

CHAPTER 3. PROGRAM REQUIREMENTS

3-1 AFFORDABLE HOUSING REQUIREMENT. All projects insured under the Risk-Sharing program must qualify as affordable housing. Affordable housing means:

--a project in which 20 percent or more of the units are both rent-restricted and occupied by families whose income is 50 percent or less of the area median income as determined by HUD, with adjustments for household size, OR

--a project in which 40 percent (25 percent in New York City) or more of the units are both rent-restricted and occupied by families whose income is 60 percent or less of the area median income as determined by HUD, with adjustments for household size.

Rent-restricted means that gross rent for a unit does not exceed 30 percent of the imputed limitation applicable to such unit. HFAs are responsible for determining gross rent and/or income limitations including a determination of personal benefits expenditures (e.g., utilities). See Appendix 1 for definition of "gross rent."

3-2 ELIGIBLE PROJECTS

A. MINIMUM PROJECT SIZE. Projects must consist of 5 or more rental dwelling units (including cooperative dwelling units) on one site. The site may consist of two or more noncontiguous parcels of land situated so as to comprise a readily marketable real estate entity within an area small enough to allow convenient and efficient management. These units may be detached, semi-detached, row houses, multifamily structures or mobile home parks (exclusive of the mobile homes).

B. NEW CONSTRUCTION is when project and construction elements are installed as part of the work.

C. SUBSTANTIAL REHABILITATION is any combination of the following work to the existing facilities of a project that aggregates to at least 15 percent of project's value after the rehabilitation and that results in material improvement of the project's economic life, livability, marketability, and profitability:

Replacement, alteration and/or modernization of building spaces, long-lived building or mechanical system components and/or project facilities. Substantial rehabilitation may include but not consist solely of any

combination of: minor repairs, replacement of short-lived building or mechanical system components, cosmetic work and/or new project additions.

D. EXISTING PROJECTS. Financing of existing properties without substantial rehabilitation is allowed.

1. If an existing multifamily development is being acquired and HUD insurance will be used to facilitate the acquisition of the project to increase the supply of affordable housing, such acquisitions are permissible if the HUD insured mortgage does not exceed the sum of the total cost of acquisition, cost of financing, cost of repairs, and reasonable financing costs as defined in paragraph 3.

2. If the property is an HFA financed loan to be refinanced and such refinancing will result in the preservation of affordable housing, refinancing of these properties is permissible if project occupancy is not less than 93 percent (to include consideration of rent in arrears), based on an average occupancy in the project over the most recent 12 months, and the mortgage does not exceed an amount supportable by the lower of the unit rents being collected under the rental assistance agreement or the unit rents being collected at unassisted projects in the market area that are similar in amenities and location to the project for which insurance is being requested.

The HUD insured mortgage may not exceed the sum of the existing indebtedness, cost of refinancing, the cost of repairs and reasonable financing costs as defined in paragraph 3. If a loan to be refinanced has been in default within the 12 months prior to application for refinancing, or at any time subsequent to application up to and including final endorsement, the HFA must assume not less than 50 percent of the risk.

3. Reasonable financing costs. The maximum HFA financing fees allowable in the mortgage computation for an existing project insured under paragraphs 1 or 2, above, and recognizable for cost certification purposes is 3.5 percent of the mortgage amount, except for bond-financed projects (taxable or tax-exempt), where the maximum is 5.5 percent. Any cost beyond these maximum percents must be paid from sources outside the mortgage.

E. PROJECTS RECEIVING SECTION 8 RENTAL SUBSIDIES OR OTHER RENTAL SUBSIDIES. Projects receiving project-based housing assistance payments under Section 8 of the United States Housing Act of 1937, or other rental subsidies and meeting the requirements of this part may

be insured under this part only if the mortgage does not exceed an amount supportable by the lower of the unit rents being or to be collected under the rental assistance agreement or the unit rents being collected at unassisted projects in the market that are similar in amenities and location to the project for which

insurance is being requested.

- F. SINGLE ROOM OCCUPANCY (SRO) projects are eligible for insurance in the Risk-Sharing program. Units in SRO projects must be subject to 30-day or longer leases; however, rent payments may be made on a weekly basis in SRO projects.
- G. BOARD AND CARE/ASSISTED LIVING FACILITIES that provide continuous protective oversight and assistance with the activities of daily living for frail elderly or other persons needing such assistance may be insured. These facilities typically provide room and board as well as oversight and assistance and contain a central kitchen and dining area, although meals may be catered off site.
- H. ELDERLY PROJECTS. Projects or parts of projects specifically designed for the use and occupancy by elderly families are eligible. An elderly family means any household where the head or spouse is 62 years of age or older, and also any single person who is 62 years of age or older.

