project. The Lender may accept a lesser cash deposit or an alternative to a cash deposit, where the required funding is to be provided by a grant or loan from a Federal, State, or local government agency or instrumentality.

1. As a special condition to the firm commitment, the Lender is required to provide HUD with the most recently updated Equity Contribution Schedule. The Equity Contribution Schedule is a part of the LIHTC Summary Report which is located at:  
<https://www.hud.gov/sites/dfiles/Housing/documents/LIHTCSummaryReport20AllDealTypes0920.xlsx>
2. A Disbursement Agreement that reflects the terms of the Limited Partnership Agreement or Operating Agreement for the remaining outlay of tax credit equity contributions must also be provided prior to Initial Closing.
3. The Borrower's minimum initial equity installment is twenty percent (20%) of the total tax credit equity allocated for mortgageable and nonmortgageable costs (10% may be funded with an equity bridge loan). The initial installment shall be disbursed in accordance with the amounts approved by the Regional or Satellite Office Director per the pro-rata agreement for governmental sources funds and tax credits per 24 CFR 200.54.
4. Subsequent contributions should be made at a time and in a manner during construction to ensure that the statutory limitations based on actual costs for the applicable FHA mortgage program are maintained during construction.
5. Tax credit equity pay-ins related to Investor/Syndicator required reserves and/or escrows may be made after construction completion pursuant to benchmarks established in the partnership or operating agreement.

### **A.12.1.2 Architect's Fees**

**A.** The Architect's cash fee is in AIA Document B108, Standard Form of Agreement Between Owner and Architect for a Federally Funded or Federally Insured Project.

**B.** The Architect's design cash fee may be released with the initial advance.

**C.** Design services provided by others as detailed in the B108 must be supported by contracts approved by HUD during commitment processing before any funds may be advanced.

**D.** The Mortgagor's and Architect's Certificate, form HUD-92403.01, must accompany any request or partial request for advance of the design fee.

**E.** The Architect's supervisory cash fee is advanced based on a percentage of completion method. The maximum amount that may be approved is computed by multiplying the Architect's supervisory cash fee

by the percentage of work completed and approved on form HUD-92448, then deducting the total of installments previously paid.

F. There is no “holdback” applied to the disbursements approved from the Architect’s Cash Fee.

### **A.12.1.3 Interim Insurance of Advances**

**A. Approval.** Interim Insurance of Advances, the Carrying Charges, Financing, Legal, and Audit Expense must not exceed their allocations in the Building Loan Agreement. Approve items due or already paid by the mortgagor that are supported by bills and/or paid invoices/receipts on the initial advance. Do not approve costs for interest, taxes, and insurance incurred during early start period. At cost certification, certify the actual cost without regard to release limitations imposed by the Building Loan Agreement during the Construction period.

**B. Interest.** Interest is advanced only when and as earned. The MAP Lender must specify on form HUD-92403, the period(s) for which interest is requested and the amount for each period.

1. At initial closing, check each interest request for accuracy, i.e. 360 factor, and the annual interest rate approved at Initial Endorsement.
2. The MAP Lender is prohibited from drawing down interest and refunding a portion of the money to the Borrower. Such practice constitutes a kickback and is not acceptable to HUD and will be treated as a direct mortgage reduction. It is appropriate to allow amounts for fire, windstorm, extended coverage, liability, and other risk insurance customarily insured against in the community.
3. Do not allow amounts that accrued before Initial Endorsement.
4. Do not approve bills, invoices/receipts for workmen’s compensation and/or public liability insurance that are included in the cost estimate.

**C. Taxes.**

1. Do not allow amounts that accrued before Initial Endorsement.
2. Approve invoices that are payable during construction, even if a portion of the billing period will be after an allowable cutoff date. Necessary adjustments will be made at the time of cost certification.

**D. Insurance.** Allow amounts for fire, windstorm, extended coverage, liability, and other risk insurance customarily insured against in the community.

1. Do not allow amounts that accrued before Initial Endorsement.
2. Do not approve invoices/receipts for workmen’s compensation and/or public liability insurance that are included in the cost estimate.

**E. MIP.** Mortgage Insurance Premium (MIP) may not exceed the amount due for 1 year.

**F. Service Charge and Lender Fees.** Initial service charge and permanent Lender fees are limited to:

1. The actual amount paid, or the amount stipulated in the Lender’s Certificate, form HUD-92434M, whichever is less.
2. The initial service fee cannot exceed 2 percent.



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3. The combined amount may not exceed 3.5 percent of the mortgage.
4. If the 3.5% included in processing exceeds the financing fee charged by the mortgagee, identify the excess as restricted funds. For bond financed projects it is capped at 5.5%. Amounts in excess of 5.5% are not mortgageable.

**G. Legal Fees.** Legal fees may be allowed for:

1. Borrower's Counsel to create the Borrower entity; however, do not allow the cost of legal services to create tax shelters, trusts, etc.
2. Costs associated with a counsel's review of initial and final closing documents.
3. Normal interim activities in creating a project.
4. Documented costs for items in [Section A.12.1.3.G.1](#), [Section A.12.1.3.G.2](#), and [Section A.12.1.3.G.3](#) above that are due and payable before or at final closing may be approved in the initial advance, provided the limitation in [Section A.12.1.3.G.5](#) below is not exceeded.
5. Seventy-five percent may be disbursed at initial closing or during construction. The remaining 25 percent may not be released before final endorsement. Do not allow legal expenses of the MAP Lender or legal services connected with land acquisition, title, and recording charges and/or obtaining zoning as they are reflected in the land value. Amounts included in form HUD-92264 for legal and audit expenses are not blanket allowances, but ordinarily set an upper limit on allowable amounts. Non-typical fees must be borne by the Borrower, unless in an exceptionally complex case, a higher fee is proven by the Borrower to be necessary and reasonable. Detailed invoices and/or other documentation is required as to the reasonableness, purpose, necessity, and proper classification of all items in the category.

**H. Organizational Fees:**

1. The amount included in the replacement cost estimate for organizational fees is an allowance to reimburse the Borrower for costs incurred to:
  - a. Initiate a project;
  - b. Organize the Borrower entity;
  - c. Organize its planning, financing, and construction;
  - d. Control and manage construction by a hired third party, through endorsement; and
  - e. Third Party costs (Appraiser, Environmentalist etc.)
2. Release based upon the following:
  - a. Disburse 65 percent at initial closing.
  - b. Disburse the remaining 35 percent at final endorsement.
  - c. MAP Lender's Third-Party Costs, reflected in Organization Costs, are exempted from the 65% rule. The rule applies only to the Borrower's organizational costs.
3. This allowance may not be used to subordinate the cash requirements for closing.

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4. At cost certification allow only the amount included in Section G of form HUD-92264 for organizational fees, unless fully supporting documentation is submitted by the Borrower that justifies the need for and reasonableness of the additional expenditure. Any costs incurred in excess of this allowance are not eligible for recognition in processing a mortgage increase or the equity computation on form HUD-2580, Maximum Insurable Mortgage.

**I. Audit Fees.** Audit fees associated with obtaining an accountant's opinion of the Borrower's cost certification may not be advanced until final endorsement.

