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CHAPTER 1. GENERAL INTRODUCTION TO SECTION 202 PROGRAM

- 1-1. AUTHORITY. The program of direct loans for housing for the elderly or handicapped is authorized by Section 202 of the Housing Act of 1959, as amended, Public Law 86-372, 73 Stat. 654, 667, 12 U.S.C. 1701q. Applicable regulations appear in the Federal Register, 24 CFR Part 885, and are hereby incorporated by reference and made a part of this Handbook. (See Appendix 1.)
- 1-2. DELEGATION OF AUTHORITY. Under a decentralized Section 202 program, responsibility for program administration has been delegated to Area Managers, including the Supervisors of Multifamily Service Offices. These Service Offices are identified at 24 CFR 200.128. Area Managers, Supervisors of Multi-family Service Offices, and their deputies, are delegated authority to approve or disapprove loans for housing for the elderly or handicapped under Section 202, to amend fund reservations for approved Borrowers, and to make contracts and execute documents. As used in this Handbook, Area Managers and Housing Directors shall also refer to Supervisors of Multifamily Service Offices.
- 1-3. DEFINITIONS. Definitions applicable to this Handbook are covered in Section 885.5 of the Section 202 Regulations.
- 1-4. PURPOSE AND POLICY.
 - a. Purpose. The purpose of the Section 202 program is to provide direct Federal loans for a maximum term of 40 years under Section 202 of the Housing Act of 1959, as amended, to assist private, nonprofit corporations and consumer cooperatives in the development of new or substantially rehabilitated housing and related facilities to serve the elderly, physically handicapped, developmentally disabled or chronically mentally ill adults.
 - b. Policy. The policy of this program requires that Section 202 loans be used to finance the construction or substantial rehabilitation of residential projects for the elderly or the handicapped. With the consolidation of the application requirements of both the Section 202 and Section 8 programs in Part 885 -- Loans for Housing for the Elderly or Handicapped, projects which meet the requirements of the Section 202 program shall be deemed to have met the requirements for housing

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(1-4) assistance payments under the Housing Assistance Payments Program as provided in the U. S. Housing Act of 1937, as amended. Accordingly, a separate application for Section 8 assistance is not necessary.

(1) Eligibility for Occupancy. Occupancy of housing financed under the Section 202 program is open to elderly or handicapped families and to handicapped persons, as defined and discussed below:

(a) An elderly or handicapped family means:

- 1 Families of two or more persons the head of which (or his or her spouse) is 62 years of age or over or is handicapped, or
- 2 The surviving member or members of any family described in subparagraph 1 above, living in a unit assisted under the Section 202 program with the deceased member of the family at the time of his or her death, or
- 3 A single person who is 62 years of age or over, or a nonelderly handicapped person between the ages of 18 and 62, or
- 4 Two or more elderly or handicapped persons living together, or one or more such persons living with another person who is determined by HUD, based upon a licensed physician's certification provided by the tenant family or prospective tenant family, to be essential to their care or well-being.

(b) A handicapped person means:

- 1 Any adult having an impairment which is expected to be of long-continued and indefinite duration, is a substantial impediment to his or her ability to live independently, and is of a nature that such ability could be improved by more suitable housing conditions, or
- 2 The term "developmental disability" means a severe, chronic disability of a person which
 - (A) is attributable to a mental or physical impairment or combination of mental and physical impairments;

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- (B) is manifested before the person attains age twenty-two;
 - (C) is likely to continue indefinitely;
 - (D) results in substantial functional limitations in three or more of the following areas of major life activity: (i) self-care, (ii) receptive and expressive language, (iii) learning, (iv) mobility, (v) self-direction, (vi) capacity for independent living, and (vii) economic self-sufficiency; and
 - (E) reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.
- 3 An adult who is chronically mentally ill, i.e., with a severe and persistent mental or emotional disorder that seriously limits his or her functional capacities relative to primary aspects of daily living such as personal relations, living arrangements, work, recreation, etc., and whose disability could be improved by more suitable housing conditions. NOTE: Alcoholism and drug addiction are not included in the definition of chronically mentally ill.
- (2) Independent Living. Housing intended specifically for occupancy by the elderly or the handicapped or the disabled should be designed to maximize their ability to live independent . Except for group homes or other shared living arrangements for the nonelderly handicapped, only projects with housekeeping apartments, with or without central dining, and with a variety of appropriate services, are eligible. Consideration in the planning and design of projects must be based on the recognition that the individual units are the residents' own homes. This means that their rights to privacy are the same as if they were living in a single family house, or any other private home. At the same time, architects and owner-managers must at least provide opportunities to encourage residents to participate in various activities with their fellow project residents and others in the community.

