
CHAPTER 1. GENERAL INTRODUCTION TO SECTION 202 PROGRAM

1-1. Authority.

Section 202 of the Housing Act of 1959, as amended; 12 U.S.C. 1701q. Applicable Interim Regulations appear in the Federal Register, dated _____, 24 CFR Part 889.

1-2. Delegation of Authority in HUD.

Responsibility for program administration is delegated to Regional Administrators and Field Office Managers.

Field Office Managers and their deputies will recommend approval or disapproval of capital advances, amend fund reservations for approved Owners, and make contracts and execute documents. When used in this Handbook, Field Office Managers or Housing Development Directors also means supervisors of Multifamily Service Offices.

1-3. Purpose of Section 202 Program.

This program provides Federal capital advances and project rental assistance under Section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) for housing projects serving elderly households. Such projects shall provide the necessary services for the occupants which may include, but are not limited to: health, continuing education, welfare, informational, recreational, homemaking, meal and nutritional services, counseling, and referral services, as well as transportation where necessary to facilitate access to these services.

Capital advances are available only to private, nonprofit corporations and nonprofit consumer cooperatives to finance the construction or rehabilitation of a structure or portion thereof or the acquisition of a structure from the Resolution Trust Corporation (RTC) to provide supportive housing for the elderly and may include the cost of real property acquisition, site improvement, conversion, demolition, relocation and other expenses of supportive housing for the elderly.

Project rental assistance is made available to owners for all units.

1-4. Applicant Eligibility.

- A. Sponsor. Only a Sponsor may obtain a Section 202 capital advance fund reservation, which will be transferred to an owner to be organized by the Sponsor. NOTE: The term Section 202 capital advance fund reservation (or Section 202 fund reservation), as used throughout this handbook, means capital advance funds that have been reserved (initially in the name of the Sponsor) for the purpose of providing Section 202 housing units for the elderly.

1. Definition of Sponsor.

- a. Must be a private nonprofit entity (need not be incorporated) and must have an IRS tax exemption ruling.
- b. May not be a public body or an instrumentality of a public body.
- c. No part of its earnings may inure to the benefit of any private shareholder, contributor or individual.
- d. May not be controlled by or directed by persons or firms seeking to derive profit or gain from the project.

2. Significance of Sponsor.

- a. HUD provides a Section 202 fund reservation on basis of the Sponsor's management experience (housing or services) and its pledge of financial support to the project.
- b. Sponsor will be evaluated on the strength of its activities as an organization and not on the individual records of the officers, board members, or general membership.

NOTE: The same requirements apply to all co-Sponsors of a project.

- B. Owner. The Owner corporation to be formed by the Sponsor must comply with the requirements of Part 889, and must be either a:

Private nonprofit corporation, as follows:

- a. Purposes must include the promotion of the welfare of elderly families.
- b. May not be a public body or instrumentality of a public body.
- c. No part of its net earnings may inure to the benefit of any private shareholder, contributor, or individual.
- d. May not be controlled by or directed by persons or firms seeking to derive profit or gain from the project.
- e. Must be a single asset corporation. It may not engage in any other business or activity or incur any liability or obligation unrelated to the project.
- f. Must be exempt from Federal income taxes under either Section 501(c)(3) or (4) of the Internal Revenue Code.

or a

2. Consumer cooperative, as follows:

- a. If the Owner is a nonprofit consumer cooperative and the proposed housing is to be developed as a management type cooperative, 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.
- b. If the Owner is a private, nonprofit corporation other than a cooperative and intends from the outset of the application process to convert to a cooperative, HUD Handbook 4550.5 instructions would be applicable, except as modified here, 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.

-
- c. The physical assets of the cooperative cannot be sold for the personal gain of any of its members. The Articles of Incorporation shall provide that after a decision of the members to discontinue operation as a cooperative, the physical assets of the cooperative will be conveyed to HUD or at HUD's discretion, to an eleemosynary organization.
 - d. Consumer cooperatives intending to provide rental housing are subject to the same provisions as nonprofit corporations providing rental housing.
 - e. Consumer cooperatives are not eligible for exemption under Section 501 of the IRS Code. A consumer cooperative meets the nonprofit requirement if it:
 - (1) is formed as a nonprofit corporation or cooperative under State law;
 - (2) will not pay patronage refunds out of project revenues; and
 - (3) has never been liable for the payment of income taxes.

C. Ineligible Participants.

1. Religious Organizations.

- a. Religious bodies may not be an Owner (but may be a Sponsor)
- b. Under Constitutional requirement for separation of church and State, Section 202 capital advances may not be made to religious organizations or ones that have religious purposes.

2. Public Bodies and Instrumentalities of Public Bodies.

- a. Public bodies (examples: Public Housing Agencies and Local Public Agencies) may not serve as sponsors or owners.

-
- b. Instrumentalities of public bodies also are ineligible.
 - c. Indication of instrumentality relationship:
 - (1) Articles of Incorporation or by-laws provide for control of corporation by public body.
 - (2) Control may be indicated by power to name majority of Board members or exercise of supervisory power in operation of corporation.
 - (3) Dissolution clause running to a public body.
 - d. Public bodies may provide housing consultant and management services to Section 202 projects.

1-5. Resident Eligibility. Occupancy in Section 202 housing is open to any household composed of one or more persons, one of whom is 62 years of age or more at the time of initial occupancy, if other occupancy requirements are met.

1-6. Program Components.

- A. Capital Advances. Capital advances bear no interest and their repayment is not required so long as the housing remains available for very low-income elderly persons for not less than 40 years.
 - 1. To determine the capital advance amount to be reserved for new construction or rehabilitation projects for the elderly, the following development cost limits, shall be used:
 - a. For nonelevator structures:
 - (1) \$28,032 per family unit without a bedroom;
 - (2) \$32,321 per family unit with one bedroom;
 - (3) \$38,979 per family unit with two bedrooms;
 - b. For elevator type structures:
 - (1) \$29,500 per family unit without a bedroom;

- (2) \$33,816 per family unit with one bedroom;
- (3) \$41,120 per family unit with two bedrooms.

c. Increased capital advance limits:

- (1) Field Offices may increase the cost limits set forth above by the Headquarters approved high cost factor of up to 140 percent. Where the cost levels require, Headquarters may approve high cost factors above 140 percent up to 160 percent on a project-by-project basis.
- (2) If high construction costs in Alaska, Guam, Hawaii or the Virgin Islands make it infeasible to construct dwellings, without sacrificing sound construction, design, and livability standards within the cost limits provided above and adjusted by the Field Office's approved high cost factor, the amount of the capital advance may be increased to compensate for such costs. The increase may not exceed the limits established after applying the Field Office's approved high cost factor by more than 50 percent.

d. Rehabilitation Projects. A capital advance that involves a project to be rehabilitated is subject to the following additional limitations:

- (1) Property held in fee. If the Sponsor is the fee simple owner of an unmortgaged property, the capital advance amount may not exceed 100 percent of the cost of the proposed rehabilitation.
 - (2) Property subject to existing mortgage. If the Sponsor owns a mortgaged property that is to be refinanced with part of the capital advance, the maximum capital advance amount may not exceed the cost of rehabilitation plus the portion of the outstanding indebtedness that does not exceed the fair market value of the land and improvements before the rehabilitation, as determined by the Field Office.
-

