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**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.

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**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.

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**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.

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**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.

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

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37 ~~A. General overhead; and~~

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

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## 11.5

### Types of Cost Certification

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44 A. In general, a standard or “long form” cost certification shall be required except for projects  
45 permitted to use the “simplified” cost certification described in Section 11.5.B.

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47 B. A simplified cost certification is permitted for projects with forty (40) or fewer units of  
48 proposed construction or substantial rehabilitation. A simplified cost certification is also  
49 permitted for projects refinanced under Section 232 pursuant to Section 223(f) of the  
50 National Housing Act.

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## 11.6

### Entities That Must Cost Certify

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54 A. The Borrower shall cost certify for all projects, except for certain projects assisted with  
55 LIHTC, Historic Tax Credits or New Market Tax Credits as outlined in [1311.4](#).

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

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

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74 C. The general contractor shall cost certify where:

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- 76 1. The general contractor has an identity of interest with the Borrower, regardless of  
77 whether such identity of interest existed prior to initial closing (for insured advances  
78 projects) or issuance of the firm commitment (for insurance upon completion  
79 projects), or such identity of interest developed after such dates; and/or  
80  
81 2. The general contractor used the “cost plus” principles of the Construction Contract  
82 (Form HUD-92442-ORCF), regardless of any identity of interest with the Borrower.  
83  
84 The general contractor and subcontractors will not be required to cost certify when  
85 the Borrower is exempt from certifying actual costs.  
86

87 D. Subcontractors at any tier, equipment lessors, materials suppliers, and manufacturers of  
88 industrialized housing shall cost certify where:  
89

- 90 1. The total of all subcontracts, purchases, and leases exceed one-half percent (0.5%) of the  
91 FHA-insured mortgage amount; and  
92  
93 2. An identity of interest exists or comes into being between such subcontractor,  
94 equipment lessor, materials supplier, or manufacturer of industrialized housing, and  
95 either:  
96 a. The Borrower; or  
97 b. The general contractor, if the general contractor is required to cost certify.  
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## 11.7

## Final Completion Date and Cut-Off Date

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101 The final completion date for determining actual costs is the date the HUD inspector signs the  
102 final [100% complete](#) HUD Representative’s Trip Report (Form HUD-95379-ORCF), provided  
103 that such trip report is subsequently endorsed by the construction manager. Construction must  
104 be completed by the final completion date, except for acceptable items of delayed completion  
105 approved in writing by HUD. HUD will notify in writing each of the Borrower, general  
106 contractor and Lender of the approved final completion date.  
107

- 108 A. The final completion date is the effective date for the cost certification. However, the  
109 Borrower has the option to include in the cost certification all soft costs incurred up to sixty  
110 (60) days beyond such date. The date selected by the Borrower is the “cut-off date” for all  
111 soft costs.  
112  
113 B. The Borrower’s balance sheet and the Borrower or the Operator’s operating statement date must  
114 conform to the selected cut-off date.  
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## 11.8

## Administrative Completion Date

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

- 123  
124 A. The CM may set an administrative completion date for any project when the monthly  
125 inspection reports show ninety-five percent (95%) completion of work, and thereafter less  
126 than a two percent (2%) increase in percentage of completion in any subsequent month.  
127  
128 B. The CM shall notify in writing each of the Borrower, general contractor and Lender of such  
129 administrative completion date, and the following:  
130  
131 1. That the administrative completion date shall be the effective date for cost  
132 certification, except that all soft costs up to sixty (60) days beyond such date may  
133 be included at the option of the Borrower.  
134  
135 2. That the date of the balance sheet and operating statement must be the same as the  
136 cut-off date selected by the Borrower.  
137  
138 3. That all liquidated and/or actual damages for cost certification purposes shall be  
139 computed using the administrative completion date. However, the general contractor  
140 shall be liable for any liquidated and/or actual damages that arise after the  
141 administrative completion date and before the date of substantial completion.  
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## 11.9

## Submission Date

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145 The submission date for cost certification shall be within sixty (60) days after the cut-off date.  
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## 11.10