3-3 INELIGIBLE PROJECTS.

- A. TRANSIENT HOUSING OR HOTELS. Rental for transient or hotel purposes. For purposes of this program, rental for transient or hotel purposes means:
  - 1. Rental for any period less than 30 days, or
  - 2. Any rental, if the occupants of the housing accommodations are provided customary hotel services such as room service for food and beverages, maid service, furnishing and laundering of linens, and valet service.
- B. PROJECTS IN MILITARY IMPACT AREAS. If the HUD local Office determines that a project is located in a military impact area, the project shall not be insured under this program. A military impact area is defined in paragraph 4-2H.1.
- C. RETIREMENT SERVICE CENTERS. Projects designed for the elderly with extensive services and luxury accommodations and that provide for central kitchens and dining rooms with food service or mandatory services are not permitted in the Risk-Sharing program.
- D. NURSING HOMES OR INTERMEDIATE CARE FACILITIES. Nursing homes and intermediate care facilities licensed and regulated by State or local government and providing nursing and medical care are prohibited.

3-4 ZONING REQUIREMENTS. Projects insured under this program must meet applicable zoning and other State/local government requirements.

3-5 PROHIBITION ON GNMA SECURITIZATION.

Issuance of Government National Mortgage Association (GNMA) mortgage-backed securities is prohibited for projects insured under the Risk-Sharing program.

3-6 SPECIAL CIRCUMSTANCES REQUIRING AT LEAST 50 PERCENT HFA RISK.

HFAs may select their risk level participation as described in Chapter 2. However, an HFA must take at least 50 percent of the risk of loss when:

A. The HFA refinances under the Risk-Sharing program an existing HFA-financed project to preserve affordable housing and the loan to be refinanced has been in default within 12 months prior to the application for refinancing (see paragraph 3-1D).

B. There is a partial payment of claim (see Chapter 10).

3-7 APPRAISAL STANDARDS.

All appraisal functions must be completed by Certified General Appraisers, licensed in the State in which the property is located. All appraisal functions must also be completed in accordance with the Uniform Standards of Professional Appraisal Practice.

3-8 AFFIRMATIVE FAIR HOUSING MARKETING PLAN.

The HFA will review and approve the Affirmative Fair Housing Marketing Plan (AFHMP) for projects to be insured under the Risk-Sharing program. HFAs must follow the procedures and requirements of HUD Handbook 8025.1 REV-1, Implementation of Affirmative Fair Housing Marketing Requirements, for reviewing and approving the AFHMP.

3-9 SUBSIDY LAYERING.

HUD (or such delegation to Housing Credit Agencies as may be in effect by regulation hereafter) shall review all projects receiving tax credits or other government assistance and some form of HUD assistance, including mortgage insurance

under the Risk-Sharing program, for any excess subsidy provided to individual projects and reduce subsidy sources in accordance with outstanding subsidy layering guidelines. (Notice H 95-4, Subsidy Layering Reviews Implementing Instructions.)

3-10 ENVIRONMENTAL REVIEW. All projects insured under the 542(c) Risk-Sharing program must comply with the environmental requirements of 24 CFR Part 58. See also paragraphs 4-2.F. and G. for details on submission and HUD review of the environmental review.

1. RESPONSIBILITY. The environmental review will not be conducted by HUD except in cases where HUD approves a request of legal incapacity in accordance with 58.11. The environmental review shall be conducted by the Responsible Entity (RE), defined for purposes of this program as the State, or Indian tribe, Alaska native village, or unit of general local government with land use and building permit jurisdiction for the project site. The HFA may choose to have either the unit of local government, Indian tribe, or Alaska native village or the State perform the review. The HFA, provided it meets the definition of RE, may perform its own environmental reviews. The HUD Environmental Officer can provide assistance in identifying the appropriate RE.

2. PROCEDURES. For all Risk Sharing proposals, the HFA must submit to the RE a request for environmental review in accordance with Part 58 and must provide the RE with all available project and environmental information. The RE (not the HFA) will determine the level and scope of environmental review required and whether the proposal includes exempt activities and categorical exclusions from National Environmental Policy Act

(NEPA).