- (1-4) (3) Significance of Sponsor. Under Section 202, the Sponsor of the housing project is expected to have a continuing relationship with the project and its residents over the life of the project. Partly because of this continuing relationship, the nature of the Sponsor has had a significant effect on the composition of the tenancy. In particular, research indicates that minority participation as residents is directly related to minority sponsorship of projects.
- (4) Affirmative Marketing. In carrying out affirmative marketing activities, the Borrower must determine the racial or ethnic groups least likely to apply, taking into consideration the location of the project, and shall establish a plan to inform and encourage such groups to apply. In soliciting applicants, the aim of the Borrower shall be to provide housing opportunities for a broad range of eligible elderly/handicapped persons.
- (5) Significance of Location. The significant role of a good location in the success of any housing project is difficult to overstate. As indicated above in subparagraph b(1) in the discussion of the need to design for independent living and below in subparagraph b(6), to assure the availability of a variety of services, the location selected for housing for the elderly or the handicapped is of even greater importance to such projects than in housing intended for others in the community-at-large. Projects which, by their location or architectural design, discourage continuing relationships with others in the community will not be approved. However, a project should not be rejected simply because it would be located next to or in close proximity to a nursing home, for example, or other institutional facilities, but should be considered on its own merit. In this regard, a primary concern is that the project not be dominated by an institutional environment.
- (6) Services.
- (a) The housing projects shall be designed to provide, and management plans also shall include, an assured range of necessary services for the occupants, such as, among others, health, continuing education, welfare, informational, recreational, homemaker, counseling and referral services, as well as transportation where necessary to facilitate convenient access to such services and also to employment opportunities and participation in religious activities.

- (1-4) (b) Management plans must be designed to encourage and assist occupants in the use of such services and

facilities which are made available. Management plans also must include a discussion of the management and maintenance responsibilities of the Borrower, as well as a discussion of how the Borrower plans to deliver necessary services and what arrangements will be made to pay for such services.

- (c) Various HUD Handbooks and Guides concerning management of and services needed in housing for the elderly may be obtained from HUD Field Offices. They include HUD Handbook 7460.1, HUD-Assisted Housing Management Guide on Congregate Housing; HUD Handbook 7460.3, Management Guide on Housing for the Elderly.
 - (d) Each Field Office has staff with community services functions or experience. This staff has specialized knowledge of agencies and organizations at the State and local level which have the capacity to provide assistance to residents of housing for the elderly and the handicapped. Borrowers, Sponsors, consultants, and architects should feel free to consult this staff about the special needs of the elderly and the handicapped, the types of services available to residents, the resources available for the provision of such services, and information on any agreements between HUD and other Federal agencies and between HUD and State and local agencies on aging or Departments of Welfare or Social Services.
 - (e) Interested groups also might wish to obtain information directly from other Federal agencies which administer various social services programs. These include, among others, the Administration on Aging (AoA) of the Department of Health and Human Services (HHS), the Rehabilitation Services Administration (RSA), the Administration on Developmental Disabilities and the Department of Transportation (DOT).
- (7) Health Care. Under Section 202, provisions for health and medical care are expected to be based primarily on facilities and services offered in the community rather than by the project. Provisions for emergency care must be included in management plans and a project might incorporate an emergency room, if necessary, for temporary treatment, but not to provide care overnight or for extended

- (1-4) periods. However, multi-purpose rooms could be used for such purposes as blood donations, vaccinations, or other similar activities. No staff provisions for doctors, nurses or other medical personnel are permitted under the

program, although consideration may be given to renting space for a doctor, dentist, or other medical professionals.

