

II.

CHAPTER 4. FIRM APPROVAL LETTER PROCESSING

4-1 SUBMISSION BY HOUSING FINANCE AGENCY. The HFA will submit as part of its request for issuance of a firm approval letter, a request for the HUD-retained reviews and other findings to the local HUD Office with jurisdiction for the location of the project, using the format in Appendix 4. This request includes:

- A. the HFA's HUD mortgagee number,
- B. Form HUD-7015.15 Request for Release of Funds (Appendix 32) and Certification (RROF) (in accordance with 58.71) or a finding of exempt activity (in accordance with 58.34) with a cover letter requesting issuance of a firm approval letter and indicating the HFA agrees to abide by the special conditions, procedures and requirements of the environmental review and also agrees to advise the Responsible Entity (RE) by letter and request a supplemental review of any proposed change in the scope of the project or any change in environmental conditions.
- C. sufficient information about the project for the HUD Office to conduct the previous participation, intergovernmental and other HUD-retained reviews.

Successful completion of the HUD retained reviews results in issuance by HUD of a Firm Approval Letter.

4-2 INITIAL PROCESSING

- A. HFA'S MORTGAGEE NUMBER - Each HFA's HUD mortgagee number is the identifier for the HFA in the 542(c) data system. Designated Offices and local HUD Offices should use this number on all correspondence.
- B. PROJECT NUMBER - The local Office will assign the project number when the HFA request is received.
  - 1. Sequence. Where an Office is dealing with more than one HFA, the applications will be numbered sequentially, notwithstanding that the HFA may be different from case to case.
  - 2. Numbering. A new set of project numbers for the risk-sharing program has been established as follows:
    - a. Office prefix: use the same 3-digit prefix as for other insured projects.
    - b. Project number: risk-sharing projects insured under Section 542(c) will have a 5-digit project number similar to the number for a project insured under the National Housing Act. The numbers begin at

98001 and proceed to 98999.

c. Program identifier. Use YHA as the Section of Act Code.

3. Log. Each Office must maintain a log to ensure that Risk Sharing applications are numbered sequentially without duplication.

C. DATA FILES. The local HUD Office is responsible for entering basic information about the project into the data system when the request for the Firm Approval Letter is received and a project number is assigned. Subsequent detailed project information will be transmitted by the HFA on a diskette for entry into the system with the initial and/or final closing docket. Basic information is related to:

1. project number, location, number of units and other identifying material;
2. percent of risk to be assumed by the HFA and HUD;
3. units set aside for the proposed project (the system will calculate the balance (if any) of units remaining in the HFA's set-aside;
4. status of the HUD-retained review steps.

D. UNIT INCREASES. An HFA may submit a request for HUD-retained reviews for a project that exceeds the HFA's allocation or overall set-aside.

1. Increase in allocation. The local HUD Office has the authority to increase an HFA's allocation up to the amount of the HFA's set-aside. As noted in paragraph C, the data system will automatically calculate the balance of the HFA's set-aside.
2. Increase in set-aside. When a request exceeds the HFA's set-aside, the Office must request an increase in the set-aside from Headquarters in writing (Office of Insured Multifamily Housing Development).

E. PREVIOUS PARTICIPATION REVIEW. Principals participating in a planned or existing multifamily project must disclose all past participation in HUD-FHA programs (except home mortgage) and the nature of their proposed interest. Handbook 4065.1, Previous Participation Handbook, gives complete requirements for this review.

1. Examples of who is a "principal" and must file a Form HUD-2530, Previous Participation Certificate:
  - a. Sponsors and owners of the project.
  - b. General contractors.

- c. Project managers and management agents.
  - d. Packagers, consultants and other persons or organizations hired to: furnish advisory services in project financing, construction or operation; select and negotiate contracts with contractors, architects, attorneys or managing agents; secure financing; or meet HUD requirements.
  - e. Architects and attorneys who have any interest in the project other than an arms-length fee arrangement for services.
2. Examples of who is not a "principal." Form HUD-2530 is not required for:
- a. Stockholders with less than 10 percent interest in a corporation.
  - b. Limited partners with less than 25 percent interest in the partnership.
  - c. Attorneys and architects with only an arms-length arrangement for services.
  - d. Minor corporate officers.
  - e. Subcontractors.
3. HFA action. Caution principals that they must list every HUD-FHA project in which they have participated as a principal and include default and mortgage relief history of each unless they have a master list on file with HUD. HUD will return without approval a certificate that fails to provide complete disclosure and may prosecute the principal for violation of Section 1010 of Title 18, U.S. Code or take other action (e.g., suspension, debarment).
- a. Review the HUD-2530 to determine that:
    - (1) All copies are clear and legible.
    - (2) HUD project number appears for each previous project listed. Indicate on form if not available.
    - (3) Certifying principal's type of participation and percent of ownership, where applicable, appear for each listed project.
    - (4) Certificate is signed by every principal who will participate in the proposed project.
    - (5) Principal's name and participation in the

proposed project are typed or printed under each signature and the Social Security or Employer's Identification Number appears.