- e. Property to be Acquired. If the property is to be acquired by the Owner from an entity other than the Sponsor, and the purchase price is to be financed with a part of the Section 202 capital advance, the maximum capital advance amount may not exceed the cost of the rehabilitation plus the portion of the purchase price that does not exceed the fair market value of such land and improvements before the rehabilitation, as determined by the Field Office.
 - f. Leaseholds. If the site is secured by a leasehold estate rather than by a fee simple estate, the amount of the capital advance attributable to the cost of the property may not exceed the value of the leasehold estate.
2. Revisions to Cost Limits. Periodically, the Department will revise the development cost limits by market area for various types and sizes of supportive housing for the elderly units by publishing a notice of the cost limits in the Federal Register in accordance with Section 889.245 of the Regulations.
 3. Annual Adjustments. The cost limits will be adjusted at least once annually to reflect changes in the general level of construction or rehabilitation costs.
 4. Prevailing Cost Data. In establishing development cost limits for a given market area, data will be used that reflect currently prevailing costs of construction or rehabilitation, and land acquisition in the area.
 5. RTC Properties. In the case of existing housing and related facilities to be acquired from the RTC under Section 21A(c) of the Federal Home Loan Bank Act, the cost limits shall include:
 - a. The cost of acquiring such housing (or such lesser amount as may be supported by the HUD appraisal);
 - b. The cost of rehabilitation, alteration, conversion, or improvement, including the rehabilitation thereof; and

4571.3 REV-1

- c. The cost of the land on which the housing and related facilities are located. In the case of existing housing and related facilities which require no rehabilitation and are to be acquired from the RTC, 85 percent of the development cost limits identified in paragraph A. of this section shall be used to calculate the capital advance amount to be reserved.
6. Savings Incentive. The development cost limits established under subparagraphs 1.a. and b. above, adjusted by the Field Office's high cost factor up to 140 percent, shall be used to calculate the fund reservation amount of the capital advance to be made available to individual Owners. If actual development costs are less than the amount of the initial fund reservation, the Owner is entitled to retain 50 percent of the savings in a Replacement Reserve Account. This percentage shall be increased up to 75 percent for Owners which add energy efficiency features which:
 - a. Exceed the energy efficiency standards promulgated by the Secretary in accordance with Section 109 of the National Affordable Housing Act;
 - b. Substantially reduce the life-cycle cost of the housing;
 - c. Reduce gross rent requirements; and
 - d. Enhance tenant comfort and convenience.
7. Approval to Use Replacement Reserve. The Replacement Reserve Account established may only be used with the approval of the Field Office Manager for repairs, replacements or capital improvements to the project.
8. Design Flexibility. The Owner, to the extent practicable, has the flexibility to design housing appropriate to the location and proposed resident population subject to HUD's design and cost standards.
9. Funds from non-Federal Sources. An Owner may voluntarily provide funds from non-Federal sources

for amenities and other features of appropriate design and construction suitable for supportive

4/93

1-8

4571.3 REV-1

housing for the elderly if the cost of such amenities is not:

- a. Financed with the capital advance, and
- b. Taken into account in determining the amount of Federal assistance or of the tenant payments.

B. Project Rental Assistance Contracts (PRAC).

1. Annual Contract Amount. The annual contract amount for any project shall not exceed the HUD-approved annual operating budget for all units so occupied (or as approved by the Secretary held for occupancy) and any initial utility allowances for such units, as approved by the Secretary. Any contract amounts not used by a project in any year shall remain available to the project until the expiration of the contract. The Secretary may adjust the annual amount if the sum of the project income and the amount of assistance payments available are inadequate to provide for reasonable HUD-approved operating costs. The HUD-approved operating costs may include an allowance (not to exceed \$15 per unit per month) for services limited to the frail and "at risk" elderly (see Paragraph 1-8).
2. Operating Cost Standards. HUD shall establish operating cost standards based on the average annual operating cost of comparable housing for elderly persons in each Field Office, and shall adjust the standard annually, based on appropriate indices of an increase in housing costs such as the Consumer Price Index. HUD may adjust the operating cost standard applicable to an approved project to reflect such factors as differences in costs based on location within the Field Office jurisdiction. The operating cost standard will be used to determine the initial reservation amount of the project assistance funds. The Owner must submit estimates based on project design, maintenance and services provided at the time of the conditional and firm commitment application processing stages.
3. Term of Commitment. All units in housing assisted

under Part 889 must be available for occupancy by very low-income elderly persons for not less than 40 years.

4571.3 REV-1

The initial term of a project rental assistance contract shall be 240 months. The Secretary will, to the extent approved in appropriations acts, extend any expiring contract for a term of not less than 60 months. In order to facilitate the orderly extension of expiring contracts, the Secretary is authorized to make commitments to extend expiring contracts during the year prior to the date of expiration.

4. Tenant Payment. A very low-income elderly person's tenant payment for a dwelling unit assisted under Part 889, shall be the highest of the following amounts, rounded to the nearest dollar:
 - a. 30 percent of the person's monthly adjusted income (as defined in 24 CFR Part 813),
 - b. 10 percent of the person's monthly income, or
 - c. If the person is receiving payments for welfare assistance from a public agency and a part of such payment, adjusted in accordance with the person's actual housing costs, is specifically designated by such agency to meet the person's housing costs, the portion of such payments which is so designated.

If the person's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under (c) above shall be the amount resulting from one application of the percentage.

1-7. Financial Obligations of Sponsor.

A. Owner Deposit (Minimum Capital Investment).

The Owner must deposit one-half of one percent (0.5%) of the HUD-approved capital advance amount (not to exceed \$25,000 for national sponsors i.e., those with approved projects in more than one region or \$10,000 if not a national sponsor) in a special escrow account to assure the Owner's commitment to the housing. The

Minimum Capital Investment (MCI) will be placed in escrow prior to disbursing any capital advance funds and will be held by HUD or by a HUD-approved escrow agent.

4/93

1-10

4571.3 REV-1

If construction starts within the initial 18 months of the fund reservation, HUD will waive one-half of the MCI, which would be required under the aforementioned formula, at the time the deposit would be required.

If final closing occurs within six months after construction completion, HUD will approve the return of all remaining funds not used to cover operating deficits during the first three years of operation. If final closing does not occur within six months after project completion (unless extended by the Field Office for up to two months due to justifiable delay) the balance remaining at the end of three years will not be returned and shall be deposited in the Replacement Reserve Account.

B. Other Possible Financial Obligations.

Besides the Minimum Capital Investment, additional funds may be required as determined during subsequent processing stages as follows:

1. Front-end money for any project costs (such as individual unit balconies) which are not eligible to be included in the capital advance.
2. Off-site escrow for off-site drives, walkways, etc., which may be necessary, but which may not be included in the capital advance.
3. Initial operating deficit escrow if an expected slow rent-up would result in a projected operating deficit.
4. Unforeseen expenses incurred during construction or operation of project.
5. Incremental development and operational cost of facilities not eligible for capital advances (e.g., amenities not covered under HUD's design and cost standards).
6. Supportive Services (see paragraph 1-8).