- (8) Facilities for Religious Observances. Under Section 202, facilities cannot be set aside for use only for religious purposes. However, a multipurpose room may be used for religious services and other related purposes from time-to-time. Religious articles or equipment may not be installed permanently and must be removed promptly at the conclusion of any service or observance. In addition, any room or space used for such purposes must be available for use on an equitable basis by all religious groups comprising the tenancy.

- (9) Statutory Requirement for Economies. There is a statutory requirement that all projects financed under this program must not be elaborate or extravagant design or materials. In addition, all participants must be kept aware that cost limits and Section 8 Fair Market Rent Limits are intended to serve as the upper limits of acceptability, and projects with maximum costs and maximum rents should be the exception, rather than the rule. Requests for Conditional or Firm Commitments for Direct Loan Financing must be based on realistic cost and rent estimates and all facets of each proposal will be subject to suggested changes by HUD staff to achieve maximum economies, both in development costs and operating costs, consistent with the goal of good housing and related Facilities for the intended occupants. At the same time, false, short-term economies must be avoided to minimize maintenance and replacement costs over the long run. This requires fine tuning between initial and long-term costs. Good housing, together with reasonable costs and reasonable rents, can be achieved through the continuous cooperation of all concerned--HUD staff, Borrowers, Sponsors, consultants, architects, the builders, management, residents and the community. (For additional cost containment and modest design requirements, see paragraph 1-5h.)

- (10) High-rise Construction for the Elderly may be utilized when
 - (a) Land costs are so high that providing equivalent accommodations in structure types of lower density would threaten the economic feasibility of the housing; or

- (1-4) (b) The social environment is such that the provision of safety and security is of special importance and concern; or,

- (c) The only sites which offer adequate proximity to community services and facilities and accessibility to low cost transportation are so costly that only high-rise construction is feasible; or
- (d) Established land use patterns mandate high-rise construction.

1-5. GENERAL APPLICATION LIMITS.

- a. Unit Limits for Borrowers and Sponsors. Each invitation for applications for Section 202 reservations shall state that no single Borrower shall apply for more than 3,000 units of Housing and Related Facilities nationwide, nor for more than 300 Housing Units and Related Facilities in a single Region. No single Borrower shall receive a reservation of loan funds in a single Region in excess of the amount necessary to finance the construction or substantial rehabilitation of 300 units of Housing and Related Facilities. No Borrower or Sponsor can be a party independently or as a co-Borrower with one or more other Borrowers, co-Borrowers or Sponsors in any HUD Region for more than 300 units or receive a reservation of loan funds for more than the amount necessary for 300 units of Housing and Related Facilities. If it is found that any Borrower or Sponsor is a party to more than 300 units in that Region, it will be asked to identify which 300 units in that Region to which it wishes to be party for consideration for a fund reservation in that Region.
- b. Unit Limits for Housing for the Elderly. Although a Borrower may be a party to one or more applications for up to 200 units in any Region, reservations for projects intended primarily for the elderly generally will not be approved for more than 200 units. This policy is intended to avoid undue concentration of housing for the elderly in any one part of the community and to expand the number of areas in the community in which the elderly can choose to live in housing specially designed to meet their needs. Given the limited funds available, such a limit also is more equitable as it provides for a broader range

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- (1-5) of sponsor participation and greater geographic distribution. Accordingly, proposals which would result in more than about 200 units of specially designed housing for the elderly in that immediate area should not be approved. Exceptions to this policy may be considered, however, in connection with rehabilitation proposals and others on a case-by-case basis. Field Office Directors must fully document the reasons for approving proposals which contemplate projects in excess of the approximate 200-unit limit.

- c. Unit Limits for Housing for the Physically Handicapped. Prospective Borrowers should be aware of HUD's policy to encourage housing for the physically handicapped which provides for their continued integration in the community among the nonhandicapped of all ages, rather than permitting them to live only among the elderly. Accordingly, proposals for the nonelderly physically handicapped generally will be approved only for small apartment complexes of up to 40 units or group homes for occupancy of up to 15 persons, not including resident assistants. Projects for the physically handicapped also should be scattered throughout their communities in the continuing effort to normalize living for disabled people and to try to assure that they will continue in the mainstream of community life.

