
CHAPTER ONE

INTRODUCTION

1.1 GENERAL

- a. Management agents that operate HUD-insured and HUD-assisted multifamily properties play a key role in helping HUD provide quality affordable housing. A principal focus of this handbook is the development of an effective partnership among owners, their management agents, residents and resident associations, and HUD staff to provide quality affordable housing (see Figure 1-1). Throughout this handbook, the term "partnership" specifically refers to the roles of property owners, management agents, residents, and HUD in working together to meet this objective.
- b. This handbook provides guidance regarding most aspects of HUD's relationship and interaction with owners and management agents of HUD-insured and HUD-assisted properties. It also includes guidance regarding the involvement of residents and their representative organizations in key decisions concerning their projects and the importance of supporting resident efforts to organize.
- c. Most of the activities discussed in this handbook are the responsibility of the Office of Multifamily Housing Management. The handbook also describes the role of the Office of Fair Housing and Equal Opportunity (FHEO) in ensuring compliance with civil rights requirements.

1.2 APPLICABILITY

- a. The guidance presented in this handbook applies to management agents of both HUD-insured and HUD-assisted properties. Figure 1-2 lists the different types of HUD properties subject to the provisions of this handbook.
- b. Depending upon the circumstances, HUD, the Administration for Rural Housing and Economic Development Services (ARHEDS), or a state/local agency will be responsible for oversight of management agent activities. In general, state agency-financed projects that are also HUD-insured follow the rules for HUD-insured properties. Agents managing projects that are financed under the ARHEDS Section 515 program generally receive guidance from ARHEDS rather than HUD.

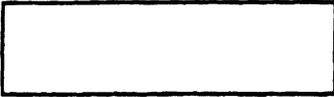
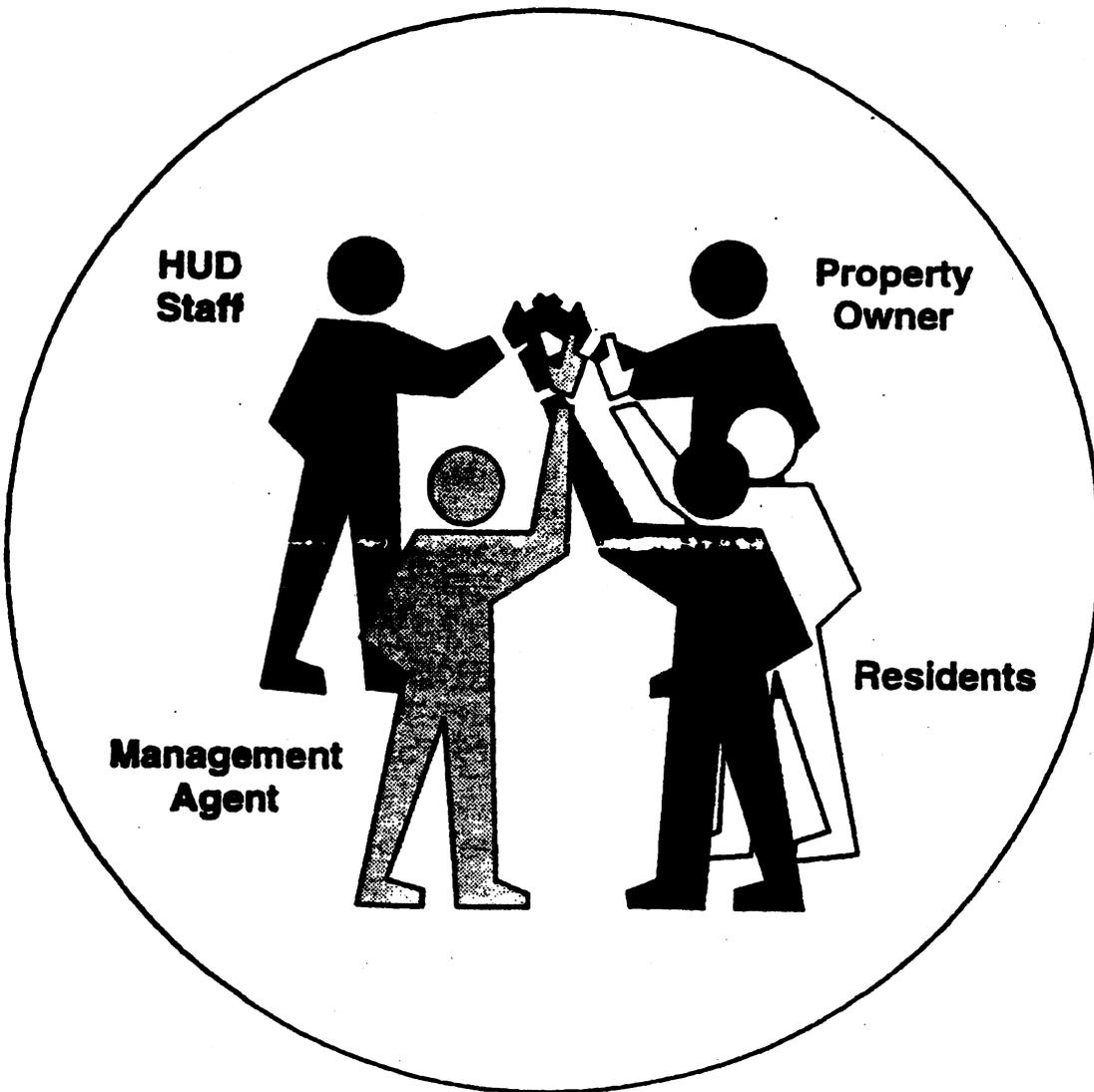


Figure 1-1

HUD is Seeking To Foster A Partnership Among Key Actors



1.3 PURPOSE OF THIS HANDBOOK

- a. This handbook describes the procedures that Loan/Asset Management and other HUD staff need to follow in working with and monitoring management agents of HUD-insured and HUD-assisted properties. The handbook is also designed to serve as a reference for owners and their management agents.

Figure 1-2

Applicability by Type of HUD Property

Types of Properties	Programs Affected
1. Insured Multifamily Housing	Section 221(d)(3) Section 221(d)(4) Section 207 & Section 220 Section 231
2. Interest Subsidy Projects	Section 221(d)(3) BMIR Section 236
3. Project-Based Rental Assistance	Section 8 Multifamily Programs (except Mod Rehab) Rent Supplement and RAP
4. Direct Loans for Housing for the Elderly or the Handicapped	Section 202 and Section 202/8 Section 811

- b. While this handbook provides basic guidance regarding owner/agent responsibilities and HUD procedures, it is designed to be used in conjunction with:

- (1) HUD Handbook 4350.1, Multifamily Asset Management and Project Servicing; and
- (2) HUD Handbook 4350.5, Subsidy Contract Administration and Monitoring.

as well as the relevant HUD multifamily housing handbooks listed at the end of this chapter.

1.4 HUD GOALS

- a. The Office of Multifamily Housing has established the following goals to guide the administration HUD's insured and assisted housing programs:
- (1) Assuring decent, safe, and sanitary housing for those the housing was constructed to serve. HUD is charged with the responsibility to help provide and preserve an adequate supply of affordable housing.
 - (2) Minimizing losses in the multifamily insured, direct loan, capital advance, and property disposition programs.
 - (3) Maximizing collections of all funds due HUD, with particular emphasis on the collection of delinquent debt and Section 236 excess income.
 - (4) Enforcing applicable statutes and regulations.
 - (5) Allocating, administering, and monitoring subsidy-based programs in a cost-effective manner.
- b. HUD Loan/Asset Management staff will work with and monitor management agents and owners of HUD-insured and HUD-assisted properties to achieve these goals and assure that all applicable HUD regulations and program requirements are met.
- c. FHEO Area Office staff will monitor compliance with civil rights statutes, regulations, and civil rights-related program requirements and provide technical assistance as needed.

1.5 COOPERATION

- a. A successful partnership among management agents, owners, residents, and HUD staff is vital to providing an adequate supply of well-maintained, financially solvent, affordable housing on a nondiscriminatory basis. HUD recognizes that while the formal relationships between the members of this partnership are contractually controlled, mutual respect for its partners and an appreciation of their interests are essential for reaching its goals.
- b. Through the procedures it establishes and its interaction with the other partners, HUD will seek to foster an effective working relationship among the members of this partnership. HUD also will look to management agents, residents, and their representative organizations to take steps to build and

maintain a working partnership with HUD. In addition to this commitment to its partners, HUD must also protect its interests as a mortgage insurer and its responsibilities to the nation's taxpayers.

1.6 OWNER/MANAGEMENT AGENT RELATIONSHIP

- a. While HUD will work with management agents and monitor their performance, the property owner is ultimately responsible for a project's compliance with HUD regulations and requirements. HUD expects that owners will oversee the performance of their management agents and take steps to correct deficiencies that occur.
- b. HUD will not intercede in the relationship between owners and management agents except to review the qualifications of a proposed agent and to assure compliance with applicable HUD regulations, program requirements, and civil rights statutes and regulations. The management fee paid to the management agent is determined solely through negotiations between the owner and the agent. HUD will only approve the management fee payable from project funds.

1.7 HUD/MANAGEMENT AGENT RELATIONSHIP

- a. HUD will work with agents to provide quality affordable housing. Activities of HUD Area Office staff include providing assistance to help agents meet their responsibilities, monitoring agent activities for compliance with laws, regulations and the provisions of subsidy contracts and regulatory agreements, and working with associations of housing management agents to resolve conflicts and develop mutually agreeable solutions to problems that arise.
- b. In the spirit of partnership, HUD will exercise care to prevent undue intervention in the affairs of the management agent when taking steps to protect its interests and ensure that agents meet their obligations.

1.8 RESIDENTS' RELATIONSHIP WITH OWNERS, MANAGEMENT AGENTS, AND HUD

Residents and resident associations can be invaluable allies for owners/agents and should be given the opportunity to voice their views and concerns in key decisions regarding the project. Toward this end, HUD encourages owners/agents to go beyond the minimum requirements for resident involvement and take the following steps:

- (1) work to enhance communication between residents and both on-site and senior management;
- (2) facilitate resident access to management;

- (3) ensure that proper consideration is given to resident input; and
- (4) emphasize the importance of promptly resolving problems affecting residents.

1.9 RESOLVING CONFLICTS AND MANAGEMENT ISSUES

- a. This handbook provides guidance regarding a range of management activities and duties. Nonetheless, HUD recognizes that issues will arise which are not addressed in the following chapters. When agents encounter issues affecting their ability to manage their properties effectively, HUD encourages them to work through local professional associations of management agents to identify practices that will provide proposed solutions to these issues.
- b. HUD expects that its Area Offices will work with agents through their professional associations to find mutually acceptable solutions whenever possible. Once agents and their industry groups have identified a potential response to a problem area, they should review the proposed practice with the Director of Housing in the Area Office. Resolution of management concerns pertaining to civil rights compliance or enforcement issues will involve FHEO staff. The Director will assess whether the proposed practices protect HUD's interests and are consistent with the agency's basic regulatory requirements, consulting with Headquarters staff as necessary. Management practices that satisfy these two conditions may be approved for use by management agents in that area. The Area Office may place conditions on the use of proposed practices if necessary to protect HUD's interests.

1.10 WAIVER OF HANDBOOK DIRECTIVES BY HUD AREA OFFICES

- a. Appropriate Uses of Waivers
 - (1) The procedures presented in this handbook are designed to ensure that statutory, regulatory, and contractual obligations imposed on owners of HUD-insured and assisted housing are fulfilled. While some are specifically required by statute or regulation, others have been established by HUD through experience with court cases and problem resolution to provide the means to meet statutory and regulatory goals and objectives and to confirm compliance with program objectives.
 - (2) HUD Area Offices may find that some of the procedures do not allow them to take local conditions into consideration or that alternative procedures would allow them to perform their duties more effectively.

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- (3) If Area Office staff determine that an alternative system or procedure allows them to perform their duties more effectively or helps to overcome problems experienced by owners or agents, the Director of Housing may waive directives specified in this handbook ONLY if they are not formally required by statute or regulation.
- b. Processing of a Waiver. The Director of Housing must prepare a written waiver and waiver justification that includes:
- (1) the reason for the waiver, including the issues to be addressed or the problem to be solved;
 - (2) the procedure that Area Office staff will follow in place of the directive being waived, including an explanation of how the alternative procedure will ensure that all statutory, regulatory, and contractual obligations will be met and HUD's interests protected;
 - (3) the circumstances to which the waiver applies (e.g., whether the waiver applies to all projects in the Area Office jurisdiction, projects in certain circumstances or meeting certain requirements, or only a specific project); and
 - (4) the circumstances under which the waiver will no longer apply (e.g., time limits or threshold requirements that must be maintained).
- c. Area Office Counsel Review and Determination
- (1) Upon the request of the Director of Housing, the Area Office Counsel must review the proposed waiver to confirm that:
 - (a) the waiver is consistent with statutory and regulatory requirements and that other legally binding requirements of any applicable regulatory agreement or housing assistance contract are met; and
 - (b) HUD's interests are adequately protected.
 - (2) If the Area Office Counsel finds that the waiver does not meet the requirements of paragraph (c)(1) above, the directive may not be waived. The Area Counsel may recommend revisions to the proposed waiver that would enable it to be approved.

- d. **Notice to Affected Parties.** Written copies of the waiver and the procedures being implemented under the waiver must be provided as follows.
- (1) If the waiver applies to all projects or a group of projects, the Area Office must make copies available to:
 - (a) owners of HUD-insured and HUD-assisted projects covered by the waiver under the jurisdiction of the Area Office;
 - (b) management agents of these same projects; and
 - (c) formally established resident associations representing the residents of these projects.
 - (2) If the waiver applies to only a single project or a small number of projects held by a single owner, the Area Office must send a written copy to the property owner and management agent specifically stating that the waiver only applies to the specific project or group of projects. The waiver does not need to be distributed to other owners and agents. However, it should be provided to legitimate resident associations representing residents of the affected projects upon written request.
- e. **Notice to HUD Headquarters.** Upon issuing a waiver, the Director of Housing must send HUD Headquarters a copy of the written waiver and guidance for Area Office staff, property owners, and agents.

1.11 ORGANIZATION OF THIS HANDBOOK

This handbook is organized as follows:

Chapter 2, Approval of Management Agents identifies the approving authority for each type of project affected and describes the conditions and procedures for approving management agents.

Chapter 3, Allowable Management Fees from Project Funds outlines the different types of management fees and sets forth the procedures for determining the allowable fee amounts to be paid from project funds.

Chapter 4, Working with Residents discusses the importance of resident involvement in certain areas of project operations and describes owner/agent responsibilities for communicating with and gathering input from project residents.

Chapter 5, Encouraging Training and Employment Opportunities presents HUD's policy of encouraging owners/agents of HUD-insured and HUD-assisted properties to inform residents and area businesses of employment and training opportunities and to consider hiring them.

Chapter 6, Program Monitoring discusses the monitoring procedures Loan/Asset Management staff are expected to follow in monitoring management agent activities to assure that they are in compliance with all applicable HUD requirements.

Chapter 7, Program Compliance describes the types of violations that can occur and the actions HUD must take to assure that compliance is restored.

Chapter 8, Service Coordinators provides owners/agents the ability to request, and HUD the ability to approve rent increases for both budget-based and AAF rents where the owner could justify the expense of a Service Coordinator.

1.12 OTHER REFERENCES

In addition to the two handbooks references in paragraph 1.3 (HUD Handbooks 4350.1 and 4350.5), this handbook references guidance and procedures contained in a number of additional HUD documents. Figure 1-3 lists the additional HUD documents used in conjunction with this handbook.

Figure 1-3**Additional HUD Reference Materials**

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|------------------------------|---|
| ◆ HUD Handbook 4065.1, | Previous Participation Handbook (Instructions) |
| ◆ HUD Handbook 4350.3, | Occupancy Requirements of Subsidized Multifamily Housing Programs |
| ◆ HUD Handbook 4370.1, | Reviewing Annual and Monthly Financial Reports |
| ◆ HUD Handbook 4370.2, | Financial Accounting Procedures Handbook |
| ◆ HUD Handbook 4350.2, | Loan Management Set-Aside Handbook |
| ◆ HUD Handbook 4355.1, | Flexible Subsidy Handbook |
| ◆ HUD Handbook 4350.6, | Processing Plans of Action Under the Low-Income Housing Preservation and Resident Homeownership Act of 1990 |
| ◆ HUD Handbook 4370.4, | Basic Accounting Desk Reference for HUD Loan Servicers |
| ◆ HUD Handbook 4571.1 REV-2, | Section 202 Direct Loan Program for Housing for the Elderly or Handicapped |
| ◆ HUD Handbook 8025.1 REV-2, | Implementation of Affirmative Fair Housing Marketing Requirements for Multifamily Housing |

CHAPTER TWO

APPROVAL OF MANAGEMENT AGENTS

2.1 INTRODUCTION

This chapter discusses the approval procedures for the selection of management agents. Under different circumstances, HUD, Administration for Rural Housing and Economic Development Services (ARHEDS), or a state/local agency may be responsible for approving the management agent. The first section of this chapter describes four management agent types and lists the conditions under which each federal or state/local agency has approval authority. The second section discusses the procedures for management agent approval under HUD authority. The third section discusses the procedures for management agent approval under ARHEDS and state/local agency authority.

SECTION 1: BACKGROUND

2.2 AGENT SELECTION AND APPROVAL AUTHORITY

The project owner is responsible for seeking out and selecting a management agent, but the selection is subject to the approval of the authorizing agency. This authorizing agency may be HUD, or it may be ARHEDS or the state/local agency, depending upon the project type and the mortgage insurance coverage. See Figure 2-1.

Figure 2-1 Approval Authority by Project Type	
APPROVING AUTHORITY	PROJECT TYPE
HUD	All multifamily projects insured or financed directly by HUD, and HUD-assisted multifamily projects where HUD is the Contract Administrator.
State/local agencies	Non HUD-insured multifamily housing projects where a state or local housing agency financed the project or serves as the Contract Administrator for HUD assistance. HUD Area Offices perform Previous Participation review to determine agent eligibility.
ARHEDS	HUD-assisted multifamily housing financed by ARHEDS. HUD Area Offices perform Previous Participation review to determine agent eligibility.

- a. **HUD Approval Authority.** HUD has approval authority for all multifamily HUD-insured and HUD-assisted projects where HUD is the contract administrator. Furthermore, regardless of approving agency, HUD will conduct all Previous Participation Clearance (Form HUD-2530) reviews for all types of projects.
- b. **State/local housing agency Approval Authority.** State/local agencies have approval authority for all non-HUD insured projects where the agency financed the project or serves as the subsidy contract administrator. As part of the approval process, the state/local agency must submit to HUD a Previous Participation Certification (Form HUD-2530) for the proposed management agent as described in paragraph 2-9a. With respect to all other procedures discussed in this chapter, state and local agencies may develop their own criteria or elect to use the procedures established in this Chapter. See Section 3 of this chapter for additional guidance.
- c. **ARHEDS Approval Authority.** ARHEDS has approval authority for all ARHEDS 515/8 projects. The ARHEDS Office must submit a Previous Participation Certification for the proposed management agent for all ARHEDS 515/8 projects as described in paragraph 2-9a. With respect to all other procedures discussed in this chapter, ARHEDS may develop its own criteria or elect to use the procedures established in this Chapter. See Section 3 of this chapter for additional guidance.

2.3 TYPES OF MANAGEMENT AGENTS

Figure 2-2	
Four Types of Management Agents	
1.	Owner/Manager
2.	Identity of Interest Management Agent
3.	Independent Fee Agent
4.	Project Administrator

(In this handbook, the term "management agent" applies to all four forms of management agents unless a specific distinction is made because of policy or procedural differences.)

- a. **Owner/manager.** In this relationship, the owner and the management agent are the same business entity. This is also referred to as self-management. A project is not self-managed if some or all of the same individuals are involved in both the ownership entity and the management agent but the organizations are legally different business entities.

For example, if the owner is a limited partnership, and the general partner of the ownership entity serves as the management agent, the management agent is not an owner/manager because the management agent and the mortgagor are different business entities. Instead, the management agent is an **identity-of-interest management agent** (see paragraph 2.3b).

- b. **Identity-of-interest (IOI) management agent.** An IOI relationship exists when an individual or entity that provides management services to the project has a relationship with the project owner that is such that selection of the management agent and determination of the management fee will not be determined through an arms-length transaction.

- (1) An identity-of-interest relationship exists when:

- (a) The owner entity or a general partner of the owner entity, or
- (b) Any officer or director of the owner entity, or
- (c) Any person who directly or indirectly controls 10 percent or more of the voting rights, or owns 10 percent or more of the owner entity

is also

- (d) An owner, general partner, officer, or director of the management agent company or its subcontractor, or
 - (e) A person who directly or indirectly controls 10 percent or more of the voting rights, or owns 10 percent or more of the management company or its subcontractor.
- (2) "Person," as used above, refers to any individual, partnership, corporation, or other business entity. Any ownership, control, or interest held or possessed by a person's spouse, parent, child, grandchild, or sibling or other relation by blood or marriage is attributed to that person for this determination.
- (3) "Subcontractor," as used above, refers to any individual or company that contracts with the management agent to provide management services to the project.

- c. **Independent fee management agent.** A management company or individual that has no identity-of-interest relationship with the owner (see paragraph 2.3b) and no financial interest or involvement in the project, other than earning a fee for providing management services.
- d. **Project administrator.** An individual who directs the day-to-day activities of a project designed for elderly, handicapped, or disabled residents, and who reports to the Board of Directors. Generally, a project administrator is an employee of the project, rather than a contractor; has a job description and/or employment agreement with the project instead of a management agreement; and receives a salary rather than a management fee.

2.4 PRINCIPLES OF THE REVIEW PROCESS

- a. **Approval will not be unreasonably withheld.** A management agent's contract is with the project owner. HUD will not unreasonably withhold approval of the proposed agent for a project.
- b. **HUD reviews protect the public interest.** HUD reviews management agent performance, experience, and capabilities to protect the public and its own interests. HUD does not disapprove agents to penalize program participants who have had past performance problems.
- c. **Past Performance and Current Expertise are Considered.** Loan/Asset Management staff must consider both the agent's past performance and the probability of future compliance.
- (1) Area Offices will not issue disapprovals based on past performance without considering corrective actions taken by the agent to address previous poor performance.
 - (2) If there are management problems or open audit findings at projects the agent currently manages, Area Offices will consider the following in deciding whether to approve or disapprove an agent:
 - (a) whether the agent caused or exacerbated the problem(s); and
 - (b) whether the agent has taken, or is taking, all reasonable steps to correct the problem(s) and address HUD's concern(s).
- d. **Experience.** Although the Loan/Asset Management staff may disapprove the agent if the proposed agent clearly lacks the skills or experience to manage the project, they may not refuse to approve an agent merely because the agent has not previously managed the type of project being proposed (e.g., has

managed only Elderly or only Family units). Instead, the Loan/Asset Management staff must assess the agent's strengths in management systems and procedures that will be essential to management of the new type of project.

- e. Monitoring. HUD will use the documents submitted during the approval process as the basis for monitoring the agent's performance and compliance with all conditions agreed to during the approval process. HUD will require owners to replace agents that do not adequately perform their management responsibilities.

2.5 STANDARDS FOR MANAGEMENT AGENT APPROVAL

The owner agent is entrusting a management agent with the day-to-day operation of the project. Therefore, the owner and HUD must be assured that the project will be managed in a prudent, efficient, and cost-effective manner, in accordance with applicable laws and HUD rules, contracts, and procedures. HUD requires that the management agent:

- (1) Be eligible and in good standing with HUD (see paragraphs 2.10 and 2.11);
- (2) Demonstrate effective management experience and acceptable operating procedures (see paragraph 2.12);
- (3) Carry adequate fidelity bond coverage (see paragraph 2.14);
- (4) Be in compliance with civil rights laws, regulations and requirements (see paragraph 2.10b); and

Agents should also demonstrate a positive record of communication and cooperation with legitimate resident associations (see Chapter 4).

2.6 MANAGEMENT AGENT ASSUMPTION OF RESPONSIBILITY

Generally, the management agent may assume management responsibility only after:

- a. The HUD Loan/Asset Management staff has issued a letter approving the agent proposed by the owner; and
- b. The owner and agent have executed and submitted the appropriate Management Certification form (Form HUD-9839a, b, or c); and
- c. The owner and agent have executed a Management Agreement, as necessary (see paragraph 2.17).

2.7 MANAGEMENT IN EMERGENCY SITUATIONS

An owner or agent may assume management of a project without prior Loan/Asset Management staff approval only in an emergency (e.g., an agent has abandoned a project or HUD has required the owner to terminate a management agreement).

2.8 SUBSEQUENT AGREEMENTS WITH MANAGEMENT AGENTS

Once HUD has approved a management agent for a particular project, the owner and agent do not have to seek HUD approval for subsequent agreements as long as the agent remains at the project, unless HUD has imposed a Limited Denial of Participation (LDP), Suspension, or Debarment on the agent. (See paragraph 2.10a)

SECTION 2: PROCEDURES FOR HUD APPROVAL OF MANAGEMENT AGENTS**Figure 2-3****Key Steps in Management Agent Approval Process**

- 🔑 The project owner selects proposed management entity.
- 🔑 The owner submits required documentation to HUD.
- 🔑 HUD reviews the project owner's submission to assess proposed agent's:
 - ◆ eligibility
 - ◆ past performance
 - ◆ management capacity and experience
 - ◆ fidelity bond coverage.
- 🔑 HUD issues a decision letter.
- 🔑 The owner executes an acceptable Management Agreement with the agent.

2.9 OWNER/MANAGEMENT ENTITY APPROVAL SUBMISSION REQUIREMENTS

To request approval of the management entity, the owner/agent must submit the following information to the HUD Area Office at least **60 days** before the date the owner wishes the new agent to assume responsibility. In the case of emergency replacements of management agents (see paragraph 2.7) the owner/agent must submit the information needed for HUD to review and approve the new management agent as soon as the new agent is identified.

- a. Previous Participation Certification. Form HUD-2530 (see Appendix 1) reports the names of all principals and affiliates of the management agent and any previous housing projects in which they have participated. It further certifies that they currently are eligible to participate in the management of the HUD-insured, financed or assisted multifamily project.
- b. Management Entity Profile. Form HUD-9832 (see Appendix 2) provides HUD with information on the management entity's organization and procedures, including treatment of identity-of-interest relationships. It also shows the types of projects the agent has managed and what skills or professional certificates

the agent's staff hold. It does not provide information on how the agent has operated individual projects.

- (1) If the management entity has already submitted a profile in the format of the HUD-9832 and the profile is still accurate, the owner/agent should state in the cover letter requesting approval of the management entity that an accurate and up-to-date profile is on file. The cover letter should also include the date that this document was submitted. A new submission is not required.
 - (2) If a previously-submitted profile is not current, or if the management entity has never submitted a profile that conforms with the HUD-9832 format, the owner or agent must submit a new profile of the management entity.
 - (3) An updated profile must be submitted whenever there are changes in the management entity's organization or operations. The owner and/or agent should not wait until the management fee changes to submit a revised profile.
- c. **Management Certification.** Using Form HUD-9839a, b, or c, as appropriate, (see Appendix 3) the owner and management agent together certify that they will comply with HUD requirements and contract obligations, execute an acceptable management agent agreement, and that no payments have been made to the owner in return for awarding the management contract to the agent and such payments will not be made in the future (projects not managed by the owner). Owners and agents must fill out the appropriate Certification Form as follows:
- (1) Owner-Managed Projects submit Form HUD-9839a
 - (2) Identity of-Interest Agents submit Form HUD-9839b
 - (3) Independent Fee Agents submit Form HUD-9839b
 - (4) Project Administrators submit Form HUD 9839c.
- d. **Proposed Staffing to be Charged Against the Project Operating Account.** (See paragraph 6.38 for a discussion of which positions can be charged against the operating account.)
- (1) Owners/agents must provide a listing of the staff whose salaries will be paid from the project's operating account. The list must include:
 - (a) Job titles and approximate salary, including hourly rate;

- (b) A statement of each position's duties, if not obvious by title and whether the position is full or part-time;
- (c) If the employee will be working for more than one project and/or working part-time for the agent in a non-supervisory capacity, a statement of how that person's time and salary will be allocated.

Note: Salaries of management agent supervisory staff not assigned to the project must be paid from the management fee. Only full-time, front-line supervisors may be paid from the project account (see exceptions to this rule in paragraph 6.39(c)).

- (2) Any changes in staffing structure described in the listing above or additions in staff, which would require submitting a rent increase request to HUD, should be documented as part of the budgeted rent increase request process.
- e. **Resident Complaints and Their Resolution.** Owners must provide a description of the system employed by the agent for resolving resident complaints and actual examples of the agent's implementation of the system.
- f. **Additional Information Required by the HUD Area Office.** The Loan/Asset Management staff may require owners to submit additional information to clarify materials already submitted. Materials requested may address:
 - (1) Determining the management agent's acceptability.
 - (2) Monitoring the agent's compliance with HUD requirements.
 - (3) Resolving project operating problems.

Figure 2-4 lists the types of additional information that may be needed to assess the acceptability of a proposed agent. Loan/Asset Management staff should not require owners to submit this type of information on a specific form.

2.10 AGENT ELIGIBILITY BASED ON PREVIOUS PARTICIPATION

- a. **Previous Participation Review.** To assess if a proposed agent is eligible, Loan Management staff must perform a Previous Participation review to determine if the management agent or any of its principals are ineligible (24 CFR, Part 200.213). Loan/Asset Management staff will process Form HUD-2530, the Previous Participation Certification. (Instructions are in HUD Handbook 4065.1, Previous Participation Handbook.) If HUD has taken one or more of the following actions against the proposed agent or one of its principals, the agent may not be approved to manage the project.

Figure 2-4

**Information HUD Area Offices Might Need to Assess
the Acceptability of a Proposed Management Agent**

Situation	Type of Information
1. Area Office is familiar with the agent's operating procedures and agent has satisfactorily managed projects similar to the one under consideration.	Explanation of how operating and oversight procedures for this project will vary from any others normally used by the agent
2. HUD Area Office has had no experience with the agent or is unsure of the agent's ability to manage the project.	To aid in future performance monitoring, new agents need to include a narrative explaining how the agent will handle the management tasks listed on Form HUD-9834, Management Review Report, and/or a copy of the agent's procedures manuals
3. Project has significant physical, financial, or social problems.	<p>Statement of project's problems and their causes</p> <p>Review of recent Forms 9834 and open IG audits on the project</p> <p>List of actions to be taken to eliminate those causes and correct the problems (e.g., repairs, rent increase, change in operating procedures)</p> <p>Schedules for implementing the above actions</p> <p>List of projects with similar problems or needs that the agent has previously or is currently managing</p>
4. New project preparing for rent-up.	Description of planned advertising and marketing efforts. (NOTE: If an Affirmative Fair Housing Marketing Plan is on file for the project, use the information in that plan.)
5. Owner/manager proposes to contract out certain management functions.	List of functions to be contracted out, as well as a description of the contractual relationship and the contractor's qualifications and experience in those functions
6. Project is different from any other project(s) the agent is currently managing in the Area Office's jurisdiction	List of similar projects in other Area Office jurisdictions

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- (1) Headquarters has suspended or debarred the management agent or any of its principals (24 CFR, Part 24.200)
 - (2) Headquarters has placed the agent or any of its principals in an ineligible status -- i.e., HUD has disqualified the agent or principal from participation in HUD programs because another Federal Agency has imposed a sanction (24 CFR, Part 24, subpart G).
 - (3) The HUD Area Office in which the project is located has issued a Limited Denial of Participation (LDP) for the agent. The HUD Area Office may also restrict or deny an agent's participation on the basis of an LDP issued by another Area Office (24 CFR, Part 24, subpart G).
- b. FHEO Input. Loan/Asset Management staff should also seek FHEO input regarding a proposed management agent. FHEO can alert Loan/Asset Management staff to proposed participation by persons who have been found, through appropriate procedures, to be in violation of civil rights laws, regulations, or requirements.

2.11 AGENT ELIGIBILITY IN SECTION 202 PROJECTS

- a. Self Management. The Borrower may self-manage the project provided that the salaried employee responsible for managing the project is not an office, board member or authorized agent of the Sponsor or Borrow and a waiver of Paragraph 11(b) of the Regulatory Agreement (Form FHA 2466-EH), is obtained from Headquarters to permit self management. The salary included in processing the project expenses must be what is reasonable and customary.
- b. Identity of Interest Management Agents.
- (1) An identity-of-interest relationship exists if any officer, director, board member, or authorized agent of any development team member (consultant, general contractor, attorney, management agent, seller of the land, etc):
 - (a) Is also an officer, director, board member, or authorized agent of any other development team member;
 - (b) Has any financial interest in any other development team member's firm or corporation;
 - (c) Is a business partner of an officer, director, board member, or authorized agent of any other development team member;

- (d) Has a family relationship through blood, marriage or adoption with an officer, director, board member, or authorized agent of any other development team member; or
 - (e) Advances any funds or items of value to the sponsor/ borrower.
- (2) The Sponsor or its nonprofit affiliate may be retained by the Borrower to manage a Section 202 project if no more than two paid officers, directors, board members, or authorized agents of the Sponsor also serve as nonvoting board members of the Borrower corporation. In such cases a waiver of 24 CFR Part 885.5 and Paragraph 11(b) of the Regulatory Agreement is required.

2.12 REVIEW OF AGENT PERFORMANCE, EXPERIENCE, AND CAPABILITY

Loan/Asset Management staff must review the qualifications of the proposed agent to assess the agent's ability to manage the project effectively and in compliance with HUD requirements. Loan/Asset Management staff must consider each of the factors below in reviewing an agent's qualifications. Paragraph 2.13 provides guidance about how to conduct the review and document the results.

a. Past and Current Management

- (1) Loan/Asset Management staff must review the proposed agent's past experience and current performance with respect to the following performance indicators:
- (a) Billing
 - (b) Controlling operating expenses
 - (c) Vacancy rates
 - (d) Resident turnover
 - (e) Rent collection and accounts receivable
 - (f) Physical security
 - (g) Physical condition and maintenance
 - (h) Resident relations.

Figure 2-5 provides guidance for determining whether changes are needed in the Management Agent's operating procedures.

- (2) If problems are identified with any of these indicators, Loan/Asset Management staff must assess whether the agent has adequately improved its procedures to prevent the recurrence of such problems or whether management initiatives proposed by the agent and owner are

Figure 2-5

**Determining Whether Changes Are Needed
in the Management Agent's Operating Procedures**

If:	Assess Procedures for:
Billings: The agent has consistently submitted late or incorrect HUD-50059 certifications or subsidy billings.	Training occupancy staff and reviewing the occupancy staff's work. (The agent should have described these procedures in the Management Entity Profile.)
Operating expenses: Operating expenses are higher than those of comparable projects (i.e., assisted projects are compared to other assisted projects and unassisted projects are compared to other unassisted projects).	Comparing prices, taking advantage of discounts, and bulk purchasing. Preparing budgets and monitoring actual expenses against budgeted amounts.
Vacancy rates: Vacancy rates are higher than those of comparable projects.	Marketing and preparing units for occupancy following move-out.
Resident Turnover: Turnover rates have been higher than those of comparable projects.	Screening residents. Responding to resident complaints and repair requests. Project maintenance.
Rent collection and accounts receivables: Accounts receivables have been high.	Screening residents for payment history. Collecting rents in a timely manner. Pursuing delinquent accounts.
Physical security: Project has frequent break-ins, vandalism, or drug problems.	Providing security services.
Physical condition/maintenance: Project has critical and continuous physical condition/maintenance problems attributed to the Management Agent. Project is not well maintained.	Compliance with contractual terms and HUD- required corrections. Performance evaluations and responsiveness to HUD- required actions. Responding to resident concerns.
Resident Relations: Verified evidence that the agent has shown a pattern of harassment of residents or legitimate resident organizations.	Recognition of independent, representative resident associations; communication with resident associations; and distribution of information about residents' rights and responsibilities.

sufficient to correct the problems and their causes. Figure 2-6 presents two sample situations of agents with past performance problems and how to assess the probability of future compliance.