## Required Forms and Documentation

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149 The following items shall be submitted for purposes of cost certification, as applicable:  
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- 151 A. A ~~Mortgagor's~~Borrower's Certificate of Actual Cost (Form HUD-92330-~~ORCF~~) shall  
152 be required for the cost certification of all Borrowers. Excel spreadsheets and instructions  
153 are provided in the Lender Narrative Cost Certification Supplement (Form HUD-9444-  
154 ORCF).  
155  
156 B. A Contractor's Certificate of Actual Cost (Form HUD-~~92330-A~~92330A-ORCF) shall be  
157 required for the cost certification of all general contractors. Excel spreadsheets and  
158 instructions are provided in the Lender Narrative Cost Certification Supplement.

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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).

204 K. A Financial Record of Mortgage Loan Transaction (Form HUD-92451) or similar advances  
205 register at the option of the Lender.  
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## 11.11

## Required Cost Certifications

208  
209 Borrowers shall comply with either subsection A or B below, depending on the criteria described  
210 in subsection A.1.  
211

212 A. Simplified form of cost certification. For projects that qualify for a simplified cost  
213 certification, the Borrower's Certificate of Actual Cost and Contractor's Certificate of Actual  
214 Cost shall be required. Eligible projects include those that use a cost plus construction  
215 contract and those for which an identity of interest exists between the Borrower and the  
216 general contractor. For all such projects, an accountant's opinion shall not be required.  
217

- 218 1. A simplified cost certification, in lieu of a long form cost certification, shall be  
219 permitted for new construction or substantial rehabilitation projects involving forty  
220 (40) or fewer units and for the refinance or acquisition of existing projects under  
221 Section 232 pursuant to Section 223(f) of the National Housing Act.  
222
- 223 2. If an identity of interest exists between a subcontractor, materials supplier and/or  
224 equipment lessor, and the Borrower and/or the general contractor (if such general  
225 contractor must cost certify), and the total of all identity of interest subcontracts,  
226 purchases and leases is more than one-half of one percent (0.5%) of the FHA-insured  
227 mortgage amount, the applicable party shall use the Contractor's Certificate of Actual  
228 Cost. This requirement, as further described in the Agreement and Certification  
229 (Form HUD-93305-ORCF), shall apply for all projects.  
230
- 231 3. An unaudited balance sheet of the Borrower, as of the cut-off date, shall be required for  
232 all projects. The format and content of such balance sheet shall comply with  
233 Section 11.11.B.4.  
234
- 235 4. An unaudited operating statement (from the Borrower and/or the Operator, as applicable)  
236 shall be required if occupancy commenced during the construction period. The format  
237 and content of such operating statement shall comply with Section 11.11.B.5.  
238

239 B. Long-form cost certification. For all projects that do not qualify for a simplified cost  
240 certification under the criteria of subsection A.1 above the following items shall be required:  
241

- 242 1. A Borrower's Certificate of Actual Cost, supported by an accountant's opinion, shall  
243 be required for all projects.  
244
- 245 2. A Contractor's Certificate of Actual Cost, supported by an accountant's opinion, shall  
246 be required for the general contractor if such general contractor shares an identity of

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

- 249
- 250 3. All subcontractors, materials suppliers, and/or equipment lessors with an identity of  
251 interest with either the Borrower or the general contractor shall submit a Contractor’s  
252 Certificate of Actual Cost, supported by an accountant’s opinion.
- 253 a. As required, all materials suppliers shall attach to the Contractor’s  
254 Certificate of Actual Cost a sheet describing in sufficient detail:
- 255 i. Quantities of such materials furnished;
- 256 ii. Sources from which such materials were obtained; and
- 257 iii. Unit prices paid to the sources of such materials, as well as the  
258 brand names, model numbers, sizes, and lumber grades of such  
259 materials, etc., as applicable.