(6) A copy of any referenced certificate is attached.

b. Completed Forms HUD-2530 for principals should be included with the request for Firm Approval Letter (or as soon as the principal is associated with the project, if that is a later date).

If they have previously filed a certificate in any local HUD Office, they may identify that certificate on the front of the new form, attach a copy, and list only additional projects and information on the new form.

4. HUD Office must:

a. Review the HUD-2530 for completeness and process in accordance with Handbook 4065.1 in the usual manner.

b. Notify the HFA of the decision relative to previous participation.

c. Not discuss adverse finding with the HFA. Adverse findings may be discussed with the affected applicant only.

5. Disapproval for previous participation. If HUD rejects one or more of the principals, their withdrawal may resolve the matter, presuming the HFA determines that the remaining principals can successfully proceed with the project.

a. New principals may be substituted, but each substitute must file a certificate and be approved pursuant to Handbook 4065.1 and these procedures.

b. A principal may request reconsideration by the Multifamily Participation Review Committee. The Committee will not hear oral arguments. The principal must send requests with a statement and supporting exhibits explaining the grounds for approval to:

Executive Secretary  
Multifamily Participation Review Committee  
Department of Housing and Urban Development  
451 7th Street, S.W.  
Washington, D.C. 20410

6. Submission of 2530s at later date. When entities such as the management agent or contractor are unknown at the time of the Firm Approval Letter, the 2530s must

be submitted subsequently. HFAs must certify at endorsement that all principals have received previous participation clearance.

- F. ENVIRONMENTAL REVIEW. HUD must approve the HFA's Request for Release of Funds and Certification form HUD-7015.15 (RROF), prepared and executed by the Responsible Entity (RE) who carried out the environmental review, stating that the HFA has complied with all environmental obligations in accordance with 24 CFR 58, prior to issuance of a Firm Approval Letter under the Risk Sharing Program. A Firm Approval Letter cannot be issued conditioned on subsequent approval of the RROF. Local HUD Office Housing Development staff shall process the RROF, as follows:
1. All projects must include a RROF or a finding of exempt activity made by the RE (the HFA cannot make this finding unless they qualify as the RE under 58.2(a)(7)).
  2. HUD shall ensure that the form HUD-7015.15 or finding of exempt activity is executed by the RE's Certifying Officer.
    - a. The HFA may select either the State, or the Indian tribe, Alaska native village, or unit of general local government with land use and building permit jurisdiction where the project is located to perform the environmental review.
    - b. The HFA, provided it meets the definition of RE in 58.2(a)(7), may perform its own environmental reviews.
    - c. Housing staff should consult with the HUD Environmental Officer for assistance in making this determination.
  3. Compare the description of the project and activities in Part 1 of form HUD-7015.15 (or the finding of exempt activity) with the project description and activities in the Risk-Sharing application and ensure that they agree.
  4. HUD must verify that the comment periods identified in Part 2 of form HUD-7015.15 (in accordance with <sup>1</sup> 58.74) have expired:
    - a. 15 days from the time HUD received the form HUD-7015.15, or
    - b. the time specified in the published Notice of Intent to request release of funds (<sup>1</sup> 58.70), if it is longer than 15 days.
  5. HUD may disapprove a RROF if HUD becomes aware that

the HFA or the developer proceeded to undertake any activities that had an adverse environmental impact or limited the choice of reasonable alternatives prior to HUD's issuance of a Firm Approval Letter.

6. Although the public notices required by Part 58 direct commenters to respond directly to the RE (not HUD) any written comments received by HUD must be forwarded immediately to the HFA to be provided to the RE for prompt resolution.
7. It is important for Housing staff to understand HUD's role in the Part 58 environmental review process. HUD reviews the RE's compliance with the procedural requirements of Part 58, and does not make substantive determinations regarding the content of the environmental review performed. HUD will make its determination to approve or disapprove the RROF based on the information contained on the form HUD-7015.15 (and required attachments) and will not look behind the RROF to review the environmental assessment itself or respond to specific comments or objections. The following are the only permissible reasons (in accordance with <sup>1</sup> 58.75) for HUD disapproval of form HUD-7015.15.
  - a. The certification was not executed by the Certifying Officer of the RE (consult with Environmental Officer);
  - b. The RE failed to make a Finding of No Significant Impact;
  - c. A Finding of Significant Impact was found as a result of the Environmental Assessment;
  - d. The RE omitted one or more of the required steps in preparing its Environmental Assessment or Environmental Impact Statement (examine form HUD-7015.15 for omissions or inconsistencies);
  - e. The RE failed to record the written determination and findings from a reevaluation of a prior Environmental Assessment or Environmental Impact Statement;
  - f. The RE failed to record the written determination and findings on the continued relevance of a prior environmental review being amended as a result of a change in the scope of the project or in the environmental conditions justifying the use of a prior Environmental Impact Statement;
  - g. A decision from a reassessment, supplementary Environmental Impact Statement is disputed (consult with Environmental Officer and Field Counsel);

