

Section II Production

Chapter 11 Cost Certification

11.1 Introduction

Prior to final closing, the final eligible mortgage costs must be certified by both the Lender and the Borrower. This chapter contains the guidance and program requirements for the Section 232 Office of Residential Care Facilities cost (ORCF) certification process.

11.2 Projects That Must Certify

A cost certification is required by Section 232 of the National Housing Act and its implementing regulations for all mortgage insurance applications processed by FHA Lenders.

11.3 Purpose For Certification

The purpose of a cost certification is to establish the Borrower's actual costs, including the contractor's cost, to establish the "maximum insurable mortgage" for Final Closing of the insured mortgage.

11.4 Certifiable Costs

Certifiable costs are those costs that have been paid in cash or will be paid in cash within forty-five (45) days of final closing.

The Lender's appraiser will establish land value which shall be reviewed by ORCF. Eligible land cost will be determined in compliance with program guidance in Production, Chapter 3 of this Handbook.

~~The following costs~~General Overhead must always be certified,~~whether or not paid in cash:~~

~~A. General overhead; and~~

~~Non-profit developer's fee, which is cost-certifiable~~ whether or not it is paid in cash,~~less amounts certified to and allowed on other line items.~~

11.5

Types of Cost Certification

- A. In general, a standard or “long form” cost certification shall be required except for projects permitted to use the “simplified” cost certification described in Section 11.5.B.
- B. A simplified cost certification is permitted for projects with forty (40) or fewer units of proposed construction or substantial rehabilitation. A simplified cost certification is also permitted for projects refinanced under Section 232 pursuant to Section 223(f) of the National Housing Act.

11.6

Entities That Must Cost Certify

- A. The Borrower shall cost certify for all projects, except for certain projects assisted with LIHTC, Historic Tax Credits or New Market Tax Credits as outlined in [4311.4](#).
- B. Tax Credits Exemption from Cost Certification Requirements: The Housing Economic Recovery Act (HERA) of 2008 affected the borrower’s obligation to certify “actual cost” (as defined in the National Housing Act) under the insured mortgage programs. If it is determined at the time of issuance of the Firm Commitment for insurance that the ratio of loan proceeds to the actual cost of the project is less than or equal to 80 percent, the borrower and general contractor are not required to certify actual cost to HUD. The exemption affects construction, rehabilitation (including property acquisition), purchase or refinance of a project for which equity is provided through tax credits. However, the borrower (or operator as applicable) will be required to provide an audited Income Statement covering the project operations from Initial Closing to the Construction Cut-Off date for new construction and rehabilitation projects. Any Windfall (See Appendix 11.1 and 11.2) should be treated as a reduction in actual cost on an updated HUD-92264A-ORCF submitted with final closing documents.

Note that the borrower and the general contractor have the option to cost certify according to the guidance in this chapter.

- C. The general contractor shall cost certify where:

1. The general contractor has an identity of interest with the Borrower, regardless of whether such identity of interest existed prior to initial closing (for insured advances projects) or issuance of the firm commitment (for insurance upon completion projects), or such identity of interest developed after such dates; and/or
2. The general contractor used the “cost plus” principles of the Construction Contract (Form HUD-92442-ORCF), regardless of any identity of interest with the Borrower.

The general contractor and subcontractors will not be required to cost certify when the Borrower is exempt from certifying actual costs.

D. Subcontractors at any tier, equipment lessors, materials suppliers, and manufacturers of industrialized housing shall cost certify where:

1. The total of all subcontracts, purchases, and leases exceed one-half percent (0.5%) of the FHA-insured mortgage amount; and
2. An identity of interest exists or comes into being between such subcontractor, equipment lessor, materials supplier, or manufacturer of industrialized housing, and either:
 - a. The Borrower; or
 - b. The general contractor, if the general contractor is required to cost certify.

11.7

Final Completion Date and Cut-Off Date

The final completion date for determining actual costs is the date the HUD inspector signs the final [100% complete](#) HUD Representative’s Trip Report (Form HUD-95379-ORCF), provided that such trip report is subsequently endorsed by the construction manager. Construction must be completed by the final completion date, except for acceptable items of delayed completion approved in writing by HUD. HUD will notify in writing each of the Borrower, general contractor and Lender of the approved final completion date.

- A. The final completion date is the effective date for the cost certification. However, the Borrower has the option to include in the cost certification all soft costs incurred up to sixty (60) days beyond such date. The date selected by the Borrower is the “cut-off date” for all soft costs.
- B. The Borrower’s balance sheet and the Borrower or the Operator’s operating statement date must conform to the selected cut-off date.

11.8

Administrative Completion Date

The ORCF construction manager (the “CM”) may advance the completion date to prevent unnecessary accumulation of soft costs. Such advancement may be deemed warranted by HUD for nearly-completed projects that face unnecessary delays.

- A. The CM may set an administrative completion date for any project when the monthly inspection reports show ninety-five percent (95%) completion of work, and thereafter less than a two percent (2%) increase in percentage of completion in any subsequent month.
- B. The CM shall notify in writing each of the Borrower, general contractor and Lender of such administrative completion date, and the following:
 1. That the administrative completion date shall be the effective date for cost certification, except that all soft costs up to sixty (60) days beyond such date may be included at the option of the Borrower.
 2. That the date of the balance sheet and operating statement must be the same as the cut-off date selected by the Borrower.
 3. That all liquidated and/or actual damages for cost certification purposes shall be computed using the administrative completion date. However, the general contractor shall be liable for any liquidated and/or actual damages that arise after the administrative completion date and before the date of substantial completion.

11.9

Submission Date

The submission date for cost certification shall be within sixty (60) days after the cut-off date.

11.10

Required Forms and Documentation

The following items shall be submitted for purposes of cost certification, as applicable:

- A. A ~~Mortgagor's~~Borrower's Certificate of Actual Cost (Form HUD-92330-~~ORCF~~) shall be required for the cost certification of all Borrowers. Excel spreadsheets and instructions are provided in the Lender Narrative Cost Certification Supplement (Form HUD-9444-ORCF).
- B. A Contractor's Certificate of Actual Cost (Form HUD-~~92330-A~~92330A-ORCF) shall be required for the cost certification of all general contractors. Excel spreadsheets and instructions are provided in the Lender Narrative Cost Certification Supplement.

All subcontractors, materials suppliers and equipment lessors shall also use this form to certify ~~cost~~costs.

Note: When a project includes both rehabilitation and new construction, a separate form of cost certification shall be required for each, as well as a master form of cost certification that summarizes total project costs, including fees.

- C. Borrower's Certificate of Actual Cost (Form HUD-2205A-ORCF) shall be required for all projects refinanced under Section 232 pursuant to Section 223(f).
- D. The Lender Narrative Cost Certification Supplement ([Form HUD-9444-ORCF](#)) shall be submitted for all substantial rehabilitation projects and any new construction projects for which a mortgage increase is requested at Final Closing. The Excel spreadsheets contained in the Lender Narrative Cost Certification Supplement shall be used as a guideline for auditors and Lenders to better assure consistency and accuracy of cost certification submissions.
- E. A Lender Certification (Form HUD-91129-ORCF) shall be required with short-form cost certifications for new construction, substantial rehabilitation, supplemental loans and all long-form cost certifications.
- F. Audited Borrower and Operator financial statements (*see* Section 11.11).
- G. A Request for Final Endorsement of Credit Instrument (Form HUD-92023-ORCF). Such Request for Final Closing shall be updated if there are material changes prior to Final Closing.
- H. A draft Maximum Insurable Mortgage Letter (*sample available on Section 232 Program website*).
- I. All invoices that have not previously been provided to ORCF (for initial closing or insured advances).

