

## CHAPTER 1. ELIGIBILITY REQUIREMENTS

## 1-1. GENERAL.

- a. The Purpose of Section 207. Section 207 assists in financing the construction or rehabilitation of rental projects. The program is intended primarily to provide housing for families with children, although rental housing in locations close to a central or business district may
- \* provide for a reasonable number of efficiency units. The subject project must include at least 8 units of which not more than 30 percent should be efficiencies. If a greater percentage of efficiencies is contemplated the Area Manager/ Service Office Supervisor shall obtain prior clearance from the Director, Office\* of Multifamily Housing Development.
- b. Income Limits. There are no income limits. However, the rental rates established under this program must be tailored to the incomes of the market to be served. No mortgage will be accepted for insurance under this Section unless the proposed project is economically sound.
- c. Furnished Apartments. In considering any proposal in which furnished units are to be provided, the prohibition against the use of multifamily housing for hotel or transient purposes will be made plain. Subject always to a finding as to long range market demands, preliminary discussions with the sponsors should proceed on the assumption that satisfactory occupancy can be attained initially without leasing any of the dwelling units as furnished units. This
- \* concept is basic and there shall be no deviation from it without a special written recommendation of the Area Office Manager/ Service Office Supervisor which must be approved by the Director, Office of Multifamily Housing Development, Headquarters. \*

- 1-2. SELECTION OF PROGRAM. The purpose of this particular program will be more fully explained to the sponsor at the first meeting with the HUD Field Office to secure assistance in selecting the specific program that best suits the proposal. If the proposal is obviously ineligible for any of our programs, the sponsor will be so advised before any substantial effort is expended. If the proposal appears to meet the objectives of this program, the HUD Field Office personnel will assist
- \* in preparing a request for project analysis. \*

- 1-3. FEES AND CHARGES. HUD requires the following fees:

- a. Application Fee - An application Fee of \$1.50 per thousand dollars of the amount of the mortgage applied for will accompany the application for conditional commitment.
- b. Commitment Fee - A Commitment Fee, which when added to the Application Fee, will aggregate \$3.00 per thousand dollars of the face amount of the mortgage applied for, will accompany the application for firm commitment.
- c. Inspection Fee - An Inspection Fee of \$5.00 per \$1,000 of the mortgage amount is paid at initial endorsement for insurance of advance cases and prior to the start of construction for insurance upon completion cases.
- d. No Fee is collected by HUD until the project is determined to be feasible.

1-4. MORTGAGEE FEES AND CHARGES. The mortgagee may collect from the mortgagor an initial service charge not to exceed 2% of the face amount of the mortgage and a 1 1/2% commitment fee. These charges are included in the estimated replacement cost of the project. No other fees and/or charges made by the mortgagee may be included in the estimated replacement cost.

1-5. ELIGIBLE MORTGAGORS.

- a. Type of Mortgagor. The mortgagor must be a private, profit-motivated corporation, trust, partnership, or individual regulated or restricted by the Assistant Secretary for Housing as to rents or sales, charges, capital \* structure, rate of return, and methods of operation. Other types of sponsorships may be accepted under Section 207 if they appear promising and particularly well suited for the type of project proposed.
- b. Form FHA 2530, Previous Multifamily Participation Review Procedures. Sponsors are to file Form FHA 2530 with their request for feasibility analysis or immediately when the person or firm first becomes associated with the project if the participation begins at a later date.

- (1-5) c. The Purpose of this Procedure is to provide a central source of information relating to a Principal's previous participation in HUD programs in all jurisdictions as an aid in the evaluation of the mortgage insurance risk of a proposed project. Such information is also useful in instances where approval of a new venture should be accompanied or

preceded by corrective action on an existing project involving the same participants. Approval of a proposal under these procedures is limited to the consideration of the previous participation of the Principals. It in no way amends or deletes other outstanding administrative and under-writing instructions as to project acceptability, credit capability, competency, etc., and in no way implies approval of these matters.

