

CHAPTER TWO

APPROVAL OF MANAGEMENT AGENTS

2.1 INTRODUCTION

This chapter discusses the approval procedures for the selection of management agents. Under different circumstances, HUD, Administration for Rural Housing and Economic Development Services (ARHEDS), or a state/local agency may be responsible for approving the management agent. The first section of this chapter describes four management agent types and lists the conditions under which each federal or state/local agency has approval authority. The second section discusses the procedures for management agent approval under HUD authority. The third section discusses the procedures for management agent approval under ARHEDS and state/local agency authority.

SECTION 1: BACKGROUND

2.2 AGENT SELECTION AND APPROVAL AUTHORITY

The project owner is responsible for seeking out and selecting a management agent, but the selection is subject to the approval of the authorizing agency. This authorizing agency may be HUD, or it may be ARHEDS or the state/local agency, depending upon the project type and the mortgage insurance coverage. See Figure 2-1.

Figure 2-1 Approval Authority by Project Type	
APPROVING AUTHORITY	PROJECT TYPE
HUD	All multifamily projects insured or financed directly by HUD, and HUD-assisted multifamily projects where HUD is the Contract Administrator.
State/local agencies	Non HUD-insured multifamily housing projects where a state or local housing agency financed the project or serves as the Contract Administrator for HUD assistance. HUD Area Offices perform Previous Participation review to determine agent eligibility.
ARHEDS	HUD-assisted multifamily housing financed by ARHEDS. HUD Area Offices perform Previous Participation review to determine agent eligibility.

- a. **HUD Approval Authority.** HUD has approval authority for all multifamily HUD-insured and HUD-assisted projects where HUD is the contract administrator. Furthermore, regardless of approving agency, HUD will conduct all Previous Participation Clearance (Form HUD-2530) reviews for all types of projects.
- b. **State/local housing agency Approval Authority.** State/local agencies have approval authority for all non-HUD insured projects where the agency financed the project or serves as the subsidy contract administrator. As part of the approval process, the state/local agency must submit to HUD a Previous Participation Certification (Form HUD-2530) for the proposed management agent as described in paragraph 2-9a. With respect to all other procedures discussed in this chapter, state and local agencies may develop their own criteria or elect to use the procedures established in this Chapter. See Section 3 of this chapter for additional guidance.
- c. **ARHEDS Approval Authority.** ARHEDS has approval authority for all ARHEDS 515/8 projects. The ARHEDS Office must submit a Previous Participation Certification for the proposed management agent for all ARHEDS 515/8 projects as described in paragraph 2-9a. With respect to all other procedures discussed in this chapter, ARHEDS may develop its own criteria or elect to use the procedures established in this Chapter. See Section 3 of this chapter for additional guidance.

2.3 TYPES OF MANAGEMENT AGENTS

Figure 2-2

Four Types of Management Agents

1. Owner/Manager
2. Identity of Interest Management Agent
3. Independent Fee Agent
4. Project Administrator

(In this handbook, the term "management agent" applies to all four forms of management agents unless a specific distinction is made because of policy or procedural differences.)

- a. **Owner/manager.** In this relationship, the owner and the management agent are the **same business entity**. This is also referred to as **self-management**. A project is not self-managed if some or all of the same individuals are involved in both the ownership entity and the management agent but the organizations are legally different business entities.

For example, if the owner is a limited partnership, and the general partner of the ownership entity serves as the management agent, the management agent is not an owner/manager because the management agent and the mortgagor are different business entities. Instead, the management agent is an **identity-of-interest management agent** (see paragraph 2.3b).

- b. **Identity-of-interest (IOI) management agent.** An IOI relationship exists when an individual or entity that provides management services to the project has a relationship with the project owner that is such that selection of the management agent and determination of the management fee will not be determined through an arms-length transaction.

- (1) An identity-of-interest relationship exists when:

- (a) The owner entity or a general partner of the owner entity, or
- (b) Any officer or director of the owner entity, or
- (c) Any person who directly or indirectly controls 10 percent or more of the voting rights, or owns 10 percent or more of the owner entity

is also

- (d) An owner, general partner, officer, or director of the management agent company or its subcontractor, or
- (e) A person who directly or indirectly controls 10 percent or more of the voting rights, or owns 10 percent or more of the management company or its subcontractor.