Note: Cover sheets for invoices or other documentation shall be required for each line item of the cost certification. Such cover sheets shall identify the number and name of each line item by sub-category. Additional cover sheets shall be provided for each sub-category and shall specifically identify the purpose of each invoice (*e.g.*, third-party appraiser, PCNA, Phase I, survey, etc.). If an invoice is not available for a particular sub-category, a cancelled check may be submitted in order to satisfy such requirement.

- J. An updated third-party appraisal and Lender Narrative appraisal section (in the case of a request for mortgage increase that includes a proposed revision to value).

- K. A Financial Record of Mortgage Loan Transaction (Form HUD-92451) or similar advances register at the option of the Lender.

11.11

Required Cost Certifications

Borrowers shall comply with either subsection A or B below, depending on the criteria described in subsection A.1.

A. Simplified form of cost certification. For projects that qualify for a simplified cost certification, the Borrower's Certificate of Actual Cost and Contractor's Certificate of Actual Cost shall be required. Eligible projects include those that use a cost plus construction contract and those for which an identity of interest exists between the Borrower and the general contractor. For all such projects, an accountant's opinion shall not be required.

1. A simplified cost certification, in lieu of a long form cost certification, shall be permitted for new construction or substantial rehabilitation projects involving forty (40) or fewer units and for the refinance or acquisition of existing projects under Section 232 pursuant to Section 223(f) of the National Housing Act.
2. If an identity of interest exists between a subcontractor, materials supplier and/or equipment lessor, and the Borrower and/or the general contractor (if such general contractor must cost certify), and the total of all identity of interest subcontracts, purchases and leases is more than one-half of one percent (0.5%) of the FHA-insured mortgage amount, the applicable party shall use the Contractor's Certificate of Actual Cost. This requirement, as further described in the Agreement and Certification (Form HUD-93305-ORCF), shall apply for all projects.
3. An unaudited balance sheet of the Borrower, as of the cut-off date, shall be required for all projects. The format and content of such balance sheet shall comply with Section 11.11.B.4.
4. An unaudited operating statement (from the Borrower and/or the Operator, as applicable) shall be required if occupancy commenced during the construction period. The format and content of such operating statement shall comply with Section 11.11.B.5.

B. Long-form cost certification. For all projects that do not qualify for a simplified cost certification under the criteria of subsection A.1 above the following items shall be required:

1. A Borrower's Certificate of Actual Cost, supported by an accountant's opinion, shall be required for all projects.
2. A Contractor's Certificate of Actual Cost, supported by an accountant's opinion, shall be required for the general contractor if such general contractor shares an identity of

interest with the Borrower and/or if the “cost plus” principles of the Construction Contract were used.

3. All subcontractors, materials suppliers, and/or equipment lessors with an identity of interest with either the Borrower or the general contractor shall submit a Contractor’s Certificate of Actual Cost, supported by an accountant’s opinion.

- a. As required, all materials suppliers shall attach to the Contractor’s Certificate of Actual Cost a sheet describing in sufficient detail:

- i. Quantities of such materials furnished;
- ii. Sources from which such materials were obtained; and
- iii. Unit prices paid to the sources of such materials, as well as the brand names, model numbers, sizes, and lumber grades of such materials, etc., as applicable.

Note: No amount shall be included for general requirements (*e.g.*, job overhead).

- b. Equipment lessors shall attach to the Contractor’s Certificate of Actual Cost a sheet describing in sufficient detail:

- i. Dates such equipment was acquired;
- ii. Ages of such equipment at acquisition date;
- iii. Brand names and model numbers of such equipment;
- iv. Sizes of such equipment;
- v. Dates and length of time such equipment was used; and
- vi. Rates charged for such equipment.

- c. In addition, such equipment lessors shall certify that:

- i. The rates charged were not more than the local market rate for such equipment, including the maintenance and/or repair of such equipment;
- ii. The time charged for such equipment was not more than essential for the project; and
- iii. The charges did not exceed the purchase price of such equipment.

- d. Lump Sum Basis. In lieu of providing an attachment describing the above-required items, such equipment lessors may elect to certify that its rates are less than or equal to eighty-five percent (85%) of the local market rate for identical equipment under arms’ length (lump sum) leases. When making this election, the equipment lessor shall agree:

- 283 i. That the Closer shall be the sole judge of the reasonableness for the
284 time and rates charged; and
- 285 ii. That all equipment maintenance and repair expenses shall be the
286 responsibility of such equipment lessor and shall not be included as an
287 additional cost.
- 288 e. Subcontractor's equipment. All costs for the equipment of subcontractors,
289 whether owned or rented, shall be considered in the markup for overhead and
290 profit. Such costs shall be reflected in the total subcontract and in the prior
291 approval for identity of interest entities. A separate certification of such
292 equipment shall not be required.
- 293
- 294 4. An audited balance sheet of the Borrower, as of the cut-off date, shall be required.
295 Such balance sheet shall:
- 296 a. Incorporate the following certification:
- 297

298 "I hereby certify that the foregoing figures and statements contained herein, and as
299 submitted by me as an authorized agent of [Name of Borrower] for the purpose of
300 obtaining mortgage insurance under the National Housing Act, are true and provide a
301 full and accurate description of the current financial position of (Name of Borrower)
302 as of (date of financial statement).
303

304 Signed this ___day of ___, 20__.

305
306 _____
307 (Signature of authorized agent with name printed or typed below signature)
308

309 **WARNING: Any person who knowingly presents a false, fictitious or fraudulent**
310 **statement or claim in a matter within the jurisdiction of the U.S. Department of**
311 **Housing and Urban Development is subject to criminal penalties, civil liability,**
312 **and administrative sanctions."**
313

- 314 b. Furnish reconciling information if short-term liabilities on the balance sheet
315 do not agree with Column B of the Borrower's Certificate of Actual Cost.
- 316 c. Explain the purpose of all liabilities in the notes to the financial statement and
317 include repayment requirements for such liabilities. Special care shall be
318 taken to disclose any liabilities in the balance sheet that were not disclosed
319 prior to Initial Closing. If such liabilities are disclosed, the Lender shall
320 promptly inform the Borrower that such liabilities cannot be an obligation of
321 the project and that repayment shall solely be the responsibility of the
322 Borrower. Such liabilities shall not be considered (i.e., they shall not be
323 allowed nor disallowed) in the review of the cost certification. When
324 previously non-disclosed items are disclosed in the audited balance sheet, a
325 detailed review of the Borrower's Certificate of Actual Cost and the
326 Contractor's Certificate of Actual Cost shall be required and may result in
327 delays in HUD's review of the cost certification.