- d. Scope of Evaluation. The evaluation of a Principal's previous participation includes a review of project dockets, audit reports, compliance records, reports by the HUD Office of Investigation and the recommendation of RAs and Field Office Managers/Supervisors. The initial source of this information is the Previous Participation Certificate, Form FHA-2530, on which the Principals are required to disclose their past participation in all HUD and other HUD programs (except HUD home mortgage programs) and their interest in the proposed project.
- e. Who Must File Form FHA-2530. A Previous Participation Certificate, Form FHA-2530, must be executed and filed by every person and organization planning to;
  - (1) Participate as a Principal in a proposed multifamily, Title X, Title XI or nursing home/intermediate care facility project.
  - (2) Obtain an interest in an existing project.
  - (3) Submit a bid to purchase a Secretary-owned project.
- f. Who Is A Principal. The term Principal, as used in these procedures, includes:
  - (1) Sponsors and owners of the project.
  - (2) General Contractors.
  - (3) Project managers and management agents.

- (1-5) (4) Packagers, consultants and other persons or organizations engaged to furnish advisory services in connection with the financing, construction or operation of a project, or to select and negotiate contracts with contractors, architects, attorneys or managing agents, or to secure financing or to meet HUD requirements.

- (5) Architects and attorneys who have any interest in the project other than an arms-length fee arrangement for architectural or legal services to be rendered.

g. Organizations as Principals. An organization which participates as one of the Principals specified in Sub-paragraph f. above must file as follows:

- (1) If a Principal is a profit motivated corporation, the Certificate must be executed on behalf of the corporation and by its principal officers, directors, and each stockholder having 10% or more interest in the corporation. If the corporation is wholly or partially owned by another corporation, a Certificate must also be filed by the parent organization, its officers, directors, and stockholders having 10% or more interest. Where a corporation is publicly held or unusually large and it would be unreasonable to require filing by all officers, directors and stockholders, this requirement may be modified.

- (2) If the Principal is a non-profit corporation, the Certificate must be executed on behalf of the corporation and by the head of the organization (the head of the local unit if it is a national organization) and the officers who will represent the organization to HUD.

- (3) If the Principal is a partnership, the Certificate must show the partnership name and  
\* must be executed by each general partner and each limited partner with 25 percent or more interest. (Reference 24 CFR, 200.212). \*

- (4) If the Principal is a trust or other similar entity, the Certificate must be executed on behalf of the entity and by each trustee.

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(1-5) h. Time of Filing.

- (1) Proposed Projects - The Certificate must be filed at the time of filing FHA Form 2013, requesting feasibility analysis or

immediately when the person or organization first becomes associated with the project, if participation begins at a later date.

- (2) Transfer of Physical Assets - The Certificate must be filed no later than the other documents required for preliminary approval of the transfer.
- (3) Purchase of Secretary-owned project - The Certificate must be filed with the bid directly to the Director, Office of Property Disposition, HM.

i. Preparation of Certificate.

- (1) The name, location, and number of the proposed project and the number of units and the proposed mortgage amount must be shown.
- (2) All HUD-FHA and other HUD projects in which the Principal has previously participated must be identified by name, location, and project number, and the nature of his participation in each project must be disclosed. If a Principal participated as an owner, his percentage of ownership must be shown.
  - (a) Where an organization is a Principal in the proposed project, previous projects in which the corporate officers, directors and stockholders or partners participated must be shown, as well as those in which the organization participated.
  - (b) The column headed "Name of Principal" should be used to identify the certifying Principal who participated in the listed project, when more than one person executes the form.
- (3) The Certificate must show whether the previous project is or ever has been in default or subject to mortgage relief. A history of default or mortgage relief may seriously affect the determination of the feasibility of the proposed project, therefore the Principal may attach an explanation as an aid in evaluation. If the Principal's