- (2) "Person," as used above, refers to any individual, partnership, corporation, or other business entity. Any ownership, control, or interest held or possessed by a person's spouse, parent, child, grandchild, or sibling or other relation by blood or marriage is attributed to that person for this determination.

- (3) "Subcontractor," as used above, refers to any individual or company that contracts with the management agent to provide management services to the project.

- c. Independent fee management agent. A management company or individual that has no identity-of-interest relationship with the owner (see paragraph 2.3b) and no financial interest or involvement in the project, other than earning a fee for providing management services.
- d. Project administrator. An individual who directs the day-to-day activities of a project designed for elderly, handicapped, or disabled residents, and who reports to the Board of Directors. Generally, a project administrator is an employee of the project, rather than a contractor; has a job description and/or employment agreement with the project instead of a management agreement; and receives a salary rather than a management fee.

2.4 PRINCIPLES OF THE REVIEW PROCESS

- a. Approval will not be unreasonably withheld. A management agent's contract is with the project owner. HUD will not unreasonably withhold approval of the proposed agent for a project.
- b. HUD reviews protect the public interest. HUD reviews management agent performance, experience, and capabilities to protect the public and its own interests. HUD does not disapprove agents to penalize program participants who have had past performance problems.
- c. Past Performance and Current Expertise are Considered. Loan/Asset Management staff must consider both the agent's past performance and the probability of future compliance.
 - (1) Area Offices will not issue disapprovals based on past performance without considering corrective actions taken by the agent to address previous poor performance.
 - (2) If there are management problems or open audit findings at projects the agent currently manages, Area Offices will consider the following in deciding whether to approve or disapprove an agent:
 - (a) whether the agent caused or exacerbated the problem(s); and
 - (b) whether the agent has taken, or is taking, all reasonable steps to correct the problem(s) and address HUD's concern(s).
- d. Experience. Although the Loan/Asset Management staff may disapprove the agent if the proposed agent clearly lacks the skills or experience to manage the project, they may not refuse to approve an agent merely because the agent has not previously managed the type of project being proposed (e.g., has

managed only Elderly or only Family units). Instead, the Loan/Asset Management staff must assess the agent's strengths in management systems and procedures that will be essential to management of the new type of project.

- e. Monitoring. HUD will use the documents submitted during the approval process as the basis for monitoring the agent's performance and compliance with all conditions agreed to during the approval process. HUD will require owners to replace agents that do not adequately perform their management responsibilities.

2.5 STANDARDS FOR MANAGEMENT AGENT APPROVAL

The owner agent is entrusting a management agent with the day-to-day operation of the project. Therefore, the owner and HUD must be assured that the project will be managed in a prudent, efficient, and cost-effective manner, in accordance with applicable laws and HUD rules, contracts, and procedures. HUD requires that the management agent:

- (1) Be eligible and in good standing with HUD (see paragraphs 2.10 and 2.11);
- (2) Demonstrate effective management experience and acceptable operating procedures (see paragraph 2.12);
- (3) Carry adequate fidelity bond coverage (see paragraph 2.14);
- (4) Be in compliance with civil rights laws, regulations and requirements (see paragraph 2.10b); and

Agents should also demonstrate a positive record of communication and cooperation with legitimate resident associations (see Chapter 4).

2.6 MANAGEMENT AGENT ASSUMPTION OF RESPONSIBILITY

Generally, the management agent may assume management responsibility only after:

- a. The HUD Loan/Asset Management staff has issued a letter approving the agent proposed by the owner; and
- b. The owner and agent have executed and submitted the appropriate Management Certification form (Form HUD-9839a, b, or c); and
- c. The owner and agent have executed a Management Agreement, as necessary (see paragraph 2.17).






2.7 MANAGEMENT IN EMERGENCY SITUATIONS

An owner or agent may assume management of a project without prior Loan/Asset Management staff approval only in an emergency (e.g., an agent has abandoned a project or HUD has required the owner to terminate a management agreement).

