

CHAPTER 5. PREPARING FOR INITIAL LOAN CLOSING

5-1. PERMANENT FINANCING. At least 15 days before initial closing, the mortgagee must send the Field Office the permanent lender's written assurance that permanent financing will be available at the rate shown in the firm commitment application and two sets of draft closing documents. Mortgage Credit and Legal are responsible for reviewing the documents.

A. The permanent lender's assurance must address, but is not limited to:

1. Source of financing;
2. Terms;
3. Interest rate;
4. Discounts;
5. Extension provisions (including time frame and cost);
6. Dates for delivery of the permanent mortgage;
7. Any deposits being required, including those that the lender has agreed may be satisfied with letters of credit; and
8. Any conditions that are in, will be in, or will affect the permanent financing arrangements.

B. Evaluate:

1. The mortgagee's permanent loan commitment or assurance considering:
 - a. Construction time for the project;
 - b. Sponsor's multifamily development experience;
 - c. Time required to deliver the permanent loan after construction is complete; and
 - d. Conditions that would jeopardize permanent financing at final endorsement.

(5-1) 2. Mortgagee's Certificate, Form HUD-2434, at initial endorsement, to see that it is consistent with the commitment or assurance.

5-2. CHANGES IN CONSTRUCTION AND/OR PERMANENT LOAN INTEREST RATES.

A. If the construction interest rate is reduced before initial endorsement and it is not feasible to reprocess the project, the firm commitment must be amended to contain the following condition:

"Any interest savings resulting purely from a differential between the HUD processed interest rate and the actual construction interest rate may not be construed as excess funds that may be used to offset costs in other categories at the time of cost certification. Any such savings must be applied as a mortgage reduction."

B. If the construction interest rate is increased before initial endorsement, the firm commitment must be rescinded and the application reprocessed to reflect the higher rate.

C. The firm commitment must be reprocessed if the evidence submitted does not indicate that the permanent financing will be available at the rate, for the term, and for at least the mortgage amount identified in HUD's commitment.

D. A willingness of the permanent lender to reduce the interest rate after initial endorsement does not constitute a basis for a mortgage increase.

5-3. PREPARING FORM FHA-2283, FINANCIAL REQUIREMENTS FOR CLOSING. Prepare Form FHA-2283 based on the draft closing documents following the instructions in Reference 16 of the Foreword.

A. Closing documents should be submitted at least 15 working days before the scheduled closing date.

B. Use the following information from the draft closing documents.

1. Amount of the construction contract. Assure the accuracy of the incentive clause and daily rate of liquidated damages.

(5-3) a. If no identity of interest exists between the mortgagor and the contractor and both parties are mutually agreeable, Form HUD-92443, Construction Contract Incentive Payment, may be added as a rider to the construction contract.

b. When an identity of interest exists between the mortgagor and the general contractor and both parties are mutually agreeable, the construction contract may be amended to provide for an incentive payment where there are recognized:

- (1) construction cost overruns; and
- (2) savings in interest, taxes, insurance and MIP.

c. When paragraph b above applies, the following language may be added to Article 3.A.(1) of the construction contract (Refer to Handbook 4430.1):

"Plus the amount by which \$ _____ (the estimated sum of mortgage interest, taxes, property and mortgage insurance premiums applicable to the construction period for this project) exceeds the mortgagor's certified cost for these items through the completion date, as approved by the Commissioner, provided that construction is completed prior to the date specified in Article 2A of the construction contract as amended by approved change orders, and further, that in no event shall the total cash payable exceed the actual cost of construction as approved by the Commissioner."

d. Incentive payment provisions must be included in the construction contract prior to initial endorsement. No modifications to include this provision are permitted after initial endorsement.

e. Compute the daily liquidated damages amount:

- (1) At 32 cents per thousand dollars of mortgage amount using an 8 percent interest rate.

(5-3)(2) Increase or decrease the amount in paragraph (1) by one cent per day for each 1/4 percent change in the interest rate.

(3) A larger amount may be used if agreed to by the mortgagor and general contractor.

f. Ensure that the maximum amount payable under the construction contract coincides with the amount shown on line 4 of Form FHA-2283.