- (1-5) participation has terminated and he does not know whether there has been a default or mortgage relief (e.g., a general contractor) he may enter "Unknown, Terminated (Date)." However if the mortgage was in default or subject to relief during his participation it should be noted and an explanation attached.
- (4) A Principal who has previously filed a Certificate in any Field Office may identify such Certificate on the face of the new submission, attach a copy, and list only additional projects and additional information on the new Certificate.
- (5) Each Principal must sign the Certificate and type or print his name under the signature, together with the type of participation he will have in the proposed project. If he will be an owner of the project the percentage of ownership must be shown. The Certificate must also show the date of execution and the Social Security number for individual Principals and the Employer Identification number for organizations.
- (6) If Subparagraph b.(1) applies to the project manager or other Principal, a certificate must be filed by such Principal as soon as he has been selected.
- (7) If one or more additional or substitute Principals will participate in a project previously approved under these procedures a Certificate must be filed by the new Principals together with a statement giving the names and type of interest of all of the Principals whose participation in the project was previously approved. The previously approved Principals should not execute the new Certificate unless the Field Office wants a current review of their participation.
- (8) The following participants are not considered Principals under these procedures and need not execute a Certificate:
- (a) Stockholders having less than 10% interest in a corporation.

- \* (1-5) (b) Limited partners having less than 25 percent interest in the partnership. \*
- (c) Attorneys and architects having only an arms-length fee arrangement for legal or architectural services to be rendered.
- (d) Minor corporate officers.
- (e) Sub-contractors.

j. Action in Field Office.

- (1) Upon receipt of a Previous Participation Certificate, Form FHA-2530, the form should be reviewed carefully to determine that it has been completed in all respects. Particular attention should be given to the following:
  - (a) All copies must be clear and legible.
  - (b) The project number must be shown for the proposed project and for each previous project listed. When the Principal is unable to furnish a project number the Field Office should insert the number. If the number is not available to the office, so indicate on the form.
  - (c) The certifying Principal's type of participation and the percentage of ownership, where applicable, must be shown for each listed project.
  - (d) The Certificate must be executed by every Principal who will participate in the proposed project. If the Certificate involves only substitute or additional Principals, a statement relating to Principals who were previously approved must be attached.
  - (e) The name of the Principal and his/her participation in the proposed project must be typed or printed under each signature and his/her Social Security or Employer's Identification Number must be shown.
  - (f) If the Certificate refers to an earlier Certificate a copy of the earlier Certificate must be attached.

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- (g) If a proposed Principal is subject to an existing Section 512 determination or an Unsatisfactory Risk Determination, advise him/her that the project will not be approved with respect to his/her participation.
  - (h) Caution Principals that every project in which they have previously participated as a Principal must be listed, and the default and mortgage relief history of each listed project must be disclosed. A Certificate which fails to provide complete disclosure will be returned without approval and may subject the Principal to prosecution for violation of Section 1010 of Title 18, United States Code.
- (2) Complete Form HUD-1441.1, request for information concerning Previous Participation, taking the information from the filed Certificate. The name, Social Security number and city and state of residence of each Principal who executed the Certificate must be entered. If the Principal is an organization, its Employer's Identification number and the location of its business office must be entered. In those cases where an individual conducts his/her business under a business name, enter both the individual's name and his/her business name together with the appropriate addresses, Social Security number and Employer's Identification number. If several Forms FHA-2530 are submitted for one project the information should be consolidated for entry on Form HUD-1441.1
- (3) When it has been determined that Form FHA-2530 and Form HUD-1441.1 are properly completed:
- (a) Retain the original copy of Form FHA-2530 and the third (pink) copy of Form HUD-1441.1 for filing in the Field Office docket.
  - (b) Forward the first copy of Form FHA-2530 to the Regional Administrator.
  - (c) Forward to the Director, Participation

and Compliance Review Division, the remaining three copies of Form FHA-2530 and two copies of Form HUD-1441.1. That office will forward the copies of Form HUD-1441.1 to the Office of Investigation as required by Reference (1) of the Foreword.