2.8 SUBSEQUENT AGREEMENTS WITH MANAGEMENT AGENTS

Once HUD has approved a management agent for a particular project, the owner and agent do not have to seek HUD approval for subsequent agreements as long as the agent remains at the project, unless HUD has imposed a Limited Denial of Participation (LDP), Suspension, or Debarment on the agent. (See paragraph 2.10a)

SECTION 2: PROCEDURES FOR HUD APPROVAL OF MANAGEMENT AGENTS**Figure 2-3****Key Steps in Management Agent Approval Process**

-  The project owner selects proposed management entity.
-  The owner submits required documentation to HUD.
-  HUD reviews the project owner's submission to assess proposed agent's:
 - ◆ eligibility
 - ◆ past performance
 - ◆ management capacity and experience
 - ◆ fidelity bond coverage.
-  HUD issues a decision letter.
-  The owner executes an acceptable Management Agreement with the agent.

2.9 OWNER/MANAGEMENT ENTITY APPROVAL SUBMISSION REQUIREMENTS

To request approval of the management entity, the owner/agent must submit the following information to the HUD Area Office at least **60 days** before the date the owner wishes the new agent to assume responsibility. In the case of emergency replacements of management agents (see paragraph 2.7) the owner/agent must submit the information needed for HUD to review and approve the new management agent as soon as the new agent is identified.

- a. Previous Participation Certification. Form HUD-2530 (see Appendix 1) reports the names of all principals and affiliates of the management agent and any previous housing projects in which they have participated. It further certifies that they currently are eligible to participate in the management of the HUD-insured, financed or assisted multifamily project.
- b. Management Entity Profile. Form HUD-9832 (see Appendix 2) provides HUD with information on the management entity's organization and procedures, including treatment of identity-of-interest relationships. It also shows the types of projects the agent has managed and what skills or professional certificates

the agent's staff hold. It does not provide information on how the agent has operated individual projects.

- (1) If the management entity has already submitted a profile in the format of the HUD-9832 and the profile is still accurate, the owner/agent should state in the cover letter requesting approval of the management entity that an accurate and up-to-date profile is on file. The cover letter should also include the date that this document was submitted. A new submission is not required.
- (2) If a previously-submitted profile is not current, or if the management entity has never submitted a profile that conforms with the HUD-9832 format, the owner or agent must submit a new profile of the management entity.
- (3) An updated profile must be submitted whenever there are changes in the management entity's organization or operations. The owner and/or agent should not wait until the management fee changes to submit a revised profile.

c. Management Certification. Using Form HUD-9839a, b, or c, as appropriate, (see Appendix 3) the owner and management agent together certify that they will comply with HUD requirements and contract obligations, execute an acceptable management agent agreement, and that no payments have been made to the owner in return for awarding the management contract to the agent and such payments will not be made in the future (projects not managed by the owner). Owners and agents must fill out the appropriate Certification Form as follows:

- (1) Owner-Managed Projects submit Form HUD-9839a
- (2) Identity of-Interest Agents submit Form HUD-9839b
- (3) Independent Fee Agents submit Form HUD-9839b
- (4) Project Administrators submit Form HUD 9839c.

d. Proposed Staffing to be Charged Against the Project Operating Account. (See paragraph 6.38 for a discussion of which positions can be charged against the operating account.)

- (1) Owners/agents must provide a listing of the staff whose salaries will be paid from the project's operating account. The list must include:
 - (a) Job titles and approximate salary, including hourly rate;

- (b) A statement of each position's duties, if not obvious by title and whether the position is full or part-time;
- (c) If the employee will be working for more than one project and/or working part-time for the agent in a non-supervisory capacity, a statement of how that person's time and salary will be allocated.

Note: Salaries of management agent supervisory staff not assigned to the project must be paid from the management fee. Only full-time, front-line supervisors may be paid from the project account (see exceptions to this rule in paragraph 6.39(c)).

- (2) Any changes in staffing structure described in the listing above or additions in staff, which would require submitting a rent increase request to HUD, should be documented as part of the budgeted rent increase request process.
- e. **Resident Complaints and Their Resolution.** Owners must provide a description of the system employed by the agent for resolving resident complaints and actual examples of the agent's implementation of the system.
- f. **Additional Information Required by the HUD Area Office.** The Loan/Asset Management staff may require owners to submit additional information to clarify materials already submitted. Materials requested may address:
 - (1) Determining the management agent's acceptability.
 - (2) Monitoring the agent's compliance with HUD requirements.
 - (3) Resolving project operating problems.

Figure 2-4 lists the types of additional information that may be needed to assess the acceptability of a proposed agent. Loan/Asset Management staff should not require owners to submit this type of information on a specific form.