**J. Title and Recording.**

1. Approve amounts typically incurred for titling and recording, including:
  - a. Title search and policy at the time of Initial Endorsement;
  - b. Recording fees at Initial Endorsement;
  - c. Mortgage and stamp taxes;
  - d. Survey recording fees;
  - e. Updating title policy during construction;
  - f. Final title policy and recording charges; and
  - g. Legal fees incurred with any of the above.
2. Do not fully disburse these funds at Initial Endorsement. Ensure that sufficient funds are maintained in the account to cover title and recording costs required at final endorsement. This may require the approval of an amount less than that requested in the initial draw.
3. Do not disburse funds for title and recording cost associated with acquisition of the land or property.
4. Legal, organizational, title, recording costs, and taxes incurred in connection with the site purchase may be added to the cost of the land in establishing the latest arms' length purchase price.

**K. Developer's Fee.** Developer's fee is provided in the estimated replacement cost of Sections 220, 221, 231 projects involving non-profit Borrower. A portion of the fee may be used to pay for transactional costs associated with developing the project, including but not limited to:

1. Reduction of the estimated closing costs of the project;
2. Staff salaries;
3. Non-profit working capital deposit;
4. Relocation expenses;
5. Operating deficit escrow;
6. Financing fees over and above the 3.5 percent included in the estimated replacement cost of the project;
7. Environment studies; and
8. Housing Consultant services provided by either in-house staff or contractor.

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**L. Tap fees, Soil Testing and Other Fees.** Approved disbursement of tap fees, soil testing, and other fees must be fully supported and is not to exceed the amount estimated in the General Contractor's or Borrower's list of other fees for requested items. Approve disbursement only for items actually due.

**M. Contingency Reserve.** The contingency reserve is included in the replacement cost of substantial rehabilitation projects.

1. Use the contingency reserve for:
  - a. Unforeseen costs of necessary changes approved by the HUD Office.
  - b. Unanticipated soft costs associated with extension of time change orders approved by the HUD Office.
2. Changes classified as betterments by Architectural and Cost staff are ineligible for funding.

**N. Third-Party Expenses.** Fees to be paid for third-party review costs of the MAP Lender including but not limited to Architectural reviews, Cost reviews, appraisals, and market studies.

**O.** At Initial Endorsement, HUD fees for examination and inspection.

**P.** Sums allocated to acquisition cost of land or existing building.

#### **A.12.1.4 Allocation of Cash Available to the Borrower**

**A. Allocation.** Allocation of cash available to the Borrower listed on line 42 of form HUD-2283, Financial Requirements for Closing (excess mortgage proceeds), may be allocated as described in this section.

##### **B. New Construction.**

1. Land value equity can be applied to fund operating deficit or working capital escrows, or other cash requirements at Initial Endorsement. After Initial Endorsement, additional draws from mortgage proceeds associated with the excess land value will be considered only after the designated escrow accounts have been fully exhausted. The land value is HUD's estimate of the "as-is" value of land or the actual latest arms' length purchase price, whichever is less. The latest arms' length purchase price may include the following costs incurred in connection with the site purchase:
  - a. Legal fees associated with negotiations for acquisition of land, zoning, and examination of title on the purchase or defense of title after purchase;
  - b. Prepaid special assessments;
  - c. Interest on bridge loans to purchase property after the date of submission of the initial application for mortgage insurance;
  - d. Taxes; and
  - e. Cost of improvements made to the project site by the Sponsor/Borrower.
2. Cash escrow to cover offsite construction cost.
3. Cost of any demolition reflected in the Fair Market Value of Land. Payment is approved as demolition progresses.
4. Construction and/or permanent loan discounts required to be paid at initial closing.

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5. Cash to cover interest shortfall escrow, working capital deposit(s) (i.e. 2% escrow and 2% construction contingency), initial operating deficit, non-realty items, and any permanent loan discounts not required to be paid at initial closing.
  6. Remaining balance may be used to fund any approved change orders or held until final endorsement.
- C. Rehabilitation of Existing Construction.
1. HUD's estimate of the "as-is" value by market comparison or the Borrower's acquisition cost/existing indebtedness, whichever is less.
  2. Items in [Section A.12.1.4.B.1](#) through [Section A.12.1.4.B.6](#) above.

### **A.12.1.5 Restricted Excess Mortgage Proceeds**

- A. Restricted excess mortgage proceeds are those excess mortgage proceeds determined not to be available to the Borrower during construction, i.e., the difference by which the HUD estimate exceeds contract amounts.
- B. These funds cannot be used to satisfy any escrow requirements and must be held until final endorsement.
- C. Identify these funds in an unused column of form HUD-92451, Financial Record of Mortgage Loan Transaction, as restricted funds.

### **A.12.1.6 MAP Lender Duties for Processing Form HUD-92403**

- A. The Lender must review and approve form HUD-92403 conducting the following major responsibilities:
1. Reconcile any discrepancies between the cumulative total for all advances, including the advance under consideration, and conclusions reached in the processing before recommending the advance for approval.
    - a. Enter any required adjustments in Column B and note, "No Adjustment Necessary, Except as Indicated," or "No Adjustment Necessary," as appropriate.
    - b. Enter the approved amount in the "Certificate of Mortgage Insurance" on the face of the form, and where the request is reduced; explain the disallowance on the form's reverse side.
  2. Determine monthly that advances are proportionate to construction progress.
    - a. Require the MAP Lender's Underwriter to advise you where advances for "soft costs", i.e., financing and carrying charges, are in excess of work progress as shown by the most current Progress Schedule accepted by the HUD and the percentage of project completion reflected on form HUD-92448.
    - b. Take action where the mortgage is not in balance due to the fault of the contractor.
  3. The amount advanced for construction retainage items must be adjusted for a 10 percent holdback of the construction contact amount from each advance. The standard 10% retainage will be required until 50% completion. After the project is 50% complete, the retainage will be reduced to 5% until

75% completion, and further reduced to 2.5% until the loan reaches the Final Endorsement. The following conditions must be met to permit these reductions in retainage:

- a. The Contractor has no identity-of-interest with the owner greater than a 5 percent equity interest;
  - b. If applicable, prior written consent from the surety company must be attached to the request for release; and
  - c. There are no questions regarding the contractor's performance concerning the quality of work, compliance with the contract, and any change orders or work in progress.
4. Secure approval from HUD for any advance requesting release of any portion of the contractor's 10 percent holdback.
  5. Maintain a record of approved disbursements on form HUD-92451, Financial Record of Mortgage Loan Transaction (or similar format in an Excel worksheet).

### **A.12.1.7 Certificate of Mortgage Insurance**

**A.** Prepare Certificate of Mortgage Insurance when the advance is eligible for approval. The approved sum is the total for the Contractor's Requisition and other eligible line items.

**B.** The total approved for any item must not exceed the amount allocated to the item unless the MAP Lender submits a written request to HUD for permission to reallocate funds between line items.

**C.** The sum approved for mortgage insurance is the amount approved for advance less any funds remaining in the front money escrow and any grant/loan proceeds.

**D.** For interim advances, the Lender is to prepare this Certificate and sign for HUD, to increase the amount of mortgage insurance.

**E.** After signing form HUD-92403 in the space for the Authorized HUD Official, and signing form HUD-92448 for the Regional or Satellite Office Director, the MAP Lender sends a copy of forms HUD-92403, HUD-92448, HUD-92451 (or similar format in an Excel worksheet), and supporting documentation to HUD.