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- (1-5) (4) If FHA Form 2530 was submitted to the Participation and Compliance Review Division before a project number was assigned, or if the project number is changed after submission, or if the project is withdrawn or rejected, promptly notify that Division of the assignment, change, withdrawal or rejection.
- k. Action by Regional Office. When the Regional Administrator receives a copy of FHA Form 2530 which discloses previous participation in another HUD program he should report any adverse information regarding the Principal in HUD-FHA or other HUD programs to the Director, Participation and Compliance Review Division, by memorandum or telephone. If no report is received within five days it will be presumed that the Regional Administrator has no adverse information.
- i. Action by Participation and Compliance Review Division. After evaluating the information referred to in Sub-paragraph 1-5.d., the Participation and Compliance Review Division will advise the Field Office whether or not the proposed project has been approved with respect to the participation of the Principals who executed the Certificate. The commitment should not be issued until the participation of each Principal listed in Sub-paragraph 1-5.f., has been approved. The participation of Principals who have not executed the Certificate will not be approved.
- m. Clearance Priority. If there is reason to believe that the proposal will be ready for commitment in less than 60 days from the date the request for feasibility analysis is filed, indicate by memorandum attached to the FHA Form 2530 the date on which the request for feasibility analysis was filed and the expected date of issuance of the commitment prior to which FHA Form 2530 clearance is needed. Processing priority will be given to these cases so that within the specified time an approval letter will be issued or the originating office will be advised of any adverse information which may delay or preclude approval.

- n. Project Disapproval. In the event a project is disapproved under these procedures the Field Office should notify the Principals who executed the Certificate of the disapproval. Persons and organizations who did not execute the Certificate are not Principals and should not be notified. Only the Principal whose previous participation is found unacceptable should be advised of the basis for disapproval.

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If a project is disapproved because of the participation of one or more Principals, new Principals may be substituted but a Previous Participation Certificate must be filed for each substitute.

- o. Reconsideration. A Principal whose previous participation has been found unacceptable may request reconsideration of the proposal by the Multifamily Participation Review Committee. Such request must be accompanied by a statement in writing fully setting forth appropriate grounds for approval of the project with respect to his previous participation. Exhibits may be submitted with the statement. Oral argument will not be heard by the Committee.

Requests for reconsideration should be submitted to:

Executive Secretary, Multifamily Participation  
Review Committee  
Room 6236  
451 Seventh Street, S. W.  
Washington, D. C. 20411

- 1-6. CONTROL OF MORTGAGOR. The Secretary's control over the mortgagor will be exercised by a Regulatory Agreement, FHA Form 2466. This requirement as well as the others set forth in this chapter will be discussed with sponsors and explained to them fully at the initial interview.
- 1-7. RESPONSIBILITIES AND OBLIGATIONS OF MORTGAGORS. Financing under the HUD-FHA mortgage insurance programs imposes certain responsibilities and obligations on all mortgagor. The basic description and outline material indicated below pertain to all rental housing programs. The most important of these responsibilities and obligations are:
  - a. Equal Opportunity in Housing. Federal law and HUD-FHA Regulations require that neither the mortgagor nor anyone authorized to act for him will decline to sell, rent, or otherwise make

available any of the properties or housing units in a multifamily project to a prospective purchaser or tenant because of his race, color, creed, or national origin. The mortgagor must further agree to comply with state and local laws and ordinances prohibiting discrimination.

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- (1-7) b. Cost Certification Requirements. Cost Certification is required by Section 227 of the National Housing Act and HUD Regulations for all multifamily housing projects, except those insured under Section 810(g) of the Act, rehabilitation sales type projects under Sections 221(h) and 235(j), and sales type projects under Section 213. The Field Office will determine the maximum \* insurable mortgage based on actual cost of the project and the amount of the reduction of the original mortgage amount, if any. This determination will be based on the cost certification of items and amounts included in the mortgagor's cost certification after a careful review has been made of the items and amounts included, without making an audit of the mortgagor's books and records which subsequently may be required.
- \* (1) Joint Pre-Cost Certification Conference. When the project has attained a construction completion percentage of no more than 90 percent the Cost and Mortgage Credit staffs shall hold a joint pre-cost certification conference with the mortgagor, mortgagee, general contractor, and accountants. At this conference, provisions of HUD Handbook 4470.2 , Cost Certification Handbook for Mortgagors and Contractors of HUD Insured Multifamily Projects, and IG 4200.1A Audit Guide for Auditing Costs of HUD Insured Multifamily Projects for use by Independent Public Accountants shall be explained and the mortgagor and contractor shall be asked to submit the required statements and certifications. The importance of a careful review by all parties, including the mortgagee, mortgagor and accountant, prior to submitting the cost certification documents to HUD shall be stressed. Particular emphasis shall be placed on the necessity for completeness with respect to required documentation, dates and signatures and upon the timeliness of the submission. \*
- (2) Costs. As a general rule, only costs

