

CHAPTER 3. REQUIRED STATEMENTS AND CERTIFICATIONS

3-1. REFERENCE DOCUMENTS. The mortgagor and general contractor must supply the person(s) preparing their certificates of actual cost with the following applicable forms completed for the project under review.

- A. HUD-92264* Project Income Analysis and Appraisal (Firm)
- B. HUD-92432** Commitment for Insurance of Advances
- C. HUD-92432-CA*** Firm Commitment for Capital Advance Financing
- D. HUD-92441** Building Loan Agreement
- E. HUD-92441 Supplement to the Building Loan Agreement (Applicable only to those insured projects where the mortgagor is also serving as the general contractor)
- F. HUD-90167-CA*** Capital Advance Agreement
- G. HUD-2434** Mortgagee's Certificate
- H. FHA-2455** Request for Endorsement of Credit Instrument, Certificate of Mortgagee, Mortgagor and General Contractor (Applicable only to insurance upon completion cases - only Certificate of Mortgagee portion will be completed)
- I. HUD-3305** Agreement and Certification
HUD-3306** (Select Applicable Form)
HUD-93566-CA***
- J. HUD-92442** Construction Contract
HUD-92442A** (Select Applicable Form)
HUD-92442-CA***
HUD-92442A-CA***
- K. HUD-92448* Contractor's Requisition, Project Mortgages (Latest requisition approved by HUD)
- L. FHA-2328* Contractor's and/or Mortgagor's Cost Breakdown

- (3-1)M. HUD-92437* Request for Construction Change (Changes Order)

- N. HUD-92443** Construction Contract Incentive Payment
HUD-92443-CA***
- O. FHA-2453** Commitment to Insure Upon Completion
- P. HUD-92466** Regulatory Agreement-Multifamily Housing
HUD-92466-CA*** Project
- Q. FHA-1733** Regulatory Agreement-Nonprofit and Public Mortgagor
- R. HUD-5379* HUD Representative's Trip Report (Showing 100 percent completion)
- S. FHA-2485* Initial Permission to Occupy-Project Mortgages
- T. AIA Document* Owner-Architect Agreement and B181 HUD amendment
HUD-90169-CA***
- U. HUD-92531A** Guide Form of Contract for Housing Consultant Services for Nonprofit Projects Under HUD Programs
- V. HUD-92531A-CA*** Contract for Housing Consultant Services for Nonprofit Projects Under Section 202 or Section 811
- W. HUD-90172A-CA*** Part I of the Agreement to Enter into a Project Rental Assistance Contract
- X. HUD-90172B-CA*** Part 2 of the Agreement to Enter into a Project Rental Assistance Contract
- Y. * Management Contract

* Applicable for all projects

** Applicable for insured multifamily projects

*** Applicable for Section 202/811 capital advance projects

3-2. REQUIRED STATEMENTS. Follow either A or B, below, depending on qualifications in A.1.

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- (3-2) A. Simplified Form of Cost. Certification. Use Form HUD-92330 and Form HUD-92330-A (if a cost plus construction contract was used or an identity of interest exists between the mortgagor and general contractor). An accountant's opinion is not needed.

1. Simplified cost certification is permitted for:
 - a. Section 220(h), improvement loans and Section 241(a) supplemental loans of \$200,000 or less.
 - b. Title II Equity loans and Title VI Equity and Acquisition loans where substantial rehabilitation component of the loan is \$200,000 or less.
 - c. Projects involving 40 units or less (exclusive of Section 207 projects).
 - d. Condominium projects (Section 234), if the project mortgage is to be terminated by final closing and converted to individual unit ownership. Otherwise, follow long form cost certification procedures in paragraph 3-2.B.
 - e. Section 202 Direct Loan projects funded under:
 - 1) 24 CFR Part 885 Subpart B with loans of \$500,000 or less.
 - 2) 24 CFR Part 885 Subpart C with loans of \$750,000 or less.
 - f. Section 202 or 811 Capital Advance projects funded under 24 CFR Part 889 or 890 with mortgages of \$750,000 or less.
2. If there is an identity of interest between a subcontractor, supplier or equipment lessor or manufacturer of industrialized housing and the mortgagor or general contractor and the total of all identity of interest subcontracts, purchases and leases is more than 1/2 of 1 percent of the mortgage or capital advance, Form HUD-92330 must be accompanied by an unaudited Form HUD-92330-A from the identity party. This requirement, established by the Agreement and Certification, applies in all cases. Refer to paragraph B.3 below for submission requirements.