- d. Unit Limits for Housing for the Developmentally Disabled.
 - (1) Housing for the developmentally disabled may be proposed for small group homes of up to 15 persons per site or independent living residences of up to 40 units. Facilities for six to eight persons are preferable, if feasible, as smaller projects can provide more normal and home-like noninstitutional environment. As with housing for the elderly and the physically handicapped, facilities should be scattered throughout their communities and should not be located on adjacent sites, if they would exceed the above limits.

 - (2) Most proposals involving the developmentally disabled are for group homes. However, to be consistent with the basic objective of maximizing independence, proposals for the developmentally disabled which provide opportunities for more independent living will be encouraged.

- (1-5) e. Units Limits for Housing for the Chronically Mentally Ill. Projects designed exclusively for the chronically mentally ill are eligible and may provide group homes for up to 15 persons or independent living residences to serve up to 20 persons. As for other projects under the Section 202 program, group homes or independent living residences for the chronically mentally ill should be scattered throughout their communities in residential neighborhoods.

- f. Flexible Design. HUD policy requires that all projects intended for occupancy by the elderly will be designed for independent living. While projects are eligible which include both group homes and independent living residences, the two types of facilities must be on scattered sites. Shared living

arrangements may require a variety of support or assistance that may take the form of resident houseparents or assistants, supervisors, attendant or personal aides, who may live-in or may come in daily or as needed by the residents. Any proposal for a waiver of limits for the number of handicapped persons or units on single or contagious sites will be considered only on a case-by-case basis and must be fully documented. Such waiver requests must be submitted to the appropriate field office and must be approved by the Assistant Secretary.

g. Other Considerations for Housing for the Physically Handicapped, Developmentally Disabled and Chronically Mentally Ill.

- (1) Housing for the physically handicapped, the developmentally disabled, and the chronically mentally ill should be located in predominantly residential neighborhoods where other family housing is located and in reasonable close proximity to shops, commercial facilities and services, job opportunities, recreational facilities, and the like. Such housing shall not be located in areas characterized by or adjacent to institutional facilities including, but not limited to schools for the handicapped, workshops, day-care centers or medical facilities.

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- (1-5) (2) For new construction, all units must be accessible to and usable by the physically handicapped, either by inclusion of elevators or entrances at each grade level. Preferably, all units in a rehabilitation project also should be accessible to and useable by the physically handicapped. However, a rehabilitation proposal may be considered marginally acceptable if, for example, it involves a two-story building, in which an elevator would not be feasible, in which case the second story would not be accessible to some physically handicapped persons.
- (3) In group homes, either the zero-bedroom or one-bedroom cost and rent limit will be applicable. The one-bedroom limits may be used only if the bedroom space, plus the proportionate part of the common spaces which ordinarily make up a living unit, such as the living room, dining room, kitchen, pantry, bathrooms and hallways, which should be allocated to the bedroom unit, are equal to the minimum space requirements for one-bedroom units. Otherwise, zero-bedroom unit limits shall be used. Cost Not Attributable to Dwelling Use and Cost Not Ordinarily Attributable to Dwelling Use will be treated in the same

manner as in other Section 202 projects as discussed in Chapter 5, paragraphs 5-23 and 5-24. It is anticipated that bedrooms intended for two-person occupancy will be designed to accommodate two persons comfortably and with more space than in bedrooms intended for single occupancy. In any case, the cost limits and rents are to be determined on a per-unit and not on a per-person basis.

- (4) In all group homes, only one or two-person occupancy will be permitted in each bedroom unit.
- (5) In all group homes, the living unit occupied by the houseparents must be accessible to all residents of the homes.
- (6) Lavish design must be avoided.
- (7) There shall be at least one full bathroom for every four residents.

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- (1-5) (8) Each group home should be designed so that corridors are kept to a minimum length to avoid the appearance of an oversize home or an institution.
- (9) Provisions should be made both for active and passive recreational activity, and plans should include facilities both for indoor and outdoor recreation at the project site.
- (10) Careful attention should be given to limiting the number of exterior entrances to provide security for the residents.
- (11) Sufficient storage should be incorporated in each living unit for each prospective resident.
- (12) The budget for management normally should include sufficient funds for houseparents as well as relief houseparents. Financing for other staff needs should be obtained from sources other than income from rents.

