

* CHAPTER 8. CONSTRUCTION PERIOD TO FINAL CLOSING

- 8-1. DISBURSEMENT OF SECTION 202 LOAN PROCEEDS. Section 202 loan proceeds may be disbursed to Borrowers to meet bills which are due and payable including bills submitted by contractors covering actual work completed and/or materials delivered to and stored on the building site. Processing of requests for disbursements shall be in accordance with procedures stated in Handbooks 4470.1 REV, Mortgage Credit Analysis for Project Mortgage Insurance Section 207, and 4480.1, Multifamily Underwriting Reports and Forms Catalog, except as modified herein (see paragraph 6-27, for instructions with regard to initial disbursements).
- a. Type and Amount of Disbursements. Application for disbursement of loan proceeds shall be submitted on Form HUD 92403-EH, Requisition for Disbursement of Section 202 Loan Funds.
- (1) For each Form FHA-92403-EH submission, on a line designated thereon, the Borrower must state the cumulative amount of all disbursements made to the Borrower including the disbursement for which approval is being requested. If this total is at variance with the total amount of disbursements approved, the Mortgage Credit Staff shall contact the Borrower and resolve the variance(s).
- (2) In addition to any bills or receipts which may be required as supporting documentation with each disbursement, the Borrower must submit a current extension of the title policy furnished by the title company with each disbursement, evidencing clear title. Should there be any title exception, the Mortgage Credit Staff shall contact the Area Counsel and the Borrower to resolve the issue.
- b. Payment to Architect or on Construction Costs. Disbursements for architects are discussed in paragraph 7-8. In addition, if the disbursement includes a payment on construction costs, the application must be accompanied by Contractor's Requisition, Form FHA-2448, and Contractor's Prevailing Wage Certificate, Form FHA-2403-A, completed and executed by the contractor and signed by the architect and the HUD inspector. The amount

- * (8-1) stated in the certification as payment received to date on the construction contract (lower half on Form FHA-2448) should agree in all cases with the amount entered by the contractor on line (11) identified as "Less Previous Payments." In any case where the amount in the certification is not in agreement with the amount on line (11) of Form FHA-2448, or cannot be

explained by the recordings on Form HUD-92451, Financial Record of Mortgage Loan Transaction, no disbursement will be approved on Form HUD-92403-EH until the differences are reconciled by an acceptable written explanation from the Borrower.

- c. Interest During Construction. As provided in Handbook 1970.39, Accounting Reporting Requirements for Section 202 Direct Loan Program for Housing for the Elderly or Handicapped, the Regional Accounting Division (RAD) will bill the Borrower at time intervals specified in the Mortgage Note for interest payable to HUD during the construction period. Such billed amounts will be requisitioned by the Borrower on the Form HUD-92403-EH along with the other construction cost items, but with the understanding that the interest payable to HUD will be offset (collected) by the RAD from the total funds requisitioned and a Treasury check will be requested for the balance of the approved disbursable items.
- d. Form Execution and Transmittal. When the Mortgage Credit Staff has completed its processing of Form HUD-92403-EH, it shall be forwarded to the Housing Director for approval. Prior to executing the Form HUD-92403-EH the Housing Director should determine that the requirements contained in this paragraph have been met. If the application is for other than a final disbursement, and if the application is in order, the Housing Director will execute the "Certificate of Approval" to disburse loan funds on all copies of the Form HUD-92403-EH and transmit them as follows:
 - (1) Original to the Regional Accounting Division,
 - (2) One copy to the Mortgage Credit Staff for eventual filing in the Field Office Docket, and
 - (3) One copy to the Borrower.