### **A.12.1.8 HUD Monitoring of Interim Draws**

**A.** The HUD Single Underwriter will monitor interim draws. If a problem is encountered during an interim draw, the HUD Underwriter will bring the problem to the Regional or Satellite Office Director's attention in order to:

1. Modify the next draw, or
2. Withdraw the MAP Lender's authority to approve advances.

## **A.12.2 Contractor's Monthly Requisition**

**A.** Contractor's monthly requisition must be made on form HUD-92448. The Contractor's Prevailing Wage Certificate on the form's reverse side must be signed. (The HUD Construction Manager should contact

HUD Labor Standards and Enforcement staff if there are any outstanding questions regarding Davis-Bacon weekly payrolls and/or possible underpayment of Davis-Bacon prevailing wages.) The HUD Inspector reviews for acceptability. If acceptable, forward to MAP Lender's mortgage credit analyst for further processing.

**B. Eligible Items for Inclusion on form HUD-92448 include:**

1. Acceptably completed onsite work, i.e. in full compliance with contract documents.
2. Materials acceptably stored onsite, itemized by quantity and cost, with supporting invoices.
3. Components acceptably stored offsite, where provisions are made at initial closing in accordance with [Chapter 12](#), and requirements of [Section A.12.3](#) below are met.

**C. The Architect determines amounts due by job site observation of acceptable work. (The HUD Inspector makes the determination if there is no Architect.)**

**D. The HUD Inspector:**

1. Checks the Architect's determination using form HUD-2328, Schedule of Values, and trade item cost breakdowns (guides) to assure that amounts are reasonable for acceptable work and that funds remain for unacceptable and incomplete work;
2. Spot checks the count of stored onsite items, determines that storage is acceptable, and assures that amounts are reasonable for approval;
3. Checks the invoice and certificate for stored onsite items and approves payment after assuring that funds remain for transportation to the site and erection.

**E. Ineligible Items for Inclusion on form HUD-92448 include:**

1. **Noncompliant work and work supported or dependent upon noncompliant work.** Work changes completed in anticipation of future change order approvals are noncompliant work.
2. **Additive change orders.** Refer all change orders to HUD for processing and payment.
3. **Offsite work.** See [Section A.12.3.6](#) below for the contractor's requisition of payment, and release of funds to the Borrower for acceptably completed offsite work.

**F. Where there is disagreement with the requisition, the HUD inspector may modify the contractor's requested amount by:**

1. Entering trade item modification(s) on form HUD-92448;
2. Explaining the modification(s) in the HUD Representative's Trip Report, form HUD-95379;
3. Completion of form HUD-92448, Items (1) through (13) are made by the MAP Lender.

**H. Supporting Documentation includes:**

1. In order to help the HUD Inspector, reconcile differences with contractor claims, the contractor will submit receipts, bills of lading for onsite deliveries, billings for onsite work, evidence of onsite payrolls, etc.
2. Surveys may be submitted with each contractor's requisition for improvements not previously shown on a survey, especially regarding:

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- a. Where the siting of structures or setting of finished floor elevations are questioned and the
  - b. Location of materials stored onsite.
3. A survey is required for the next to last advance.

## A.12.3 Components Stored Offsite

### A.12.3.1 Eligible Building Components

- A. Only “building components” qualify for insurance of advances when stored offsite.
- B. An “eligible building component” is a manufactured or pre-assembled building element which, by reason of bulk, size or weight, vulnerability to weather conditions or lack of space at the site, is impractical to store at the site.
- C. Eligible building components comprise, but are not limited to:
1. Precast concrete floor, wall, and roof panels;
  2. Assembled bath and/or kitchen core units; and
  3. Fully fabricated structural steel beams and columns.
- D. Items that are not eligible “building components” are (but not limited to): kitchen appliances, carpeting, wood roof trusses, etc.

### A.12.3.2 Basic Requirements for Insured Advances

- A. The MAP Lender must have agreed to the necessary provisions at initial closing. See [Chapter 12, Section 12.5](#) and [Section 12.7](#).
- B. The Construction Contract must include the rider “Amendment to the Construction Contract for Components Stored Offsite.” See Forms [Section A.12.4](#).
- C. Payments are limited to the invoice value of the components.
- D. The contractor and its surety bear full responsibility for fraudulent claims for payment and fraudulent disposition of such payments. Safeguards are to protect against premature payments, against materials that do not meet contract requirements, and against losses not covered by insurance.
- E. The construction contract must be secured by a 100 percent performance and payment bond or a cash deposit or Letter of Credit in the amount of 15% or 25% of the HUD estimated cost of construction or rehabilitation for projects with four stories or less or five stories or more, respectively .
- F. Components must be stored at a location approved by the Lender and HUD.

### A.12.3.3 MAP Lender’s Responsibilities

- A. File Uniform Commercial Code (UCC)-1 financing statements with the proper office in the proper jurisdiction.



- B. Make whatever additional filings are necessary to maintain a first lien on the components until they are incorporated into the building(s).
- C. Release the financing statement filings as appropriate.
- D. Unconditionally certify by letter to HUD that the security instrument(s) is (are) a “first lien” on the components covered by the instrument(s). The MAP Lender’s certification must be supported by an opinion from the Lender’s counsel.
- E. In the event of default under the mortgage, either assign its security interest to HUD or acquire title through foreclosure to the components intended for use or incorporation into the building(s) and convey title to HUD.

### **A.12.3.4 General Contractors’ Responsibilities**

- A. All direct and indirect costs associated with the storage and transportation of components stored offsite.
- B. Obtaining a risk of loss insurance policy which covers the components. Evidence of this policy must be submitted to the MAP Lender prior to approval of any advance for components stored offsite.
- C. Assurance that there is a valid security agreement that is a first lien on the components.

### **A.12.3.5 Contractor’s Requisition**

- A. All requests for payment for components stored offsite must be submitted on form HUD-92448, Contractor’s Requisition, accompanied by the following:
  - 1. A statement from the Borrower’s Architect certifying that:
    - a. He/she has visited the storage site and inspected the components for which payment has been requested;
    - b. The components are in good condition and they comply with the contract requirements;
    - c. The components are properly stored and protected; and
    - d. The components are segregated, in an easily identified manner from other materials stored at the same site and are marked for identification.
  - 2. A bill of sale accompanied by an itemized invoice transferring title of the components to the Borrower.
  - 3. A copy of the security agreement provided to the mortgagee by the Borrower.;
  - 4. A copy of the financing statement or statements filed by the MAP Lender in accordance with the Uniform Commercial Code.;
  - 5. A warrantee from the MAP Lender that the security instruments represent a first lien on the building components.
  - 6. An opinion from the MAP Lender’s attorney that he/she has reviewed the security agreement and associated documents relative to the building components and that the security agreement creates a valid security interest in the collateral and that when the financing statement or statements is (are) duly filed, the secured party will have a first lien.

### **A.12.3.6 Offsite Construction**

**A.** Offsite construction is separate from work done under the Construction Contract for the project. Where offsite work is completed by the Borrower, rather than by a municipality or utility company, a separate construction contract is required, even if completed by the project contractor. Offsite work must also be funded from sources outside the mortgage, except that an escrow for its completion may be funded from available excess mortgage proceeds.

**B.** Completion Monitoring is performed by the HUD inspector and reported on the Trip Report, form HUD-95379. See HUD Procedures.