260

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

262

- 263 b. Equipment lessors shall attach to the Contractor’s Certificate of Actual  
264 Cost a sheet describing in sufficient detail:
- 265 i. Dates such equipment was acquired;
- 266 ii. Ages of such equipment at acquisition date;
- 267 iii. Brand names and model numbers of such equipment;
- 268 iv. Sizes of such equipment;
- 269 v. Dates and length of time such equipment was used; and
- 270 vi. Rates charged for such equipment.
- 271 c. In addition, such equipment lessors shall certify that:
- 272 i. The rates charged were not more than the local market rate for such  
273 equipment, including the maintenance and/or repair of such  
274 equipment;
- 275 ii. The time charged for such equipment was not more than essential for  
276 the project; and
- 277 iii. The charges did not exceed the purchase price of such equipment.
- 278 d. Lump Sum Basis. In lieu of providing an attachment describing the above-  
279 required items, such equipment lessors may elect to certify that its rates are  
280 less than or equal to eighty-five percent (85%) of the local market rate for  
281 identical equipment under arms’ length (lump sum) leases. When making this  
282 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.

- 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.

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

- 447 1. The certification must be submitted after all critical repairs have been completed.  
448  
449 2. The general contractor will be required to cost certify using the Contractor's  
450 Certificate of Actual Cost if a cost plus construction contract is used.  
451  
452 3. A balance sheet and income statement are not required.  
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## 11.12

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

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456 When the cost certification package is received for processing, the Closer shall:  
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- 458 A. Complete the cost certification review checklist and determine deficiencies associated with the  
459 Borrower's and contractor's cost certifications.  
460  
461 B. Send an email to the Lender stating the deficiencies and requesting further information.  
462  
463 C. The Lender shall be required to provide a full response in writing within ten (10) working days.  
464  
465 D. Send a HUD-approved maximum insurable mortgage letter to the Lender when the cost certification  
466 review is complete.  
467  
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## 11.13

### Allowable Costs in Borrower's Certificate of Actual Cost

469  
470 A. Construction Contract:  
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- 472 1. A lump sum construction contract is permitted when no identity of interest exists  
473 between the Borrower and the general contractor. The amount allowed in cost  
474 certification shall be the lesser of:  
475 a. The actual cash paid or to be paid by the Borrower under the construction  
476 contract; or  
477 b. The construction contract price, as adjusted by ORCF's estimated cumulative  
478 effect of approved change orders paid, or to be paid, by the Borrower, and, if  
479 applicable, the liquidated or actual damages provision to the contract.  
480  
481 2. A cost-plus construction contract shall be required when an identity of interest exists  
482 between the Borrower and the general contractor.  
483  
484 3. 50/75 Percent Rule:  
485 a. Whether or not there is an identity of interest, no general contractor's fee  
486 (general overhead and profit) shall be allowed when:

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

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

- 495 b. Exceptions: The 50/75 percent rule shall not apply to:  
496 i. Trade items performed by persons on the general contractor's payroll.  
497 ii. The supplemental loan program.  
498 iii. Rehabilitation programs other than gut rehabilitation.  
499 c. The Closer shall make all final determinations on the applicability of the  
500 50/75 percent rule.  
501 d. Where the 50/75 percent rule is violated, the general contractor shall forfeit its  
502 anticipated profits.  
503

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

- 506 a. The actual cash paid, or to be paid, by the Borrower under the construction  
507 contract.  
508 b. The amounts the Closer approved for construction.  
509 c. The construction contract price, as adjusted by the ORCF's estimated  
510 cumulative effect of approved change orders paid, or to be paid, by the  
511 Borrower, and, if applicable, either the incentive provision or the liquidated or  
512 actual damages provision of the contract.  
513 d. Borrowers shall be expected to adhere to the following additional guidelines:  
514 i. Recognizing approved change orders necessitated by errors or  
515 omissions of the architect only to the extent that such change orders  
516 result in savings for the mortgage. Borrowers shall not recognize such  
517 change orders when processing a mortgage increase.  
518 ii. Not recognizing approved betterment change orders in calculating the  
519 adjusted upset price.  
520 iii. Recognizing the increase in general requirements, if any, noted on  
521 approved time extension change orders. Borrowers shall not recognize  
522 any increases in soft costs associated with such change order. Soft costs  
523 will instead be recognized under applicable line items.  
524 iv. For profit-motivated projects involving an identity of interest between  
525 the Borrower and the general contractor, the amount of builder's profit  
526 as shown on the Agreement and Certification shall be an eligible  
527 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

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

573  
574 In calculating an incentive fee, Borrowers shall be expected to adhere to the following  
575 additional guidelines:

576 a. Identity-of-interest Borrowers.