- b. **Ability to Manage Troubled Projects.** If the project the agent will manage has physical, financial or social problems that require special expertise or skills to manage effectively, Loan/Asset Management staff must determine whether the agent has the necessary skills and expertise to manage the project and whether the agent's proposed remedies are appropriate. Agents proposed for these projects should have prior experience successfully addressing similar issues.
- c. **Management Qualifications.** The proposed management agent should have at least one person who establishes the agent's policies and supervises project operations with the following qualifications:
- (1) A professional designation in housing management from a national organization that provides such accreditation, or
 - (2) A minimum of two years experience in directing and overseeing the management of multifamily projects serving a similar resident clientele.

The Loan/Asset Management staff may accept a proposed agent without the experience requirements listed in this subparagraph if the agent is satisfactorily managing other HUD-insured or subsidized projects.

- d. **Past Performance with IOI Contractors.** If the agent purchases goods or services from identity-of-interest companies and has previously managed HUD-insured and/or subsidized projects, Loan/Asset Management staff 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 11b 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 the contracting and hiring guidelines in Chapter 5 and Paragraph 6.49.

Figure 2-6

Assessing an Agent's Past Performance and Probability of Future Compliance**SAMPLE SITUATIONS**

Situation 1: The agent has seriously or frequently misused project assets or violated HUD requirements, but has corrected the violations.

The Area Office should consider: **Will the agent repeat these violations?** If the Area Office concludes that the answer is no, it should approve the proposed agent. It might reach this conclusion if:

A. The violations were caused by weaknesses in the agent's operating procedures and the agent has since implemented acceptable procedures.

or

B. The violations were caused by persons who are no longer associated with the management agent.

If there is reason to believe that the agent will repeat these violations, then the Area Office should impose a Limited Denial of Participation (LDP) on the agent.

Situation 2: In the past, the agent seriously or frequently violated HUD requirements and did not properly correct the violations.

The Area Office may still approve the agent on a conditional basis, if the agent and the Area Office have agreed on actions, and a schedule for implementing them, that will correct the violations. Before making the conditional approval, the Area Office should determine that the agent has made satisfactory progress toward correcting the violations -- in short, that the agent is making a good-faith effort to restore and ensure compliance with HUD requirements.

Under a conditional approval, the management agreement between the owner and the agent must:

A. incorporate or refer to the schedule for completing the corrective actions,

and

B. Contain a clause giving HUD the right to request termination of the management agreement at any time if the agent is not making satisfactory progress toward completing those corrections.

The Area Office will have to incorporate monitoring of that progress into its review process.

If the Area Office and the agent do not agree on actions and a schedule for implementation, or do reach an agreement but the Area Office determines that the agent has not made satisfactory progress in correcting the violations, the Area Office will impose a LDP until it determines that the agreement is in place and the agent is making satisfactory progress.

In both situations: If the problems on which the LDP are based are serious enough to warrant a denial of participation nationally and/or in other programs, the Area Office will request Headquarter's Office of Multifamily Housing to initiate action for debarment or suspension.

2.13 CONDUCTING REVIEWS OF AGENT QUALIFICATIONS

- a. **Timing of decision.** The Loan/Asset Management staff should normally issue a decision on the acceptability of a proposed management agent within **45 days** of receiving all the materials listed in paragraph 2.9, unless processing delays in receiving the HUD-2530 clearance preclude completing the review within this time period.
- b. **Information Sources for the Review.** Loan/Asset Management staff have a variety of sources of information about the proposed management agent.
- (1) **Management Entity Profile.** Loan/Asset Management staff can use the information listed on the form to solicit opinions from:
- (a) Other Area Offices that have worked with this agent, as noted in Section 19a of the Management Entity Profile.
- (b) ARHEDS offices and State/local agencies that have worked with this agent, as noted in Section 19c of the Management Entity Profile.

For ARHEDS-financed projects insured by HUD, Loan/Asset Management staff should inquire with the ARHEDS offices shown on Schedule A of Form HUD-2530.

- (2) **Audit Reports.** Open audit reports and information about IG or GAO audits in progress related to the project, the management agent, or individual principals can be obtained from the Area Office Inspector General for Audit (IGA). Upon request, the IGA will provide:
- (1) Report numbers, titles, and dates of audit reports;
- (2) The nature of any findings; and
- (3) Whether the findings are open or closed.

The Loan/Asset Management staff should review these reports to determine whether the proposed agent was managing the project when the audit took place, and whether the deficiencies cited in the audit were within the agent's authority to correct.

- (3) **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.

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- (4) Monthly and Annual Financial Statements of the Project, including the Independent Public Auditor (IPA) Internal Controls Questionnaire.
- (5) Additional Documentation. Additional documentation that the HUD Loan/Asset Management staff may review includes:
- (a) HUD/mortgagee on-site review reports;
 - (b) Results of Form HUD-50059 and voucher reviews;
 - (c) Correspondence;
 - (d) Resident complaint files; and
 - (e) Previous management reviews.
- c. Documentation of Review Results. Loan/Asset Management staff must develop a format to document their review of management agents. The review documentation must provide evidence for Headquarters and for the owner and proposed agents that Loan/Asset Management staff has reasonably considered all information pertinent to its decision.

2.14 BONDING REQUIREMENTS FOR AGENTS

Loan/Asset Management staff must also determine whether the agent has adequate bonding. The Loan/Asset Management staff may not waive these minimum fidelity bond requirements. To provide a basic level of protection for the multifamily project assets:

- a. The management agent must certify in the Management Certification that it carries fidelity bond or employee dishonesty coverage for:
 - (1) All principals of the management entity, and
 - (2) All persons who participate directly or indirectly in the management and maintenance of the project and its assets, accounts, and records.
- b. The fidelity bond or coverage must name the mortgagee and HUD as additional loss payees.
- c. Coverage may be through one or more bonds, and one bond may cover more than one project, including projects whose mortgages are not insured or held by HUD. The agent's principals and supervisory and front-line staff may be covered under the same bond.

- d. Each project must be insured for at least the value of two months' gross potential income for the project. If a bond covers more than one project, this minimum must be computed using the project with the highest gross potential income.

EXAMPLE: If an agent seeks to manage three projects with monthly gross income of \$50,000, \$75,000, and \$150,000, the agent may obtain one bond with a value of \$300,000 – two months' income from the \$150,000 project – to cover all three projects.

2.15 APPROVAL OF THE PROPOSED MANAGEMENT AGENT

- a. Grounds for Approval. HUD will approve a proposed management agent when:
- (1) HUD Headquarters approves the Form HUD-2530 clearance;
 - (2) Loan/Asset Management staff determines that the agent has the capacity to manage the project effectively and in accordance with HUD requirements; and
 - (3) Loan/Asset Management staff determine that the agent has adequate fidelity bond coverage.
- b. Conditional Approvals. All issues raised during the review that may negatively impact the Loan/Asset Management staff's decision should be discussed with the owner and agent, as necessary and appropriate. If the Loan/Asset Management staff feels that the agent is acceptable but concludes that the agent's proposed procedures are weak in particular areas, it may make a conditional approval of the proposed management agent by:
- (1) Sending the owner a letter describing the specific weaknesses identified and discussing these weaknesses with the owner and/or agent as appropriate; and
 - (2) Reaching an agreement with the owner and agent as to how the agent will change its procedures. This agreement should indicate the specific steps the owner/agent will have to take to remedy the identified weaknesses and establish a date by which HUD will reassess the agent's acceptability. The agreement should be included in the letter approving the management agent.

The second sample situation in Figure 2-6 illustrates the use of a conditional approval.

- c. **Scheduling Initial Management Reviews of Less Experienced Agents.** When issuing approvals for agents who have not previously managed HUD projects or who do not have experience with the particular type of project under consideration, Loan/Asset Management staff should schedule a comprehensive management review to be performed within 12 months of the date the agent assumes responsibility for the project, unless otherwise specified by program requirements.

2.16 DISAPPROVAL OF THE PROPOSED MANAGEMENT AGENT

- a. **Previous Participation Rejection.**
 - (1) If Headquarter's Participation Control Officer/Review Committee decides to deny or withhold approval of an agent's participation in accordance with 24 CFR, Parts 200.226-230, it will notify the owner and agent directly in writing and send a copy to the Loan/Asset Management staff.
 - (2) The Loan/Asset Management staff must then advise the owner that the project may not enter into an agreement, pay, or become obligated to pay management fees to the proposed agent and of the owner's right to appeal this decision.
- b. **Owner Response.** The owner must:
 - (1) Propose another management agent, or
 - (2) Await resolution of any appeal the agent files under 24 CFR, Part 200.241 and make interim management arrangements acceptable to the Loan/Asset Management staff.

2.17 MANAGEMENT AGREEMENT REQUIREMENTS

- a. **Applicability.** Projects with identity-of-interest agents or independent fee agents must execute a Management Agreement. An Agreement is recommended, but not required, for owner-managed projects or projects managed by a project administrator.
- b. **Required contents.** The owner and agent may negotiate their own form of agreement provided that it contains language to meet the following requirements:

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- (1) **Scope of service.** All management agreements must describe the services the agent is responsible for performing and for which the agent will be paid management fees.
- (2) **Required clauses.** All agreements must provide that:
- (a) Management fees will be computed and paid according to HUD requirements.
 - (b) HUD may require the owner to terminate the agreement:
 - (i) **Immediately, in the event a default under the Mortgage, Note, Regulatory Agreement, or Subsidy Contract attributable to the management agent occurs;**
 - (ii) **Upon 30 days written notice, for failure to comply with the provisions of the Management Certification or other good cause; or**
 - (iii) **When HUD takes over as MIP.**
- NOTE: As a good business practice, the management agreement should always give the owner the ability to terminate the contract for cause, with notice.**
- (c) If HUD terminates the agreement, the owner will promptly make arrangements for providing management satisfactory to HUD.
 - (d) HUD's rights and requirements will prevail in the event the management agreement conflicts with them.
 - (e) The management agent will turn over to the owner all of the project's cash, trust accounts, investments, and records immediately, but in no event more than 30 days after the date the management agreement is terminated.
- (3) **Prohibited "hold harmless" clause.** Management Agreements cannot exempt the agent from all liability for damages and injuries.

A sample prohibited clause would read:

"The owner agrees to hold and save agent harmless from dangers of injuries to persons or property by reason of any cause whatsoever, either in or about the premises or elsewhere, when agent is carrying out

the provisions of this agreement, or acting under the express or implied direction of the owner."

To make this clause acceptable:

- (a) Delete the underlined words, and
 - (b) Add "unless such injuries resulted from the agent's gross negligence or willful misconduct" after "direction of the owner".
- c. Length/term of the Agreement. The length/term of the Agreement is negotiated between the owner and the management agent. The Loan/Asset Management staff may impose a maximum term on the Management Agreement if the Loan/Asset Management staff approved the agent on a conditional basis.
- (1) The contract may provide for a fixed term or an open-ended term (e.g., automatically renewable or "to remain in effect until cancelled by HUD, the owner, or the agent").
 - (2) If the length/term of the Agreement changes, the owner/agent must submit a new Management Certification.

**SECTION 3: REVIEW PROCEDURES FOR MANAGEMENT ENTITIES SUBJECT TO
ARHEDS OR STATE/LOCAL AGENCY APPROVAL**

2.18 GENERAL

- a. Management agents for HUD-assisted properties which are financed by state/local agencies or through the ARHEDS Section 515 program are approved by the financing agency. (See Figure 2-1 for a complete description of approval authority by project type.)
- b. State/local agencies and the ARHEDS may approve a proposed agent only if:
 - (1) HUD Headquarters has approved the HUD-2530 clearance; and
 - (2) The state/local agency or ARHEDS is satisfied that the agent has the capacity to manage the project.
- c. Apart from the Form HUD-2530 review process described above, state/local agencies and ARHEDS may develop their own policies and procedures for reviewing and approving management agents. They may elect to use HUD forms and procedures or design different ones.
- d. Monitoring records should be kept in accordance with the Contract Administrator's Handbook (HUD Handbook 4350.5).

2.19 STATE/LOCAL AGENCY AND ARHEDS PROCESSING PROCEDURES

- a. Upon receiving the Form HUD-2530 and any other documentation required by the agency, the state/local agency or ARHEDS must assess the acceptability of the proposed agent.
 - (1) If the state/local agency or ARHEDS staff know that HUD has taken any of the actions described in paragraph 2.10a against the proposed agent or one of its principals, it should advise the management agent that HUD will not approve its participation.
 - (2) The state/local agency or ARHEDS has full authority to disapprove a proposed management agent without processing and submitting the Form HUD-2530 to HUD if there is good reason for doing so.

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- b. If the agent is acceptable to the state/local agency or ARHEDS, the agency should send to the Loan/Asset Management staff:
- (1) The original Form HUD-2530 with a letter stating that the Form HUD-2530 is being submitted in connection with the review of a proposed management agent; and
 - (2) If the agency is aware of involvement by the owner or any of its principals with a project that did not comply with HUD's regulations or administrative procedures, information about:
 - (a) Names of involved principal(s);
 - (b) The nature of the non-compliance;
 - (c) Whether the principal was involved with the project when the non-compliance occurred;
 - (d) How the principal was involved; and
 - (e) Whether, how, and when the non-compliance was resolved.
- c. When HUD returns the Form HUD-2530, the Form will indicate whether HUD has cleared the agent's previous participation in HUD programs. If HUD disapproves or withholds clearance, the state/local agency or ARHEDS should require the owner to propose a new agent.

CHAPTER THREE

ALLOWABLE MANAGEMENT FEES FROM PROJECT FUNDS

3.1 GENERAL

Management agents operating HUD-insured and HUD-assisted properties are paid a management fee for their services. Management fees may be paid only to the person or entity approved by HUD to manage the project. Management agents must cover the costs of supervising and overseeing project operations out of the fee they receive.

Owners determine the actual amount of fee to be paid to the management agent. As provided for in project Regulatory Agreements and rental assistance contracts, for certain projects HUD determines the amount of fee that may reasonably be paid out of project funds.

NOTE: Unless otherwise specified, the term "management fee" in this chapter references to the management fee payable out of project funds.

This chapter addresses reviews of management fees requiring HUD approval.

Section 1: Management Fees and Review Requirements discusses the types of fees that are allowed and summarizes review requirements.

Section 2: Procedures for Performing Management Fee Reviews covers procedural steps in the review process.

Section 3: Assessing Reasonableness of Management Fees provides guidance on the technical review of proposed fees.

Section 4: Special Provisions for Fees Approved On or Before August 1, 1986 highlights special rules for certain "held harmless" projects.

SECTION 1: MANAGEMENT FEES AND REVIEW REQUIREMENTS**3.2 TYPES OF MANAGEMENT FEES**

- a. There are five major types of fees that, when added together, make up the overall management fee for a project. The five types of fees are:
- (1) Residential income fee;
 - (2) Commercial income fee;
 - (3) Miscellaneous income fee;
 - (4) Special fees; and
 - (5) Add-on fees.
- b. Fees derived from project income (residential, commercial, and miscellaneous) must be quoted and calculated as a percentage of the amount of income collected by the agent. Multiplying the fee percentage by the income collected gives the actual amount of fee paid to the agent. This requirement serves two purposes.
- (1) It gives the agent an incentive to maximize collections; and
 - (2) It automatically increases the agent's potential fee yield as project rents increase. These increases help offset increases in the agent's cost due to inflation.
- c. Both special fees and add-on fees are quoted as dollar per unit amounts because they relate to project conditions that are not a function of project rents or income.

3.3 RESIDENTIAL INCOME FEE

HUD specifies the kinds of income that may be treated as residential income when determining the residential income fee. In general, income received from the rental of housing units may be counted as residential income. Figure 3-1 indicates the types of income that may and may not be included in the residential income base amount used when calculating this fee.

**Figure 3-1
Determining Residential Income**

<u>DO COUNT</u>	<u>DO NOT COUNT</u>
<ol style="list-style-type: none"> 1. Apartment rents. 2. Cooperative carrying charges. 3. Rent Supplement payments. 4. RAP payments. 5. Section 8 regular tenant assistance payments (including utility reimbursement payments made to residents whose Total Tenant Payment is less than the utility allowance). 	<ol style="list-style-type: none"> 1. Section 8 Special Claims: <ol style="list-style-type: none"> a) unpaid rents b) vacancy loss c) debt service d) resident damages. 2. Excess rents and charges for Section 236 when the unit rent paid is greater than the unit Basic Rent. (This condition applies regardless of whether the excess income is due to HUD.) 3. Section 236 Interest Reduction Payments (IRPs) made to mortgagees on Section 236 projects.

3.4 COMMERCIAL INCOME FEE

Most sources of commercial income may be counted when establishing the income base for this fee. Figure 3-2 shows the types of income that may be counted as commercial income.

**Figure 3-2
Determining Commercial Income**

<u>DO COUNT</u>	<u>DO NOT COUNT</u>
<ol style="list-style-type: none"> 1. Rent receipts from commercial space. 2. Fees for parking spaces or garages. 3. Charges collected by the agent for additional services not included in project rents. 	<ol style="list-style-type: none"> 1. Charges for services paid directly to an outside vendor or contractor.

3.5 MISCELLANEOUS INCOME FEE

- a. HUD will allow management agents to earn fees only on selected types of miscellaneous income. Figure 3-3 lists the types of income that may and may not be counted in the miscellaneous income base amount.

Figure 3-3	
Determining Miscellaneous Income	
<u>DO COUNT</u>	<u>DO NOT COUNT</u>
<ol style="list-style-type: none"> 1. Laundry and concession income (e.g., coin machines, car wash, cable TV, etc.). 2. Charges collected from residents, such as fees for damages, bad checks, and late payments. 3. Proceeds from Loss of Rents Insurance policies. 4. Income from furniture, equipment, and other charges shown on the HUD-approved Rent Schedule (Form HUD-92458). 5. Pet fees - for clean-up, etc. (not pet deposits). 	<ol style="list-style-type: none"> 1. Interest earned on invested security deposits, reserves, or other project funds. 2. Section 8 Special Claims for unpaid rent, vacancy loss, debt service, or resident damages. 3. Flexible Subsidy Funds, except as provided for in the MIO plan. 4. Refunds from property tax or utility rate appeals. 5. Proceeds from property damage or liability insurance policies. 6. Recovered legal fees and court costs. 7. Replacement reserve and residual receipts reimbursements to the project.

3.6 SPECIAL FEES

- a. Use of Special Fees. In addition to the percentage-based fees described above, owners may agree to pay special management fees if a project has special needs or problems. Proposing special fees (rather than adjusting the fee percentage) is an appropriate and cost effective way to address specific project conditions that should be temporary in nature.
- b. Circumstances When Special Fees Are Allowed. Agents may earn special management fees only if all six conditions listed below are met.
- (1) The agent did not cause the problem the fee is designed to address.

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- (2) The fee is tied to the correction of specific problems or the accomplishment of specific tasks. Examples of such tasks include:
- (a) Renting-up the project (unless compensation for this is provided from a supplemental management fund);
 - (b) Obtaining or renewing a lease for commercial space at the project;
 - (c) Completing significant rehabilitation work or utility conversion;
 - (d) Reducing vacancies or improving rent collections;
 - (e) Reducing a specific excessive expense (e.g., utility costs or property taxes); and
 - (f) Processing membership transfers at cooperatives.

NOTE: Normally, Loan/Asset Management staff should not approve incentive fees tied solely to an agent's performance in increasing net income, or decreasing total expenses. Such fees might encourage agents to forego necessary maintenance or expenditures.

- (3) The fee is structured so that it is payable only if the agent completes the required actions or obtains the required results.

EXAMPLE: A new agent might receive a special fee for satisfactorily correcting all items of deferred maintenance by a specific date.

- (4) The fee does not include services that are covered by residential, commercial, or miscellaneous management fees, or by other sources of compensation.

EXAMPLE: An agent may not collect a special management fee for supervising rehabilitation work if those services are being paid for through BSPRA (Builders/Sponsors Profit and Risk Allowance), a construction oversight fee.

- (5) The fee is reasonably related to the time, effort, and expertise required of the agent.

- (6) The fee is paid only for a limited period of time. The length of this period should be no longer than the time required to resolve a specific problem or complete a certain task.

- c. Bookkeeping Expenses Are Treated as a Project Cost. The cost of bookkeeping services for a project performed as part of a centralized bookkeeping system are treated as a project cost and should not be treated as a special fee. Such expenses are paid out of project funds based on actual costs attributable to the project. Further guidance on the treatment of such costs and the amount payable out of project funds is provided in Chapter Six, paragraph 6.37.

3.7 ADD-ON FEES

NOTE: ONLY AFTER computation of the permitted percentages for residential, commercial and miscellaneous income have been determined and approved by HUD, may add-on fees be considered. In approving the permissible percentage fees, the PUPM Yield must fit within the range established by the Area Office. Although the total yield including the add-on fees may exceed the range, add-on fees may not be used to increase this range and in turn increase the percentage fee.

- a. Add-on fees are a flat dollar per unit fee paid to agents managing projects with long-term project characteristics/conditions that require additional management effort beyond than the activities covered by the residential management fee. For example, scattered site projects will often will often require greater management effort than single site projects.
- (1) HUD Area Offices will establish a schedule of project characteristics/conditions that warrant add-on fees and a flat fee amount (PUPM) for each characteristic/condition (see paragraph 3.21). Area Offices will make this schedule available to owners/agents of projects within its jurisdiction.
 - (2) Figure 3-4 list examples of project characteristics/conditions that may warrant the use of add-on fees.
 - (3) For short-term or temporary project conditions, owners/agents should seek special management fees (see paragraph 3.6). Area Offices will not approve add-on fees for temporary projects conditions.
 - (4) HUD Area Offices must not establish add-on fees for project characteristics/conditions that are already covered in its residential management fee range. For example, an add-on fee for a subsidy contract would not be appropriate if a significant number of the projects used to establish the residential fee range were Section 8 New Construction or Substantial Rehabilitation projects.

Figure 3-4

Examples of Long-Term Project Conditions That Could Justify Add-On Fees

- A. High Density Projects:** A high percentage of units with three or more bedrooms increases the population density and can increase the cost of managing a project.
- B. Location:**
1. Remote location. A higher fee may be justified if:
 - No local management is available and agent will incur unusually high travel costs.
 - Special outreach is required to attract residents.
 2. Scattered site. The agent may be paid additional compensation for the extra travel expenses incurred in overseeing several sites.
 3. Adverse neighborhood conditions (e.g., high incidence of crime or vandalism, or large concentration of deteriorated or substandard housing) These characteristics tend to increase maintenance and repair problems, resident turnover, vacancies, and rent collection losses.

NOTE: While higher fees may be allowed for these conditions, Area Offices should not allow higher fees for collection losses caused by these conditions if the owner and agent used a collections base of less than 95 percent to estimate the residential management fee yield.

- C. Type of ownership:** Because owners of nonprofit projects may be less experienced in property management or because cooperative projects have additional legal and organizational responsibilities, management of these projects may require extra knowledge and effort on the part of the agent.

EXAMPLE: To manage a cooperative, the agent must understand State and local cooperative laws, the cooperative subscription process, how homeownership works in cooperative housing, and other requirements specific to cooperative housing.

- D. Subsidy mix:** A higher fee may be appropriate if:

- 1 A project has more than one type of subsidy.

AND

2. The combination of subsidies to the project requires more administrative oversight than the projects that were used to establish the residential fee range.

EXAMPLE A: An agent who manages a 236 project with a Rent Supplement, RAP, or Section 8 contract may receive a higher fee than an agent who manages an otherwise comparable 236 project with no tenant-based subsidy.

EXAMPLE B: An agent who manages a 236 project with both Rent Supplement and Section 8 may receive a higher fee than an agent who manages an otherwise comparable 236 project with only one tenant-based subsidy. (NOTE: This does not apply if the project has both RAP and Section 8. Since the rules for these two programs are so similar, having both subsidies does not require significantly more work from the agent.)

- a. **Owner/Agent Requests for Add-on Fees.** Owners/agents requesting add-on fees for a project must submit a new Management Certification (From HUD-9839-A, or B) and list the requested fees under the Special Fees section of Attachment 1 of this form. In completing Attachment 1 of the Management Certification, owners/agents must clearly distinguish any add-on fees requested from any special fees listed on the form. The owner may request any dollar amount for a specific add-on so long as the amount does not exceed the dollar limit established for that add-on fee by the appropriated Area Office.

3.8 PROJECTS SUBJECT TO HUD MANAGEMENT FEE REVIEWS

- a. **General.** Whether a project is subject to a management fee review depends upon several key factors:

- (1) Type of Ownership (i.e., whether the ownership is profit motivated, limited dividend, or nonprofit.)
- (2) Management Agent: (e.g., whether the agent has previously received approval from the Area Office or has outstanding findings of noncompliance.)
- (3) Project Conditions: (i.e., whether the project's financial, physical, or administrative problems suggest the need for a review.)

Projects subject to review may be reviewed either up-front (before the project is obligated to pay the management agent) or after-the-fact (in conjunction with other servicing activities). Figure 3-5 summarizes the requirements and timing of management fee reviews.

b. **Types of Ownership**

- (1) **Profit-Motivated Project.** A profit-motivated (PM) project is one in which the ownership entity is legally allowed to distributed surplus cash to its members.
- (2) **Limited Distribution Project.** A limited distribution (LD) project is one in which distributions of surplus cash to the ownership are limited and certain conditions must be met before the project's surplus cash can be distributed.
- (3) **Nonprofit Project.** A nonprofit project is one in which the ownership entity generally does not receive distributions of surplus cash from the property. Surplus funds from the operation of these projects are used for project-related improvements or services.

Figure 3-5
Timing of Area Office Review of Management Fees

UP-FRONT REVIEW	AFTER-THE-FACT REVIEW	NO REVIEW
<p>All projects:</p> <ol style="list-style-type: none"> 1. Whose agents have not received previous approval from the HUD Area Office in the jurisdiction. 2. In default under a mortgage or other approved payment program. 3. Where the Director of Housing Management has determined that an up-front review is needed to protect HUD's interests. This determination should be made if a project exhibits <u>any</u> of the following conditions: <ol style="list-style-type: none"> a) Poor financial position with a need to control expenses. Evidence that this condition is present includes: <ul style="list-style-type: none"> -- recent defaults -- delinquent mortgage payments -- marginal or negative cash throw-off (i.e., income less than or only slightly more than operating expenses, debt service, and reserve requirements) -- high vacancy/turnover rates -- excessive accounts receivable/payable. b) Serious noncompliance with HUD financial requirements, including outstanding diversions and/or significantly overdue financial reports. c) Poor physical condition, including significant deferred maintenance. d) Serious outstanding findings from IG or GAO audits. e) Agent has not made satisfactory progress toward correcting problems found in project reviews (HUD, IPA, administrator, or mortgagee). f) A persistent pattern of poor communication or relationships with tenants or tenant associations and/or a persistent pattern of failure to address tenant service requests or complaints. 	<p>Projects <u>not</u> subject to up-front reviews that fall into any of the following categories.</p> <ol style="list-style-type: none"> 1. Limited distribution and nonprofit projects (regardless of how project rents are set). 2. Profit-motivated Section 8 projects subject to budgeted rent reviews. 3. Subsidized cooperative projects. 	<p>No fee review is performed for the following types of projects, <u>unless</u> one or more of the conditions necessitating an up-front review exists.</p> <ol style="list-style-type: none"> 1. Profit-motivated projects that do not have rental assistance contracts. 2. Profit-motivated Section 8 projects that have rents set through use of the Annual Adjustment Factor (AAF). 3. Profit-motivated Preservation projects that use the Operating Cost Adjustment Factor (OCAF) to determine rent adjustments. 4. Unsubsidized cooperatives and Section 234(d) condominium projects.

In certain cases nonprofit entities, such as those receiving Title II or Title VI Preservation funding, are allowed to receive distributions. Such projects retain their nonprofit designation even though the organization is allowed to receive distributions of project funds. For detailed guidance regarding Preservation projects, see Processing Plans of Action under the Low-Income Housing Preservation and Resident Homeownership Act of 1990, HUD Handbook 4350.6.

- (4) **Determining the type of ownership.** The applicable Regulatory Agreement or rental assistance contract for the project will indicate the extent to which surplus cash can or cannot be distributed to the owner.

NOTE: Generally speaking, Section 8 projects issued a notice of selection after November 5, 1979 (for New Construction) and February 20, 1980 (for Substantial Rehabilitation) should be LD projects.

- c. **Projects Not Subject to HUD Management Fee Reviews.** Owners of the following types of projects do not have to obtain HUD approval of the management fee payable out of project funds unless the project is in default under a mortgage or other approved payment program or HUD determines a review is necessary to protect its interests. See Figure 3-5 for examples of project conditions that might trigger the requirement for a review.

- (1) PM projects that do not have rental assistance contracts.
- (2) PM projects that hold Section 8 contracts and use the Annual Adjustment Factor (AAF) to compute rental adjustments for Section 8 units.

NOTE: If owners of this type of project request a special rent increase or have their rents set through a budget, HUD will process the rent increase request using the lower of:

- (a) The project's actual management fee (as shown on the current management certification); or
 - (b) The maximum fee that would be allowed under this chapter's procedures, if the fee were subject to HUD review.
- (3) PM Preservation projects that use the Operating Cost Adjustment Factor (OCAF) to determine rent adjustments.
 - (4) Unsubsidized cooperatives and Section 234 (d) condominium projects.

3.9 APPLICABLE MANAGEMENT FEE FOR RENT INCREASE REQUESTS

- a. **Budget-based Rent Increases.** For projects where rents are set through an expense-based rent formula, HUD will use the approved management fee percentage in processing all rent increase requests. The approved fee percentage is used regardless of the fee yield provided by this percentage fee, except in cases where the provisions of paragraphs (b) or (c) below apply.

EXAMPLE: Last year HUD approved a management fee of five percent for Property X. At that time, this management fee provided a potential fee yield of \$25 per unit per month (PUPM). This year the owner is applying for a budgeted rent increase.

In processing this request, Loan Management staff will use the management fee of five percent. If the five percent fee would result in a potential fee yield of \$28 PUPM and this amount exceeded the upper limit of the reasonableness range of \$26 PUPM for that area (see Section 3), Loan Management staff would use the approved fee percentage and no cap would be placed on the fee yield.

- b. **Capped Fee Percentage for Projects Receiving Significant Rent Increases.** When a project will receive a rent increase equal to 20 percent or more of its current rent potential (e.g., as a result of large increases in project costs, capital improvement activities, or preservation incentives), the management fee percentage must be adjusted. Figure 3-6 illustrates when an owner request for a rent increase affects the residential management fee percentage.
- (1) In such cases, the residential management fee yield is limited to the yield that would be allowed under a 20 percent rent increase using the current management fee percentage.
 - (2) The residential management fee percentage is then adjusted to reflect the maximum allowable yield under the new rent structure for the project.
 - (3) This adjustment to the fee percentage will not be subject to a reasonableness review as described in Sections 2 of this chapter. It is merely an adjustment of the percentage fee which will occur at the same time the rent increase is approved by HUD.
 - (4) This adjusted percentage fee will apply to all future rent potentials without regard to the fee range limits until such time as the agent requests a change in the percentage fee.

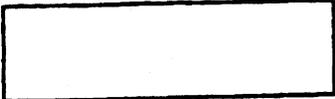


Figure 3-6

**EFFECT OF A RENT INCREASE
ON THE MANAGEMENT FEE**

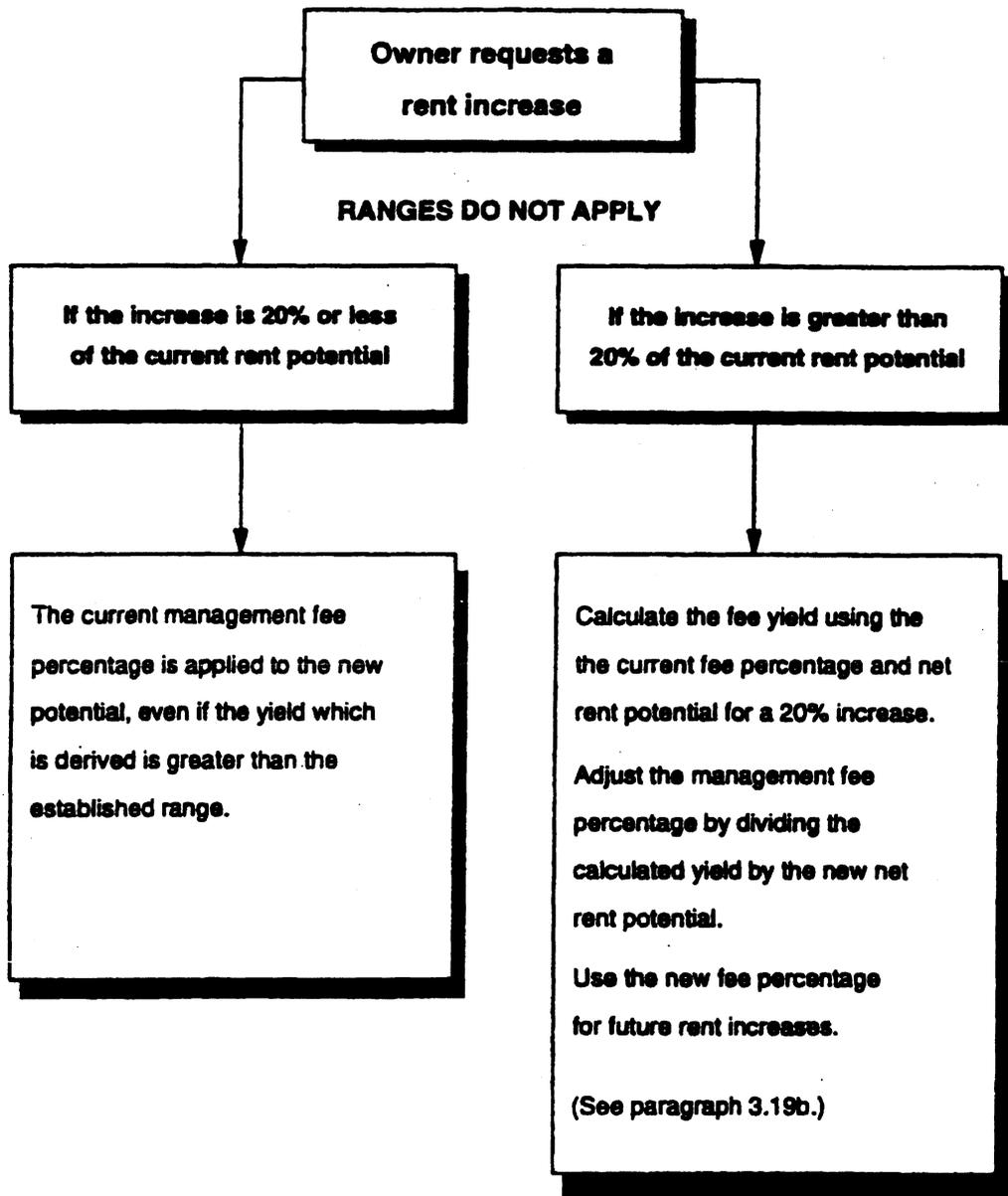


Figure 3-7 illustrates the method for determining the revised residential management fee for these projects and adjusting the residential fee percentage for these projects.

