

CHAPTER 4. COMPLETING FORM HUD-92330, MORTGAGOR'S CERTIFICATE OF ACTUAL COST

4-1. GENERAL INFORMATION AND DESIRED FORMAT.

- A. Heading of Form. Self-explanatory.
- B. Columns A, B, and C in the body of the form are used to record the actual cost of all enumerated items set forth on the form. Blank lines are provided on the form for listing items not provided for elsewhere.
 - 1. Use Column A to record those costs actually paid in cash as of the date of the form.
 - 2. Use Column B to record those costs to be paid in cash within 45 days after final endorsement.
 - 3. Column C is the sum of Columns A and B.

4-2. COMPLETING LINE ITEMS ON FORM HUD-92330. Use the following guidelines to determine eligible costs for each line item.

- A. Line 1.a. Amount due under terms of Lump Sum Construction Contract (as adjusted). Use this line if there is no identity of interest between the sponsor/mortgagor and the general contractor and a lump sum construction contract is used. Enter the actual amount of cash paid or to be paid by the mortgagor under the terms of the construction contract as adjusted upward or downward by the HUD estimated cumulative effect of approved construction change orders, liquidated/actual damages, or incentive payment, if applicable.
 - 1. Recognize the HUD-estimated increase in general requirements, if any, noted on approved time extension change orders.
 - 2. Include the amount due for the cost of minor items of on-site work which remain incomplete under the construction contract.
 - 3. For capital advance and Section 8 moderate rehabilitation programs where betterments to the project have been added through approved change orders, attach a breakdown of costs associated with the betterments.

- (4-2) 4. Incentive.
 - a. If the construction contract is modified

before initial endorsement to provide for an incentive, compute the incentive based on the rider attached to -the construction contract.

- b. When Construction Contract Incentive Payment, Form HUD-92443 (Form HUD-92443-CA for Section 202/811 capital advance projects), is used, the incentive payment. is to be accounted for on one of the blank lines on Form HUD-92330.
5. Damages Clause. Apply the damages clause of the construction contract when the general contractor doesn't complete the project by the scheduled completion date in the construction contract as amended by HUD change orders.
- a. Calculate the amount of actual and liquidated damages, using the lesser to determine the adjusted upset price.
 - b. To determine actual damages, compute the actual cost of interest, taxes, Insurance, MIP and extension fees for the period from the scheduled completion date through the final completion date.
 - c. To determine liquidated damages multiply the daily liquidated damages rate from the construction contract by the number of days between the scheduled completion date and the actual date of final completion.
 - d. Prorate the net operating income for the period of damages.
 - e. Cut the damages by the portion of the net operating income earned during the liquidated/ actual damage period.

B. Line 1.b. Amount due under terms of a Cost-Plus Construction Contract. Use this line if there is any identity of interest between the sponsor/mortgagor and the general contractor or where a cost-plus form of construction contract is used. Enter the lesser of:

- 1. The cash paid or to be paid by the mortgagor.

4/94

4-2

4470.2

REV-1

(4-2)

- 2. The net amount due under the terms of the cost-plus contract, as adjusted upward or downward by HUD's estimated cumulative effect of approved construction changes, liquidated/actual damages, or incentive payment, if applicable. Refer to paragraphs

A.1 through 5.

3. If a mortgagor acts as its own general contractor, a construction contract is not executed. Instead, Form HUD-92441 Supplement, is added to the Building Loan Agreement, Form HUD-92441.
 - a. The upset price for construction is line 51 of the approved Form FHA-2328, Contractor's and/or Mortgagor's Cost Breakdown (Schedules of Values), as adjusted by the cumulative effect of HUD approved change orders and the incentive provision, if applicable.
 - b. Incentive clause, if any, is incorporated by addendum to Form HUD-92441 Supplement.
 - c. There is no liquidated/actual damages clause.

C. Line 1.c. Allowable Builder's Profit. This line is used with line 1b only.

1. Record builder's profit in Column C.
2. When BSPRA is not applicable, certify to the amount of builder's profit shown in the construction contract whether or not it will be paid in cash.

NOTE: The mortgagor cannot issue a residual receipts/surplus note to evidence this debt where the fee is not paid in cash.

D. Lines 2.a. b and c. Architect's Fee-Design, Supervision and Additional Services. Enter the amount paid in cash or to be paid in cash by the mortgagor.

1. No portion of the fee paid by means other than cash may be considered as an allowable cost.
2. If there is an identity of interest between the sponsor/mortgagor and design architect, the design fee may not exceed the amount set forth in the Agreement and Certification, Form HUD-3305/3306.

- (4-2)
3. Include a breakdown of any additional services provided beyond the required basic services.
 4. Architects of Section 202/811 projects are not permitted to request added monies for reimbursable expenses and additional services beyond compensation provided for basic services.