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

582  
583 If there is an identity-of-interest between the Borrower and the general  
584 contractor, an incentive fee shall ~~only~~ be paid only if there are certified cost  
585 overruns that were not included in an ORCF-approved change order, and the  
586 amount of such incentive fee ~~shall~~does not exceed the amount of certified cost  
587 overruns that were actually incurred.  
588

589 b. Non-identity of interest Borrowers.

- 590 i. The incentive payment shall be reflected in the Construction Contract  
591 Incentive Payment (Form HUD-92443-ORCF).
- 592 ii. Incentive fees shall be calculated in accordance with instructions of the  
593 Construction Contract Incentive Payment.
- 594 iii. The incentive fee computed for lump sum construction contracts shall  
595 not exceed fifty percent (50%) of the amount by which the estimated  
596 mortgage interest, taxes, property insurance and mortgage insurance  
597 premium exceeds the certified costs for those same items through the  
598 actual date of completion.
- 599 iv. The incentive fee computed for cost plus construction contracts shall  
600 be paid in an amount calculated in accordance with the incentive  
601 payment computation on Page 2 of the Construction Contract  
602 Incentive Payment. Additionally, when a cost plus construction  
603 contract is used, the general contractor shall not receive any incentive  
604 payments that exceed:
- 605 1. the actual costs of construction,
  - 606 2. the cash fee provided in the construction contract, or
  - 607 3. the incentive fee as determined by the incentive  
608 payment computation.  
609

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

613  
614 7. Damages clause. The Borrower shall exercise the damages clause of the construction  
615 contract when the general contractor does not complete the project on time. Such  
616 clause holds the general contractor financially responsible for the added soft costs  
617 resulting from the delays in completion of the project.

618  
619 In applying the damages clause, Borrowers shall be expected to adhere to the  
620 following additional guidelines:  
621

622 a. Borrowers shall calculate the amount of actual and liquidated damages, as  
623 further defined by the construction contract, using the lesser to determine the  
624 adjusted upset price.

625 b. To determine actual damages, Borrowers shall compute the actual cost of  
626 mortgage interest, taxes, insurance and mortgage insurance premiums for the  
627 period from the scheduled completion date (as amended by any ORCF-  
628 approved change orders) through the substantial completion date.

629 c. To determine liquidated damages, Borrowers shall multiply the daily  
630 liquidated damages rate from the construction contract by the number of days  
631 between the scheduled completion date specified in the construction contract,  
632 as amended by any ORCF-approved time extensions, through the substantial  
633 completion date.

634 d. Borrowers shall reduce the calculated damages by the portion of the net  
635 operating income earned during the respective periods for calculating the  
636 liquidated or actual damages.

637 e. For those cases where an administrative completion date has been established,  
638 Borrowers shall use the administrative completion date for computing  
639 damages for cost certification purposes. However, the general contractor shall  
640 remain liable for damages through the date of substantial completion.

641  
642 8. If the Borrower acts as its own general contractor:

643 a. A construction contract shall not be required. Instead, the Building Loan  
644 Agreement Supplemental (Form HUD-92441a-ORCF) shall be incorporated  
645 into the Building Loan Agreement (Form HUD-92441-ORCF).

646 b. The upset price for construction shall be described in Line 51 of the ORCF-  
647 approved Contractor's and/or Borrower's Cost Breakdown (Schedule of  
648 Values (Form HUD-~~2328~~92328-ORCF), as adjusted by the cumulative effect  
649 of any ORCF-approved change orders and/or incentive provisions, as  
650 applicable.