- c. Adjusting the Management Fee for Rent Decreases. When project rents are reduced as a result of refinancing or other reason permitted by HUD regulation, HUD will also adjust the residential management fee percentage in order to ensure that agents retain their current yield. In readjusting the percentage, the following formula should be used:

$$\text{Revised Management Fee Percentage} = \frac{\text{Current Fee Yield} \times \text{Number of Units}}{\text{Collections Percentage} \times \text{Reduced Monthly Rent Potential (0.95 or other factor determined by HUD)}}$$

This adjusted percentage fee will apply to all future rent potentials without regard to the fee range limits until such time as the agent requests a change in the percentage fee.

- d. Capped Fee Yield In Hold-Harmless Projects. For projects where the residential management fee yield has been capped pursuant to the hold-harmless provisions set forth in paragraphs 3.24 and 3.27, Loan Management staff must use the capped fee yield when processing rent increases. (NOTE: This only applies to Pre-1986 contracts covered by paragraphs 3.24 and 3.27)

3.10 OWNER REQUESTS FOR CHANGES IN EXISTING FEES

- a. Owner Submission. To initiate a change in the management fee percentage, the owner and agent must submit a new Management Certification showing the revised management fee(s).
- (1) For projects subject to up-front reviews, the fee can be changed only after the HUD Area Office has given written approval of the fee.
 - (2) Owners of projects subject to after-the-fact reviews may negotiate and implement revised fees with in-place agents without HUD approval, as long as the fee complies with the reasonableness standards described in Section 3. A new Management Certification must be submitted before the revised fee can be charged.
 - (3) For projects not subject to HUD review, owners may negotiate fees and revise fees without HUD review or approval. However, the owner/agent must submit a new Management Certification.
- b. HUD Review. When HUD receives a request from an owner to change the management fee for an in-place agent, Loan/Asset Management staff should take the following steps:

Figure 3-7

**Adjusting the Residential Management Fee Percentage
for Projects Receiving Significant Rent Increases**

METHODOLOGY

Step 1: DETERMINE ALLOWABLE FEE YIELD

Allowable Fee Yield = Projected Fee Yield Under a 20% Rent Increase Using Current Management Fee Percentage**

Step 2: CALCULATE REVISED MANAGEMENT FEE PERCENTAGE

Revised Management Fee Percentage = $\frac{\text{Allowable Fee Yield Under New Project Rents}}{\text{Annual Net Rent Potential Under New Project Rents}}$

**** Projected Fee Yield = $\frac{\text{Yield Under New Rent Structure Using Applicable Occupancy Factor Adjustment}}{\text{Annual Net Rent Potential Under New Project Rents}}$**

EXAMPLE

ABC Apartments Assumptions:

A 30% rent increase has been approved

Annual Gross Rent Potential Under 30% Rent Increase = \$1,300,000

Annual Gross Rent Potential Under 20% Rent Increase = \$1,200,000

Current Management Fee = 7.00%

Step 1: Determine Allowable Fee Yield Under New Project Rents

\$1,200,000	(Annual Gross Rent Potential Assuming 20% Increase)
x .95	(Standard Occupancy Adjustment Factor **)
1,114,000	(Adjusted Gross Rent Potential)
x .07	(Current Management Fee)
\$ 79,800	(Allowable Fee Yield)

Step 2: Revise Fee Percentage

\$1,300,000	(Annual Gross Rent Potential Assuming 30% Increase)
x .95	(Standard Occupancy Adjustment Factor **)
\$1,235,000	(Adjusted Gross Rent potential)

\$79,800 (Allowable Fee Yield) ÷ \$1,235,000 (Adjusted Gross Rent Potential) = 6.46%

**** Standard Occupancy Adjustment factor of 95% is used in this example. However, the factor normally used in the budgeted rent increase process and/or in processing the Management Fee percentage should be used.**

-
- (1) Review the Management Certification to determine the type of review required, if any.
 - (2) Write the applicable review category (i.e., up-front, after-the-fact, or no review) on the first page of the Management Certification.
 - (3) For projects not subject to up-front reviews, Loan/Asset Management staff should update the office computer system with data items used in determining reasonableness ranges. This information will be used when revising residential fee ranges.
 - (4) Follow the procedures in Section 2 to assess the reasonableness of the proposed changes in the existing management fees.

3.11 TERM OF HUD-APPROVED MANAGEMENT FEES

- a. Once HUD has reviewed and approved the percentage management fees for a project (i.e., completed an up-front or after-the-fact review), these management fees will not be subject to further review unless:
 - (1) There is a change in management agents; or
 - (2) Owners/agents request a change in the approved management fee percentage (see paragraph 3.10).
- b. Rents increases do not trigger HUD management fee reviews. Large rent increases may require an adjustment of the fee percentage (see paragraph 3.9).

SECTION 2: PROCEDURES FOR PERFORMING MANAGEMENT FEE REVIEWS**KEY STEPS IN MANAGEMENT FEE REVIEW PROCESS**

- Receive owner/agent request and management certification
- Determine if up-front or after the fact review is required
- Determine if "Hold-Harmless Provisions" are Applicable
- Determine whether fees are reasonable
- Notify the owner and agent
- Document the results of the review

3.12 BASIC PROCEDURES FOR PERFORMING MANAGEMENT FEE REVIEWS

Loan/Asset Management staff must follow the procedures below when performing management fee reviews. These procedures are used for both up-front and after-the-fact management fee reviews. See Figure 3-5 to determine the type of review required.

- a. **Determining If "Hold-Harmless Provisions" Are Applicable.** HUD instituted reasonableness reviews of management fees on August 1, 1986. If an owner/agent is seeking an increase in the residential management fee percentage and the agent's current management agreement was executed prior to August 1, 1986, specific hold-harmless provisions may apply to the review of the residential fee. See Section 4 of this chapter.
- b. **Determining Whether Management Fees Are Reasonable.** Section 3 of this Chapter provides guidance for determining the reasonableness of these fees.
 - (1) If the agent listed on the Management Certification is a new agent for the project, all four types of management fees (i.e., residential, commercial, miscellaneous, and special fees) must be reviewed for reasonableness.
 - (2) If the fee review is being performed because the existing agent for the project is requesting an increase in the percentages for any management fee or new special fees, only the fees where a change is

requested must be reviewed. For example, if the Management Certification submitted indicates the owner/agent is seeking a higher residential fee percentage but no change in the commercial fee percentage or special fees for the project, then Loan/Asset Management staff need only review the reasonableness of the proposed increase in residential fee percentage.

- c. Documenting the Results of the Review. The analysis and results of the review must be documented as required by paragraph 3.17.
- d. Notifying the Owner and Agent. The owner and agent must be notified of the results of the review as required by paragraph 3.15.

3.13 UP-FRONT MANAGEMENT FEE REVIEWS

For affected projects, an up-front review is required whenever an owner proposes a new management agent or requests a change in the fee percentages or special or add-on fees paid to the existing agent. Loan/Asset Management staff determine the reasonableness of the proposed fees following the criteria provided in Section 3.

- a. HUD Notice to Owners. Loan/Asset Management staff must notify the owner and agent in writing if an up-front review is required. Owners/agents receiving notices that an up-front management fee review is required remain subject to up-front reviews until notified by HUD that such reviews are no longer required.
- b. Prior Approval is Required. For projects subject to an up-front review of management fees, owners/agents must obtain HUD approval of the amount listed in the management fee line item of the project's operating budget before (1) charging any portion of the fee against the project operating account or (2) otherwise obligating the project to pay a management fee.
 - (1) If the proposed agent has not previously received HUD approval, the owner and the agent may sign a management agreement that contains a clause specifying that the agreement is conditional upon HUD approval of the agent. The agent may not be paid from project funds until the owner receives HUD approval of the agent.
 - (2) If, in an emergency, an agent assumes management of a project without prior HUD approval of the management fee, the agent may begin collecting the fee and charging these amounts against the project's account. However, the management fee is subject to reduction if Loan/Asset Management staff determine the fee amount is excessive. In such cases, Loan/Asset Management staff must review the fee immediately upon receipt of the Management Certification.

- c. **Owner Requests for Up-front Review.** An owner with a project subject to an after-the-fact review may request that HUD perform an up-front review. Loan/Asset Management staff must conduct an up-front review if the owner requests one.
- d. **Time Period for Completion of Review.** Loan/Asset Management staff should complete up-front management fee reviews within 60 days of receiving the Management Certification.
- (1) If the owner and agent do not receive written notice of the results of HUD's management fee review within 60 days, the agent may begin collecting the management fees documented in the Management Certification under review.
- (2) If the results of a HUD review completed after this date indicate that the management fees must be reduced, these reductions will take effect on the date that notice of the review results is issued to the owner and agent.

3.14 AFTER-THE-FACT MANAGEMENT FEE REVIEWS

For projects which are subject to after-the-fact reviews (See Figure 3-5), owners/agents may establish and charge the management fee amount listed in the project's budget without prior HUD approval. Owners/agents must submit a new management certification prior to changing the management fee for a project.

- a. **Timing of Review.** Loan/Asset Management staff may assess the reasonableness of these fees at any time, but will usually perform this review in conjunction with other servicing activities (e.g., reviewing annual or monthly financial reports, processing rent increase requests, or negotiating transfers of physical assets or provisional workout arrangements). Whether performed in conjunction with other servicing activities or independently, Loan/Asset Management staff should complete the fee review within 12 months of receiving the owner/agent's request for a fee increase.
- b. **Results of the Review.** If the review shows that the residential fee yield falls within the applicable fee range at the time the fee was established, the fee will be approved. If the fee exceeds the applicable range, the fee must be reduced to an amount considered reasonable under the range.
- c. **Fee Reviews Performed in Conjunction With Financial Reviews.** If the fee review is performed in conjunction with the review of the project's annual financial statements or monthly accounting reports, Loan/Asset Management staff should perform the procedures established in paragraph 3.12 in accordance with the following requirements.

- (1) Use the data on actual rent collections from the project's most recent financial statement to make reasonableness determinations.
 - (2) If a review of the project's financial statements show that the owner/agent's collection assumptions were wrong, rework the yield computation using the actual collections data.
 - (3) Compare the yield with the acceptable range that is in effect at the time of the after-the-fact review.
 - (4) If after-the-fact reviews reveal that the fee amount charged to the project exceeds the amount the HUD Area Office determines to be reasonable, Loan/Asset Management staff should immediately review fees at all other projects that are:
 - (a) Managed by the same agent; and
 - (b) Subject to after-the-fact reviews and have not already been reviewed.
 - (5) Loan/Asset Management staff must also perform a compliance check on the amount of management fee charges, as required in Paragraph 2.21.d of HUD Handbook 4370.1, Reviewing Annual and Monthly Financial Reports. These checks assess whether the fees collected by the agent are within the limits shown on the Management Certification.
- d. Fee Reviews Performed in Conjunction With Rent Increase Requests. If the review is performed in conjunction with the processing of a rent increase request, Loan/Asset Management staff should take the review in the following manner.
- (1) Complete the procedures established in paragraph 3.12. Assess the reasonableness of the management fee and determine the residential income fee percentage on the basis of current rents.
 - (2) Use the instructions in Appendix 4 to process rent increases that use a cost approach.

NOTE: If an after-the-fact review is done in conjunction with the processing of a rent increase request, review the fee early during the rent increase processing so that HUD's decision on the rent increase will not be delayed.

3.15 NOTIFICATIONS TO OWNERS AND AGENTS

- a. **Acceptable Fees.** If the fee amount to be charged to the project account is acceptable, Loan/Asset Management staff must send a letter to both the owner and agent stating that: "HUD has approved a residential management fee of ___[specify]% and other fees set forth in the Management Certification dated _____ [enter the date shown in the top right portion of Page 1 of the Management Certification]."
- b. **Unacceptable Fees.** If the fee amount(s) is(are) not acceptable under the procedures set forth in this chapter, Loan/Asset Management staff must send the owner and agent a letter that:
- (1) Explains the reasons HUD cannot approve the fees shown in the Management Certification.
 - (2) Sets forth the fees HUD could approve.
 - (3) Indicates whether the residential fee is held harmless due to the transition provisions in Section 4 of this chapter.
 - (4) Includes the statements required by paragraph 3.27(d) if the residential fee yield is capped under the provisions of that paragraph.
 - (5) Within 30 days of the letter, requires the owner and agent to:
 - (a) reduce the fee(s) to the amount(s) specified in the letter;
- OR
- (b) appeal HUD's decision (see paragraph 3.16).
 - (6) With 30 days of the initial notification letter or HUD's decision letter responding to the owner's/agent's appeal:
 - (a) Refund to the project any excessive fees collected.
 - (b) Reduce any management fees payable by the excessive amounts included in them.

3.16 APPEALS

- a. The owner and management agent may appeal the results of a management fee review to the Multifamily Division Director in the Area Office.

-
- (1) Appeals must be submitted in writing within 30 days after the date of HUD's decision letter.
 - (2) In the appeal, owners/managers must show how special needs and conditions at the project and the type of management services required justify a higher fee.
 - (3) If agents submit an appeal without the owner's signature, the agent must certify that the owner consents to the appeal.
- b. The Director of Housing in the Area Office must issue a decision within 30 days after receiving an appeal.
- c. From the time the Area Office issues its initial decision letter until the Director of Housing renders a decision on the appeal, management agents can collect fees only as provided below.
- (1) If the appeal follows an up-front review and HUD has approved the agent, the agent may collect only the fee specified in HUD's initial decision letter.
 - (2) If the appeal follows an after-the-fact review, the agent can continue to collect the disputed fee until the Area Office issues a decision on the appeal. If the appeal decision requires a reduction in the fee, the reduction will be retroactive to the date the agent began charging the excessive fee. Therefore, within 30 days after the date of the appeal decision, the owner and the agent must:
 - (a) Reduce the fee to the amount specified in Area Office decision on the appeal.
 - (b) Refund to the project any excessive fees collected.
- AND
- (c) Reduce any excessive fees payable by the excessive amounts included within them.
- d. If the agent submitted the appeal without the owner's signature and, on appeal, HUD allows part or all of the amount appealed, the appeal decision letter must state that HUD's approval of the fee is subject to the owner's written approval of that fee.

3.17 DOCUMENTING MANAGEMENT FEE DECISIONS

Loan/Asset Management staff must document their approvals and disapprovals of management fees.

a. Fees Approved.

If the fees are approved:

- (1) Indicate HUD's approval on the last page of the Management Certification; and
- (2) Staple a copy of the HUD approval letter to the Management Certification.

b. Fees Disapproved.

If fees are disapproved:

- (1) Annotate Page 1 and Attachment 1 of the Management Certification to show which fee(s) were not approved;
- (2) Indicate HUD's disapproval on the last page of the Management Certification and enter the date of the disapproval letter. If the residential fee percentage is held harmless, indicate this condition on the certification and enter the hold harmless percentage or yield; and
- (3) Staple a copy of the disapproval letter to the Management Certification.

c. Retaining Key Documents.

Management fee documents must be retained in the project file for at least three years. This documentation must include:

- (1) Management Certifications;
- (2) Decision letters; and
- (3) Management fee correspondence with owners/agents.

d. Updating Computerized Files.

Loan/Asset Management staff must enter information on approved management fees into their office's computer system.

SECTION 3: ASSESSING REASONABLENESS OF MANAGEMENT FEES

NOTE: The procedures in this Section are intended to apply only when assessing the reasonableness of a percentage fee when an agent requests a change in the fee percentage. Once a percentage fee is approved by HUD, reasonableness is not further assessed under this Section. (See Chapter 3, Section 4 and Paragraph 3.9(b)-(d) for reasonableness tests which may be applicable to a specific project after the approval of a percentage fee by HUD).

3.18 OVERVIEW

- a. **Goals of the Reasonableness Determination.** The goals of HUD's review of management fees for reasonableness are to assure that fees approved for projects:
 - (1) Provide sufficient compensation to attract the quality of management needed to administer the project during the time period covered by the fee.
 - (2) Do not significantly exceed the amount that HUD determines independent agents and owners would ordinarily negotiate for comparable services at projects in the same geographic/cost area, except as justified by conditions that require more time and effort on the part of the management agent.

- b. **Determining Comparable Costs for the Residential Management Fee.** HUD Residential income fee ranges are established by HUD that reflect costs by geographic/cost area. Paragraph 3.19 below provides instructions for developing and updating fee ranges.
 - (1) For projects subject to fee reviews, Loan/Asset Management staff use the applicable ranges to determine whether the owner-proposed fee percentages initially yield a PUPM dollar amount that is reasonable.
 - (2) If using the owner's proposed percentage results in a dollar yield that falls within the applicable range, the proposed percentage will be approved and remain in effect until the management agent requests an increase in the percentage fee amount.

- c. **Additional Fees Based upon Project Conditions.** Residential Income fee ranges are developed using data on the fees independent management agents charge for managing projects with market-based incentives for controlling both operating costs and management fees. The presence of certain project characteristics or conditions may warrant the approval of fees in excess of the residential fee.

- (1) Add-on fees may be approved to recognize long-term characteristics or conditions. Paragraph 3.21 below provides instructions for developing a list of permissible Add-on fees and determining the reasonableness of proposed Add-on fees.
- (2) Special fees may be approved to recognize temporary project conditions. Paragraph 3.23 below provides instructions for determining the reasonableness of Special Fees.

d. Additional Fees Based upon Income

- (1) Commercial Fees. Commercial fees are considered reasonable if they do not significantly differ from the fee yield HUD determines would be generated by projects with similar types of commercial space.
- (2) Miscellaneous Income Fees. Miscellaneous income fees are considered reasonable if the fee percentage does not exceed the approved residential income fee percentage.

e. Compensation for Section 202/Section 811 Project Administrators

Loan/Asset Management staff must also determine whether the salaries of Section 202/811 Project Administrators are reasonable. Project administrators' salaries should be compared to the salaries of other project administrators in the area, taking into consideration the level of management required to operate the property.

3.19 CALCULATING THE RANGE OF ACCEPTABLE RESIDENTIAL FEE YIELDS

Each Super A Area Office must assure that residential fee ranges are established for its jurisdiction. An individual Area Office may establish their own residential fee range, if the market (or a specific portion of the market) covered by the Area Office varies significantly from the Super A Office. At the Area Office's option, a single range may be used with add-ons, several different ranges may be established, or the Area Office may develop its own process for developing ranges. For example, if fee data show that yields vary significantly by a project's location, a range for high and low cost areas might be appropriate. Ranges must be reviewed and updated every two years. Updated ranges should be set more frequently if: (1) staff workload permits; or (2) the fees used to set the range(s) change significantly. If the ranges are not reviewed and published by an Area Office at the two year interval, they will automatically be adjusted by the Services Consumer Price Index (CPI) for the total of the 2 years.

At the request of an owner/agent, information regarding the process for which ranges are established should be made available. Area Offices are encouraged to publish their method for deriving the range as well as the approved range on an annual basis.

Whenever the permissible fee range is developed or revised, a copy should also be forwarded to HUD Headquarters, Attention: Director of Multifamily Housing Management. This will assist in the monitoring and review of nationwide financial data.

NOTE: As used in this paragraph and throughout this chapter, "monthly rent potential" means the sum of the contract rents of all units, including rent-free units, shown on the most recent Rent Schedule (Form HUD-92458) submitted to HUD.

- a. **Data Collection.** To establish a range of acceptable fee yields, HUD Area Office staff will gather information on the fees charged for HUD-insured and HUD-assisted projects where the owners/agents have incentives to control management costs.
- (1) If possible, ranges should be established using data from unassisted, HUD-insured projects.
 - (2) Projects included must meet all of the following criteria:
 - (a) Be owned by profit-motivated entities and have fees that are not subject to HUD review.
 - (b) Be managed by independent agents who have no identity-of-interest with the owners.
 - (c) Properly allocate the management costs between the management fee and the project account as required by the procedures specified in Chapter 6.
 - (d) Have no problems that would merit special or add-on fees, whether or not these fees are paid.
 - (e) Be well-managed and in good physical condition (e.g., generally receive at least satisfactory ratings on any IPA, GAO, IG or HUD reviews). Mortgagee physical inspections should show that the physical condition of the project is satisfactory.

- (3) If an Area Office does not have enough unassisted, HUD-insured projects to establish a meaningful range for a particular market area, the office may include data from Section 8 New Construction or Substantial Rehabilitation projects that meet the criteria in paragraph (2) above.
- (4) If the office still does not have enough projects to establish a meaningful range for a particular cost area or project type, the office may further expand the range by including projects subject to after-the-fact fee reviews that also meet criteria (b) through (e) in paragraph (2) above. Projects must be added in the following sequence.
- (a) Limited Distribution Section 8 New Construction and Substantial Rehabilitation projects.
 - (b) Nonprofit Section 8 New Construction and Substantial Rehabilitation projects.

NOTE: Use the fee yield proposed by the owners/agents rather than any revised amount allowed by HUD following an after-the-fact review.

EXAMPLE: The proposed residential fee yield shown on Line 1d of Attachment 1 of the original Management Certification of a LD was \$22 per-unit per-month (PUPM). As a result of an after-the-fact review, the Area Office approved a fee yield of \$19 PUPM. The originally quoted yield of \$22 should be used rather than the \$19 figure approved by HUD.

- b. Calculating the Fee Yield. Residential fee yields used for establishing the range(s) must be computed by applying the residential fee percentage to the monthly rent potential for all revenue-producing units (adjusted to reflect a 95 percent collection rate).
- (1) The fee percentage and the rent potential used must be those in effect at the time the ranges are established.
 - (2) Yields must be computed on a per-unit per-month (PUPM) basis.

c. **Determining the Acceptable Range.** HUD will use the following procedures to set the acceptable range. These will ensure that the top of the acceptable range does not exceed "amounts ordinarily paid" for management services and is not distorted if some fee yields significantly exceed the average amount of most fee yields. Figure 3-8 provides an example of the range determination process.

- (1) List all fee yields in ascending order. Express fee yields in dollars PUPM. Show the number of projects with each fee yield.
- (2) Determine the mean (average) fee yield by dividing the total dollar amount in column (c) by the total number of projects in column (b). Round the result to the nearest dollar.
- (3) Determine the top of the acceptable range. If the highest fee yield is:
 - (a) Less than or equal to 120 percent of the mean, use the highest fee yield rounded to the nearest dollar.
 - (b) Greater than 120 percent of the mean, use 120 percent of the mean fee yield rounded to the nearest dollar.
- (4) Use the lowest fee yield among the figures collected to establish the lower end of the acceptable range.

Figure 3-8		
Example of Residential Fee Range Determination		
(a) Fee Yield (PUPM)	(b) Number of Projects	(c) Total (a x b)
\$12	2	\$ 24
\$14	1	\$ 14
\$15	4	\$ 60
\$17	5	\$ 85
\$18	7	\$126
\$19	5	\$ 95
\$20	4	\$ 80
\$21	1	\$ 21
\$25	2	\$ 50
Total	31	\$555
Average: $\$555 \div 31 = \17.90 (rounded to \$18 PUPM)		
Top of Acceptable Range: Lower of: $\$18 \times 1.20 = \21.60 or \$25		
Lower End of Acceptable Range = \$12		

3.20 REVIEWING RESIDENTIAL MANAGEMENT FEES**a. Review Owner Estimate of Monthly Collections for Accuracy and Reasonableness.**

Loan/Asset Management staff must examine the occupancy/collections assumptions and yield computations shown in Attachment #1 of the Management Certification (Form HUD-9839-A, B, or C) and confirm that they are accurate. If inaccuracies are found, the figures must be corrected.

- (1) Determine if the estimate of monthly collections shown on Line 1(a) of the attachment is accurate. Except for the following cases, this figure should be 95 percent of the monthly contract rent potential shown in the last HUD-approved Rent Schedule (Form HUD-92458).
 - (a) Owners may use a collections base of less than 95 percent of potential only if the conditions that impede collections were not caused or exacerbated by the current management agent.
 - (b) If the conditions leading to collections of less than 95 percent will last less than one year, a special fee should be used instead of a lower estimate of collections.
- (2) If the owner/agent listed rent collections of less than 95 percent on the Management Certification, review the following items to identify the cause of the lower rent collections.
 - (a) The owner's/agent's explanation for the lower collections base provided in Attachment 1 of the Management Certification.
 - (b) The project's recent monthly accounting and occupancy reports.
 - (c) Market area vacancy trends.
 - (d) Any marketing/management initiatives the agent is or will be taking to increase occupancy and/or reduce collection losses.
- (3) If the lower rent collections percentage is due to the current agent's poor rent collection or leasing practices, compute the PUPM yield using 95 percent rather than the collections percentage proposed by the owner/agent.
- (4) If the lower rent collections percentage is due to factors beyond the current agent's control:

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- (a) Use the collections percentage most likely to be realized through aggressive management effort during the term the fee will be in effect.
- (b) Limit the term of that collections percentage. Generally, the term should not exceed one year. If collections will improve significantly within the year, different percentages may be used during the year (e.g., 85 percent for first six months and 90 percent for the next six months).
- (c) Determine if the agent will receive a special fee for the conditions related to lower rent collections. If the agent will receive special fees for these conditions, a 95 percent rent collections figure should be used to determine the fee yield.
- (d) Recompute the PUPM fee yield using the allowable collections percentage.
- b. **Review the Owner's Estimate of total fee yield and PUPM yield shown on the Management Certification to ensure that they were properly computed.**
- c. **Assess Whether the Proposed Fee Percentage is Reasonable.** Loan Management staff must assess whether the yield produced by the fee percentage is reasonable. If the yield is not reasonable, the fee percentage may not be approved. (Note: If PUPM fee yield listed in the Management Certification was inaccurate, use the corrected fee yield calculated under paragraph (b) above.)
- (1) If the PUPM fee yield falls within the residential fee range established by the Area Office at the time approval was requested, the residential management fee is considered reasonable and the fee percentage may be approved. As future rent increases are approved, this percentage fee may provide a fee yield that exceeds the upper limit of the range. This yield is allowable as long as the fee percentage remains the same.
- (2) If the PUPM fee yield falls below the current residential fee range established by the Area Office, Loan/Asset Management should assess the project's past and current performance. The agent may have proposed a low fee to win the management contract with the owner. If the fee percentage is unrealistically low, the agent may experience management problems resulting in poor services and conditions at the project.
- (a) If there are no problems attributable to the management agent, Loan/Asset Management staff should approve the fee and

monitor the project periodically to make sure that management services are adequate.

- (b) If there have been problems with management agent performance, Loan/Asset Management staff should discuss with the owner the possible need to upgrade management services and to propose a fee commensurate with these services.
- (3) If the PUPM fee yield exceeds the acceptable range, the requested residential fee percentage may not be approved. Loan/Asset Management staff must advise the owner/agent of the residential fee percentage that could be approved.

3.21 REVIEWING THE REASONABLENESS OF ADD-ON FEES

a. Developing an Add-on Fee Schedule. An add-on fee reflects the amount HUD will pay management agents to cover a higher level of management service for a project with specific characteristics or recognized long-term conditions.

- (1) Each Area Office must develop and publish a list of permissible Add-on fees that may be applicable to projects within its jurisdiction.

Whenever this fee list is developed or revised, a copy should be forwarded to HUD Headquarters, Attention: Director of Multifamily Housing Management. This will assist in the monitoring and review of nationwide financial data.
- (2) Add-on fees are separate and distinct from residential fee percentage and should not be used to provide agents a fee for functions covered by the residential fee percentage. For example, if the projects used to establish the residential fee range were all unassisted, HUD-insured projects, allowing an Add-on fee for subsidy contract administration could be appropriate. However, if the residential fee was established by relying heavily on assisted projects, an add-on fee for this project characteristic would be inappropriate.
- (3) Add-on fees may be established for specific types of projects and locations (e.g., an add-on fee for projects located in high-cost areas). Add-on fees must be reviewed and published every two years.
- (4) The schedule of Area Office approved add-on fees must be made available to owners/agents upon request.

- b. **Determine Whether the Project's Characteristics Warrant Add-On Fees.** Examine the add-on fees listed by the owner/agent in the Management Certification (see Item #4 - Special Fees, Attachment 1 to the Management Certification form) and determine whether the project's characteristics or conditions qualify the agent to receive the add-on fees requested.
- (1) Loan/Asset Management staff should review the project's records to assess whether add-on fees are warranted. For example, an add-on fee is not warranted if the owner/agent has requested the add-on fee for small projects established by the Area Office, but the number of units in the project exceeds the size limit to qualify for the fee.
 - (2) Loan/Asset Management staff must not allow add-on fees for short-term problems or services when a special management fee would be more appropriate. For example, the Area Office may have established an add-on fees for adverse neighborhood conditions, but the adverse conditions at the project under review are temporary. The following steps should be taken to determine whether add-on fees are warranted.
 - (a) Assess whether the project conditions the add-on fee is intended to cover are likely to be long-term conditions.
 - (b) If the project conditions are likely to be short-term, the add-on fee must not be approved.
 - (c) If the add-on cannot be approved, consider whether the project conditions warrant a special fee. If such fees are appropriate, inform the owner/agent.
 - (3) If the owner/agent has requested an add-on fee for a project condition that does not have an established add-on fee, the add-on fee should be disallowed.
 - (a) If this occurs, Loan/Asset Management staff should assess whether the condition warrants a special fee.
 - (b) If a special fee is warranted, the notice issued to the owner/agent should indicate that the add-on fee was not allowed but that a special fee could be used.
- c. **Assess Whether the Project's Add-On Fees are Reasonable.** Loan/Asset Management staff must assess whether the add-on fee amounts requested are reasonable.
- (1) Only the add-on fees warranted for the project need to be reviewed for reasonableness.

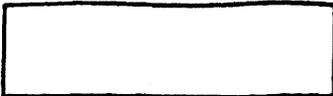
- (2) The amount of the add-on fee listed on the Management Certification must be compared to the schedule of add-on fees established by the Area Office.
- (3) Add-on fees that do not exceed the current schedule are considered reasonable and may be approved.
- (4) If the amount requested exceeds the fee amount on the current fee schedule, the add-on fee may not be approved. The notice to the owner/agent should indicate the amount the Area Office could approve.

3.22 REVIEWING THE REASONABLENESS OF COMMERCIAL AND MISCELLANEOUS FEES

- a. Commercial Fees. The yield likely to be derived from the fee proposed for the project must not exceed the yields generated by projects with comparable types of commercial space (e.g., stores, offices, etc.)
- b. Miscellaneous Fees. The miscellaneous fee percentage must not exceed the residential income fee percentage.

3.23 REVIEWING THE REASONABLENESS OF SPECIAL FEES

- a. Determine if Circumstances Warrant Special Fees. Loan/Asset Management staff must confirm that:
 - (1) The agent did not cause the problem that the fee is designed to address.
 - (2) The fee is tied to the correction of specific problems or the accomplishment of specific tasks.
 - (3) The fee is structured so that it is payable only if the agent completes the required actions or obtains the required results.
 - (4) The fee does not include services that are covered by residential, commercial, or miscellaneous management fees, or by other sources of compensation.
 - (5) The fee is reasonably related to the time, effort, and expertise required of the agent.
 - (6) The fee is paid only for a limited period of time. The length of this period should be no longer than the time required to resolve a specific problem or complete a certain task.



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- b. **If the amount requested exceeds the amount determined by the Area Office to be reasonable, the special fee may not be approved. The notice to the owner/agent should indicate the amount the Area Office could approve.**

**SECTION 4: SPECIAL PROVISIONS FOR FEES APPROVED
ON OR BEFORE AUGUST 1, 1986**

3.24 GENERAL

The provisions in this section apply only to management fees subject to HUD review that were approved by HUD on or before August 1, 1986 and continue to remain in effect. These provisions are referred to as the "hold harmless" provisions for management fees. Figure 3-9 contrasts the fee review procedures for projects with management fees approved prior to August 1986 with the procedures for all other projects subject to HUD management fee reviews.

3.25 CONTINUATION OF EXISTING AGREEMENTS

On August 1, 1986, HUD implemented the reasonableness criteria for management fees described in the above sections of this chapter for projects that are subject to management fee reviews. If the current management agreement and fee percentages payable from project funds were approved by HUD on or before August 1, 1986, the agent may continue collecting that approved fee percentage for the term of the agreement. This is true even if the per-unit per-month (PUPM) fee yield exceeds the upper limit of the fee range that the Area Office would use to assess the reasonableness of the agent's fees if a fee review were being performed.

3.26 REQUESTS FOR INCREASES IN PERCENTAGE FEES AT OWNER-MANAGED PROJECTS AND PROJECTS WITH OPEN-ENDED AGREEMENTS

The following procedures apply to projects with active management agreements signed on or before August 1, 1986 that have self-managing owners or owners/agents with open-ended agreements. If the owner/agent requests an increase in the residential management fee percentage payable out of project funds and the fee is subject to HUD review, Loan/Asset Management staff must use the following procedures.

- a. The proposed fee percentage increase may not be approved if the PUPM yield under the new fee would exceed the maximum amount allowed by HUD under the criteria set forth in Sections 2 and 3 of this chapter. A smaller increase in the percentage fee may be approved as long as the fee yield does not exceed the maximum allowable amount.
- b. If the proposed increase cannot be approved because it exceeds the reasonableness range, the existing fee percentage is held harmless. Area Offices may not reduce the current HUD-approved residential fee percentage for these projects, even if the yield produced by this percentage exceeds the applicable reasonableness range.

Figure 3-9

THE MANAGEMENT FEE REVIEW PROCESS

OWNERS REQUESTING FEE PERCENTAGE INCREASES		
Post-1986 Agreements Subject to HUD Review	Pre-1986 Fixed Term Agreements	Pre-1986 Open Ended Agreements
Use ranges to determine the approvable fee.	Use ranges to determine the approvable fee.	Any increase in the fee percentage must result in a yield within the range limits. However, the old percentage may continue to be used, even if the yield exceeds the range limits.

RENEWALS OF PRE-1986 FIXED TERM AGREEMENTS
<p>If the fee percentage is not increased but the current fee yield exceeds the range:</p> <ol style="list-style-type: none"> (1) cap the yield at the current yield (2) adjust the fee percentage by dividing the capped PUPM yield by the new net monthly rent potential <p>See paragraph 3.27</p>

EXAMPLE: An owner who has an open-ended management agreement with the in-place agent executed in November 1985 requests a residential fee increase from the previously approved figure of six percent to 6.25 percent. The results of the review by Loan/Asset Management staff reveal that not only does the yield under the proposed increase (\$32 PUPM) exceed the maximum allowable yield of \$26 PUPM, but the yield under the current fee of six percent (\$29 PUPM) also exceeds the maximum. In this case, the residential fee percentage must remain at the previously approved figure of six percent.

- c. Commercial and miscellaneous income percentage fees remain subject to the reasonableness criteria discussed in paragraph 3.12.

REMINDER: Commercial and miscellaneous income percentage fees cannot exceed the residential fee percentage.