**C.** Contractor's Requisition is by letter to the Borrower. Do not use form HUD-92448 to reflect the value of acceptably completed offsite work, even if completed by the project contractor. Request for Approval of Advance of Escrowed Funds, form HUD-92464, is used.

**D.** Construction Changes for offsite work must be requested by letter. Form HUD-92437, Request for Construction Changes, may be used as a guide, but the form itself must not be used for offsite change orders.

## **A.12.4 Amendment to the Construction Contract for Payment for Components Stored Offsite**

**A.** The undersigned as Contractor and as Owner will abide by the following conditions to induce the Commissioner to release mortgage proceeds for the payment of components stored offsite.

**B.** The components stored offsite that will be recognized for payment under Article 5 of the contract are those listed and approved by HUD as an appendix to the Contractor's and/or Mortgagor's Cost Breakdown, form HUD-2328, attached to the Contract as Exhibit "A". The appendix must provide an inventory of the "stored components" and a breakdown of the line item of which the stored components are a part. The breakdown must state:

1. Cost of Components (Invoice Value),
2. Cost of transportation form the offsite storage location to the construction site,
3. Cost of Installation, and
4. Costs of any other items included in the line item.

**C.** The Contractor is responsible for:

1. All direct and indirect costs associated with the storage and transportation of components stored offsite.
2. Obtaining a risk of loss insurance policy which covers the components during storage, in transit and until installed at the project site. The policy must name the Borrower, the Mortgagee and the Commissioner as their interest may appear. Evidence of the existence of this insurance must be submitted to HUD prior to the approval of any advance for components stored offsite.

3. Assuring to the satisfaction of HUD proper identification and segregation of components while in storage and protection of components while in storage and transportation.
4. Securing from the Borrower or mortgagee all necessary security agreements, copies of financing statement, and documentation pertaining to first lien warranties, and submitting them with the request for payment.
5. Providing corporate surety bonds for on-site improvements on form HUD-92452M for payment and performance bonds, each equaling 100 percent of the HUD estimate of construction or rehabilitation cost.

**D.** All requests for payment for components stored offsite must be submitted by the Contractor on form HUD-92448, Contractor's Requisition, accompanied by the following:

1. A statement from the Architect certifying that:
  - a. He/she has visited the storage site and inspected the components for which payment has been requested;
  - b. The components are in good condition and they comply with the contract requirement;
  - c. The components are properly stored and protected; and
  - d. The components are segregated, in an easily identified manner from other materials stored at the same site and are marked for identification.
2. A bill of sale accompanied by an itemized invoice transferring title of the components to the Borrower.
3. A copy of the security agreement provided to the mortgagee by the Borrower.
4. A copy of the financing statement filled by the mortgagee in accordance with the Uniform Commercial Code.
5. A warranty from the mortgagee that the security instruments requested a first lien on the building components.
6. An opinion from the mortgagee's attorney that he/she has reviewed the security agreement and associated documents relative to the components for which advance are sought and that the security agreement creates a valid security interest in the collateral and that when the financing statement is duly filed, the secured party will have first lien.

**E.** Restrictions:

1. Payments for components stored offsite shall be limited to the cost of components Invoice Value) identified in the HUD approved appendix to the Contractor's and/or Mortgagor's Cost Breakdown, form HUD-2328, attached to the Contract as Exhibit "A," and shall be subject to a 10 percent holdback.
2. In no case shall a payment be approved for components stored offsite to a contractor whose performance, in the judgment of the Regional or Satellite Office Director, is marked by serious deviations from the contract documents.
3. Outstanding amount of insured advances for components stored offsite must not exceed 50 percent of the total estimated construction costs specified in the construction contract at any point in time.
4. The minimum amount for any single advance is \$10,000.

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Owner

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Contractor

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Date:

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Date:

## A.12.5 Projects Experiencing Difficulties Before Final Closing

### A.12.5.1 General

**A.** Additional attention must be given to projects that are experiencing difficulties that may lead to default before reaching final closing. Diagnose problems and take immediate actions during critical periods of project construction to avoid foreclosure or assignment, and to avoid serious hardship to Borrowers, contractors, and mortgagees. See [Chapter 19](#) for final closing procedures when the Borrower and General Contractor are in dispute and closing without full participation of the contractor.

**B.** Prompt action must be taken to correct problems as they arise. Where requested relief cannot be granted for statutory, regulatory or administrative reasons, however, a prompt and final disapproval must be given.

### A.12.5.2 Problems Leading to Default

**A.** Construction problems due to:

1. Work stoppage,
2. Contractor abandonment of job,
3. A change in the contractor, owner or Architect during construction,
4. Construction defects untreated for 30 days, and
5. Extended periods of bad weather, strikes, etc.

**B.** Financing problems due to:

1. Contractor's inability to complete construction because of under financing.
2. Cost overruns in carrying charges due to circumstances beyond the contractor's and Borrower's control.
3. Cost overruns in construction hard costs caused by:
  - a. Mandatory changes,
  - b. Voluntary changes, and

c. Price escalation.

C. Inadequate project income due to:

1. Underestimated operating expenses,
2. Overestimated rents and long-term occupancy levels, and
3. or lack of initial operating deficit.

### **A.12.5.3 Defaults During Construction**

A. HUD Construction Manager will consider alternative actions that can be offered to avoid foreclosure and hardship to all concerned parties regardless of the cause.

B. Request field counsel to provide legal guidance and participate in meetings to discuss the consequences of default and possible preventive actions.

C. Contact MAP Lender:

1. Speak to a responsible official and obtain an opinion on the cause of default, methods of cure, and probability of cure.
2. Advise the Lender:
  - a. To preserve its rights against the surety by giving prompt oral and written notification of the contractor's lack of performance or default, and by demanding performance under the contract of surety (see [Section A.12.5.3.D](#) below),
  - b. To consult with its attorney and to secure HUD approval before entering into any formal or informal agreement with the surety.

D. The MAP Lender must send a notice to the bonding company with a copy to the General Contractor for all conditions affecting the bonding company's interests. The notice should be sent to the bonding company's principal office, and its regional or branch office, attention: Claims Department.

1. Conditions requiring notification include:
  - a. A sustained work stoppage,
  - b. Nonpayment of subcontractors, suppliers, workmen, etc., and
  - c. Failure to maintain satisfactory progress.
2. Conditions that require obtaining surety's approval in advance include:
  - a. Approving a change order or aggregate of change orders that exceed 10 percent of the contract price, and
  - b. Extension of the bond by surety where there is a compelling reason why the contractor cannot remedy a latent defect before the bond's expiration date.
3. The Borrower is responsible for requesting the surety's performance, the MAP Lender must act to protect its and HUD's interests, and HUD must take the final action to protect its interests under conditions in [Section A.12.5.3.D.1](#) above.

**E.** Advise the Borrower of the contractor's violation, and/or lack of performance by the Architect or Borrower and give 30 days for correction.

**F.** Assess the situation by considering:

1. Percentage of construction complete,
2. Occupancy (including current estimates of income, expenses and occupancy projections),
3. Type of assurance of completion (bonds, cash escrow),
4. Status of escrow deposits,
5. Undrawn dollar amount of letters of credit (including working capital), and
6. Any other pertinent information.

**G.** HUD staff should meet to assess available options and prepare a position to present to interested parties. The meeting should include the Regional or Satellite Office Director, Field Counsel, and a representative from Asset Management. Separate meetings by staff with one or more of the non-HUD parties may be helpful before holding a general meeting with all interested parties.