2.10 AGENT ELIGIBILITY BASED ON PREVIOUS PARTICIPATION

- a. **Previous Participation Review.** To assess if a proposed agent is eligible, Loan Management staff must perform a Previous Participation review to determine if the management agent or any of its principals are ineligible (24 CFR, Part 200.213). Loan/Asset Management staff will process Form HUD-2530, the Previous Participation Certification. (Instructions are in HUD Handbook 4065.1, Previous Participation Handbook.) If HUD has taken one or more of the following actions against the proposed agent or one of its principals, the agent may not be approved to manage the project.

Figure 2-4

**Information HUD Area Offices Might Need to Assess
the Acceptability of a Proposed Management Agent**

Situation	Type of Information
1. Area Office is familiar with the agent's operating procedures and agent has satisfactorily managed projects similar to the one under consideration.	Explanation of how operating and oversight procedures for this project will vary from any others normally used by the agent
2. HUD Area Office has had no experience with the agent or is unsure of the agent's ability to manage the project.	To aid in future performance monitoring, new agents need to include a narrative explaining how the agent will handle the management tasks listed on Form HUD-9834, Management Review Report, and/or a copy of the agent's procedures manuals
3. Project has significant physical, financial, or social problems.	<p>Statement of project's problems and their causes</p> <p>Review of recent Forms 9834 and open IG audits on the project</p> <p>List of actions to be taken to eliminate those causes and correct the problems (e.g., repairs, rent increase, change in operating procedures)</p> <p>Schedules for implementing the above actions</p> <p>List of projects with similar problems or needs that the agent has previously or is currently managing</p>
4. New project preparing for rent-up.	Description of planned advertising and marketing efforts. (NOTE: If an Affirmative Fair Housing Marketing Plan is on file for the project, use the information in that plan.)
5. Owner/manager proposes to contract out certain management functions.	List of functions to be contracted out, as well as a description of the contractual relationship and the contractor's qualifications and experience in those functions
6. Project is different from any other project(s) the agent is currently managing in the Area Office's jurisdiction	List of similar projects in other Area Office jurisdictions

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- (1) Headquarters has suspended or debarred the management agent or any of its principals (24 CFR, Part 24.200)
 - (2) Headquarters has placed the agent or any of its principals in an ineligible status -- i.e., HUD has disqualified the agent or principal from participation in HUD programs because another Federal Agency has imposed a sanction (24 CFR, Part 24, subpart G).
 - (3) The HUD Area Office in which the project is located has issued a Limited Denial of Participation (LDP) for the agent. The HUD Area Office may also restrict or deny an agent's participation on the basis of an LDP issued by another Area Office (24 CFR, Part 24, subpart G).
- b. FHEO Input. Loan/Asset Management staff should also seek FHEO input regarding a proposed management agent. FHEO can alert Loan/Asset Management staff to proposed participation by persons who have been found, through appropriate procedures, to be in violation of civil rights laws, regulations, or requirements.

2.11 AGENT ELIGIBILITY IN SECTION 202 PROJECTS

- a. Self Management. The Borrower may self-manage the project provided that the salaried employee responsible for managing the project is not an officer, board member or authorized agent of the Sponsor or Borrow and a waiver of Paragraph 11(b) of the Regulatory Agreement (Form FHA 2466-EH), is obtained from Headquarters to permit self management. The salary included in processing the project expenses must be what is reasonable and customary.
- b. Identity of Interest Management Agents.
- (1) An identity-of-interest relationship exists if any officer, director, board member, or authorized agent of any development team member (consultant, general contractor, attorney, management agent, seller of the land, etc):
 - (a) Is also an officer, director, board member, or authorized agent of any other development team member;
 - (b) Has any financial interest in any other development team member's firm or corporation;
 - (c) Is a business partner of an officer, director, board member, or authorized agent of any other development team member;

- (d) Has a family relationship through blood, marriage or adoption with an officer, director, board member, or authorized agent of any other development team member; or
 - (e) Advances any funds or items of value to the sponsor/ borrower.
- (2) The Sponsor or its nonprofit affiliate may be retained by the Borrower to manage a Section 202 project if no more than two paid officers, directors, board members, or authorized agents of the Sponsor also serve as nonvoting board members of the Borrower corporation. In such cases a waiver of 24 CFR Part 885.5 and Paragraph 11(b) of the Regulatory Agreement is required.