- C. Loans. Funds for the Minimum Capital Investment may not be borrowed, nor may letters of credit be used. Where the Sponsor entity lacks the financial resources, it may borrow the necessary funds for any other project purposes from third parties, under the following conditions:

1-11

4/93

4571.3 REV-1

1. Loans from contractor or other parties standing to gain a profit from the project are prohibited.
2. Indebtedness must not create a situation where such a creditor can exercise any direction or control over the Owner.
3. Funds used to cover items which are in excess of those permitted under the cost guidelines may not be repaid from project resources. Funds borrowed outside of capital advance proceeds for other approved purposes may be secured only by a promissory note executed by the Owner on a Form FHA-1710 after a prior written approval by the Field Office. The note shall 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"

1-8. Supportive Services. While adequate housing is a basic necessity of life for everyone, the provision of housing alone cannot create a stable living environment for many elderly people, especially the frail elderly. In establishing this program, the National Affordable Housing Act mandated that the Secretary ensure that services are provided which are tailored to the needs of the category or categories of elderly persons (including frail elderly persons) occupying the housing.

- A. Who is Eligible for Services Paid for by HUD. A portion of the service cost may be shared by the Department (see paragraph 1-8C below). However, that portion of the funds will be limited to those who are determined to be frail or those "at risk" of being

institutionalized. This does not preclude other tenants or a service coordinator (see paragraph 1-9 below) from arranging for services which are paid for by the tenants or from other funds.

The following definition has been adopted based on use in the Department's Congregate Housing Services Program and as a standard accepted by State and local agencies

4/93

1-12

4571.3 REV-1

participating in the programs of the Department of Health and Human Services which serve the elderly. A frail elderly person is defined as:

An individual who has been determined to be deficient in three or more of the Activities of Daily Living.

The designation of an "at risk" elderly person will be made on a case-by-case basis and generally will require a determination that an individual needs assistance in performing one or two Activities of Daily Living and an assessment that receipt of Services is essential to prevent premature institutionalization.

The Activities of Daily Living (ADLs) and the factors which determine whether there is a deficiency are:

- EATING: May need assistance with cooking, preparing, or serving food, but must be able to feed self;
- BATHING: May need assistance with getting in and out of the shower or tub, but must be able to wash self;
- GROOMING: May need assistance in washing hair, but must be able to take care of personal appearance;
- DRESSING: May need occasional assistance, but must be able to dress self;
- HOME MANAGEMENT:
May need assistance in doing laundry, housework, grocery shopping, or getting to and from activities such as going to the doctor and shopping, but must be mobile. This does not exclude

persons in wheelchairs or those requiring mobility devices.

Each of the ADLs noted above includes a requirement that a person must be able to perform at a specified minimal level (e.g., to satisfy the eating ADL, the person must be able to feed him/herself). The determination of whether a person meets this minimal level of performance must include consideration of those services that will be performed by a person's

spouse, relatives or other attendants to be provided by the individual. For example, if a person requires assistance with cooking, preparing or serving food plus assistance in feeding him/herself, the individual would meet the minimal performance level and thus satisfy the eating ADL, if a spouse, relative or attendant provides assistance with feeding the person. The Owner is not obligated at any time to provide individualized services beyond those offered to the resident population in general.

The ADLs analysis is relevant only with regard to determine a person's eligibility to receive supportive services paid for by HUD and is not a determination of eligibility for occupancy.

B. What Services May be Provided.

1. Meal service adequate to meet nutritional needs;

NOTE: Section 202 projects selected for funding may not operate a mandatory meals program. Any meals program must be voluntary on the part of the residents. (See 24 CFR Part 278, Mandatory Meals Programs in Multifamily Rental or Cooperative Projects for the Elderly or Disabled).

2. Housekeeping aid;
3. Personal assistance;
4. Transportation services;
5. Health-related services;

NOTE: Health care must be based in the community, not in the project. A small multipurpose room may be provided in a project for the elderly for emergency

use, but not overnight cars. No staff provisions may be made for doctors, nurses, or other medical personnel.

6. Other services the Field Office deems essential for maintaining independent living.

The Field Office shall ensure that Owners have the managerial capacity to:

- o Assess the ongoing service needs of residents;

4/93

1-14

4571.3 REV-1

- o Coordinate the provision of supportive services and tailor such services to the individual needs of residents; and
 - o Seek on a continuous basis new sources of assistance to ensure the long-term provision of supportive services.
- C. Who Pays for the Services. Indirect costs associated with providing supportive services shall be an eligible cost under the Project Rental Assistance Contract. Likewise, any costs associated with employing a service coordinator in housing principally serving frail elderly persons also are eligible, unless the project is receiving congregate housing services assistance under Section 802 of the National Affordable Housing Act. The HUD-approved expenses for operating a project may include 15 percent (up to \$15 per unit/per mo.) of the service costs for the frail elderly and those determined to be "at risk" of being institutionalized. The balance of service costs (85 percent for the frail and "at risk" elderly and all costs for other elderly) shall be provided from other sources, which may include co-payment by the tenant receiving the service. Such co-payment shall not be included in the Total Tenant Payment.

Even though a tenant may not be eligible to receive assistance under the HUD portion of the payment, it does not preclude a tenant or the service coordinator from arranging for service(s) which are paid for by the tenant or from other sources.

1-9. Service Coordinator.

A service coordinator is a social service staff person who

is part of the project's management team. The service coordinator is responsible for assuring that the project's elderly residents, especially those who are frail or "at risk," are linked to the supportive services available from community agencies to enable them to continue living in the project. A description of the qualifications and responsibilities for a service coordinator may be found at 24 CFR 700.220, published in the Federal Register on December 8, 1992.

4571.3 REV-1

1-10. General Application Limits.

A. Unit Limits for Sponsors. No sponsor in a given fiscal year may singly or as a co-sponsor (including affiliated entities):

1. Apply for more than 300 of the number of units allocated in any given Region, and
2. Apply nationwide for more than 10 percent of the total units allocated in all Regions.
3. Affiliated entities which submit separate applications shall be deemed to be a single entity for purposes of these limits.

NOTE: Any Sponsor found to exceed the above limits will be afforded the opportunity to withdraw the excess applications. If it refuses, funding will be denied for all of its applications.

B. Unit Limits for Housing for the Elderly.

No single application may propose more than the number of units permitted by a Field Office or 125 units, whichever is less. Reservations for projects in metropolitan areas will not be approved for less than 40 units.

1-11. Program Requirements.

A. General Design Guidelines.

In designing housing for the elderly, the following should be considered when determining the type of project (elevator, nonelevator, garden, etc.):

1. Land costs in relation to the economic feasibility of the housing;
2. The social environment in relation to the safety and security of the residents;
3. The available sites which offer adequate proximity to community services and facilities and accessibility to low-cost transportation;
4. The established land-use patterns in the community.

