

## CHAPTER 10. MORTGAGE DEFAULT AND CLAIMS

### 10-1 ORGANIZATIONAL RESPONSIBILITIES.

HFAs are responsible for filing Notices of Default and Reinstatements, claims for insurance benefits including Partial Payment of Claim (PPC), issuing debentures, paying annual accrued interest on debentures, retiring bonds, returning excess funds to Headquarters and submitting to Headquarters HUD's share of repayments. The Multifamily Insurance Operations Division, in Headquarters, is responsible for monitoring defaults, granting extensions for filing an initial claim, accepting PPCS, accepting reinstatements and notifying the Multifamily Claims Branch of these transactions. The Multifamily Claims Branch in Headquarters, is responsible for computing and paying insurance benefits, holding HFA Debentures and tracking accrued interest received on debentures. The Multifamily Accounting Branch (MAB), in Headquarters, is responsible for receiving and monitoring repayments on HFA's second mortgages.

### 10-2 NOTICE OF DEFAULT AND FILING AN INSURANCE CLAIM.

#### A. NOTICE OF DEFAULT

1. General - When a mortgage is in default, the HFA is required to notify Headquarters monthly until the default is cured or the HFA files an application for initial claim payment.
2. Definition of Default
  - a. A monetary default exists when the mortgagor fails to make any payment due under the mortgage.
  - b. A covenant default exists when the mortgagor fails to perform any other covenant under the provision of the mortgage or the regulatory agreement, which is incorporated in the mortgage. An HFA becomes eligible for insurance benefits on the basis of the covenant default only after the HFA has accelerated the debt and the owner has failed to pay the full amount due, thus converting a covenant default into a monetary default.
3. Date of Default - For the purpose of this chapter, the date of default is:
  - a. The date of the first uncorrected failure to perform a mortgage covenant or obligation; or
  - b. The date of the first failure to make a monthly payment that is not covered by subsequent payments, when such subsequent

payments are applied to the overdue monthly payments in the order in which they were due.

4. HFA Responsibilities when a Default Occurs
  - a. File a Notice of Default - If a default (as defined above) continues for a period of 30 calendar days, the HFA must notify the Multifamily Insurance Operations Division by submitting a Form [HUD-92426](#), Notice of Default Status on Multifamily Housing Projects, (Appendix 19) within 10 calendar days thereafter, unless the default is cured within the 30-day period. Unless waived by the Commissioner, the HFA must submit monthly a Form [HUD-92426](#) until the default has been cured or an application for initial claim payment is filed.
  - b. Mortgage Acceleration - In cases of mortgage acceleration, HFA must first give notice of default. Unless already accelerated (as in a covenant default), the HFA must accelerate the debt when the owner has failed to pay the amount due.
5. Multifamily Insurance Operations Division Responsibilities when Notified of a Default Monitors Defaults.

B. APPLICATION FOR INITIAL CLAIM

1. General
  - a. If the HFA has not previously received a partial payment of claim (PPC), the HFA may file for a PPC. Otherwise, the HFA must file for an initial claim payment.
  - b. Application for the initial claim payment or for a PPC (See Section 10-3) must be filed within 75 calendar days from the date of default or within the extended time granted by HUD. The application may be filed as early as the first day of the month following the month for the payment was missed.
  - c. Time extension must be granted before the 75 calendar-day period expires. Additional extensions must be granted also before each deadline expires.
  - d. Upon request, HUD may extend in writing, up to 180 calendar days, the deadline for filing a claim. The 180 days include the initial 75-day period. The deadline may be extended beyond a 180 days, not to exceed 360 calendar

days from the date of default, in cases when the HFA certifies that the project owner is in the process of transacting a bond refunder, refinancing the mortgage, or changing the ownership for the purpose of curing the default and bringing the mortgage current.