which have been paid in cash or will be paid in cash upon release of the balance of the mortgage proceeds are eligible for inclusion as a certified cost.

- (a) Land and Builder's Profit. Excepted from the general rule above are amounts allowed for land in all types of cases and amounts allowed for builder's profit in the case of a profit-motivated project where there

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is an identity of interest between the general contractor and the mortgagor. The amount allowable for land is the HUD "as is" value found in Section J, Block 14(7) of Form FHA-2264. When there is an arms length relationship between a mortgagor and a builder under a lump sum contract, the builder's profit and general overhead expense lose their identity as such and only that portion of the lump sum contract price (including fee) paid in cash, or to be paid in cash at final closing, is includable. In the case of a non-profit mortgagor, builder's profit must be certified as an actual cost since it cannot be treated as an allowance.

- (3) Form FHA-2330. Mortgagor's Certificate of Actual Cost, is required in all cases upon completion of construction and prior to the approval of the final advance of mortgage proceeds.
- (4) Form FHA-2330-A. In the event there is or has been any identity of interest between the mortgagor, on the one hand, and any subcontractor, supplier or equipment lessor, on the other hand, each such subcontractor, supplier or lessor will be required to submit a certification of actual costs. Form FHA-2330-A, Contractor's Certificate of Actual Cost, will be required for such subcontractors and evidence of actual costs will be required for such suppliers and lessors. If there is an identity of interest between the mortgagor and general

contractor, any subcontractor, supplier or lessor having an identity of interest with the general contractor will be treated as having an identity with the mortgagor.

- c. Annual Financial Statements. Mortgagors are required to keep their books and accounts in accordance with Handbook 4371.1, Financial Operations and Accounting Procedures For Insured Multifamily Projects. Mortgagors also are required to provide annual financial reports meeting the requirements

\* set forth in Reference (6) of the Foreword. \*

- d. Annually a form is mailed to all project mortgagors to determine occupancy ratios and rentals by type of unit. The Rental Housing Occupancy Report, Form FHA-2474, is used to determine whether there exists any violation of the approved maximum rent schedule for the project.

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1-8 ELIGIBLE PROPOSALS. To be eligible for insurance under any of the unsubsidized rental housing programs, the proposal must fall into one of the following categories:

- a. Proposed New Construction. In proposals involving new construction, work may not have been done to the site prior to the issuance of a firm commitment. The driving of foundation pilings, pouring of foundation footings, or pouring or placing of a pier or caisson constitutes the start of construction. Therefore, no project mortgage can be accepted for insurance if any of the above actions transpired prior to filing an application for mortgage insurance and issuance of a firm commitment.
- b. Substantial Repair and Rehabilitation of existing dwelling units and facilities. Mortgage proceeds may be used to acquire the project and satisfy any previous existing mortgage.
- c. Purchase and Refinancing Transactions. Where the primary purpose of the mortgage insurance proposal is to refinance or purchase an existing multifamily housing project, the proposal is eligible for mortgage insurance only under Section 223(f). See Reference (5) of the Foreword.

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1-9. ELIGIBLE MORTGAGES. Maximum Mortgage Amount - The mortgage shall involve a principal obligation not to exceed the lesser of:

- a. For such part of the property or project attributable to dwelling use (excluding exterior land improvements as defined by the Field Office Director) an amount per family unit depending on the number of bedrooms which may be:

	non-elevator*	elevator*
0-bedroom	\$13,000	\$15,000
1-bedroom	18,000	21,000
2-bedroom	21,500	25,750
3-bedroom	26,500	32,250
4-bedroom	30,000	36,465

\*NOTE: The amounts stated above may be increased by up to 75% depending on the Field Office's determination of the \* cost level prevailing in the area. There are specific high cost determinations for Alaska, Guam and Hawaii.