5. No identity of interest may exist between the supervisory Architect and -the sponsor, mortgagor or contractor.

E. Line 3. Interest during construction. Enter, the amount of interest incurred on the HUD insured mortgage, between initial endorsement (start of construction for insurance upon completion projects) and the cut-off date.

1. Interest costs associated with an approved early start may be allowed provided:

a. The certified amount, when added to the interest cost incurred by the mortgagor, does not exceed the total amount of interest estimated in Section G of Form HUD-92264.

b. Form FHA-2415, Request for Permission to Commence Construction Prior to Initial Endorsement for Mortgage Insurance, was executed and approved.

c. Interest cost reflects the contractor's actual cost of money borrowed to cover the cost of construction between the early start date and the initial endorsement. Rate may not exceed rate established for the insured construction loan.

2. Rate paid on the construction loan cannot exceed:

a. For insurance of advances -- the rate stated in the firm commitment.

b. For insurance upon completion -- the rate approved by the Director of Housing before the start of construction.

3. Deduct accrued interest forgiven by the lender or otherwise not paid in cash.

4/94

4-4

4470.2

REV-1

(4-2)

4. A lender/bond underwriter's refund of any portion of the construction loan interest directly to the mortgagor or sponsor or on behalf of the mortgagor to the mortgagee or an escrow agent is not a certifiable cost.

5. Interest on subordinated liens or other obligations of the mortgagor are not allowed as a certifiable cost.

F. Line 4. Taxes during construction. Based on the same

period as interest. Do not include costs accrued during early start period.

G. Line 5. Property Insurance. Based on the same period as interest.

1. Include amounts for fire, windstorm, extended coverage, liability insurance and other risk insurance customarily insured against in the community.
2. Do not include expenses incurred for workman's compensation and public liability or costs accrued during early start period.

H. Line 6. Mortgage Insurance Premiums (MIP). Based on the same period as interest.

1. Insurance of advances. Enter MIP of 1/2 of 1 percent per annum on the mortgage.
2. Insurance upon completion. No MIP is paid during construction.

I. Lines 7 & 8. HUD application, commitment and inspection fees. HUD fees are allowable in the amounts paid. Fees paid to reopen an expired or terminated commitment are not allowable costs.

J. Line 9. Title and recording expense. Enter cost of:

1. Title search and policy at the time of initial endorsement,
2. Recording fees at initial endorsement,
3. Mortgage and stamp taxes,
4. Survey recording fees,

4-5

4/94

4470.2 REV-1

- (4-2)
5. Updating title policy during construction,
 6. Title search and policy and recording charges for final endorsement, and
 7. Legal fees incurred with any of the above.

K. Line 10. Allowance for Making Nonprofit Projects Operational (AMPO) is included in the replacement cost of insured projects involving nonprofit mortgagors under certain Sections of the Act.

1. Eligible costs include:

- a. Shortfalls in: interest; taxes; property insurance premiums; mortgage insurance premiums; ground rents and assessments during construction when funds under the Building Loan Agreement have been exhausted.
 - b. Unforeseen costs of necessary changes approved by the HUD Field Office.
 - c. Unanticipated hard and soft costs associated with extension of time change orders approved by the HUD Field Office.
 - d. Cost of office furniture and equipment and lounge and lobby furniture.
 - e. Cost of intangibles such as advertising and office supplies essential to the renting of the project.
- 2. Expenditures for change orders and shortfalls in soft costs should be certified to under those specific line items.
 - 3. The amount certified to under AMPO should be the amount of the allowance identified in Section G of Form HUD-92264 less the amounts (change orders, interest, taxes, etc.) certified to under other line items.
 - 4. Expenses paid from the allowance are not to be included in the operating statement.
 - 5. Attach to the certification, an itemization of all expenditures covered by the allowance.

4/94

4-6

4470.2

REV-1

- (4-2) 6. For Section 202/811 projects, use this line to certify to project contingency expenditures. Project contingency cannot be used for intangibles or items with a short-term life cycle such as office and maintenance supplies.
- L. Lines 11a-d. Financing expense. Enter the amount incurred by the mortgagor for the initial service charge (financing fee), construction and permanent loan discounts, permanent marketing fees, and other similar fees.
- 1. Enter the lesser of:
 - a. Amounts paid, or to be paid, in cash.

- b. Amounts shown on Form HUD-2434, Mortgagee's Certificate, or Certificate of Mortgage portion of Form FHA-2455 and approved by the Field Office Director of Housing Development before initial endorsement (insurance of advances) and issuance of firm commitment (insurance upon completion), respectively.
2. Construction lender's initial service charge (not to exceed 2 percent):
- a. Is expected to cover:
 - 1) "Processing fees."
 - 2) "Expenses of lender's counsel."
 - 3) All other charges by the construction lender.
 - b. Excludes:
 - 1) Construction loan discount.
 - 2) Construction loan extension fees.
 - c. Any charges made by the lender for payment of counsel, or charges paid directly to the lender's counsel, to the extent they cause the initial service charge to exceed 2 percent, are not certifiable. Charges related to "Title and Recording" expense are certifiable under that line item.