**H.** Convene a general meeting of all interested parties with either a direct or indirect interest in the project to explain the consequences of default. Hold such meetings even where there is no possibility of HUD granting a mortgage increase or other form of relief.

1. Emphasize that all non-HUD participants must make a meaningful contribution before HUD will assume any additional risk. Such contributions include:
  - a. Infusion of new capital through adding partners, syndication or other investments, and/or
  - b. Concessions by the MAP Lender to avoid a loss (e.g., deferral or forgiveness of interest, taking a partial assignment of the partnership interest, etc.).
2. State firmly and unequivocally that the non-HUD parties must work out the remedy if the default is to be cured.
3. Clarify that unless a written firm proposal for a workout is developed; assignment or foreclosure of the mortgage will be the consequence.
4. Address the remedies covered in [Section A.12.5.4](#) below, as appropriate.

**I.** Extension of MAP Lender's election period to assign a loan for insurance benefits should not be granted where a workout proposal is not developed. Thirty days should be the maximum extension in most cases.

### **A.12.5.4 Remedies to Cure Defaults**

**A.** Call on the Bonding Company to perform, where applicable.

1. Request field counsel to communicate with surety where it fails to perform to terms of the bond.
2. Where the Surety refuses to honor its obligations after communications by field counsel, request the Department of Treasury to initiate procedures for removal of the surety from the Treasury Circular 570.

3. List the surety, contractor, and project; describe the particulars, including nature of the problem, length of delays and actions taken by Borrower, mortgagee and HUD to secure surety's performance; and attach a copy of the bond(s).
  4. Mail to:
    - U.S. Department of Treasury
    - Surety Bond Branch
    - Financial Management Service
    - Washington, D.C. 20227
  5. Distribute copies of the letter to the Washington Docket, Field Office Docket and the Regional or Satellite Office Director.
- B. MAP Lender or Title Company control payments through issuance of two- or three-party checks to assure that disbursed mortgage proceeds are applied for the intended purpose and not diverted to other uses.**
1. All money drawn for construction must be paid to subcontractors, suppliers, and workers on the job.
  2. Money drawn for specified purposes, e.g., Architect's fees, insurance premiums, taxes, etc., must not be diverted to other uses.
- C. Transfer construction funds to soft cost expenses, i.e., keep the mortgage in balance. The liquidated damages clause in the construction contract provides a source of funds for overruns in interest, taxes, MIP and insurance (soft costs) that are due to construction delays that are the General Contractor's fault.**
1. Authorize the transfer of funds from the construction contract for payment of soft cost overruns, where it becomes apparent that the scheduled date for completion cannot be met due to the fault of the contractor. The amount of transferred funds must be reflected on subsequent form HUD-92448, as a decrease to item 7, Sum of Cost Breakdown Items Plus Inventories of Materials.
    - a. The transfer of funds will get the attention of the contractor, Surety (if any), Borrower and mortgagee, as well as address any financial necessity.
    - b. Notify the contractor, Surety (if any), Borrower and mortgagee by certified mail of the amount and the reason for the transfer.
    - c. Require written acknowledgement of the notification from the mortgagee and Surety, if any.
  2. When the amount originally allocated to interest on form HUD-92451, Financial Record of Mortgage Loan Transaction (or similar format in an Excel worksheet) is exhausted or near exhaustion, request the Architect and HUD representative to estimate the earliest date of construction completion. Use this date to:
    - a. Set an assumed completion date.
    - b. Compute the minimum liquidated damages for the period between the completion date specified in the construction contract, as adjusted by approved change orders, and the assumed completion date.
    - c. Transfer the computed amount from Column J, Construction, to Column G, Carrying Charges and Financing, on form HUD-92451 (or similar format in an Excel worksheet).



- 1) Allocate full amount to interest, initially.
- 2) Only use funds for MIP, taxes and insurance after funds for these line items, and the working capital escrow have been exhausted.

**D.** Use contractor's holdback, subject to provisions of [Section A.12.5.4.B](#) above.

**E.** Release assurance of completion cash escrow where used in place of a performance and completion bond for the construction contract.

1. The Regional or Satellite Office Director may authorize such release, where:
  - a. The project is nearly complete,
  - b. Project completion and final closing may not be attainable with the remaining mortgage proceeds alone or in combination with the Borrower other available assets, and
  - c. Release of the funds will offer an excellent chance for project completion and final closing with clear title.
2. The entire escrow may be released under such circumstances except for 2-1/2 percent of the contract, which amount is needed to fund the latent defects escrow, subject to:
  - a. The MAP Lender must take steps to assure that all required payments by the contractor have been made or will be met to preclude uncovered liens, and
  - b. Disbursement of such funds and Borrower's additional contributions must be under strict control of the mortgagee or a title company.
3. Distribute the Regional or Satellite Office Director's written authorization for release of the funds as follows: original to the Washington Docket with copies to the Field Office Docket, Closing Attorney, and Mortgage Credit Control File.

**F.** Infusion of new money. See [Section A.12.5.3.H.1](#) above.

**G.** Deferment of principal payments where the project is complete and ready for occupancy but cannot go to final closing.

**H.** Mortgage increase may be provided as discussed in MAP Guide [Chapter 13, Section 13.23](#), where economically feasible. Where the contractor is changed because the original contractor becomes bankrupt, abandons the job, or the contract is terminated due to inadequate contractor performance, any mortgage increase must also be processed in accordance with the following:

1. Reprocess the project.
  - a. Use rents, expenses, and occupancy ratios current as of the date of reprocessing.
  - b. Consider the new builder's cost to complete, amounts expended to date, and any increase in carrying charges, financing, etc., due to increased mortgage amount and/or extra construction time over the original estimate.
2. Mortgage increase conditions.
  - a. The Borrower provides any required front money.

- 1) Any recovery from the original contractor or surety must be applied first to reduction of the mortgage on a mandatory basis.
- 2) The balance of the net recovery after legal expense, if any, may be used to indemnify the Borrower, MAP Lender, and others.
- 3) A legal document providing for [Section A.12.5.4.A](#) and [Section A.12.5.4.B](#) above must be included as a rider to the Regulatory Agreement and Lender's Certificate at final closing, where such recovery has not been made before and considered in the cost certification.

I. Reanalyze the Cost Certification for inclusion of all allowable costs where final closing has not occurred.

J. Working capital deposit balance.

## A.12.5.5 Reporting

A. Complete the Default report before final closing, form HUD-58047. Report monthly on the default and describe the plan for curing it.

B. If default cannot be promptly cured, provide a current estimate of income, expenses, and occupancy projections.

C. Distribute Report to:

1. Regional or Satellite Office Director, and the Director of the Office of Asset Management and Portfolio Oversight Division, within two weeks of default.
2. Asset Management's Account Executive staff for use with the Multifamily Default Status Report, form HUD-92426.

## A.12.5.6 Foreclosure

A. **Decision to foreclose.** Make a decision to foreclose where the contractor becomes bankrupt, abandons the job, or the contractor is terminated due to inadequate contractor performance. Encourage the MAP Lender to consider foreclosure and tender of the unfinished property to HUD, where the Regional or Satellite Office Director agrees in writing that it would be advantageous to the insurance fund, e.g., instances where interruption of construction occurs at an early stage and market and/or economic conditions have worsened to preclude attaining project viability. Consider surety's position in reaching this determination.