Note: If the application is for a final disbursement, the Housing Director shall follow the instructions in Chapter 9 of this Handbook. *

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- * e. Timeliness in Processing and Expediting Disbursement Requests. Requests for construction disbursements often involve considerable amounts of money, and long delays in such funding can impose a serious financial burden on the Borrower and contractor. Under an extreme situation, the inability to obtain funding in a timely fashion may also result in filing of mechanic's or materialmen's liens on the project. Consequently, the expeditious processing of disbursement requests is of extreme importance. The Field Office staff

shall therefore complete processing of the Form HUD-92403-EH within 2-3 working days and transmit it to the Regional Accounting Division. In order to expedite processing, the approved Form HUD-92403-EH shall be sent to the RAD initially by facsimile transmission followed by transmittal of the original. However, the actual dispatch of the Voucher and Schedule of Payments by the RAD to the Treasury Department for issuance of the Treasury check will be held up until receipt of the original Form HUD-92403-EH. The original Form HUD-92403-EH shall be handcarried, where possible, to the RAD (where collocated) or shall be sent by the quickest mail delivery system.

- f. Monitoring of Construction Progress. In conjunction with the processing of Form HUD-92403-EH, the Mortgage Credit Staff shall monitor the progress of construction in comparison with estimates as shown on the Progress Schedule kept in the Mortgage Credit Section (see paragraph 2-20, Handbook 4470.1 REV). If it is determined that construction is falling behind the contractor's Progress Schedule, a meeting shall be called of all principal parties to the contract, including the Borrower, supervisory architect, general contractor and bonding company, to discuss the problems associated with the construction of the project, the available remedies and the consequences associated therewith.

8-2. RELEASE OF HOLDBACK OF LOAN PROCEEDS. The Building Loan Agreement requires the retention by HUD of 10% of the construction proceeds at the time of each disbursement. This retention is one of the few sanctions HUD possesses to achieve an early final closing of a loan. Not until the time of the last disbursement is the holdback normally included in the funds disbursed. An earlier release of the funds could weaken the incentive on the part of the Borrower and contractor to take the necessary steps to permit a final closing. *

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- * a. Consent of Surety. Prior written consent of the surety must be obtained before approving an early release of the holdback.
- b. Consideration by Field Office. With the consent of the surety in hand, the other factors the Area Manager must consider are the percentage of completion at the time of the request, the amount of the holdback, the portion of the holdback requested to be released, the contractor's performance up to the time the request for release is submitted, and whether or not any liquidated damages may be assessed against the contractor which would reduce the amount of the funds to be paid to the contractor at final closing. Notwithstanding the instructions contained in subparagraphs c, d and e below, if the Area

Manager determines that the contractor's performance has not been satisfactory, no release of any portions of the holdback shall be permitted.

- c. Basis Before 90% of Construction. Prior to completion of 90% of construction, such a release may be permitted only if the Area Manager determines that failure to do so probably would result in a default of the construction loan. If such release is granted, loan funds disbursed should be paid out immediately and the Area Manager should make sure that the disbursements principally benefit the subcontractors.
- d. Basis After 90% of Construction. After 90% of the construction has been completed, a release of up to 50% of the holdback normally may be permitted, provided the Borrower and contractor are not primarily responsible for conditions causing the request for an early release. There also must have been general compliance with HUD requirements by the Borrower and contractor in the construction of the project to that point.
- e. Basis for Further Releases. Once the project has been completed, acceptable cost certification has been filed, and an early final closing scheduled, the Area Manager has discretion to release 50% but not more than 75% of the holdback.

8-3. PAYMENT FOR OFF-SITE FACILITIES. If an escrow deposit has been made to assure construction of off-site facilities under the provision of Escrow Agreement for Off-Site Facilities, Form *

* (8-3) FHA-2446-EH, disbursements may be made from this escrow deposit as the construction of off-site facilities progresses. These disbursements will be in proportion to the percentage of off-site work completed, less a holdback of 10%. The Borrower will submit to the depository its request for payment, in quadruplicate, on Request for Approval of Advance of Escrow Funds, Form FHA-2464. The depository will complete its portion of the Form and submit it in triplicate to HUD. Upon receipt, the request will be routed to the Mortgage Credit Staff for processing in accordance with underwriting procedures.

- a. Disbursement in Order. The Mortgage Credit Staff shall complete the form and forward it to the Housing Director. If the disbursement is in order, the Housing Director shall execute the form and distribute it as follows:
 - (1) Original to the depository,
 - (2) One copy to the Mortgage Credit Staff, and
 - (3) One copy to the PC&R Staff to be filed in the Field Office

Docket.