4470.2 REV-1

- (4-2)
- 3. Permanent lender's placement fee (usually 1.5 percent):
 - a. Is expected to cover all permanent placement expenses except discounts and some of the fees associated with a bond financed transaction.
 - b. If GNMA Mortgaged Backed Securities are involved, the mortgagee may not assess an additional charge for the MBS application fee or for the custodial or delivery fee.

NOTE: Construction and permanent lenders' fees in aggregate shall not exceed 3-1/2 percent and may be divided as agreed upon by the parties involved provided the construction lender's fee does not exceed 2 percent.

- 4. Include cost of:

- a. Discounts (based upon interest rate levels at the time of initial closing for projects involving insurance of advances and issuance of the firm commitment for projects involving insurance upon completion) and construction lender extension fees, if funded at initial endorsement and shown on the Mortgagee's Certificate, Form HUD-2434.
- b. Permanent lender extension fees, shown on Form HUD-2434, if funded before the final completion date.
- c. For insurance upon completion cases, construction and permanent loan extension fees, shown on the Certification of Mortgagee portion of Form FHA-2455, if funded before cost certification cut-off.
- d. Financing fees (including extension fees and discounts) paid on behalf of a mortgagor by a third party under paragraph 18f of the Mortgagee's Certificate or paragraph 10h of Certificate of Mortgagee portion of Form FHA-2455 and shown as a current liability on the mortgagor's balance sheet.

4/94

4-8

4470.2

REV-1

(4-2)

- e. For bond financed projects, cost of issuance, discounts and financing fees in excess of 3-1/2 percent provided the information in paragraph 6-1 is submitted.

5. Don't include:

- a. Any "side deals" (except for approved discounts) by which the mortgagor agrees to pay for "added cost of money." Any such deals must be explained in the notes to the financial statements.
- b. The cost of purchasing of FNMA stock.
- c. Discounts required to buy down the construction and/or permanent rate to a below market rate.
- d. Partial refunds of the commitment fee allowed in processing, which are returned to the mortgagor or sponsor.
- e. Discounts or other fees paid for by a

contribution of a portion of the initial service charge by the lender/bond underwriter.

M. Lines 12 a-c. Legal, organization and audit expenses.

1. Organization expenses. Enter the amount incurred by the mortgagor to:

- a. Initiate a project,
- b. Organize a project's planning, financing and construction,
- c. Control and manage construction through endorsement.

2. Legal expenses.

- a. Enter the amount incurred by the mortgagor for: initial through final closing; tax advice during organization of mortgagor entity only; and preparation of documents and representation for and during organization of the mortgagor entity.

4-9

4/94

4470.2 REV-1

(4-2)

b. Include customary expenditures expected to be incurred before and during initial closing, construction period, and final closing.

c. Do not include costs associated with:

1) The usual expenses connected with land acquisition which are already included in, or contributing to:

- a) Title and recording expense.
- b) Estimated market price of site.
- c) Obtaining changes in zoning.

2) Cost of legal services to create tax shelters, trusts, etc.

d. For co-ops, see the Cooperative Housing Handbooks 4550.1 through 4550.6 since special instructions apply.

3. The audit fee covers the cost of the accountant's audit and opinion of the mortgagor's certificate of costs.

N. Line 13. Other. Include all costs and recovery of costs eligible for inclusion in the computation of the Builder's and Sponsor's Profit and Risk Allowance (BSPRA), which are not provided for elsewhere and which are clearly attributable to the actual cost of the project. These costs include:

1. Incentive payment. based on Form HUD-92443, if applicable.
2. Contractor's bond premium if paid by the mortgagor.
3. Other fees, including engineering and topographical survey paid by the mortgagor. If any of these costs were included in the construction contract, the construction contract amount must be adjusted.
4. Contingency reserve included in substantial rehabilitation projects.
 - a. Contingency reserve may be used for:

4/94

4-10

4470.2 REV-1

(4-2)

- 1) Unforeseen costs of necessary changes approved by the HUD Field Office.
- 2) Unanticipated hard and soft costs associated with extensions of time change orders approved by the HUD Field Office.
- b. Contingency reserve may not be used to:
 - 1) Fund changes classified as betterments by the Field Office Architectural Branch.
 - 2) Provide additional profits and/or fees to the architect, attorney or other development team members.
- c. Certify expenditures for change orders and shortfalls in soft costs under those specific line items.
- d. Attach to the certification, an itemization of all expenditures covered by the reserve.