3.27 RENEWALS OF EXISTING FIXED-TERM AGREEMENTS

The provisions of this paragraph apply only to management agreement renewals where the residential management fee percentage remains the same as the fee percentage previously approved by HUD. Owners/agents of projects with fixed-term agreements that propose to change the management fee percentage must be reviewed in accordance with Section 3 of this chapter.

- a. If the fee is subject to HUD review and the residential fee yield shown on the Management Certification exceeds the maximum amount allowed under Sections 3 of this chapter, Loan/Asset Management staff must cap the fee at its current yield.
- b. If the fee was not previously capped, Loan/Asset Management staff must use the procedures described in paragraphs 3.20(a) and (b) to compute the yield the agent is likely to collect. The residential fee yield must be capped at this amount.

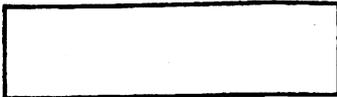
EXAMPLE: In a letter dated October 31 of last year, HUD approved a monthly rent potential of \$94,737 for Project A, which consists of 200 units. On November 15, Project A submitted a Management Certification showing a six percent residential management fee, which is the same percentage that HUD approved under the initial Management Agreement signed in November 1985. (Note: The fee for this property was not previously capped.) Attachment 1 of the Management Certification shows that this fee's yield at 95 percent of the \$94,737 rent potential is \$27 PUPM. The maximum amount HUD would otherwise approve under Sections 2 and 3 of this chapter is \$26 PUPM. In this case, the residential fee yield must be capped at \$27 PUPM.

- c. The residential fee for such projects will remain capped at this level until conditions change and HUD approves a revised fee due to such changes. The types of situations in which Loan/Asset Management staff may consider revising the approved fee payable from project income include the following:
- (1) The capped yield no longer exceeds the maximum allowable yield;
 - (2) The financial or physical condition of the project have changed; or
 - (3) The scope of management services have changed.
- d. In the decision letter authorizing the renewal of the Management Agreement, Loan/Asset Management staff must:
- (1) State the capped residential fee yield.
 - (2) If the fee was previously capped and the fee percentage had to be reduced to comply with the cap (see paragraph (e)(1)), state the revised fee percentage payable out of project income.
 - (3) If necessary, require the owner and the agent to revise their Management Agreement to show the revised management fee.
 - (4) State that the cap on the residential fee yield will remain in effect until HUD approves a revised fee as a result of changes in one of the following:
 - (a) Acceptable fee range.

- (b) Project conditions.
- (c) Scope of management services.
- e. Each time Loan/Asset Management staff approve a rent increase for these projects, the following steps must be taken.
- (1) Recompute the residential fee percentage using the formula below.

Revised Residential Management Fee %	$\frac{\text{Capped PUPM Fee Yield}}{\text{Collections Percentage (Standard = 95\%)}}$	\times	$\frac{\text{No. of Units}}{\text{New Monthly Rent Potential}}$
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- (2) Highlight the adjusted residential management fee percentage in the letter approving the rent increase. Require this adjustment to be effective on the date on which the rent increase takes effect.
- (3) Enter the following items on the last page of the Management Certification.
- (a) Effective date of the rent increase/management fee adjustment.
- (b) New monthly rent potential.
- (c) Collections percentage assumed.
- (d) Adjusted management fee percentage.
- (4) An owner/agent of a project where HUD has capped the fee yield as provided above may request that HUD reconsider the fee at any time. Loan/Asset Management staff must perform such a review up-front, even if the project would otherwise be eligible for an after-the-fact review.



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- f. Commercial and miscellaneous income percentage fees remain subject to the reasonableness criteria discussed in paragraph 3.12.

REMINDER: Commercial and miscellaneous income percentage fees cannot exceed the residential fee percentage. If the residential fee percentage is reduced to maintain the capped fee yield, the commercial and miscellaneous income percentage fees must be reduced accordingly.

CHAPTER FOUR

WORKING WITH RESIDENTS

4.1 GENERAL

HUD expects owners and their management agents to build good resident/management relations. The participation and cooperation of residents is important in creating a suitable living environment and can contribute to the successful operation of these properties. For example, resident involvement can help maintain the physical condition of the property, ensure proper maintenance, improve security, contribute to improvements in energy efficiency, and control operating costs.

HUD regulations establish several basic requirements that owners and their management agents must abide by with respect to resident involvement. HUD views these requirements as minimum standards for resident participation and encourages owners and agents to take further steps to foster strong resident/management relations.

4.2 APPLICABILITY

The requirements regarding resident participation presented in this chapter apply to all HUD-insured and HUD-assisted projects with the exception of the resident input provision described in paragraph 4.5, which applies only to projects receiving project-based assistance.

4.3 DEVELOPING A COLLABORATIVE RELATIONSHIP

- a. Residents and resident organizations can be invaluable allies for owners/agents and should be given the opportunity to voice their views and concerns. Toward this end, HUD encourages owners/agents to go beyond the minimum requirements for resident involvement and take the following steps.
 - (1) Foster Enhanced Communication Between Residents and Both On-Site and Central Office Management. Owners/agents are encouraged to request constructive comments and suggestions from residents. Resident suggestions often reveal cost-effective ways to reduce maintenance problems or improve security at the property.
 - (2) Increase Resident Access to Management. Steps that give residents greater access to managers help encourage resident input and increase

the likelihood that owners/agents will find out about problems before they become severe.

- (3) **Ensure that Proper Consideration and Acknowledgement to Resident Input is Given.** When residents offer their input, they need to know that their input is taken seriously or they will often stop contributing their comments. Owners/agents are encouraged to follow up with residents to show them that their views were considered.
- (4) **Emphasize the Importance of Promptly Resolving Problems.** Encouraging on-site staff to respond to resident complaints promptly will send the message that responding to resident concerns is important. Owners/agents can help ensure that the people who have regular interaction with residents are aware of these issues and understand that the owner/agent takes these concerns seriously. Toward this end, owners/agents should establish a system to track resident complaints/service requests and communicate resident concerns to all on-site staff.

4.4 RESIDENT INPUT REGARDING OWNER REQUESTS TO HUD

- a. When seeking HUD approval for certain actions, HUD regulations (24 CFR, Part 245) require owners of projects receiving project-based assistance to show that they have notified residents in the affected project of the proposed action and solicited resident input regarding the impact of this action. Resident notification and comment is required when an owner will request any of the following actions:
 - (1) Increase in maximum permissible rents.
 - (2) Conversion from project-paid utilities to resident-paid utilities, or a reduction in resident utility allowances.
 - (3) Conversion of residential units to non-residential use, or to cooperative housing or condominiums.
 - (4) Partial release of mortgage security.
 - (5) Major capital additions.
 - (6) Additional resident subsidy or funding under the Flexible Subsidy program.

The specific procedures necessary to comply with resident notification and comment requirements can be found in the documents that provide guidance on preparing requests for HUD approval of any of these actions. Additional resident notice requirements apply to project receiving LIHPRHA funding. These requirements are covered in HUD Handbook 4350.6.

- b. Owners/agents must make copies of the following documents available to designated resident association representatives upon request.
- (1) HUD's completed Physical Inspection and Management Review reports.
 - (2) Owner/agent's proposed MIO Plan and funding strategy.
 - (3) HUD non-compliance notices to the owner and the owner's response.
 - (4) HUD declaration of default, MIP action, or other sanctions.
 - (5) Applications by the owner for HUD assistance or HUD approval.
- c. The owner is ultimately responsible for meeting resident notifications and comment requirements. However, management agents are expected to comply with these requirements to the extent that they are obligated to perform this function as a condition of their management contract and, in any event, to make their best effort to follow resident notification and comment procedures. HUD regulations regarding resident input also establish that owners and their agents must not take any actions that would hinder proper notification or resident input.
- d. HUD will respond in writing within 30 days to written comments submitted by a legitimate, independent resident association regarding proposed owner actions requiring HUD approval. Resident association representatives may request a meeting with Area Office representatives, prior to any final action by HUD on such owner/agent requests.

4.5 RESIDENT EFFORTS TO OBTAIN ASSISTANCE

a. Residents Seeking Assistance

Owners/agents may not interfere with the efforts of residents to obtain rent subsidies or other public assistance (24 CFR, Part 245.205). For example, owners/agents may not reject residents during the screening process solely because they receive public assistance or hold a Section 8 Rental Certificate or Rental Voucher.

b. Rental Assistance for Existing Residents

- (1) Owners/agents must provide in-place residents with information regarding rent subsidies and other public assistance that is prepared by HUD and sent to the project for distribution to residents (24 CFR, Part 245.210)
- (2) Owners/agents of properties with rent supplement, RAP, and Loan Management Set-Aside HAP contracts may not refuse to make assistance available to existing residents who are eligible if sufficient funding and units are available. Existing residents who are eligible for assistance may, at the option of the owner, receive priority over applicants on the property's waiting list (24 CFR, Part 245.205).

4.6 RELATIONS WITH RESIDENT ORGANIZATIONS**a. Recognizing Resident Organizations and Their Efforts**

HUD expects owners/agents to recognize legitimate resident organizations which meet regularly, operate democratically, are representative of all residents in the development, and are independent of non-resident owners and management agents. Owners/agents may not impede the reasonable efforts of residents to organize or activities of resident organizations to reasonably represent resident interests (24 CFR, Part 245.105).

b. Meeting Space for Resident Organizations

- (1) Owners/agents are expected to provide an accessible meeting space within the premises of the development for legitimate resident associations to hold meetings.
- (2) Owners/agents may not unreasonably withhold the use of community rooms or other available space within the project when requested by:
 - (a) A resident organization in connection with the representational functions of the organization; or
 - (b) Residents seeking to organize or to collectively consider any matter pertaining to the operation of the project (24 CFR, Part 245.110).
- (3) The following restrictions apply to fees for resident use of community rooms.

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- (a) In projects subject to budget-based rent reviews, owners/agents may not charge residents a fee for the use of such rooms.
 - (b) For all other projects, owners/agents may charge residents a fee for the use of these facilities only if a fee is normally charged for the use of such space. If owners/agents do not normally charge a fee for such facilities, they may not charge resident organizations for the use of this space (24 CFR, Part 245.110). HUD does not approve the fees for such facilities

4.7 ADDRESSING RESIDENT SERVICE REQUESTS/COMPLAINTS

- a. **Owner/Agent Responsibility.** HUD expects owners/agents to respond to valid resident requests involving concerns about conditions or quality of life at the project, and to resolve all significant or recurring problems.
 - (1) Whenever possible, owner/agents should take immediate action to address problems or concerns registered by residents.
 - (2) Owners/agents should provide a copy of any written request or complaint received from a resident or resident association to the person filing the request/complaint.
- b. **HUD's Response to Notice of Resident Concerns/Complaints.** While HUD will monitor the level of consideration given to resident concerns, it will not become intricately involved in the resolution of routine complaints.
 - (1) If HUD receives a complaint from a resident, Loan/Asset Management staff will notify the owner/agent of the problem. Upon notification of a complaint, owners/agents should take immediate action to address the problem. HUD may require the owner/agent to provide information about the resolution of the problem.
 - (2) If HUD discovers an ongoing high level of resident complaints over several months, Loan/Asset Management staff should perform a nonscheduled management review of the project's operations.
- c. **Developing and Implementing A "Service Request" System.**
NOTE: While most good management companies have an effective work order system in place for addressing tenant concerns, this section details a recommended outline for those agents who do not have such a system in place and are in the process of developing one.
 - (1) Resident requests involving concerns or problem conditions at a project are often referred to as "resident complaints." HUD encourages

owners/agents to take a positive, customer service approach in addressing resident concerns. One action that owners/agents can take is to develop and implement a "Service Request" system for processing and responding to resident concerns.

- (2) Exhibit 4-1 at the end of the chapter contains a sample "Resident Service Request" form that could be used as part of such a system.
- (3) Owner/agent adoption of a Service Request system is strictly voluntary.

d. Special Consideration Given to Projects Using Service Request Systems.
Proper use of a Service Request system reflects a commitment by the owner/agent to respond effectively to resident concerns.

- (1) Owners/agents who implement an acceptable Service Request system can receive the following considerations from HUD. It should provide enough flexibility for residents to either write or phone in their concerns.
 - (a) HUD will not become involved in situations involving resident complaints (with the exception of immediate health and safety threats) until the owner/agent has had 30 days from the date of the resident's service request to present a written response to the concern.
 - (b) HUD would consider evidence of proper implementation of a Service Request system as a strong positive factor when rating the agent's resident/management relations during management reviews.
- (2) To receive the considerations outlined above, owners/agents must take the following steps.
 - (a) Notify HUD in writing that the agent is implementing a Service Request system that meets HUD's standards. The written notice should include:
 - 1) a description of the procedures used to implement the system;
 - 2) a copy of the Service Request form to be used by residents; and
 - 3) a description of the steps taken to obtain resident input regarding the design of the system and a summary of their comments and suggestions.

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- (b) Maintain records on-site showing the disposition of service requests received during the past three months and any outstanding or unresolved requests.
- e. **Failure to Address Resident Complaints.** Owner/agent failure to respond timely to valid resident complaints will be noted during management reviews. Both the agent and the owner will be notified of failure to address resident complaints. A lack of consideration for resident concerns and poor response to resident complaints could result in a lower overall rating on a management review. Poor ratings can affect owner/agent participation in HUD programs.

4.8 HUD OVERSIGHT

- a. **HUD Response to Tenant Complaints.** Loan/Asset Management staff are expected to ensure that owners/agents are responding to resident concerns.
- (1) Loan/Asset Management staff should have a system in place to formally notify management agents and/or owners when a resident complaint is received. Valid resident complaints forwarded by other agencies, as well as those discovered during on-site reviews or sent directly to HUD, should be addressed by Loan/Asset Management staff. In the event Loan/Asset Management staff believe an owner/agent is not responding to resident complaints, they should conduct an on-site review to assess the situation and take appropriate action to ensure that identified problems are addressed.
 - (2) If a complaint appears to involve discrimination, Loan/Asset Management staff must contact Fair Housing and Equal Opportunity staff for guidance on how to proceed. Initial requests for guidance from FHEO should be made in writing and describe the basic allegation(s).
 - (3) Loan/Asset Management staff should consult with the Resident Initiatives Specialist (RIS) regarding resident/management relations at the project and the circumstances surrounding resident complaints.
 - (4) Repetitive complaints, including complaints regarding harassment of residents or residents associations who attempt to exercise their rights, should be viewed as an indicator that the project may be in trouble. In the event that Loan/Asset Management staff believe an owner/agent is not responding to resident complaints, they should conduct an on-site review to assess the situation and take appropriate action to ensure that identified problems are addressed.

Note: When HUD's automated Early Warning System becomes available, Loan/Asset Management staff should use the system

to aid in performing monitoring and follow-up activities concerning resident/management relations.

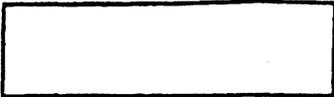
- (5) A great deal of judgement is involved in separating routine from non-routine complaints. The Director of Housing for the Area Office should be consulted if Loan/Asset Management staff require guidance in this area.
- (6) There are certain circumstances where Loan/Asset Management staff should not become actively involved in resolving a problem. Loan/Asset Management staff should refrain from involvement in:
 - (a) Disputes involving third parties;
 - (b) Suits brought by residents against owners/agents, or vice versa;
 - (c) Eviction matters; and
 - (d) Interpretations of local laws and ordinances.

b. **Assessing Resident/Management Relations During Management Reviews.** The management review form (Form HUD-9834) includes a section for rating resident/management relations.

- (1) To develop this rating, Loan/Asset Management staff are encouraged to meet with representatives of residents in the property to obtain their views of resident/management relations. Loan/Asset Management staff should also visit units chosen for review by the resident organization and the management agent, as well as randomly selected units. Loan/Asset Management staff should ask the Resident Initiative Specialist for the project to comment on resident/management relations and provide input regarding the rating. Chapter 6 of HUD Handbook 4350.1 provides specific instructions for completing a management review and discusses the procedures for rating resident/management relations.
- (2) Loan/Asset Management staff must also determine whether the agent is responding to valid resident complaints. Resident complaints that correspond to one of the following conditions must be addressed promptly by the agent.
 - (a) The resident's rights as established by the lease or described in the HUD Resident Rights and Responsibilities brochure have been violated;

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- (b) The physical condition of the property violated HQS requirements;
- (c) The owner/agent has failed to properly carry out its management responsibilities; or
- (d) The owner/agent has engaged in one or more of actions that constitute harassment of residents or resident associations attempting to exercise their rights as described in paragraph 4.8d below.
- (3) Loan/Asset Management staff should give a less than acceptable rating on the resident/management relations section of the management review to owners/agents who fail to show that they are responding effectively to legitimate resident concerns or who fail to address resident complaints.
- (4) In cases where an owner/agent has shown continued failure to respond to valid resident complaints, Loan/Asset Management staff should establish a reasonable time period for the owner/agent to address these complaints and recommend actions that could be taken to adequately respond to the complaints. The nature of the complaints will govern the type of actions to be taken.
- (5) If the owner/agent fails to adequately respond to the outstanding resident complaints within the time period set by the Area Office, Loan/Asset Management staff should consider implementing sanctions against the agent and/or owner in accordance with the procedures in Chapter Seven.
- d. Impediments to Residents or Resident Associations Attempting to Exercise Their Rights.
- (1) The following actions by owners/agents constitute impediments to residents or resident associations attempting to exercise their rights.
- (i) Unreasonable denial of accessible meeting space to residents.
- (ii) Repeatedly sending management representatives to resident meetings when residents have requested management not to attend.
- (iii) Evicting, threatening to evict, withholding entitlements, or otherwise penalizing residents for organizing or asserting their rights.

-
- (iv) Attempting to adversely influence resident leaders by offering individual inducements such as employment, preferential transfers, rent abatements, favored repairs, or other benefits not available to all residents in the development.
 - (v) Attempting to form a competing resident organization under the control of the management company or the owner.
 - (vi) Sexual harassment of residents by owners/agents.
- (2) Management employees may not run for elected office in the residents organization. (NOTE: Coop owners who are also employees of the management company are not subject to this restriction.)
- (3) HUD considers any of the above actions taken by owners/agents to be a violation of residents' right to organize and assert individual rights.



**Exhibit 4-1
SAMPLE RESIDENT SERVICE REQUEST FORM**

Name: _____ Apartment: _____

Phone: _____ Type of Request: Maintenance Problems
 Neighbor Issues
 Management Staff Concerns
 Other _____

Please provide a detailed description of your request:

Please attach additional sheet of paper if necessary.

Received by:

Management Agent Representative

Date: _____

Owner/Agent Response:

Signed
by: _____
Owner/Agent

Date: _____

CHAPTER FIVE:

ENCOURAGING TRAINING AND EMPLOYMENT OPPORTUNITIES

5.1 GENERAL

HUD encourages and, in some instances, requires recipients of HUD assistance to facilitate training and employment opportunities for low income residents of assisted housing as well as residents and business in the project area and women- and minority-owned business.

5.2 SECTION 3 (EMPLOYMENT, TRAINING AND CONTRACTING OPPORTUNITIES FOR PROJECT AREA RESIDENTS AND BUSINESSES) - RESERVED

For a discussion of Section 3 objectives and requirements, see the implementing regulations at 24 CFR 135 and HUD Handbook 8023.1, Implementation of Section 3 of the Housing and Urban Development Act of 1968.

5.3 ENCOURAGING PARTICIPATION OF WOMEN- AND MINORITY-OWNED BUSINESSES

a. HUD encourages participation of women and minority-owned enterprises (W/MBEs) in the activities of HUD programs.

- (1) Management agents (in the Management Certification) and Owners (in applicable contracts and regulatory agreements) agree to work and take affirmative steps to make W/MBEs aware of contracting opportunities.
- (2) Owners and management agents should attempt to obtain at least one bid from a W/MBE when soliciting services for HUD-insured or HUD-assisted properties through a competitive process.
- (3) Owners and managers also should consider employment opportunities under Neighborhood Networks (see Chapter 9 of this Handbook).

b. Owners and managers should consider the outreach activities described below to encourage the participation of women- and minority-owned businesses.

- (1) Identify and maintain an inventory of certified W/MBEs, their capabilities, services and/or products.
- (2) Use local media to market and promote contract and business opportunities with W/MBEs.
- (3) Develop written material (fact sheets, procurement forecasts, etc.) on contracting opportunities.
- (4) Sponsor and/or participate in business opportunity meetings, conferences, seminars to promote opportunities for W/MBEs.
- (5) Develop procurement procedures that facilitate opportunities for W/MBEs to participate. For example, if possible and economically feasible, solicit services and products in quantities that make it feasible for small W/MBEs to participate.

5.4 TELECOMMUNICATIONS SERVICES

a. GENERAL.

The Department supports owners of HUD's multifamily insured and assisted housing projects contracting with providers who offer project residents various alternative telephone, cable or satellite television, information and security systems.

b. BACKGROUND.

Several telecommunications companies have approached project owners of HUD's assisted and insured multifamily housing projects to provide the project residents with various alternative telephone, cable or satellite television, information and security systems. In these proposals, the providers typically propose installing all necessary equipment on the project site at no cost to the project and, in some cases, returning a portion of the subscriber fees paid by tenants for the services to the project as project income.

These benefits are provided to the project in return for an exclusive agreement for providing such services as an alternative to those available through local telephone and cable television companies.

Additionally, some proposals offer coordination through a third-party entity who would arrange the agreements between service providers and, possibly, multiple project owners.

The Department supports all these arrangements, especially since they may bring a higher level of service to our low-income communities in a more competitive atmosphere, offer avenues to training and jobs, possibly increasing project revenues, and producing more marketability for the project.

c. REQUIREMENTS.

The following features must be addressed or included in each arrangement or contract. Documents must be submitted to the asset management staff of the appropriate HUD field office or State HFA office, as appropriate.

(1) Owner Action/Considerations Prior to Agreement:

- (i) Project owners shall notify residents of the proposed agreement/contract and solicit their input.
- (ii) Project owners may do a preliminary review of the types of services available in their area to obtain a wide range of services at competitive prices.

(2) Contracts or Agreement Contents:

Each contract/agreement must specifically address the following points:

(i) General Contractual Stipulations:

- (a) Must be between project owners and the service providers (or their coordinating entity) and NOT involve HUD.

(b) HUD property cannot be encumbered by a service provider without prior HUD field office approval.

(ii) The Equipment or System:

(a) All costs for installation, operation, maintenance, repair and upgrading are borne by the provider.

(b) Equipment remains the sole property of the provider and shall not be deemed to constitute part of the property, or otherwise encumber the property.

(c) The project may provide electrical power to the system, as long as there is no significant negative effect on the project's operating budget.

(iii) Resident Service Subscriptions:

(a) Are strictly voluntary by project residents.

(b) Must be paid by the residents directly to the service provider, NOT through project management. Said service can not be part of the rent or rent structure.

Any excess fees must be returned directly to the subscribers by the provider. Such fees may NOT revert to the owning entity or the management agent.

(c) Must not include fees in excess of the amount ordinarily paid for such service in the area. Note: The fees are not part of, or compensated from the management agent fee.

3. ITEMS FOR CONSIDERATION - PROVIDER.

(i) In certain cases, providers may want to station their staff on-site to act as sales or marketing personnel. Project owners can consider such an arrangement acceptable, subject to HUD's review and approval.

However, these staff must be separate from management agent staff, and compensation from the provider cannot be a part of, or paid by HUD's management fee.

- (ii) Providers may wish to do a feasibility study to determine if such an arrangement would be beneficial to them.

d. SUBMISSION/HUD REVIEW.

Any contract/agreement must be submitted to the HUD field office servicing the project or review and approval prior to execution.

- (1) The HUD review should focus particularly on issues regarding any effect on the project's income and expenses, the Regulatory Agreement and mortgage, and on any arrangements using project management staff as representatives or agents of the service provider.
- (2) The Multifamily Director should determine which field staff are involved in the review, depending on the issues of concern.

5.5 HUD MONITORING AND ASSISTANCE

a. Monitoring.

FHEO staff have the primary responsibility for monitoring compliance with these requirements.

b. HUD Assistance.

- (1) FHEO maintains an automated registry of Section 3 businesses which is available for use by owners and managers.
- (2) HUD's Office of Asset Management and Property Disposition works to maintain information about training and employment opportunities for residents and can share this information with owners and managers.

CHAPTER SIX: PROGRAM MONITORING

SECTION 1: INTRODUCTION

6.1 GENERAL

This chapter provides basic guidance on monitoring management agent activities to ensure that program requirements and procedures are followed. It specifically focuses on how to apply HUD's monitoring strategy in reviewing management agent performance. Where specific instructions for carrying out individual monitoring activities are provided in other HUD Handbooks, these documents are referenced.

6.2 OVERVIEW OF MONITORING ACTIVITIES

- a. Types of Monitoring Activities. There are three basic types of monitoring activities.
- (1) Physical Inspections. To assure that properties provide decent, safe, and sanitary housing, HUD regularly inspects the physical condition of all HUD-insured and HUD-assisted projects. Section 2 of this chapter discusses the use of physical inspections to monitor property conditions.
 - (2) Management Reviews. HUD also conducts on-site visits to review the management of HUD-insured and HUD-assisted properties. Key management areas, such as occupancy practices and on-site record-keeping, are examined to ensure that program requirements and procedures are properly followed. Section 3 of this chapter describes the use of management reviews in more detail.
 - (3) Financial Reviews. The financial management of HUD projects is also regularly monitored. HUD staff review financial statements and other documents to ensure that project funds are handled properly. Financial reviews are discussed in Section 4 of this chapter.

In addition to these regular monitoring activities, HUD will check that owners/agents comply with all elements of rental assistance contracts (e.g., HAP Contract) or Regulatory Agreements governing the property that are not included as part of the above reviews. These activities are outlined in Section 5 of this chapter.

- b. Applicability. The responsibility for carrying out individual monitoring activities varies by activity and the type of project. The responsibility for performing each type of review is discussed in the sections below as part of the description of each activity.

6.3 MONITORING GOALS

Broadly speaking, HUD's monitoring goal is to ensure the success of its statutory mission to provide decent, safe, and sanitary housing. Management agents and owners, as HUD's partners in this effort, each have responsibilities in fulfilling this mission.

More narrowly, HUD seeks to protect the Department's interest as the insurer of project mortgages and as the regulator of millions of dollars in physical assets. HUD has a Congressional mandate to oversee the provision of physically and fiscally sound housing, and to protect the integrity of the resources that underwrite its production.

Last, HUD has a statutory obligation to monitor compliance with housing program requirements as set out in rental assistance contracts and Regulatory Agreements. Fulfillment of this goal requires HUD to directly oversee owners' and management agents' activities through periodic management, project, and documentation reviews. Within this review process, HUD seeks to work objectively and in a professional manner to identify strengths and weaknesses in project management, to communicate findings openly with the owner and management agent, and to find mutually acceptable solutions to management problems.

Monitoring and enforcing program compliance is a responsibility that HUD takes very seriously. HUD also recognizes that this responsibility is a component of its overall partnership with owners and management agents in providing affordable housing. In carrying out its monitoring activities, HUD will simply seek to assure that owners and agents are fulfilling their responsibilities and at the same time will respect the contribution of its partners.

6.4 HUD'S MONITORING STRATEGY

To guide its monitoring activities, HUD uses a strategy known as accountability monitoring. Under this strategy, HUD focuses the majority of its monitoring efforts on program participants who pose the greatest risk to HUD's mission.

6.5 IMPLEMENTING ACCOUNTABILITY MONITORING

- a. Monitoring Based on Risk. Decisions regarding monitoring reviews and resources are made using a risk management process which determines both

the participants and areas to be reviewed based on the risk posed to HUD's objectives. Under this approach, the frequency and intensiveness of monitoring reviews increases as the risk posed by a project or participant increase.

- b. **Monitoring Schedule.** Schedules for monitoring activities will be based on an assessment of the risks posed by projects within a jurisdiction. A risk rating system has been developed to guide the scheduling of monitoring activities. The rating system to be used to schedule physical inspections (see paragraph 6.12) is also used in scheduling other monitoring reviews.
- (1) In developing their monitoring schedules, Loan/Asset Management staff should schedule projects that fall near the top of these ratings earliest in the schedule and consider the potential need for follow-up reviews.
 - (2) Projects that pose lower risks should be scheduled after higher risk properties.
- c. **Interrelationship of Monitoring Reviews.** Although each type of review is discussed separately, Loan/Asset Management staff should conduct each review with an eye toward overall performance. For example:
- many contract monitoring requirements directly overlap with the financial review and management review requirements; and
 - management reviews contain most of the steps required to complete a financial review.

Loan/Asset Management staff not only need to complete an individual monitoring activity, but also recognize the implications of a finding in a particular area for other functional areas, as well as for the project overall. The following guidelines apply in all cases:

- (1) **Risk Assessment.** After identifying the goal of their review procedures, Loan/Asset Management staff should use their knowledge of project conditions to identify and focus their attention on higher-risk items. It is more efficient to concentrate on areas where problems have been identified, even at the risk of neglecting lower-risk areas, than to spend equal time on all issues and not adequately cover the highest-risk issues.
- (2) **Trend Analysis.** Individual findings should be viewed in the context of the project as a whole. Loan/Asset Management staff should try to look "behind" an individual finding to see if its cause lies elsewhere or is having a larger effect. For example, if cash management controls are weak, the problem may lie in the management agent's training policies.

Or, if a project is in poor physical condition, a reviewer should consider whether its Replacement Reserve Account is managed properly.

- (3) **Portfolio Analysis.** Loan/Asset Management staff should evaluate a management agent's performance by looking at all projects that the agent manages, not simply at the project currently under review. A pattern of findings at other projects might suggest that a control weakness exists in the project currently under review.
- d. **Adapting to Changing Conditions.** Monitoring schedules should be flexible to allow for periodic revisions based on changes in monitoring objectives and available resources. For example, the discovery of a series of unanticipated compliance problems during the course of monitoring reviews may require Loan/Asset Management staff to revise the monitoring schedule to account for the presence of a previously unknown problem.

6.6 WHEN TO PERFORM NON-SCHEDULED REVIEWS

While individual monitoring techniques can follow different schedules, there are situations where one or more reviews is immediately appropriate. Loan/Asset Management staff should recognize that they can and should use any of the monitoring activities discussed in paragraph 6.2 when the need arises. The following paragraph outlines situations in which each monitoring technique is appropriate. HUD Handbook 4350.1 provides more detailed guidelines for using each of these techniques.

- a. **Physical Inspections.** Physical inspections should be performed as soon as possible once the Loan/Asset Management staff determine that a project is troubled or potentially troubled (see Exhibit 6-1). Such projects are characterized by:
- (1) Physical deterioration or specific substandard conditions identified by a legitimate, representative resident organization;
 - (2) Evidence of drug use, drug sales, or other criminal activities;
 - (3) Financial stress; and/or
 - (4) A high level of significant resident complaints.

The Loan/Asset Management staff should also inspect the project if it determines that the mortgagee inspection is inadequate or if the project requests additional HUD financial assistance.

- b. **Management Reviews.** When physical inspections are required for any of the reasons listed in paragraph (a), a management review should also be performed. Loan/Asset Management staff may also perform a management review when a physical inspection is not necessary, but there is evidence of:
- (1) Poor accounting, budgeting, and/or cost controls;
 - (2) Failure to submit required periodic reports, including vouchers, in a complete and timely manner;
 - (3) Low rent collection or high accounts receivables;
 - (4) Complaints about or evidence of poor procedures for resident screening and selection;
 - (5) High vacancy rates or turnover;
 - (6) Specific and verifiable evidence of project mismanagement or harassment of residents or resident associations reported by petition from a legitimate resident association;
 - (7) Other staffing/supervisory failures; and/or
 - (8) A high level of significant resident complaints.
- c. **Financial Reviews.** Financial reviews should be performed when the project management does not submit fiscal reports in a timely manner. For example, a financial review is appropriate when there are frequent requests for Section 8 special claims or Reserve for Replacement withdrawals. The Loan/Asset Management staff should also conduct a financial review if rent collections are below expected levels and accounts receivables are excessively high.
- d. **Resident File Reviews.** Resident file reviews are conducted as part of an on-site review to verify that the project manager is complying with HUD resident screening, selection, and other occupancy policies. If remote monitoring suggests occupancy problems at any project that the agent manages, Loan/Asset Management staff should review a sample of files to assess the extent of the problem and determine appropriate corrective actions.

6.7 MONITORING LOBBYING ACTIVITIES

- a. Pursuant to Section 319 of Public Law 101-121, all mortgagees, mortgagors, and their agents participating in any multifamily, assisted housing, or coinsurance program under Title II of the National Housing Act are required to submit certifications and disclosures regarding their lobbying activities.

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- (1) The certification states that the recipient of federally-appropriated funds does not, has not, and will not use those funds for lobbying purposes.
 - (2) The disclosure form (Standard Form-LLL) reports any payments made or agreement to make any payment from funds other than federally-appropriated funds for the purpose of influencing or attempting to influence any Executive of Legislative personnel in connection with the award of HUD contracts, grants, cooperative agreements, loans, or other form of assistance.
- b. **Applicability.** The certification and disclosure requirements are triggered when contracts or grants exceeding \$100,000 and loans or commitments exceeding \$150,000 are made. However, any attempt to influence federal agency actions through the use of federally-appropriated funds to this end is prohibited and such actions which come to the attention of HUD staff must be reported to the Office of Ethics.
- c. **Submission Requirements**
- (1) The Area Office is required to provide each applicant for an insured/coinsured mortgage commitment or for other federal assistance (e.g., contract, grant, loan, etc.) with the standard certification and disclosure language, and a Standard Form-LLL to report lobbying activities.
 - (2) When applicable, sponsors, mortgagors, and mortgagees must submit certifications and disclosure forms in conjunction with the following documents:
 - (a) Mortgage insurance application at any stage – HUD-92013, 92013-Hosp, 92013-NHICF, or HUD-93201, as appropriate;
 - (b) Cost Certification forms HUD-92330 or FHA-2205A;
 - (c) Request for Final Endorsement of Credit Instrument – FHA-2023;
 - (d) Applications for Flexible Subsidy assistance;
 - (e) Requests for Loan Management Set-Aside assistance; and
 - (f) Applications for drug grants and other forms of competitive awards.

d. HUD Processing

- (1) The Loan/Asset Management staff will review each certification and disclosure for completeness prior to issuing any commitment or award of insurance or financial assistance
- (2) The Area Office will send the original of any disclosure form (Standard Form-LLL) immediately to the Office of Ethics in Headquarters and will retain a copy in the application, project, or program file.

SECTION 2: PHYSICAL INSPECTIONS**6.8 HUD'S PHYSICAL INSPECTION PROGRAM**

Well-maintained projects are central to HUD's mission of providing decent, safe, and sanitary housing. HUD will not accept deteriorated conditions in housing under its jurisdiction.

- a. **Purposes.** A comprehensive inspection program:
- (1) Verifies the quality of housing provided to residents and enables Loan/Asset Management staff to identify and correct problems in project conditions and maintenance.
 - (2) Serves as a control for the quality of mortgagees' inspections of projects.
 - (3) Helps to safeguard the integrity of the FHA Insurance Fund for HUD-insured and HUD-held projects.
- b. **Annual Inspections.** The Loan/Asset Management staff is responsible for ensuring that all multifamily projects under HUD's jurisdiction are inspected yearly by HUD, a designated Contract Administrator, a HUD-selected contractor, or by the mortgagee. Loan/Asset Management staff should follow the procedures set forth in Chapter 6 of HUD Handbook 4350.1 for performing inspections of insured and non-insured projects where HUD is the Contract Administrator.
- c. **Additional Funding or Funding Changes.** Before approving additional HUD funding or changes to HUD funding arrangements, a physical inspection must be conducted if the most recent inspection is more than 12 months old. Examples of additional funding or funding changes include:
- (1) receiving additional LMSA units;
 - (2) awarding Flexible Subsidy funding;
 - (3) awarding Service Coordinator funding; or
 - (4) conversion of a Rent Supplement contract to a Section 8 contract.