2.12 REVIEW OF AGENT PERFORMANCE, EXPERIENCE, AND CAPABILITY

Loan/Asset Management staff must review the qualifications of the proposed agent to assess the agent's ability to manage the project effectively and in compliance with HUD requirements. Loan/Asset Management staff must consider each of the factors below in reviewing an agent's qualifications. Paragraph 2.13 provides guidance about how to conduct the review and document the results.

a. Past and Current Management

- (1) Loan/Asset Management staff must review the proposed agent's past experience and current performance with respect to the following performance indicators:
- (a) Billing
 - (b) Controlling operating expenses
 - (c) Vacancy rates
 - (d) Resident turnover
 - (e) Rent collection and accounts receivable
 - (f) Physical security
 - (g) Physical condition and maintenance
 - (h) Resident relations.

Figure 2-5 provides guidance for determining whether changes are needed in the Management Agent's operating procedures.

- (2) If problems are identified with any of these indicators, Loan/Asset Management staff must assess whether the agent has adequately improved its procedures to prevent the recurrence of such problems or whether management initiatives proposed by the agent and owner are

Figure 2-5

**Determining Whether Changes Are Needed
in the Management Agent's Operating Procedures**

If:	Assess Procedures for:
Billings: The agent has consistently submitted late or incorrect HUD-50059 certifications or subsidy billings.	Training occupancy staff and reviewing the occupancy staff's work. (The agent should have described these procedures in the Management Entity Profile.)
Operating expenses: Operating expenses are higher than those of comparable projects (i.e., assisted projects are compared to other assisted projects and unassisted projects are compared to other unassisted projects).	Comparing prices, taking advantage of discounts, and bulk purchasing. Preparing budgets and monitoring actual expenses against budgeted amounts.
Vacancy rates: Vacancy rates are higher than those of comparable projects.	Marketing and preparing units for occupancy following move-out.
Resident Turnover: Turnover rates have been higher than those of comparable projects.	Screening residents. Responding to resident complaints and repair requests. Project maintenance.
Rent collection and accounts receivables: Accounts receivables have been high.	Screening residents for payment history. Collecting rents in a timely manner. Pursuing delinquent accounts.
Physical security: Project has frequent break-ins, vandalism, or drug problems.	Providing security services.
Physical condition/maintenance: Project has critical and continuous physical condition/maintenance problems attributed to the Management Agent. Project is not well maintained.	Compliance with contractual terms and HUD- required corrections. Performance evaluations and responsiveness to HUD- required actions. Responding to resident concerns.
Resident Relations: Verified evidence that the agent has shown a pattern of harassment of residents or legitimate resident organizations.	Recognition of independent, representative resident associations; communication with resident associations; and distribution of information about residents' rights and responsibilities.

sufficient to correct the problems and their causes. Figure 2-6 presents two sample situations of agents with past performance problems and how to assess the probability of future compliance.

- b. **Ability to Manage Troubled Projects.** If the project the agent will manage has physical, financial or social problems that require special expertise or skills to manage effectively, Loan/Asset Management staff must determine whether the agent has the necessary skills and expertise to manage the project and whether the agent's proposed remedies are appropriate. Agents proposed for these projects should have prior experience successfully addressing similar issues.
- c. **Management Qualifications.** The proposed management agent should have at least one person who establishes the agent's policies and supervises project operations with the following qualifications:
 - (1) A professional designation in housing management from a national organization that provides such accreditation, or
 - (2) A minimum of two years experience in directing and overseeing the management of multifamily projects serving a similar resident clientele.

The Loan/Asset Management staff may accept a proposed agent without the experience requirements listed in this subparagraph if the agent is satisfactorily managing other HUD-insured or subsidized projects.

- d. **Past Performance with IOI Contractors.** If the agent purchases goods or services from identity-of-interest companies and has previously managed HUD-insured and/or subsidized projects, Loan/Asset Management staff must assess the agent's past use of such companies and whether this use resulted in costs to the project that exceed the prices paid in arms-length transactions. The review should especially consider:
 - (1) Goods and services purchased through any "pass-through" arrangements described in Item 11b of the Management Entity Profile.
 - (2) Evidence that the agent has compared prices and that the use of any identity-of-interest companies or pass-through arrangements has been more advantageous to the project than purchasing through arms-length transactions would have been.
 - (3) Evidence that the management agent followed the contracting and hiring guidelines in Chapter 5 and Paragraph 6.49.