B. **MAP Lender tenders unfinished property.** Where the Regional or Satellite Office Director agrees in writing that accepting conveyance of such unfinished property would be more advantage to the insurance fund than pursuing project completion:

1. Promptly convey the decision to all interested parties.
2. Request field counsel to maintain close communication with the Lender's and Borrower's counsel and seek advice from the Office of General Counsel as necessary.

C. **Estimate completion cost.** Estimate completion cost for the unfinished project to support a subsequent damage claim against the surety for damages due to contractor's failure to perform.

**D. Document distribution.** Compile original documents, including the Regional or Satellite Office Director's authorization to accept the unfinished project, in the Washington Docket with one copy to the Field Office Docket, Field Counsel, and Mortgage Credit Control File.

## A.12.5.7 Other Matters

**A.** In the event of a mortgage insurance claim before final closing, instruct the MAP Lenders to establish communications with the Office of the FHA Comptroller regarding the surcharge of insurance benefits for recovery of mortgage proceeds.

**B.** For tax-exempt bond funded projects in default before final closing, see [Chapter 11](#) for additional information and riders included in the “Note” and “Lender's Certificate” regarding a default.

**1. Prepayment lock-out and/or penalty override.** Consider exercising HUD authority to override Lender's prepayment lock-out and/or penalty provisions only where:

- a. The project mortgage has defaulted, and HUD has received notice of such default, in accordance with 24 CFR Section 207.256;
- b. HUD determines that the project is experiencing a net income deficiency that is attributable to more than management inadequacy or lack of owner interest, and that the deficiency's magnitude leaves the Borrower unable to make required debt service payments, pay all project operating expenses and fund all required HUD reserves;
- c. HUD finds that there is a reasonable likelihood that the Borrower can arrange to refinance the defaulted loan at a lower interest rate or otherwise reduce the debt service payments through partial prepayment; and
- d. HUD determines that refinancing the defaulted loan at a lower rate or partial prepayment is necessary to restore the project to a financially viable condition and to avoid an insurance claim.

**2. Deadline extension for filing claim intentions.** MAP Lender must request a three-month extension of the election notice filing deadline in the event of a default within the term of the prepayment lock-out and/or penalty. See [Chapter 11](#) and the Lender's Certificate.

- a. Analyze the project's financial condition and assess the feasibility of arranging a successful refinancing.
- b. Recommend that the Regional Center or Satellite Office Director grant the 3-month extension or a shorter extension of the election notice filing deadline, based upon positive conclusions reached by the analysis in [Section A.12.5.1.A](#) above.
- c. Do not consider additional extensions of the election notice filing deadline, unless specifically requested by the MAP Lender.

**C.** In the event of a grant/loan project with a pro rata disbursement agreement that defaults before completion of construction, the governmental entity must disburse the remaining funds where the request for funds remains in the same ratio as previously authorized.

## Appendix 13 Cost Certification

### A.13.1 Agreement Authorizing Reopening of Mortgage Transaction

*(Insert Date)*

*(Insert Mortgagee's Name and Address)*

*(Insert Project Number)*

Madam/Gentlemen:

We have favorably considered your request to reopen this mortgage transaction to increase the maximum insurable mortgage amount. An increase of \$\_\_\_\_\_ is approved making the new maximum mortgage amount \$\_\_\_\_\_. This increase will be insured pursuant to Section \_\_\_\_\_ of the National Housing Act, and Regulations applicable to the original mortgage, provided all legal instruments are modified in a manner satisfactory to the HUD closing attorney assigned to the case. It is understood that no portion of this increase will become available before final closing.

*(Insert the amount of additional fees required and the time of payment thereof in accordance with appropriate Regulations.)*

Please signify your acceptance of this agreement to modify by signing all five (5) copies of this letter in the space provided and promptly returning originals (and an electronic version of the originally-signed letter) to *(Insert name and address of the Regional Director or Satellite Office Director of the Office of Multifamily Housing Production).*

Sincerely,

Accepted HUD By: \_\_\_\_\_

Accepted Mortgagee By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

## A.13.2 Agreement Authorizing Deferment of Principal Payments for Level Annuity Monthly Payment

*(Insert Date)*

*(Insert Mortgagee's Name and Address)*

*(Insert Project Number)*

Madam/Gentlemen:

This letter will serve as our approval of the request for a (further\*) stay in the commencement of principal payments on the mortgage covering the subject project. In this agreement, the following stipulations are pertinent:

It is agreed that principal payments shall be (further\*) deferred for the period beginning \_\_\_\_\_ to \_\_\_\_\_.

The Level Annuity Monthly Payment (Principal and Interest) required to amortize the amount of \$ \_\_\_\_\_ at \_\_\_\_\_% in \_\_\_\_\_ payments from \_\_\_\_\_ through \_\_\_\_\_ is \$ \_\_\_\_\_.

These changes will not affect the eligibility of the mortgage for insurance under the provisions of Section \_\_\_\_\_ of the National Housing Act, as amended, and applicable FHA regulations, provided that before final endorsement of the Mortgage Note, the Building Loan Agreement, the Construction Contract and the mortgage instruments are all modified in a manner satisfactory to the Department of Housing and Urban Development's closing attorney assigned to the case.

In the event of a subsequent claim against the mortgage insurance, insurance benefits will be computed on the basis of the date of default as determined under the terms of the modified mortgage. For the purpose of determining such date, all funds collected during the period of the modification agreement and before your election to claim mortgage insurance benefits will be applied to full monthly installments in the order in which they fall due under the mortgage as modified. The date of default will be the due date of the first installment not fully paid when the funds are so applied.

**\* Insert when applicable.**

Evidence your acceptance of this agreement to modify by signing all five (5) copies of this letter in the space provided and promptly returning originals (and an electronic version of the originally-signed letter) to *(Insert name and address of the Regional Director or Satellite Office Director of the Office of Multifamily Housing Production)*.

Sincerely,

Accepted HUD By: \_\_\_\_\_

Accepted Mortgagee By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

# Appendix 15 Lender Compliance, Loan Underwriting and Application Processing Deficiency Taxonomy

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## A.15.1 Background and Purpose

A. HUD must manage a variety of risks in the Multifamily Accelerated Processing (MAP) FHA Insurance Program and must maintain an appropriate balance between managing these risks and achieving its mission under the National Housing Act. The MAP Guide, and the regulations and statutes on which it is based, sets forth standards and requirements for all active MAP lenders under the program, as well as the loans they underwrite and applications they submit. By referencing examples of noncompliance and deficiencies from the MAP Guide and identifying their relative severity, this taxonomy gives lenders greater clarity on HUD's risk management process and better advises them of what compliance risks and what loan underwriting or application processing deficiencies may result in sanctions and an enforcement action under [Chapter 15](#) of the MAP Guide.

B. The bases for issuing a Letter of Caution, a Warning Letter or other sanction are set forth in this Appendix and in [Chapter 15, Section 15.6](#) and [Section 15.7](#) of the MAP Guide. Note that any specific sanctions or enforcement actions will be based on the facts and circumstances of the individual lender's actions or inactions and of the specific MAP transaction.