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

653 d. There shall be no liquidated and/or actual damages clause.  
654

655 NOTE: The Borrower may serve as its own general contractor only when the  
656 Borrower is an individual or a general partnership.  
657

658 9. Incomplete minor items. The Borrower's certification of the amount due under the  
659 terms of the construction contract may include the cost of minor items of on-site work  
660 that remain incomplete under the terms of the construction contract.  
661

662 B. Owner-Architect Agreement. Architect's fees shall be limited to amounts paid in cash.  
663 Borrowers shall be expected to adhere to the following additional guidelines:  
664

665 1. Borrowers shall recognize the cost of additional services set forth in Article 10 of the  
666 Standard Form of Agreement between Owner and Architect for Housing Services  
667 (AIA Document B108)- [and the B108 HUD Amendment](#).  
668

669 2. Borrowers shall not recognize the following costs:

670 a. Any portion of the architect's fee paid in stock.

671 [b. Any Partnership or LLC interests.](#)

672 b. Any costs associated with a clerk of the works.  
673

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.

674  
675 3. If any identity of interest exists or comes into being between the architect and either  
676 the Borrower or the general contractor, or both, during project construction:

677 a. The design architect's fee shall be limited for cost certification purposes as set  
678 forth in the Agreement and Certification; and

679 b. Borrowers shall not be permitted to allow a fee for supervisory services.  
680

681 4. Borrowers shall apply any unused balance of the total architect's fee as a direct  
682 reduction of the allowable cost.  
683

684 C. Interest shall be allowable on the amount accrued on the HUD-insured mortgage between  
685 Initial Closing (or the start of construction, for insurance upon completion projects) and the  
686 cut-off date. Borrowers shall be expected to adhere to the following additional guidelines:  
687

688 1. Borrowers may recognize interest costs associated with an approved early start,  
689 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."

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6. Neither the interest on subordinated liens ~~nor~~ 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

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

777 iii. All other charges of the construction Lender.

778 b. Shall exclude:

779 i. Any construction loan discounts.

780 ii. Any construction loan extension fees.

781

782 3. The permanent Lender's placement fee:

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

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

787 NOTE: Construction and permanent Lenders' initial service charges and  
788 placement fees in the aggregate shall not exceed three and one-half percent  
789 (3.5%) (or 5.5 percent for bond-financed projects), and the parties involved  
790 may divide such fees as negotiated.

791

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

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

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

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

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

811 e. Any costs of issuance, discounts, and financing fees in excess of five and one-  
812 half percent (5.5%) for bond-financed projects; provided that the cost  
813 certification evidences that the sponsor and Borrower shall not benefit  
814 monetarily from any excess investment income derived from the proceeds of  
815 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.

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1. Organizational expenses shall be further limited as follows:
  - a. Borrowers shall be limited to the amount described in the Maximum Insurable Loan Calculation Replacement Cost Tab for the organizational fee, unless sufficient justification is submitted for the need for, and reasonableness of, any additional expenses, including fully supporting documentation such as receipts or cancelled checks.
  - b. Additional information on organizational fees is provided in the [LNCCSLNCCC](#).
2. Legal expenses shall be further limited to those legal expenses incurred for representation of the Borrower during its organization and at initial and final closing, tax advice provided to the Borrower solely during its organization, and preparation of legal documents required for initial and/or final closing of the FHA-insured loan.
  - a. Borrowers are permitted to include customary expenditures expected to be incurred before and during initial closing, over the construction period, and at final closing. This may include legal expenditures for any identity of interest Operator or Management Agent if they are directly related to the specific HUD-insured transaction.
  - b. Borrowers shall not include:
    - i. Customary expenses for land acquisition which are already incorporated in, or contributing to:
      1. Title and recording expenses;
      2. The estimated market price of the acquisition site; and/or
      3. Expenses related to changes, variances and/or special use permits for zoning.
    - ii. The costs of legal services to create tax shelters and trusts.
3. Borrowers are permitted to include the cost of a “package deal” for organization and legal services, provided:
  - a. The supplier of such services is qualified to furnish the respective services; and
  - b. The costs do not duplicate expenses for the same services.
4. Audit fees shall be further limited to those expenses related to a qualified accountant’s audit and opinion of the Borrower’s certificate of costs.
5. Amounts included in the Maximum Insurable Loan Calculation Replacement Cost Tab for legal and audit expenses are not blanket allowances, but ordinarily set an 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
- 921 a. HUD shall adjust the as-is land value of the project, if the permitted amount  
922 for offsite and demolition differs from HUD’s estimate on the Maximum  
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