Figure 2-6

Assessing an Agent's Past Performance and Probability of Future Compliance**SAMPLE SITUATIONS**

Situation 1: The agent has seriously or frequently misused project assets or violated HUD requirements, but has corrected the violations.

The Area Office should consider: Will the agent repeat these violations? If the Area Office concludes that the answer is no, it should approve the proposed agent. It might reach this conclusion if:

A. The violations were caused by weaknesses in the agent's operating procedures and the agent has since implemented acceptable procedures.

or

B. The violations were caused by persons who are no longer associated with the management agent.

If there is reason to believe that the agent will repeat these violations, then the Area Office should impose a Limited Denial of Participation (LDP) on the agent.

Situation 2: In the past, the agent seriously or frequently violated HUD requirements and did not properly correct the violations.

The Area Office may still approve the agent on a conditional basis, if the agent and the Area Office have agreed on actions, and a schedule for implementing them, that will correct the violations. Before making the conditional approval, the Area Office should determine that the agent has made satisfactory progress toward correcting the violations -- in short, that the agent is making a good-faith effort to restore and ensure compliance with HUD requirements.

Under a conditional approval, the management agreement between the owner and the agent must:

A. Incorporate or refer to the schedule for completing the corrective actions,

and

B. Contain a clause giving HUD the right to request termination of the management agreement at any time if the agent is not making satisfactory progress toward completing those corrections.

The Area Office will have to incorporate monitoring of that progress into its review process.

If the Area Office and the agent do not agree on actions and a schedule for implementation, or do reach an agreement but the Area Office determines that the agent has not made satisfactory progress in correcting the violations, the Area Office will impose a LDP until it determines that the agreement is in place and the agent is making satisfactory progress.

In both situations: If the problems on which the LDP are based are serious enough to warrant a denial of participation nationally and/or in other programs, the Area Office will request Headquarter's Office of Multifamily Housing to initiate action for debarment or suspension.

2.13 CONDUCTING REVIEWS OF AGENT QUALIFICATIONS

- a. Timing of decision. The Loan/Asset Management staff should normally issue a decision on the acceptability of a proposed management agent within **45 days** of receiving all the materials listed in paragraph 2.9, unless processing delays in receiving the HUD-2530 clearance preclude completing the review within this time period.
- b. Information Sources for the Review. Loan/Asset Management staff have a variety of sources of information about the proposed management agent.
 - (1) Management Entity Profile. Loan/Asset Management staff can use the information listed on the form to solicit opinions from:
 - (a) Other Area Offices that have worked with this agent, as noted in Section 19a of the Management Entity Profile.
 - (b) ARHEDS offices and State/local agencies that have worked with this agent, as noted in Section 19c of the Management Entity Profile.

For ARHEDS-financed projects insured by HUD, Loan/Asset Management staff should inquire with the ARHEDS offices shown on Schedule A of Form HUD-2530.

- (2) Audit Reports. Open audit reports and information about IG or GAO audits in progress related to the project, the management agent, or individual principals can be obtained from the Area Office Inspector General for Audit (IGA). Upon request, the IGA will provide:
 - (1) Report numbers, titles, and dates of audit reports;
 - (2) The nature of any findings; and
 - (3) Whether the findings are open or closed.

The Loan/Asset Management staff should review these reports to determine whether the proposed agent was managing the project when the audit took place, and whether the deficiencies cited in the audit were within the agent's authority to correct.

- (3) Performance Evaluations for the proposed agent and projects which the agent has managed or is currently managing if those projects are under Flexible Subsidy contracts or Workout Agreements.

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- (4) Monthly and Annual Financial Statements of the Project, including the Independent Public Auditor (IPA) Internal Controls Questionnaire.
- (5) Additional Documentation. Additional documentation that the HUD Loan/Asset Management staff may review includes:
- (a) HUD/mortgagee on-site review reports;
 - (b) Results of Form HUD-50059 and voucher reviews;
 - (c) Correspondence;
 - (d) Resident complaint files; and
 - (e) Previous management reviews.
- c. Documentation of Review Results. Loan/Asset Management staff must develop a format to document their review of management agents. The review documentation must provide evidence for Headquarters and for the owner and proposed agents that Loan/Asset Management staff has reasonably considered all information pertinent to its decision.