- b. For New Construction. 90% of the estimated value of the property after construction of improvements.
- c. For Rehabilitation.
  - (1) Property held in fee - 100% of the estimated cost of repair and rehabilitation.
  - (2) Property subject to existing mortgage - the estimated cost of repair or rehabilitation; plus the lesser of: (1) the outstanding indebtedness or (2) 90% of the estimated fair market value of the property prior to rehabilitation.
  - (3) Property to be acquired - 90% of the estimated cost of repair or rehabilitation; plus 90% of the lesser of: (1) the actual purchase price of the property prior to repair or rehabilitation or (2) the appraised value of the property prior to rehabilitation.

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1-10. INCREASED MORTGAGE AMOUNT - OPERATING LOSS.

- a. If the mortgagor suffers an operating loss during the first two years of the project's operation, the mortgagor may request, and the Commissioner may insure a loan to cover the excess of taxes, interest, mortgage insurance premiums, hazard

insurance premiums, and the expense of maintenance and operation of the project (excluding depreciation) over project income during the first two years following the date of completion of the project. The mortgage term of such a loan cannot exceed the unexpired term of the original mortgage.

- b. It must be shown that sustaining occupancy has been obtained or there is every indication that sustaining occupancy will be attained at a predictable date in the immediate future (in most cases 18 months or less). Also the competency and responsibility of the project management must have been established to the satisfaction of HUD-FHA.
- 1-11. MAXIMUM TERM OF LOAN. The mortgage term cannot exceed the lesser of 40 years or 3/4 of the remaining economic life.
- 1-12. INTEREST RATE. The interest rate cannot exceed the maximum rate established by the Secretary.
- 1-13. MORTGAGE COVENANTS. The mortgage will contain covenants which:
- a. Prohibit any form of discrimination on the basis of race, sex, creed or color in connection with the occupancy of the mortgaged property.
  - b. Prohibit the use of the mortgaged premises for any purpose other than that for which it is intended at the date the mortgage was executed.
  - c. Prohibit the creation by the mortgagor of liens against the property superior or inferior to the liens of the mortgage.
  - d. Bind the mortgagor to keep the property insured by a standard policy or policies against fire and such other hazards as the Director may stipulate.
- 1-14. ELIGIBLE MORTGAGEES. To be eligible to apply for and receive commitments for mortgage insurance under any section of the Act, a lender must be an approved mortgagee. Also, if it is contemplated that the mortgages will be sold to FNMA or GNMA, the lender should also be an approved FNMA/GNMA seller-servicer.
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- 1-15. OBLIGATIONS OF GENERAL CONTRACTOR.
- a. Prevailing Wages and Equal Employment Opportunity - Pre-Construction Conference. In the pre-construction conference, labor standards, prevailing wage determinations and HUD-FHA's Equal

Employment Opportunity Policy are outlined to all participants. The principal contractor must certify that all laborers and mechanics will be paid not less than the prevailing wages in the project area and that he accepts the responsibility for such payment by all subcontractors.

- (1) A HUD-FHA representative will read and explain HUD Form 907, Instructions for Contractors Regarding Affirmative Action, which sets forth pertinent obligations which are assumed by a contractor or subcontractor as well as a statement of the sanctions that may be applied in the event of non-compliance.
- (2) A copy of HUD Form 907, is to be given to every contractor and subcontractor at the conference. Each contractor should be given additional copies to pass on to absent subcontractors who will be used on the project. This publication explains in more detail some of the pitfalls a contractor should avoid, as well as some affirmative steps he should take to assure an effective, and therefore acceptable, program of Equal Employment Opportunity.
- (3) Copies of the Equal Employment Opportunity poster, which each contractor and subcontractor must agree to post in conspicuous places available to employees and applicants for employment, will be given to the contractors and subcontractors present, and additional copies will be furnished each general contractor to be given to any subcontractor not present who will be involved in the project.

b. Inspection. Inspections of multifamily housing projects are made to insure that the project is being constructed in accordance with the identified drawings and specifications and all approved construction changes. Failure on the part of the contractor to remedy any unacceptable work practices will result in either a reduction in the amount of the insured mortgage or a notification to the mortgagee that the project will be considered unacceptable for insurance unless correction is made.