- b. Disbursement not in Order. If the disbursement is not in order, the Housing Director shall be return the request to the Borrower accompanied by a letter stating the reasons for denying the release of the escrow funds.
- 8-4. CONSTRUCTION CHANGE, FORM FHA-2437. Construction changes require prior acceptance by HUD and must be submitted using Form FHA-2437, Request for Construction Changes-Project Mortgages. Specific instructions and conditions of acceptance are outlined on the form. Upon receipt, the request will be routed to the various technical staff for processing in accordance with underwriting procedures. When processing is completed, the form shall be forwarded to the Housing Director for review and approval.
- a. Acceptable Change. In considering any changes in drawings and specifications, the Housing Director must bear in mind that such changes can be accepted only because of necessity.
 - b. Increase of Construction Cost. If a change results in any increase in the cost of construction, the Housing Director shall determine whether funds are available in the Project *

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- * (8-4) Contingency which may be used to cover the cost of the change order. Should such amounts not be sufficient to cover the increase, the Borrower shall deposit in the Construction Account such additional funds as are required. (Note: Since necessary change orders are permitted to be covered by Project Contingency in the Section 202 program, care must be exercised so that approved change orders are not duplicated under the construction budget and Project Contingency line items at the time of cost certification. Care must also be exercised to assure that any contingency amounts designated for use for major movable equipment are considered when determining the amount of contingency funds available for change orders.)
- c. Approval of Surety. If a change or an aggregate of changes involves an increase in cost equal to 10% or more of the construction contract amount, the Housing Director shall also obtain the written approval of the surety.
- d. Action Upon Change. If a change is in accord with underwriting determinations, the Housing Director shall execute all copies of Form FHA-2437, and distribute as follows:
 - (1) Three copies for the Borrower (one copy for the contractor and one copy for the architect),
 - (2) One copy for the HUD inspector assigned to the project,

- (3) One copy for the Mortgage Credit Staff, and
- (4) One copy for the Field Office Docket (filed with master set of drawings and specifications).

8-5. INCREASE IN LOAN AMOUNT. The Field Office staff should emphasize at the preconstruction conference with all parties that while changes in plans or specifications during construction may involve increased costs and may result in betterments, it will not automatically follow that an increase in loan amounts can be approved. When approving construction changes, the Area Manager shall give no explicit or implied assurance that an increase in the loan will be granted. Instead, particular attention should be directed to "Instructions and Conditions of Acceptance" on the reverse side of Form FHA-2437. It is expected that additional costs incurred incident to approved changes in construction will be satisfied with funds available in the project contingency, or with funds other than loan proceeds. However, if it is established that the additional costs incurred fall within one or more of the categories stated in paragraph 8-5(b) below, the following actions will be taken: *

- * (8-5) a. Timing for Increase. Generally, requests for increases on the amount of the loan should not be considered until construction has been substantially completed, but must be acted upon before final closing.
- b. Basis for Increase. Subject to the availability of funds, the five categories under which a request for a loan increase may be approved are:
 - (1) To correct substantial error in the original processing which would otherwise result in serious inequities;
 - (2) Additional costs for interest, taxes, and hazard insurance, that are associated with extensions in construction time due to labor disputes, natural disasters, or other causes which are beyond the control of the contractor and are justifiable under American Institute of Architects (AIA) General Conditions, provided such extensions of time for the completion of the construction contract have been requested of and approved by HUD;
 - (3) Additional costs caused as a result of requirements imposed by local authorities beyond the control of the Borrower, which were unknown at the time of issuance of the firm commitment;

- (4) Increased construction (hard) costs resulting from a natural disaster or to the extent that such costs are not covered by insurance;
- (5) Increased construction (hard) costs and soft costs resulting from a change in the general contractor (as permitted under troubled projects procedures found in Handbook 4435.2, Project Servicing Procedures Prior to Final Endorsement). *