Note: Cost certification footnotes may use vendor names to identify third-party costs. However, such footnotes shall describe in sufficient detail the services provided by such vendor. This requirement is critical to further assure that there ~~are~~ is no duplication of costs between contractors, subcontractors, architects and subcontract engineers, etc. For rehabilitation projects, any costs that may be construed as maintenance costs attributable to ongoing operations shall also be described in 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; [\(Form HUD-92330-ORCF\)](#);

- 1024 b. Contractor's Certificate of Actual Cost; [\(Form HUD-92330A-ORCF\)](#);
- 1025 c. Agreement and Certification; [\(HUD Form-93305-ORCF\)](#);
- 1026 d. Request for Construction Changes-- Project Mortgages--all approved for the
- 1027 project (Forms HUD-92437-[ORCF](#));
- 1028 e. Project Cost Estimate (Lender's Third-Party Estimate) (Form HUD-92326);
- 1029 f. Contractor's and/or ~~Borrower's~~Mortgagor's Cost Breakdown: [\(From HUD-](#)
- 1030 [92238-ORCF\)](#);
- 1031 g. [HUD Representative's](#) Trip Report ~~(-- for all for projects~~Inspections (Form
- 1032 [HUD-95379-ORCF\)](#).
- 1033

1034 4. Such review shall determine the following:

1035 a. Whether the 50/75 percent rule applies. Such determination shall be based

1036 in part on the disclosures described in the "total" and "name of

1037 subcontractor or payee" columns of the general contractor's cost

1038 certification, and if such rule does apply, the general contractor's general

1039 overhead and profit shall not be permitted as expenditures.

1040 b. Whether any identity of interest exists among the Borrower, the general

1041 contractor and/or any subcontractors, materials suppliers and equipment

1042 lessors.

1043 i. Such determination shall be based in part on the disclosures described

1044 in the Agreement and Certification.

1045 ii. HUD shall review each cost certification for identity of interest

1046 subcontractors for compliance; however, if such cost certification is

1047 not submitted, such subcontractor's overhead, profit and other

1048 questionable costs shall not be permitted as expenditures. Permitted

1049 expenditures shall be further limited as follows:

1050 1. If such subcontractor was not previously approved as an

1051 identity of interest subcontractor, such subcontractor's

1052 overhead and profit shall not be permitted as expenditures.

1053 2. If such subcontractor was previously approved as an identity of

1054 interest subcontractor, all **subcontract overhead and profit**

1055 **previously approved by ORCF, plus or minus the effect of**

1056 **any approved change orders, shall be permitted as**

1057 **expenditures. Previously- approved subcontract overhead**

1058 **and profit shall not be reduced in the event that the**

1059 **certified cost for such work is less than the prior approved**

1060 **maximum subcontract price.** (c) Permitted expenditures

1061 may include up to the previously- approved maximum

1062 subcontract amount for work, plus or minus the effect of

1063 any ORCF-approved change orders.