NOTE: Section 8 budget authority amendments are not considered additional HUD funding.

6.9 MORTGAGEE AND CONTRACT ADMINISTRATOR INSPECTIONS

- a. Mortgagee Inspections. The Loan/Asset Management staff must ensure that mortgagees comply with the procedures outlined in the Mortgagee Monitoring Handbook (HUD Handbook 4350.4), which sets forth the requirements for mortgagees to complete physical inspections.
- (1) Loan/Asset Management staff must establish a tracking and quality control system for mortgagee physical inspections.
 - (2) Loan/Asset Management staff must inspect a portion of the portfolio sufficient to evaluate the reliability of mortgagee physical inspections and to follow up where a mortgagee inspection or other indicator identifies a project as troubled or potentially troubled.
- b. Contract Administrator Inspections. For projects with an entity other than HUD serving as the contract administrator, Loan/Asset Management staff must ensure that the administrator is performing physical inspections. Loan/Asset Management staff must also ensure that the physical integrity of the property is being maintained as required in the applicable rental assistance contract and under HUD Handbook 4350.5, Subsidy Contract Administration.
- (1) Loan/Asset Management staff must establish procedures for ensuring that contract administrators are conducting physical inspections as required.
 - (2) Loan/Asset Management staff must inspect a portion of the portfolio sufficient to evaluate the reliability of contract administrator physical inspections and to follow up where such inspections or other indicators identify a project as troubled or potentially troubled.

For more detailed instruction, see HUD Handbook 4350.5.

6.10 USE OF CONTRACTORS

Area Offices must not use contractors to conduct Physical Inspections for projects with HUD-insured and HUD-held mortgages which are troubled projects. Area Offices may use contractors to inspect only the remaining portion of the insured and HUD-held portfolio which HUD staff did not inspect during the year.

- a. Contracting and Payment. Contractors will be paid with fee money from the FHA Insurance Fund.

- b. **Resource Utilization Strategy.** Area Offices should include in their resource utilization strategy the staff required to oversee and review contract physical inspections.

6.11 INSPECTION STANDARDS

- a. **Housing Quality Standards.** At a minimum, all assisted units must comply with Section 8 Housing Quality Standards (HQS) and/or local housing codes, whichever are more stringent. However, inspectors should expect management agents to maintain the projects at physical conditions above these minimum maintenance standards.
- b. **Serious vs. Non-serious Deficiencies.** The Loan/Asset Management staff must develop criteria for classifying physical deficiencies as serious or non-serious. Criteria may include:
- (1) Whether the repair need was judged as "immediate";
 - (2) Whether the deficiency poses a health and/or safety threat to residents and/or project staff;
 - (3) The cost to repair the deficiency; and
 - (4) Any other criteria the Area Office reasonably deems appropriate.

Serious deficiencies will serve as the basis for the Area Office Manager's determination of technical default. See paragraph 6.19.

6.12 PRIORITIES FOR SCHEDULING PHYSICAL INSPECTIONS

- a. The Loan/Asset Management staff should use the priorities described in Figure 6-1 to schedule physical inspections. Exhibit 6-1 at the end of this chapter provides additional guidance on indicators of "troubled" or "potentially troubled" status.
- b. Within each priority area, identify and rank projects in the worst condition. These projects should be targeted for physical inspection first, followed by the remaining projects within that category. Sources of information include: mortgagee inspections, management review reports, previous physical inspection reports, and resident complaints.

**FIGURE 6-1
PRIORITIES FOR HUD INSPECTIONS**

1. Insured assisted troubled
2. HUD-held assisted troubled
3. Non-insured assisted troubled
4. Insured unassisted troubled
5. HUD-held unassisted troubled
6. Insured assisted potentially troubled
7. HUD-held assisted potentially troubled
8. Non-insured assisted potentially troubled
9. Insured unassisted potentially troubled
10. HUD-held unassisted potentially troubled
11. Insured assisted
12. HUD-held assisted
13. Non-insured assisted
14. Insured unassisted
15. HUD-held unassisted

6.13 CONDUCTING THE INSPECTION

- a. Scope of Inspection. Each physical inspection must include:
 - (1) A physical review of the inside and outside of projects' housing units, buildings, grounds, commercial space, and common areas for condition and maintenance.
 - (2) A visual check of all common areas (equipment rooms, laundries, storage rooms, etc.).
 - (3) A review of at least 10 percent of the occupied units and all vacant units. The Director of Multifamily Housing may authorize or require a lesser or greater number of units to be inspected, based on the number of units in the project, to establish a reasonable sample size.
- b. Identifying Deficiencies. For any identified deficiency, HUD should work with owners/agents to estimate the cost of repairs in order to provide as much useful information as possible to the owner and/or management agent.
 - (1) Loan/Asset Management staff should conduct inspections of troubled projects with the assistance of either the loan servicer, a construction analyst, or an engineer who is capable of determining the cost of the required repairs.

- (2) If this expertise is not readily available to the Multifamily Housing staff, the Director of Multifamily Housing and the Director of Housing shall coordinate to provide either in-house resources or a third-party contractor to produce the needed cost estimate.

c. Conducting Close-out Meeting

- (1) The owner and manager must be notified of findings upon the conclusion of the inspection so they can begin to address the problems.
- (2) Inspectors should stress that areas of concern identified are not necessarily all-inclusive and that the final report could include additional findings of deficiency based on the analysis of the overall inspection.

6.14 DOCUMENTATION OF THE PHYSICAL INSPECTION AND FINDINGS

- a. Format. The prescribed format for the documentation is the Form HUD-9822, "Physical Inspection Report," included in Appendix 5.
- b. Contents. The written report of the physical inspection should document:
- (1) Detailed deficiency explanations, including locations of the deficiencies and classification as "serious" or "non-serious";
 - (2) Cost estimates for needed repairs;
 - (3) Recommended or required actions and time frames; and
 - (4) Overall conclusions on the physical condition of the project.
- c. Use of Photographs. Where practicable, inspectors should include photographs with the Form HUD-9822 documentation to describe both good and bad conditions. Any photographs used in the report should be cross-referenced to their location in the report.
- d. Report Conclusion. Each report must be signed, dated, and must specify the recommended corrective actions specified by the inspector. The report to the owner may summarize the deficiencies, but Loan/Asset Management staff must retain detailed descriptions of deficiencies and locations in the project files for follow-up review.

e. Time for Completion

- (1) If HUD performs the inspection, HUD staff will prepare the report once the field work is complete.
- (2) If a contractor performs the inspection, the contractor must deliver the report to the Area Office within the time frame specified in its contract with HUD.

6.15 AREA OFFICE COUNSEL REVIEW

When inspection results reveal serious deficiencies, Loan/Asset Management staff should submit the inspection documentation to Area Office Counsel to determine whether the deficiency represents a "waste" of assets or whether there has been a failure to maintain the property in good repair. Area Office Counsel should provide the program office with guidance regarding which documentation should be retained.

See Handbook 4350.1, Chapter 6 for further instruction the on Area Office Counsel review.

6.16 NOTIFICATION OF THE OWNER/MANAGEMENT AGENT

- a. The Loan/Asset Management staff should send a completed physical inspection report to the owner upon completion of the report by HUD staff or contractors. Loan/Asset Management staff must also send a copy of the report to the management agent and/or other contacts identified by the owner.
- b. The Area Office is not required to send any photographs with the report unless such pictures are specifically referenced in the report.

6.17 CORRECTIVE ACTION PLANS

Once HUD has notified the owner and management agent of the report's findings, the owner/agent is expected to prepare a corrective action plan to address any deficiencies. The Area Office shall not approve the corrective action plan unless it provides for the final resolution of all deficiencies.

a. Time Frames for Owner Response

- (1) When serious deficiencies are identified in the inspection report, owners must:
 - (a) Meet with Loan/Asset Management staff within ten (10) working days from the date of issuance of the report to discuss the deficiencies identified during the inspection, unless an alternate schedule is agreed upon by HUD staff and the owner.
 - (b) At this meeting, provide a written report on all actions taken since the report was issued to correct the deficiencies noted.
 - (c) Provide a commitment within 20 working days of the meeting outlining how and when the remaining deficiencies will be corrected and provide a written plan for addressing these deficiencies within a time frame agreed upon by the Area Office. The owner may use the Management Improvement and Operating (MIO) Plan format, and must include a budget identifying the source of funds used to implement corrective actions. See HUD Handbook 4355.1 REV-1, Flexible Subsidy, for a description of the MIO Plan.
- (2) For deficiencies identified as non-serious, owners are not required to meet with the Loan/Asset Management staff. However, they must submit a plan to resolve those deficiencies within 30 calendar days of the date of the receipt of the report. Owners will be subject to all monitoring and enforcement actions outlined in this Handbook, and in accordance with HUD Handbook 4350.1, Chapter 6.

b. Required Contents

- (1) Corrective action plans for insured projects, including those submitted for non-serious deficiencies, must be appropriately formulated and organized so that they can be monitored in the Area Offices.
- (2) The action plan must be well-considered and specific. It must include timetables for deficiency resolution and must identify sources of funds necessary to bring the project to an acceptable condition.
 - (a) If the project's cash flow is not sufficient, the owner should provide a MIO plan covering how he/she proposes to correct the problem or what savings he/she suggests.

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- (b) . The owner must make all reasonable efforts to secure additional funding needed to implement corrective actions.
- (3) Where an owner requests increased HUD funding to pay for all or part of the required repairs, the owner must present a certification and supportive documentation that he/she has made efforts to secure funding from non-HUD funding sources.
- c. Area Office Counsel Review. When serious deficiencies exist, Area Office Counsel must review the corrective action plan prior to Loan/Asset Management staff approval. Area Office Counsel will advise program staff on any legal issues raised within the plans.
- d. Corrective Action Plans for HUD-Held Projects will be included in and made part of a workout plan.

6.18 MONITORING CORRECTIVE ACTION

- a. Use of Monitoring Systems. If a monitoring system is not in place, Loan/Asset Management staff in each Area Office will develop a system to monitor planned and completed corrections. The Early Warning System, when implemented, may aid in the tracking of corrective plans.
- b. Follow-Up Inspections
- (1) Where serious deficiencies were identified during the physical inspection, Loan/Asset Management staff shall schedule a follow-up inspection within **30 days or less** of the meeting to assure satisfactory completion of all corrections the owner indicates are completed.
- (2) Follow-up inspections on completed tasks may be performed by permanent staff, or by contract inspectors if the project is HUD-insured or HUD-held.
- (3) All follow-up inspections must be documented either through a memorandum to the file or on a Form HUD-9822. Documents must be clearly marked to show that the inspection is a follow-up.
- b. Addressing Noncompliance. Loan/Asset Management staff shall notify the owner in the case of noncompliance with the plan.
- (1) The owner must take remedial action **immediately** upon receipt of notification and must provide an explanation of any noncompliance. In addition, the owner must develop and provide to the Area Office proposed revisions to the corrective action plan.

- (2) The Loan/Asset Management staff will analyze any suggested modifications to determine their feasibility and their effect on the continued viability of the plan.
- (3) If the Loan/Asset Management staff determine that the owner and/or management agent is not making a good-faith effort to bring the project into acceptable condition, or if the plan, as revised, is no longer feasible, then they may impose sanctions as described in Chapter 7 of this Handbook and, if applicable, in accordance with Chapter 8, HUD Handbook 4350.1.

6.19 TECHNICAL DEFAULTS

If the owner does not remedy noncompliance with the corrective action plan and the physical condition of the property has fallen to an unsatisfactory level, Loan/Asset Management staff must determine whether to declare default under the clauses of the Regulatory Agreement or under the waste provision of the mortgage.

- a. Recommendation of Default. If the Director of Multifamily Housing determines that a declaration of default is appropriate, the Director of Housing has the authority to approve or disapprove the recommendation.
- b. Notification. If the Director of Housing accepts the Director of Multifamily Housing's recommendation, the Loan/Asset Management staff must notify the owner of the intended action by certified mail with return receipt requested, and must send a copy of the notification to the management agent.
 - (1) The notification must be reviewed by Area Office Counsel and signed by the Director of Housing before being sent to the owner. Area Office Counsel must review and concur on all notices of intent and all subsequent correspondence to the owner.
 - (2) The Loan/Asset Management staff must inform owners in the notification that they will be given thirty calendar days to show sufficient cause why the default should not be declared, or otherwise to provide a new or revised corrective action plan, or to carry out the previously approved plan.
- c. Extension of Notice. The Director of Housing may extend the time frame for declaration of default for specific cause on a case-by-case basis. The Director must document such cause for the record.

- d. **Declaration of Default.** If the owner does not satisfactorily show cause or comply with the Director of Housing's requests regarding corrective actions within thirty days or the approved time frame, the Area Office Counsel shall proceed with a written request to the mortgagee to accelerate the principal balance of the mortgage.
- (1) For declarations of default under the waste provision of the mortgage, the request shall require that, under the authority provided the Secretary contained in 24 CFR 207.257, the mortgagee declare a Covenant Default and accelerate the principal balance of the mortgage.
 - (2) For projects with HUD-held mortgages, the Director of Housing Management must request the Office of Mortgage Insurance Accounting and Servicing (MIAS) to accelerate the principal balance of the mortgage and to declare the balance immediately due and payable.
 - (3) If the housing condition is below acceptable levels, but the documentation or the problem does not support a declaration of default based on the Regulatory Agreement or the waste provision of the mortgage, HUD should determine the advisability of initiating immediate litigation against the owner. Civil penalties should also be implemented where appropriate to ensure compliance with the corrective action plan.
- e. **Foreclosure and Mortgagee-in-Possession (MIP) Status.**
- (1) After the mortgagee has prepared the election to assign the mortgage, or MIAS has completed the necessary steps for HUD-held mortgages, the Area Office Counsel, upon instruction from the Director of Housing, should take action to obtain either voluntary or involuntary mortgagee-in-possession status.
 - (2) The Area Office must request or begin foreclosure concurrently with the commencement of MIP status. This is imperative and must occur in all cases.
 - (3) When the Department is awarded MIP status, the Director of Housing Management should authorize the management agent to begin making the needed repairs to restore the project to acceptable living standards as quickly as possible. The repairs should be paid for out of project funds and the Insurance Fund.

Refer to Handbook 4315.1, Multifamily Property Disposition – Management, for further instruction on foreclosure and MIP responsibilities.

6.20 NON-ROUTINE INSPECTIONS

- a. Inspections for Funding Changes. In addition to regularly-scheduled inspections, Loan/Asset Management staff must ensure that a physical inspection has been carried out prior to approving actions that entail funding changes, such as additional subsidy approvals and workouts. Loan/Asset Management staff may waive this requirement if:
- (1) A physical inspection performed in compliance with this Handbook has been completed within the past year; or
 - (2) Loan/Asset Management staff determine that project operations will be imperiled if approval of the requested assistance is withheld.
- b. Ad-hoc Reviews. If time permits, HUD staff on official travel should drive by any HUD-assisted and insured projects located nearby their travel route or destination. Area Office staff should observe the physical condition of the project with a quick walk-through or drive-by inspection and assess whether the project requires further inspection.

SECTION 3: MANAGEMENT REVIEWS

6.21 PURPOSE OF MANAGEMENT REVIEWS

- a. **Compliance.** Management reviews are another integral step for ensuring compliance with HUD program requirements. Management reviews allow HUD to determine whether owners and management agents are providing the services which HUD requires under its Regulatory Agreements, Housing Assistance Payments Contracts, mortgages, and general and industry standards.
- b. **Communication.** Effective management of HUD-insured and HUD-assisted multifamily properties requires adequate communication between owners, managers, and residents. Management reviews serve as HUD's primary means of assessing the communication between owners, management agents, and residents and resident organizations. Chapter Four of this Handbook provides more detailed guidance on communication between owners, management agents, and residents.

6.22 TYPES OF MANAGEMENT REVIEWS

There are two types of management reviews.

- a. **Comprehensive Management Reviews.** A comprehensive review covers all aspects of property operations and addresses all questions on the HUD-9834 "Management Review of Multifamily Projects." Exceptions to the comprehensive review format may be granted in writing by the Director of Housing Management on a case-by-case basis.
- b. **Limited Management Reviews.** Limited management reviews examine only the key areas of project operations. These reviews use 17 of the questions on the HUD-9834, in addition to all questions addressing the suspected or known problem area(s).

Refer to HUD Handbook 4350.1, Chapter Six for a full discussion of comprehensive vs. limited reviews.

6.23 DETERMINING THE SCOPE OF REVIEW

- a. Loan/Asset Management staff must conduct comprehensive reviews for all physically or fiscally troubled projects.

- b. Loan/Asset Management staff may choose to perform limited reviews for some projects. The Director of Multifamily Housing will determine whether the scope may be limited or comprehensive. Chapter 6 of HUD Handbook 4350.1 outlines the appropriate circumstances in which to use limited reviews.

6.24 SCHEDULING MANAGEMENT REVIEWS

- a. The Area Office should use the same priority standards shown in Figure 6-1 to schedule management reviews. Loan/Asset Management staff should ensure that assisted projects which are physically or fiscally troubled receive first priority.
- b. In addition to the normal review plan, Loan/Asset Management staff must arrange to review projects at which there are serious management problems or significant resident complaints.
- c. When possible, Loan/Asset Management staff should schedule management reviews to coincide with the project physical inspection to minimize the impact on project operations and to use HUD resources most efficiently.

6.25 STEPS FOR PERFORMING THE MANAGEMENT REVIEW

- a. Preparation. Loan/Asset Management staff should review the records, listed below, for each project scheduled for review to determine whether the review is warranted and, if so, its extent. Staff should keep in mind, however, that these records alone may not fully indicate the project's needs and condition.
- (1) The priority status assigned to the project.
 - (2) Any records of the agent's performance at other projects.
 - (3) Quality, scope, and results of previous HUD on-site reviews (management or physical) and mortgagee physical inspection reports.
 - (4) Results from FHEO reviews.
 - (5) Financial condition reports, including the Independent Public Accountant's report.
 - (6) Early Warning System, MIPS, and TRACS printouts.
 - (7) Results of Occupancy Specialist desk reviews of subsidized project resident certifications and vouchers.

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- (8) Resident comments and complaints.
 - (9) Local police reports, if available.
- b. Documentation
- (1) Format. The review will be documented on form HUD-9834, "Management Review of Multifamily Projects." See Appendix 4.
 - (2) Contents.
 - (a) The report will summarize all identified deficiencies, recommended or required corrective actions and time frames, and conclusions. Area Office records shall contain a detailed description of any deficiency.
 - (b) If the report refers to materials that are not physically attached to it (such as annual financial statements), it should clearly identify the location of those materials.
- c. Close-out Meeting. The owner and/or manager should be notified of findings upon the conclusion of the review so they can begin to address the problems. The reviewers should stress at the meeting that the areas of concern identified are not necessarily all-inclusive and that the final report could include additional findings of deficiency based on the analysis of the overall review.

6.26 FAIR HOUSING AND EQUAL OPPORTUNITY CONSIDERATIONS

- a. Referrals to FHEO. During management reviews, Loan/Asset Management staff examine resident records together with the agent's resident screening and selection procedures for compliance with the occupancy requirements established in HUD Handbook 4350.3. If concerns about an owner/agent's compliance with Fair Housing requirements arise during such reviews, Loan/Asset Management staff should notify FHEO of these concerns.
- b. FHEO Reviews. FHEO staff conduct separate compliance reviews based upon Loan/Asset Management referrals or the results of FHEO risk assessments concerning the following areas.
 - (1) Management and administration;
 - (2) Equal employment opportunity and training;
 - (3) Outreach and affirmative marketing;

- (4) Occupancy reviews and resident data;
- (5) Maintenance and facility management;
- (6) The provision of services to persons with disabilities; and
- (7) Procurement practices and the use of minority- and women-owned businesses.

For additional information, see FHEO Notice 92-1, Implementing FHEO Accountability Monitoring/Risk Assessment.

6.27 TIMEFRAME FOR COMPLETING REPORT

- a. If HUD performs the management review, it will issue the report upon completion of the field work.
- b. If a contractor performs the management review, the contractor must deliver the report to the Area Office within the time frame specified in its contract with HUD.

6.28 NOTIFICATION OF THE OWNER/MANAGEMENT AGENT

The Loan/Asset Management staff must notify the owner of the results of the review upon completion of the report by HUD staff or contractors. Loan/Asset Management staff must also send a copy of the report to the management agent and/or other contacts identified by the owner and to the mortgagee if the property has an insured mortgage. See HUD Handbook 4350.1 for specific procedures regarding owner notification.

6.29 CORRECTIVE ACTION PLANS

- a. Format. Once HUD has notified the owner and management agent of the report's findings, the owner/agent is expected to prepare a corrective action plan to address deficiencies. Like the corrective action plan for a physical inspection, this plan may use the MIO plan format. (See HUD Handbook 4355.1, Flexible Subsidy Handbook.)
- b. Time Frame for Response. Owners must provide the Area Office with a corrective action plan addressing the noted deficiencies within thirty 30 days of the date of notification.

- c. **Appeals.** The owner may appeal the findings of the management review according to HUD Handbook 4350.1, Chapter 6. However, the owner may not delay submitting the response or correcting valid deficiencies that are not under appeal.
- d. **Monitoring Corrective Action.**
- (1) To monitor corrective action, Loan/Asset Management staff may, as appropriate:
- (a) Conduct discussions with owners, agents, and residents;
 - (b) Review the deficient area by performing a limited management review using form HUD-9834; and
 - (c) Review desk reports and other documentation to verify that management deficiencies have been corrected.
- (2) Each Area Office must develop its own procedures and timetables for monitoring management corrections given the severity of the deficiencies and available staff resources, but the following guidelines apply to all monitoring activities.
- (a) **Follow-up.** HUD staff must ensure that owners are carrying out the required corrective actions. The Loan/Asset Management staff will monitor the project for as long as deficiencies are being corrected, and will determine whether the owner is acting in a timely and professional manner in carrying out the corrections.
 - (b) **Discovery of Additional Deficiencies.** If new deficiencies are revealed as a result of routine monitoring or as a result of a subsequent review of operations, Loan/Asset Management staff will repeat all steps necessary to assure owner compliance.
 - (c) **Follow-up System.** If a follow-up system is not in place, Loan/Asset Management staff shall establish a follow-up and reporting system which monitors the actions taken by the owner to cure existing deficiencies.

6.30 ADDRESSING NONCOMPLIANCE

- a. The Loan/Asset Management staff shall notify the owner in the case of noncompliance with the corrective action plan. The owner must take remedial action **immediately** upon receipt of notification, and must provide an explanation of any noncompliance.

- b. The owner also must develop and provide to the Area Office proposed revisions to the corrective action plan within ten (10) days of the notification. The Loan/Asset Management staff will analyze any modifications to determine their feasibility and their effect on the continued viability of the plan.
- c. If noncompliance is caused by a management agent, Loan/Asset Management staff should follow the procedures described in Chapter 7 to enforce agent compliance.

6.31 TECHNICAL DEFAULTS

For properties with HUD-insured or HUD-held mortgages, if the Loan/Asset Management staff determine that:

- a. A good-faith effort is not being made to correct deficiencies noted in the management review report;
- b. A plan is not received; or
- c. The plan, as revised, is no longer workable.

then the Area Office should pursue a declaration of default, under either the waste provision of the mortgage or under the Regulatory Agreement. See paragraph 6-19.

6.32 AGENTS MANAGING MORE THAN ONE PROPERTY

- a. If the Loan Management or other Area Office staff are familiar with the management agent's performance because the agent manages more than one property under HUD's jurisdiction, the Loan/Asset Management staff may perform a Limited Management Review. They may also examine a sample of the more important management tasks (cost controls and budgeting, resident screening and selection, preventive maintenance, etc.).
- b. If the Area Office has observed problems at one or more of the agent's projects, Loan/Asset Management staff should perform a Comprehensive Management Review at all current projects.

6.33 REVIEWS OF MANAGEMENT AGENTS' CENTRAL OFFICES

- a. In some cases, agents with more than one property perform certain management functions from a centralized location. General management functions, as well as financial management and selected occupancy functions, are activities these agents often choose to centralize. Loan/Asset Management staff must perform management reviews of the agent's central office activities as well as regular on-site reviews of functions carried out at the projects. The purpose of the centralized review is to limit the time spent reviewing individual properties. For example, once a review is performed on the agent's central offices books, records, and internal controls, they will not need to be inspected at each individual property.
- b. The HUD Super A Area Office covering the area in which the management agent's central office is located has responsibility for centralized reviews. They may solicit assistance from the Area Office which is located closest to the Central Office proposed for review. The Super A Area Office has the responsibility for assuring the review is conducted, resolving any outstanding findings, and forwarding a copy of the review to other Area Offices with properties managed by that agent.
- c. Central office management reviews should be performed at least once every 18 months.
- d. Whenever possible, a team of the appropriate HUD specialists, rather than a single staff person, should perform these reviews. An ideal team would consist of a Loan Specialist/Asset Manager, a Financial Analyst, and an Occupancy Specialist, if staffing permits. Additional members may be appropriate depending on the size of operation and types of functions handled by the agent's central office.
- e. Central office management reviews follow a modified management review format. Loan/Asset Management staff performing this type of review should complete the following portions of the Management Review Form (Form HUD-9834):
 - (1) Part B - Financial Management (All items)
 - (2) Part C - Occupancy and Tenant Selection (Those items that correspond to activities handled at the agent's central office)
 - (3) Part E - Drug Free Housing Policy (Items 33, 34, 36, & 37)
 - (4) Part F - General Management (Items 38 - 42 and 44- 45)



In completing the review, Loan/Asset Management staff should assess whether the agent's procedures allow HUD to examine the performance of each project individually for all of the applicable items above.

SECTION 4: FINANCIAL COMPLIANCE

6.34 OVERVIEW

- a. **Purpose.** Management agents are charged with protecting the financial viability of HUD-insured multifamily projects. The purpose of financial reviews is to verify that owners and management agents are in compliance with HUD Handbook 4370.2, Financial Operations and Accounting Procedures for Insured Multifamily Projects, and related HUD requirements and guidelines. This section provides an overview of the financial compliance review requirements for Loan/Asset Management staff.

Inadequate internal controls and procedures for financial operations and accounting can result in

- insufficient funds to pay for maintenance and emergency repairs;
- willful misappropriation of project funds; and/or
- claims and losses against the FHA Insurance Fund.

To prevent these occurrences, Loan/Asset Management staff are responsible for determining that owners and management agents observe HUD guidelines and maintain an effective set of reporting systems and internal controls.

- b. **Applicability.** All HUD-insured and HUD-assisted properties are subject to some degree of financial review. HUD Handbook 4370.2 describes the review procedures that must be performed for different types of projects and who is responsible for conducting the review (i.e., HUD, the mortgagee, or Contract Administrators other than HUD).

6.35 RELATIONSHIP TO MANAGEMENT REVIEW

Part B of the HUD-9834, Management Review of Multifamily Projects, addresses financial management. Questions on Part B of the HUD-9834 relate directly to the following paragraphs. See Appendix 4.

6.36 REVIEWING ANNUAL FINANCIAL STATEMENTS

- a. **Purpose.** Annual financial statements show the project's financial condition. Loan/Asset Management staff may review the statements, which are sent to the Area Office, to measure the current and near-term financial stability of the

project by using financial ratios and other indicators. (Reports from existing MIPS applications may provide additional detail.) Loan/Asset Management staff should determine whether project assets and liabilities, rates of rent collection, accounts payable, etc., appear reasonable given the project's size and history. This information may suggest areas where increased oversight is needed.

- b. **Review requirements.** Loan/Asset Management staff must verify that annual financial statements are prepared and submitted to the Area Office in compliance with the following procedures and with HUD Handbook 4370.2.

(1) **Preparation**

- (a) Each annual financial report must be based on books and accounts for that project only.
- (b) The annual financial report must cover the project's entire fiscal period under review.
- (c) The annual financial report must be prepared on an accrual basis.
- (d) The annual financial report must be audited by an Independent Public Accountant (IPA) who is a Certified Public Accountant or who has been licensed or registered on or prior to December 31, 1970.

- (2) **Submission.** Chapter 3 of HUD Handbook 4370.2 REV-1 provides a detailed listing of the required annual reports. Audited financial statements must be submitted annually for each project. The Regulatory Agreement requires submission within 60 days following the end of each fiscal year.

6.37 ASSIGNING MANAGEMENT COSTS

- a. HUD allows owners to charge certain management costs to the project's operating account. However, other management costs may be paid only out of the management fee. The assignment of these costs is discussed in paragraphs 6.38 and 6.39. Asset management costs for the project must be paid out of distributions to the owner. The assignment of asset management costs is described in paragraph 6.41.
- b. In reviewing a project's financial statements, Loan/Asset Management staff should follow the procedures in paragraphs 6.38 through 6.41 and in

Handbook 4370.2 to ensure that management costs have been properly assigned.

- c. Rather than maintaining separate payroll and separate fringe benefits plans for each property, some agents consolidate payroll and fringe benefit plans in order to reduce costs for the properties. In such a system, all personnel for several properties are listed under a single Federal Employer I.D. Number. The salary and fringe benefits costs are prorated to the various properties in the following ways.
- (1) Salaries and fringe benefits of personnel performing front-line duties are prorated among the properties served in proportion to actual use.
 - (2) The agent may not impose surcharges or administrative fees in addition to actual costs.
 - (3) The properties served may make reimbursement payments to the consolidated employer upon issuance of payroll checks.
 - (4) Discounts, rebates, dividends, commissions, or other recoveries of fringe benefits costs must be prorated among the properties served in proportion to actual use during the period to which the recovery applies.

6.38 MANAGEMENT COSTS CHARGED TO THE PROJECT'S OPERATING ACCOUNT

a. Front-line Costs and Day-to-Day Activities

- (1) Reasonable expenses incurred for front-line management activities may be charged to the project operating account. HUD Handbook 4370.2, Financial Operations and Accounting Procedures for Insured Multifamily Projects, provides a complete listing of allowable expenses. Front-line activities include:
 - taking applications;
 - screening, certifying, and recertifying residents;
 - maintaining the project; and
 - accounting for project income and expenses.

Figure 6-2 provides examples of front-line management costs.

Figure 6-2

Examples of Costs Paid from Management Fee and Project Account

Costs Paid from Fee	Costs Paid from Project Account
<p>The selection and establishment of an accounting system and internal management control procedures. Visits to spot check performance of on-site staff (e.g., reviews of occupancy files, office procedures, etc.).</p>	<p>Reimbursement of all costs related to maintaining a centralized or project-based accounting functions of the project, including resident certifications, worksheets, and monthly subsidy billings, as well as monthly accounting reports required by the owner or HUD. Includes prorated costs on a per-unit basis for centralized accounting systems, including hardware, software and technical support. Agent can be reimbursed for the prorated cost to the project of personnel providing property-specific accounting and computer services. The cost to the project for such services provided by the agent may not exceed the cost of procuring comparable services from an independent vendor. Each year, the agent must determine that these costs are at or below the market and maintain such evidence on-site.</p>
<p>Fidelity bond coverage for the agent's supervisory staff</p>	<p>Fidelity bond coverage for front-line employees and principal management staff.</p>
<p>Bookkeeping expenses attributable to agent's company</p> <p>Overhead expenses (e.g., supplies and equipment, transportation and phone calls to projects, regularly scheduled long distance calls from project to agent, office space, data processing, etc).</p>	<p>Costs of front-line project operations -- e.g., managers and their apartments, legal and auditing expenses, bookkeeping and associated expenses, occupancy clerks, project management delinquency notices, evictions, project checks, envelopes, postage, air express delivery charges, copying, unscheduled long distance calls to agent, costs of IRS Section 401-K, 125, and 403-B, and related retirement and health plans for on-site staff so long as they are comparable with industry standards and in compliance with the guidelines set forth in paragraph 6.38(e), and the salary of a supervisory employee of the agent designated to replace a project employee for hours worked at the project above and beyond the first 40 consecutive hours of the assignment.</p>
<p>Directing the investment of project funds.</p>	<p>Reasonable brokerage fees and interest costs incurred in investing project funds</p>
<p>Agent's travel expenses to visit project and meet with owners. Training and travel expenses for agent's supervisory staff.</p>	<p>Travel expenses incurred by front-line staff's responsibilities (e.g., making bank deposits, meeting with contractors, attending training, etc.).</p>
<p>Agent office phone lines not dedicated to TRACs or the project, and automation equipment not required by HUD.</p>	<p>Dedicated line and modem for transmitting TRACs data (such lines can be shared with FAX machines). Automation required by HUD (e.g., equipment for the implementation of TRACs). Reasonable costs for on-site equipment, software, and technical support necessary for performing other front-line activities of the project, including FAX machines, automated credit terminals, and other telephones and electronic transmission devices at the site.</p>
<p>Recruiting costs for agent's staff, including roving staff members.</p>	<p>Recruiting costs for on-site staff.</p>

- (2) If front-line management functions for several properties are performed by staff of the agent operating out of a single office, the following conditions apply.
- (a) The agent must prorate the total associated costs among the projects served in proportion to the actual use of services. Allowable total associated costs include:
 - (i) Salaries and fringe benefits of personnel performing front-line duties; and
 - (ii) Actual office expenses, fees, and contract costs directly attributable to the performance of front-line duties.
 - (b) The agent may not impose surcharges or administrative fees in addition to actual costs.
 - (c) The cost of performing front-line management functions off-site may not exceed the total cost of performing these functions at the property.
- (3) The salaries of the agent's supervisory personnel may not be charged to project accounts, with the exception of supervisory staff providing oversight for centralized accounting and computer services for the project.

b. Agent Staff Performing Front-Line Functions

A management agent employing generalist staff members specifically designated to assume front-line responsibilities on an as-needed basis may bill the project's operating account for time spent on front-line activities for the property if each of the following conditions are met.

- (1) Salaries of an agent's supervisory personnel may not be charged to the project's operating account (See exceptions to this rule in paragraph 6.39).
- (2) The agent develops a job description for each generalist position outlining the front-line and non-front-line responsibilities of the position. The non-front-line responsibilities in the generalist description may not include supervisory functions.
- (3) The agent develops a reasonable hourly rate, which will be used to bill individual projects for time spent on front-line functions. A reasonable hourly rate includes the hourly salary for the position and an allocation

for overhead expenses, and should not exceed the amount that would be paid to an on-site staff member with similar experience.