- (3-2) 3. An unaudited balance sheet of the mortgagor entity, as of the cut-off date is required in all cases. Format and content of the balance sheet must follow paragraphs B.5.a through g below.
4. An unaudited operating statement is required if occupancy occurred during construction. Format and content of the operating statement must follow paragraphs B.6.a through 1 below.

5. In those cases involving LIHTCs, the information required by paragraph 7-2.E must be audited even for those cases eligible to submit a simplified cost certification.

B. Long Form Cost Certification. For cases that do not qualify for simplified cost certification based upon paragraph A.1 above, submit the following:

1. Mortgagor's Certificate of Actual Cost, Form HUD-92330, supported by an accountant's opinion (refer to paragraph 3-2.B.7).
2. Contractor's Certificate of Actual Cost, Form HUD-92330-A, supported by an accountant's opinion (refer to paragraph 3-2.B.7), is required if there is an identity of interest with the mortgagor or if a cost plus construction contract was used.
3. Subcontractors, suppliers and equipment lessors with an identity of interest with either the mortgagor or general contractor must submit Form HUD-92330-A supported by an accountant's opinion (refer to paragraphs 3-2.B.7 and 3-2.A.2).
 - a. Material suppliers. Attach to Form HUD-92330-A a sheet showing:
 - 1) Quantities furnished.
 - 2) Sources from which the materials were obtained.
 - 3) Unit prices paid to the sources, brand names, model numbers, sizes, lumber grades, etc., as applicable.

NOTE: No amount will be included for general requirements (job overhead).

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- b. Equipment Lessor. Attach to Form HUD-92330-A a sheet showing:
 - 1) Dates the equipment was acquired,
 - 2) Age of equipment at acquisition date,
 - 3) Brand names and model numbers,
 - 4) Sizes,
 - 5) Dates and length of time used,

6) Rates charged.

a) The lessor(s) must certify that:

- i. The rates charged were not more than the local going rate obtainable in the area, including any maintenance and repair.
- ii. The time charged was not more than essential for the project.
- iii. The charges did not exceed the purchase price of the equipment.

b) Lump Sum Basis. Instead of providing an attachment containing the above information, the lessor(s) may elect to certify to charges at 85 percent of the local going rates for identical equipment under arms' length (lump-sum) leases. When using this alternative, the lessor agrees:

- i. The Field Office is the sole judge of the reasonableness of the time and rates charged, and
- ii. Equipment maintenance and repair expense is the responsibility of the lessor(s) and is not included as an additional cost.

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c. Subcontractor's equipment. Costs for subcontractor(s) equipment, whether owned or rented, are considered in the markup for overhead and profit. These costs shall be reflected in the total subcontract and in the prior approval of identity of interest entities. A separate certification of the equipment is not required.

d. Manufacturer of Industrialized Housing. Attach to Form HUD-92330-A a breakdown of Division 13, Special Construction, showing:

- 1) Manufacturing costs.
 - a) Labor.
 - b) Materials.
 - c) Sales and any other taxes.
 - d) Factory overhead.
 - e) General overhead and profit.

NOTE: The manufacturer's accounting system must follow generally accepted accounting procedures which will allow certification of the actual cost of manufacturing by a Certified Public Accountant or Independent Public Accountant. No amount will be included for transportation or work at the project site.

- 2) Transportation costs, factory to project site (if provided by manufacturer).
 - a) Labor.
 - b) Equipment.
- 3) On-site erection costs (if provided by manufacturer).
 - a) Labor.
 - b) Equipment.
 - c) Materials.
 - d) General requirements (job overhead).