2. HFA Responsibilities

- a. The HFA files for the initial claim payment by completing and mailing to the Multifamily Claims Branch a Form HUD-94195, Application for Initial Claim Payment (Appendix 20) and the Payment Information Form (Appendix 21). Mailing instructions are given on Form HUD-94195.
- b. The HFA must request time extension(s) for filing the initial claim application by sending a letter to the

U.S. Department of Housing and  
Urban Development  
Multifamily Insurance Operations  
Division  
451 Seventh Street, SW  
Washington, D.C. 20410

The letter must specify the reason(s) for the extension and the date upon which the extension shall expire.

- c. When filing for the initial claim payment within time extensions granted by HUD, the HFA must submit a copy of the granted extensions along with Form HUD-94195 and the Payment Information Form.

3. Multifamily Insurance Operations Division Responsibilities - When requested by the HFA, the Operations Division may grant written extensions for filing for the initial claim payment.

10-3 INITIAL CLAIM PAYMENT AND BOND RETIREMENT.

A. INITIAL CLAIM PAYMENT

1. General

- a. The initial claim amount is based on the unpaid principal balance (UPB) of the mortgage note as of the date of default, plus interest at the mortgage note rate from the date of default to the date of initial claim payment.

- b. In determining the mortgage note interest component of the initial claim amount, if the HFA fails to meet any of the requirements of this chapter within the specified time (including any granted extension of time) HUD shall curtail the accrual of mortgage note interest by the number of days by which the required action was late.

The initial claim payment is the amount of the initial claim as prescribed in Paragraph 10-3.A.1.(a), less MIP delinquencies, late charges and interest assessed under Paragraph 9-3.D of this Handbook.

## 2. Multifamily Claims Branch Responsibilities

- a. When the Multifamily Claims Branch receives Form HUD-94195, it computes and pays the initial claim payment.
- b. The claim payment is wired to the Bank and Account Number listed on the Payment Information Form that the HFA has submitted. The Multifamily Claims Branch is not responsible for misdirected funds due to HFA error.

## B. BOND RETIREMENT

1. General - Proceeds from the initial claim payment must be used, within 30 calendar days after the date of the initial claim payment, to retire any bonds or any other financing mechanisms securing the mortgage. Any excess funds resulting from such retirement or repayment shall be returned to HUD within 30 calendar days of the retirement.
2. HFA Responsibilities - HFA retires bonds and wires excess funds to the Multifamily Claims Branch. The Form HUD-94193, Excess Funds from Redemption of Bonds Part I (Appendix 22), must be completed and sent to the Multifamily Claims Branch. Instructions for completing and sending form are stated on the form. Part II of Form HUD-94193 gives wiring instructions.

## C. PARTIAL PAYMENT OF CLAIM

### 1. GENERAL

General - When a claim for a partial payment (under Paragraph 10-2.) is received, the Commissioner may make a PPC in accordance with the requirements of this section.

2. One PPC - Only one PPC may be made under a

contract of insurance.

3. PPC Amount - The amount of the PPC is equal to the amount of relief provided by the HFA in the form of a reduction in principal and a reduction of delinquent interest due on the insured mortgage times the lesser of HUD's percentage of the risk of loss or 50 percent.
4. HFA Second Mortgage - Repayment of the relief provided by the HFA must be secured by a second mortgage to the HFA.
  - a. This second mortgage may provide for postponed amortization and may not be assigned to HUD by the HFA.
  - b. This second mortgage is not insured under this part and may not be insured under any other HUD-related insurance program.
5. Administrative Guidelines - The HFA must follow HUD's Administrative Guidelines in Handbook 4350.1, Insured Project Servicing, Chapter 14 and substitute HFA for HUD. To assist the HFA to meet these administrative requirements, HUD has developed an automated system. Please contact the Asset Management Branch Chief in the local HUD Office and request a copy of the automated process.

D. HFA RESPONSIBILITIES

1. Claim for a Partial Payment - HFA submits to Multifamily Insurance Operations Division an application for PPC.
2. HFA Submission - The HFA must provide the following information with its application for a PPC:
  - a. The amount by which the HFA will reduce the principal on the insured mortgage and the amount of delinquent interest on the insured mortgage that the HFA will defer based on the anticipated closing date; and Certify that:
    - (1) The amount of the principal reduction of the insured first mortgage does not exceed 50 percent of the UPB;
    - (2) The relief resulting from the PPC, when considered with other resources available to the project, are sufficient to restore the financial viability of the project;

- (3) The project is or can (at reasonable cost) be made structurally sound;
- (4) The management of the project is satisfactory;
- (5) The default under the insured mortgage was beyond the control of the mortgagor.

b. A completed Payment Information Form (Appendix 21).