- h. The justification to use a prior Environmental Impact Statement is disputed;
- i. Another Federal agency with environmental expertise or oversight responsibilities finds that the project is environmentally unsatisfactory and notifies HUD;
- j. HUD has evidence that the HFA or its developer committed funds for activities that had an adverse environmental impact or limited the choice of reasonable alternatives prior to HUD issuance of a Firm Approval Letter.

8. Sometimes objections are received by HUD after expiration of the comment period, or commenters may be dissatisfied with the RE's resolution of their objection and submit a followup protest directly to HUD. Objections are also sometimes made directly to HUD on the basis of both environmental and non-environmental issues (e.g., fair housing issues) unrelated to any notices placed in accordance with Part 58. HUD has two options on how to handle outstanding objections or those received after the form HUD-7015.15 has been approved:

- a. HUD may refer late comments or objections to the HFA to be forwarded to the RE for response settlement (including comments received from another agency or individual which may not have been in response to the public notice, but relate to the specific project); or
- b. HUD may intervene directly to facilitate settlement of the objection and provide suggested resolutions to the HFA to forward to the RE, such as:
  - (1) Requiring re-publication of notices if the timing was not appropriate.
  - (2) Development of procedures for prescribing remedial or corrective actions.
  - (3) Recommending rejection of the application.
  - (4) Determining that no consideration is warranted because it was previously addressed fully or that the objection is outside the parameters of Part 58.

G. APPROVAL OF RROF - HUD will approve the RROF by separate letter or by providing an executed form HUD-7015.16, Notice of Removal of Grant Conditions (Appendix 33), as an attachment to the Firm Approval Letter. See paragraph 4-4A.1 below.

H. INTERGOVERNMENTAL REVIEW

The HFA is responsible for sending the SF-424 (Appendix 7) to the appropriate State Single Point of Contact (SPOC) if the State has selected the mortgage insurance programs for review under the intergovernmental State Review Procedure (SRP) and the project proposes insured advances. Substantial rehabilitation projects with insured advances are covered only if there is 1) a change in land use, 2) an increase in project density, or 3) a change from rental housing to cooperative housing. The Catalog of Federal Domestic Programs number for the Risk-Sharing program is 14.188.

NOTE: Many States do not review insured projects under these procedures. If the State has not elected the mortgage insurance programs for review, the HFA should submit a statement to that effect. If comments are received from the SPOC, the following applies:

1. When the SRP results in favorable comments or a recommendation for approval:
  - a. the Office may issue the Firm Approval Letter if all other HUD-retained review requirements are met (see paragraph F).
  - b. the Office must apply the "non-accommodation" procedures in paragraph 3 below if, for other reasons, the Office will not issue the Firm Approval Letter (e.g., adverse environmental review).
2. When the SRP results in negative comments or a recommendation for disapproval:
  - a. if the Office agrees with the SRP, it will tell the HFA what changes are necessary before the Firm Approval Letter may be issued or that no Firm Approval Letter may be issued.
  - b. if the Office disagrees, paragraph 3 below applies and the Office will advise the HFA that the Firm Approval will be held until the 15-day "nonaccommodation" period ends.
3. "Nonaccommodation" of SRP comments. The Office must notify the State and provide a 15-day period before the Office may approve (issue a Firm Approval Letter) or disapprove (reject) a project if:
  - a. the Office does not accept an SRP recommendation, or
  - b. the HFA notifies HUD that it elects not to approve the project.

HUD will notify the HFA at the same time, stating when the 15-day period ends and that a Firm Approval Letter may be issued or the project rejected after the 15-day



period ends.

NOTE:All notifications between the HFA and the local HUD Office must be in writing.