- (4) An agent's generalist staff must document hours spent and duties performed on front-line activities for each project and those spent on the central office functions. Weekly timesheets are an acceptable method of documenting hours spent on front-line tasks.

c. Training Costs for Front-Line Staff

- (1) Project funds may be used to obtain project related training for front-line management staff.
- (2) Loan/Asset Management staff may use the following guidelines to assess whether amounts proposed for training are reasonable.
 - (a) At a minimum, the budget amount should be sufficient to allow one staff person from each functional area to attend a minimum of one project related training session per year.
 - (b) As a rule of thumb for most projects, a reasonable training budget would not exceed the greater of \$5,000 or one half of one percent (0.005) of gross rents.
 - (c) Loan/Asset Management staff have the authority to approve training budgets that exceed the guidelines in paragraph (b) above if the owner/agent can clearly document the conditions that necessitate more extensive training for project staff.

d. Training Costs for Board Members of Resident-Owned/Co-op Housing

- (1) Project funds may be used to provide project related training for the Board of Directors of a housing cooperative.
- (2) Project funds approved by the Board may be used to pay for each board member to attend one project related training session or conference per year.
- (3) The guidelines presented in paragraph 6.38c(2)(b) and 6.38c(2)(c) should be used in evaluating whether the amounts proposed for training are reasonable.

REVISIONS TO

CHAPTER SIX: PROGRAM MONITORING

6.38 MANAGEMENT COSTS CHARGED TO THE PROJECT'S OPERATING ACCOUNT

e. Retirement Accounts for Front-Line Staff

- (1) Funding of retirement accounts for front-line staff can be paid out of a project's operating account. Retirement accounts for an agent's central office staff may be paid only out of the management fee.
- (2) HUD will allow employer contributions to retirement accounts for front-line staff to be paid out of project funds if the following requirements are satisfied.

(a) The retirement account plan complies with all applicable federal, state, and local laws and regulations governing such programs.

(b) Only permanent, front-line employees who work full-time at the project (i.e., more than 20 hours per week) may participate. Temporary or part-time on-site employees are not eligible. Also, rotating employees working at more than one project are not eligible unless they qualify as a full-time employee at one project.

Note: The definition of full-time employment must be consistent with applicable federal and state law definitions of full-time employment, however in no event can it be less than 20 hours per week.

(c) The projected cost of employer contributions to be paid out of project funds may not exceed ten percent of the base pay of eligible employees.

(d) The employee is to be vested ownership of no less than 20% of the employer's contribution each year until fully vested. Employees must be fully vested after five full years of employment.

(e) Employees must remain 100 percent vested for all personal contributions to their account.

(f) The actual cost of administering the retirement account plan will be prorated to the projects.

(g) No commingling of employee accounts may occur.

(h) The plan must be managed by a qualified outside entity with an established history of handling such programs.

(i) Agents will make modifications to the plan as necessary to comply with changes in the laws and regulations governing such programs.

To further the plan's goals, the agent may make modifications to the program without notice to HUD as long as the program continues to satisfy the provisions of paragraphs (a) through (i) above.

- (3) Agents must certify to HUD that the retirement account plan meets the requirements set forth in this paragraph before any funds are charged to a project's operating account. In addition, agents must include the additional cost in their Budgeted Rent Increase request.

To further the plan's goals, the agent may make modifications to the program without notice to HUD as long as the program continues to satisfy the provisions of paragraphs (a) through (i) above.

- (3) Agents must certify to HUD that the retirement account plan meets the requirements set forth in this paragraph before any funds are charged to a project's operating account. In addition, agents must include the additional cost in their Budgeted Rent Increase request.

6.39 MANAGEMENT COSTS PAID FROM THE MANAGEMENT FEE

- a. Expenses for services that are not front-line activities must be paid out of management fee funds, except for centralized accounting and computer services. Figure 6-2 above presents examples of costs that may only be paid out of the management fee.
- b. Salaries, fringe benefits, office expenses, fees, and contract costs for the following activities must be paid out of management fee funds. These costs include:
 - (1) Designing procedures/systems to keep the project running smoothly and in conformity with HUD requirements.
 - (2) Preparing budgets required by the owner or HUD, exclusive of rent increase requests and MIO Plans.
 - (3) Recruiting, hiring, and supervising project personnel.
 - (4) Training for project personnel that exceeds the line item budget for training expenses.
 - (5) Monitoring project operations by visiting the project or analyzing project performance reports.
 - (6) Analyzing and solving project problems.
 - (7) Keeping the owner abreast of project operations.
 - (8) Overseeing investment of project funds.
 - (9) Ensuring that project positions are covered during vacations, sickness, and vacancies.

- c. The salaries of agent supervisory personnel must be paid from the management fee unless one of the exceptions below is met.
- (1) The cost of supervisory personnel providing oversight of centralized accounting and computer services for a project may be paid out of project funds.
 - (a) A prorated share of the salaries for such supervisors may be charged to the project's account.
 - (b) The total charges to a project for centralized accounting and computer services (including supervisory staff costs) provided by the agent may not exceed the cost of procuring comparable services from an independent contractor.
 - (2) The costs of the salary for a supervisory employee of the agent designated to replace a project employee on temporary leave may be paid out of project funds after the first 40 hours of the assignment.
 - (a) The amount paid out of project funds to cover the weekly salary of the replacement employee may not exceed the lesser of:
 - (i) Twice the amount of the absent employee's weekly salary; or
 - (ii) The actual amount of the replacement employee's weekly salary.
 - (b) Project funds may be used to pay the allowable portion of the replacement employee's salary for a period of up to 90 days after the first 40 consecutive hours.

6.40 OFFSETTING AGENT'S COSTS FOR PURSUING RESIDENT FRAUD

As part of HUD's efforts to reduce the incidence of resident fraud in HUD-assisted projects, HUD will allow owners/agents to keep a portion of the resident repayments they collect from residents who have improperly reported their income at the time of certification or recertification to help defray the cost of pursuing these cases. Owners/agents should take the following steps when they become aware that a resident may have provided inaccurate information about household income during the certification or recertification process.

- a. Follow the procedures in Chapter 5 of HUD Handbook 4350.3 for investigating and correcting inaccurate information provided during certification or recertification of resident income.

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- b. If a resident supplies inaccurate income information and, as a result, is charged less than the amount required by HUD's rent formulas, the resident must reimburse the owner for the difference between the rent the resident should have paid and the rent he/she was actually charged. Chapter 5 of HUD Handbook 4350.3 describes HUD's requirements for resident repayment.
- c. When residents submit inaccurate income information and are found to have received overpayments of assistance, owners/agents are required to reimburse HUD for any resident repayments received. To help offset the expense of obtaining resident repayments, owners/agents may retain up to a maximum of 20 percent of the amount of resident repayments they actually collect from residents who have provided inaccurate information about their income to cover their actual costs. Owners/agents must reimburse HUD for the remaining portion of resident repayments they collect in accordance with the procedures in Chapter 5 of the 4350.3.

6.41 ASSET MANAGEMENT SERVICES

- a. Asset management functions are those activities associated with managing and protecting the assets of the ownership entity and overseeing the management agent's performance. Asset management activities include:
- (1) Disbursing surplus cash.
 - (2) Periodic owner visits to the project to review the agent's performance.
 - (3) Obtaining or providing tax advice to the ownership entity or its principals and preparing the ownership's tax return.
- b. Asset management costs must not be billed to a project's operating account. These costs may only be paid from funds available for distribution to owners in accordance with the terms of the Regulatory Agreement and HUD Handbook 4370.2.

NOTE: On limited distribution projects, any asset management fees paid from project funds must be included in the distributions-paid entry on Line 2C of Form HUD-93486, Computation of Surplus Cash, Distributions and Residual Receipts.

- c. Reasonable expenses for preparing the ownership entity's tax return, and Schedule K-1 if the entity is a partnership, may be charged to a project's operating account.

6.42 FIDELITY BOND COST ALLOCATION

- a. The cost of the management agent's fidelity bonds must be allocated as follows:
- (1) The agent must pay fidelity bond costs for the agent's supervisory staff.
 - (2) The agent may charge the project operating account for bond costs for front-line employees and the agent's principals. If a bond covers the front-line employees of several projects, the bond costs applicable to those projects must be allocated in direct proportion to the gross rent potentials in effect for those projects at the time the bond is purchased. Bond costs for the agent's principals should also be prorated among all properties if the agent manages more than one property.
- b. When conducting financial reviews, Loan/Asset Management staff should ensure that fidelity bond costs have been properly allocated.

6.43 WORKER'S COMPENSATION DIVIDENDS

- a. Dividends received from Worker's Compensation insurance premiums must be distributed in the following manner.
- (1) If Worker's Compensation insurance for project staff is paid for out of project funds, all dividends are returned to the project.
 - (2) If Worker's Compensation premiums are paid by the agent out of the management fee, the dividends are paid to the agent.
- b. In reviewing a project's financial statement, Loan/Asset Management staff should identify the source of funds used to pay Worker's Compensation premiums and verify that all dividends are returned to the project when the premiums are paid out of project funds.

6.44 PROJECTS NOT SUBJECT TO MANAGEMENT FEE REVIEWS

Owners of projects not subject to HUD review of management fees may not inflate management fees to receive project funds monthly rather than through semi-annual or annual distributions of surplus cash. During all financial reviews of such projects, Loan/Asset Management staff should examine management fee payments to make sure they have not been inflated.

6.45 CASH MANAGEMENT

- a. Purpose. Loan/Asset Management staff must verify that the management agent secures cash receipts and disbursement checks to prevent unauthorized use of funds.
- b. Review Requirements. Loan/Asset Management staff must review the management agent's cash management controls in accordance with Part B of the HUD-9834, Item 12 – Cash Controls, as part of the management review.

See Chapter 2, Handbook 4370.2 REV-1, for details on Cash Management Controls. Generally:

- (1) All receipts must be promptly deposited to a federally insured bank account held in the name of the project. Security deposits should be held separate and apart from other project funds in a segregated account.
- (2) The management agent must obtain a fidelity bond in an amount at least equal to potential collections for two months. Blanket coverage must extend to all employees handling cash.
- (3) Receipts and disbursements should be controlled through procedures for reconciliation of cash movements to banking and accounting statements and vouchers.
- (4) Cash instruments (e.g. blank checks) must be kept secure in a locked drawer or safe with limited access.

6.46 DISTRIBUTION OF SURPLUS CASH

- a. Purpose.
 - (1) Uses of surplus cash are governed by the Regulatory Agreement. Loan/Asset Management staff must verify that owners do not distribute surplus cash before satisfying all obligations to mortgage repayment, payment of reasonable project expenses, and replacement reserve accounts.
 - (2) Distributions may not be made when the project is in default or under a forbearance agreement, and distributions to owners may not be made on nonprofit projects.

- b. **Review Requirements.** Loan/Asset Management staff must review the Income Statement and Cash Flow Statement to verify that distributions have been made in compliance with the Regulatory Agreement and with the requirements of Chapter 2, Handbook 4370.2 REV-1. These guidelines include the timing as well as the amount of the distribution.

6.47 MAINTAINING PROJECT FUNDS IN INSURED ACCOUNTS

- a. **Purpose.** Given the size of most project accounts, it is vital that they be held in a federally-insured bank. An unreimbursable loss to any of these accounts would unnecessarily burden the FHA Insurance Fund.
- b. **Review Requirements**
- (1) Loan/Asset Management staff must ensure that each project maintains at least these bank accounts in a federally-insured bank (descriptions of each account are included in Chapter 2 of Handbook 4370.2 REV-1):
 - (a) Regular Operating Account;
 - (b) Replacement Reserve Account;
 - (c) Tenant Security Deposit Account (if the project takes security deposits); and
 - (d) Residual Receipts Account.
 - (2) Loan/Asset Management staff must review the project's bank account statements and verify that the bank is federally-insured and that each account is established and in use.
 - (3) Loan/Asset Management staff must verify that the project has opened additional security deposit accounts in different banks, if necessary, to ensure that the balance of each security deposit account does not exceed the insurance limit of \$100,000 per FDIC regulations. See Handbook 4370.2 for further guidance.

6.48 MONITORING EXCESS INCOME FROM SECTION 236 PROJECTS

- a. **Purpose.** Rents collected in excess of basic rental charges from residents in a Section 236 project must be remitted monthly to HUD. Excess rents is the amount by which the rent collected on a dwelling unit exceeds the approved basic rent for that unit.

b. Review Requirements

- (1) **Annual Review.** The IPA should confirm the transfer of excess rents for Section 236 projects with the Excess Rental Income Office in Pittsburgh. Loan/Asset Management staff should review the results of this confirmation.
- (2) **Mid-year Review.** If Loan/Asset Management staff determine it necessary to review excess rent transfers mid-year, they should request copies of the project's forms HUD-93104, Monthly Report of Excess Income and Accrued Unpaid Excess Income and HUD-93104A, Schedule for Calculating Excess Income and Report of Excess Income Delinquencies from the management agent, and compare the recorded amounts to the project's Monthly Accounting Reports.
- (3) Paragraph 7-28 of HUD Handbook 4350.1 provides detailed guidance on the specific actions loan management staff need to take to properly monitor excess income from Section 236 projects.

6.49 MONITORING EQUITY SKIMMING

- a. In reviewing a project's financial statements, Loan/Asset Management staff must make sure that owners are not receiving unauthorized distributions from the project. To ensure that no unauthorized distributions have been made, also referred to as equity skimming, Loan/Asset Management staff should compare the amount of distributions paid during the period covered by the annual statements to the amount of surplus cash available, keeping in mind the distribution limitations imposed on limited dividend owners. Proper distributions meet the following conditions:
 - (1) No distributions are permitted for projects with a nonprofit ownership entity.
 - (2) Limited dividend owners may pay both the annual distribution earned (i.e., the 6 or 10 percent permitted by the Regulatory Agreement) plus distributions unpaid from previous years, but only up to the amount of surplus cash available.
 - (3) Distributions may not be paid in excess of the surplus cash available as of the end of the prior fiscal year. Distributions may be paid semi-annually for certain projects with HUD approval.
 - (4) Distributions may not be paid when:
 - (i) A project is in default under the mortgage;

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- (ii) The owner has agreed to waive payment of distributions;
 - (iii) The project is in a non-surplus cash position; or
 - (iv) The project is not in "good repair and condition" (a requirement of the Regulatory Agreement) based on a mortgagee physical inspection, or a HUD management review or physical inspection.
- b. Loan/Asset Management staff should refer to HUD Handbook 4370.1, and Chapter 8 of Handbook 4350.1 for more detailed guidance on monitoring for equity skimming.

6.50 CONTRACTING GUIDELINES

- a. When an owner/agent is contracting for goods or services involving project income, an agent is expected to solicit written cost estimates from at least three contractors or suppliers for any contract, ongoing supply or service which is expected to exceed \$10,000 per year, or the threshold established by the HUD Area Office with jurisdiction over the project.
- b. For any contract, ongoing supply or service estimated to cost less than \$5,000 per year, the agent should solicit verbal or written cost estimates in order to assure that the project is obtaining services, supplies and purchases at the lowest possible cost. The agent should make a record of any verbal estimate obtained.
- c. Documentation of all bids should be retained as a part of the project records for three years following the completion of the work.
- d. For further information on contracting guidelines and requirements, see Chapter 5 of this Handbook.

SECTION 5: PROVISIONS OF CONTRACTS AND REGULATORY AGREEMENTS**6.51 OVERVIEW**

- a. **Purpose.** When HUD is the Contract Administrator, the Loan/Asset Management staff must verify that the project owner and management agent are complying with their legal agreements between the owner and HUD, and that the project owner is providing decent, safe, and sanitary housing to assisted residents in compliance with HUD guidelines.

When HUD is not the Contract Administrator, the Loan/Asset Management staff should review the work of the Contract Administrator (PHA, State Agency, etc.) to be sure that the owner and management agent remain in compliance, and that the contract administrator itself is taking all necessary steps to prevent the opportunity for fraud, waste, and mismanagement in the operation of the project.

- b. **Applicability.** The following project types are covered under this section.

- (1) Section 8 Loan Management Set-Aside
- (2) Section 8 Property Disposition Set-Aside
- (3) Section 8 New Construction and Substantial Rehabilitation
- (4) Section 515/8 Administration for Rural Housing and Economic Development Services
- (5) Section 8 State Agencies
- (6) Section 236 Interest Reduction Payments for Rental Projects
- (7) Section 221(d)(3) Below Market Interest Rate (BMIR)
- (8) Rent Supplement
- (9) Rental Assistance Payment (RAP)
- (10) Section 202 Projects for the Elderly or Handicapped
- (11) Section 202 Nonelderly Handicapped Families and Individuals
- (12) Project Rental Assistance Contract (PRAC)
- (13) Project Assistance Contract (PAC)
- (14) Flexible Subsidy Program for Troubled Projects

6.52 REVIEWS AND CORRECTIVE ACTION

The monitoring tasks described in this Section are similar to those covered in Section 2. In the event that the Loan/Asset Management staff identify waste, fraud or noncompliance while monitoring rental assistance contracts and Regulatory Agreements, they should require and monitor corrective action as described in Section 2 and/or pursue sanctions as discussed in Chapter 7 of this Handbook and, if applicable, Chapter 8 of Handbook 4350.1.

6.53 MONITORING RENTAL ASSISTANCE CONTRACTS

Owners and managers of subsidized projects agree to comply with the procedures and practices stated in the rental assistance contract, including (but not limited to) the maintenance of housing units to meet Section 8 Housing Quality Standards. The contract administrator – HUD, the PHA, or the State Agency – is responsible for ensuring that the owner/agent complies with the clauses of the rental assistance contract.

This paragraph summarizes the responsibilities of the owner/manager and the contract administrator, and highlights some of the monitoring tools that the contract administrator may use to fulfill its responsibilities. A complete discussion of contract monitoring is contained in HUD Handbook 4350.5, Subsidy Contract Administration and Field Monitoring. Owners/managers and contract administrators are reminded that the exact wording of HAPs can vary depending on the project type and whether or not the project is HUD-insured; this discussion is only a general overview of the administrative responsibilities.

- a. Under the HAP, the owner/agent is responsible for:
 - (1) Marketing units and selecting families in accordance with HUD guidelines and applicable fair housing regulations;
 - (2) Maintaining and operating the project in a decent, safe, and sanitary manner and in conformance with Housing Quality Standards and industry practices;
 - (3) Verifying resident income and household composition on at least a yearly basis to ensure compliance with occupancy guidelines;
 - (4) Collecting resident rents;
 - (5) Establishing and maintaining project financial accounts and records; and
 - (6) Obtaining the necessary insurance contracts, including flood insurance for projects located in special flood hazard areas.

- b. The contract administrator will verify that the owner/agent is fulfilling these responsibilities in a timely and professional manner, and will also initiate any procedures to bring about necessary corrective actions. Specifically, the contract administrator will:
 - (1) Assess the project's operating policies and procedures through on-site visits, interviews with the owner, management agent, and project staff;

- (2) Review operations for evidence of waste, mismanagement, or fraud, and take appropriate steps as outlined in this handbook and in Handbook 4350.5 and 4350.1 to initiate corrective action;
- (3) Review the project's operating budget, Reserve for Replacement withdrawal requests, and owner distributions for propriety;
- (4) Ensure that rent increase requests are submitted in a timely and reasonable manner;
- (5) Review rent collection procedures, including the tracking of delinquencies;
- (6) Determine whether the vacancy rate is comparable to other projects in the area, and assess causes for high turnover if any;
- (7) Verify that owners/agents are screening and selecting residents in compliance with HUD guidelines;
- (8) Verify that the owner/agent is managing mandatory meals and pet owner policies in accordance with HUD Handbook 4350.1;
- (9) Review Section 8 utilization, including monthly vouchers, special claim vouchers, rent rolls, and other project records, to ensure that funds are being used properly and that unused funds are returned to HUD;
- (10) Verify that utility allowance adjustments are calculated properly; and
- (11) Review project property tax and flood insurance matters as appropriate.

Additionally, the contract administrator must ensure that the owner/manager is operating in compliance with the regulatory requirements as listed in HUD Handbook 4350.5, Chapter 1.

6.54 MONITORING FLEXIBLE SUBSIDY CONTRACTS

Area Office instructions for evaluating and monitoring projects that request or operate under Flexible Subsidy contracts are discussed in Handbook 4355.1 REV-1, Flexible Subsidy, particularly in Chapter 6. Flexible Subsidy contracts include both the Operating Assistance Program (OAP) and the Capital Improvement Loan Program (CILP). The following paragraphs provide an overview of the Loan/Asset Management staff's responsibilities for monitoring Flexible Subsidy contracts.

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- a. HUD will review the project requesting a Flexible Subsidy prior to approving an application to verify that the project is free of significant or repetitive resident complaints and physical problems, or that the owner/agent will rectify the cause of the complaints and problems through the assistance. These reviews may include any of the monitoring techniques discussed in Section 1.
- b. The Loan/Asset Management staff must determine that the Flexible Subsidy will:
- (1) Restore or maintain the project's physical soundness;
 - (2) Restore or maintain the project's fiscal soundness;
 - (3) Provide the least costly financing alternative that also retains the low- and moderate-income character of the project for the remaining term of the project mortgage;
 - (4) Be applied within the conditions of an approved Management Improvement and Operating (MIO) Plan or Work Write-Up; and
 - (5) Be provided under competent project management, and that project management meets satisfactory levels of experience and ability as determined by the management review and other monitoring processes.
- c. HUD will not provide assistance until the owner/agent:
- (1) Submits a plan to correct and remedy any deficiencies documented by the Department, and
 - (2) Certifies and documents that he/she has taken steps to secure funding from all possible sources.
- d. After a Flexible Subsidy contract has been awarded, the Area Office will receive from the owner on a monthly basis:
- (1) A Monthly Accounting Report for the previous month (Forms HUD-93479, 93480, and 93481);
 - (2) Form HUD-9835, Part II, Section A of the MIO Plan, covering progress and payments for action items; and
 - (3) Any Requisition for Advance of Flexible Subsidy Funds, Form HUD-9823a, processed during the previous month.

The Loan/Asset Management staff will verify that the forms are complete and that all requests for funds are reasonable.

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- e. On a quarterly basis, the Loan/Asset Management staff will conduct an in-depth review of each Flexible Subsidy contract. These reviews will include:
- (1) Remote monitoring of submitted progress reports, budgets, cost estimates, schedules, and invoices; and
 - (2) On-site visits to verify that work undertaken is being completed in a satisfactory manner in compliance with subparagraph b., above.

6.55 MONITORING REGULATORY AGREEMENTS

HUD requires different forms of Regulatory Agreements for different project and owner types. In many cases, the Agreement specifies owner/management agent responsibilities which the Loan/Asset Management staff already monitors pursuant to other paragraphs in this chapter. The guidance below covers general issues related to monitoring Regulatory Agreements. More detailed guidance can be found in Chapter 2 of HUD Handbook 4350.1.

- a. Financial issues. The Loan/Asset Management staff will verify that reports and other documents are submitted on required schedules, confirm that these items are complete, and investigate questionable transactions. These reports and documents include:
- (1) The Annual Financial Statement and Budget.
 - (2) Monthly Accounting Reports.
 - (3) Evidence that the owner/management agent is utilizing the Receipts Fund Account and, for nonprofits, the Residual Receipts Fund Account in the required manner.
 - (4) Statements of Replacement Reserve Account use (deposits and withdrawals), to verify that all transactions are authorized.
 - (5) Vouchers, invoices, and other evidence that distribution and expense payments are proper and authorized.
- b. Occupancy and Resident Selection Issues. The management agent will submit monthly reports on occupancy levels. In addition, the management agent must provide, at the Loan/Asset Management staff's request, information on its resident screening and selection processes. The Loan/Asset Management staff should review this information to determine that the management agent:
- (1) Observes federal preferences for resident selection; and

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- (2) Admits income-eligible residents to achieve an overall population that is at least 90 percent lower income.

In addition, the Loan/Asset Management staff should verify that the management agent conducts income recertification annually or more often if necessary. If such reviews reveal that the agent may be in violation of civil rights statutes, or is possibly discriminating against families with children or applicants of any age, Loan/Asset Management staff should advise FHEO staff.

- c. On-site Review Issues. The management agent must maintain the property in suitable physical condition and must maintain all records, books, accounts, documents, etc. in suitable condition for on-site review.

Exhibit 6-1**INDICATORS FOR TROUBLED/POTENTIALLY TROUBLED PROJECTS**

A multifamily project may be considered troubled when it requires assistance in order to meet its obligations and/or to provide the quality of housing and services to which its owner committed in the rental assistance contracts and/or Regulatory Agreement. Potentially troubled projects are those where critical information regarding the operation of the project is not available or where the project may soon require assistance if action is not taken to address existing or emerging difficulties. Indicators such a situation include:

1. High or increasing vacancy rate.
2. A major system that requires replacement, major repair, or repair beyond existing or potential project resources.
3. Persistent physical problems of a serious nature (such as health and safety problems, security problems, deferred maintenance, or lack of janitorial services or routine maintenance).
4. Improper or unauthorized distributions, as defined in HUD Handbook 4370.2, Financial Operations and Accounting Procedures for Insured Multifamily Projects, or unauthorized diversion of project assets.
5. The Management Review or other financial analysis determined that annual or monthly operating expenses exceed income potential and will more than likely continue.
6. Project expenses are abnormally high or low compared to previous years or comparable projects.
7. Project rents are abnormally low or in excess of authorized limits.
8. The owner/sponsor has threatened or has declared bankruptcy.
9. There has been more than one request from the owner(s) to use Reserve for Replacement Account money for the mortgage payment, fuel, utilities, insurance, security, or for routine expenses for which the account was never intended.
10. The Management Review reveals management policies or procedures that jeopardize the project, as indicated by a below satisfactory rating in one or more categories.

11. There are persistent, validated resident complaints of a serious nature, including but not limited to: harassment, leasing irregularities, improper certification, discrimination, or fraud by the project management or owner.
12. The owner/agent has not met the contractual, statutory and/or managerial obligations and has not developed programs to address them.
13. Annual financial statements disclose significant irregularities, such as: qualified auditor's opinions; negative cash throw-offs; line items that are inconsistent with each other, with the prior years, or with similar projects; under-funded General Operating Reserves (GOR), Replacement for Reserves, or escrow accounts; or increasing accounts payable, receivables, or bad debts.
14. Failure to provide required or requested data with respect to fiscal items for significant matters involving the management/operation of the project.
15. Physical inspection indicates serious emergency health and safety hazards for which there is no acceptable plan of correction.
16. Section 8 units do not meet HQS and project funds are not available to immediately correct the deficiencies.
17. Serious drug problems prevail in the complex or in the neighborhood.
18. In the case of a non-profit, the Board does not meet the criteria used when it was originally constituted.
19. The owner has threatened to abandon or has abandoned the complex.
20. Commercial space is unrentable, or is being rented at less than market rents, causing a cash drain on the project, or commercial space detracts from project liveability.
21. The mortgage is in default.

CHAPTER SEVEN: PROGRAM COMPLIANCE

7.1 GENERAL

While one of HUD's key objectives is building a constructive working relationship with owner/agents, Loan/Asset Management staff need to be prepared to take actions to compel owners to meet their responsibilities if they fail to fulfill their obligations to HUD. These actions include enacting sanctions against owners/agents who violate the provisions of their agreement/contract with HUD. Strong actions, such as sanctions, will only be taken when owners/agents do not work with HUD to correct problems at their projects.

This chapter reviews HUD's authority to enforce compliance, describes the major types of violations that can occur, discusses the sanctions available to Field Offices in the event violations occur, presents the procedures Loan/Asset Management staff should follow when they believe a violation has occurred, and outlines additional enforcement actions that can be taken in the event of continued noncompliance by owners/agents.

7.2 AUTHORITY

The statutes establishing the programs for HUD-insured and HUD-assisted properties provide HUD with the authority to impose civil and criminal penalties in the event owners and/or their agents violate program requirements.

Further, the Management Certification, Forms HUD-9839-a, b, or c establishes that the management agent agrees to comply with all applicable requirements and advises the agent that HUD may impose civil and criminal penalties in the event the agent commits certain violations.

7.3 COMPLIANCE VIOLATIONS

- a. Compliance violations occur when owners/agents fail to meet their responsibilities set forth in the HUD regulatory agreement or assistance contract governing the property. The applicable HUD Handbooks describe these responsibilities in greater detail. Chapter 6, Section 1 of this handbook summarizes the principal owner/agent responsibilities and references other handbooks as appropriate.

b. Types of Violations. Compliance violations fall into five major categories.

- (1) Failure to Adequately Maintain the Physical Condition of the Property. If an owner/agent has received proper notice of a deficient physical condition and failed to take the necessary action to correct the problem, the owner/agent may be considered in violation of the applicable HUD agreement/contract.

EXAMPLE: A physical inspection of a Section 8 Substantial Rehabilitation project revealed electrical hazards and inadequate heating. If the owner agent failed to take the corrective actions specified in the notice from HUD within the required time period, the owner agent would be in violation of the project's HAP Contract.

- (2) Failure to Follow Proper Management Practices. If an owner/agent receives an unsatisfactory rating during a HUD management review and does not take the necessary actions to improve management performance at the project, the owner/agent may be considered in violation of the applicable HUD agreement/contract.

EXAMPLE: The results of a management review conducted at a 236 project indicated that the owner/agent was not following proper resident selection and occupancy procedures. After 30 days, if no steps had been taken to correct deficient practices, the owner/agent would be in violation of the regulatory agreement for the property.

- (3) Financial Management Practices Inconsistent with HUD Requirements. If a review of a project's financial documents reveals that the owner's/agent's procedures for handling its financial operations are not consistent with HUD requirements, the owner/agent may be considered in violation of the applicable HUD agreement/contract.

EXAMPLE: A review of the audited financial statements for a 221(d)(3) BMIR project reveals that the agent incorrectly allocated salary and fringe benefit costs for supervisory personnel to the project account. If the agent fails to return the improperly allocated funds to the project account, the agent would be in violation of the project's regulatory agreement.

- (4) Failure to Follow Proper Record-Keeping and Reporting Requirements. If the owner/agent fails to maintain project books and records in a reasonable condition for proper audit under HUD requirements or an owner/agent does not provide the required reports to HUD, the owner/agent may be considered in violation of the applicable HUD agreement/contract.

EXAMPLE: If the management agent of a 221(d)(4) project failed to keep the necessary financial records and was unable to submit a properly audited annual financial statement, the agent would be in violation of the project's regulatory agreement.

- (5) **Failure to Observe Fair Housing/Equal Opportunity Requirements.** If the owner/agent is found to have discriminated against applicants or tenants on the grounds of race, color, creed, national origin, gender, age, or familial status, the owner/agent may be considered in violation of the applicable HUD agreement/contract.

EXAMPLE: A review of tenant selection records reveals that a management agent of a Section 8 project not designed exclusively for the elderly was giving preference to households without children.

c. **Detecting Violations**

1. The monitoring and follow-up activities described in Chapter 6 of this handbook are the primary methods for identifying when violations have occurred. Again, these activities are:
 - (a) Physical inspections;
 - (b) Management reviews; and
 - (c) Financial reviews.
2. Loan/Asset Management staff may also discover violations through less formal sources. These sources include:
 - (a) Reports from project residents or a local tenant organization;
 - (b) Information provided by a state or local government entity, such as a public housing authority or social service agency;
 - (c) Complaints from neighborhood organizations; or
 - (d) Information from the mortgagee for the project.

If the information provided by these sources indicates that a violation may exist, Loan/Asset Management staff should take the necessary steps to gather any additional details needed to properly assess whether a violation has occurred.

7.4 TYPES OF SANCTIONS

- a. HUD Field Office staff may pursue removal of the agent or appropriate civil and/or criminal penalties as sanctions for violations of HUD Regulatory Agreements and insured housing program requirements. These sanctions are listed below. Sanctions that may be used in cases of subsidy contract violations are listed in the subsidy contract for the project.
- b. Removal of an Agent. HUD Field Office staff may request that the owner terminate the agent's contract.
- (1) When an agent is removed, all records and assets are to be turned over to the owner immediately, but in no event more than 30 days after the date of termination.
 - (2) If the agent is liable under state law for unpaid bills, then the agent may withhold the money required to pay these expenses.
- c. Civil Penalties. HUD Field Office staff may seek to impose the following civil penalties as appropriate.
- (1) A penalty of up to \$25,000 for violations of the project's Regulatory Agreement.
 - (2) A penalty of up to \$25,000 for violations of an agreement to use non-project funds for specific project needs (e.g., payments to the replacement reserve account) as a condition of a transfer of physical assets (TPA), a Flexible Subsidy loan, a modification of the mortgage terms, or a workout agreement.
 - (3) A penalty up to double the value of the assets and project income that the court determines was used in violation of the project's Regulatory Agreement or any applicable regulation.
 - (4) Referral to the Attorney General with a recommendation for civil action, including mandatory or injunctive relief, for non-compliance with fair housing statutes.

SPECIAL NOTE: Civil money penalties cannot be collected for violations that are caused by the Department.

- d. **Criminal Penalties.** HUD Field Office staff may seek to impose the following criminal penalties as appropriate.
- (1) **A fine of up to \$250,000 or imprisonment of not more than five years for willfully using or authorizing the use of any part of the project's rent, assets, proceeds, income, or other funds for purposes other than meeting actual or necessary expenses during a period when the mortgage note is in default or the project is in a non-surplus cash position.**
 - (2) **A fine of not more than \$10,000, imprisonment of not more than five years, or both for knowingly and willfully falsifying, concealing, or making any false, fictitious, or fraudulent statements. This penalty also applies to the acts of making a false document or using a document while knowing it to contain any false, fictitious, or fraudulent information.**
 - (3) **A fine of not more than \$5,000, imprisonment of up to two years, or both for:**
 - (a) Knowingly making or signing false statements; or
 - (b) Willfully overvaluing any security, asset, or income for purposes of obtaining any HUD-insured loan or advance of credit; or
 - (c) Willfully overvaluing any security, asset, or income for purposes of obtaining any extension or renewal of any loan, advance of credit or mortgage or acceptance, release, or substitution of any security on such loan.

7.5 PROCEDURES FOR RESPONDING TO VIOLATIONS

- a. **Advise Owner/Agent of Possible Violations.** If information obtained from monitoring activities or other sources indicates that a violation may have occurred, Loan/Asset Management staff must notify the owner/agent in writing.
- (1) For HUD-insured projects, the notice should:
 - (a) State the specific violation that may have occurred and cite the paragraph of the Regulatory Agreement, other agreement, contract, certification, or warranty that may have been violated.
 - (b) Indicate that the violation, if established, may subject the owner/agent to administrative sanctions, civil money penalties, and/or criminal penalties.

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- (c) Request that the owner/agent respond in writing to the allegation. In the response, the owner/agent should admit or deny that the violation has taken place, and provide a justification for the actions in question.
- (d) Allow the owner a reasonable amount of time to investigate the allegation and submit a response.
- (2) For HUD-assisted projects, Loan/Asset Management staff should follow the procedures included in HUD Handbook 4350.5.

b. **Establishing the Presence of a Violation**

- (1) In determining whether a violation has taken place, Loan/Asset Management staff should thoroughly review all explanations and supporting documentation submitted by the owner.
- (2) If necessary, interview the owner/agent and or any other project representatives associated with the alleged violation to gather additional information. All contact should be documented with a letter confirming that the conversation took place and reviewing the information provided.
- (3) If there is any doubt about whether a violation has taken place, Loan/Asset Management staff should discuss the matter with Field Counsel, the Office of General Counsel, or Headquarters Desk Officers in the Office of Housing Management.
- (4) If the owner's/agent's response fails to provide adequate explanation and justification that the circumstances associated with the allegation do not constitute a violation as stated in the notice to the owner, Loan/Asset Management staff should make the determination that the owner/agent has committed the alleged violation.
- (5) If the owner's/agent's response provides sufficient evidence that the alleged violation did not occur, Loan/Asset Management staff should document in the project file the evidence that led to this determination. Loan/Asset Management staff should also prepare a letter to the owner/agent indicating that in light of the owner's/agent's response, no further action is being taken at this time.