3. Closing of Second Mortgage - When the second mortgage is closed, the HFA shall notify the Multifamily Insurance Operations Division.

4. Partial Claim Repayment

a. The HFA must remit to Multifamily Accounting Branch a percentage of all amounts collected on the HFA's second mortgage within 15 calendar days of receipt by the HFA. The remittance must be by check made payable to:

U.S. Department of Housing and  
Urban Development Multifamily  
Accounting Branch  
P. O. Box 44804  
Washington, DC 20026-4804

b. The applicable percentage is equal to the percentage used in Paragraph 10-4.A.3. to determine the PPC amount. Payments received after the 15th calendar day must include a 5 percent late charge plus accrued interest at the debenture rate.

5. Certified Statements of Amounts Collected - As long as the second mortgage remains of record, the HFA must submit to the MAB (address in above paragraph) an annual certified statement of the amounts collected by the HFA. The HFA must submit a final certified statement within 30 calendar days after the second mortgage is paid in full, foreclosed, or otherwise terminated.

E. MULTIFAMILY INSURANCE OPERATIONS DIVISION  
RESPONSIBILITIES

1. Acceptable Application - If the HFA's application is acceptable, the Multifamily Insurance Operations Division notifies the HFA to process the PPC, which includes the modification of the existing mortgage and the execution by the mortgagor of a second mortgage payable to the HFA.

2. Unacceptable Application - The Multifamily Insurance Operations Division shall either advise the HFA of information needed to make the application acceptable or return the application for further action. The HFA is granted an extension of 30 calendar days from the date of any notification for further action.
  3. Notification of Closing - When notified by the HFA that the second mortgage has closed, the Multifamily Insurance Operations Division notifies the Multifamily Claims Branch to pay the partial claim.
- F. MULTIFAMILY CLAIMS BRANCH RESPONSIBILITIES - When notified by the Multifamily Insurance Operations Division, Multifamily Claims Branch verifies and pays the partial claim. Payment is wired as prescribed in Paragraph 10-3.A.2.(b).
- G. MULTIFAMILY ACCOUNTING BRANCH RESPONSIBILITIES - The MAB receives and monitors repayments and annual collection statements the HFA remits.

10-4 WITHDRAWAL OF CLAIM.

- A. GENERAL - In case of a default and subsequent filing of a claim, the HFA shall inform HUD of the form of mortgage relief (e.g., workout or modification) determined to be appropriate. If the default is cured after the claim is made but before the initial claim is paid, the HFA may, in writing, withdraw the claim, and insurance will continue as if the default had not occurred.
- B. HFA RESPONSIBILITIES - Notifies the Multifamily Claims Branch by telefax (202-619-8259) immediately that the claim is being withdrawn. In addition, HFA files a Form [HUD-92426](#) with the Multifamily Claims Branch and the Multifamily Insurance Operations Division requesting reinstatement and follows-up with the Multifamily Insurance Operations Division until receipt and reinstatement are confirmed.
- C. OPERATIONS DIVISION RESPONSIBILITIES
1. The Multifamily Insurance Operations Division notifies the Multifamily Claims Branch to withdraw the claim.
  2. The Multifamily Insurance Operations Division confirms with HFA receipt of Form [HUD-92426](#).

10-5 REINSTATEMENT OF THE CONTRACT OF INSURANCE.