- 328 d. If any proceeds and/or obligations from a syndication of the project are passed
329 through the books and records of the Borrower, receivables shall be described
330 as an asset of the Borrower.
- 331 e. The notes to the balance sheet shall identify the original amount of the
332 working capital deposit and shall summarize any expenditures thereof.
333
- 334 5. An audited operating statement covering the period from the beginning of marketing
335 and rent-up activities (or the date of Initial Closing in rehabilitation projects
336 involving insurance of advances, or the date of the start of construction for
337 rehabilitation projects involving insurance upon completion) to the cost certification
338 cut-off date, shall be submitted for:
- 339 a. The Borrower, for all projects;
- 340 b. The Operator, when an identity-of-interest exists between the Borrower and
341 the Operator and the Operator has executed a Regulatory Agreement;
- 342 c. The Borrower only, where no identity-of-interest exists between the
343 Borrower and the Operator and the Operator has executed a Regulatory
344 Agreement in favor of HUD. The Borrower's income statement shall
345 reflect a market comparable lease payment as income; and
- 346 d. The Borrower, where the Borrower and the Operator are the same entity and a
347 Regulatory Agreement has not been executed.
348
- 349 6. All operating statements shall include the certification described in Section 11.11.B.4,
350 and shall comply with the following additional requirements:
- 351 a. The operating statement shall be prepared on an accrual basis;
- 352 b. The operating statement shall cover the beginning of marketing and rent-up
353 activities (or the date of Initial Closing in rehabilitation projects where
354 occupancy is continuous) to the cost certification cut-off date;
- 355 c. Marketing and rent-up activities shall start no earlier than six (6) months prior
356 to the issuance of the first Permission to Occupy-Project Mortgages (Form
357 HUD-92485-ORCF);
- 358 d. The operating statement shall sufficiently describe the dates covered by such
359 statement;
- 360 e. The operating statement shall sufficiently describe income from all sources, and shall
361 not consider security deposits as income;
- 362 f. The operating statement shall not contain any expense items that were paid or that
363 should have been paid from the working capital deposit or otherwise included in
364 the cost certification.
- 365 g. Operating expenses may include the following:
- 366 i. Expenses directly relating to renting the project, such as:

- 367 1. Rental commissions customary for the type of project, if any;
368 and
369 2. Marketing and advertising expenses.
- 370 ii. Expenses for the purchase of furnishings, equipment not paid from the
371 working capital deposit, and other supplies essential to project
372 operation.
- 373 iii. Reasonable fees for preparing any federal, state, or local tax return
374 required for the project.
- 375 *Note: If the Borrower is a partnership, reasonable fees for preparing*
376 *both the tax return of the partnership, shall be permitted, but the cost*
377 *of preparing a partner's personal tax returns shall not be permitted.*
378 ~~*Note: If the Borrower is an individual, reasonable fees for preparing a tax*~~
379 ~~*return for project operations shall be permitted, but not for non-project*~~
380 ~~*related items on such tax return.*~~
- 381 iv. Electricity, gas, water, waste water and operating salaries
382 (maintenance, cleaners, gardeners, elevator operators, etc.) to the
383 extent they are not included in construction cost of Borrower's
384 Certificate of Actual Cost, or Contractor's Certificate of Actual Cost.
- 385 v. Management fee stated in the contract.
- 386
- 387 7. Operating expenses may not include:
- 388 a. Depreciation;
- 389 b. Interest, taxes, property insurance premiums, and mortgage insurance
390 premiums that are reflected in the Mortgage Certificate of Actual Cost;
- 391 c. Salaries paid to principals of the sponsor or Borrower for managing the
392 Borrower entity.
- 393
- 394 8. Treatment of net operating income generated during construction (by the entity which
395 operates the facility):
- 396 a. The windfall is the amount that will be entered as net income on the
397 ~~Mortgage Certificate~~Borrower's Certificate of Actual Cost.
- 398 b. The windfall calculation and explanation are provided in Appendix 11.1 and
399 11.2. The windfall calculation is not applicable:
- 400 i. When the Borrower and Operator are unrelated entities.
- 401 ii. For Section 241(a) Supplemental Loans.
- 402 c. If the windfall is less than or equal to zero:
- 403 i. No entry is made on the ~~Mortgage Certificate~~Borrower's
404 Certificate of Actual Cost.

- 405 ii. Operating deficit may be carried over as a reduction to net income on
406 the supplemental operating statement.
407
- 408 9. A certification by an independent Certified Public Accountant or an Independent Public
409 Accountant must accompany the Borrower's Certificate of Actual Cost, including the
410 audited balance sheet of the Borrower and operating statement of the Borrower or
411 Operator, and the Contractor's Certificate of Actual Cost.
- 412 a. The accountant must meet the auditor qualifications of the Government
413 Auditing Standards (GAO Yellow Book), including the qualifications relating
414 to independence and continuing professional education. The audit
415 organization also must meet the quality control standards of the GAO Yellow
416 Book.
- 417 b. Part 24 of Title 24 of the Code of Federal Regulations prohibits accountants
418 from contracting for services when their name is shown on the HUD and
419 General Services Administration Government-wide Consolidated List of
420 Debarred, Suspended and Ineligible Contractors and Grantees.
- 421 c. The accountant must also comply with the requirements in Chapters 1, 2, and
422 6 of HUD Handbook IG 2000.4, (Consolidated Audit Guide for Audits of
423 HUD Programs.)
424
- 425 10. The Borrower must submit a supplemental operating income statement (of the Borrower
426 or Operator) if more than 3 months exist between the cut-off date and the start of
427 amortization. If a deferment of amortization was granted, use the new date for the start of
428 amortization in determining the need for a supplemental operating statement.
- 429 a. This requirement does not apply to non-profit Borrowers or any project where
430 the mortgage is \$200,000 or less.
- 431 b. The statement covers the period from the cost certification cut-off date to the
432 date, which is 3 months before the start of amortization. The Borrower shall
433 submit the statement within 30 days after the expiration of this period.
- 434 c. If the required original cost certification was audited, a CPA or IPA must
435 prepare and certify the supplemental statement.
- 436 d. The Borrower may advance the date of amortization to avoid submitting a
437 supplemental income statement.
- 438 e. In preparing the statement, if the operating statement submitted at cost
439 certification shows expenses in excess of income, such expenses may be
440 carried forward as "un-recovered expense—prior period."
441
- 442 C. **Section 232/223(f) Projects:** The Borrower certifies to the total costs incurred in the
443 acquisition or refinancing of the property using the Borrower's Certificate of Actual Cost.
444 The certification must be dated and signed by an authorized agent of the Borrower. An
445 accountant's opinion is not needed.
446

1. The certification must be submitted after all critical repairs have been completed.
2. The general contractor will be required to cost certify using the Contractor's Certificate of Actual Cost if a cost plus construction contract is used.
3. A balance sheet and income statement are not required.

11.12

ORCF Closer Review of Borrower's and Contractor's Cost Certifications

When the cost certification package is received for processing, the Closer shall:

- A. Complete the cost certification review checklist and determine deficiencies associated with the Borrower's and contractor's cost certifications.
- B. Send an email to the Lender stating the deficiencies and requesting further information.
- C. The Lender shall be required to provide a full response in writing within ten (10) working days.
- D. Send a HUD-approved maximum insurable mortgage letter to the Lender when the cost certification review is complete.

