
CHAPTER 4: PROJECT APPROVAL AND FUNDING

4-1. HEADQUARTERS REVIEW AND APPROVAL

a. Review Criteria

Headquarters decisions will be determined by the selection and ranking criteria outlined in the NOFA. Category selectees may be announced prior to complete selection of all categories if sufficient funds exist to fund all applicants in the specific category. Headquarters staff will decide whether or not to fund non-Plan of Action projects based on the information contained in the application package and the Field Office's recommendation.

b. Notification to the Field

Once Headquarters has made its funding decision, it will notify the Field Office. The Field Office is responsible for providing the required Congressional Notification and then notifying the owner of the Headquarters determination and instructing the owner how to obtain funds that have been awarded.

4-2. FUND RESERVATION

a. Once Headquarters has notified the Field Office which projects have been approved, and at what level of funding, the Field Office is responsible for reserving those funds through the RAD.

b. To process initial fund reservations, as well as subsequent increases or decreases in reservations, the Field Office should complete a Reservation of Flexible Subsidy Funds, Form HUD-9823 (See Appendix 19).

c. All reservation activity must identify the federal fiscal year for which the funds were appropriated, or the "source year." Whenever a development is receiving funding through monies from two different source years, there will be two different reservation numbers. A separate column should be used to record the funds from each year in the Reservation of Flexible Subsidy form.

d. The total amount of Flexible Subsidy made available by

the reservations will be tracked on the Flexible Subsidy Control Log, Form HUD-9823-C and Form HUD-9823-D (see Appendix 15) under the Project's FHA case number.

- e. Once the contract is executed, the Field Office must attach a fully executed contract amendment to the Reservation of Flexible Subsidy Funds, Form HUD-9823 to process any changes. If a reservation is canceled or amended before a contract is executed, only Form HUD-9823 is required.

4-3. CONGRESSIONAL NOTIFICATION

- a. Immediately after the RAD has executed the Reservation of Flexible Subsidy Funds, the Field Office must send a Notification of Award of Flexible Subsidy Assistance, Form HUD-9823-E (see Appendix 20), to Headquarters, Office of Intergovernmental Relations, attention Assistant Secretary for Congressional and Intergovernmental Affairs. The form should be sent via both facsimile transmission and priority pouch mail. Field Offices should not notify the owner of the award until after Congressional Notification has been completed.
- b. Unless the Office of Intergovernmental Relations notifies the Field Office by telephone within five working days that action on the award should be delayed, the Field Office is authorized to execute the assistance contract.
- c. Field Offices are cautioned not to execute the contract until the required time period has elapsed. In cases where the five day delay would cause a hardship, Field Offices may request the Office of Intergovernmental Relations to complete their notifications in less than the five day period and to notify the field of the earliest date the contract may be executed.

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4-4. COLLATERALIZING CILP LOANS

a. Overview

- (1) The CILP loan must be secured by the property. In addition, the mortgagor must agree to maintain the low- and moderate- income character of the project for a period at least equal to the remaining term of the mortgage.

- (2) To assure compliance, the mortgagor must execute a Capital Improvement Mortgage which incorporates by reference a Use Agreement that would ensure the continuation of the character of the project if the underlying first note and mortgage are prepaid. Procedures for executing and recording these documents is different for HUD-insured and HUD-held projects, and are discussed in detail below. State laws may also dictate the form of legal documents and methods for recordation.

b. Preparation and Review of Legal Documents

- (1) Since the forms of mortgage, deeds of trust, security deeds and notes used in multifamily programs must vary by State, it is not possible to prepare a standardized Capital Improvement Note or Mortgage.
- (2) The Loan Management Branch Chief should seek the assistance of the Field Counsel in preparing the appropriate CILP documents for each local jurisdiction. The Field Counsel should ensure that the proper procedures are followed for executing, recording and distributing these documents.
- (3) Instructions for preparing the mortgage and note instruments are provided in Appendix 24. Sample language for the Deferred Recordation Agreement and Use Agreement are provided in Appendices 25 and 21 respectively.

c. Procedures for HUD-Insured Projects

- (1) The Loan Management Staff will hold the Deferred Recordation Agreement and the unrecorded Note and Mortgage until the mortgagee's consent is obtained, or until the mortgage is assigned to HUD. Once either of these events occurs the documents must be recorded.
- (2) There may be a territory or a state in which the mere execution of a mortgage without recording it would create a lien which might allow an insured mortgagee to assign an existing insured mortgage. If this is the case, Field Counsel must so advise the Loan Management Branch Chief and the Capital

Improvement Mortgage must not be prepared or executed unless the insured mortgagee has given its written permission for the Capital improvement Mortgage. In such a situation the Field Office should contact the Office of Multifamily Housing Management in Headquarters.