4/93

1-16

4571.3 REV-1

B. Design and Cost Standards.

1. Limit on number of bedrooms. Resident units for the elderly are limited to efficiencies or one-bedroom units. If a resident manager unit is proposed, up to a two-bedroom unit may be provided.
2. Restrictions on amenities. Projects must be modest in design. Amenities not eligible for HUD funding include individual unit balconies and decks, atriums, bowling alleys, swimming pools, saunas, and jacuzzis (including spas). Also, dishwashers, trash compactors, and washers and dryers in individual units will not be funded. The use of durable materials to control or reduce maintenance, repair and replacement costs is not an excess amenity.
3. Community spaces. Community spaces may not exceed 10 percent of the gross square foot area except as provided in 6 below.
4. Limitation on unit sizes. The net rentable area of tenant units shall not exceed 415 sq. ft. for an efficiency unit or 540 sq. ft. for a one-bedroom unit. The manager's unit, if a two-bedroom unit, may not exceed 800 sq. ft. Only one bath will be permitted regardless of unit size.
5. Accessibility. In projects for the elderly, five percent of the units and all community facilities and common areas must be designed for persons needing an accessible unit as defined by the Uniform Federal Accessibility Standards (UFAS) and HUD's implementing regulations at 24 CFR Part 40, Appendix A or an equivalent or stricter standard;

and Section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulation at 24 CFR Part 8. An additional 2 percent must be designed to meet the needs of persons with visual and/or hearing impairments (this requirement can be met through subsequent installation or adaptation).

All new construction Section 202 projects must also comply with the design and construction requirements of the Fair Housing Act and HUD's implementing regulations at 24 CFR Part 100.

6. Exceptions. HUD may approve a project that does not comply with the design and cost standards set forth in this section if:

1-17

4/93

4571.3 REV-1

- a. The Sponsor demonstrates a willingness and ability to contribute the incremental development cost and continuing operating costs associated with the additional amenities or design features; or
 - b. The proposed project involves rehabilitation or acquisition from the Resolution Trust Corporation, the additional amenities or design features were incorporated into the existing structure before the submission of the application, and the total development cost of the project with the additional amenities or design features does not exceed the cost limits described in paragraph 1-6A, unless the Sponsor indicates a willingness to pay the excess costs from other than capital advance proceeds.
7. Prohibited facilities. Project facilities may not include commercial spaces (this does not include areas for convenience items operated by the project), infirmaries, nursing stations, and spaces for overnight care.
- C. Affirmative Marketing. The Owner must determine the racial or ethnic groups least likely to apply for project occupancy taking into consideration the location of the project, and shall establish a plan to inform and encourage such groups to apply (see 24 CFR Part 200, Subpart M).
 - D. Certifications. The following certifications are required for participation in the Section 202 program:

1. Conflict of Interest. Officers and directors of either the Sponsor or Owner cannot have any financial interest in any contract with the Owner or in any firm which has a contract with the owner. This restriction applies so long as the individual is serving on the board and for a period of three years following resignation or final closing, whichever occurs later.

a. This restriction includes individuals of the Sponsor and Owner organizations who serve as:

(1) a board member, officer, director, partner, employee or authorized agent of any firm providing services or products related to the construction or operation of the proposed project.

4/93

1-18

4571.3 REV-1

(2) the attorney, general contractor, land seller, architect, housing consultant, among other things, in connection with the project, EXCEPT that the:

(i) Sponsor or its nonprofit affiliate may contract for a fee with the Owner to provide management services and/or supportive services. In such cases, only two persons who are paid by the Sponsor or its nonprofit management or supportive services firm(s) may serve as directors on the owner board and only in a nonvoting capacity.

(ii) Sponsoring entity may enter into an agreement to sell the land to the Owner.

b. Family members of any officer, director, or authorized agent of the Sponsor or Owner are prohibited from entering into any contracts for services with the Owner or with the Sponsor where the project is involved.

c. When submitting its application for a Section 202 fund reservation, Sponsor must include a Conflict of Interest Resolution (Appendix 1) duly adopted by the Sponsor; agreeing to comply with the Department's conflict of interest

requirements which must include names, titles and dates of beginning and ending of terms of all officers and directors.

- d. With the submission of an Application for Conditional Commitment, both Sponsor and Owner must file Conflict of Interest and Disclosure Certifications (Appendix 2) for each officer, director, and authorized agent along with a current Incumbency Certificate.
- e. The Section 202 fund reservation is subject to cancellation if the certifications under item d. above are not provided for all officers, directors, and authorized agents of the Sponsor and Owner.
- f. Certifications from only executive board members are not acceptable.

-
2. Identity of Interest. An identity of interest between the Sponsor/Owner and the development team member or between development team members is prohibited.
- a. Development team members include, but are not limited to, consultant, architect, general contractor, attorney, management agent and seller of the land.
 - b. This prohibition excludes the following:
 - (1) An identity is permitted between the Sponsor and its nonprofit affiliate, and the Owner.
 - (2) The Sponsor or its nonprofit affiliate may contract for a fee with the Owner to manage or provide services under the conditions specified in 1a. above.
 - (3) The Owner may self-manage the project provided the salaried employee responsible for managing the project is not an officer, director, or authorized agent of the Sponsor or Owner.
 - (4) The Sponsor may be the seller of the land.

- (5) The consulting firm may serve as the management agent with the prior approval of the local HUD Field Office.
- (6) Staff of the Sponsor/Owner may perform services typically performed by the consultant. In such cases, no consultant fees or expenses related to overhead salaries for these services may be included in the Section 202 capital advance.
- (7) An identity of interest may exist between the general contractor and the subcontractors, material suppliers and equipment lessors with the prior approval of their contracts and the allowance for general overhead and profit by the local HUD Field Office.

4/93

1-20

4571.3 REV-1

- (8) An officer, director or board member of the Sponsor or Owner or any development team member may donate their services to the project, except that a donation of the land may only be made by the Sponsor or Owner or an individual/firm/corporation which had no other involvement in the project.
- c. A prohibited identity of interest will exist if any development team member firm/corporation or any officer, director, board member, partner or authorized agent of a development team member's firm/corporation:
- (1) Is also an officer, director, board member, partner, or authorized agent for any other development team member.
 - (2) Has any financial interest in any other development team member's firm/corporation.
 - (3) Has a family relationship with any officer, director, board member, partner or authorized agent of any other development team member's firm/corporation.
 - (4) Advances any funds or thing of value to the Sponsor/Owner including the land option or

the land or the cost of providing the land option or takes stock or any interest in the Sponsor/Owner corporation or property as part of consideration for payment.

d. This prohibition extends to:

- (1) The consultant firm/corporation or any of its officers, directors, board members or partners who are involved as an officer, director, board member or general partner in a business venture with any other development team member.
- (2) The attorney for the Sponsor/Owner who also serves as the attorney for a development team member, except that the Sponsor/Owner's attorney may serve as the personal attorney for an individual associated with a development team member in matters not involving the Section 202 project.

- (3) Any firm or subsidiary having an identity of interest with a contractor that is providing the option or selling the land to the Sponsor/Owner. In such cases, the Sponsor/Owner is prohibited from selecting that contractor or its affiliate to construct the project for which the Application for a Fund Reservation is being made.