11.13

Allowable Costs in Borrower's Certificate of Actual Cost

A. Construction Contract:

1. A lump sum construction contract is permitted when no identity of interest exists between the Borrower and the general contractor. The amount allowed in cost certification shall be the lesser of:
 - a. The actual cash paid or to be paid by the Borrower under the construction contract; or
 - b. The construction contract price, as adjusted by ORCF's estimated cumulative effect of approved change orders paid, or to be paid, by the Borrower, and, if applicable, the liquidated or actual damages provision to the contract.
2. A cost-plus construction contract shall be required when an identity of interest exists between the Borrower and the general contractor.
3. 50/75 Percent Rule:
 - a. Whether or not there is an identity of interest, no general contractor's fee (general overhead and profit) shall be allowed when:

- i. More than fifty percent (50%) of the contract sum in the Construction Contract is subcontracted to one subcontractor, materials supplier or equipment lessor; or
- ii. More than seventy-five percent (75%) of the contract sum in the Construction Contract is subcontracted with three (3) or fewer subcontractors, materials suppliers or equipment lessors.

If two (2) or more subcontractors have common ownership, they shall be treated as one subcontractor for purposes of this Section.

- b. Exceptions: The 50/75 percent rule shall not apply to:
 - i. Trade items performed by persons on the general contractor's payroll.
 - ii. The supplemental loan program.
 - iii. Rehabilitation programs other than gut rehabilitation.
- c. The Closer shall make all final determinations on the applicability of the 50/75 percent rule.
- d. Where the 50/75 percent rule is violated, the general contractor shall forfeit its anticipated profits.

4. The amount permitted in cost certification when a cost-plus contract is used is the lesser of:

- a. The actual cash paid, or to be paid, by the Borrower under the construction contract.
- b. The amounts the Closer approved for construction.
- c. The construction contract price, as adjusted by the ORCF's estimated cumulative effect of approved change orders paid, or to be paid, by the Borrower, and, if applicable, either the incentive provision or the liquidated or actual damages provision of the contract.
- d. Borrowers shall be expected to adhere to the following additional guidelines:
 - i. Recognizing approved change orders necessitated by errors or omissions of the architect only to the extent that such change orders result in savings for the mortgage. Borrowers shall not recognize such change orders when processing a mortgage increase.
 - ii. Not recognizing approved betterment change orders in calculating the adjusted upset price.
 - iii. Recognizing the increase in general requirements, if any, noted on approved time extension change orders. Borrowers shall not recognize any increases in soft costs associated with such change order. Soft costs will instead be recognized under applicable line items.
 - iv. For profit-motivated projects involving an identity of interest between the Borrower and the general contractor, the amount of builder's profit as shown on the Agreement and Certification shall be an eligible expense whether or not it was paid in cash.

- 528 v. For non-profit Borrowers, the allowable builder's profit is the lesser of
529 the amount actually paid or to be paid in cash to the general contractor
530 or the amount of builder's profit shown in the Maximum Insurable
531 Loan Calculation replacement cost tab, plus or minus any applicable
532 amount due under ORCF-approved change orders.

533
534 5. An identity of interest shall be deemed to exist under any of the following
535 circumstances:

- 536 a. The Borrower has any financial interest in the general contractor, or
537 conversely, the general contractor has any financial interest in the Borrower.
- 538 b. Any officer, director, stockholder, member, manager, trustee or partner of the
539 Borrower is also an officer, director, stockholder, member, manager, trustee or
540 partner of the general contractor.
- 541 c. Any officer, director, stockholder, member, manager, trustee or partner of the
542 Borrower has any financial interest in the general contractor; or any officer,
543 director, stockholder, member, manager, trustee or partner of the general
544 contractor has any financial interest in the Borrower.
- 545 d. The general contractor advances any funds to the Borrower.
- 546 e. The general contractor supplies and pays, on behalf of the Borrower, the cost
547 of any architectural services or engineering services other than those of a
548 surveyor, general superintendent, or engineer employed by a general
549 contractor in connection with its obligations under the construction contract.
- 550 f. The general contractor takes stock or any interest in the Borrower or its
551 controlling stockholders, members or partners as consideration of payment.
- 552 g. There exists or comes into being any side deals, agreements, contracts, or
553 undertakings entered into by either the Borrower and/or the general contractor
554 which modifies, amends, subordinates and/or terminates any provisions and/or
555 mortgage insurance documents required by Program Obligations, except as
556 approved by ORCF.
- 557
558 h. Any relationship (e.g., familial) exists ~~which~~that would give the Borrower or
559 the general contractor undue control or influence over the terms and price of
560 the contract or the price paid to any subcontractors, materials suppliers and/or
561 lessors of equipment.

562
563 6. Incentive fee payments to contractors:

564 The Borrower may request that the construction contract be modified before Initial
565 Closing to provide for an incentive fee for the general contractor for completing the
566 specified construction work in its entirety and delivering a completed project before
567 the date specified in the construction contract (or as amended by any ORCF-approved
568 time extensions). Incentive fees shall be described in sufficient detail in a rider to the
569 construction contract and shall be approved by ORCF prior to Initial Closing, or, for

insurance upon completion and insurance of advance projects, prior to execution of the construction contract. An incentive fee rider may not be added to the construction contract after Initial Closing.

In calculating an incentive fee, Borrowers shall be expected to adhere to the following additional guidelines:

a. Identity-of-interest Borrowers.

- i. The general contractor may benefit from savings in construction interest, taxes, property insurance, and mortgage insurance premiums to the extent there are construction cost overruns.
- ii. The incentive payment shall be reflected in the adjusted upset price of the construction contract.

If there is an identity-of-interest between the Borrower and the general contractor, an incentive fee shall ~~only~~ be paid only if there are certified cost overruns that were not included in an ORCF-approved change order, and the amount of such incentive fee ~~shall~~does not exceed the amount of certified cost overruns that were actually incurred.

b. Non-identity of interest Borrowers.

- i. The incentive payment shall be reflected in the Construction Contract Incentive Payment (Form HUD-92443-ORCF).
- ii. Incentive fees shall be calculated in accordance with instructions of the Construction Contract Incentive Payment.
- iii. The incentive fee computed for lump sum construction contracts shall not exceed fifty percent (50%) of the amount by which the estimated mortgage interest, taxes, property insurance and mortgage insurance premium exceeds the certified costs for those same items through the actual date of completion.
- iv. The incentive fee computed for cost plus construction contracts shall be paid in an amount calculated in accordance with the incentive payment computation on Page 2 of the Construction Contract Incentive Payment. Additionally, when a cost plus construction contract is used, the general contractor shall not receive any incentive payments that exceed:
 1. the actual costs of construction,
 2. the cash fee provided in the construction contract, or
 3. the incentive fee as determined by the incentive payment computation.

In addition, the general contractor shall not be paid an incentive fee that is greater than the amount of cost overruns; any excess of this amount shall be refunded to the Borrower.

7. Damages clause. The Borrower shall exercise the damages clause of the construction contract when the general contractor does not complete the project on time. Such clause holds the general contractor financially responsible for the added soft costs resulting from the delays in completion of the project.