- A. REINSTATEMENT CONDITIONS - After the initial claim payment, HUD may reinstate the contract of insurance on

the following conditions:

1. The HFA has not acquired the project;
  2. The mortgagor has cured the default; and
  3. The HFA requests that HUD reinstates the contract of insurance.
- B. NOTIFICATION OF REINSTATEMENT - If the reinstatement is acceptable to HUD, HUD notifies the HFA of the date the contract of insurance will be reinstated and advises of the payment needed to reinstate the contract of insurance.
- C. REINSTATEMENT PAYMENT - The reinstatement payment is an amount equal to the initial claim amount, plus an amount equal to the accrued and unpaid interest on the HFA Debenture through the reinstatement date, plus an amount equal to the mortgage insurance premium for the period from the date of reinstatement of the contract of insurance to the next anniversary date for payment of the mortgage insurance premium.
- D. CANCELLATION OF DEBENTURE - Upon receipt of the reinstatement amount stated in the above paragraph, HUD cancels and returns the debenture to the HFA.
- E. CONTINUATION OF CONTRACT OF INSURANCE - Upon reinstatement, the contract of insurance shall continue as if the default had not occurred.
- F. HFA RESPONSIBILITIES
1. The HFA requests a reinstatement.
  2. Within 30 calendar days of the date of the Notification of Reinstatement, the HFA pays HUD the reinstatement amount as instructed by the Multifamily Insurance Operations Division.
- G. OPERATIONS DIVISION RESPONSIBILITIES - If the reinstatement is acceptable to HUD, the Multifamily Insurance Operations Division notifies the HFA of the date the contract of insurance will be reinstated and advises the HFA of the payment needed to reinstate the contract of insurance. The Multifamily Insurance Operations Division also provides payment instructions.
- H. MULTIFAMILY CLAIMS BRANCH RESPONSIBILITIES
1. When requested by the Multifamily Insurance Operations Division, the Multifamily Claims Branch computes reinstatement amount and notifies the Multifamily Insurance Operations Division of the amount. The Multifamily Claims Branch also provides payment instructions to Multifamily



Insurance Operations Division.

2. Upon receipt from HFA of the reinstatement payment, the Multifamily Claims Branch returns the HFA Debenture to the HFA for cancellation.

10-6 INSURING NEW LOANS FOR DEFAULTED PROJECTS.

The HFA may not make another loan that is insured under this part to the same owner in the same project if HUD has paid a claim under this part.

10-7 ISSUANCE OF HFA DEBENTURE.

- A. CONDITION TO INITIAL CLAIM PAYMENT - As a condition to receiving an initial claim payment, the HFA must issue an instrument in the form of a Debenture to HUD within 30 calendar days of the initial claim payment. The HFA Debenture shall meet the following requirements and shall be in a form that has been approved by HUD as part of the application approval process.

1. Terms of HFA Debenture

- a. The HFA Debenture shall be dated the same date that the initial claim payment is issued.
- b. The HFA Debenture shall have a term of 5 years in order to afford the mortgagor ample time to cure the default or afford the HFA time to foreclose and/or resell the project.
  - (1) HUD may provide a written extension of the 5 year term if the HFA certifies and provides documentation that the project owner has filed bankruptcy and the HFA is taking action to have the project discharged from the bankruptcy.
  - (2) The HFA debenture shall, during this extended period, continue to bear interest as described below at HUD's published debenture rate at the earlier of initial endorsement or final endorsement of the insured mortgage.
  - (3) Interest shall be due and payable annually on the anniversary date of the initial claim payment. Interest is due on the full face amount of the HFA Debenture through the term of the HFA Debenture or through the date an application for final claim payment is received by the Commissioner.

2. HFA Debenture Amount

- a. The HFA Debenture shall be for the full initial claim amount as determined in Paragraph 10-3.A.1 (minus any excess funds returned to HUD under Paragraph 10-3.B.1).
- b. The full amount of the HFA Debenture shall be payable to HUD upon maturity, unless the HFA Debenture is cancelled because of:
  - (1) A reinstatement of the contract of insurance under Paragraph 10-6; or
  - (2) A final claim settlement under Paragraph

10-17.