- e. Identity of Interest Disclosure Certifications (Appendix 3) on the development team members noted in subparagraph 2.a. above are to be submitted along with the Owner's Application for a Conditional Commitment, unless the development team member's initial contract with the Owner occurs at a later processing stage. In such cases the certification must be filed at that time, but no later than the initial closing.
- f. The prohibition of an identity of interest between development team members applies until two years after final closing. EXAMPLE: A management agent which has or had an identity of interest with the contractor cannot be the

initial management agent, but could bid on the management contract after the project had been finally closed for two years.

3. Delinquent Federal Debt. OMB Circular A-129, Managing Federal Credit Management Programs, requires Owner certification relating to credit availability from private sources and also requires Sponsors and Owners to certify that they are not delinquent on the repayment of any Federal debt.

The Sponsor must complete and include a copy of Form SF-424, Application for Federal Assistance, which includes a question regarding delinquent Federal debt, with its Application for Fund Reservation. The Sponsor must answer this question and provide an explanation if any delinquent Federal debt is acknowledged.

The Owner must provide a similar certification with its Application for Conditional Commitment.

4/93

1-22

4571.3 REV-1

4. Lobbying Activities. Pursuant to statutory requirements, Sponsors and Owners cannot use grant or loan funds to lobby the Executive or Legislative branches of the Federal Government.

A certification and a Disclosure of Lobbying Activities Form (Standard Form -LLL) must be submitted by:

- a. the Sponsor with its Application for a Fund Reservation, and
 - b. the Owner with its Application for a Conditional Commitment.
5. Drug-Free Workplace. In accordance with the Drug-Free Workplace Act, all Sponsors and Owners must certify that they will comply with the requirements under the Act.

The required Certification Regarding Drug-Free Workplace Requirements form must be submitted by:

- a. the Sponsor with its Application for a Fund Reservation, and

- b. the Owner with its Application for Conditional Commitment.
- 6. Design and Cost Standards. The Sponsor must certify that the project will comply with HUD's design and cost standards.
- 7. Certification in Connection with the Development and Operation of a Section 202 Supportive housing for the Elderly Project.

The Sponsor must certify that it will comply with the following civil rights requirements:

- a. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8;
- b. The Fair Housing Act (42 U.S.C. 3600-3619) and the implementing regulations at 24 CFR Parts 100, 108, 109, and 110;
- c. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the implementing regulations at 24 CFR Part 1;

-
- d. Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the implementing regulations at 24 CFR Part 135;
 - e. The Age Discrimination Act of 1975 (42 U.S.C. 6101-6107) and the implementing regulations at 24 CFR Part 146;
 - f. Executive Order 11246 as amended and the implementing regulations at 41 CFR Chapter 60;
 - g. The regulations implementing Executive Order 11063 (Equal Opportunity in Housing) at 24 CFR Part 107;
 - h. The Americans with Disabilities Act (42 U.S.C. 12101 et seq.) to the extent applicable;
 - i. The Affirmative Fair Housing Marketing Requirements at 24 CFR Part 200, Subpart M; and
 - j. Other applicable Federal, State and local laws

prohibiting discrimination and promoting equal opportunity.

8. Certification of Consistency with Comprehensive Housing Affordability Strategy (CHAS). Each applicant at the Fund Reservation Stage must submit a certification by the jurisdiction in which the proposed project will be located that the Sponsor's application is consistent with the jurisdiction is HUD-approved CHAS for the fiscal year in which the application is submitted. The certification must be made by the unit of general local government if it is required to have, or has a complete CHAS. Otherwise, the certification may be made by the State, or if the project will be located in a unit of general local government authorized to use an abbreviated CHAS, by the unit of general local government if it is willing to prepare such a CHAS.

All CHAS certifications must be made by the public official responsible for submitting the CHAS to HUD. All CHAS certifications must be submitted as part of the application by the application submission deadline set forth in the NOFA, except as provided in the next paragraph. THE REQUIRED CHAS MUST THEREFORE HAVE BEEN SUBMITTED MORE THAN 60 DAYS TO REVIEW, SINCE HUD HAS 60 DAYS TO REVIEW

AND APPROVE THE CHAS. WHERE THE CERTIFICATION OF CONSISTENCY IS PERMITTED TO BE SUBMITTED AFTER THE APPLICATION SUBMISSION DEADLINE, AS DESCRIBED IN THE NEXT PARAGRAPH, THE CHAS MUST BE SUBMITTED FOR APPROVAL IN TIME FOR THE CERTIFICATION TO BE MADE BY THE LATER DATE. IN NO EVENT WILL AN APPLICATION BE CONSIDERED IF THE CHAS HAS NOT BEEN SUBMITTED FOR APPROVAL BY THE APPLICATION SUBMISSION DEADLINE.

If the required certification will be made by a unit of general local government with respect to an abbreviated CHAS, and such CHAS has been submitted by the application submission deadline but has not yet been approved by HUD, the deadline will not be applied to the certification for consistency. Instead, the application must include a written statement from the public official responsible for submitting the CHAS that the jurisdiction has submitted an abbreviated CHAS for the fiscal year, in which the application has been submitted, for

HUD approval and that the application is consistent with the CHAS. If HUD approved the CHAS, the required certification that the application is consistent with a HUD-approved CHAS for the particular fiscal year must be submitted by the date set forth in the NOFA. AN APPLICATION WILL NOT BE SELECTED FOR FUNDING UNLESS THE CHAS IS APPROVED AND THE REQUIRED CERTIFICATION IS MADE BY THE DATE ESTABLISHED IN THE NOFA. The CHAS regulations are published in 24 CFR Part 91.

9. Applicant Disclosure Form. The HUD Reform Act requires all applicants requesting assistance from HUD, in excess of \$200,000, to disclose on Form HUD-2880:
 - a. Assistance from other government sources in connection with the project,
 - b. The financial interests of persons involved in the project,
 - c. The sources of funds to be made available for the project, and
 - d. The uses to which the funds are to be put.

NOTE: APPLICANTS FOR FUNDING UNDER SECTION 202 ARE REQUIRED TO PROVIDE THEIR SOCIAL SECURITY NUMBERS OR EMPLOYEE IDENTIFICATION NUMBERS ON FORM HUD-2880.

10. Executive Order 12372 (EO 12372). The Sponsor's certification that the appropriate State agency (Single Point of Contact) under EO 12372, Intergovernmental Review, has been contacted to determine if the Section 202 program is covered under that State's review process, and, if applicable, the date the application was submitted to the State and a copy of the accompanying Form SF-424.
11. Uniform Relocation Assistance and Real Property Acquisition. The Sponsor's certification that it will comply (or has complied) with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), as amended, and implementing regulations at 49 CFR Part 24 and 24

CFR Section 889.265(e).

NOTE: This certification is required by all Sponsors regardless of whether they are aware of any required relocation.

- E. Facilities for Religious Observances. 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. Religious articles or equipment may not be installed permanently and must be removed at the conclusion of any service or observance. Any room or space used for such purposes must be available for equitable use by all groups composing the tenancy.

- F. Location of Project. The importance of a good location in the success of a project for the elderly cannot be overstated. Sites should not be isolated and must be close to services likely to be required by occupants and to shopping and other facilities that will enhance the capacity of occupants to live as independently as possible. The site and the area around the project must be safe and convenient public transportation should be available as many elderly tenants do not have cars. In more rural areas, Sponsors must compensate

4/93

1-26

4571.3 REV-1

for locations which may not be as easily accessible as urban sites and for the lack of a public transportation system. (Also see Paragraphs 3-21 and 3-22 of this Handbook.)