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- * (8-5) c. Cost Overruns. Loan increases will not be approved solely due to cost overruns associated with the construction of a project in accordance with the original drawings and specifications.
- d. Processing of Loan Increase. Upon receipt of a Borrower's request for an increase in the loan amount before final closing, an evaluation should be made on the basis of the five criteria listed above. If the decision is to allow an increase, the Area Manager shall submit a memorandum to Headquarters (Attn: Office of Multifamily Housing Development) that:
 - (1) requests additional Section 202 loan authority needed to fund the increase;
 - (2) clearly demonstrates that the loan increase is approvable under the criteria set forth above;
 - (3) includes copies of the original and reprocessed Forms HUD-92264, Rental Housing Project Income Analysis, (plus attachments) and FHA-2264A, Supplement to Project Analysis, supporting the increase (Note: Reprocessing should be done at the same interest rate existing at the time of initial closing);
 - (4) includes copies of any approved change orders and attachments, any correspondence, etc. which serve as the basis for the loan increase;
 - (5) includes copies of the cost certification and Forms FHA-2331, Summary of Cost Certification Review, and FHA-2331A, Cost Certification Review Worksheet, if the cost certification review has been completed.
- e. Rent Increases Needed to Support Loan Increase. Should rent increases be necessary to support the loan increase, reprocessing shall be in accordance with 24 CFR Section 885.400(a) together with consideration of the following factors:

- (1) The rent increase shall be limited to the amount needed to cover the allowed loan increase.
- (2) The new rent shall fall within current Fair Market Rent limitations. Since the current Fair Market Rents are trended ahead two years to allow for the construction *

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- * (8-5) period, an appropriate reduction must be made in determining the applicable Fair Market Rent limitations if the project was completed earlier than the two-year period.
- f. Actions After Headquarters Approval. If the loan increase is approved by Headquarters, a Form HUD-185, Regional Fund and Contract Authority Assignment, will be issued assigning the funds to the Regional Office, which will in turn issue a Form HUD-185.1, Regional Fund and Contract Authority Subassignment, to the Field Office. Upon receipt of the fund assignment, Form HUD-718, Fund Reservation and Contract Authority, shall be processed as provided in paragraph 4-51b. The Form FHA-2441-EH, Building Loan Agreement, shall be revised to reflect the approved loan increase and must be transmitted to the RAD prior to the final disbursement of loan proceeds. The following legal instruments also shall be modified to reflect the approved loan increase and shall be transmitted to the RAD after final closing per paragraph 9-33.
- (1) Supplemental Note and Mortgage (Deed of Trust) covering the amount of increase.
 - (2) Consolidation and Modification Agreement combining the Supplemental Note and Mortgage with the original Note and Mortgage (Deed of Trust).
- 8-6. EXTENSION OF TIME TO COMPLETE CONSTRUCTION. Where an extension of time is desired, the Borrower and the contractor may request permission to amend the construction contract. No extension of time will be approved unless it can be demonstrated that the delay was due to causes beyond the contractor's control. It is intended that where the delay is the fault of the contractor or where requests for extension have not been filed in a timely fashion, the provisions of Article 2C (liquidated damage clause) of the construction contract will be enforced against the contractor and the surety. Requests for extension must be made to the Field Office no more than 30 calendar days after the termination of the delay. Where requests are filed within the time specified and where the Area Manager/MF Service Office Supervisor is satisfied that the delay is solely because of circumstances beyond the contractor's control, consent to an extension may be granted by appropriate change order (in accordance with paragraph 8.3.1 of the AIA General

Conditions) provided the written consent of the surety is first obtained.