3. HFA Debenture Interest Rate - The HFA Debenture shall bear interest at HUD's published debenture rate at the earlier of initial endorsement or final endorsement of the insured mortgage. Interest shall be due and payable annually on the anniversary date of the initial claim payment and on the date of redemption when redeemed or canceled before an anniversary date. Interest shall be computed on the full face amount of the HFA Debenture through the term of the HFA Debenture.
4. Form of HFA Debenture - The HFA Debenture should follow the standard form of a State/Municipal Debenture issued under the Uniform Commercial Code, where applicable, and shall be supported by the full faith and credit of the HFA. For HFAs that operate as departments or divisions of States or units of local government and where such HFAs cannot pledge the full faith and credit of the HFA, such HFAs may collateralize their obligation through a letter of credit, reinsurance, or other forms of credit acceptable to the Commissioner. The form of debenture will be approved upon receipt of the HFA application to participate in the Risk-Sharing Program as referenced in Chapter 2 of this Handbook.
5. Debenture Registration - Unless otherwise required by law, including State or local laws, or other governing bodies, HUD will not require the HFA Debenture to be "Registered" (with the Securities and Exchange Commission) as it is a direct, or private, placement, and not a public offering, that is supported by the full faith and credit of the HFA.

B. HFA RESPONSIBILITIES

1. HFA issues HFA Debentures. The HFA Debenture shall be sent to:

U.S. Department of Housing and Urban  
Development  
Multifamily Claims Branch  
P.O. Box 44003  
Washington, D.C. 20026

2. Accrued interest on the debenture and the full amount of the matured Debenture are to be sent to the address stated in the above paragraph.
3. HFA certifies and provides documentation of bankruptcy actions filed by the project owner and certifies the HFA is taking action to have project discharged from bankruptcy. The HFA must immediately notify the Multifamily Insurance Operations Division (address stated in Paragraph 10-2.B2b), the local HUD Counsel, and the Asset Management Branch of all notifications and bankruptcies.

- C. OPERATIONS DIVISION RESPONSIBILITIES - The Multifamily Insurance Operations Division may provide written extension to the Debenture 5 year term. In addition to notifying the HFA, the Multifamily Insurance Operations Division notifies the Multifamily Claims Branch when an extension is given. The extension by the Multifamily Insurance Operations Division will be based on the HFA meeting the responsibilities as stated in paragraph 2 above.
- D. MULTIFAMILY CLAIMS BRANCH RESPONSIBILITIES - The Multifamily Claims Branch holds the HFA Debenture until the Debenture matures or is cancelled.

10-8 FORECLOSURE AND ACQUISITION.

The HFA is not required to foreclose the insured mortgage. It may accept a deed-in-lieu of foreclosure. Before a deed-in-lieu can be accepted, the HFA must ensure that the project is free of all liens and the owner must have provided a final certified financial accounting of all project funds.

10-9 APPRAISALS.

- A. GENERAL - An appraisal must be performed to determine the value of the project at its highest and best use. The appraisal must reflect the market value of the property on the date the appraisal is performed and should assume a willing buyer and a willing seller. An appraisal must be performed by an independent appraiser chosen from a panel of fee appraisers approved by the HFA.
- B. APPRAISAL FEES - The appraisal fees may not exceed the customarily fees paid for an appraisal of a project of

similar type and size. These values will be used to determine the claim amount.

C. WHEN APPRAISALS SHOULD BE PERFORMED

1. Where actions taken or caused to be taken by the HFA have the effect of the recovery of less than the face amount of the HFA Debenture held by HUD. The appraisal must be done within 45 calendar days immediately preceding the date when the HFA files an application for final claim settlement.
2. At the time of final claim settlement and the HFA has not sold the project.
3. When the HFA files a claim for final settlement and a foreclosure is not anticipated within 180 calendar days of the claim filing.
4. If the property is not disposed of within 1 year of the date of the appraisal, the appraisal process must be repeated (market value/highest and best use).

10-10 FILING CLAIM FOR FINAL SETTLEMENT.