C. The taxonomy does not limit HUD's remedies for fraud or misrepresentation in the MAP program or preclude HUD from referring lenders to the MAP Lender Review Board, the Mortgagee Review Board or the Departmental Enforcement Center for noncompliance or deficiencies which, in HUD's judgment, warrant such a referral. Nor does it establish any new standards for administrative or civil enforcement actions, which are currently set forth in law.

## A.15.2 MAP Lender Compliance

A. [Chapter 2](#) sets forth various standards and obligations for lender compliance with MAP program requirements. The list of lender standards and obligations, below, indicates whether a noncompliance is of high or low severity and the likely sanctions for a noncompliance under [Chapter 15](#).

B. Instances of lender noncompliance which are of low severity and for which a Letter of Caution may be issued include, but are not limited to:

1. Failure to seek or obtain COB's approval for administrative matters requiring its review, including lender change of control, sale, merger or license transfers, as is required by [Chapter 2, Section 2.8](#).
2. Failure to notify COB of changes in, or transfers of, key MAP personnel, including MAP approved underwriters and chief underwriters, as is required by [Chapter 2, Section 2.10.2](#) and [Section 2.10.3](#) and [Section 2.12](#).

3. Failure to notify COB of changes in the lender's Quality Control plan, failure to conduct an annual Quality Control review, failure to notify COB of the results of the review or to submit an annual QC certification or a transaction tracking report, or failure of the lender to comply with its own Quality Control plan, as is required by [Chapter 2, Section 2.9](#).
4. Material failure to comply with any agreement, certification, undertaking or condition of approval listed in a MAP Lender's application for approval.
5. Failure: a) to respond in a timely manner to inquiries from; b) to comply with any requirement or directive of; or c) to cooperate with an inquiry, review, audit or investigation into the conduct of the MAP Lender, its MAP applications or its FHA insured mortgages by, the Director of OMP, COB, the DAS for Multifamily Housing, the MAP Lender Review Board, the Mortgagee Review Board, the Departmental Enforcement Center or the Office of Inspector General.

C. Instances of lender noncompliance which are of high severity and for which a Warning Letter may be issued and Targeted Enforcement Actions or other sanctions may be imposed include, but are not limited to:

1. Identities of Interest or conflicts of interest between the parties to a MAP transaction which are not disclosed to or approved by HUD prior to or during application processing and are discovered after a Firm Commitment has been issued, as is prohibited by [Chapter 2, Section 2.6.5](#).
2. Providing prohibited inducements to a borrower in exchange for their agreeing to engage the lender to process a MAP application, as is prohibited by [Chapter 2, Section 2.6.4.7](#).
3. Payment of referral fees to persons or firms which are not actively engaged in the mortgage origination business and are not mortgage brokers, correspondents or consultants, as is prohibited by [Chapter 2, Section 2.4](#).
4. Payment of refunds or kickbacks to a borrower which are prohibited by the MAP Guide and are not disclosed to HUD, as is prohibited by [Chapter 2, Section 2.6.1](#).
5. Payment by or receipt of a payment by a MAP Lender of any kickback, referral fee or other consideration, directly or indirectly from the sponsor or from any other participant in the transaction, that would affect the lender's independent evaluation or represent a conflict of interest, in connection with any insured mortgage transaction, as is prohibited by [Chapter 2, Section 2.6.1](#).
6. Entering into a side agreement with a borrower or other parties to the transaction which is not disclosed to HUD and is intended to circumvent MAP requirements, as is prohibited by [Chapter 2, Section 2.6.4.7](#).
7. Failure to administer rehabilitation or construction escrow disbursements and site inspections in accordance with the requirements of the MAP Guide, as is required by [Chapter 2, Section 2.5.2](#).
8. Employing or retaining an employee, officer, partner, director, principal or third party firm and who is or will be working on MAP program matters at the time when the person or firm was suspended, debarred, ineligible, subject to an LDP or otherwise prohibited from participation in HUD programs, when the MAP Lender knew or should have known of the prohibition, as is prohibited by [Chapter 2, Section 2.6.3](#).
9. A violation of any Federal Statutes or Regulations or of the requirements of any contract with HUD.



10. Fraud or material misrepresentation on the part of the lender in its participation in any FHA multifamily programs. Note, a lender convicted of fraud may be subject to further action under Public Law 111-22.
11. Indictment or conviction of a MAP Lender or any of its officers, directors, principals or employees for an offense that reflects on the responsibility, integrity or ability of the lender to participate in the MAP program.

## A.15.3 Loan Underwriting or Application Processing Deficiencies

**A.** The MAP Guide has many requirements for lender underwriting and application processing, and it imposes a wide range of responsibilities on the lender. A lender's deficient performance of necessary due diligence or market analysis, or failure to adequately identify, assess and mitigate loan transaction issues and risks, may increase risk to the FHA insurance fund.

**B.** HUD will review the quality of the lender's underwriting analysis in the 5 technical disciplines of MAP underwriting, including:

1. Borrower mortgage credit and REO analysis under [Chapter 8](#);
2. Valuation and market analysis under [Chapter 7](#);
3. Architectural and cost analysis under [Chapter 5](#);
4. Cash flow analysis of project income and expenses under [Chapter 3](#) and [Chapter 7](#);
5. Synthesis of all technical disciplines to evaluate risk under [Chapter 3](#).

**C.** The list of MAP underwriting and processing standards and obligations, below, indicates whether a deficiency is of low or high severity, whether a deficiency will result in referral to COB for a lender monitoring review or an enforcement action, and the likely sanctions for a deficiency under [Chapter 15](#). For purposes of this Taxonomy, a material underwriting deficiency is an omission or representation by the lender that would significantly alter the underwriting conclusion and result in increased risk to HUD. A significant finding of underwriting deficiencies is a weakness in the lender's risk analysis which the HUD underwriter identified and addressed during processing but which would not alter the underwriting conclusion or result in increased risk to HUD.

**D.** Deficiencies in application processing which are of low severity and for which a Letter of Caution may be issued include, but are not limited to:

1. Repeated failure to submit with its applications the required exhibits or certifications, repeated submission of incomplete or inaccurate exhibits or certifications, or inadequate disclosure of material facts affecting the loan application as evidenced by multiple deficiency letters issued to the lender during application processing in response to the missing, incomplete or inaccurate exhibits or certifications or inadequate disclosures.
2. Identification of 2 or more material underwriting deficiencies in any of the 5 technical disciplines during processing of any single application, or repeated material underwriting deficiencies in any of the 5 technical disciplines for all applications submitted by the lender within any 12 month period,

whether or not the lender was notified of the underwriting deficiencies via deficiency letters issued during application processing.

3. Repeated failure to complete application processing to a Firm Commitment, unrelated to the project underwriting analysis, which demonstrates that the application process should not have been initiated.
4. Failure to notify the HUD processing office promptly of material changes in the application for a Firm Commitment that has been submitted, such as changes in rents, unit count or configuration, or gross project area.
5. Repeated failure to meet MAP closing requirements or construction loan administration requirements.
6. A violation of MAP procedures or requirements by a third party contractor (appraisers, PCNA inspectors, cost analysts, architectural and engineering studies, etc.) that the MAP Lender knew, or should have known, was occurring and that, if performed by the MAP Lender itself, would constitute grounds for sanctions under this Appendix.
7. Submission of an application which is not signed by an authorized MAP underwriter or chief underwriter, as required by [Chapter 2, Section 2.10](#) and [Section 2.5.1](#), unless the failure to sign the application was inadvertent and the result of an oversight that is immediately corrected.