- c. **Issuing a Notice of Violation.** If the Field Office determines that the violation did occur, Loan/Asset Management staff must send the owner/agent a letter indicating that the response provided was inadequate and explaining why. The letter must also state that:
- (1) HUD has declared the owner/agent in violation of the identified provision of the statute, Regulatory Agreement, other agreement, assistance contract, certification, or warranty.
 - (2) The owner/agent must remedy the violation within the specified reasonable period of time.
 - (3) If the violation is not corrected within the required time period, the owner/agent will face possible administrative sanctions, or civil and/or criminal penalties.
 - (4) The owner/agent is required to respond in writing to this notice within 10 working days. The response must state the corrective action the owner will take and agree to provide certified, written confirmation that these actions have been properly executed once the violation has been remedied.
- d. **Verifying Corrective Actions**
- (1) Upon receiving the owner's/agent's certification that the violation has been corrected, Loan/Asset Management staff must take any steps necessary to verify within a reasonable period of time that the correction has been made.

NOTE: Loan management staff must independently verify that a violation has been corrected even if the owner/agent submits a third party certification of compliance.
 - (2) If the corrections have been made to HUD's satisfaction, Loan/Asset Management staff should notify the owner/agent of this determination once compliance has been verified.
- e. **Continued Noncompliance.** Field Offices will use their authority to impose sanctions whenever necessary to enforce program requirements.
- (1) If a compliance certification is not received within the time period set forth in the violation notice, Loan/Asset Management staff should take steps to assess the extent to which the owner/agent has worked to correct the violation.

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- (2) After reviewing owner/agent progress in addressing the violation, Loan/Asset Management staff should consider whether sanctions will be necessary to compel the owner/agent to take the necessary corrective actions.
 - (3) Field Office staff should submit recommendations for prosecution to obtain civil and criminal penalties to the Regional Counsel. While administrative sanctions do not require action by the Regional Counsel, Field Offices may wish to have the counsel review the matter.

7.6 ADDITIONAL ENFORCEMENT ACTIONS

- a. In cases of extended noncompliance, HUD will consider taking the following enforcement actions.
 - (1) Initiate legal action to place the property in receivership.
 - (2) Terminate the project's assistance contracts.
 - (3) Take steps to have the property declared in default of the mortgage and initiate foreclosure proceedings.
- b. These actions may be taken without further notice to the owner/agent.

CHAPTER EIGHT:

SERVICE COORDINATORS

8.1 GENERAL

It is the Department's finding that service coordinators are necessary to coordinate supportive services for the elderly, disabled, and families residing in eligible housing projects. Service coordinators are needed to link the elderly or disabled residents residing in the projects to the supportive services necessary for them to remain independent and in their own homes.

Families living in assisted housing have various unmet social needs which are difficult for management agents to work with and resolve effectively. These unresolved social needs have a devastating impact on individual families and in turn directly impact the management of the project. In some properties, resourceful owners and agents alone and/or in conjunction with public or private organizations have addressed these problems. These solutions, in the form of a service coordinator, who is part of the management team, have benefited individual tenants who in turn have assisted in building community within the housing project. Problem solving, which promotes active communication between residents and the management team, makes management's job easier, improves the lives of the tenants, and builds community in the process.

Due to the limited amount of funds available to date less than half of all project owners have funded a service coordinator. However, HUD permits rent increases and the use of residual receipts to fund service coordinators in eligible projects with HUD approval. Projects may also utilize the services of an "On-line Service Coordinator" (OLSC), to work with a project's "Computerized Learning Center" (CLC). (See Chapter 9 for further information.)

8.2 ELIGIBILITY

- a. Projects Serving the Elderly or Disabled. Various Appropriations Acts for the Departments of Veterans Affairs and Housing and Urban Development, may provide funds for grants for service coordinators for elderly or disabled families in housing projects serving the elderly or disabled participating in the following programs: Section 8 New Construction,

Substantial Rehabilitation, Section 202, State Agency, Farmers Home, and Loan Management Set-Aside and Property Disposition, where contract rents are adjusted based on the AAF (as opposed to budget-based rents). HUD will publish a separate Notice concerning specific funds appropriated for service coordinators, when necessary.

An owner/borrower of an eligible project must first apply for grant funds designated for service coordinators if available, prior to requesting approval for a rent increase described in this Chapter. Once these special grant funds are exhausted, projects owners may apply under paragraph B below.

- b. Projects Serving Families, the Elderly or Disabled. HUD may approve requests for the use of residual receipts, budget-based rent increases or special adjustments to fund service coordinators or OLSCs (see Chapter 9). Requests to fund a service coordinator will be evaluated under the criteria within this notice, but must also be consistent with availability of funds in a changing regulatory environment. Owners must exhaust funds in the projects residual receipt account prior to the Area Office's approval of a rent increase (except under Section 202, see paragraph 8.5(a) below).

To qualify for eligibility for either the use of the residual receipts or a rent increase, a 202 loan must have closed. In addition, since there may be isolated cases in other programs where the loan has not closed or been endorsed, the requirement that the loan has closed or been endorsed applies to all project owners.

Also, in some cases under the Section 202 program, the project's reserves for replacement and residual receipts are located in one account. In order for these projects to be approved, the sponsor must agree to provide separate accounts for the residual receipts and reserve for replacements from the time of approval forward.

In the following Section 8 programs project owners are eligible to apply for a special adjustment in rents for service coordinators in accordance with the requirements outlined in this chapter: Section 8 New Construction, Substantial Rehabilitation, Section

202, State Agency, Farmers Home, and Loan Management Set-Aside/Property Disposition Set-Aside, where contract rents are adjusted based on the AAF (as opposed to budget-based rents). These adjustments are also available for OLSCs.

In all cases, rent increases may be affected by rents policy in effect that Fiscal Year.

8.3 AUTHORITY

Authority for eligible costs for service coordinators for elderly or disabled families in eligible housing projects is addressed in Sections 671, 672, 674, 676 and 677 of the Housing and Community Development Act of 1992 (42 U.S.C. 13631 and 13632). Authority for the use of residual receipts for 202 projects is addressed in Section 202(j) of the Housing Act of 1959 (12 U.S.C. 1701q(j)) as amended by Section 602(e) of the Housing and Community Development Act of 1992. Authority for the special adjustments is addressed in Section 8(c)2(B) of the United States Housing Act of 1937, as amended, which reads in part:

"The contract shall further provide for the Secretary to make additional adjustments in the maximum monthly rent for units under contract to the extent he determines such adjustments are necessary to reflect increases in the actual and necessary expenses of owning and maintaining the units which have resulted from substantial general increases in real property taxes, utility rates, or similar costs which are not adequately compensated for by the adjustment in the maximum monthly rent authorized by subparagraph A..."

There is no specific statutory authority for service coordinators within projects other than elderly or disabled families.

8.4 SERVICE COORDINATOR FUNCTIONS AND QUALIFICATIONS

The service coordinator and the OLSC normally reports to the project administrator, executive director or director of management in a management company. The coordinator will also consult with tenant organizations and resident management corporations, where appropriate.

A service coordinator links tenants within the project to supportive services or medical services provided by public agencies or private practitioners within the general community. The service coordinator may assess service needs, determine eligibility for public services, and work with the CLC or the OLSC (see Chapter 9).

THE SERVICE COORDINATOR SHOULD NOT BE ASSIGNED RESPONSIBILITY AS THE PROJECT'S RECREATIONAL OR ACTIVITIES DIRECTOR, NOR PROVIDE SUPPORT SERVICES DIRECTLY (EXCEPT IN EMERGENCY SITUATIONS). THE SERVICE COORDINATOR, ALSO, CANNOT ASSIST WITH OTHER ADMINISTRATIVE WORK NORMALLY ASSOCIATED WITH THE PROJECT(S) OPERATING BUDGET.

a. Eligible Housing Project Serving the Elderly or Disabled. The service coordinator hired by the owner of a project for the elderly or disabled must meet the requirements of paragraph 1, 2 and 3 below.

(1) Qualification of a service coordinator:

A. A Bachelor of Social Work or degree in Gerontology, Psychology or Counseling is preferable; a college degree is fully acceptable. However, individuals without a degree, but with appropriate work experience may be hired.

Supervisory experience may be necessary in some team situations in which a professional supervises a number of nonprofessional or paraprofessional "aides".

B. Training in the aging process, elder services, disability services, eligibility for and procedures of Federal and applicable State entitlement programs, legal liability issues relating to providing service coordination, drug and alcohol use and abuse by the elderly, and mental health issues.

NOTE: This requirement is not a prerequisite for hiring.

The Owner/borrower must certify that training requirements, if not met at the point of hiring, will be satisfied within one year.

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- C. Two to three years experience in social service delivery with senior citizens and nonelderly disabled. Some supervisory or management experience may be desirable.
 - D. Demonstrated working knowledge of supportive services and other resources for senior citizens and non-elderly disabled in the area served by the project.
 - E. Demonstrated ability to advocate, organize, problem-solve and provide results for the elderly and disabled served.
 - F. In situations where the management of a building(s) wants to create a services "team" in which a service coordinator supervises one or more "aides" (nonprofessional persons - see item 2. below), the coordinator should have appropriate professional staff experience AND prior supervisory or management experience.

(2) Aides working with a service coordinator:

- A. It is desirable, but not required, that aides have a college degree; they should, however, have appropriate experience in working with the elderly and/or disabled.
- B. Options for structuring an "aide" situation:
 - set up an internship or work study program with local colleges and universities to assist in carrying out some of the functions noted under paragraph 8.4(a)(1)(D) above; or,
 - use local college and university programs to provide planning guidance to project staff or provide program evaluation/assessment functions.

(3) The major functions of the service coordinator are:

- A. Provides general case management (including intake) and referral services to all residents needing such assistance.

May provide formal case management (i.e., evaluation of health, psychological and social needs, development of an individually tailored case plan for services and periodic reassessment of the resident's situation and needs) for a resident when such service is not available through the general community. (This will probably occur in rural areas.)

NOTE: There may be times when there will be difficulty in linking up residents with a community assessment agency in a timely manner. Therefore, the project may want to consider setting up a Professional Assessment Committee (PAC) to work with the Service Coordinator to perform initial assessments.

A PAC would be composed of at least three members, one of which must be a qualified medical professional, with all members professionally competent to assess frailty and functional independence.

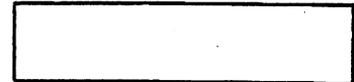
For projects wanting to consider setting up a PAC, see the guidance given in the CHSP regulations, 24 CFR Section 700.220.

A PAC member shall NOT be paid for his/her services with Section 8 funds.

- B. Establishes linkages with all agencies and service providers in the community; shops around to determine/develop the best "deals" in service pricing to assure individualized, flexible and creative services for the involved resident(s).
- C. Sets up a directory of providers for use by both project staff and residents.
- D. Refers and links the residents of the project to service providers in the general community; these are, for example, case

management, personal assistance, homemaker, meals-on-wheels, transportation, counseling, occasional visiting nurse, preventive health screening/wellness and legal advocacy.

- E. Educates residents on service availability, application procedures, client rights, etc., providing advocacy as appropriate.
 - F. May develop case plans in coordination with assessment services in the community or with a PAC.
 - G. Monitors the ongoing provision of services from community agencies and keeps the case management and provider agency current with the progress of the individual. Manages the provision of supportive services where appropriate.
 - H. May set up volunteer support programs with service organizations in the community.
 - I. Helps the residents build informal support networks with other residents, family and friends.
 - J. May provide training to project residents in the obligations of tenancy or coordinate such training.
 - K. May educate other staff on the management team on issues related to aging in place and service coordination, to help them to better work with and assist the residents.
 - L. May serve part-time as an OLSC (see paragraph 9.5(g)).
- b. Eligible Housing Projects Serving Families. The following is guidance which the owner should follow when hiring a service coordinator and in developing a job description.
- (1) Qualification of a service coordinator in family projects:



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- A. A Bachelor of Social Work or degree in Psychology or Counseling is preferable. Supervisory experience may be necessary in some situations.
 - B. Two to three years experience in social service delivery with families.
 - C. Demonstrated working knowledge of supportive services and other resources in the area served by the project.
 - D. Demonstrated ability to advocate, organize, problem-solve and provide results for families.

(2) Functions of a service coordinator in family projects:

The following provides a list of functions a service coordinator may perform. The exact role for the service coordinator shall be designed to meet the needs of the project's community.

- A. Provides general case management which includes intake, education (services available and application procedures) and referral of residents to service providers in the general community. These social services may include job training, drug and alcohol counseling, preventive health screening, and other family services.
- B. Sets up Service Agency Listing for Self-Referral. This directory may include a listing of State and/or local service providers that residents can contact for assistance (e.g., services to families, children, individuals who are elderly, persons with disabilities, emergency assistance). In many cases State and local governments can also provide a listing of the non-profit agencies with which they contract for services.
- C. Sponsors educational events which may include subjects relating to health care, job search seminars, life skills training, etc.

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- D. Facilitates the formation of Self-Help Groups within the project's community if a particular need is evident. The formation of small groups will assist in fostering a sense of community and encourage residents' efforts to support and assist each other.
 - E. Monitors the ongoing provision of services from community agencies and keeps the case management and provider agency current with the progress of the individual. Manages the provision of supportive services where appropriate.
 - F. Sets up volunteer support programs with service organizations in the community.
 - G. Helps the residents build informal support networks with other residents, family and friends.
 - H. Provides training to project residents in the obligations of tenancy or coordinates such training.
 - I. May serve part-time as an OLSC.

8.5 QUALITY ASSURANCE

Management must assure that the service coordinator function is effectively implemented. Therefore, quality assurance is an allowable administrative expense. A project may propose a cost of 8-10 percent of the service coordinator salary to provide limited monitoring oversight of the service coordinator by a qualified third party. The project must provide a written justification along with the budget. **Current salaries of in-house staff may not be augmented for this purpose.**

8.6 OWNER'S SUBMISSION REQUIREMENTS

The following provides guidance to the owner regarding submission requirements for the use of residual receipts and rent increases. These funding mechanisms may be used alone or in conjunction with one another. For example, if

the residual receipts are not sufficient to cover the entire cost of a service coordinator, the owner may request to use the remaining residual receipts in addition to requesting a rent increase. However, residual receipts shall be exhausted prior to requesting a rent increase.

- a. Use of Residual Receipts Accounts in Project For the Elderly or Disabled. If the project has funds in the residual receipts account, it shall use these funds for a service coordinator prior to requesting HUD approval of a rent increase. An exception to the use of all residual receipts is in the case of Section 202 projects. Section 602(e) of the HCDA of 1992, limits the use of residual receipts, by amending Section 202(j) of the Housing Act of 1959. If approved by HUD, the owner of a Section 202 project may use any residual receipts held for the project in excess of \$500 per unit to provide a service coordinator.

- (1) Requests for the release of funds from the residual receipts account shall be made in writing to the HUD State or Area Office. The request shall provide a detailed description of the proposed use of the funds, in accordance with Handbook 4350.1, Rev-1, Multifamily Asset Management and Project Servicing, Chapter 25, Residual Receipts.
- (2) Owners should also analyze the amounts in the Reserve for Replacements Fund in light of anticipated replacement needs. They should rely on their own personal knowledge of the physical condition of the project, evaluations made by their managing agents, and physical inspection reports furnished by HUD. After reviewing this information owners should project how much money needs to be on deposit in the Reserve Fund at specific points in the future. They also need to consider whether funds should be transferred from the residual receipts account to cover real or potential shortfalls. See Handbook 4350.1, Rev-1, Multifamily Asset Management and Project Servicing, Chapter 4, Reserve Fund for Replacements.

Based on the size of a project and the amount of the available funds, significant withdrawals from the residual receipts account should be discussed with the Asset Management staff in the HUD Area Office before making the written request. Disbursements from this fund may be made only after receipt of written consent from HUD. The Asset Management Branch Chief will make every reasonable effort to review and act upon the owner's request within 30 days of its receipt.

- (3) Owners using residual receipts for this purpose must submit an annual report to the HUD Area Office describing the uses of the residual receipt funds.
- (4) Owners shall meet the requirements of paragraphs 8.4.(a).

b. Use of the Residual Receipts Account in Family Projects. Requests for the release of funds from the residual receipts account must be made in writing to the HUD Area Office. The request must provide a detailed description of the proposed use of the funds, in accordance with Handbook 4350.1, Rev-1, Multifamily Asset Management and Project Servicing, Chapter 25, Residual Receipts. The disbursements from this account may be made only after receipt of written consent from HUD.

Owners may follow requirements in paragraph 8.4(b).

c. Budget-Based Rent Increase Process For Projects Serving The Elderly, Disabled Or Family Projects. If a project's residual receipts account has been exhausted, the project owner may request a budget-based rent increase. In cases where the project does not have a residual receipt account (this is true for some 202 projects), the owner must agree to separate the reserves for replacement from the residual receipt account from this point forward.

- (1) Requests for a budget-based rent increase must follow the guidance in 4350.1, REV-1, Chapter 7.
- (2) Owners of projects for the Elderly must meet the requirements in paragraphs 8.4(a).

- (3) Owners of Family projects may meet the requirements in paragraph 8.4(b).

Rent adjustments must be consistent with rents policy in effect at the time of request.

- d. Special Rent Adjustments. Once a project's residual receipts account has been exhausted, the project owner may request a Special Rent Adjustment to cover the cost of a service coordinator.

Very-low income families living in assisted housing have various unmet social needs. These unmet social needs place a high level of stress on the individual family unit. This stress results in a dysfunctional system of relating to others within the family unit, the project, and those within the larger community. The result of this impacts the management and the physical condition of the project.

Section 8(c)(2)(B) of the United States Housing Act of 1937 provides: "The contract shall further provide for the Secretary to make additional adjustments in the maximum monthly rent for units under contract to the extent he determines such adjustments are necessary to reflect increase in the actual and necessary expenses of owning and maintaining the units which have resulted from substantial general increase in real property taxes, utility rates, or similar costs which are not adequately compensated for by the adjustment in the maximum rents..." (emphasis added).

Pursuant to this provision and in order to determine whether costs qualify for consideration for a special adjustment under the "or similar costs" provision of the statute the costs have to meet the following standards:

- (1) Are the cost items "similar" to those identified in the statute and regulations, i.e., necessary expenses of owning and maintaining the units within the project.
- (2) Has there been a "substantial and general increase" in the cost at issue? In the case of service coordinators for families, is there a causal relationship between the "dysfunctional family" and the increased cost?

- (3) Has the increase been "general"? For example, has this increase been experienced by owners of other than the immediate project and particularly projects other than merely Section 8 assisted projects (e.g. 236's or 221(d) (3) BMIRs)?

Owners whose costs meet these three standards, will satisfy the legal requirements for consideration for special rent adjustments. In addition, requests must meet the following requirements:

- (4) Calculations for the special adjustment shall be made on Form HUD-9833B: Section 8 Annual Contract Rent Adjustment Worksheet, Part G, "Special Adjustments for Taxes, Insurance or Utility Cost Increases. ". This form is located in Handbook 4350.1, Rev-1, Chapter 34, Appendix 2. Owners are instructed to add an entry for "Other" (to cover "similar cost" language in the statute and regulations) in the blank space on the right side of the form next to the entries for "Taxes," "Insurance," and "Utilities" and specify that the special adjustment is for a service coordinator.
- (5) In the case of an elderly project, owners shall meet the requirements in paragraphs 8.4(a) (1) and (2). However, in the case of family projects, owners may follow, but are not required to adhere to the guidance in paragraph 8.4(b) (1) and (2).

Rent adjustment must be consistent with rents policy in effect at the time of request.

- e. Elderly Projects Constructed Under the 202 Capital Advance Program. Projects constructed under this program must submit an operating budget for HUD review and approval. In cases when an owner did not initially propose a service coordinator, the owner may request an amendment to the Project Rental Assistance Contracts (PRAC). The approval of this request will be based on the availability of funds. The sponsor shall follow the procedures below:

- (1) Submit a request for an increase in PRAC along with supporting documentation. This request must certify that at least 25% of the residents are frail and at risk, and otherwise be consistent with the requirements of Notice H-93-71 and its successors.
- (2) Owners shall meet the requirements in paragraphs 8.4(a)(1) and (2).

8.7 AREA OFFICE/CONTRACT ADMINISTRATOR PROCESSING INSTRUCTIONS.

a. Residual Receipts.

- (1) Section 202 projects.
 - A. The Asset Management Branch Chief can require when necessary a complete physical inspection of the project. The inspection will determine pending and future repairs and replacements, based on the age and condition of the project.
 - B. Based on the physical inspection and information obtained from the project owner, an Asset Manager shall analyze the Reserve for Replacements Account to assure that it is sufficiently funded to cover pending replacements. If the Reserve Account is insufficiently funded, a transfer of funds from the residual receipts account to the Reserve for Replacement Account will be required to cover the shortfall. This shall be done before authorizing release of any of the residual receipts.
- (2) All other projects (except for Section 202) shall follow the Handbook 4350.1, REV-1, Multifamily Asset Management and Project Servicing, Chapter 25 Residual Receipts.

- b. Budget Based Rent Increase. Review the request for a budget-based rent increase in accordance with 4350.1, REV-1, Chapter 7, and current rents policy, if appropriate.

c. Special Rent Adjustment

- (1) Owners must meet the legal requirements for consideration of a special rent adjustment as stated in paragraph 8.5(d). However, such requests for special rent adjustments for service coordinators for families should also include a review of specific circumstances for each case in applying these requirements.
- (2) Area Offices/Contract Administrators will need to review the project's contract authority to determine if it is adequate to meet the projected demands for housing assistance for the remaining incremental terms of the contract because it will be paid out of the project's contract/budget authority. If contract authority is inadequate to meet projected demands, a request for additional funding may be forwarded to Headquarters, Office of Multifamily Housing Management, Program Support Branch, for Contract Amendments.
- (3) Review of Form HUD-9833B, Section 8 Annual Contract Rent Adjustment Worksheet, Part G, "Special Adjustments."
- (4) Area Offices/Contract Administrators are instructed to follow existing instructions in Handbook 4350.1, Chapter 34 for processing special rent adjustment. In particular, paragraphs 34-6 through 34-8 provide general processing instructions, including a walk-through of how to compute the actual dollar amount of the special adjustment to approve applicable "back out" procedures. The instructions and requirements contained therein are incorporated here by reference.

The expiration of a special adjustment does not constitute a "reduction in rent." This point is especially relevant to Section 142(d) of the Housing and Community Development Act of 1987, which limited reductions in Section 8 contract rents to specific causes. Reductions for other reasons are prohibited unless agreed to by the owner. The owner, by accepting the special adjustment, agrees to this reduction when the need for the rent increase no longer can be justified.

Field Office should also consider adjustments in terms of current rents policy.

d. Elderly Projects Constructed Under The 202 Capital Advance Program:

- (1) The HUD Area Office will request and ask for additional information as necessary and approve it as appropriate.
- (2) Approved requests will be forwarded to the Director of Funds Management Division. Project funding will be based on the availability of dollars at the time the request is submitted to Headquarters.

8.8 APPEALS OF SPECIAL RENT INCREASE DECISIONS

Owner appeals will follow existing procedures as set forth in HUD Handbook 4350.5, Subsidy Contract Administration and Field Office Monitoring, Section 2. The requirements of that part are incorporated here by reference. In summary, the first level of appeal is to the HUD Area Office or Contract Administrator which issued the contested decision. This appeal to the Area Office/Contract Administrator is at least one administrative level above the level which made the final decision on the owner's original submission.

8.9 TRAINING GUIDELINES FOR SERVICE COORDINATORS

- a. General. This Section provides guidance for training of service coordinators working in HUD-assisted projects serving residents who are elderly or have disabilities, including those funded under the Congregate Housing Services Program (CHSP). It also provides guidance for multifamily properties serving families and the On-Line Service Coordinator (OLSC).

While the statute mandates training requirements for service coordinators in housing serving elderly or residents with disabilities, it does not mandate training in projects serving families or the OLSC. In the case of HUD-assisted projects serving families, owner/agents must follow guidance in chapter six ("Training Costs for Front-Line Staff"), prior, and Subparagraph 8(f), page 8-28, below, which provides suggested training areas for family projects with service coordinators.

The training guidelines enhance the service coordinator's current level of knowledge and skills which will improve his/her effectiveness in working with residents. The guidelines offer a general framework for developing training programs to meet the needs of service coordinators; they also allow flexibility in training design and delivery by vendors outside the Department.

- b. Authority. Statutory authority for training guidelines for service coordinators serving projects for the elderly or people with disabilities is found in Sections 671 and 672 of the Housing and Community Development Act Amendments of 1992 (HCDA) (41 USC 8011). Section 671 requires training for service coordinators serving projects for the elderly or people with disabilities. Section 672 of the HCDA states the minimum requirements as: "Such qualifications and standards shall include requiring each service coordinator to be trained in the aging process, elder services, disability services, eligibility for and procedures of Federal and applicable State entitlement programs and legal liability issues relating to providing service coordination, drug and alcohol use and abuse by the elderly and mental health issues."

Training for service coordinators for families and the OLSC's are not a statutory requirement.

- c. Implementation - Projects With Service Coordinators Serving The Elderly Or People With Disabilities.
1. Eligibility. Training for service coordinators qualifies as an eligible project expense if the proposed training relates to the guidelines herein, i.e., to enhance the service coordinator's knowledge and skills in the identified subject areas. Associated costs of the training activity (including travel and lodging) considered reasonable and customary in accordance with HUD travel requirements are also allowable.
 2. Minimum Training Requirements. All service coordinators serving the elderly and people with disabilities must have met a minimum of 36 training hours of classroom/seminar time before hiring, OR will complete these minimum training requirements within 12 months of initial hiring.

The 36 hours MUST, cover ALL nine of the following subject areas:

The first seven of these are statutory:

- o The Aging Process - see subparagraph 8.8(d)(5)(a).

Note 1: Group Homes and Independent Living Complexes serving non-elderly residents with disabilities need only address this issue as necessary and consistent with their resident population.

- o Elder Services - see subparagraph 8.8(d)(1)(a).

Note 2: See Note 1, above.

- o Disability Services - see subparagraphs 8.8(d)(1)(b) and 8.8(5)(d).

- o Federal and Applicable State Entitlement Programs covering both the elderly and people with disabilities - see subparagraphs 8.8(d)(2)(a) and (b).

- o Legal Liability Issues Relating to Providing Service Coordination - see subparagraphs 8.8(d)(2)(c) and (d).

- o Medication/Substance Abuse - see subparagraph 8.8(d)(5)(b)

- o Mental Health Issues - see subparagraphs 8.8(d)(5)(c) and (e).

The last two are additional areas considered critically important for service coordinators serving the elderly or people with disabilities.

- o Strategies for Communicating Effectively in Difficult Situations - see subparagraph 8.8(d)(4)(a).

- o Strategies for Dealing with Cognitive Impairments - see subparagraphs 8.8(d)(5)(e).

Service Coordinators must meet the statutory requirements before requesting approval for additional training in other core subject areas.

3. Continuing Education. After completion of statutory training requirements, all service coordinators serving the elderly or people with disabilities should attend at least 12 hours of training annually. Continuing education is necessary in order to be an effective professional. At a minimum, service coordinators must remain current on changing statutes at all levels and current practices in aging and/or disability issues.
4. Documentation. Project managers must document conformance with training requirements by listing the subject matter, length of time of the course covered (e.g., 6 hours), sponsoring organization, date(s) and cost. Such information must be available to HUD staff on management reviews of the project site, if requested (see subparagraph 8.8(e)).

- d. General - Guidelines - Service Coordinators Serving Projects With Elderly Or People With Disabilities. There are five categories, or "core areas" of service coordinator training: The Professional Service Coordinator; Government Programs and (Legal) Requirements; Community Relations; Communications; and, Current Issues.

Each core area encompasses a broad array of related skills, knowledge and abilities in which training can be provided. Also, each core area can be broken down into "skills areas," from which a training course, seminar, symposium, etc. can be tailored. While training can be developed based on one or a combination of the skills areas, the method of presentation and exact content of training material is up to the training provider or vendor.

Additionally, project management is encouraged to provide an orientation regarding general project management functions to the coordinator (see subparagraph 8(d)(6), following).

NOTE 3: The areas listed below that have an asterisk (*) denote those in which there are statutory minimum requirements for service coordinators serving elderly/disabled populations, as discussed under subparagraph 8(c)(2).

The Office of Housing encourages the involvement of other members of the property management team in service coordinator training as appropriate and necessary to that specific property. The more service coordinators and other members of the property management teams understand each others roles, functions and responsibilities, the smoother the operation of the project. Training may be approved as an eligible project expense in the following areas:

1. The Professional Service Coordinator.

This core area addresses the concept of service coordination, the role of the service coordinator in relation to the residents of the community and the other staff of the property, and administrative aspects of service coordination. It also focuses on the resident population being served, specifically addressing and meeting their needs through supportive service provision. Eligible training includes:

The following statutory subjects:

a. *Supportive Services for the Aging/Elder Services **

The network and array of services available to the senior community for independent/assisted living.

Note 4: See Note 1, page 8-18, prior.

b. *Supportive Service Needs of Non-Elderly People with Disabilities **

The network and array of services available to people with disabilities for independent/assisted living.

The following subjects are optional:

c. *Role of Service Coordinator*

The purpose, responsibilities and functions of the service coordinator.

d. *Identifying Service Needs and Availability*

The methodology for identifying needs of residents and service availability to meet those needs including case management and consumer research techniques; may involve cultural diversity issues.

e. *Monitoring and Evaluating Services' Effectiveness, Adequacy and Need for Changes*

The maintenance of established services plans (also known as case plans or care plans) and how to evaluate their effectiveness, adequacy and need for changes.

f. *Networking*

The process of establishing linkages with service providers and tapping resources to enhance service provision.

g. *Creative Strategies in Service Provision*

The examination of alternatives to traditional approaches in service provision.

h. *Ethics/Confidentiality*

Ethical considerations in performing the service coordinator job with sensitivity and professionalism.

i. *Recordkeeping and Reporting*

Techniques for keeping organized records and files to achieve service coordinator recordkeeping and reporting goals; development of useful forms for effective reporting purposes.

e. *Strategies for Dealing with Cognitive Impairments **

The signs and symptoms of mental illness or depression among the elderly and people with disabilities; how to serve populations with Alzheimer's disease, dementia and other forms of cognitive impairment.

The following subjects are optional:

f. *Other Health Problems Among the Aging*

The common health problems experienced as one ages (e.g. arthritis, osteoporosis/bone fractures).

g. *Crime and Self-protection*

Common crimes committed against residents who may be elderly or people who have disabilities; how to serve the elderly or people with disabilities in making them aware of crime and how to protect themselves.

h. *Death and Loss*

Helping the residents who are elderly or who have disabilities in dealing with death of loved one (e.g. spouse, friend, roommate). May involve cultural diversity issues.

i. *Living Wills/Trusts*

Fundamentals of living wills and establishing trusts; how to introduce these instruments to your residential population.

j. *Guardianship/Power of Attorney*

Legal fundamentals of working with residents and families to assign power of attorney and guardianships, where appropriate.

k. *On-Line Service Coordination*

Fundamentals of computers, including distance learning, if appropriate, local computer resources and use of the world-wide web (see Chapter 9, following).

6. Administration/Project Management. This sub-area deals with a basic understanding of the property in which the service coordinator operates. The service coordinator needs general understanding, awareness and appreciation of the basics of project management, and should be attuned to issues concerning others on the management staff.

Thus, for the following subjects, appropriate members of the project's or the property management team should provide an orientation sufficient for the service coordinator's needs.

Training costs in the following subject areas are not normally approvable.

a. *Resident Selection and Termination*

The interviewing/intake process for new residents, the termination process and other related procedures.

b. *Occupancy Issues*

The examination of occupancy problems/violations and identifying associated service needs (e.g. good neighbor programs). Also, provide a general understanding in plain language and reasonable accommodation practices.

c. *Emergency Procedures*

The fundamentals of safe crisis handling; fires; CPR; first aid; conduct in different emergency situations.

d. *Basics of Finance/Accounting*

An introduction to fundamentals of bookkeeping/accounting procedures; essential components of a financial statement; understanding budgeting.

- e. State/Area Office Management Review. When doing an on-site management review of projects for the elderly or people with disabilities subject to Handbook 4350.1, Chapter 6, include a check of whether or not there is documentation that the coordinator has met the training requirements or is in the process of receiving appropriate training. Any findings should be written in narrative format as an addendum to Form HUD-9834B, "Management Review Questionnaire" and summarized on the Form HUD-9834, "Management Review Report", under Section VI, General Management Practices, which is sent to the project manager.
- f. Guidelines- Service Coordinators Serving Family Projects. There are no minimum training requirements for service coordinators in family projects. The Office of Housing is offering general guidance to assist owners of family projects address training needs of coordinators, as appropriate, either upon hiring or to meet needs which arise during their tenure.

Training for family projects is an eligible project expense under this Handbook; see page 6-32.

The subject areas noted below are **EXAMPLES** of current issues which may be useful for coordinators working in family projects; they are **NOT** all-inclusive. Family project owners may use discretion in determining training needs for coordinators. Training areas could include:

- (1) *Single Head of Households* - Issues and service needs confronting one-parent families;
- (2) *Spousal Abuse* - Signs of spousal abuse; how to deal with it, including coordinating professional help and counseling;

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- (3) *Child Abuse* - Signs of child abuse and how to deal with such situations coming to light, including facilitating intervention of legal authorities and professional counseling;
 - (4) *Child Care* - locating and providing child care (e.g. day care) on/off-site;
 - (5) *Building Safe Communities* - Identifying strategies to increase safety in the project(s) (e.g. public/private partnerships, neighborhood watch groups);
 - (6) *Economic Development and Employment Opportunities* - Strategies and training associated with developing economic development opportunities for the residents, both on and off-site e.g. small business development, job training programs, how to get and hold a job, etc.);
 - (7) *Educational Opportunities* - Existing programs (e.g. community colleges, GED Program) enabling residents to set and pursue educational goals;
 - (8) *Drug/Alcohol Abuse* - Types of common drugs/alcohol abuse and associated behavioral patterns. Getting emergency support and learning what is the local referral process for professional treatment;
 - (9) *Neighborhood Violence* - Exploring causes of violence, including gang violence, and successful ways to combat it;
 - (10) *Youth Services* - Approaches for tapping into existing or creating new programs and services for youth (e.g. boys'/girls' clubs, sports clubs, recreation centers) as ways of facilitating community building, positive peer relationships and alternatives to resorting to crime;
 - (11) *Disability Issues* - Approaches for working with residents with different types of disabilities; understanding relevant programs and statutes;

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- (12) *Cultural Diversity* - Approaches for working with religious, racial and ethnic differences among resident groups and conflict resolution, where appropriate; and
- (13) *On-Line Service Coordination* - Approaches to dealing with establishing and administering a computerized learning center in a project, including, but not limited to: Networking skills and educational techniques, training methodologies and facilitating skills, computer skills, distance learning equipment (if appropriate), and use of the world wide web. (see Chapter 9 for further information.)
- (14) *Other subject areas deemed necessary.*
- (15) Project management is also encouraged to provide in-house cross-training for family service coordinators in areas noted in subparagraph 8(d)(6), above.