- G. Relocation, Displacement and Real Property Acquisition.
 - 1. Applicable Relocation and Real Property Acquisition Rules. The Supportive Housing for the Elderly Program is subject to the following requirements:
 - a. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) and implementing regulations at 49 CFR Part 24. These requirements are described in Chapters 1 through 6 of HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition. Additional guidance on Section 202 projects for the elderly is contained in Section 12 of Chapter 8 of Handbook 1378.

b. Section 24 CFR 889.265(e). These additional policies are described in this Section G.

2. Definition of Displaced Person. For purposes of providing relocation assistance (at URA levels), the term "displaced person" is generally described in Paragraph 1-8 of HUD Handbook 1378. However, 24 CFR 889.265(e)(6) provides the following additional guidance:

a. The term "displaced person" includes, but may not be limited to:

- (1) A person that moves permanently from the real property after receiving a notice from the Sponsor/Owner that requires such move, if the move occurs on or after:
 - (a) The date of the submission of the application to HUD for assistance for the project which is later approved, if the Sponsor has control of the site; or
 - (b) The date that the Sponsor obtains control of the site, if such control is obtained after the submission of the application to HUD.

- (2) Any person, including a person who moves before the date described in Paragraph G-2a(1), if either HUD or the Sponsor/Owner determines that the displacement directly resulted from acquisitions rehabilitation, or demolition for the project.
- (3) A tenant-occupant or a dwelling who moves permanently from the building/complex after execution of the Agreement between the Sponsor/Owner and HUD, if the move occurs before the tenant in provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions shall include a monthly rent and estimated average monthly utility costs

that do not exceed the "total tenant payment," as determined under 24 CFR 813.107.

- (4) A tenant-occupant of a dwelling who is required to relocate temporarily and does not return to the building/complex, if either:
 - (a) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation (including the cost of moving to and from the temporarily occupied unit and any increased housing costs), or
 - (b) Other conditions of the temporary relocation are not reasonable.

- (5) A tenant-occupant of a dwelling who moves from the building/complex permanently after he or she has been required to move to another unit in the building/complex, if either:
 - (a) The tenant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or

- (b) Other conditions of the move are not reasonable.
- b. Persons Not Eligible. Notwithstanding the provisions of Paragraph G-2a, a person does not qualify as a "displaced person," if:
- (1) The person is excluded under Paragraph 1-8c of HUD Handbook 1378; or
 - (2) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause, and HUD determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation

assistance; or

- (3) The person moved into the property after the submission of the application and, before signing a lease and commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated or suffer a rent increase) and the fact that the person would not qualify as a "displaced person" as a result of the project.
3. Definition of Initiation of Negotiations. For purposes of providing the appropriate notice under Paragraph 2-3b of HUD Handbook 1378 and determining whether a person displaced from a dwelling qualifies for a replacement housing payment under Paragraph 3-3 or Paragraph 3-4 of HUD Handbook 1378 (as opposed to paragraph 3-5), the term "initiation of negotiations" means the execution of the Agreement between the Sponsor/Owner and HUD.
4. Application Requirements. To evaluate the feasibility of a proposed project and assess training, technical assistance and monitoring needs, the Sponsor/Owner must provide HUD the information described in Exhibit 7 of the section 202 Application Package. When preparing an estimate of the cost of required relocation payments and services, the applicant may wish to consult with the HUD CPD Relocation Specialist serving the community.

-
5. Minimizing Displacement. Consistent with the other goals and objectives of the Supportive Housing for the Elderly Program, the Sponsor/Owner shall assure that all reasonable steps have been taken to minimize displacement as a result of an assisted project.
 6. Appeal by Lower-Income Person. Under the supportive Housing for the Elderly Program, a lower-income person, who is dissatisfied with the determination of the Sponsor/Owner on his or her appeal under Paragraph 1-33 of HUD Handbook 1378, may request HUD to review that determination as described in Paragraph 1-33i of that handbook.

7. Compliance Responsibility of Sponsor/Owner.
 - a. Certification. Before receiving HUD financial assistance, the applicant must certify to HUD that it will comply with the URA, 49 CFR Part 24, and 889.265(e) (see paragraph 1-11(D) (11) above). The Sponsor/Owner is responsible for ensuring compliance with such requirements, as described in HUD Handbook 1378, notwithstanding any third party's contractual obligation to the Sponsor/Owner to comply with such provisions.
 - b. The cost of required relocation assistance is an eligible project cost in the same manner and to the same extent as other project costs. However, such assistance may also be paid for with funds available from other sources.
 - c. The Sponsor/Owner must maintain records in sufficient detail to demonstrate compliance with the provisions of HUD Handbook 1378, as described in Chapter 6 of that handbook.

H. Site Control.

1. Documentary evidence that the Sponsor has site control is required for fund reservations for all projects. The Owner must have site control in its name prior to submission of the Application for Conditional Commitment.
2. Site control may be evidenced by:
 - a. a copy of a contract of sale;

- b. a site option agreement or other legal commitment (MUST BE GOOD THROUGH THE END OF THE FISCAL YEAR PLUS A RENEWAL CLAUSE TO EXTEND THE OPTION FOR AT LEAST AN ADDITIONAL SIX MONTHS);
- c. a deed; or
- d. a request with all supporting documentation, submitted either prior to or with the Application for Fund Reservation, for a partial release of a site covered by a mortgage under a HUD program.

3. When sites are to be acquired from a public body, satisfactory site control consists of evidence that the public body:
 - o possesses clear title to the land and
 - o has entered into a legally binding written agreement to convey the property to the Sponsor when it receives a Section 202 Fund Reservation.

A mere recitation of intent to convey the land made by an official of the public body to the sponsor or preliminary actions (such as initiating condemnation proceedings or being under consideration by the City Council) on the part of the public body are not adequate evidence of site control. The contract of sale, option agreement, or other legal agreement must have been executed prior to the application deadline date.

4. If the public body does not own the land or public hearings have to be conducted at a later date, sufficient evidence of site control by the Sponsor does not exist. Under these circumstances, the threshold requirement for site control would not have been met and the application would have to be rejected.
5. However, since time constraints of the funding round may not permit all of the required official actions (e.g., approval of Community Planning Boards as required by New York City) which are necessary to convey city-owned sites, a letter in the application from the Mayor or Director of the

appropriate local agency indicating their approval of conveyance of the site contingent upon the necessary approval action is acceptable.

6. The proposed site cannot be optioned or acquired from a general contractor (who is to be the project contractor) or any other development team member.
7. Applications from two or more Sponsors proposing to use the same publicly-owned site are acceptable for processing in the normal manner if the locality has

agreed to make the sites available to more than one Sponsor, conditioned in each case on the particular Sponsor being the one selected for funding by HUD. In such instances, however, both the Field Office and the Regional Office must take steps to assure that duplicate selections are not made for the same site.