- (3) When the first mortgage is insured, the Capital Improvement Mortgage must not be recorded unless written consent to this lien is obtained from the insured mortgagee who holds the first mortgage. HUD will not seek approval to record the CILP mortgage unless there is a history that the mortgagee will agree to record the mortgage at no additional cost to HUD. The Capital Improvement Mortgage must not be recorded without the express written permission of the first mortgagee. Failure to obtain the mortgagee's approval could trigger premature assignment of the first mortgage to the Secretary.
- (4) If the mortgagee has been asked and does not provide written consent to the Capital Improvement Mortgage, the mortgagor must execute (excluding mortgagors in paragraph 2 above):
 - o a Capital Improvement Note and Capital Improvement Mortgage (or Deed of Trust) in recordable form, and

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- o a Deferred Recordation Agreement that will allow the Capital Improvement Mortgage to be recorded at a later date when the mortgagee gives approval, or the project mortgage is assigned to HUD.

No other closing documents are required.

- (5) The Loan Management Branch should not record the mortgage without the approval of the Office of Multifamily Housing Management in Headquarters unless it can be recorded at no additional cost to HUD, or the state requires that it be recorded.

d. Procedures for Projects with HUD-Held Mortgages

Projects with HUD-Held mortgages do not require the use of a Deferred Recordation Agreement since HUD is the mortgagee. The Capital Improvement Mortgage must be

recorded as soon as it is properly executed.

4-5. PLANNING CONFERENCE

- a. Field Offices must schedule Planning Conferences with owners within 10 working days of notifying the owner that the Flexible Subsidy assistance has been approved. Appropriate Loan Management staff, Field Counsel, other appropriate Field Office staff, the owner, the management agent, any contractors who may have been selected, and the owner's attorney should all attend the Planning Conference.
- b. The main purpose of the conference will be to inform the attendees of all relevant programmatic requirements, and to impress upon them the need to begin the work itemized in the MIO Plan or Work Write-Up at an early date. Issues such as whether a holdback should be imposed on the general contractor, and the appropriate amount of the performance and payment bond and latent defects bond are left to the discretion of the individual Field Office. These items should be tailored to the circumstances of each case.

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- c. As part of the Planning Conference, the Field Office will prepare the following documents:

For OAP:

- (1) the Use Agreement (see Appendix 21);
- (2) Financial Assistance Contract, Form HUD-9819 (see Appendix 22); and
- (3) the Direct Deposit Form SF-1199-A (see Appendix 23) with a void check for the Project Improvement Account attached; and
- (4) Residual Receipts Note (see Appendix 7).

For CILP:

- (1) the Use Agreement (See Appendix 21);
- (2) the Capital Improvement Note (see Appendix 24);
- (3) the Capital Improvement Mortgage (or Deed of Trust) (see Appendix 24);

- (4) the Deferred Recordation Agreement (see Appendix 25); and
 - (5) the Direct Deposit Form SF-1199-A (see Appendix 23) with a void check for the Project Improvement Account attached.
- d. The owner should return signed copies of these documents to the Field Office within five working days of the Planning Conference. The 1199A, the Flexible Subsidy Note, and the Financial Assistance Contract should note the Employer Identification Number (EIN). Once the Field Office has revised and executed the documents and the necessary funds, if required, are deposited in the Project Improvement Account, work should begin.
- e. Field Office staff should notify the owner that each CILP loan is a liability of the project which is not dischargeable in any bankruptcy proceeding.

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Field Office staff should also advise the owner that the Flexible Subsidy Mortgage should be recorded as soon as possible, and always before offering the project for sale. If it is not possible to record the mortgage, the owner should notify the buyer that the mortgage exists, and it must be noted in the TPA documents.

4-6. FINANCIAL ASSISTANCE CONTRACT EXECUTION

- a. The Financial Assistance Contract, Form HUD-9819, is executed by the Regional Administrator, the Regional Director of Housing, or a designee after:
- o the owner and the Field Office have finalized a MIO Plan or Work Write-up for the project;
 - o the RAD has executed the Reservation of Flexible Subsidy Funds, HUD-9823;
 - o the Congressional Notification Requirements have been met;
 - o the owner has established a Project Improvement Account;
 - o confirming that the annual amount of Flexible

Subsidy assistance referenced in the Contract equals the contract amount shown on the Reservation of Flexible Subsidy Funds Form (HUD-9823); and

- o confirming that final versions of the Budget Worksheet Form, [HUD-92547-A](#) (see Appendix 27) and Part II, Section A of the MIO Plan are attached as contract Exhibits.
- b. The Field Office should assure that the owner has read and understands the key components of the documents provided at the Planning Conference.