1064

- 1065 5. HUD shall additionally review trade line ~~item~~ costs in accordance with the following  
1066 guidelines:
- 1067 a. HUD shall utilize the general contractor and subcontractor cost certification  
1068 sections of the [LNCCSLNSCC](#) as a template for calculations under this  
1069 Section and pursuant to the following formula:
- 1070 i. Enter all trade line costs from HUD's estimate or the applicable  
1071 contractor's schedule of values after adjusting for any ORCF-  
1072 approved change orders.
- 1073 ii. Enter all trade line costs from the general contractor's cost  
1074 certification.
- 1075 iii. Using dollar and percentage variance columns, compare each trade's  
1076 actual cost with the estimate and determine permitted expenditures.
- 1077 b. Permitted expenditures shall not be limited by the estimates described in  
1078 Section 11.14.B.5(a) above; rather, HUD reserves the discretion to base any  
1079 such determination on distinctions in the contracted work, in part based on the  
1080 following criteria:
- 1081 i. Actual costs paid to complete the work in accordance with the  
1082 construction contract shall be permitted; and
- 1083 ii. Actual costs incurred due to unusual circumstances shall be permitted  
1084 (e.g., bankruptcy of the subcontractor, code changes, required  
1085 replacement of completed work and/or replacements due to natural  
1086 occurrences, such as storms, floods, earthquakes, etc.).
- 1087 c. HUD shall only review expenditures under this Section if such expenditure is  
1088 substantially in excess of the above-described estimates (i.e., those greater  
1089 than ten percent (10%) of the estimated trade line cost). If expenditure  
1090 requires such review, HUD shall:
- 1091 i. Contact the Lender to request an explanation of such expenses,  
1092 including supporting documentation, as applicable.
- 1093 ii. Make disallowances if the requested explanation and/or documentation  
1094 is not submitted in a reasonable amount of time.
- 1095 iii. Request that the Lender submit an amended Contractor's Certification  
1096 of Actual Cost.
- 1097 d. HUD shall not permit any amount not justified or supported as being part of  
1098 the construction contract work.
- 1099 e. HUD shall not permit costs for duplication of work due to a contractor's error  
1100 or negligence (e.g., improper placement of construction, failure to protect the  
1101 construction and/or noncompliance with the terms of the contract, etc.).

1102  
1103 C. Lump sum construction contract cost certification  
1104

1105 HUD shall review the cost certification of any subcontractor that has an identity of interest  
1106 with the Borrower.  
1107  
1108  
1109  
1110  
1111

## 11.15

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

1112  
1113 A. Borrowers shall complete and submit for review a modified form of cost certification  
1114 prior to the Initial/Final Closing of a loan for insurance for all projects insured under  
1115 Section 232 pursuant to Sections 223(f) or 223(a)(7) that include repairs without a PCNA  
1116 (Project Capital Needs Assessment). Such cost certification shall comply with the  
1117 following requirements:  
1118

- 1119 1. Borrowers shall be required to certify to the total actual costs incurred in the  
1120 acquisition or refinancing of the project. Such certification shall be submitted with  
1121 the Borrower's Certificate of Actual Cost and shall be dated and signed by an  
1122 authorized agent of the Borrower.  
1123

1124 Invoices shall be submitted to describe in sufficient detail all third-party costs,  
1125 including cover sheets for each invoice and/or document submitted for each line item  
1126 of the cost certification. Such cover sheet shall identify the number and name of the  
1127 applicable line item and any subcategories. Additional cover sheets shall be  
1128 submitted for each subcategory and shall identify the purpose of each invoice. If no  
1129 invoice is available for a particular line item, a cancelled check may be submitted in  
1130 lieu of such requirement.  
1131

1132 The following categories of line items shall be further documented as follows:  
1133

- 1134 a. Purchase Price or Existing Indebtedness

1135 Purchase prices shall be evidenced by the relevant portion of the applicable  
1136 purchase agreement and shall be supplemented by any necessary explanation  
1137 and/or clarification.  
1138

1139 Existing indebtedness shall be evidenced by pay-off letters from all existing-  
1140 debt holders dated the month of closing. Per-diem amounts (including all  
1141 calculations for taxes and insurance) shall be evidenced as follows:

- 1142 i. Prepayment fees shall be evidenced with documentation of the relation  
1143 of such fees to the project and the basis for their calculation.
- 1144 ii. Any existing indebtedness of a Real Estate Investment Trust shall  
1145 be calculated using the same methodology as utilized for