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- * (8-6) a. In instances where extensions are granted, a review shall be made by the Mortgage Credit Staff as to the appropriateness of the commencement date of amortization. If deferment is found to be necessary, actions as outlined in paragraph 8-8 shall be taken.
- 8-7. FIRST PAYMENT TO PRINCIPAL. Amortization must start on the date specified in the Mortgage and Note unless a deferment (see paragraph 8-8) or advancement of the amortization date has been approved in advance by the Area Manager. Depending on the circumstances, the commencement date of amortization may be moved up, but it may be done only at the request or with the concurrence of the Borrower.
- 8-8. DEFERMENT OF PRINCIPAL PAYMENTS. Where a deferment of amortization is requested before final closing in projects resulting from a delay in construction or to permit the Borrower to obtain sustaining occupancy, the Mortgage Credit Staff must assure that sufficient funds for payment of any overrun of interest are available from the project contingency or from funds other than loan proceeds. If sufficient funds are not available from the project contingency or payment therefrom is inappropriate, the Field Office must obtain written assurance from the Borrower that the funds will be available or that they will be forthcoming through action instituted against the contractor.
- a. Deferment Due to Construction Delay. Where a deferment of principal is granted due to delay in construction, a corresponding adjustment in the term of the mortgage will be made by extending the maturity date for a period equivalent to the period of deferment. This will eliminate the necessity of adjusting the monthly payment to principal and interest (except in cases where there has been a reduction in principal indebtedness due to cost certification). In granting the deferment, the letter agreement to the Borrower will be in the format prescribed in Appendix 26.
- b. Deferment Due to Reasons Other Than Construction Delay. When construction is completed but where a deferment of principal is granted because of demonstrated hardship, such as lack of sustaining occupancy, the maturity date will not be extended. In such instance, the Borrower will make payment of interest only at the permanent loan rate commencing on the originally

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- * (8-8) established amortization date. As the maturity date is not extended for this type of deferment, the Borrower will be required to make commensurately higher payments over the resulting shorter amortization period when it starts to remit payments toward principal. The format letter prescribed in Appendix 29 will be used for deferments which fall in this category.
- c. Modification Agreement. Prior to execution of a Modification Agreement extending the maturity date, the Area Counsel must be fully satisfied that the priority or validity of the mortgage will not be affected. This will require the recordation of the Modification Agreement and an endorsement to the title policy extending the effective date of the policy through the date of the modification agreement and insuring the mortgage as modified is a valid first lien. If the title company is unable to issue such an endorsement, the maturity date may not be extended. If the maturity date cannot be extended, the letter agreement to the Borrower granting the deferment will be in the format prescribed in Appendix 27.
 - d. Notification of Regional Accounting Division (RAD). Upon approval and when the deferment letter is issued to the Borrower, a copy of the letter shall be forwarded to RAD to prevent any improper billing based on the originally established date for commencement of amortization.
 - e. Amendment of Documents. The Area Manager is authorized to approve such modifications of the mortgage instruments as may be necessary to effect the deferment of principal payments, provided the instruments have been examined and approved by the Area Counsel. The amendatory document (Modification Agreement) shall be forwarded to the Regional Accounting Division.
 - f. Deferment of Amortization and Replacement Reserve Fund Payments. When commencement or amortization is deferred pursuant to the foregoing, the commencement of payments into the Replacement Reserve Fund is automatically deferred, in accordance with the Regulatory Agreement.
- 8-9. WORK STOPPAGE. If a work stoppage occurs on any project being financed with a direct loan, the Area Manager will communicate immediately with the Borrower and the contractor to determine the cause of the stoppage and to ascertain when construction will be resumed. *

- * (8-9) a. Effect of Stoppage. The seriousness of a work stoppage should be impressed upon the parties concerned, particularly that a stoppage of 20 days or more constitutes a default under the Building Loan Agreement.
- b. Report by Field Office. If the Field Office determines that efforts to obtain resumption of construction are proving ineffective, and in every instance when a work stoppage has continued for 20 days, the Area Manager shall notify the Regional Labor Relations Officer and the Director, Office of Multifamily Housing Development, by telegram and request special guidance as to action to be taken to protect the Secretary's interest.

Note: The above steps will be taken in addition to any steps that may be prescribed under contractual documents.

8-10. MANAGEMENT PROCESSING DURING CONSTRUCTION. During the construction phase, HUD management staff shall perform processing in accordance with Handbook 4381.2, Management Requirements in Processing Insured Multifamily Housing Projects, except as modified herein:

- a. Review Change Order Requests. The Housing Director shall furnish the Loan Management Specialist with a copy of change order requests which may affect the management of the project. If any requested change order is considered adverse to project management, the Loan Management Specialist shall resolve the matter with the MHR. In those instances where the problem cannot be resolved by mutual agreement, the Housing Director shall make the final determination.
- b. Scheduling of Pre-Occupancy Conference. The Loan Management Branch Chief is responsible for scheduling a pre-occupancy conference with the Borrower and its Project Administrator (if self-managed) or Management Agent at least 120 days prior to completion of the first units for occupancy. The weekly production progress report will be used to set the date of the conference. At this conference at least the following items shall be reviewed and applicable Handbooks distributed:

- (1) Provisions of Regulatory Agreement.
- (2) Remittance of monthly payments due under the Note and Mortgage. *

- (8-10) (3) Submission of operating budget (Form HUD-92458A).
- (4) Tenant selection during the rent-up period.