8. Site Occupancy Data. The Sponsor must provide the information requested in the Data on Project occupancy, Displacement and Real Property Acquisition. The data include an identification of the number of persons (families, individuals, businesses and nonprofit organizations) occupying the property on the date of the submission of the application for a Section 202 fund reservation (or, date of initial site control, if later) the estimated cost of relocation payments and other services, and the staff organization that will carry out the relocation activities.

The cost of required relocation assistance is an eligible project cost in the same manner and to the same extent as other project costs. Such assistance may also be paid for with funds available from other sources. When funds are to be provided by other sources, submit evidence of a firm commitment of the funds.

9. Explain steps taken to comply with applicable real property acquisition requirements. (See Paragraph 5-1 of HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition.)

- I. Site and Neighborhood Standards. All sites must meet the following site and neighborhood requirements:

1. The site must be adequate in size, exposure and contour to accommodate the number and type of units proposed, and adequate utilities (water, sewer, gas and electricity) and streets must be available to service the site.
2. The site and neighborhood must be suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights act of 1964, the Fair Housing Act, Executive Order 11063 and implementing

HUD regulations.

3. New construction sites must meet the following site and neighborhood requirements:
 - a. The site must not be located in an area of minority elderly concentration except as permitted under subparagraph 3(e) of this section, and must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority elderly to non-minority elderly residents in the area.
 - b. A project may be located in an area of minority elderly concentration only if:
 - (1) Sufficient, comparable opportunities exist for housing for minority elderly households in the income range to be served by the proposed project, outside areas of minority concentration (see subparagraph 3(c) of this section for further guidance on this criterion); or
 - (2) The project is necessary to meet overriding housing needs that cannot be met in that housing market area (see subparagraph 3(e) (8) of this section for further guidance on this criterion).
 - c. "Sufficient" does not require that in every locality there be an equal number of assisted units within and outside of areas of minority concentration. Rather, application of standard should produce a reasonable distribution of assisted units each year which over a period of several years will approach an appropriate balance of housing opportunities within and

outside areas of minority concentration. An appropriate balance in any jurisdiction must be determined in light of local conditions affecting the range of housing choices available for very low-income minority elderly households and in relation to the racial mix of the locality's population.

- d. Units may be considered to be "comparable

opportunities" if they have the same household type (elderly) and tenure type (owner/renter); require approximately the same total tenant payment; serve the same income group; are located in the same housing market; and are in standard condition.

- e. Application of this sufficient, comparable opportunities standard involves assessing the overall impact of HUD-assisted housing on the availability of housing choices for very low-income minority elderly households in and outside areas of minority concentration, and must take into account the extent to which the following factors are present, along with any other factor relevant to housing choice:
- (1) A significant number of assisted housing units are available outside areas of minority concentration.
 - (2) There is significant integration of assisted housing projects constructed or rehabilitated in the past ten years, relative to the racial mix of the eligible population.
 - (3) There are racially integrated neighborhoods in the locality.
 - (4) Programs are operated by the locality to assist minority elderly households who wish to find housing outside areas of minority concentration.
 - (5) Minority elderly households have benefitted from local activities (e.g., acquisition and write-down of sites, tax relief programs for homeowners, acquisitions of units for use as assisted

housing units) undertaken to expand choice for minority households outside of areas of minority concentration.

- (6) A significant proportion of minority elderly households have been successful in finding units in non-minority areas under

the Section 8 Certificate and Housing Voucher programs.

- (7) Comparable housing opportunities have been made available outside areas of minority concentration through other programs.
- (8) Application of the "overriding housing needs" criterion, for example, permits approval of sites that are an integral part of an overall local strategy for the preservation or restoration of the immediate neighborhood and of sites in a neighborhood experiencing significant private investment that is demonstrably changing the economic character of the area (a "revitalizing area"). An "overriding housing need", however, may not serve as the basis for determining that a site is acceptable if the only reason the need cannot otherwise be feasibly met is that discrimination on the basis of race, color, creed, sex, or national origin renders sites outside areas of minority concentration unavailable or, if the use of this standard in recent years has had the effect of circumventing the obligation to provide housing choice.
- (9) The neighborhood must not be one which is seriously detrimental to family life or in which substandard dwellings or other undesirable conditions predominate, unless there is actively in progress a concerted program to remedy the undesirable conditions.
- (10) The housing must be accessible to social, recreational, educational, commercial, and health facilities and services, and other municipal facilities and services that are

at least equivalent to those typically found in neighborhoods consisting largely of unassisted, standard housing of similar market rents.

1-12. Using a Housing Consultant. Although Sponsors are not required to submit the consultant's contract and obtain approval until after the Notification of Selection for a Section 202 Fund Reservation is received, they should be aware of the fee schedule and policies concerning the selection and payment for housing consultants.

A. Definition.

An individual or firm experienced and competent in organizing and planning housing projects, housing market evaluation and marketing, procurement of financing, evaluation and selection of attorneys, architects, building contractors, property managers and other required participants in the development and management of a Section 202 project. The consultant may not have any other role on the development team, except as managing agent if the individual or firm has management capability and is approved by the Field Office Manager.

OTHERWISE, THE INDIVIDUAL OR FIRM MUST HAVE AN ARMS-LENGTH RELATIONSHIP WITH THE SPONSOR, OWNER AND ALL MEMBERS OF THE DEVELOPMENT TEAM.

B. Use of Consultants.

1. Consultants are used to:
 - a. Expedite development of the proposal;
 - b. Improve quality of the building design, and lower construction and other costs; and,
 - c. Assist the Sponsor and Owner in handling all aspects of project development through to final closing.
2. Consultant efforts must be directed exclusively towards serving the nonprofit Sponsor and the Owner to be formed.
3. HUD permits reasonable consultant fees to be included in the Section 202 Capital Advance. (See subparagraph E below.)

-
4. HUD permits, with the approval of the Field Office Manager, a qualified consultant to be retained to act as management agent for the same project.

5. A consultant is not required for participation in the Section 202 program.

C. Identity of Interest.

1. Neither the Sponsor nor the Owner may receive a fee as consultant. If staff of the Sponsor/Owner performs the services typically provided by the consultant:
 - a. The capital advance cannot cover the cost of salaries and overhead associated with these services; however,
 - b. The Sponsor/Owner is entitled to a typical organizational expense to cover actual costs of establishing the Owner entity and submitting the application (i.e., photo-copying, stamps, etc.).
2. No individual or entity having an identity of interest with the Sponsor (or Owner) may earn a fee for providing services that would otherwise be provided on a fee basis by a housing consultant (for example, an executive director or other employee of the Sponsor).

D. Selection of a Housing Consultant.

1. Responsibility of the Sponsor/Owner.
 - a. Select the consultant.

(NOTE: Selection of a housing consultant who is located far from the project site is discouraged.)
 - b. Enter into a contract with the consultant, using Form HUD-92531A-CA, Contract for Housing Consultant Services.
 - c. Enforce the terms of the contract.