In applying the damages clause, Borrowers shall be expected to adhere to the following additional guidelines:

- a. Borrowers shall calculate the amount of actual and liquidated damages, as further defined by the construction contract, using the lesser to determine the adjusted upset price.
 - b. To determine actual damages, Borrowers shall compute the actual cost of mortgage interest, taxes, insurance and mortgage insurance premiums for the period from the scheduled completion date (as amended by any ORCF-approved change orders) through the substantial completion date.
 - c. To determine liquidated damages, Borrowers shall multiply the daily liquidated damages rate from the construction contract by the number of days between the scheduled completion date specified in the construction contract, as amended by any ORCF-approved time extensions, through the substantial completion date.
 - d. Borrowers shall reduce the calculated damages by the portion of the net operating income earned during the respective periods for calculating the liquidated or actual damages.
 - e. For those cases where an administrative completion date has been established, Borrowers shall use the administrative completion date for computing damages for cost certification purposes. However, the general contractor shall remain liable for damages through the date of substantial completion.
8. If the Borrower acts as its own general contractor:
- a. A construction contract shall not be required. Instead, the Building Loan Agreement Supplemental (Form HUD-92441a-ORCF) shall be incorporated into the Building Loan Agreement (Form HUD-92441-ORCF).
 - b. The upset price for construction shall be described in Line 51 of the ORCF-approved Contractor's and/or Borrower's Cost Breakdown (Schedule of Values (Form HUD-~~2328~~92328-ORCF), as adjusted by the cumulative effect of any ORCF-approved change orders and/or incentive provisions, as applicable.

c. All incentive payment clauses shall be incorporated by an addendum to the Construction Contract Incentive Payment (Form).

d. There shall be no liquidated and/or actual damages clause.

NOTE: The Borrower may serve as its own general contractor only when the Borrower is an individual or a general partnership.

9. Incomplete minor items. The Borrower's certification of the amount due under the terms of the construction contract may include the cost of minor items of on-site work that remain incomplete under the terms of the construction contract.

B. Owner-Architect Agreement. Architect's fees shall be limited to amounts paid in cash. Borrowers shall be expected to adhere to the following additional guidelines:

1. Borrowers shall recognize the cost of additional services set forth in Article 10 of the Standard Form of Agreement between Owner and Architect for Housing Services (AIA Document B108)- and the B108 HUD Amendment.
2. Borrowers shall not recognize the following costs:
 - a. Any portion of the architect's fee paid in stock.
 - b. Any Partnership or LLC interests.
 - b. Any costs associated with a clerk of the works.

Note: Clerk of the works are individuals (in addition to the supervisory architect) who represent the Borrower on the job site during construction of large and/or complex construction projects. Their cost may be allowable when included in underwriting as a Mortgagor Other Fee.

3. If any identity of interest exists or comes into being between the architect and either the Borrower or the general contractor, or both, during project construction:
 - a. The design architect's fee shall be limited for cost certification purposes as set forth in the Agreement and Certification; and
 - b. Borrowers shall not be permitted to allow a fee for supervisory services.
4. Borrowers shall apply any unused balance of the total architect's fee as a direct reduction of the allowable cost.

C. Interest shall be allowable on the amount accrued on the HUD-insured mortgage between Initial Closing (or the start of construction, for insurance upon completion projects) and the cut-off date. Borrowers shall be expected to adhere to the following additional guidelines:

1. Borrowers may recognize interest costs associated with an approved early start, provided that:

- 690 a. The Borrower entered into a binding agreement with the general contractor
691 which:
- 692 i. Was previously approved in writing by ORCF;
- 693 ii. Agrees to reimburse the general contractor for interest on money
694 borrowed for construction prior to Initial Closing; and
- 695 iii. States that reimbursement will be made only to the extent that the
696 Borrower has funds available in the amount estimated for interest
697 during construction.
- 698 b. The certified amount of such interest, when added to the interest costs
699 incurred directly by the Borrower, does not exceed the total amount of interest
700 estimated in the Maximum Insurable Loan Calculation replacement cost tab.
- 701 c. A Request for Permission to Commence Construction Prior to Initial
702 Endorsement for Mortgage Insurance (Form FHA-2415) was executed and
703 previously approved in writing by ORCF.
- 704 d. The interest costs reflect the general contractor's actual cost of money
705 borrowed to cover the cost of construction between the early start date and
706 Initial Closing as adjusted by subsection (e) below.
- 707 e. The rate of interest does not exceed the rate of interest approved for the FHA-
708 insured loan.
- 709
- 710 2. The interest rate paid on the construction loan shall not exceed the rate stated in
711 HUD's firm commitment.
- 712
- 713 3. Borrowers shall deduct accrued interest forgiven by the Lender or otherwise not paid
714 in cash.
- 715
- 716 4. Borrowers shall treat any refunds from the Lender and/or bond underwriters of any
717 portion of the construction loan interest as a reduction to the allowable cost.
- 718
- 719 5. If the construction interest rate changed prior to Initial Closing, and it was not
720 feasible to reprocess the project, or if a state housing agency sold bonds to finance the
721 construction loan and the true interest rate was not known until cost certification:
- 722 a. Interest savings may be created from the difference between the processed
723 interest rate and the actual final interest rate approved by ORCF.
- 724 b. Borrowers may treat such savings as a reduction to the allowable cost if the
725 following condition is included in HUD's firm commitment:
- 726
- 727 "Any interest savings resulting purely from a differential between the HUD-
728 processed interest rate and the actual construction interest rate may not be
729 construed as excess funds that may be used to offset costs in other categories
730 at the time of cost certification. Any such saving must be applied as an
731 allowable cost reduction."

6. Neither the interest on subordinated liens ~~nor~~for other obligations of the Borrower shall be allowed as certifiable costs.

D. Costs for taxes and insurance shall be allowable in the amount accrued on the first mortgage between Initial Closing (or the start of construction, for insurance upon completion projects) and the cut-off date as defined in Section 11.7 of this Chapter. Borrowers shall not recognize costs accrued during the early start period.

E. The exact amount of mortgage insurance premium due during the construction period will not be finally computed until the project has been completed. Such premium shall be calculated as follows:

1. The mortgage insurance premium shall be based on the applicable regulatory annual percentage of the mortgage amount on the basis of accrual for the number of days in the period described in Section 11.13.C of this Chapter, for projects involving insurance upon advances.

2. No mortgage insurance premium shall be paid during construction for projects involving insurance upon completion.

F. HUD application, commitment and inspection fees shall be allowable as amounts paid. Fees paid to re-open an expired or terminated commitment shall not be allowable costs.

G. Financing expenses shall include any initial service charges, discount fees, Federal National Mortgage Association (FNMA), Government National Mortgage Association (GNMA) or other permanent Lender commitment and marketing fees, and other similar fees. Borrowers shall be expected to adhere to the following additional guidelines:

1. Permitted expenses shall include the lesser of:

a. All expenses paid, or to be paid, in cash.

b. All expenses described in the Lender's Certificate (Form HUD-92434-ORCF), or the Request for Endorsement of Credit Instrument & Certificate of Lender, Borrower & General Contractor (Form HUD-92455-ORCF) and approved by ORCF prior to Initial Closing (or issuance of the firm commitment, for insurance upon completion projects).

2. The construction Lender's initial service charge:

a. May cover:

i. Processing fees;

ii. All expenses of counsel for the Lender paid directly from the initial service charge; however, any such expenses shall not be permitted if they cause the initial service charge to exceed two percent (2%) the

mortgage amount. Lenders shall be responsible for reconciling separate invoices or bills with such itemized costs; and/or

iii. All other charges of the construction Lender.

b. Shall exclude:

i. Any construction loan discounts.

ii. Any construction loan extension fees.