- 1146 determining existing indebtedness in the Maximum Insurable Loan  
1147 calculation attached to HUD's firm commitment.
- 1148 iii. Any portion of a bond premium being distributed to the Borrower,  
1149 the Operator or any of their principals shall not be included.
- 1150 b. Repairs shall reflect the actual amount paid for repairs, and shall be evidenced  
1151 by photographs, invoices and the Borrower's certification for critical repairs.  
1152 If the Borrower performs such repairs, itemization of the labor, material,  
1153 equipment rent and overhead, shall be identified by trade in Schedule A of the  
1154 Borrower's certification for critical repairs. Permitted expenditures for such  
1155 repairs shall not exceed the estimated cost of repairs from HUD's firm  
1156 commitment.
- 1157 c. All HUD-required fees (including the Application Fee, Inspection Fee and  
1158 Mortgage Insurance Premium) shall be itemized on the bottom of Page 2 of  
1159 the Borrower's Certificate of Actual Cost.
- 1160 d. The Lender's fees shall not exceed three and one-half percent (3.5%) of the  
1161 mortgage amount; however, higher fees (up to five and one-half percent  
1162 (5.5%)) may be permissible for bond transactions.
- 1163 i. The Lender's fee shall include the Lender's legal expenses, which  
1164 shall be identified on Schedule B and additionally included in this line  
1165 item.
- 1166 ii. Any broker's fee shall be identified (with the name and address of the  
1167 broker) on Schedule B and additionally included in this line item.
- 1168 iii. Any placement fee (GNMA, etc.) shall be identified on Schedule B  
1169 and additionally included in this line item.
- 1170 iv. Security extension fees are not an allowable mortgageable cost.
- 1171 e. Recording expenses shall include any recording taxes.
- 1172 f. Legal and organizational expenses shall be itemized on the bottom of Page 2  
1173 of the Borrower's Certificate of Actual Cost and shall be further supported by  
1174 third-party invoices ~~of third parties~~. Other expenses shall be described in  
1175 sufficient detail in Schedule C and supported by invoices and/or other relevant  
1176 documentation. All third-party reports (appraiser, PCNA, environmental,  
1177 survey, etc.) and the initial deposit to the R4R account shall additionally be  
1178 included in this line item. All previously FHA-insured projects shall describe  
1179 in sufficient detail the proposed disposition of the current R4R fund in  
1180 Schedule C.
- 1181
- 1182 2. The Lender shall be responsible for submitting its certification to ORCF for  
1183 computation of the maximum insurable mortgage and completion of Section II of the  
1184 Borrower's Certificate of Actual Cost.  
1185

1186 B. In circumstances where the actual costs are less than estimated, the Borrower shall deposit any  
1187 remaining funds in the R4R account.  
1188  
1189

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## 11.16

## Mortgage Reduction After Cost Certification

1190  
1191 A mortgage reduction is not required under Section 232.  
1192

1193 A. The Lender must recalculate the replacement cost based on allowable cost.  
1194

1195 B. The Lender must recalculate the mortgage determinants.  
1196

1197 C. If the new mortgage amount is less than the firm commitment mortgage amount the Lender  
1198 may request either:

1199 1. The difference may be added to the R4R account, or

1200 2. The mortgage will be reduced.  
1201

1202 The Lender request and explanation will be included as a part of the Lender's draft Maximum  
1203 Insurable Mortgage Letter.  
1204  
1205

---

## 11.17

## Increase in Mortgage Amount

1206  
1207 A. Any requests for an increase in the mortgage amount shall be presented by the Lender and  
1208 described in sufficient detail as part of the Lender's draft Maximum Insurable Mortgage Letter.  
1209

1210 B. All mortgage increase requests shall require a detailed Lender review of the cost certification  
1211 documents. Documentation of this review shall be evidenced by the [LNCCSLNSCC](#).  
1212  
1213  
1214

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**11.18****Inspector General Audit**

1215  
1216 ORCF reserves the discretion to request that the District Inspector General for Audit perform an  
1217 audit [on](#) the Borrower's and/or contractor's books where discrepancies appear to arise from other  
1218 than inadvertent error or creditable misinterpretation of applicable criteria. ORCF additionally  
1219 reserves the discretion to delay final closing if an audit will also be requested for any suspected  
1220 fraud or material misrepresentation that arises prior to final closing.

1221  
1222

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**11.19****Cost Certification Incontestability**

1223  
1224 After ORCF approves the respective cost certifications and signs the Maximum Insurable  
1225 Mortgage Letter, such cost certifications shall be deemed final and incontestable unless there is  
1226 determined to be fraud or material misrepresentation by the Borrower, the general Contractor or  
1227 any subcontractors.

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