- * (a) Title XX, a Social Security Act social services program (now included under the Social Services Block Grant program) would be an acceptable source of funds needed for such purposes. Under Title XX, a 75 percent Federal formula grant to the State is used for a wide variety of social and other services for low-income persons, including the elderly. Examples of these services include a variety of meal, housekeeping and personal care services, recreation, continuing education, employment opportunities, transportation,

counseling, legal services, welfare, health-related services, vocational and rehabilitation service and housing services.

- (b) If the Borrower and Sponsor indicate that they would be dependent on Title XX grants, they should be able to document their success in obtaining such funds in the past or that such funds will, in fact, be available for their project. In this regard, Title XX funds cannot be assured beyond a limited number of years. Thus, the Borrower or Sponsor must identify alternative sources of funds if Title XX grants are not available when the project opens for occupancy, or when such funds are no longer available. The Sponsor, various Federal, State, and local public or private agencies might be among other sources of funds.

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(1-5) h. Cost Containment and Modest Design Requirements.

- (1) Each application will be examined to assure that design is not excessive in terms of amenities and cost of materials (but not including materials which result in energy efficiency).
 - (a) Where alternative methods of construction and materials are available at significantly less cost than those being proposed, HUD has an obligation to urge consideration of such alternatives and give greater consideration in approving projects to those proposals that incorporate efficient construction design.
 - (b) Unacceptable amenities include, but are not limited to bowling alleys, swimming pools, saunas, jacuzzis, balconies, atriums, dishwashers, and individual trash compactors.
 - (c) Unusual building configurations, not required to provide for the needs of the occupants, which unnecessarily increase the extent of exterior walls, or which require special materials or construction methods, shall not be accepted unless there are demonstrated cost savings.
- (2) The proposed unit sizes and number of bathrooms proposed shall not exceed the following (except for substantial rehabilitation projects where it would be more expensive to comply with these limitations than to retain the

existing features):

Number Bedrooms	0	1	2	3	4
Sq. Ft. Rentable Area	415	540	800	1050	1150
Number Baths	1	1	1	1-1/2	2

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- 1 For projects involving five or more bedrooms the maximum unit size may be increased by up to 100 sq. ft. for each additional bedroom.
 - 2 With regard to group homes, the following sq. ft. are applicable in determining the applicable Fair Market Rents and Cost Limits:

0 Bedroom	up to 449 sq. ft.
1 Bedroom	450 to 540 sq. ft.
- (3) All applications for housing for the elderly shall include at least 25 percent efficiency units, unless a waiver request is submitted at the Fund Reservation stage and the EMAD and Valuation staffs determine that such units are not readily marketable in the community where the project is to be located. This efficiency requirement does not apply to independent living complexes for the handicapped, disabled or chronically mentally ill nor to substantial rehabilitation projects where it would be more expensive to comply with the requirements than to retain the existing unit composition.
- (4) Two bedroom units are prohibited except for the resident manager's unit. This two-bedroom prohibition will not apply to independent living projects designed wholly for the nonelderly handicapped. Additionally, projects designed wholly for the nonelderly handicapped may include three and four or more bedroom units to meet the needs of larger nonelderly handicapped families.
- (5) Cost not attributable to dwelling use normally shall not exceed 10 percent of the total project space. Central kitchen and dining facilities may only be approved if the Borrower demonstrates that the dining facility will be self-sustaining and in full use at initial occupancy. To achieve economies in development cost, special spaces and accommodations must be designed to serve more than one function, i.e., multipurpose rooms used to the maximum extent feasible.
- (6) Commercial space such as beauty and barber shops and

convenience stores may not be provided unless they are self-sustaining, provide needed services for residents, and do not exceed five percent of the total project space.

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1-6. AMOUNT OF LOAN.

a. Loan Amount Limitations. The loan amount shall not exceed the lowest of:

- (1) The total development cost of the project,
- (2) An amount which entails a debt service not in excess of 97 percent of the estimated net income, or
- (3) An amount attributable to dwelling use, excluding exterior land improvement as defined in paragraph 1-6b(1), not to exceed:

- (a) \$22,900 per family unit without a bedroom;
\$26,550 per family unit with one bedroom;
\$31,500 per family unit with two bedrooms;
\$37,100 per family unit with three bedrooms; and
\$42,000 per family unit with four or more bedrooms.