3. The permanent Lender's placement fee:

a. Shall cover all permanent placement expenses, except discounts and certain fees associated with a bond financed transaction, if applicable.

b. Shall not incorporate any additional charges for a GNMA mortgage-backed security application fee or other custodial or delivery fees.

NOTE: Construction and permanent Lenders' initial service charges and placement fees in the aggregate shall not exceed three and one-half percent (3.5%) (or 5.5 percent for bond-financed projects), and the parties involved may divide such fees as negotiated.

4. The following costs shall additionally be permitted for cost certification:

a. Any reasonable discounts based on current interest rates at the time of HUD's issuance of the firm commitment, for projects involving insurance of advances and insurance upon completion charged by the construction and/or permanent Lenders. Extension fees charged by the construction Lender shall also be permitted, if funded at Initial Closing and disclosed in the Lender's Certificate.

b. Any permanent Lender extension fees, as disclosed in the Lender's Certificate, and if funded before the substantial completion date.

c. Any construction and/or permanent loan extension fees for insurance upon completion projects, as disclosed in the Request for Endorsement, and if funded before the cost certification cut-off date.

d. Any financing fees (including extension fees and discounts) paid on behalf of the Borrower by a third-party and as disclosed by the Lender's Certificate or the Request for Endorsement, if shown as a current liability on the Borrower's balance sheet, and to the extent that such fees result in savings for the mortgage. At final closing, a promissory note in a format approved by HUD shall be used for any unpaid balance of such obligations recognized in cost certification.

e. Any costs of issuance, discounts, and financing fees in excess of five and one-half percent (5.5%) for bond-financed projects; provided that the cost certification evidences that the sponsor and Borrower shall not benefit monetarily from any excess investment income derived from the proceeds of any invested obligations.

- 816
- 817 5. The following costs shall not be permitted for cost certification:
- 818 a. Any “side deals” (except for discounts previously approved by ORCF) by
- 819 which the Borrower agrees to pay for the “added cost of money.”
- 820 b. The four percent (4%) construction loan and 1.75 percent permanent loan
- 821 indemnification escrows required by GNMA.
- 822 c. Any discounts required to buy down the construction and/or permanent rate to
- 823 a below market ~~rate~~.
- 824 d. Any amount of the bond premium distributed to the Borrower, Operator
- 825 and/or any of their principals.
- 826
- 827 6. The following items shall be treated as reductions for cost certification:
- 828 a. Premiums paid by the Lender to the Borrower or sponsor for acquiring the
- 829 construction or permanent loan.
- 830 b. Partial refunds of the processing commitment fee, ~~which~~ that are returned to
- 831 the Borrower or sponsor.
- 832 c. Discounts or other fees paid for by a contribution of a portion of the initial
- 833 service charge by the Lender and/or bond underwriter.
- 834 d. Rebates paid to the Borrower or sponsor by the Lender and/or bond
- 835 underwriter for bond-financed mortgages.
- 836
- 837 H. Title and recording expenses shall be limited to cash paid for:
- 838
- 839 1. Title searches and/or title insurance policies required by HUD for Initial Closing;
- 840
- 841 2. Recording fees for mortgage insurance documents at HUD Initial Closing;
- 842
- 843 3. Mortgage and stamp taxes;
- 844
- 845 4. Survey fees;
- 846
- 847 5. Updates required by HUD for the title insurance policy during construction;
- 848
- 849 6. Title searches, title insurance policies and recording charges required by HUD at
- 850 Final Closing; and
- 851
- 852 7. Legal fees incurred for the preparation of any of the above.
- 853
- 854 I. Legal, organization and audit expenses shall be limited to expenses incurred in organizing the
- 855 Borrower and/or updating its governing documents in order to comply with Program
- 856 Obligations, developing the financing proposal for HUD and other necessary governmental
- 857 agencies, and for providing additional services during closing and construction.

- 858
859 1. Organizational expenses shall be further limited as follows:
- 860 a. Borrowers shall be limited to the amount described in the Maximum Insurable
861 Loan Calculation Replacement Cost Tab for the organizational fee, unless
862 sufficient justification is submitted for the need for, and reasonableness of,
863 any additional expenses, including fully supporting documentation such as
864 receipts or cancelled checks.
- 865 b. Additional information on organizational fees is provided in the
866 [LNCCSLNSCC](#).
867
- 868 2. Legal expenses shall be further limited to those legal expenses incurred for
869 representation of the Borrower during its organization and at initial and final closing,
870 tax advice provided to the Borrower solely during its organization, and preparation of
871 legal documents required for initial and/or final closing of the FHA-insured loan.
- 872 a. Borrowers are permitted to include customary expenditures expected to be
873 incurred before and during initial closing, over the construction period, and at
874 final closing. This may include legal expenditures for any identity of interest
875 Operator or Management Agent if they are directly related to the specific
876 HUD-insured transaction.
- 877 b. Borrowers shall not include:
- 878 i. Customary expenses for land acquisition which are already
879 incorporated in, or contributing to:
- 880 1. Title and recording expenses;
881 2. The estimated market price of the acquisition site; and/or
882 3. Expenses related to changes, variances and/or special use
883 permits for zoning.
- 884 ii. The costs of legal services to create tax shelters and trusts.
- 885
- 886 3. Borrowers are permitted to include the cost of a “package deal” for organization and
887 legal services, provided:
- 888 a. The supplier of such services is qualified to furnish the respective services;
889 and
- 890 b. The costs do not duplicate expenses for the same services.
891
- 892 4. Audit fees shall be further limited to those expenses related to a qualified
893 accountant’s audit and opinion of the Borrower’s certificate of costs.
894
- 895 5. Amounts included in the Maximum Insurable Loan Calculation Replacement Cost
896 Tab for legal and audit expenses are not blanket allowances, but ordinarily set an
897 upper limit on allowable amounts.

- 898 a. Non-typical fees (i.e., those that exceed the above-described upper limits)
899 shall be borne by the Borrower, unless in an exceptionally complex case, a
900 higher fee is sufficiently demonstrated by the Borrower to be necessary and
901 reasonable. Detailed invoices and/or other documentation shall be required to
902 evidence the reasonableness, purpose, necessity, and proper classification of
903 all non-typical fees.
- 904 b. The restrictions of this Section are not flexible where Borrowers are permitted
905 to include the cost of a “package deal” for organization and legal services, and
906 where a substantial amount of such organization and legal services are
907 performed by the same firm.
- 908
- 909 J. Offsite costs: Where the Borrower enters into a supplemental contract for constructing
910 offsite improvements, the costs of such improvements shall be calculated using the lesser of
911 the following:
912
- 913 1. The offsite construction contract price as adjusted by ORCF’s estimated cumulative
914 effect of approved offsite change orders;
915
- 916 2. The actual cash paid or to be paid for such offsite work; or
917
- 918 3. The amount approved by ORCF for offsite construction.
919 Offsite costs shall be further limited as follows:
- 920 a. HUD shall adjust the as-is land value of the project, if the permitted amount
921 for offsite and demolition differs from HUD’s estimate on the Maximum
922 Insurable Loan Calculation land tab issued with HUD’s firm commitment.
- 923 b. Offsite costs shall not be permitted for leasehold estates when the ground
924 lease rent is based on a land value that reflects all required offsite
925 improvements, since the Borrower has not or will not pay for such
926 improvements.
- 927 c. If the Borrower certifies to off-site costs, the land value utilized to determine
928 the maximum insurable mortgage shall be reduced by the amount of such off-
929 site costs.
930
- 931 K. Other permitted costs include all costs and/or recovery of costs ~~which~~that are not provided
932 for elsewhere and which are clearly attributable to the actual cost of the project, including,
933 but not limited to, the following items:
934
- 935 1. Any costs attributable to acquiring a leasehold interest in the project, provided that
936 any such acquisition costs, ground rents and/or offsite costs are paid by the Borrower,
937 do not exceed HUD’s calculation of the fair market value of the land fully improved
938 (from the land tab of the Maximum Insurable Loan Calculation. Any excess costs
939 shall be reflected as a disallowed cost of acquiring the leasehold.
940