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- 4) The remainder of the manufacturer's Form HUD-92330-A is completed per outstanding instructions.

NOTE: There can be no duplication of manufacturing costs, i.e., repair of components damaged in shipment.

4. Form FHA-2330-A(LI), Contractor's Certification of Actual Cost, is to be used for land improvement developments such as Mobile Home Courts.
5. An audited balance sheet of the mortgagor entity,

as of the cut-off date is required.

- a. The balance sheet must contain the following certification (substitute appropriate language Section 202/811 projects):

I HEREBY CERTIFY that the foregoing figures and statements contained herein submitted by me as agent of the mortgagor (owner] for the purpose of obtaining mortgage insurance under the National Housing Act [a Section 202 capital advance (substitute direct loan, if applicable) under Section 202 of the Housing Act of 1959, as amended,] [a Section 811 capital advance under Section 811 of the National Affordable Housing Act of 1990, as amended,] are true and give a correct showing of _____'s (Name of mortgagor or owner) financial position as of _____ (date of financial statement).

Signed this ____ day of _____, 19__

(Signature of authorized agent with name printed or typed under signature)

WARNING: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

- b. Furnish reconciling information if short-term liabilities on the balance sheet do not agree with Column B of Form HUD-92330.

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- c. Explain the purpose of all liabilities in the notes to the financial statements and include repayment requirements of the liabilities.
- d. If proceeds and obligations from project syndication are passed through the books and records of the mortgagor entity, reflect receivables as an asset of the mortgagor entity.
- e. The notes to the balance sheet must identify the original amount of and summarize the expenditures from the working capital deposit.
- f. See Chapter 6 for special instructions concerning bond financed cases.

- g. See Chapter 7 special instructions concerning projects involving LIHTCs.
6. An audited operating statement is required if occupancy occurs before the cost certification cutoff date. Projects involving a Section 241(a) supplemental loan, a Title II Equity loan, or a Title VI Equity or Acquisition loan are exempted from providing an operating statement since the mortgagors of these projects are controlled by an existing Regulatory Agreement.
- a. The statement must contain the certification contained in paragraph 3-2.B.5.
 - b. Prepare the operating statement on an accrual basis.
 - c. The statement covers the beginning of marketing and rent-up activities (or date of initial endorsement in rehabilitation projects where occupancy is continuous) to the cut-off date.
 - d. Marketing and rent-up activities will start no earlier than 6 months before the issuance of the first Permission to occupy-Project Mortgages, Form FHA-2485.
 - e. The statement must show the actual dates covered rather than language such as "From the Date of Commencement of Marketing and Rent-up Activities, etc."

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- 3-2) f. The statement must show income from all sources. Do not consider security deposits as income.
- g. The operating statement should not contain any expense items that were paid or should have been paid from the working capital deposit, AMPO or otherwise included in cost certification.
- h. Operating expenses may include:
 - 1) Expenses directly relating to renting the project, such as:
 - a) Rental commissions customary for the type of project, if any, and
 - b) Marketing and advertising expenses.

- 2) Purchase of furnishings, equipment and supplies essential to project operation.
- 3) Reasonable fees for preparing any Federal, State or local tax return information required of the project.
 - a) For example: If the mortgagor entity is a partnership, the cost of preparing both Form 1065, U. S. Partnership Return of Income, and related K Schedules may be considered. Include only the cost of preparing a partner's personal Form 1040 return.
 - b) If the project is owned by an individual, include the cost of preparing any tax return schedule related to project operations, but not other parts of the owner's return.
- 4) Electricity, gas, water and operating salaries (maintenance, cleaners, gardeners, elevator operators, etc.) to the extent they are not included in construction cost on Forms HUD-92330, Mortgagor's Certificate of Actual Cost, or HUD-92330-A, Contractor's Certificate of Actual Cost.
- 5) Management fee stated in the contract.

