
CHAPTER 3. CONTRACT AUTHORITY

- 3-1. GENERAL. The term "contract authority" refers to the dollar amount of funds which can be used to enter into new contracts to make interest reduction payments on behalf of project owners. The overall level of available contract authority to established on a yearly basis. Except for any amount retained by the Central Office as a contingency reserve, contract authority is either allocated to field offices for regular program operations or set aside for use in connection with special programs. Allocations are made in accordance with the procedures stated in Reference (8) of the Foreword.
- 3-2. DISTRIBUTION. The term "adjusted fair share" describes the methodology for providing that every section of the country, as represented by the various field office jurisdictions, receives a proportionate share of assistance for low and moderate income housing.
- a. Demand and Production Factors. Under this system, HUD utilizes the budgetary projections of units for which reservations will be made in a given calendar year for all subsidized program. Allocations of contract authority are then made to field offices by the HUD Central Office, through and with Regional Office consultation, on the basis of demand and production capacity factors. These factors are:
- (1) Demand Factors:
- (a) Program potentials-standardized annual estimates of need for each housing program are projected for each county on the basis of family income distribution, age of heads of household, and housing conditions as reported by the Bureau of the Census.
- (b) Absorption potentials-as estimated by the field offices.
- (2) Production Factors:
- (a) Starts under the program during the previous year.
- (b) Prospective starts-as estimated by the field offices.

- b. Adjusted Fair Share. These factors combine to permit the establishment of an "adjusted fair share" for each jurisdiction based on demand and absorption potential modified by past and estimated production performance.
 - c. Field Office Responsibility: Each field office is responsible for assuring that reservations of contract authority never exceed amounts allocated to the field office. Offices must hold back any amount of funds that may be needed for increases. Each Regional Office is responsible for efficient utilization of authority by field offices within their jurisdiction.
- 3-3. EVALUATION OF MARKET DEMAND AND USE OF PROJECT SELECTION CRITERIA. Since the demand for Section 236 assistance is greater than the supply, each field office must carefully evaluate needs within its jurisdiction in order to achieve optimum utilization of available contract authority.
- a. The Role of HUD in meeting the nation's housing needs should be an active one; HUD is to take the lead in encouraging sponsors and builders to develop the capacity to meet the needs of the total housing market. Each field office should divide its jurisdiction into recognizable market areas and plan its distribution of contract authority so that each area receives an equitable share of assisted housing. It should be recognized that one area will not necessarily need the same percentage of Section 236 allocation as another, since demand is not the same in each area as to type or volume of housing, or economic levels to be served.
 - b. In Market Areas for which an Inadequate Amount of Assisted Housing Has Been Proposed, the field office should actively solicit and/or assist in the development of housing proposals. Various elements of the housing industry, and prospective housing sponsors, should be made aware of the need for housing in particular areas.
 - c. Section 236 Housing Proposals should initially be separated according to the market area proposed. They should then be evaluated in terms of the Project Selection Criteria. Within a market area in which many Section 236 projects are proposed for development, the Project Selection Criteria should establish priorities as to which will be funded and in what order.

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- d. The Utilization of Project Selection Criteria is mandatory. Housing sponsors should be educated concerning Project Selection Criteria and informed of ratings received by their

proposals. Upon inquiry such sponsors may also be given the ratings of superior proposals, if any, and the reasons for the differences.

- 3-4. ENVIRONMENTAL REQUIREMENTS. HUD regulations implementing the National Environmental Policy Act of 1969 (P.L. 91-190) and the Guidelines of the Council on Environmental Quality are applicable to each Section 236 project.
- 3-5. PROCEDURE DURING PERIOD WHEN CONTRACT AUTHORITY IS NOT AVAILABLE - TREATMENT OF "BACKLOG." Field offices need not process proposals up to feasibility when contract authority is not available. It is recognized that staff limitations may at times make immediate processing impossible, and further, that some effort will be duplicated at the time contract authority becomes available. The Field Office Director, pursuant to guidance of the ARA for HPMC, should employ a policy which will make the best use of his resources and best serve the public.
- a. Proposals need not be formally recorded or numbered unless a complete FHA Form 2013 (Request for Feasibility Determination) has been submitted. Periodic review of the backlog file must be made to identify which proposals are still active. One method would be an interview with each sponsor at intervals of not more than 60 days to determine whether it is still interested. Each proposal must at least be analyzed to determine (1) the market area which it would serve, and (2) whether it is potentially eligible for feasibility review or is clearly ineligible under the Project Selection Criteria and economic viability tests.
- b. The extent of review and whether or not FHA Form 2013 will be obtained will depend upon staff time available to the office. When the proposal is found to be potentially eligible, the sponsor is to be advised in writing that its proposal will be held in abeyance for review and should be given a general idea of when contract authority may become available. A proposal must never be permitted to remain unprocessed without the sponsor being notified of its status.