- (b) To compensate for the higher costs incident to the construction of elevator-type structures, the above dollar limitations per family unit may be increased to:

- \$26,400 per family unit without a bedroom;
\$30,550 per family unit with one bedroom;
\$36,200 per family unit with two bedrooms;,
\$42,700 per family unit with three bedrooms; and
\$48,700 per family unit with four or more bedrooms.

- (c) The limitations specified in this paragraph for two, three, four or more bedrooms shall be restricted to the nonelderly handicapped families, except for a project manager's unit.

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- (1-6) b. Exceptions to loan amount limitations are as follows:
- (1) The loan amount may exceed the limits listed above in subparagraphs (3) (a) and (b) by not more than 100 percent of the cost not attributable to dwelling use (see Chapter 5, paragraphs 5-23 and 5-24), including exterior land improvements.
 - (2) The Assistant Secretary may increase any of the foregoing per family unit limitations by up to 75 percent in any geographical area where the cost level requires. The Assistant Secretary may increase any of the foregoing per family unit limitations by up to 90 percent on a project-by-project basis.
 - (3) If the Assistant Secretary finds that because of high costs in Alaska, Guam or Hawaii, it is not feasible to construct dwellings without the sacrifice of sound standards of construction, design, and liveability, within the limitations of maximum loan amounts provided above, the principal amount of mortgages may be increased by such amounts necessary to compensate for such costs, but not to exceed in any event, the maximum, including the high cost increases, if any, otherwise applicable by more than one-half thereof.
- c. Reduced Loan Amounts for Leaseholds. In the event the loan is secured by a leasehold estate rather than a fee simple estate, the allowable cost of the property upon which the loan amount is based shall be reduced by the value of the leased fee which is defined to be the value of the lease (and reversionary rights) to the fee simple owner. (See Handbook 4465.1, Valuation Analysis for Project Mortgage Insurance, Chapter 3 for discussion of leaseholds.)
- d. Adjusted Loan Amounts for Rehabilitation. Loans which involve projects to be rehabilitated shall be subject to the following additional limitations.
- (1) Property Held in Fee. If the Borrower is the fee simple owner of the project not encumbered by a mortgage, the maximum loan amount shall not exceed 100 percent of the cost of the proposed repairs or rehabilitation.

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- (1-6) (2) Property Subject to Existing Mortgage. If the Borrower owns the project subject to an outstanding indebtedness which is to be refinanced with part of the Section 202 loan, the maximum loan shall not exceed the cost of repair or rehabilitation, plus such portion of the outstanding indebtedness which does not exceed the fair market value of such land and improvements prior to the repair or rehabilitation, as determined by the field office. Any outstanding indebtedness placed against the owned property within a year of the date of the application for a Section 202 reservation will be excluded in calculating the loan amount under this criterion, unless it is clearly evident that it was not created to circumvent this loan amount limitation. If the property(ies) was (were) acquired within a twelve-month period prior to submission of the application for a fund reservation, the limitation for "Property to be Acquired" (see below) shall apply in lieu of the limitation for "Property Subject to Existing Mortgage."
- (3) Property to be Acquired. If the property is to be acquired by the Borrower and the purchase price is to be financed with a part of the Section 202 loan, the maximum loan amount shall not exceed the cost of the repair or rehabilitation, plus such portion of the purchase price that does not exceed the fair market value of the land and improvements prior to the repair or rehabilitation as determined by the field office. Where there is an identity-of-interest between the seller(s) of the existing property and the Borrower and/or Sponsor, the application shall be considered as a refinancing rather than a purchase transaction for the purpose of determining the loan amount. The limitation for "Property Subject to Existing Mortgage" shall apply in lieu of the limitation for "Property to be Acquired."

1-7. RELATED PROGRAMS.

- a. Section 106(b) Financial Assistance for Nonprofit Borrowers for Section 202 Housing. Interest-free loans may be made to eligible Borrowers to cover 80 percent of certain eligible preconstruction costs of planning the Section 202 project (see Handbook 4535.2, Section 106(b)

Nonprofit Sponsor Assistance Loans for Section 202 Projects for the Elderly or Handicapped). Such costs may include, but are not limited to, organizational expenses, land options, and legal, housing consultant, and architectural fees. Such loans are repayable out of the Section 202 loan. Applicable Regulations appear at 24 CFR, Part 271, Subpart B. The request for a Section 106(b) loan may be submitted with the application for a fund reservation or at any time prior to the initial closing of the Section 202 loan.