The HFA shall file a claim for final settlement no later than 30 days after any of the following: (a) Sale of the property after acquisition by deed-in-lieu or foreclosure; or (b) Expiration of the term of the HFA debenture. To file a claim, the HFA must complete the forms listed below. These forms and detailed instructions for their completion and mailing instructions are shown in Appendices 23 through 30:

- A. Form HUD-94196 - APPLICATION FOR BENEFITS AND FISCAL DATA IN SUPPORT OF FINAL CLAIM SETTLEMENT. This Form is shown in Appendix 23. The HFA uses this form to summarize all of the components of the claim except accrued interest. HUD will compute accrued interest at the time of settlement. The HFA should prepare this Form only after completing all of the supporting schedules discussed in the following paragraphs.
- B. Form HUD-2744A - ALLOCATION OF MORTGAGE RECEIPTS AND DISBURSEMENT (SCHEDULE A). This Form is shown in Appendix 24.
  1. Contents - The HFA uses this form to list and describe all mortgage transactions. This Schedule must show all receipts and disbursements, including any advances, for principal, interest, MIP, Hazard insurance, water charges, ground rents, the reserve for replacements and other items the mortgage requires the mortgagor to pay.
  2. Required Documentation

- a. The HFA must submit an explanation for delay start-up of accounting if there is a lapse of more than 5 calendar days between the date the HFA acquired the mortgage and the date HFA's accounting begins.
- b. The HFA must retain the following documentation to support the amounts shown on Schedule A:
  - (1) receipts or invoices, showing check number and date paid, for:
    - (a) any HFA advances not repaid prior to the date of default; and
    - (b) all disbursements made on or after the date of default.
  - (2) copies of HFA's ledger record showing all mortgage transactions.

C. Form HUD-2744B - MORTGAGEE'S REPORT OF PROJECT COLLECTIONS (SCHEDULE B). This form is shown in Appendix 25.

- 1. Contents - The HFA uses this form to list and describe all rent collections, forfeited tenant security deposits and other income collected on behalf of the project. The report must cover the period during the HFA's control or ownership of the project. NOTE: HUD will accept computer-generated reports of project income in lieu of Schedule B, if the computer reports (1) provide all the information required, (2) follow the format of Schedule B, and (3) are legible.
- 2. Required Documentation - The HFA must retain a separate accounting for all security deposits on hand during its control or ownership of the project.

D. Form HUD-2744C - MORTGAGEE'S REPORT OF PROJECT DISBURSEMENTS (SCHEDULE C). This form is shown in Appendix 26.

- 1. Contents - The HFA uses this form to describe and list in chronological order all disbursements for reasonable operating expenses which the HFA made during its control or ownership of the project. Expenses which were reported on Schedule A must not be shown on this Schedule. The HFA must prepare a separate disbursements report for each month it controlled or owned the project. NOTE: HUD will accept computer-generated reports of project disbursements in lieu of Schedule C, if

the computer reports (1) provide all the information required, (2) follow the format of Schedule C, and (3) are legible.

2. Required Documentation - The HFA must retain the following documentation to support the amounts shown on Schedule C:
  - a. Receipts or invoices, showing check number and date paid, for all project disbursements during the period the HFA controlled the project; and
  - b. Copies of the HFA's ledger record showing all project disbursements.

E. Form HUD-27009D - OTHER DISBURSEMENTS BY MORTGAGEE (SCHEDULE D). This Form is shown in Appendix 27.

1. Contents - The HFA uses this form to list and describe all reasonable disbursements made by the HFA from its own funds for the acquisition, preservation, protection, repair and disposition of the project. Expenses reported on Schedule A or C must not be shown on this Schedule.
2. Required Documentation - The HFA must retain the following documentation to support amounts shown on Schedule D:
  - a. Receipts or invoices, showing check number and date paid, for all disbursements shown on the Schedule; and
  - b. If expenditures for repairs in excess of a cumulative average of \$500 per unit are shown on Schedule D, HUD's approval letter authorizing those repairs.

F. Form HUD-2744E - MORTGAGEE'S REPORT OF SPECIAL ESCROW (SCHEDULE E). This Form is shown in Appendix 28.

1. Contents - The HFA uses this form to show the original amount, amounts disbursed, and balance on hand for the following special accounts:
  - a. Completion escrow or letter of credit;
  - b. Operating deficit escrow or letter of credit;
  - c. MIP that HUD has refunded to the lender; and residual receipts.
2. Required Documentation - The HFA must submit copies of its ledger records showing all receipts and disbursements from the special accounts identified in Schedule E and a copy of the escrow

agreement covering each escrow established.