CHAPTER 9

NEIGHBORHOOD NETWORKS

9.1 **PURPOSE:** This chapter briefly outlines the development and placement of Computerized Learning Centers (CLCs) with Neighborhood Networks Business Plans in HUD-insured and assisted housing. It describes the Neighborhood Networks initiative concepts, suggests methods of funding which may be used, defines eligible properties and costs, states proposal contents and outlines the local HUD office review process. A Neighborhood Networks Center/CLC can provide hope and positive focus to residents about the future; it's presence can be a factor in cutting crime and vandalism.

NOTE: THIS IS A TOTALLY VOLUNTARY PROGRAM FOR ALL OWNERS/AGENTS AND RESIDENTS.

9.2 **BACKGROUND:** The Department has observed the impact that experimental programs have had in providing for economic and educational needs of assisted housing residents. Many programs use a concept of "place-based" development to meet the needs of the residents where they live. There are increasing indications that these programs result in better neighborhoods and stronger real estate.

The Department is encouraging the use of technology in place-based development opportunities to help residents of insured and assisted housing attain jobs through job training, telecommuting, microenterprise development (see Paragraph 9.2(e)(1), following) and other job-creating strategies.

This Chapter presents one way in which owners and residents can work together to prepare for and manage change, and provides options to tenants for economic self-reliance. There are other ways as well, e.g., "Campus of Learners" in public housing, direct grants from Foundations and state and local governments. Field offices and housing developments should focus on Results rather than "process."

a. WHAT IS "NEIGHBORHOOD NETWORKS"?

Neighborhood Networks is NOT a "grant" program. "Neighborhood Networks (NN)" is an umbrella concept under which a variety of public and private organizations, neighborhood organizations, housing developments, their owners, managers and residents, are linked through computer hardware and software for job-related, educational, and other community purposes. Owners, managers, and residents of multifamily properties work together to develop partnerships with local businesses, educational institutions, private foundations, and other community organizations to create, operate, and sustain a Neighborhood Networks Center. (See Appendix 7, Fact sheet.)

b. Components of a Neighborhood Networks Center

- o On-line Service Coordinator. All centers need an on-line service coordinator. This person is responsible for tailoring opportunities at the center to meet the needs of residents of all ages. There is also a role for the voluntary sector as part-time staff, tutors and trainers; for example consider help from churches, synagogues, temples, mosques, Rotary clubs, the Grange, Veterans of Foreign Wars, Kiwanis clubs, Junior Chambers of Commerce, Police Athletic Leagues, Boys and Girl's Clubs, 4-H groups, Scouts, and many others.
- o Resident Development Plan. The on-line service coordinator can help residents create a plan to establish educational/career goals. The basic components of a good resident development plan include:

A Skills and Interest Assessment, focusing on educational basics;

A Life Goals Planning Section that determines an individual's strengths and ambitions. It includes both educational and job-related short-term objectives and career goals; and

(Six More Typing Lines)

A Lifestyle Management System that will help residents manage life changes necessary to achieve their goals.

- o Neighborhood Networks Business Plan. All assisted-housing communities must submit a business plan to the asset management branch of the local HUD field office in whose jurisdiction the community is located. (See section 9.6, "Required Components of a Neighborhood Networks Business Plan.")

c. WHAT IS A NEIGHBORHOOD NETWORKS BUSINESS PLAN (NNBP)?

An NNBP combines a CLC (see Paragraph 9.2(d), following), with distance learning and other tools in an approach which addresses resident self-sufficiency desires through meeting economic development and educational needs (see Paragraphs 9.5 and 9.6).

An NNBP for any one project or grouping thereof should address some, if not all, of the following:

- o resident involvement in all phases of planning and implementation (**required**);
- o priority focus on resident jobs, job training and job development (**required**);
- o special needs of elderly residents;
- o purchase/donations of hardware/software;
- o minor construction or taking units off-line for the CLC;
- o appropriate staffing (an On-Line Service Coordinator (OLSC) (see Paragraph 9.5(g) following), consultants, trainers, and/or volunteers to operate the center;
- o participation of non-residents, if appropriate;
- o off-site location(s), if appropriate;
- o development of "Resident Development Plans" (RDP) to meet resident training needs and goals (see Paragraph 9.2(e), below);

- o linking the center to the world through distance or on-site learning to the local public school system technical institutes and community colleges/universities, for activities such as childhood education, adult literacy, computer literacy, typing skills, GED and associate and higher level degrees, job training, microenterprise development and telecommuting;
- o linking the center to the world through networking to local public services (e.g., welfare, health, social security, and through the Internet, other residential sites, neighborhood organizations and the "world-wide-web."

Alternate Options. Please remember that it is not necessary to spend hundreds of thousands of dollars to start up a Neighborhood Networks Center. A center can be started for under \$10,000 per year. This can be accomplished by capitalizing on the following:

- o Using existing space without modification, obtaining donated furniture, security equipment, and the like.
- o using "shareware" - free programs available on the Internet and the Work Wide Web. A small fee may be requested for regular use of programs.
- o Engaging staff or volunteers with high- or low-tech know-how to create or clone one or two computers from parts of older, donated ones.
- o Using staff or volunteer time to shop around at local computer shows, seeking used and spare parts; some computers can be purchased at 1/3 or less of retail cost; and
- o Using staff or outside experts to train volunteers to run the center.

A Neighborhood Networks Center set up and running with older computers is far better than a grand design with 12 state-of-the art computers, scanners, and other hardware for which funding cannot be obtained. If a volunteer program with recycled computers can be set up and started, it can be ongoing and may prove the program's concept in that locality, thus be able to generate funding from other sources after a year or so.

d. **WHAT IS A COMPUTERIZED LEARNING CENTER (CLC)?**

A CLC is a facility and a process which, through computerization, focuses on providing a variety of job and educational opportunities to community residents. The CLC facilitates:

- o increasing resident self-sufficiency;
- o expanding job opportunities within the project, and perhaps the community - including microenterprise development; and,
- o creating a lifelong learning community.

A CLC is appropriate for many of our 21,000 housing assisted and insured developments. However, a CLC will mean different things in different residential sites. For example:

- o one family site may concentrate on job training for young adults, telecommuting for those that need jobs and provide Internet linkages and activities for the elderly on the side;
- o another family site may stress job training and computer literacy for single parents/young adults; and,
- o some may promote early childhood and teen-age education, with job training/telecommuting as a sideline.
- o a site for the seniors may focus on ending health and social isolation; making better linkages to their families, and microenterprises.

The CLC can provide:

- o a variety of early childhood education programs;
- o ~~typing and word processing skills;~~
- o adult educational opportunities at the high school, vocational, community college and university levels;

- o personal, motivational, and job-training software;
- o facilitation of telecommuting to jobs; and,
- o the development of microenterprises, such as data entry, which can contract with HUD and/or other Federal/state/local agencies or private businesses.

Programs offered may be computer-based by disk or distance learning (with or without the provision of a traditional classroom approach), usually in a project's accessible community space.

Additionally, a CLC may be:

- o shared among sites, e.g., two close-by ones sharing one center or a number of sites in the same area with a "main" center and several satellites;
- o off-site in a near-by building or facility, if the majority of support for the NNBP is from other-than-HUD resources;

NOTE: off-site can mean the CLC can be in a store-front, religious institution's space, or non-HUD sites. The prime criteria here is (a) service to HUD housing residents; (b) strong tie-in to neighborhood needs, in addition to HUD residents; and (c) one or more sites may locate the center in a partnered church/synagogue/temple or a community development agency, all of which should be 501(c)(3) non-profit agencies and organizations. (See appendix 9 for sample 501(c)(3) By-laws, particularly for tenant organizations that have CLC responsibility.)

- o offered to near-by community residents (only if on-site residents have priority, much of the resources come from sources other than HUD, and there is time/space available after residents are first served).

For further information, please see "A How to Manual-Your On-Line Guide", available for a fee from the Multifamily Clearinghouse at 1-800-685-8470.

There is additional material on the NN Home Page at "<http://www.HUD.gov/nnw/nnwindex.HTML>".

E:mail internet questions may also be addressed to "neighborhood_net@aspensys.com".

e. **PHILOSOPHY OF NEIGHBORHOOD NETWORKS:**

Neighborhood Networks can improve the lives of project residents by providing such residents with onsite access to computer and training resources. It may enhance the self-sufficiency, employability and economic self-reliance of low income families and the elderly living in HUD insured and assisted communities.

1. Providing resources which could lead residents to jobs.

CLCs help residents of assisted and insured housing by:

- o improving education levels through close assessment of reading, language, math and other courses; and,
- o providing job-related skills, access to and/or jobs, directly or indirectly.
- o Telecommuting for parents of young children, or those who are physically unable to travel. Be aware that the project cannot make telecommuting happen. It has to be inherent in the job the resident has, e.g., data entry or micro-enterprise.
- o Micro-enterprise development. Micro-enterprises, developed through business incubators, startup programs, and other partnerships, could involve teenagers, young and other partnerships, could involve

teenagers, young adults, and senior citizens. Such micro-enterprises may take numerous forms and find business opportunities in both public and private sectors.

- o Day care. Residents can expand an on-going center or join forces with a nearby center. Formal babysitting might be structured, or perhaps a preschool component designed as a learning/play tool for young children while their parents are in class. Residents may also set up a cooperative Day care center with fees to cover materials and supplies. (Before undertaking such an effort, local regulations covering day care centers must be met.)

2. Providing educational and job training programs designed to enrich residents lives:

The CLC provides residents access to the education and skills necessary for the 21st century.

- o Multimedia:

Multimedia software has a documented beneficial influence in improving the learning experience of both children and adults in activities such as: Preparing for the GED, improving math skills, computer literacy, or providing employment readiness training.

- o Job training:

There is a need for all types of job training. For success, business, educational, and voluntary association partnerships are critical. (NOTE: Residents may get relief from immediate rent increases through Handbook 4350.3 CHG-28, paragraph 3.29.A "Exclusion of Income Received Under Training Programs in Multifamily Housing Programs."

- o Life skills development. There may be interactive group training in life-coping skills classes and competency-based training. Such topics include:
 - Employment - job applications, employment contracts and forms, resumes, job motivation, job search, how to interview, what employers want;
 - Banking and Budgeting - requirements, use and maintenance of checking accounts, spending decisions, purchasing and the payment of bills, personal budgeting;
 - Credit and Loans - credit and credit cards, security, payback, types of loans, interest.

As part of the overall program, HUD has joined the Citizen Education Fund effort to fight drugs and violence in the schools (see sample form, Appendix 9). One of the goals of the center's NNBP should be to reach as many residents as possible. Consider making an outline of approaches to engaging parents and children in focusing on education and supporting drug-free, violence-free schools. One way to achieve support might be to obtain pledges from both parents and children and provide incentives in the form of free software or additional computer access when the entire housing community has agreed to join the effort.

3. Enhancing interaction among residents and providing access to the larger world:

o Internet:

Through the Internet and electronic mail, residents can reach out to their neighborhood, libraries, social service providers and the world. Through working partnerships with other properties, residents could interact on issues such as parenting and organizing.

On-line discussions become possible for any topic of general interest. With on-line access to distance learning, job hunting, telecommuting, and libraries, jobs can become a realistic component in resident's

lives, and students can easily find appropriate research material for homework. (Monthly access fees for one or more Internet accounts are specifically approvable as an allowable CLC expense.)

o Mentoring:

On-line mentoring programs could also be established for the elderly/adults/youth by voluntary organizations, which could provide younger people exposure to writing skills while building a friendship with an older member of the community.

o Distance/On-site Learning:

Based on the resident development plans, the on-line service coordinator can work with local corporations, the public schools, vocational training schools and colleges and universities to ensure that appropriate courses are available, either through diskettes, teachers, aides, or distance learning.

4. Senior Citizens:

Seniors are the fastest growing group of Internet users. Ideas for elderly residents could focus on ending isolation (contact with families, grandchildren, friends in other projects for the elderly), use of libraries, social service agency on-line registration, program information and access thereto, mentoring, partnerships with families-in-training, Senior Net and other web sites attuned to elderly needs and interests. Also consider microenterprises, both start-ups and marketing thereof.

The above examples represent a fraction of the possibilities for Neighborhood Networks. Field offices, owners, management agents, and residents are encouraged to use the resources of the community to create a variety of solutions to improve the quality of life in multifamily housing.

NOTE: Ending Welfare Dependency:

Recognizing the changing role of local, State and Federal welfare programs is a critical aspect when designing NNCLCs. Owners and managers must become familiar with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193), and the devolving of power to the states for welfare and a variety of related programs. Close linkages need to be developed with local welfare offices to determine what types of education, training, and jobs will qualify for allowances and incentives and new "workplace" requirements.

Neighborhood Networks Centers should also look into how both welfare and housing benefits might be adversely affected, and what waivers or exceptions to rules might be beneficial and obtainable. Field offices, owners, management agents, and residents are encouraged to use the resources of the community to create a variety of solutions to improve quality of life in multifamily housing.

- 9.3 HOUSING COMMUNITY ELIGIBILITY:** All insured and assisted communities, under any section of the Housing Acts administered by the Office of Housing are eligible to submit a NNBP for approval, and when approved, set up and operate a CLC. Such housing communities include, but are not limited to HFA and state-financed, Section 8 project-based, 221(d), 236, 202, 202/8 and 811. On HUD-held projects with housing finance agencies, HUD staff may negotiate for HFA dollars to pay NNBP costs.

NOTE: MOD REHAB, public housing and CPD special needs housing are not covered by this Handbook Chapter, except to the extent their owner and managers are encouraged to work with our sites in cooperation with the Office of Housing, and so do.

9.4 **FUNDING OF THE NNBP:** Owners/agents of HUD-assisted or insured properties may utilize any of the following methods (or combinations thereof) for NNBP funding. The use of non-HUD resources, e.g., equipment, software and staffing should be encouraged through outreach efforts. HUD's intention is to be the last, most flexible piece of the funding and should be thought of as "venture capital," not a guaranteed long-term source of funds. The business plan must make sustainability over time a priority. In reviewing plans, HUD staff will consider the viability of a center to operate on its own with a substantial decrease of HUD funding within three to five years.

The following funding methods are in preferred order of consideration:

- a. **OBTAINING GRANTS/RESOURCES FROM OUTSIDE SOURCES:**
Owners, management agents, and resident organizations (where they exist), are encouraged to seek out cash grants, in-kind support, or donations from state and local government, educational district partnerships, private foundations, or corporations to fund some or all components of the NNBP. Resident organizations may want to see model by-laws for incorporation (see Appendix 9).

Entrepreneurial ventures, limited fees, and other similar revenue producing sources should also be considered. Please note that a number of major vendors may partner HUD in this effort and housing communities may be able to obtain resources from National Partners at discounted costs.

- b. **USING THE PROJECT FUNDS/RESIDUAL RECEIPTS ACCOUNT:**
Owners may request the release of funds from the residual receipts account for the purpose of implementing some or all of a HUD-approved NNBP. Working in partnership with owners, HUD will review the request, considering condition of the building(s) and current or projected needs for the funds. If the residual receipts requested are not required to maintain the habitability of units or other projected building needs, approval for NNBP use will be granted. Release of residual receipts is an increase in owner's initial equity, wherever allowed (See

Paragraph 9.4(C) below), for which distributions may be paid to the owner at the approved rate.

- c. **INCREASING THE AMOUNT OF THE OWNER'S INITIAL EQUITY INVESTMENT IN THE PROPERTY:** Owners of limited distribution property may increase the amount of their initial equity investment (and in turn the yield on their distribution) by providing funding for the HUD-approved NNBP in the form of a non-repayable, capital advance. Owners who choose to utilize such methods of funding should inform HUD of the amount which they wish to contribute to the NNBP. The increased equity payments will result once the total amount of funding has been contributed, the CLC is fully established and the NN Plan is implemented. While the owner is permitted to take an increased distribution, a rent increase will not be granted to increase project income for the additional yield.

NOTE: Any change in the owners original distribution percentage will be made by Notice in the Federal Register per 24 CFR Section 881.205.

- d. **BORROWING FUNDS:** Owners may choose to obtain a loan from a lending institution in order to pay for the hardware and setup costs of the NNBP. Repayment of this loan may come from surplus cash or other outside sources with HUD approval, so long as a rent increase is not required to support the loan and the loan will not jeopardize other services which the property has agreed to provide. Loans obtained for this purpose may not be secured by the property.

- e. **BORROWING FROM THE RESERVE FOR REPLACEMENT ACCOUNT (R&R):**

1. **Projects other than 202/811 PRAC:** Owners of HUD-insured or assisted properties who are required to maintain a Reserve for Replacement Account (R&R), per Handbook 4350.1 REV-1, Chapter 4, "Reserve Fund for Replacements", may request and HUD will consider approval of funds to be borrowed against this account for the purpose of implementing some or all of the HUD-approved NNBP. The owner may borrow from the account consistent with Handbook 4350.1, Chapter 4-11. HUD recommends that owners retain about \$1000 per unit, for required repairs and replacements.

The amounts in the R&R account should anticipate repair/replacement needs using personal knowledge, inspection reports and evaluations. Owners should be able to project how much money will be needed at specific points in the future.

If an owner chooses to utilize this method of financing for the NNBP, he/she should submit a scheduled repayment plan illustrating how repayment will be made, and showing that such repayments will not interfere with projected facility needs. (For example, the facility borrows 70 percent of the R&R fund and schedules an eight-year payback. There is a need for boiler replacement in four years and there should be sufficient funds available for boiler replacement at that time.)

2. 202/811 PRAC Projects: Owners of Section 202/811 PRAC projects may request, and HUD will consider approval of, release of funds from the R&R account for the purpose of paying for some or all of a HUD-approved NNBP, if these funds are generated from the "Savings Incentive" (see, for 202/PRAC projects, Handbook 4571.3 REV-1, Chapter 1, "General Introduction to the Section 202 Program", and for 811/PRAC projects, Handbook 4571.2, Chapter 1, "General Introduction to the Section 811 Program." Before approval, HUD will consider current or projected needs for the funds.

- f. REQUESTING AN INCREASE UNDER THE BUDGETED RENT INCREASE PROCESS: In properties where rents are set under Handbook 4350.1 REV-1, Chapter 7, "Processing Budgeted Rent Increases...", owners may request a rent increase to cover some or all of the costs of the HUD-approved NNBP. Rent increases are subject to HUD's discretion and availability of Section 8 funds in a changing regulatory environment.

Residents at partially assisted properties can review and comment on the plan as outlined in Handbook 4350.1 REV-1, Chapter 7 and Handbook 4381.5 REV-2, Chapter 4.

- g. **REQUESTING A SPECIAL RENT ADJUSTMENT:** Section 8(c)(2)(B) of the U.S. Housing Act of 1937 authorizes HUD to offer these special rent adjustments in the maximum monthly rent for units under a Section 8 contract in a limited number of circumstances. It provides the following:

"The contract shall further provide for the Secretary to make additional adjustments in the maximum monthly rent for units under contract to the extent he determines such adjustments are necessary to reflect increases in the actual and necessary expenses of owning and maintaining the units which have resulted from substantial general increases in real property taxes, utility rates, or similar costs which are not adequately compensated for by the adjustment in the maximum rent..." (emphasis added)

Pursuant to this provision and in order to determine whether CLC costs qualify for consideration for a special rent adjustment under the "similar costs" provision of the statute, the costs have to meet the following standards.

1. Are the cost items "similar" to those identified in the statute and regulations, i.e., necessary expenses of owning and maintaining the units within the facility.
2. Has there been a "substantial and general increase" in the cost at issue? In the case of components of CLCs and comprehensive community development, is there a casual relationship between lack of economic and educational development training among residents in the project and the increased costs?
3. Has the increase been "general", i.e., has this increase been experienced by owners of other than the immediate project and projects other than Section 8 assisted?

Owners whose costs meet these three standards satisfy the legal requirements for consideration for special rent adjustments (see Handbook 4350.1 REV-1, Chapter 34, "Calculating Rents Utilizing Annual Adjustment Factors"). The rent increase is subject to HUD's discretion and availability of Section 8 funds in a changing regulatory environment.

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- 9.5 ELIGIBLE COSTS OF A NNBP:** In instances where hardware and installation exceed \$15,000 per center, owners must state how they plan to conduct outreach for contractor services and solicit minority-owned and women-owned businesses.

There is a possibility that excess government computers can be donated from HUD, GSA, or other government agencies (see Appendix 10, "Transfer of Excess Computers"). Also, ask the local Neighborhood Networks Coordinator if the Field Officer has a supply of excess computers for donation to Neighborhood Networks 501(c)(3) organizations or to educational institutions.

- a. **COMPUTER HARDWARE:** This includes all costs necessary to set up a Neighborhood Networks Center at the property.

Examples include but are not limited to:

- o individual computers;
- o appropriate wiring necessary to connect all equipment;
- o a network server;
- o special phone line(s), including fiber-optic cable, where appropriate; and
- o training and consultants.

Program designers must ensure that computers have sufficient power, adequate multimedia equipment, and sufficient expansion slots for intended purposes. They also must address equipment compatibility with that used by local school systems and insure that staff are effectively trained in the uses of all equipment.

- b. **COMPUTER SOFTWARE:** Fees associated with personal Internet accounts may NOT be paid for with project income or other HUD funds.

Eligible costs include:

- multimedia educational software for students;
- software designed to provide educational and job training skills to residents;
- software necessary to provide residents with resources to telecommute from the property (e.g. word processing, spreadsheet and database programs, or integrated programs);
- software designed to assist residents in creating education/job training plans and working toward implementation;
- appropriate training and consultants; and,
- at least one community Internet account for common use which permits residents access to the World Wide Web, Gopher, FTP and TELNET.

- c. **DISTANCE LEARNING EQUIPMENT:** Costs for videocasting and distance learning equipment may be part of the program, **IF FUNDING PERMITS.** The equipment is very expensive. Owners/agents/residents and HUD field offices (providing assistance, guidance and recommendations, as appropriate), should explore the feasibility of obtaining distance learning equipment in partnership with educational institutions and other CLCs.

Planned use of this equipment must be explained and documented. It should focus on a partnership with a local school district, community college, voc/technical institute or four-year college to provide a certificate program using the equipment.

- d. **RESIDENT DEVELOPMENT AND TRAINING COURSES:** In some cases owners/managers may choose to use some programs in the CLC which are not based in software, but come "live" from community organizations and institutions. Standards and certificates should be designed for any internally-developed courses; use of outside courses/training should include the same standards and certificates as at the regular location.

e. **SECURITY AND RELATED COSTS:**

1. **Security:** In planning security, thought should be given to developing an effective, discrete, system. HUD will not approve security plans involving "caging" or chaining equipment.

Costs necessary to secure computer hardware and distance learning equipment **MUST** be built into the plan. In general, this includes the ability to lock the lab/offices, prevent forced entry or equipment removal, and provide visual oversight from the adjacent rooms or offices, whenever possible.

2. **Space Use/Retrofit/Redesign:** Costs necessary for minor retrofit/redesign are allowable.

Examples are:

- (i) installing non-load bearing walls and doors;
- (ii) partition existing community space, provide for both office and a storage area for the OLSC; and, provide for a locked office/storage area.
- (iii) Proposers may also consider Removal of 1-3 units from residency (by moving people into vacant units), or using vacant units for office space, day care or perhaps the CLC itself.
- (iv) Making space accessible to the disabled.

- f. **MAINTENANCE AND INSURANCE COSTS:** The NBNP should state how maintenance, (including installing, training on, and maintaining the hardware and software) and insurance costs for the equipment in the CLC will be covered.

- g. **ON-LINE SERVICE COORDINATOR/SOCIAL SERVICES SERVICE COORDINATION:** All NN Plans submitted for approval should provide for the funding of an OLSC directly or through third parties and allow for at least a portion of the time of the Social Services Service Coordinator (SSSC) (or management staff) to work with the OLSC on community outreach. If a SSSC is not already present at the property, management may consider hiring one, if appropriate, per Chapter 8, of this Handbook.

The OLSC's major responsibility is the implementation of the NNBP, and working with the SSSC, as appropriate. Qualifications for the OLSC are based on Paragraph 8.9(C) of this Handbook; when computer literacy sufficient to run the CLC is added, an SSSC can become an OLSC. Also consider residents, computer-trained and people-focused teenagers, Americorps, VISTA, college student internships, grants or other methods of providing the OLSC without using HUD dollars; or an OLSC aide, paid at least minimum wage. Responsibilities of the OLSC are in the context of Chapter 8.9(C), but restricted to operation of the NNBP.

A SSSC (or other management staff which provide this function) is a useful adjunct to the NNBP for bringing in additional supportive services and other activities for the residents. The intent is to improve the residential neighborhood and link the residents more effectively to the entire community.

The NNBP must outline how the OLSC will integrate the RDP and technology into the CLC. It should also address the degree to which the SSSC (or other management staff) play a role both through coordinating general outside services for residents, and work with the OLSC to bring specific community resources into the facility for the NNB Plan.

h. WHAT DOES "REASONABLY FINANCED" MEAN?

A reasonably financed NNBP meets the following criteria for approval of the local HUD office:

- o Has rent levels which do not exceed current HUD policy.
- o 202/8/811's residual receipts accounts are maintained at \$500/unit or more. This is a statutory threshold.
- o The Reserve for Replacement Account for non-202/811s remains consistent with Handbook 4350.1 REV-1, chapter 4.

Any loan should be within the remaining term of the Section 8 contract and consider future replacement needs. There should not be a loan which would exceed foreseeable available sources of funding (e.g., Section 8 contracts expiring

before the loan is repaid or require repayments not supportable by rents available from a recapitalized loan (e.g., under Portfolio Re-engineering).

- o Keeps the loan to value (LTV) ratio on the original mortgage to be no more than 90 percent. (The owner's initial equity on original limited distribution loans was normally 3-5 percent. This plan would permit that to be increased to, but not exceed 10 percent.)

The LTV ratio ONLY applies to Limited Dividend projects

NOTE: Increase in equity only=no Federal Register comment period;

Increase in distribution=Federal Register and comment period as required by statute (See paragraph 9.4(c), prior).

- o Provides an adequate plan for continued operation after the start-up year, and self-sustainability after the second year.
- o provides for an adequate measure of third party resources to supplement the HUD resources, as proposed and appropriate.

NOTE: A plan which does not meet all of the above criteria should not be approved by the local HUD office.

9.6 REQUIRED COMPONENTS OF AN NNBP: All projects wishing approval of a CLC/NNBP must submit a proposal to the Asset Management Branch of the HUD local field office in whose jurisdiction the project is located. In addition to answering specific questions in the NNBP, there are **REQUIRED** components of the proposal, for example the NNCLC must be designed to address resident self-sufficiency through meeting economic development and educational needs.

- a. What specific measurable objectives will the project be designed to achieve for participating residents?

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- b. What are the action steps necessary to implement these objectives for participating residents?
 - c. How will participating residents benefit from the program (i.e., type of programs)? How will they be involved in planning? Is the Citizen Education Fund pledge addressed?
 - d. What partnerships have been built which can enhance the CLC (e.g. schools, local government, local businesses or social services which can offer programs at the CLC, or donated computer or other equipment, software or services/staff)?
 - e. Who will direct the program, what staff will be responsible for the equipment and what will the staff do? What will be the CLC's operating schedule?
 - f. What is the proposed space/security plan/monitoring arrangements? Does the retrofitting design (if appropriate) meet accessibility requirements?
 - g. What is the first year's budget, and how will the NNBP be funded initially? How will personal accounts for internet and other third party charges (if part of the proposal) be monitored and collected?
 - h. What outreach will there be to minority/women-owned firms if hardware costs are over \$15,000?
 - i. What are the various funding mechanisms? Attach a breakdown of the estimated costs, and commitment letters from any third party grantors or loan providers for the first year.
 - o Section 202 projects may use residual receipts to the extent that they are over \$500/unit. This is a statutory threshold.

Other elderly or family sites may use all available residual receipts. All facilities are subject to Handbook 4350.1 REV-1, Chapter 25, "Residual Receipts." Owners/borrowers must submit a copy of the last Annual Financial Audit (AFA) and verification that any residual receipts exist and/or have been deposited since the last AFA was completed. (Only do so if residual receipts will be used in the program.)

- o Owner/borrowers using the AAF rent increase process must first establish that revenues from the site are not adequate to pay for the NNBP. This may be demonstrated as follows:

- (1) The owner/borrower must determine if there is sufficient cash throw off to fund some or all of this proposal. To do so, complete Form HUD-9833B, Section 8 Annual Contract Rent Adjustment Worksheet, Part G, 1-14, "Special Adjustments for Taxes, Insurance or Utility Cost Increases" (see Appendix 2 of Handbook 4350.1 REV-1 and the instructions in Chapter 34).

Owners are instructed to add an entry for "Other" (to cover "similar cost" language in the statute and regulations), in the blank space on the right side of the form next to the entries for "Taxes", "insurance," and "utilities," and specify for which component of the proposal is the special adjustment.

- (2) If the net cash throw-off is less than the distribution allowance, the owner may request a special rent adjustment to fund a portion of the proposal. However, if net cash throw-off exceeds the distribution allowance as calculated for the purpose of the special adjustment, the owner may use the funds in excess of the allowable distribution to partially or fully capitalize the proposal.

In cases where all the cash throw-off is taken as distribution or surplus cash, the FO must determine what is an appropriate amount to be contributed to the program.

- (3) The owner/borrower must submit a copy of the Form HUD-9833B.

- o Budget-Based Rent Increase - Use Handbook 4350.1, REV-1, Chapter 7 and any current Notices.
- o Reserve for Replacement Account - Use Handbook 4350.1 REV-1, Chapter 4.

For 202/PRAC use Handbook 4571.3 REV-1, Chapter 1 and Handbook 4571.5, Chapter 5. For 811/PRAC housing, Handbook 4571.2, Chapter 1 and Handbook 4571.4, Chapter 5.

- o Increase of Initial Equity Balance, where appropriate.
- j. How will operations be continued after the start-up year? What will the annual operating budget be? How will the housing community become self-sustaining after the second year?
- k. How will participation in the program's operation, such as education and job training programs be tracked? How will the success of the program be assessed or evaluated? Is there agreement to cooperate with any HUD reporting requirements, including the HUD evaluation which begins in FY 1997?

9.7 LOCAL HUD OFFICE REVIEW: Local HUD office staff (Resident Initiatives Specialists (RIS) and Asset Managers (AM) are encouraged to work with applicants in the preparation of their NN Plans and BE CREATIVE in problem solving. This Chapter does not pretend to provide all the answers nor should it be used as an exclusive guideline or cookbook. The Department would like to develop as many workable programs as possible, in both single and multi-site approaches, some of which may eventually be national models--**ONLY RESULTS COUNT.**

Plan review will be done by AMs, together with the RIS', as appropriate. (A&E staff should be approached for assistance if minor retrofitting is proposed.)

Staff should review the proposed NNBPs submitted. NNBPs with deficiencies must be revised. Headquarters encourages HUD field office staff to work with interested applicants on an ongoing partnership basis, to minimize any final review. The criteria are:

- o The degree to which a complete, overall plan is provided, assuring that each component is sufficiently developed, effectively answers all questions, and links the appropriate objectives, action steps and results. (RIS, AM, A&E).

NOTE: HUD does not want only \$200,000 after-school childhood development centers, but concepts that address at least: Jobs and various forms of training and life skills learning (in some capacity as they relate to obtaining or upgrading employment particularly in consideration of Welfare Reform).

- o The degree to which the facility/NNCLC has formed partnerships with neighborhood and community entities that support the plan as proposed (RIS).

NOTE: Any plan that does not evidence strong and continuing linkages and resources from third party Local organizations, such as the school system, Universities, colleges, community colleges, businesses, non-profit corporations, local for-profit companies, and national/international companies is unlikely to sustain operations much past the first year and should not be approved.

For this reason, the role of consultants should be carefully reviewed to determine that their assistance contributes to the development of community linkages and is not solely restricted to the development of theoretical plans or "turnkey" solutions relying primarily on HUD as the funding source.

- o The degree to which the facility/CLC is provided with adequate space, staffing, volunteer or other coverage, appropriate security and accessibility for the disabled (AM, RIS, possibly A&E).
- o The degree to which the program is adequately funded through third parties and/or the project, and resident fees (AM, RIS).

This will include, as appropriate:

- consideration of whether the facility is large enough to support the program efficiently and effectively as proposed, and has enough funds to make it work.
- some evidence that project owners/management/residents have looked for other sources of funding before using HUD dollars other than residual receipts; and

- residual receipts review, and/or, reserve and replacement review for other than 202/811 PRAC projects, to make sure that the dollars are available. These must include consideration of the condition of the facility (not 202/811 PRAC) and match remaining dollars in the accounts against planned needs for the facility.

For Section 202 PRAC projects, see Handbook 4571.5, Chapter 5, "Cost Certification," and for Section 811 projects, see Handbook 4571.4, Chapter 5, "Cost Certification."

- A review for available contract authority (on both budget-based and AAF projects). The AM/Contract Administrator must review the project's contract authority to determine if it is adequate to meet the projected demands for housing assistance for the remaining incremental terms of the contract, because it would be paid out of the contract's contract and budget authority. If contract authority is inadequate, a request for amendment funds would need to go to Headquarters.

Review the HUD-9833B, Section 8 Annual Contract Rent Adjustment Worksheet, Part G, "Special Adjustments," and Chapter 34 of Handbook 4350.1. In particular, Paragraphs 34-6 through 34-8 provide general processing instructions, including a walk-through of how to compute the actual dollar amount of the special adjustment to approve applicable "back-out" procedures.

The expiration of a special adjustment does not constitute a "reduction in rent." The owner, by accepting the special adjustment, agrees to this reduction when the need for the rent increase can no longer be justified.

- A review to insure that any rent increase approved does not exceed current approvable levels.
- When an owner equity contribution is involved, try to ensure the commitment is firm (AM).

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- copies of other commitments, such as grants, etc. Make sure they are for the purpose stated in the proposal, and are either firm, or committed contingent on plan approval (AM, RIS).
 - o The degree to which proposals involve multiple site/non-resident involvement.
 - If it is a multiple site proposal, have costs been effectively prorated and have the sites been effectively distributed among the projects?
 - If people living in the community may use the NNCLC, do residents have priority? Are the majority of costs paid for by third-party resources? Is space/time available for non-residents after resident needs are covered?
 - If the NNCLC is located off-site, are the majority of resources assigned to the program covered by third parties other than HUD? Are there appropriate safeguards in place to cover HUD's portion of the investment?
 - o The degree to which there appear to be valid ideas for continued operations for year two and plans for self-sustainability after year two. These should:
 - address all components of the plan;
 - provide some indication how costs can be covered for year two; and,
 - address self-sustainability after year two.

9.8 MONITORING/REPORTING/TECHNICAL ASSISTANCE:

Monitoring is conducted in accordance with the requirements and procedures set forth in Handbook 4350.1, Chapter 6, "Project Monitoring", and Handbook 4350.5, Chapter 15, "Project Monitoring", and Chapter 16, "Field Office Monitoring Responsibilities of Subsidy Contract Administrators".

When doing an on-site review, Asset Managers/RIS' should include a review of the implementation of the facility's program, compared to the approved proposal, review of appropriate files and documents. The financial review should include documentation the project maintains for costs incurred.

Findings should be written up in narrative format as an ADDENDUM to the HUD-9834-B "Management Review Questionnaire" and summarized on the "Management Review Report", under Section V, General Management Practices, which is sent to the project manager.

From time to time HUD Headquarters may impose specific additional monitoring/reporting requirements (e.g., supporting a HUD evaluation of the NN program), or other studies.