- B. Section 8 Housing Assistance Payments Program. Participation in the Section 8 Housing Assistance Payments Program is required for a minimum of 20 percent of the units in any Section 202 project. However, if the Borrower proposes Section 8 assistance for fewer than 100 percent of the units (with the exception of one nonrevenue resident managers unit), Headquarters must review and approve the request prior to selection of the application.

1-8. SPECIAL FINANCIAL PROVISIONS.

- a. A minimum capital investment of one-half of one percent (.5%) of the total HUD-approved loan, not to exceed \$10,000 has been established.
 - (1) This minimum investment may be satisfied by making a cash contribution no later than the initial closing or by contributing all or a portion of the land draw available to the Borrower at the initial closing, as determined by HUD. Where the Borrower proposes to donate all or a portion of its land draw, an amount equivalent to the minimum capital investment required shall be entered on the Project Application Form HUD-92013.

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- (1-8) (2) At initial closing, these funds shall be placed in escrow with HUD, or other escrow agent acceptable to the Field Office Director, and shall be held through the construction period and for at least a three-year period from the date of initial occupancy. These funds may be used only for operating expenses or deficits (see Chapter 7, paragraph 7-16).
- (3) The prior approval of the Area Manager is required to use such escrowed funds. Any unexpended balance remaining in the minimum capital investment account at the end of the escrow period shall be returned to the Borrower.

- (4) In addition to the minimum capital investment, the Borrower also might have to provide additional funds at initial closing for an off-site escrow, or an initial operating deficit, or other requirements that may be determined during technical processing. Additional funds also may be required of the Borrower during the construction period because of unforeseen expenses.
- b. Loans from the Contractor or other parties standing to gain a profit from the project are prohibited. The Borrower may borrow funds required for any project purpose from the Sponsor. Also, Borrowers may obtain funds from persons or firms in no way connected with the project provided that the indebtedness will not create a situation where the person or firm can exercise any direction or control over the Borrower. If funds are to be borrowed for project purposes (except for funds to meet the required minimum capital investment) not to be included in the mortgage, the total amount of the debt must be secured by a promissory note executed by the Borrower on Form FHA-1710. The form provides for the prior written approval of the Assistant Secretary for payment of the loan. However, for Section 202 nonprofit Borrowers, the notes may be endorsed as follows:

"Approval to make repayment of this loan from Residual Receipts is hereby granted this _____ day of _____, 19__.

Assistant Secretary for Housing
Federal Housing Commissioner by
'Authorized Agent'"

1-9. COOPERATIVES.

- a. If the Borrower is a nonprofit consumer cooperative, the proposed housing cooperative would be developed as a management-type. Instructions in HUD Handbook 4550.2, except as modified herein, would be applicable and the requirements of Form FHA-3206, Commitment for Insurance of Advances, would be followed. If the Borrower is a private, nonprofit corporation other than a cooperative, and it intends from the outset of the application process to convert to a cooperative, HUD Handbook 4550.5 instructions would be applicable, except as modified herein, and the requirements of Form FHA-3206 would be followed. In either case, Section 202 cooperatives will follow the organization format of Section 221(d) (3) Market Interest Rate cooperatives.
- b. Interested groups should be aware that the physical assets

of the cooperative corporation cannot be sold for the personal gain of any of its members. In addition, the Articles of Incorporation shall provide that after a decision of the members to discontinue operations as a cooperative, the physical assets of the cooperative will be conveyed to HUD or at HUD's discretion, to an eleemosynary organization.

- c. It also should be noted that consumer cooperatives intending to provide rental housing would be subject to the same provisions as nonprofit corporations providing rental housing.

1-10. USE OF HOUSING CONSULTANTS.