(1-15) c. Builder's Fee. HUD-FHA includes a builder's fee, which consists of two basic considerations:

- (1) General overhead, which represents expenses necessary for the continued operation of a construction business
  - (2) Builder's profit, which is the return typically anticipated by builders performing their services under competitive conditions in its computation of the total cost of construction.
- d. Overhead. General overhead will be computed by applying 2% of the subtotal for construction which includes the cost of land improvements, structures and general requirements. The total builder's fee will be determined from data obtained from builders on multifamily housing projects. The data will reflect the risk and responsibility inherent in the type of construction proposed and also will take into consideration the location in which the project will be built. The percentage remaining after subtracting the 2% allowance for general overhead will be the builder's profit. The profit percentage will then be applied to the same subtotal as the overhead percentage. The allocation for general overhead expense will be allowed in all cases regardless of the total construction cost or the size of the project.
- e. General Requirements (Job Overhead). This is an allowance for miscellaneous items encountered in the construction of, and directly pertaining to, a specific project. Items of cost to be considered in the allowance include but are not limited to: supervision, field engineering, field office expense (including clerical employee's wages), temporary heat, water, light and power for construction, equipment rental (if not included in trade item costs), clean-up and rubbish disposal, building permit, watchmen's wage and/or theft and vandalism insurance or allowances for such losses, medical and first-aid facilities, temporary walkways and fences, sidewalk and street rental, temporary roads, sidings, docking facilities. Items will vary due to project type, location and site conditions.

- (1-15) f. Builder's Fee for Projects Utilizing Factory Built Modular Units or Components. This method of construction is defined as the utilization of panels or components, assemblies or complete subsystems, which are manufactured to use for or provide a space enclosing unit.

- (1) It is recognized that the builder is fully responsible for the total amount of the contract and acceptable completion of the project. However, until this method of construction has become more widely used and factual information can be obtained, the following will be considered when determining an appropriate builder's fee:
  - (a) On-site construction time should be substantially reduced.
  - (b) The number of subcontractors and on-site work relating to the structure is much less.
  - (c) The risk of construction delays is reduced due to the controlled conditions inherent in manufacturing, and the reduced on-site construction time they create.
  - (d) Many of the interim responsibilities such as compliance with various local, state and federal codes relating to the use and acceptability of materials and also structural requirements are assumed by the manufacturer.
- (2) Bearing the above in mind, the same guidelines will be followed as outlined in subparagraph 1-5.c., Builder's Fee, in establishing a reasonable fee. Full consideration must be given to the work the builder actually directs and performs and to the risk and responsibility he retains. In so doing it is expected that a total fee will be developed which is commensurate with this method of construction. The fixed percentage of 2% for general overhead will apply and the difference between it and the total percentage developed for the builder's fee will constitute profit. These percentages will be applied to the total construction costs including general requirements.

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1-16. OCCUPANCY REQUIREMENTS AND RENTAL RATES.

a. Occupancy Requirements. There is no restriction to

occupancy by virtue of the tenants income. The only requirements are:

- (1) In selecting tenants the mortgagor may not discriminate against a family because of race, color, creed or national origin or due to the fact that there are children in the family;
- (2) There may not be any leases executed for a period of less than thirty days, nor can the mortgagor provide occupants with the customary hotel services such as room service for food and beverages, maid service, furnishing and laundering of linens, and bellboy services. The intent of Congress is that housing built with the aid of mortgage insurance is to be used principally for residential purposes and not transient or hotel purposes.