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- 6) Services not covered by the management fee under paragraphs 3(b) and (c) of Handbook 4381.5, Compensations for Management Services in Multifamily Housing Projects with Insured or HUD-Held Mortgages.

i. Operating expenses may not include:

- 1) Depreciation.
- 2) Interest, taxes, property insurance premiums, and mortgage insurance premiums, that are reflected in Form HUD-92330, Mortgagor's Certificate of Actual Cost.
- 3) Salaries paid to principals of the

sponsor or mortgagor for managing the mortgagor entity.

- j. Part II of the Housing Assistance Payments Contract, Form HUD-52522-D, dated 1-90:
 - 1) Requires the owner to start making deposits to the replacement reserve on the effective date of the contract.
 - a) For staged projects, the obligation will begin on a pro rata basis for units in each stage, on the effective date of the contract for that stage.
 - b) This is not applicable to partially assisted or previously HUD-owned projects.
 - 2) Treat the deposits as a reduction to gross operating income of the project.
- k. Treat net income as:
 - 1) A recovery of construction costs for profit motivated mortgagors.
 - 2) For a nonprofit mortgagor, as a recovery of construction costs at cost certification, to the extent that it was used to reduce liquidated/actual damages.
- l. If operating expenses exceed income:

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- (3-2) 1) No entry is made on Form HUD-92330, Mortgagor's Certificate of Actual Cost.
 - 2) Operating deficit may be carried over as a reduction to net income on the supplemental operating statement.
- 7. A Certification by an independent Certified Public Accountant or an Independent Public Accountant must accompany Form HUD-92330, Mortgagor's Certificate of Actual Cost, including the audited balance sheet and operating statement of the mortgagor, and Form HUD-92330-A, Contractor's Certificate of Actual Cost.
 - a. The accountant must meet the auditor qualifications of the Government Auditing Standards (GAO Yellow Book), including the qualifications relating to independence and

continuing professional education. The audit organization also must meet the quality control standards of the GAO Yellow Book.

- b. Part 24 of Title 24 of the Code of Federal Regulations prohibits accountants from contracting for services when their name is shown on the HUD and General Services Administration Government-wide Consolidated List of Debarred, Suspended and Ineligible Contractors and Grantees.
 - c. The accountant must also comply with the requirements in chapters 1, 2, 3 and 6 of HUD Handbook IG 2000.4, "Consolidated Audit Guide for Audits of HUD Programs."
8. The mortgagor must submit a supplemental operating income statement if more than 3 months exist between the cut-off date and the start of amortization. If a deferment of amortization has been granted, use the new date for the start of amortization in determining the need for a supplemental operating statement.
- a. This requirement does not apply to cooperative, investor-sponsor or nonprofit mortgagors, nor any project where the mortgage is \$200,000 or less.

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- b. The statement covers the period from the cost certification cut-off date to the date which is 3 months before the start of amortization and should be submitted within 30 days after the expiration of this period.
 - c. The supplemental statement must be prepared and certified by a CPA or IPA if the original cost certification was required to be audited.
 - d. The mortgagor may advance the date of amortization to avoid submitting a supplemental income statement.
 - e. In preparing the statement, if the operating statement submitted at cost certification shows expenses in excess of income, such expenses may be carried forward as "unrecovered expense--prior period."
- C. Section 223(f) Projects. The mortgagor certifies to the total costs incurred in the acquisition or refinancing of the property using Form FHA 2205-A, Mortgagor's

Certificate of Actual Cost. The certification must be dated and signed by an authorized agent of the mortgagor. An accountant's opinion is not needed.

1. The certification must be submitted after all critical repairs have been completed, but at least 30 days before the desired closing date.
2. The general contractor will be required to cost certify using Form HUD-92330-A if a cost plus construction contract is used.
3. A balance sheet and income statement are not required.
4. No cost certification is required for a refinancing transaction where the mortgage, is-equal to or less than 70 percent of value.
5. For cases involving deferred repairs, the mortgagor must submit a supplemental cost certification detailing the actual cost of the deferred repairs.