- a. Some nonprofit Borrowers sincerely interested in providing housing for the elderly or handicapped lack the staff and other facilities to develop a project. HUD recognizes that there may be a need for these organizations to use the services of professional housing consultants. Qualified consultants can expedite the development of the proposal, improve the quality and help lower costs. In recognition of such services, HUD will permit a reasonable fee for consultant's services to be included in the Section 202 loan amount. However, a Borrower is not required to contract for consultant services to develop a project if it does not wish such services.

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- (1-10) b. The selection of the consultant is the responsibility of the Borrower, but HUD reserves the right to review the qualifications and suitability of any proposed consultant and to approve the arrangement for the services. The Borrower should be cautioned against selecting a housing consultant who is located an unreasonable distance from the location of the project, the HUD Field Office, and the Borrower. Upon selection, the Borrower and the housing consultant shall enter into a contract for services to be performed by the housing consultant on behalf of the Borrower. The contract form to be used is Form HUD-92513A-EH, Guide Form of Contract for Housing Consultant Services for Nonprofit Projects Under Section 202.
- c. As used here, a housing consultant is defined as an individual or firm possessing experience and competence in organization and planning of housing projects, housing market evaluation and marketing, procurement of financing, evaluation and selection of attorneys, architects, building contractors, property managers, and other required participants, and preparation of applications and other necessary documents. The consultant's efforts must be

directed exclusively toward serving the nonprofit Borrower and the interest of the tenants.

- d. HUD reserves the right to pass upon the qualifications and suitability of any proposed housing consultant and approve the terms and conditions of the Contract. The Mortgage Credit staff shall review the Contract terms and conditions and recommend acceptance, rejection or modification of the Contract. Nonprofit Borrowers and housing consultants, as well as general contractors, project managers and management agents are required to file a Form HUD-2530, Previous Participation Certificate, which enables the field office to evaluate the previous experience of the participants in the project. The review of the Contract and the 2530 procedure will take place simultaneously with the determination of eligibility of the Borrower. Upon completion of the evaluation of the housing consultant, the Mortgage Credit staff shall prepare a letter to the Borrower for the signature of the Area Manager advising of approval, disapproval or suggested revisions of the Contract. Disapproval of the housing consultant will not constitute rejection of the project or the Borrower. However, the Borrower must either select another housing consultant acceptable to HUD or proceed with the project without using the services of a consultant. Guidelines for the Mortgage Credit review are discussed in Chapter 4, paragraph 4-16 of this Handbook.

- (1-10) e. Although HUD reserves the right to approve the terms and conditions of the contract between the Borrower and the housing consultant, HUD is not a party to the contract and the Borrower has sole responsibility for enforcing the covenants, agreements and stipulations of the contract.
- 1-11. HOW THE SECTION 202 PROGRAM WORKS. The Assistant Secretary determines the Section 202 loan authority to be allocated to the HUD Regional and Field Offices, based upon the requirements of Section 213(d) of the Housing and Community Development Act of 1974.
 - a. HUD Field Offices invite, receive and review and rate applications and submit recommendations to the Regional Offices. Regional Offices score the applications on the Regional Administrator's criterion and rank applications in accordance with instructions for the current fiscal year.
 - b. Application packages, which contain applicable regulations, handbooks, forms and notices, as well as information concerning the level of loan authority, may be obtained from the appropriate HUD Field Office. Field Office staff also will conduct workshops to explain and answer questions concerning the Section 202 program. Information concerning the time and

place of the workshop will be included in the Field Office Invitation in order that representatives of prospective Sponsors, as well as consultants, architects, etc., may attend. These workshops are helpful to all Sponsors, but particularly to inexperienced groups. The Field Office staff cannot, however, provide direct assistance with regard to specific applications.

- c. Field Office staff, in the workshops and in discussing the Section 202 development process with Sponsors, will encourage the use of minority prime and sub-contractors, as well as other businesses owned by minorities and women to the maximum extent feasible in developing projects.
- d. Application review documentation by the Field Office staff must support the conclusions reached. Therefore, review guides which have been used successfully for this purpose are included as appendices to this Handbook. These guides are recommended, but are not mandatory. If Field Offices develop their own guides, they should be sufficiently comprehensive in scope to permit Regional and Headquarters staff to determine whether statutory and regulatory program requirements have been met. If a reviewer's recommendations are overridden, full documentation shall be included as to the bases for such action.