- 941 2. Any ground rents paid from Initial Closing of the FHA-insured loan (or the start of
942 construction, for insurance upon completion projects) to the cut-off date.
943
944 3. Any allowable incentive payments paid to a non-identity of interest contractor for
945 completing construction before the scheduled completion date, as amended by any
946 ORCF-approved change orders.
947
948 4. Any bond premium for the general contractor, if paid by the Borrower. If the
949 construction contract includes any expenses for the bond premium, this amount shall
950 be subtracted from the construction contract amount when calculating the adjusted
951 upset price.
952
953 5. Any other fees, including fees required for an engineering and/or topographical
954 survey. The Lender shall be responsible for determining whether such costs are
955 reasonable and not duplicated in those costs attributed to the general contractor.
956
957 6. Any grants, loans or tax credit equity of the Borrower and/or principals of the
958 Borrower used to pay for allowed items of cost, but limited as follows:
959 a. The deduction of such grants, loans or tax credit equity shall be treated as a
960 recovery of such costs by the Borrower and/or its principals; and
961 b. The Borrower shall not deduct grant, loan or tax credit equity funds from the
962 total recognized costs when such funds were used to pay for certain non-
963 replacement cost items (e.g., they were used for acquisition costs of the land
964 in excess of the HUD allowance, operating deficits, working capital, and/or
965 other items disclosed in the Applicant/Recipient Disclosure (Form HUD-
966 2880).
967
968 7. Any residential relocation costs. Further instructions are provided in the
969 [LNCCSLNSCC](#).
970

971 Note: Cost certification footnotes may use vendor names to identify third-party costs.
972 However, such footnotes shall describe in sufficient detail the services provided by
973 such vendor. This requirement is critical to further assure that there ~~are~~^{is} no
974 duplication of costs between contractors, subcontractors, architects and subcontract
975 engineers, etc. For rehabilitation projects, any costs that may be construed as
976 maintenance costs attributable to ongoing operations shall also be described in
977 sufficient detail in the audit footnotes.

- 978
979 L. Non-Profit Developer and Housing Consultant Fees: Non-profit Developer and Housing
980 Consultant Fees are not permitted as mortgageable expenses on Section 232 projects.
981
982 M. Major Movable Equipment: Instructions are provided in the [LNCCSLNSCC](#).
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11.14

Cost review of the General Contractor's Cost Certification

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- A. Actual costs shall be defined as all costs paid by the general contractor pursuant to the terms of the construction contract for completion of the project, and to which the general contractor certifies, using the Contractor's Certification of Actual Cost. Such costs shall include:
1. Actual costs paid in cash, or to be paid in cash (for items of delayed completion) within forty-five (45) days after the date of substantial completion, for all labor, materials, equipment, subcontract work, general requirements (including job overhead), fees, general overhead, and estimated costs for any items requiring an escrow.
 - a. Actual costs are further limited as follows:
 - i. The salaries of clerical staff for time actually spent at the project shall be permitted; however, the prorating of annual salaries on a percentage basis shall not be permitted.
 - ii. Salaries of executives shall not be included in the calculation of general requirements, but shall instead be included in calculation of general overhead.
 - iii. Any kickbacks, rebates, adjustments, discounts, or other similar devices ~~which~~that the general contractor has received or is entitled to receive from the Borrower or any subcontractors, materials suppliers or equipment lessors, shall be deducted from actual costs.
 - b. General overhead expenses are further limited as follows:
 - i. Such expenses shall include only the amount of the accepted Schedule of Values, adjusted by any ORCF-approved change orders.
 - ii. Itemization shall not be required for general overhead expenses.
- B. An ORCF cost review of the general contractor's cost certification shall be conducted in accordance with the following guidelines:
1. ORCF shall conduct a detailed review if the Borrower applies for a mortgage increase.
 2. Such review shall include a sufficiency and consistency review of all certifications required from the contractor and/or any subcontractors, materials suppliers and equipment lessors.
 3. The following documents, as applicable, shall be audited in the context of such review:
 - a. Borrower's Certificate of Actual Cost; [\(Form HUD-92330-ORCF\)](#);

- b. Contractor's Certificate of Actual Cost; [\(Form HUD-92330A-ORCF\)](#);
- c. Agreement and Certification; [\(HUD Form-93305-ORCF\)](#);
- d. Request for Construction Changes-- Project Mortgages--all approved for the project (Forms HUD-92437-[ORCF](#));
- e. Project Cost Estimate (Lender's Third-Party Estimate) (Form HUD-92326);
- f. Contractor's and/or ~~Borrower's~~[Mortgagor's](#) Cost Breakdown; [\(From HUD-92238-ORCF\)](#);
- g. [HUD Representative's](#) Trip Report ~~(-- for all for projects~~[Inspections \(Form HUD-95379-ORCF\)](#).

4. Such review shall determine the following:

- a. Whether the 50/75 percent rule applies. Such determination shall be based in part on the disclosures described in the "total" and "name of subcontractor or payee" columns of the general contractor's cost certification, and if such rule does apply, the general contractor's general overhead and profit shall not be permitted as expenditures.
- b. Whether any identity of interest exists among the Borrower, the general contractor and/or any subcontractors, materials suppliers and equipment lessors.
 - i. Such determination shall be based in part on the disclosures described in the Agreement and Certification.
 - ii. HUD shall review each cost certification for identity of interest subcontractors for compliance; however, if such cost certification is not submitted, such subcontractor's overhead, profit and other questionable costs shall not be permitted as expenditures. Permitted expenditures shall be further limited as follows:
 - 1. If such subcontractor was not previously approved as an identity of interest subcontractor, such subcontractor's overhead and profit shall not be permitted as expenditures.
 - 2. If such subcontractor was previously approved as an identity of interest subcontractor, all **subcontract overhead and profit previously approved by ORCF, plus or minus the effect of any approved change orders, shall be permitted as expenditures. Previously-**~~approved~~ **subcontract overhead and profit shall not be reduced in the event that the certified cost for such work is less than the prior approved maximum subcontract price.** (c) Permitted expenditures may include up to the previously-~~approved~~ maximum subcontract amount for work, plus or minus the effect of any ORCF-approved change orders.