- a. The HFA must refrain from undertaking any activities that would have an adverse environmental impact or limit the choice of reasonable alternatives until HUD has issued a Firm Approval Letter for the project.
- b. Upon completion of the environmental review, the RE must prepare the Request for Release of Funds and Certification form HUD-7015.15 (RROF), have them executed by the RE's Certifying Officer and submit them to the HFA with a description of any special environmental conditions that must be adhered to in carrying out the project. A RROF will be completed on all projects, including those which include categorical exclusions from NEPA. For exempt activities, the RE includes in the Environmental Review Record, a statement that the requirements of 58.34 have been met and submits a finding of exempt activity to the HFA in lieu of a RROF.
- c. The HFA shall then submit, as part of the HFA's request for HUD retained reviews (see Chapter 4), the RROF (in accordance with 58.71) or finding of exempt activity (in accordance with 58.34) with a cover letter:
  - (1) Requesting issuance of a Firm Approval Letter; and
  - (2) Indicating that it agrees to:
    - (a) Abide by the special conditions, procedures and requirements of the environmental review; and
    - (b) Advise the RE of any proposed change in the scope of the project or any change in environmental conditions and request a supplemental environmental review for such change.

3. Cost and Timing Arrangements. The HFA must be prepared to pay the RE for the cost of the environmental review and allow adequate time for completion of the environmental review. All notice and comment periods required under 24 CFR Part 58 must have expired and all comments considered and resolved prior to submission to HUD. The HFA may pass on the cost of the environmental review to the project mortgagor and treat that cost as any other eligible financing costs when processing.

If the HFA is unsuccessful in making arrangements for a RE environmental review, the HFA should refer the matter to the local HUD Office for a determination of legal capacity in accordance with 58.11. The HFA shall provide HUD all copies of the HFA's letters of request to the RE and the RE's letters of refusal to perform the environmental review. HUD may request that the HFA provide all information that HUD needs to perform the environmental review under 24 CFR Part 50.

3-11 LABOR STANDARDS

HFAs are delegated the ministerial duties relative to labor standards, i.e., information collection (e.g., payroll review and routine interviews) and other routine administration and enforcement functions subject to monitoring by HUD. Where administration and enforcement functions are delegated to the HFA, the HFA shall bear financial responsibility for any deficiency in payment of prevailing wages or, where applicable under 29 CFR Part 1, any increase in compensation to a contractor, that is attributable to any failure properly to carry out its delegated functions. Chapter 5 contains procedures relative to labor standards and Davis-Bacon requirements for risk-sharing projects.

3-12 BYRD AMENDMENT (LOBBYING)

The Byrd Amendment requires disclosure by mortgagors of lobbying activities for programs involving loan guarantees by the Federal government. Form LLL (Appendix 31) must be submitted with the closing docket required in paragraph 6-2

so that HUD can compile the material under the annual report required by the Byrd amendment.

3-13 REINSURANCE

An HFA will be permitted to obtain reinsurance for the portion of the risk of loss assumed by the HFA subject to the following requirements:

- A. Neither HUD's nor the HFA's position shall be subordinated to the rights of the reinsurer,
- B. The reinsurance may not be used to reduce any reserve or fund balance requirements that are required to be

maintained under this program, and

- C. Such reinsurance does not incur an obligation to the Federal Government.

3-14 NONDISCRIMINATION IN HOUSING AND EMPLOYMENT

The mortgagor must certify to the HFA that, so long as the mortgage is insured under the Risk Sharing program, it will:

- A. Not use tenant selection procedures that discriminate against families with children, except in the case of a project that constitutes housing for older persons as defined in Section 807(b)(2) of the Fair Housing Act (42 U.S.C. 3607(b)(2));
- B. Not discriminate against any family because of the sex of the head of household;
- C. Comply with the Fair Housing Act, as implemented by 24 CFR part 100; Titles II and III of the Americans with Disabilities Act of 1990, as implemented by 28 CFR part 35; section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), as implemented by 24 CFR part 135; the Equal Credit Opportunity Act, as implemented by 12 CFR part 202; Executive Order 11063, as amended, and implemented by 24 CFR part 107; Executive Order 11246, as implemented by 41 CFR part 60; other applicable Federal laws and regulations issued pursuant to these authorities; and applicable State and local fair housing and equal opportunity laws. In addition, a mortgagor that receives Federal financial assistance must also certify to the HFA that, so long as the mortgage is insured under this part, it will comply with Title VI of the Civil Rights Act of 1964, as implemented by 24 CFR part 1; the Age Discrimination Act of 1975, as implemented by 24 CFR part 146; and Section 504 of the Rehabilitation Act of 1973, as implemented by 24 CFR part 8.

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