2.14 BONDING REQUIREMENTS FOR AGENTS

Loan/Asset Management staff must also determine whether the agent has adequate bonding. The Loan/Asset Management staff may not waive these minimum fidelity bond requirements. To provide a basic level of protection for the multifamily project assets:

- a. The management agent must certify in the Management Certification that it carries fidelity bond or employee dishonesty coverage for:
 - (1) All principals of the management entity, and
 - (2) All persons who participate directly or indirectly in the management and maintenance of the project and its assets, accounts, and records.
- b. The fidelity bond or coverage must name the mortgagee and HUD as additional loss payees.
- c. Coverage may be through one or more bonds, and one bond may cover more than one project, including projects whose mortgages are not insured or held by HUD. The agent's principals and supervisory and front-line staff may be covered under the same bond.

- d. Each project must be insured for at least the value of two months' gross potential income for the project. If a bond covers more than one project, this minimum must be computed using the project with the highest gross potential income.

EXAMPLE: If an agent seeks to manage three projects with monthly gross income of \$50,000, \$75,000, and \$150,000, the agent may obtain one bond with a value of \$300,000 – two months' income from the \$150,000 project – to cover all three projects.

2.15 APPROVAL OF THE PROPOSED MANAGEMENT AGENT

- a. Grounds for Approval. HUD will approve a proposed management agent when:
- (1) HUD Headquarters approves the Form HUD-2530 clearance;
 - (2) Loan/Asset Management staff determines that the agent has the capacity to manage the project effectively and in accordance with HUD requirements; and
 - (3) Loan/Asset Management staff determine that the agent has adequate fidelity bond coverage.
- b. Conditional Approvals. All issues raised during the review that may negatively impact the Loan/Asset Management staff's decision should be discussed with the owner and agent, as necessary and appropriate. If the Loan/Asset Management staff feels that the agent is acceptable but concludes that the agent's proposed procedures are weak in particular areas, it may make a conditional approval of the proposed management agent by:
- (1) Sending the owner a letter describing the specific weaknesses identified and discussing these weaknesses with the owner and/or agent as appropriate; and
 - (2) Reaching an agreement with the owner and agent as to how the agent will change its procedures. This agreement should indicate the specific steps the owner/agent will have to take to remedy the identified weaknesses and establish a date by which HUD will reassess the agent's acceptability. The agreement should be included in the letter approving the management agent.

The second sample situation in Figure 2-6 illustrates the use of a conditional approval.

- c. Scheduling Initial Management Reviews of Less Experienced Agents. When issuing approvals for agents who have not previously managed HUD projects or who do not have experience with the particular type of project under consideration, Loan/Asset Management staff should schedule a comprehensive management review to be performed within 12 months of the date the agent assumes responsibility for the project, unless otherwise specified by program requirements.

2.16 DISAPPROVAL OF THE PROPOSED MANAGEMENT AGENT

- a. Previous Participation Rejection.
 - (1) If Headquarter's Participation Control Officer/Review Committee decides to deny or withhold approval of an agent's participation in accordance with 24 CFR, Parts 200.226-230, it will notify the owner and agent directly in writing and send a copy to the Loan/Asset Management staff.
 - (2) The Loan/Asset Management staff must then advise the owner that the project may not enter into an agreement, pay, or become obligated to pay management fees to the proposed agent and of the owner's right to appeal this decision.
- b. Owner Response. The owner must:
 - (1) Propose another management agent, or
 - (2) Await resolution of any appeal the agent files under 24 CFR, Part 200.241 and make interim management arrangements acceptable to the Loan/Asset Management staff.

2.17 MANAGEMENT AGREEMENT REQUIREMENTS

- a. Applicability. Projects with identity-of-interest agents or independent fee agents must execute a Management Agreement. An Agreement is recommended, but not required, for owner-managed projects or projects managed by a project administrator.
- b. Required contents. The owner and agent may negotiate their own form of agreement provided that it contains language to meet the following requirements:

- (1) **Scope of service.** All management agreements must describe the services the agent is responsible for performing and for which the agent will be paid management fees.
- (2) **Required clauses.** All agreements must provide that:
- (a) Management fees will be computed and paid according to HUD requirements.
 - (b) HUD may require the owner to terminate the agreement:
 - (i) **Immediately**, in the event a default under the Mortgage, Note, Regulatory Agreement, or Subsidy Contract attributable to the management agent occurs;
 - (ii) **Upon 30 days written notice**, for failure to comply with the provisions of the Management Certification or other good cause; or
 - (iii) When HUD takes over as MIP.
- NOTE: As a good business practice, the management agreement should always give the owner the ability to terminate the contract for cause, with notice.
- (c) If HUD terminates the agreement, the owner will promptly make arrangements for providing management satisfactory to HUD.
 - (d) HUD's rights and requirements will prevail in the event the management agreement conflicts with them.
 - (e) The management agent will turn over to the owner all of the project's cash, trust accounts, investments, and records immediately, but in no event more than 30 days after the date the management agreement is terminated.
- (3) **Prohibited "hold harmless" clause.** Management Agreements cannot exempt the agent from all liability for damages and injuries.

A sample prohibited clause would read:

"The owner agrees to hold and save agent harmless from dangers of injuries to persons or property by reason of any cause whatsoever, either in or about the premises or elsewhere, when agent is carrying out

the provisions of this agreement, or acting under the express or implied direction of the owner."

To make this clause acceptable:

- (a) Delete the underlined words, and
 - (b) Add "unless such injuries resulted from the agent's gross negligence or willful misconduct" after "direction of the owner".
- c. Length/term of the Agreement. The length/term of the Agreement is negotiated between the owner and the management agent. The Loan/Asset Management staff may impose a maximum term on the Management Agreement if the Loan/Asset Management staff approved the agent on a conditional basis.
- (1) The contract may provide for a fixed term or an open-ended term (e.g., automatically renewable or "to remain in effect until cancelled by HUD, the owner, or the agent").
 - (2) If the length/term of the Agreement changes, the owner/agent must submit a new Management Certification.

SECTION 3: REVIEW PROCEDURES FOR MANAGEMENT ENTITIES SUBJECT TO ARHEDS OR STATE/LOCAL AGENCY APPROVAL

2.18 GENERAL

- a. Management agents for HUD-assisted properties which are financed by state/local agencies or through the ARHEDS Section 515 program are approved by the financing agency. (See Figure 2-1 for a complete description of approval authority by project type.)
- b. State/local agencies and the ARHEDS may approve a proposed agent only if:
 - (1) HUD Headquarters has approved the HUD-2530 clearance; and
 - (2) The state/local agency or ARHEDS is satisfied that the agent has the capacity to manage the project.
- c. Apart from the Form HUD-2530 review process described above, state/local agencies and ARHEDS may develop their own policies and procedures for reviewing and approving management agents. They may elect to use HUD forms and procedures or design different ones.
- d. Monitoring records should be kept in accordance with the Contract Administrator's Handbook (HUD Handbook 4350.5).

2.19 STATE/LOCAL AGENCY AND ARHEDS PROCESSING PROCEDURES

- a. Upon receiving the Form HUD-2530 and any other documentation required by the agency, the state/local agency or ARHEDS must assess the acceptability of the proposed agent.
 - (1) If the state/local agency or ARHEDS staff know that HUD has taken any of the actions described in paragraph 2.10a against the proposed agent or one of its principals, it should advise the management agent that HUD will not approve its participation.
 - (2) The state/local agency or ARHEDS has full authority to disapprove a proposed management agent without processing and submitting the Form HUD-2530 to HUD if there is good reason for doing so.

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- b. If the agent is acceptable to the state/local agency or ARHEDS, the agency should send to the Loan/Asset Management staff:
- (1) The original Form HUD-2530 with a letter stating that the Form HUD-2530 is being submitted in connection with the review of a proposed management agent; and
 - (2) If the agency is aware of involvement by the owner or any of its principals with a project that did not comply with HUD's regulations or administrative procedures, information about:
 - (a) Names of involved principal(s);
 - (b) The nature of the non-compliance;
 - (c) Whether the principal was involved with the project when the non-compliance occurred;
 - (d) How the principal was involved; and
 - (e) Whether, how, and when the non-compliance was resolved.
- c. When HUD returns the Form HUD-2530, the Form will indicate whether HUD has cleared the agent's previous participation in HUD programs. If HUD disapproves or withholds clearance, the state/local agency or ARHEDS should require the owner to propose a new agent.