- b. Rental Rates. The maximum rental that may be charged is determined on a project-by-project basis. Project owners may not charge a gross rental in excess of that determined by HUD-FHA as necessary to pay a fee for adequate management and meet all expenses, reserve, mortgage obligations and provide a reasonable profit. With prior HUD-FHA approval the rental income maximum may be increased in response to demonstrated increases in operating expenses (primarily maintenance and taxes).

1-17. PROPERTY REQUIREMENTS.

- a. To be Eligible for Insurance of the mortgage the project must be located on real estate held in fee simple or subject to a lease for not less than ninety-nine years which is renewable or under a lease having a period of not less than seventy-five years to run from the date the mortgage is executed, or under a lease executed by a governmental agency, an Indian or an Indian tribe for the maximum term consistent with the legal authority for the execution of such a lease provided that the term of any such lease shall run for a period of not less than fifty years from the date the mortgage is executed. The property must be free and clear of all liens other than that of the insured mortgage.

- b. Leaseholds: Whenever a proposal for the development of a rental housing project involves a leasehold which is determined to be freely marketable, it

shall be explained to the sponsors that the maximum mortgage amount will be subject to a reduction in an amount equal to the capitalized value of the ground rent. Further, it should be emphasized that the annual ground rent shall not exceed that amount resulting from the application of the insured mortgage interest rate to the HUD value of the land. In addition, if it is contemplated that the terms of the lease will provide for the payment of ground rent during the construction period, it should be made clear to the sponsor that such rents may not be paid from

\* mortgage proceeds but must be provided for in the required working capital deposit. Form FHA 2070, Lease Addendum, together with a copy of Instructions for Leasehold 207 Projects is to be furnished the sponsor. The Addendum provides that the Assistant Secretary for Housing shall have the option to purchase fee title unless this \* option right is waived under any of the provisions of Reference (4) of the Foreword. In such event, Paragraph 2. of the Addendum shall be deleted and the last three lines of paragraph 5.(a) following the words "the total value of the land as established by" are to be deleted and there is to be added "the Federal Housing Commissioner at \$\_\_\_\_\_." The amount to be inserted would be the value of the fee as determined at the time of initial processing and which other-wise would have been indicated in Paragraph 2. The annual rental is to be fixed for the initial 55-year period but not necessarily limited to one rate; however, any change in rental must be fixed and not determined through negotiation or arbitration.

1-18. DEVELOPMENT OF PROPERTY. The project shall consist of eight or more units on one site.

a. The site may consist of two or more non-contiguous parcels of land when the Director has determined that the parcels are:

- (1) So situated as to comprise a readily marketable real estate entity.
- (2) Within an area small enough to allow convenient and efficient management.

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b. The property, including improvements, shall comply with the zoning or deed restrictions applicable to the project site and with all applicable local building codes and governmental regulations.

\*1-19. COMMERCIAL FACILITIES. Only commercial facilities adequate to serve the needs of the project's occupants may be included. Commercial

areas should not normally exceed 10 percent of the total gross floor area of the project, and commercial income should not normally exceed 15 percent of the estimated total gross project income. When accessory income exceeds 15 percent of the estimated total gross project income, prior clearance shall be obtained from the Director, Office of Multifamily Housing Development, Headquarters. \*

- a. Commercial leases. See Reference (3) of the Foreword for detailed instructions.
  - b. Ineligible commercial leases. Leasing of commercial facilities for uses incompatible with the residential character of the property as a whole will not be approved.
  - c. Garage facilities. See Reference (3) of the Foreword for detailed instructions.
- 1-20. RATE OF RETURN ON INVESTMENT. The rate of return achieved by the owner varies from project to project. HUD sets a maximum project rental rate sufficient to allow sponsors a fair return on their investment.
- 1-21. TAX BENEFITS. The rate of return on investment does not include the tax benefits of depreciation on the property which, for many sponsors, may be the primary reason for investing in rental housing. Persons interested in tax shelters may find it advantageous to consult with an authority in the tax field to learn of these tax benefits.