5. HUD shall additionally review trade line-item costs in accordance with the following guidelines:
- a. HUD shall utilize the general contractor and subcontractor cost certification sections of the [LNCCSLNSCC](#) as a template for calculations under this Section and pursuant to the following formula:
 - i. Enter all trade line costs from HUD's estimate or the applicable contractor's schedule of values after adjusting for any ORCF-approved change orders.
 - ii. Enter all trade line costs from the general contractor's cost certification.
 - iii. Using dollar and percentage variance columns, compare each trade's actual cost with the estimate and determine permitted expenditures.
 - b. Permitted expenditures shall not be limited by the estimates described in Section 11.14.B.5(a) above; rather, HUD reserves the discretion to base any such determination on distinctions in the contracted work, in part based on the following criteria:
 - i. Actual costs paid to complete the work in accordance with the construction contract shall be permitted; and
 - ii. Actual costs incurred due to unusual circumstances shall be permitted (e.g., bankruptcy of the subcontractor, code changes, required replacement of completed work and/or replacements due to natural occurrences, such as storms, floods, earthquakes, etc.).
 - c. HUD shall only review expenditures under this Section if such expenditure is substantially in excess of the above-described estimates (i.e., those greater than ten percent (10%) of the estimated trade line cost). If expenditure requires such review, HUD shall:
 - i. Contact the Lender to request an explanation of such expenses, including supporting documentation, as applicable.
 - ii. Make disallowances if the requested explanation and/or documentation is not submitted in a reasonable amount of time.
 - iii. Request that the Lender submit an amended Contractor's Certification of Actual Cost.
 - d. HUD shall not permit any amount not justified or supported as being part of the construction contract work.
 - e. HUD shall not permit costs for duplication of work due to a contractor's error or negligence (e.g., improper placement of construction, failure to protect the construction and/or noncompliance with the terms of the contract, etc.).

C. Lump sum construction contract cost certification

HUD shall review the cost certification of any subcontractor that has an identity of interest with the Borrower.

11.15

Section 232/223(f) and 232/223(a)(7) Modified Form of Cost Certification

A. Borrowers shall complete and submit for review a modified form of cost certification prior to the Initial/Final Closing of a loan for insurance for all projects insured under Section 232 pursuant to Sections 223(f) or 223(a)(7) that include repairs without a PCNA (Project Capital Needs Assessment). Such cost certification shall comply with the following requirements:

1. Borrowers shall be required to certify to the total actual costs incurred in the acquisition or refinancing of the project. Such certification shall be submitted with the Borrower's Certificate of Actual Cost and shall be dated and signed by an authorized agent of the Borrower.

Invoices shall be submitted to describe in sufficient detail all third-party costs, including cover sheets for each invoice and/or document submitted for each line item of the cost certification. Such cover sheet shall identify the number and name of the applicable line item and any subcategories. Additional cover sheets shall be submitted for each subcategory and shall identify the purpose of each invoice. If no invoice is available for a particular line item, a cancelled check may be submitted in lieu of such requirement.

The following categories of line items shall be further documented as follows:

- a. Purchase Price or Existing Indebtedness

Purchase prices shall be evidenced by the relevant portion of the applicable purchase agreement and shall be supplemented by any necessary explanation and/or clarification.

Existing indebtedness shall be evidenced by pay-off letters from all existing-debt holders dated the month of closing. Per-diem amounts (including all calculations for taxes and insurance) shall be evidenced as follows:

- i. Prepayment fees shall be evidenced with documentation of the relation of such fees to the project and the basis for their calculation.
- ii. Any existing indebtedness of a Real Estate Investment Trust shall be calculated using the same methodology as utilized for

determining existing indebtedness in the Maximum Insurable Loan calculation attached to HUD's firm commitment.

iii. Any portion of a bond premium being distributed to the Borrower, the Operator or any of their principals shall not be included.

b. Repairs shall reflect the actual amount paid for repairs, and shall be evidenced by photographs, invoices and the Borrower's certification for critical repairs. If the Borrower performs such repairs, itemization of the labor, material, equipment rent and overhead, shall be identified by trade in Schedule A of the Borrower's certification for critical repairs. Permitted expenditures for such repairs shall not exceed the estimated cost of repairs from HUD's firm commitment.

c. All HUD-required fees (including the Application Fee, Inspection Fee and Mortgage Insurance Premium) shall be itemized on the bottom of Page 2 of the Borrower's Certificate of Actual Cost.

d. The Lender's fees shall not exceed three and one-half percent (3.5%) of the mortgage amount; however, higher fees (up to five and one-half percent (5.5%)) may be permissible for bond transactions.

i. The Lender's fee shall include the Lender's legal expenses, which shall be identified on Schedule B and additionally included in this line item.

ii. Any broker's fee shall be identified (with the name and address of the broker) on Schedule B and additionally included in this line item.

iii. Any placement fee (GNMA, etc.) shall be identified on Schedule B and additionally included in this line item.

iv. Security extension fees are not an allowable mortgageable cost.

e. Recording expenses shall include any recording taxes.

f. Legal and organizational expenses shall be itemized on the bottom of Page 2 of the Borrower's Certificate of Actual Cost and shall be further supported by third-party invoices ~~of third parties~~. Other expenses shall be described in sufficient detail in Schedule C and supported by invoices and/or other relevant documentation. All ~~third-party~~ reports (appraiser, PCNA, environmental, survey, etc.) and the initial deposit to the R4R account shall additionally be included in this line item. All previously FHA-insured projects shall describe in sufficient detail the proposed disposition of the current R4R fund in Schedule C.

2. The Lender shall be responsible for submitting its certification to ORCF for computation of the maximum insurable mortgage and completion of Section II of the Borrower's Certificate of Actual Cost.

- B. In circumstances where the actual costs are less than estimated, the Borrower shall deposit any remaining funds in the R4R account.

11.16

Mortgage Reduction After Cost Certification

A mortgage reduction is not required under Section 232.

- A. The Lender must recalculate the replacement cost based on allowable cost.
- B. The Lender must recalculate the mortgage determinants.
- C. If the new mortgage amount is less than the firm commitment mortgage amount the Lender may request either:
1. The difference may be added to the R4R account, or
 2. The mortgage will be reduced.

The Lender request and explanation will be included as a part of the Lender's draft Maximum Insurable Mortgage Letter.

11.17

Increase in Mortgage Amount

- A. Any requests for an increase in the mortgage amount shall be presented by the Lender and described in sufficient detail as part of the Lender's draft Maximum Insurable Mortgage Letter.
- B. All mortgage increase requests shall require a detailed Lender review of the cost certification documents. Documentation of this review shall be evidenced by the [LNCCSLNSCC](#).

11.18

Inspector General Audit

ORCF reserves the discretion to request that the District Inspector General for Audit perform an audit [on](#) the Borrower's and/or contractor's books where discrepancies appear to arise from other than inadvertent error or creditable misinterpretation of applicable criteria. ORCF additionally reserves the discretion to delay final closing if an audit will also be requested for any suspected fraud or material misrepresentation that arises prior to final closing.

11.19

Cost Certification Incontestability

After ORCF approves the respective cost certifications and signs the Maximum Insurable Mortgage Letter, such cost certifications shall be deemed final and incontestable unless there is determined to be fraud or material misrepresentation by the Borrower, the general Contractor or any subcontractors.