G. Form HUD-94194, MORTGAGEE'S REPORT OF NET SALES PROCEEDS (SCHEDULE F). This form is shown in Appendix 29.

1. Contents - Except as provided in Paragraph 10-11.G.2., the HFA must use Form HUD-27009F to show the net proceeds from the sale of the project. Generally, the HFA must prorate income and expenses in the manner customary for real estate sales transactions. However, the HFA may not deduct any real estate commission or other disposition costs. These amounts are shown on Schedule D, Other Disbursements by Mortgagee.

2. Use of Appraised Value in Lieu of Sales Price - Under the following circumstances the HFA must use the appraised value in lieu of the sales price on Schedule F.

a. The HFA sold the project through a negotiated sale and the sales price was less than the appraised value; or

b. 5 years have elapsed since the issuance of the HFA Debenture.

3. Required Documentation - The HFA must retain the following documentation to support the amounts shown on Schedule F:

a. Copy of the appraisal

b. If the project has been sold,

(1) Copy of sales contract

(2) Copy of settlement statement

c. If the project has been sold, documentation to support the prorated expenses.

H. Form HUD-94192, CERTIFICATION FOR SALE BY COMPETITIVE BID. This Certification is shown in Appendix 30. The HFA must execute this form only if the property was sold by competitive bid.

1. Contents - The HFA uses this form to certify that it has complied with HUD's procedures for competitive sales and to provide HUD with information on the sale (e.g., how and when the project was advertised; number of inquiries received; date of bid opening; and number of bids received).

2. Required Documentation - The following

documentation must be retained by the HFA:

- a. Control log required by Paragraph 10-15.e.(9), HUD Handbook 4566.2, Management, Servicing and Disposition Requirements for Projects with 223(f) Coinsured Loans; and
- b. Tabulation of bids required by Paragraph 10-15.e.10) of HUD Handbook 4566.2.

I. DOCUMENTATION OF RECEIVERSHIP - If a receiver has operated the property, the HFA must retain the following documentation:

1. court order appointing the receiver;
2. receiver's accounting reports or reports to the court;
3. court order's approving the receiver's accounting; and
4. court orders discharging the receiver, fixing fees and cancelling and the receiver's bond.

10-11 RECORD RETENTION.

Documentation supporting the mortgage default and claim for insurance benefits must be retained as specified in Paragraph 8-3 of this Handbook. These records should be available for review by HUD or its agent.

10-12 DETERMINING THE AMOUNT OF LOSS.

The Multifamily Claims Branch shall determine the amount of total loss to be shared by HUD and the HFA. This amount is equal to:

- A. The amount of initial claim payment;
- B. Plus all items in Paragraph 10-14; and
- C. Less the items in Paragraph 10-15.

10-13 ITEMS INCLUDED IN TOTAL LOSS.

In computing the total loss, the Multifamily Claims Branch shall add the following items to the initial claim payment.

- A. The amount of payments that the HFA made from its own funds and not from project income for:
  1. Taxes, special assessments, and water bills that are liens before the Mortgage; and
  2. Fire and hazard insurance on the property.



- B. A reasonable amount of acquisition costs actually paid by the HFA. These costs may not include loss or damage resulting from the invalidity or unenforceability of the Mortgage lien or the unmarketability of the Mortgagor's title.
- C. Reasonable payments that the HFA made from its own funds and not from project income for:
  - 1. Preservation, operation and maintenance of the property;
  - 2. Repairs necessary to meet the requirements of local laws;
  - 3. Expenses in connection with the sale of property; and Bankruptcy expenses that have been approved by the Office of General Counsel.
  - 4. The amount of HFA Debenture interest paid by the HFA to HUD.

10-14 ITEMS DEDUCTED FROM TOTAL LOSS.