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- 3-6. ROLL-OVER PROVISION. The HUD Act of 1970 revised HUD treatment of contract authority with respect to cancellation of interest reduction contracts and reuse of contract authority. Contract authority recaptured from cancelled contracts reverts to the originating field office and may be used to fund new proposals. Fiscal instructions appear in Reference (9) of the Foreword.

- 3-7. RENT SUPPLEMENTS IN COMBINATION WITH SECTION 236. In order to facilitate an economic mix among Section 236 tenants, Section 236 projects will generally include some rent supplement assistance. Rent supplement contract authority to be used in Section 236 projects will be allocated in block amounts to field offices for their use in accordance with the following instructions. The block allocations will be specifically designated as "piggyback" funds and may not be used for any other purpose.
- a. Rent Supplement Contract Authority for a Section 236 project should be reserved by the field office Director at the same time the Section 236 reservation is made. That is, the FHA Form 3126 and the FHA Form 2500 (reservation forms for Section 236 and Rent Supplement contract authority, respectively, see Appendices 1 and 2) should be executed simultaneously. Field Office Directors are reminded that the inclusion of rent supplement assistance in any project requires local approval in the form of a certified Workable Program for Community Improvement or an official resolution adopted or signed by the appropriate local official(s).
 - b. The Statute Permits up to 40% of the units in a Section 236 project to receive the benefit of rent supplement assistance. However, the limited amount of available rent supplement authority has necessitated an administrative ceiling precluding the rent supplementation of more than 10% of the units in any Section 236 project.
 - (1) Field Office Directors may not reserve rent supplement contract authority for more than 10% of the units in any Section 236 project except when the project is intended to meet:
 - (a) A need for relocation housing,
 - (b) A need to house displacees, or
 - (c) Situations which involve vacancies of extended duration where it can be shown that a market exists for rent supplement units.

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- (3-7) (2) A Field Office Director may reserve rent supplement contract authority for more than 10% of the units in a Section 236 project in the above-stated circumstances provided he lists his justification for waiving the administrative limit (10%) in the "remarks section of the FHA Form 2500. In addition, need for relocation

housing must be documented by a letter from the local public agency.

- (3) In all cases a Field Office Director must obtain Central Office prior approval (Office of Subsidized Housing Programs) in order to reserve rent supplement contract authority for more than 20% of the units in a Section 236 project.
 - (4) In no case may rent supplement contract authority be reserved for more than 40% of the units in a Section 236 project; fractions of the units must be rounded down to avoid conflicting with the statutory limitation.
- c. Computations for arriving at the total amount of rent supplement reservation should be based on the formula in the special worksheet (see Appendix 3). The maximum rent supplement for any individual tenant is 70% of the basic rent, and no more than 25% of the rent supplement tenants in a given project may receive rent supplements amounting to more than 60% of the basis rent.
 - d. When Rent Supplement Contracts are Executed for Section 236 Projects, the number of units receiving rent supplement should be indicated in Section 17 of the Contract by adding the following: "Total project units - (); rent supplement units - ()."
 - e. Public Housing Authorities may lease units in a Section 236 project (through the provisions of the Section 23 leasing program). Such housing authorities are permitted to pay the "basic rent" for the Section 236 units which they lease. The aggregate number of units in any Section 236 project to receive assistance through the Rent Supplement program or Section 23 leasing may not exceed a combined total of 40% of the units, except with special permission of the Central Office.

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- 3-8. SECTION 236 ASSISTANCE PAYMENTS. As a condition of a Section 236 mortgage insurance commitment, HUD agrees to make assistance payments for the project, commencing at a specified time. The total amount of assistance is based upon the difference between the monthly payments for principal, interest and mortgage insurance premium (which the project owner, as a mortgagor, is obliged to pay under the mortgage) and the monthly payments for principal and interest which the project owner would be obligated to pay if the mortgage were to bear interest at a rate of 1% per annum. It is important to understand that this formula is not used to

compute each monthly subsidy payment, nor is it meant to identify specifically the components of the mortgage payment which are paid by the government. It is solely for the purpose of arriving at the total amount of assistance paid on behalf of a project. In order to spread the benefit of assistance evenly over the term of the mortgage, a factor is applied against the mortgage amount to arrive at an annual subsidy amount. Then, provided the mortgage is not subsequently amended, the mortgage payments and subsidy payments remain constant except for a gradual diminution in the amount attributable to MIP (which is based on the outstanding principal balance). Since the combination of the mortgagor's payment and the federal payment equals the total monthly mortgage payment, including MIP, the mortgagee must accumulate and safeguard, throughout the year, the amount attributable to MIP to be paid at the beginning of the next year. MIP for the first year, for insurance of advances cases, is to be paid at initial endorsement. For insurance upon completion cases, MIP is paid at initial/final endorsement. Subsequent annual payments of MIP will be made on each anniversary of initial/final endorsement, as the case may be, until the date of first payment to principal, at which time the account will be adjusted. Thereafter, MIP will be due on each anniversary of the first principal payment date.