- (5) HUD requirements covering family size and composition as they relate to unit size.
- (6) HUD Requirements relating to income limits and income certification (Form HUD-52659).
- (7) Inspection of units prior to acceptance for occupancy.
- (8) Tenant orientation program.
- (9) Review provisions of lease form (see Appendix 21, Model Lease).
- (10) Section 8 voucher procedure.
- (11) Insurance requirements.
- (12) Marketing requirements of the Affirmative Fair Housing Marketing Plan and Section 8 vacancy payment requirements.
- (13) Project management, including regular and preventive maintenance (Management Agreement).
- (14) HUD's accounting requirements (Handbook 4371.1, Financial Operations and Accounting Procedures for Insured Multifamily Projects).
- (15) Auditing of financial statements (Handbook IG 4372.1, Audit Guide for Mortgagors Having HUD Insured or Secretary Held Multifamily Mortgages).
- (16) Monthly accounting reports of income and expenses (Forms HUD-93479, HUD-93480, HUD-93481).
- (17) Tax and insurance reserve account (see paragraph 8-10e).
- (18) Social services.
- (19) Use of Management Fund, if applicable.

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- * (8-10)c. Accounting and Reporting Requirements. In order to ensure that the Borrower's books are complete and accounting uniform, prescribed accounts must be maintained as outlined and described in Chapter 4 of Handbook 4371.1, Financial Operations and Accounting Procedures for Insured Multifamily Projects. Required financial reports are also detailed in the same Handbook.
- d. Monthly Accountings. The Borrower shall be required to submit monthly accounting reports of income and expenses using Forms

HUD-93479, Monthly Report for Establishing Net Income; HUD-93480, Schedule of Disbursements; and HUD-93481, Schedule of Accounts Payable; from the first day of the month of initial occupancy through the month in which the project attains 95% occupancy or through the first full year of project operation, whichever occurs later. In the event no income is being realized, the report should reflect operating expenses. These reports will be in addition to any reports required by development staff and shall be reviewed by management staff from the aspect of having an early warning of any developing problems. Particular attention should be given to the status of tax and insurance reserve accounts (see subparagraph e(2) below), cash flow, occupancy ratio, accounts payable, management fee, and tenants accounts receivable. Every possible remedial action will be taken promptly if the accounting reports indicate problems are developing. If it is apparent the operating expenses have been underestimated, consideration should be given to processing a rent increase as soon as possible to avoid having to approve an inordinately large increase at a later date.

Tax and Insurance Reserve Accounts. In order to provide for timely discharge of such obligations as taxes, special assessments, property insurance and ground rents during the loan amortization period, the following procedure shall be established:

- (1) Not later than 30 calendar days prior to first occupancy of the project, the Borrower corporation shall establish a tax and insurance reserve account with a depository which is a member of the Federal Deposit Insurance Corporation, Federal Savings and Loan Insurance Corporation, or the National Credit Union Share Insurance Fund. The Borrower shall make monthly deposits into account sufficient to provide for the timely payment of taxes, special assessments and insurance premiums. The

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- (8-10) said account may be interest-bearing. (Note: The foregoing requirement supersedes the provision in the Section 202 Mortgage (Form FHA 2099-EH) which stipulates that the items shall be paid monthly to HUD.)
- (2) As part of the Borrower's monthly accounting report, amounts deposited in the tax and insurance reserve account shall be shown as the first item on HUD-93480, Schedule of Disbursements. The Loan Management Branch shall be responsible for monitoring financial reports to assure that Borrowers are properly maintaining tax and insurance reserves as well as overall project obligations.

