
CHAPTER 8
MANAGEMENT SPECIFIC TO CERTAIN HUD PROGRAMS

8-1 Introduction.

This chapter provides the policies and procedures concerning certain HUD programs. These policies and procedures differ from those of standard HUD management. The differences may cover MIP and/or ownership, depending upon the program.

- * All projects under Section 202, Section 312 and all other programs requiring the abatement/transfer of Section 8 payments/funds must use Appendix 5-4, checking the appropriate box, to notify the RAD of MIP possession or acquisition. *

8-2 Section 236 Projects. MIP projects must be managed and operated in the same manner as provided in this Handbook with the following exceptions:

- A. The Interest Reduction Payments (IRP) and the excess income reporting requirement continue, as well as the requirements as to rental increases, income recertification and resident eligibility.
- * B. The GTR/GTM must assure that the PM completes the Excess Income Report, Form HUD-93104 in accordance with HUD Handbook 4350.3 REV-1 and submits the original form HUD-93104 to the address listed on the form with a copy sent to the Field Office. The GTR/GTM must advise the PM that on every HUD-93104 submitted the following notation must appear on the form: "HUD is mortgagee-in-possession and all income collected has already been forwarded directly to Treasury through the PMS Lockbox. Therefore, no check accompanies this report." This notation will alert the Office of Finance & Accounting that an internal transfer is requested by the Office of Mortgage Insurance Accounting and Servicing. *

8-3 Housing Development Grant (HDG) Projects. For projects with Housing Development Grants, the DHM must contact the Field Counsel to ascertain the contents of HDG-related deed covenants and owner/government HDG related agreements.

- A. The HDG-related deed covenants and owner/government agreements exist until foreclosure. For MIP

4315.1 REV1 CHG1

projects, and for HUD-owned projects which were obtained through a deed-in-lieu, the covenants must be followed in setting rents on affected units.

- B. Depending upon the specific program, HDG related deed covenants may or may not remain in effect after foreclosure. The DHM should obtain Field Counsel's opinion as to whether the restrictions apply during HUD ownership. One of the following three conditions will apply.
1. The covenants are written in such a way that they must continue in force after foreclosure. These covenants must be followed in setting rent rates for affected units while the project is HUD-owned.
 2. The mortgagee (HUD) is given the option of continuing the covenants in force after foreclosure. when given the option, the covenants should be dropped. Rental rates should be set without consideration of past HDG requirements.
 3. The covenants are automatically dissolved at foreclosure. Rental rates should be set without consideration of past HDG requirements.

8-4 Section 312 Projects. HUD may acquire title to or become MIP of Section 312 projects as a result of a mortgagor's default on the loan.

- A. Pursuant to a May 22, 1989 Delegation of Authority and a Memorandum of Agreement between the Office of Community Planning and Development (CPD) and the Office of Housing (Housing), the Assistant Secretary for Housing is authorized to exercise the power and authority of the Secretary under Section 312 of the Housing Act of 1964 to:
1. Manage, repair, lease, and otherwise take all actions necessary to protect the financial interest of the Secretary in properties for which HUD is MIP; and
 2. Manage, repair, complete, remodel and convert, administer, dispose of, lease, sell or exchange for cash or credit at public or private sale, properties where the Secretary has acquired
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title.

- B. The Department has a contract with an outside contractor, administered by CPD, for assistance in most aspects of Section 312. The nature of these services places contractor staff in frequent contact with HUD Property Disposition staff, the Office of Finance and Accounting and the Office of General Counsel. Their functions are often coordinated by the staff of the Office of Affordable Housing Programs in CPD.
- C. Following are the major policies and procedures contained in the Memorandum of Agreement between Housing and CPD:
1. A Section 312 property is considered multifamily if it consists of five or more "residential" units. All other properties, including "commercial", are considered single family. On a case-by-case basis, however, the Single Family and Multifamily Property Disposition Divisions in Housing may agree to exceptions to this rule. *
 2. The Director, MFPD Division, is Housing's contact with CPD on Section 312 multifamily properties.
 3. CPD is responsible for the initiation of foreclosure and the determination of the HUD bid amount at a foreclosure sale.
 4. CPD coordinates the exchange of information between the foreclosing attorney and the MFPD Division.
 5. By the fifth workday of each month, CPD sends the MFPD Division a copy of the Section 312 Multifamily Loan Legal Action Status report, current as of the last day of the previous month. The report, copies of which are mailed to RHDs by the MFPD Division, indicates the current status of each property, the CPD case number, its address, the numbers of residential and nonresidential units, the date referred to the Office of General Counsel for foreclosure, the upcoming date of foreclosure sale, the prospective date for HUD's receiving a deed, and the date that any redemption period expires.

4315.1 REV1 CHG1

6. CPD provides copies of the foreclosure request to the MFPD Division and the DHM in the Field Office having jurisdiction over the property.
7. CPD must give the MFPD Division at least three weeks advance notice of HUD's having to become MIP or owner of a multifamily 312 property.
8. CPD must make every reasonable effort to ensure that the MFPD Division is notified at least three weeks in advance of a foreclosure sale.

CPD must designate who will be HUD's representative at the foreclosure sale. In cases where three weeks notice is impossible (as in bankruptcy discharges or some superior lienholder's sales), CPD must make every effort to give the MFPD Division staff reasonable advance notice.

9. To assist in determining how best to protect HUD's interests in a project, DHMs must, at the request of CPD, provide assistance in the areas of project inspection, project analysis, valuation and bidding procedures at foreclosure sales.