- a. Factors to be Used in computing the subsidy at varying interest rates are provided in the Section 236 Tables (see Appendix 4). Prior to August 13, 1971, the terms of the interest reduction payment contract began at final endorsement for all cases. For mortgages which were not finally endorsed as of August 13, 1971, the term for which interest payments shall be made shall begin as follows:

- (1) For a mortgage involving insurance of advances, on the day after the cut-off date for cost certification purposes (usually 30 days after the endorsement of FHA Form 2449, the Project Inspection Report);

- (3-8) (2) For a mortgage insured upon completion, on the date on which the Assistant Secretary-FHA Commissioner endorses the note for insurance.
- b. The First Interest Reduction Payment will cover the period from the day after the cut-off date for cost certification or from the date of final endorsement, as prescribed in paragraph 3-8.a.(1) or (2) above, through the end of the month. All computations are made on the basis of a 360-day year or twelve 30-day months.
- c. In an Insurance of Advances Case, the completion and execution

of FHA Form 3107 (see Appendix 5) will constitute the Field Office Director's approval of the commencement of the term of the interest reduction payment contract. Instructions for completion and distribution appear on the Form. Interest reduction payments made prior to final endorsement will be calculated on the basis of the advances of mortgage proceeds that have been insured through the cut-off date. Fiscal instructions are included on FHA Form 3107. Advances approved by Field Office Directors prior to the cut-off date but not disbursed by mortgagees must not be included in the total shown in panel #4 of FHA Form 3107. Subsequent to final endorsement, payments shall be due on the first day of each month following the beginning of the term and shall be paid upon receipt of a billing from the mortgagee (or its authorized agent) on FHA Form 3102, see Appendix 6.

- d. Amortization shall commence in accordance with the terms of the mortgage note. However, if there is more than a 60-day period between final endorsement and the date previously established for the commencement of amortization, then at final endorsement, the mortgagor and mortgagee will be encouraged to amend the mortgage note to provide for commencement of amortization on the first day of the first month following 30-days from the date of final endorsement.
- e. Since the entire mortgage amount will receive a subsidy, item 12A, "Amount of Insured Mortgage to be applied for," in Form 3126, and the quantity shown in item D of that form, "Amount of insured mortgage to be applied for," must be equal. After cost certification and completion of the final rent formula and allocation of rents, the Form 3126 shall be reviewed to assure that item D of this form contains the correct final and total mortgage amount to be insured. If it does not, an amended Form 3126 shall be prepared. *

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3-9. RENT SUPPLEMENTS IN FINALLY ENDORSED SECTION 236 PROJECTS.

- a. Conditions for Approval. New rent supplement contracts may be issued to provide rent supplement assistance in finally endorsed Section 236 projects for which there are no existing contracts, and outstanding rent supplement contract may be increased to cover additional units in finally endorsed Section 236 projects for the following reasons:

- (1) The necessity to house families and individuals displaced from their homes by natural disaster;

- (2) The immediate need for relocation housing;
- (3) The need to utilize vacancies of extended duration when it can be shown that there is a market for rent supplement units;
- (4) The need to provide rent supplement assistance to families now living in Section 236 projects who meet all the criteria for rent supplement eligibility and who, because of increases in rent, can no longer afford to pay the basic rent. Tenants in occupancy in Section 236 projects could be eligible for rent supplement assistance only if they meet the rent supplement income and asset limitations and are elderly, handicapped, a family whose head, or spouse is a member of the Armed Forces serving on active duty, or were displaced by governmental action.

In no case may a rent supplement contract be issued or increased to cover more than the 40 percent statutory limitation on the number of units in Section 236 projects which may receive the benefits of rent supplement assistance.

New rent supplement contracts or increases in units covered by existing rent supplement contracts may not be approved for finally endorsed Section 221(d)(3) BMIR or MIR projects.

- b. Procedure. Field Office Directors may approve new rent supplement contracts or increases in existing rent supplement contracts for finally endorsed Section 236 projects in accordance with the previously mentioned criteria. Contract authority must be provided from regular office allocations. The remarks section of the Rent Supplement Reservation Form

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- (3-9) (FHA 2500) must provide documentation as to the condition(s) under which approval of the contract (or increase) was given. If rent supplement contract authority is not available in the field office, a request for a special allocation accompanied by FHA Form 2500 and full justification, may be forwarded through the Office of the Regional Administrator to the Director, Office of Subsidized Housing Programs. Central Office permission must be obtained prior to reserving rent supplement contract authority for more than 20% of the units in a Section 236 project in any case.
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