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4-7. FINANCIAL ASSISTANCE CONTRACT AMENDMENT

Whenever the Field Office wishes to increase, decrease, or cancel a reservation on a project for which a Financial Assistance Contract has been executed, the Regional Director of Housing should send a memorandum requesting the change to the Director of the Office of Multifamily Management. The memorandum must indicate the amount of the change, and provide a reason for any increase requested.

Any request for funding increases must be well-justified and will not be entertained unless funding is available and unless the increase is due to causes beyond the control and fault of the mortgagor or any of its agents and/or employees. The Secretary is under no legal obligation to fund the increase. For example, if the original funding amount was sufficient to replace a boiler, but during the replacement, a structural problem that was not known about during the initial funding application was found, additional funding could be requested for structural repair. Any changes in reservation amounts must be noted on the Flexible Subsidy Control Log.

a. Conditions Under Which a Contract May be Amended

As a general policy, increases in Flexible Subsidy Loans are not encouraged. There are limited funds available for the program, and it is essential that Field Offices, working together with project owners, utilize these funds efficiently.

An increase may be considered only for additional items or improvements which:

- o meet the eligibility criteria for Flexible Subsidy

funding;

- o result in additional costs caused by requirements imposed by local authorities beyond the control and without the fault of the owner; and
- o were unknown at the time of issuance of the loan commitment.

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When processing a request for a loan increase, the Field Office must keep the following considerations in mind:

- o The effect of the increase on the rent structure, and the additional Section 8 funding which may be required.
- o If the increase is for additional items or improvements, the owner must provide full written documentation from the unit of government requiring such items or improvements.
- o A loan may be increased at the sole discretion of HUD, and is subject to the availability of funds including Section 8 Funds, if required.
- o Until a project owner receives a written commitment for an increase, the owner is solely responsible for any excess costs.
- o The owner must agree to pay half of the total amount of any increase.
- o No increase in the Flexible Subsidy Loan to cover cost overruns will be considered if there is any identity-of-interest between the project owner and the general contractor or any subcontractor.

b. How Contracts Should Be Amended

Whenever the Field Office decides to extend the contract term or increase or decrease the total amount of Flexible Subsidy Assistance authorized, the contract must be amended.

If funds are increased or decreased, an amended Part II of the MIO Plan or Work Write-Up must be incorporated in the contract amendment. The increase or decrease will come from the following sources:

- o If the total net cost of all amendments reduces the cost of improvements, the entire amount of the cost reduction shall reduce the amount of the Flexible Subsidy loan without regard to the owner's contribution.

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- o If the total net cost of all amendments increases the cost of improvements, the owner should be prepared to bear the increased cost entirely from the owner's funds, since additional Flexible Subsidy loan authority may not be available.

All contract amendments must be signed by both the owner and the Field Office and shall be numbered consecutively. The Field Office must send a copy of the fully executed amendment to the RAD.

Changes in individual MIO Plan or Work Write-Up action items and redistribution of the total amount among periods do not require amendments to the body of the contract. These changes only require that the appropriate sections of Part II of the MIO Plan or the Work Write-Up be revised.

All changes in contract terms or amounts must be recorded in the Flexible Subsidy Control Log.

Owners requesting loan increases must provide the following certification:

I hereby certify that no identity-of-interest of any kind exists between (name of project) and any of its owners and any contractor or subcontractor who performed work pursuant to the Flexible Subsidy Loan approved for the project.

WARNING: It is a crime to knowingly make false statements to a Federal agency. Penalties upon conviction can include a fine and imprisonment. For details, see Title 18 U.S. Code, Sections 1001 and 1010.

The owner's signature must appear immediately below this warning. The certification is to be signed by a General Partner in the case of a limited partnership owner, or an officer of a non-profit corporation who is authorized to sign such a document.

4-8. PROJECT IMPROVEMENT ACCOUNT

a. Requirement for Separate Account

The owner must open a Project Improvement Account dedicated to Flexible Subsidy funds for the project. Owners must complete a Direct Deposit Sign-Up Form (Form SF-1199-A) and provide it to the Field Office. The Field Office will review and sign the SF-1199A and forward the form to the RAD, and the RAD will instruct the Treasury Department to use the Direct Deposit mechanism to place funds in the owner's Project Improvement Account.

b. Deposits to the Account

So long as the owner complies with the terms of the Flexible Subsidy Loan and makes good faith efforts to complete the action items and achieve the management objectives specified in the MIO Plan or Work Write-Up, Flexible Subsidy funds will be deposited in the Project Improvement Account when requested monthly by the owner and approved by the Field Office.

c. Account Interest

Although there is no HUD requirement that interest be paid on the Project Improvement Account, the Field Office should encourage the owner to use an interest bearing account. If state law requires that interest be paid, or if the owner selects a lending institution that pays interest, the interest earned must remain in the account and may not be distributed to the owner. The interest may be used to offset cost-overruns. If these funds are not needed to cover cost overruns, they are recaptured by HUD when the project is closed out.