* All pre-acquisition expenses for contractors rendering technical assistance concerning a Section 312 project not yet owned by HUD or in MIP status will be paid through PMS and appropriately charged by the Office of Mortgage Insurance, Accounting and Servicing (MIAS) to the Acquired Security and Collateral Allotment. *

10. CPD must notify the MFPD Division, by telephone, of the results of a foreclosure on the day of the sale and confirm the notification in writing within five business days. The notification must state the results of the sale, e.g., sale to a third party purchaser, and the amount of Section 8 required as a result of the sale.

* 11. Once a Section 312 project becomes HUD-owned, for the purposes of management and disposition it is considered a "formerly subsidized project." *

12. Since Housing's Multifamily Mortgage FHA Insurance

Funds cannot be used to advance funds for the operation of Section 312 properties, CPD allocates

11/93

8-4

4315.1 REV1 CHG1

- * funds from the Acquired Security Part of the Section 312 Rehabilitation Loan Fund to Housing. Appropriate accounting of Section 312 projects is performed by OFA and MIAS, based on annual FY budgets submitted by Field Offices for Section 312 projects. *
- D. The DHM must assure that a project number is assigned, using the three digit field office code followed by 84001. The last digit is increased as each new Section 312 project comes into the MFPD inventory (84002, 84003, etc.).
- PMS history files must be consulted to ensure that the project number to be assigned has not been used previously.
- E. Legal documents for 312 projects are retained by Assistant General Counsel Affirmative Litigation, GPA, during MIP. When a 312 project becomes HUD-owned, the DHM must request legal counsel to transfer the documents to the Multifamily Accounting Branch, HFMMA.
- 8-5 Section 202 Projects. HUD may acquire title to or become MIP of Section 202 projects as a result of a mortgagor's default on the loan.
- A. HUD-owned multifamily Section 202 projects are "formerly subsidized projects."
- B. The original project number of Section 202 projects must continue to be used.
- C. DHMs must assure that the PM for an occupied Section 202 project is capable of properly operating and managing such a project.
- * D. Since Section 202 loans are not included in MARS and are serviced by RAD, MIAS must report to OFA the amount of income collected to enable OFA to do an internal transfer to reflect the income against the mortgage record maintained by RAD. *
- * E. Since Housing's Multifamily Mortgage FHA insurance Funds cannot be used for the operations of Section 202

projects, all expenses incurred on a Section 202 project will be charged to the account for Section 202 Preservation under Appropriation No. 86 x 4115. All pre-acquisition expenses for contractors concerning *

11/93

8-5

4315.1 REV1 CHG1

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- * a Section 202 project not yet owned by HUD or in MIP status will also be charged to this account. *
 - * F. The GTR/GTM must assure that the PM uses the MFPD Model Residential Lease for Section 202 Projects (listed in Appendix 8-1) for all applicants/residents of a Section 202 Project. *

8-6 Nursing Homes, Intermediate Care Facilities and Hospitals.

- A. HUD may become MIP or owner of nursing homes or hospitals defaulting under the Section 232 or Section 242 programs, respectively.
- B. Unless it is clearly inappropriate, such as in a vacant facility, the day-to-day operation of these facilities must be placed under the direct supervision of a qualified Nursing Home/Hospital Administrator.
- C. Due to the nature of such facilities, unlike rental housing projects, the Administrator must establish a bank account for the operation of the facility. The Administrator must submit a monthly report of all income and expenses to the GTR/GTM.
- D. In the event that income is insufficient to cover required operating expenses, HUD will advance funds through PMS. A request for an advance of funds must be submitted to PMS pursuant to the PMS User Manual after the Administrator's report of income and expenses has been reviewed and verified.
- E. As with HUD-owned and MIP projects, budgets are required on a Federal Fiscal Year basis; however, for these facilities, the budget is an abbreviated one with only summary income and expense categories rather than a fully completed line item budget. All fiscal year budgets must be entered into the PMS system pursuant to the PMS Manual.
- F. HUD-owned nursing homes retain a proprietary status and must be paid proprietary rates under Medicare.

The DHM must assure that the contract agent for Medicare is notified of the project's proprietary status and is allowing the proper rates.

Any disputes on this matter which cannot be resolved at the Field Office level must be referred to the RHD.

11/93

8-6

4315.1 REV1 CHG1

G. The DHM must determine the agency responsible for issuing the Certificate of Need license. The DHM must request, in writing, that the agency provide a detailed explanation of the requirements for maintaining the Certificate of Need license during HUD management and after sale.

H. Patient/medical records must be retained in accordance with state and local requirements.

Such retention requirements must be made a requirement of either a foreclosure or PD sale by HUD.

8-7 Occupied Retirement Service Centers (ReSC's). When HUD is MIP or owner of an occupied ReSC, the DHM must assure that:

A. The PM or PM subcontractor who will manage the ReSC has demonstrated experience or can obtain the services of personnel with demonstrated experience in developing and administering management plans tailored to the needs of the ReSC.

Special skills are generally needed in areas such as meals, maid service and social activities which, in ReSCs, are similar to those provided in resorts, while the resident care required may approach that of an intermediate care facility.

B. HUD provides the same level of services that the residents received prior to HUD becoming MIP or owner, as follows:

1. The property must be marketed as a ReSC for a trial period of at least 90 days to determine if the project can successfully continue to operate as a ReSC.
2. The marketing program must be assessed at the end of the trial marketing period. The assessment, along with a recommendation from the DHM must be forwarded to the RHD. After review of the

assessment and the DHM's recommendation, the RHD must decide whether to provide ReSC services.

3. If the RHD decides to terminate ReSC services, all residents must receive written notice of such termination at least six months before the scheduled date of termination. At the expiration of the six month period, residents may remain in

11/93

8-7

4315.1 REV1 CHG1

residency and pay a rental rate based upon comparable properties without ReSC services.

11/93

8-8