- (3) Expenditures from the escrow accounts are made as the tax assessments, insurance premiums and ground rents become due. No prior HUD approval is needed for these disbursements, but the Borrower will be responsible for the timely discharge of these obligations and the appropriate accounting in the project's books and records.
- (4) The Loan Management Branch shall monitor the payment of the tax and insurance obligations by means of the Borrower's annual financial statement and shall also be responsible for obtaining evidences of insurance renewal from the Borrower and reviewing them prior to transmittal to the Insurance Advisory Branch, Office of Public Housing and Indian Programs, in Headquarters.
- (5) Should the interest in an interest-bearing account cumulate in an amount equal to three monthly deposits for taxes, special assessments, and insurance premiums, the said cumulated interest shall be transferred to the reserve fund for replacement.

8-11. RENTAL SCHEDULE PROCEDURE. The proposed rental schedule for the project must be approved by HUD before initial occupancy. At the pre-occupancy conference, therefore, the Borrower will be asked to submit the proposed rental schedule in triplicate on Rental Schedule and Information on Rental Project, Form HUD-92458.

- a. Schedule Maximum. The maximum allowable rent from the dwelling units shall not exceed the amount derived from the application of the Rent format (Appendix 18 or 18-1, as

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- (8-11) applicable during the underwriting process. Moreover, the rents for the Section 8 contract units shall not exceed the relevant Fair Market Rent Limitations.
 - b. Approval of Schedules. After the Form HUD-92458 is reviewed, the Area Manager shall notify the Borrower of the approved initial rental schedule. The approval letter shall also advise that any future revision in the rental schedule must be substantiated and must receive the prior approval of HUD. The same letter also shall alert the Borrower to the provisions of 24 CFR Part 401 with respect to tenant notification and material required to be submitted to HUD in connection with any proposed rent increase.
 - c. Increase in Costs and Taxes. If, during construction, there has been an increase in replacement cost over the estimated replacement cost shown in the applicable Form FHA-2264; or if, after preparation of the form, it has been determined that an

increase in the estimate of operation cost or taxes is justified, such increase or increases may be considered. However, they must be substantiated with supporting documentation to the satisfaction of the Area Manager and on file in the Field Office Docket.

- d. Additional Charges. No charges to tenants will be made by the Borrower beyond those established by a HUD-approved rental schedule. Cost or charges for services provided through management efforts or obtained individually by a resident must be paid directly by the tenant to the provider and shall not be a part of the rental schedule. Any charges not contemplated at the time of processing require the approval of the Area Manager.

8-12. HOUSING ASSISTANCE PAYMENTS CONTRACT.

- A. Contract Initiation. The Housing Assistance Payments Contract may be executed only on completion of construction and issuance of a Certificate of Occupancy and on approvals by the Field Office A&E, HM, and FH&EO staffs after on-site inspection of the project. If upon initial inspection and review, the Field

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* Office determines that all requirements for project acceptance have been satisfied, the effective date of the Contract will be the earlier of (1) the date of HUD inspection, or (2) the tenth day following HUD receipt of the owner's evidence of completion. If upon initial inspection and review, the Field Office determines that any of the requirements for project inspection have not been satisfied, the effective date will be the date on which the last of any requirements is satisfied. The Area Counsel shall prepare three (3) copies of the Contract based on the Contract previously prepared and attached to the HAP Agreement. (Note: The draft Contract appended to the Agreement shall incorporate the revision as shown in paragraph 6-27b.) Any change to the Contract at this stage may only be made if authorized by the regulations or the Agreement and must be explained and justified to the other parties to the Contract in the transmittal letter. Attached to this transmittal letter shall be Housing Management's determination with respect to the unleased units, if any, and for which of those units HUD will make housing assistance payments. The copies shall be transmitted through the PC&R staff to the Borrower for execution.

- b. Execution of the Contract. Following execution of the Contract by the Borrower all copies shall be returned to the Field Office together with the Borrower's written concurrence or disagreement with the Field Office's determination regarding unleased units. After review and approval of the Contract by

the Area Counsel, the Housing Director shall sign the original and two copies of the Contract for HUD. One fully executed copy shall be retained and given to the Borrower at the final closing. The PC&R staff shall transmit to RAD the fully executed original of the Contract and send the other copy to Housing Management.