O. Subtotal. Self-explanatory. Reflect the subtotal in Column C.

P. Line 14. Builder's and Sponsor's Profit and Risk Allowance (BSPRA). Allowed under Sections 220, 221(d)(3), 221(d)(4), and 231 of the Act if an identity

of interest exists between the a profit motivated mortgagor and general contractor. For profit motivated nonidentity of interest cases under these Sections of the National Housing Act, include SPRA on this line item.

1. BSPRA.

- a. Compute without regard to amounts on Form HUD-92264.
 - 1) Use the percentage used in the original computation of BSPRA.
 - 2) Base the BSPRA computation on certified costs excluding the cost of offsites, land, payments for acquisition of a leasehold, ground rent, relocation expenses, any supplemental management fund and major moveable equipment, if any.

4-11

4/94

4470.2 REV-1

(4-2)

- b. When the "50 percent: - 75 percent" rule (refer to paragraph 5-5) is violated or the identity of interest between the mortgagor and general contractor ceases to exist before final completion, certify to SPRA on this line item. If the "50 percent - 75 percent" rule is violated, the general contractor forfeits its profit.
- c. If an identity of interest between the mortgagor and general contractor is established after initial endorsement and exists at the time of final completion, certify to BSPRA in lieu of a builder's profit and SPRA.

- 2. SPRA. Compute based upon 10 percent of the sum of allowed certified costs for architect's fees, carrying charges and financing, and legal, organizational, and audit expenses.

Q. Line 15a-d. Consultant's Fee, Major Moveable Equipment, Offsite and Demolition and Other.

- 1. Consultant's fee. If included in the replacement cost on Form HUD-92264 for a nonprofit mortgagor, certify to the lesser of the amount:
 - a. Paid or to be paid by the nonprofit mortgagor.
 - b. Specified in Form HUD-92531-A, Standard

Contract for Housing Consultant Services for Nonprofit Projects Under HUD Programs Exclusive of Section 202, or Form HUD-92531A-CA, Contract for Housing Consultant Services for Nonprofit Projects Under Section 202 or Section 811, whichever is applicable.

c. Included in Form HUD-92264.

2. Major Moveable Equipment. When major moveable equipment in Section 232 Nursing Home and Section 221(d) Single Room occupancy projects is not included in the construction contract, enter the amount expended by the mortgagor for the purchase and installation of the equipment.

4/94

4-12

4470.2

REV-1

(4-2)

3. Offsite and demolition. Certify to the lesser of:

a. Contract price(s) for offsite and demolition as adjusted by HUD's estimated cumulative effect of approved offsite and demolition change orders.

b. Actual cash paid or to be paid for offsite and demolition work.

4. Other. Include all costs and recovery of costs eligible for inclusion in the computation of BSPRA, which are not provided for elsewhere, but which clearly are attributable to the actual cost of the project. These costs include:

a. Cost of acquiring the leasehold interest.

b. Ground rent paid during the same period used in computing interest. Do not include costs accrued during early start period.

c. Residential relocation funds. Enter the actual costs paid or to be paid by the mortgagor for resident relocation.

d. Supplemental management fund established on Form HUD-92264. Certify to the full amount identified in Section G of the Form.

R. Subtotal. Self-explanatory.

S. Lines 16a and b. Reflect reductions for the following:

1. All mortgagors, except for nonprofit mortgagors, are required to enter the net income shown on the

operating statement accompanying the cost certification submission.

2. For nonprofit mortgagors, enter amount of net income, if any, applied as an offset to liquidated/actual damages.
3. For co-ops, see the Cooperative Housing Handbooks 4550.1 through 4550.6 since special instructions apply.
4. Include the following other reductions on this line (include an explanation of all reductions):

4-13

4/94

4470.2 REV-1

- (4-2)
- a. Compensation from an insurance claim including any income earned by investing the proceeds of the claim.
 - b. Refer to paragraph 6-2 for projects involving bond financing.
 - c. Grants/loans to the mortgagor entity and/or principals of the mortgagor entity used to pay for any of the certified costs.

T. Supporting documentation.

1. Lines 1.a. 1.b and 1.c. Attach a schedule which identifies:
 - a. The actual amount paid or to be paid under the terms of the original contract price.
 - b. Adjustment to contract price resulting from HUD-approved change orders (Include hard costs associated with approved time extension change orders).
 - c. Adjustment for liquidated/actual damages or incentive payment, if applicable.
 - d. Amount of any kickbacks, rebates, trade, discounts or other similar payments received.
2. Lines 2c through 6, 9 through 13 and 15b. c and d. Provide an itemized breakdown of costs and copies of supporting bills and receipts not submitted previously in a draw request.
3. Lines 16a and b. Provide an itemized breakdown of the indicated reductions.

U. Totals. This line is self-explanatory. Columns A and B will not necessarily equal Column C.