In computing the loss, the following items are deducted from the amounts described in Paragraphs 10-13.A and B.

- A. All amounts received by the HFA on account of the mortgage after the date of default;
- B. All cash, and/or funds related to the mortgaged property, including deposits and escrows made for the account of the mortgagor that the HFA holds (or to which it is entitled);
- C. The amount of any undrawn balance under a letter of credit that the HFA accepted in lieu of a cash deposit for an escrow agreement;
- D. Any net income from the mortgaged property/project that the HFA received after the date of default.
- E. The proceeds from the sale of the project or the appraised value of the project as provided in Paragraph 10-10 as follows:
  - 1. If the HFA disposes of the project through a negotiated sale, the amount deducted shall be the higher of the sales price or the appraised value.
  - 2. If the HFA disposes of the project through a competitive bid procedure approved by the Commissioner, the amount deducted shall be the sales price, even if it is lower than the appraised value.
  - 3. If the HFA has not disposed of the project within

5 years from the date of issuance of the HFA Debentures (unless an extension has been granted pursuant to Paragraph 10-8.A.1), the amount deducted shall be the appraised value.

- F. Any and all claims that the HFA has acquired in connection with the acquisition and sale of the property. Claims include but are not limited to returned premiums from cancelled insurance policies, interest on investments of reserve for replacement funds, tax refunds, refunds of deposit left with utility companies, and amounts received as proceeds of a receivership.
- G. The amount of daily HFA debenture interest accrued but not paid from the anniversary date of the last HFA Debenture interest payment to the date of final settlement.

10-15 DETERMINING SHARE OF LOSS.

The total loss computed in Paragraph 10-13 shall be shared by HUD and the HFA in accordance with their respective percentage of risk as specified in the note and addendum to the Risk-Sharing Agreement between HUD and the HFA.

10-16 FINAL CLAIM SETTLEMENT AND DEBENTURE REDEMPTION.

- A. FINAL CLAIM PAYMENT - If the initial claim amount, as determined in Paragraph 10-3, is less than HUD's share of the loss, the Multifamily Claims Branch shall make a final claim payment to the HFA that is equal to the difference between HUD's share of the loss and the initial claim amount and shall return the HFA Debenture to the HFA for cancellation.
- B. HFA REIMBURSEMENT PAYMENT - If the initial claim amount, as determined in Paragraph 10-3, is more than HUD's share of the loss, the Multifamily Claims Branch shall notify HFA of the difference. The HFA shall, within 30 calendar days of notification of amount due, remit to HUD an amount that is equal to the difference between the initial claim amount and HUD's share of the loss. HUD's notification will include procedures for sending remittance. Upon receipt of cash payment (i.e., check or wire transfer), the HFA Debenture will be considered redeemed. A 5 percent penalty will be charged and interest at the debenture rate will begin to accrue if the cash payment is not received within the prescribed period.
- C. LOSSES - Losses sustained as a consequence of the (sole) negligence of the HFA (e.g., failure to acquire adequate hazard insurance where such insurance is available) shall be the sole obligation of the HFA, notwithstanding the risk apportionment otherwise agreed

to by HUD and the HFA.

- 10-17 SUPPLEMENTAL CLAIMS - Any supplemental claim must be filed within 1 year after the date of final claim settlement. A supplemental claim must include a letter that explains the reason for filing the supplemental claim along with supporting documentation. The claim must be sent to the U.S. Department of Housing and Urban Development, Multifamily Claims Branch, Washington, D.C. 20410-8000.
- 10-18 RECOVERY COSTS AFTER FINAL CLAIM SETTLEMENT - If, after final claim settlement, the HFA recovers additional sums as the result of the sale of the project or otherwise, the total amount of such recovery shall be shared by HUD and the HFA in accordance with the prescribed percentage. When this occurs, the HFA must contact the Multifamily Claims Branch for further instructions. Cost must be actual and reasonable for the area.
- 10-19 SUPPLY OF FORMS - HUD will not maintain a supply of claim forms listed in this chapter. Forms can be obtained by reproducing applicable forms in Appendices 21 through 33.