**E.** Deficiencies in loan underwriting or application processing which are of high severity and for which a Warning Letter may be issued and Targeted Enforcement Actions or other sanctions may be imposed include, but are not limited to:

1. Any early claims, loan assignments or loan defaults occurring within the first 5 years after Final Endorsement which indicate that the claims, loan assignments or loan defaults were likely due to deficiencies in the lender's loan underwriting and risk analysis.
2. Evidence that a lender's improper, inadequate, inaccurate or negligent underwriting was a likely cause for a serious loan delinquency, default, assignment of an insured mortgage or a claim for insurance benefits to HUD, including a material failure to perform appropriate due diligence and quality oversight over third party contractors.
3. Submission of 2 or more applications within any 12 month period which are subsequently rejected by HUD due to noncompliance with MAP standards.
4. Identification of 3 or more instances of material underwriting deficiencies in any of the 5 technical disciplines during processing of any of the lender's applications within any 12 month period, whether or not the lender was notified of the underwriting deficiencies via deficiency letters issued during application processing.
5. Identification of continued material underwriting deficiencies in any of the 5 technical disciplines during processing of any of the lender's applications within any 12 month period after receipt of a Letter of Caution under [Section A.15.3.D.2](#), above, whether or not the lender was notified of the underwriting deficiencies via deficiency letters issued during application processing.
6. Issuance of 2 or more Warning Letters within any 24 month period will result in the lender being referred to the MAP Lender Review Board or the Mortgagee Review Board.

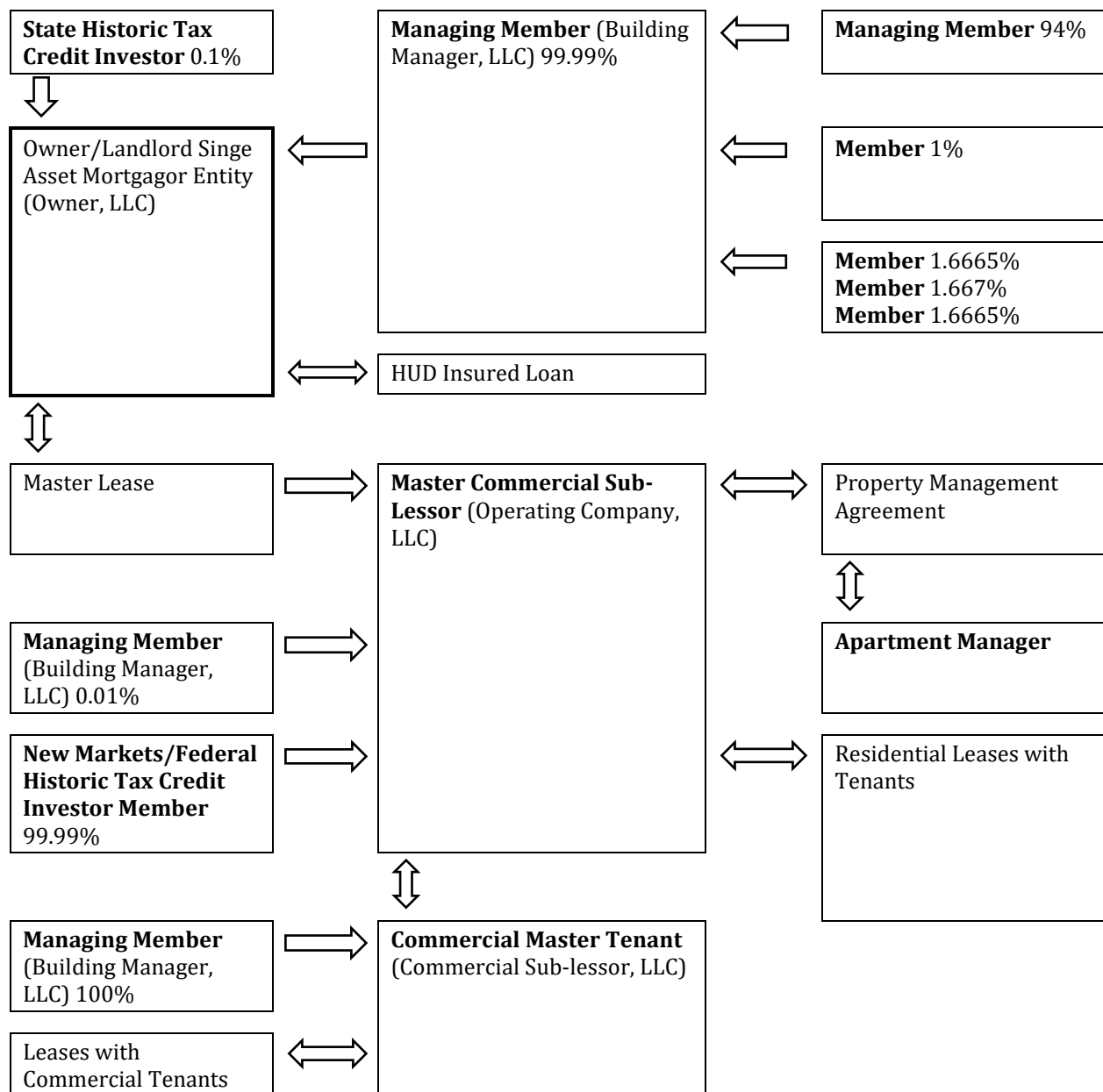
7. Lender collusion with or influence upon third party contractors to modify reports prepared by the contractor that affect the contractor's independent evaluation.
  8. Knowingly submitting false information or a false certification to HUD in connection with any MAP application or mortgage transaction.
  9. Failure to fund an FHA insured mortgage loan or any misuse of mortgage loan proceeds.
- F.** Deficiencies in loan underwriting for which the lender may be referred to COB for a lender monitoring review include, but are not limited to:
1. HUD will use the following process to review and assess the quality of a lender's underwriting for each Firm Commitment that has been issued, which review may result in a referral to COB for a lender monitoring review under [Chapter 15, Section 15.2.3](#). Each Region will maintain a record which summarizes the HUD underwriter's determinations of any significant findings of underwriting deficiencies in a lender's risk analysis in each of the 5 technical disciplines for all transactions on which Firm Commitment were issued.
  2. HUD will review annually each Region's records for all Firm Commitments issued to the lender during the previous 12 months to identify significant findings of underwriting deficiencies in any of the 5 technical disciplines. HUD will compare the average number of the lender's significant findings in any individual discipline to the average number of significant findings in that same discipline for all lenders which were issued Firm Commitments in that Region during the 12 month review period. Lenders whose average number of significant findings of underwriting deficiencies in any of the 5 technical disciplines were higher than the average number of findings in that discipline for all lenders which were issued Firm Commitments by that Region will be referred by to COB for a full or limited lender monitoring review.

## Appendix 16 Organizational Chart for Lease Structure

### A.16.1 Sample Master Lease Ownership Structure

A. MF Housing currently requires the MAP Lender to provide a rendering of an organizational structure in the Underwriter Narrative for a loan application. Examples of two structures are below.

#### Example 1: Organization Structure/Transaction Chart (Federal Historic, State Historic, New Markets Tax Credits)



**Example 2: Organization Structure/Transaction Chart  
(Federal Historic, State Historic, New Markets Tax Credits)**