2. Mortgagor's statement of its other fees.

3. Architect's design and supervisory cash fees from AIA Document B181 and HUD amendment.

4. Using Forms HUD-3305/3305A/3306/3306A, Agreement and Certification, determine the financial interests or family relationships which exist between the mortgagor or any of its officers, directors, or stockholders with the architect, general contractor, subcontractors, suppliers, or equipment lessors which are disclosed at the preconstruction conference.

5. Amount of builder's fee to be paid in cash or by means other than cash.

6. Form of assurance of completion for both on-site and offsite construction. Assure adequacy of amounts. Refer to Handbook 4430.1.

NOTE: Determine the estimated construction or rehabilitation cost by:

- Deducting the amount of architect's fees from total for all improvements and any other fees that are not contractor obligations.

- Adding a typical builder's profit in BSPRA cases.

7. Construction and permanent loan discounts and financing costs identified on the mortgagee's Certificate, Form HUD-2434.

a. Review the amount of each item to ensure its reasonableness in relation to current market conditions.

(5-3) b. Prepare a letter for the Director of Housing Development's signature informing the mortgagor of the financing costs eligible for recognition for cost certification purposes. Refer to paragraph 11-10.H for instructions relative to the recognition of financing fees at the time of cost certification.

c. For bond financed cases refer to paragraph 15-3.

d. The mortgagee, bond underwriter, and issuer have the option of deferring collection of additional discounts, financing fees, slow draw fees, etc., through provisions contained in paragraph 18(f) of the Mortgagee's Certificate.

(1) The deferred collection of these items must be an obligation of a third party and both the third party and the mortgagee, bond underwriter or issuer must attest in writing that they will not look for payment from:

(a) Mortgagor.

(b) Mortgaged property.

(c) Mortgage proceeds.

(d) Any reserve or deposit required by HUD in connection with the mortgage transaction.

(e) Rents or other income from the mortgaged property.

(2) The mortgagor entity may issue a surplus cash or residual receipts note to the third party as evidence of the debt. Refer to Chapter 12.

B. For projects involving special side features, assure that the required disclosure is made on the Mortgagee's Certificate, Form HUD-2434. Mortgage Credit is not to review the actual contingent interest, call and/or equity loan documents.

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(5-3) C. The MCE must ensure that the Form FHA-2283 to be used at initial endorsement conforms to the actual contracts and other financial details.

D. For those Sections of the Act where BSPRA is applicable, if an identity of interest between the mortgagor and general contractor ends before initial endorsement and:

1. If time permits:

a. Valuation must reprocess the project excluding BSPRA but including a typical builder's profit and a sponsor's profit and risk allowance (SPRA). The SPRA allowance is 10 percent of the sum of architect's fees, carrying and finance charges, and legal, organizational and audit expenses.

b. The MCE must prepare a revised Form HUD-92264-A and, if previously completed, a Form FHA-2283.

2. If it is not feasible to reprocess, the firm commitment must be amended to contain the following condition:

"The excess mortgage that results from this case being processed by HUD with BSPRA in lieu of a typical builder's profit and SPRA may not be construed as excess funds that may be used to offset excess costs in other categories at the time of cost certification. These funds must be applied as a direct mortgage reduction."

5-4. ORGANIZATIONAL DOCUMENTS. Review the organizational documents, i.e., partnership agreement, articles of incorporation, etc., to determine:

A. If the mortgagor has admitted any new principal partners for which a credit check, financial review and 2530 clearance will be needed before initial closing.

B. The rights and duties of each principal.

C. The capital investment to be made or maintained by each principal.

D. The mortgagor entity remains viable through the term of the mortgage.

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(5-4) E. That the mortgagor is a single asset entity as required by paragraph 6(f) of the Regulatory Agreement, Form HUD-92466.

F. That the document is in compliance with all other requirements of Form HUD-92466.

5-5. GRANT/LOAN AGREEMENT entered into by HUD, the government agency or instrumentality providing grant/loan funds and the mortgage amount must be reviewed to determine compliance with the instructions contained in paragraphs 16-4.A.3.b and c. This agreement must specify the prorata basis on which the funds will be disbursed.

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