- c. Commencement of Housing Assistance Payments. Borrowers may admit eligible tenants into occupancy at any time after occupancy permits have been granted by HUD and the local government, but no housing assistance payments may be made for any period before the effective date of the Contract. Payments under the HAP Contract shall only be made with respect to occupied units, and the Borrower shall not be entitled to receive vacancy payments for unoccupied units until and unless the project is finally accepted. *

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8-13. REQUESTS TO OCCUPY. The Borrower may request permission to occupy prior to completion of the project, since portions of the project may be ready for occupancy before completion of the entire project. For this reason, it may be necessary that the Borrower submit more than one request for approval of occupancy.

- a. Form and Copies. Each request must be submitted on a Form FHA-2485, Permission to Occupy-- Project Mortgages, an original and three copies being executed by the Borrower and the Contractor.
- b. Accompanying Rent Schedule. The Form-2485 must be accompanied by Rental Schedule and Information on Rental Project, Form HUD-92458, in triplicate, unless previously submitted.
- c. Grant of Permission. On receipt of an approved Form FHA-2485, and on determining that the rentals proposed in Form HUD-92458 are acceptable, the Area Manager shall grant permission for occupancy by executing Form FHA-2485.
- d. Prior Approval of Management Agreement. No occupancy of the project may be permitted prior to the Area Manager's approval of the Management Agreement between the Borrower and the management entity.
- e. Local Government Authorization. Borrowers must secure an occupancy permit and/or a license to operate a rental project in certain jurisdictions. An occupancy permit may be received from the local government without respect to HUD's criteria for permission to occupy, but the Borrower must secure both approvals before any unit may be occupied.

8-14. MARKETING AND INITIAL RENT-UP.

- a. Occupancy in a Section 202 project is expressly limited to elderly or handicapped families which are defined by statute and regulation (24 CFR 885.5) as including:

- (1) Families of two or more persons the head of which (or his/her spouse) is sixty-two years of age or over or is handicapped (see paragraph 1-4(1)(b) for definition of handicapped person), or

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- (8-14) (2) The surviving member or members of any family described in subparagraph (1) above, living 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 sixty-two 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 or prospective tenant family, to be essential to their care or well-being.

- * b. Eligibility for Section 8 Housing Assistance Payment is limited to those who qualify under current statutory requirements and regulations.

- c. Because of the proven demand for low income housing for the elderly, renting-up a Section 202 project and maintaining full occupancy are not perceived as onerous chores to a Borrower. However, there is a difference between simply filling a project and developing a residential community. The selection of tenants at initial occupancy in many ways defines the character of a project and establishes the nature of the clientele to which the project will appeal in the future; this is especially true in a Section 202 project, where the availability of housing assistance payments reduces the price discrimination inherent in projects requiring payment of specific minimum rent. Although many Section 202 projects maintain a waiting list, there is no HUD requirement that a waiting list be maintained. If a waiting list is used, it should be kept to a manageable size, and should be kept current, with no entry held inactive for more than one year.

- * d. The selection of residents from eligible applicants and the usual landlord-tenant relationship are the responsibility of Borrowers and managers. In addition, the Borrower is

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- (8-14) responsible, as noted above, for determining whether or not an applicant is eligible for Section 8 housing assistance, and certifying as to that determination.
- e. Affirmative Fair Housing Marketing. It is the policy of the Department to achieve a condition in which the housing choices available to an eligible individual in the housing market area are not a function of that individual's race, color, religion, sex or national origin. In order to further this policy, participants of the Section 202 program are required to pursue affirmative fair housing marketing policies as set forth at 24 CFR Part 200, Subpart M and 24 CFR Part 108.
 - f. Non-discrimination. In the administration of the Section 202 program, as in all HUD programs, Borrowers and their managers shall comply with all HUD regulations and requirements prohibiting discrimination based on race, color, creed, sex, national origin, handicap, or age. They shall also administer all facilities and services connected with the project on a non-discriminatory basis in accordance with Title VIII of the Civil Rights Act of 1968, Executive Order 11063, and Title VI of the Civil Right Act of 1964 and all regulations issued pursuant thereto.