-
2. Responsibility of HUD:
 - a. Review the suitability and qualifications of the proposed consultant;

- b. Review the quality and the adequacy of the proposed services;
- c. Approve, approve with modifications, or disapprove the proposed contract based on Form HUD-92531A-CA, Contract for Housing Consultant Services, and its Addendum (Appendix 4), to determine if the contract contains clauses or provisions which violate Section 202 regulations and Identity of Interest and Disclosure Certification requirements.
- d. Evaluate the previous experience of the consultant based on Form 2530;
- e. Determine if the proposed fee to be paid from the Section 202 Capital Advance is within allowable limits set forth in the fee schedule in subparagraph E below and is related to the services to be provided; and
- f. Conduct a credit investigation of the consultant.

E. Maximum Fees Allowable.

1. Initial Fund Reservation	Base Fee
Up to \$1,500,000	\$20,000
from \$1,500,000 to \$3,500,000	\$20,000 plus 1% of excess over \$1,500,000
over \$3,500,000	\$40,000

- 2. Percentage of Fee Earned. The following services are specified in Form HUD-92531A-CA. If services proposed are less than the full range allowed, the proposed fees must be reduced in accordance with the schedule of maximum percentages shown below.

Service to be Performed by
the Housing Consultant

Percentage of
Total Fee Earned

Initial meeting with non-profit sponsor and formation nonprofit corporation	6%
Selection of Development Team	4%
Preparation and submission of Fund Reservation Application	8%
Preparation and submission of the Conditional Commitment Application	22%
Preparation and submission of the Firm Commitment Application	12%
Initial Closing	8%
Construction Period - site visits, preparation of construction draws, preparation of and advice regarding change orders and any application(s) for an increase in the capital advance	15%
Cost Certification	7%
Final Closing	9%
Rent-Up	9%

EXAMPLE: Assume an initial fund reservation of \$4,000,000. The maximum allowable consultant fee would be \$40,000. If the consultant's contract includes all services except construction related activities, the maximum allowable would be reduced by 15%, accordingly, the upset price would be \$34,000.

If a processing stage is by-passed, the percentage attributable to the by-passed phase will be added to the next phase.

3. Incentive Payments. Consultants may receive additional payments of up to \$10,000, depending upon the initial fund reservation amount, as an incentive for bringing the project to a prompt

an acceptable cost certification and final closing.
 The incentive payment schedule is as follows:

Initial Fund Reservation	Incentive Payment Schedule
-----	-----
Up to \$1,500,000	\$5,000
From \$1,500,000 to \$3,500,000	\$5,000 plus 1/4 of 1% (.25%) of excess over \$1,500,000
Over \$3,500,000	\$10,000

The factors for approving incentive payments and
 the method for calculating such payments is
 described as follows:

Services Performed and Time Frames	Percentage of Incentive Payment
-----	-----
Submission of a Conditional Commitment Application acceptable for processing within 120 calendar days from the date of the Sponsor's acceptance stated on the Notification of Selection Letter.	10%
Submission of a Firm commitment Application acceptable for processing within 120 calendar days of the date of issuance of the Conditional Commitment	10%
If the Conditional Commitment stage is bypassed, submission of a Firm Commitment Application acceptable for processing within 180 calendar days from the date of the Sponsor's acceptance stated on the Notification of Selection Letter	20%

Initial closing and/or start
of construction within 18
months from the date of the
Fund Reservation 30%

Submission of an acceptable
cost certification within
45 Days from the cut-off
date used for cost
certification purposes 25%

Final closing Within 180
calendar days from the
project completion date 25%

EXAMPLE: In calculating the consultant's fee,
assume that the consultant will be providing the
full range of services for a project with an
initial fund reservation of \$3,000,000 and the
project is developed within the above timeframes.
The maximum consultant fees that may be included in
the capital advance would be \$43,750 (a base amount
of \$35,000 plus an incentive payment of \$8,750).
The following chart is a breakdown of the total fee
the consultant would be entitled to receive:

Actions Completed Within Time Frames	Base Fee		Incentive Payment		Total
	%	Amount*	%	Amount	
Conditional Application--Up to	40%	\$14,000	10%	\$875	\$14,875
Firm Application--Up to	52%	\$18,200	20%	\$1,750	\$19,950
Initial Closing/ Start of Construction--Up to	60%	\$21,000	50%	\$4,375	\$25,375
Construction Period and Cost Certification--Up to	82%	\$28,700	75%	\$6,563	\$35,263
Rent-Up and Final Closing ----- Up to	100%	\$35,000	100%	\$8,750	\$43,750

* Refer to subparagraph E.1. above for
the percentage breakdown related to the
consultant's base fee.

4. Upset Price -- Contract Amount

- a. The addendum in Appendix 4 which provides for the incentive payment shall be made a part of the consultant's contract (HUD-92531A-CA).
- b. The maximum allowable incentive payment plus the base fee cannot exceed \$50,000.
- c. If any time frames are missed or for any service not provided by the consultant under the contract, the consultant will not be entitled to receive the portion of the incentive payment related to that service.
- d. The initial capital advance amount shall include the maximum possible consultant fee (base fee plus incentive payment amount).
- e. If the consultant agrees to a fee which is less than the amount HUD could allow, the lesser amount shall be included in the capital advance.

F. Payment of the Consultant's Fee. Payment of the fee is approved by Mortgage Credit using the following schedule:

1. Up to 60 percent of base fee plus 50 percent of incentive payment at initial closing.
2. Up to 75 percent of base fee (an additional 15 percent) during the construction period.
3. Up to 82 percent of base fee (an additional 7 percent) plus 75 percent of incentive payment (an additional 25 percent) at cost certification.
4. The base fee balance of 18 percent plus incentive payment balance of 25 percent at final closing.

1-13. How Section 202 Works.

A. Application Process.

1. Headquarters will allocate funds on a "fair share" basis to the HUD field or regional offices, depending on the available funds. Fifteen (15) percent of the funds appropriated must be allocated to non-metro areas.
-

2. Headquarters will publish annually a Notice of Fund Availability (NOFA) in the Federal Register to announce the availability of the funds.
 3. Each field office will mail the NOFA to all persons or organizations on its mailing list and conduct a workshop to discuss the current year's program requirements, including the date and time of the workshop. (See Paragraph 2-1 below.)
 4. Field offices will receive, process, and rate applications.
 5. Regional offices will review field offices' processing for consistency and compliance with program requirements, complete the rating and ranking of applications, and submit selection recommendations to Headquarters.
 6. Headquarters will review regional offices submissions, approve applications, and announce those applications selected for funding.
- B. Competition for Fund Reservation. Due to funding limitations, competition for Section 202 fund reservations is intense. Since funding depends on strong sponsorship, unsuccessful applicants may wish to strengthen their applications by obtaining experienced and financially sound cosponsors. To be considered for funding, a new application will have to be submitted for each Notice of Fund Availability.

1-14. Ineligible Proposals.

- o Nursing homes, infirmaries and medical facilities.
 - o Mobile home projects.
 - o Community centers, with or without special components for senior citizen use.
 - o Headquarters for elderly organizations.
 - o Refinancing of sponsor-owned facilities without rehabilitation.
 - o Nonhousekeeping accommodations (central dining, but without private kitchen and/or bathrooms).
-

4571.3 REV-1

1-15. Unacceptable Proposals.

- o Applications from "front" organizations for profit-motivated developers.
 - o Proposals based on syndication for profit-motivated investors.
 - o Proposals to finance construction or rehabilitation of a project, but without provision for assisted units.
-