4-9. FUND DISBURSEMENT PROCEDURES

Project Improvement Funds are released monthly or as needed and only for the purposes specified in the project's MIO Plan or Work Write-Up. Fund disbursement procedures for both OA and CILP are summarized in Exhibit 4-1.

a. Amount to be Disbursed

- (1) Owner Contribution: Flexible Subsidy funds will not be disbursed unless the entire owner

contribution has been deposited and spent. Other

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EXHIBIT 4-1

FUND DISBURSEMENT PROCEDURES

1. Funds flow into the Project Improvement Account as follows:

- a. The owner deposits any contribution required by Part II, Section C (Sources and Uses of Funds; [HUD 9835-B](#)) of the MIO Plan.
- b. AFTER THE ENTIRE OWNER CONTRIBUTION HAS BEEN DEPOSITED IN THE PROJECT IMPROVEMENT ACCOUNT AND SPENT, on the 15th of each month, the owner determines whether additional funds are required in the Project Improvement Account to cover the month's bills. Under the OA program the owner also determines the amount needed to cover the month's operating deficit. If Flexible Subsidy funds are required, the owner completes a Requisition for Advance of Flexible subsidy Funds (Form HUD-9823-A) and sends it to the Field Office. The owner also attaches invoices for repair work completed and a copy of Part II, Section A of the MIO Plan, edited to show the amount requested for each action item.

The Field Office reviews the owner's request. If it is in order, the Field Office approves it and sends it to the RAD for payment.

- c. The RAD requests Treasury to deposit Flexible Subsidy Assistance in the Project Improvement Account.

2. Funds flow out of the Project Improvement Account as follows:

- a. The owner has the repair work specified in Part II, Section A of the MIO Plan completed.
- b. The owner writes checks for completed repair work, drawing on funds provided through the owner contribution. Checks should draw on these funds until they are depleted.
- c. After the entire owner contribution has been spent, the owner writes checks for repair invoices that draw on funds deposited in the account based on a Requisition for Allowance of Flexible subsidy funds. The portion of the release approved for monthly operating deficits under the OA program (line 3d of Form HUD 9835-B) is used to cover routine project

expenses.

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financial relief funds included in Part II, Section C of the MIO Plan must also have been deposited and spent.

- (2) Monthly Disbursements: The maximum amount available for any monthly period is equal to the difference between that month's need for Project Improvement Funds, as estimated by the owner on the 15th of the month, and the balance in the Project Improvement Account.
- (3) Quarterly Disbursements: During any quarter, the owner may not requisition more than the amount of Flexible Subsidy assistance allocated for the quarter.
- (4) Carry-over Authority: Funds authorized but not used during a quarter remain available for transfer during subsequent quarters.
- (5) Repair Costs: The owner may only requisition funds to pay for those repair items that have been completed. The cumulative amount transferred for an individual repair action item may exceed the annual amount authorized for that action item by up to 10 percent, so long as the total amount transferred for all forms of repairs does not exceed the total amount authorized for repairs on Line 1 of Form [HUD-9835-B](#).
- (6) Operating Deficits: Owners with an OAP loan may requisition funds to cover only those operating deficits which the project has incurred or will incur through the end of the calendar month for which funds are being requisitioned. Transfers for all subcategories of operating deficits are limited by the amount authorized for a quarter. The monthly deficit is limited to the actual deficit incurred or one-third of the quarterly authorization, whichever is less.
- (7) Replacement Reserve and Working Capital: OAP Funds authorized for replacement reserve and working capital uses are deposited during the fourth quarter but are released only at the end of the contract term and only if the Field Office

determines that the owner has complied with all terms of the Financial Assistance Contract.

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- (8) Field Office Discretion: The Field Office may elect to apply the monthly limitation on ongoing monthly operating deficits for OAP to any other subcategory of operating deficit.

b. Owner Requisitions

On the 15th day of each month, the owner should estimate the project's funding needs for the following month. If the balance in the Project Improvement Account is not sufficient to cover the project's needs for the month, the owner should complete a Requisition for Advance of Flexible Subsidy Funds, Form HUD-9823-A (see Appendix 28) and send it to the Director, Housing Mngement in the local HUD Field Office.

c. HUD Review of Owner Request for Funds

- (1) The Field Office evaluates the appropriateness of the estimate of need upon which the owner's requisition is based by using the owner's monthly report package (see Chapter 6, Section 1). The Field Office must also review the owner's requisition to assure that the Flexible Subsidy funds are required. Approved requisitions should be forwarded to the Regional Accounting Division (RAD) for processing. This process will require a minimum of four weeks.
- (2) Disbursements to the Project Improvement Account will be made by the Regional Accounting Division through the Treasury Department's Automated Clearing House (ACH) payment system.

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