I. ECONOMIC & MARKET ANALYSIS

The HFA is responsible for determining that a market exists for the proposed project. However, the Field Office must provide comments to assist the HFA relative to any existing or proposed Federally insured or assisted projects and must also determine that the proposed project is not in a military impact area. Economic and Market Analysis staff (EMAS) will provide comments to Housing Development within the 40 days HUD review period after receipt of the request for HUD-retained reviews (Appendix 4). EMAS will comment on the proposed project relative to:

1. Potential adverse impact, if any, that the project will have on existing or proposed Federally insured or assisted projects in the area. These comments will be included with the Firm Approval Letter for use by the HFA in its underwriting analysis.
2. Location in military impact area. Projects in military impact areas are not eligible under the Risk-Sharing program. A military impact area is generally a small or medium sized metropolitan housing market area or a remote or isolated nonmetropolitan area where:
  - a. military-connected households comprise 25 percent or more of the total households in the market area. Military-connected households include active duty personnel, civilian employees of the military service (Department of Defense) or other Federal agency at or in support of the installation, and employees of contractors and sub-contractors directly associated with the installation, and their dependents. Unaccompanied active duty military personnel housing in military-controlled group quarters housing (barracks, BOQs) are excluded; and
  - b. there is concern about the continued stability of the current level of military strength and mission at the installation based on public announcements from the Department of Defense or the military service on impending changes; and
  - c. the complete reduction of military-connected households living in nonmilitary housing over a 5-year period, at an average decline of 20 percent, would taking into account growth in the civilian economy and normal changes in the housing inventory, cause an adverse impact on the private rental market resulting in an increase in the rental vacancy rate

in the housing market of 10 percent or more at the end of that period.

4-3 SUBSIDY LAYERING REVIEW

Except to the extent that the subsidy layering reviews have been delegated to the Housing Credit Agency in the State in which the project is located and that Housing Credit Agency has accepted that delegation, the HFA must submit the required documentation to the local HUD Office for review prior to its own approval of the loan in accordance with the subsidy layering guidelines outstanding at the time.

4-4 ISSUANCE OF FIRM APPROVAL LETTER, RESERVATION OF UNITS AND OBLIGATION OF CREDIT SUBSIDY

A. Firm Approval Letter. Upon positive completion of the HUD-retained reviews, the local HUD Office will issue a Firm Approval Letter (see format in Appendix 5).

1. Contents. The Firm Approval Letter will, among other things, reserve units for the proposed project and identify the risk level to be assumed by the HFA and HUD. The Firm Approval Letter will also establish a tentative credit subsidy obligation subject to acceptance of the Firm Approval Letter by the HFA and mortgagor.

a. The Firm Approval Letter also states that, absent fraud or material misrepresentation by the HFA, provided the HFA is in good standing at the time of the requested endorsement, and subject to reduction of the mortgage amount (if required), HUD will endorse the project mortgage upon receipt of the complete closing docket described in paragraph 6-2.

b. The Firm Approval Letter may contain conditions for approval. The HFA and mortgagor must evidence their acceptance of the Firm Approval Letter and any conditions by signing and returning the Firm Approval Letter to the local HUD Office. At this time, the Office will confirm obligation of credit subsidy for the project.

c. A copy of the executed form HUD-7015.16, Notice of Removal of Grant Conditions, documenting HUD approval of the RROF shall be an attachment to the Firm Approval Letter. Form HUD-7015.16 serves as notice of environmental clearance and authority to use funds and undertake physical activities for the project covered by the applicable environmental certification.

2. Expiration. The Firm Approval Letter will expire after 1 year if the project has not reached endorsement (initial endorsement for insured

advances; final endorsement for existing projects) or construction start (for insurance upon completion), unless duly extended in writing by the local HUD Office. The Office may extend a Firm Approval Letter upon written request of the HFA with supporting documentation.

3. Transmittal of Addendum to Risk Sharing Agreement (RSA). The local HUD Office will prepare and transmit with the Firm Approval Letter, an addendum to the RSA reflecting the risk share to be borne by the HFA and HUD and number of units for the project.
  4. In cases where the subsidy layering review is not delegated to the Housing Credit Agency and HUD review pursuant to paragraph 4-3 is required, the Firm Approval Letter will require the HFA to submit the required documentation for that review before the HFA approves the loan under its own procedures if that documentation was not submitted with the request for HUD-retained reviews.
  5. Copy to Designated Office. A copy of the Firm Approval Letter, and form HUD-7015.16 must be sent to the Designated Office at the same time it is sent to the HFA if the Designated Office is different than the local HUD Office. The HFA shall forward a copy of the HUD-7015.16 to the RE's Certifying Officer for inclusion in the Environmental Review Record for the project.
- B. Credit Subsidy. All insured projects must receive a reservation of credit subsidy at the commitment stage. For risk-sharing projects, this is the Firm Approval Letter stage. Reservation of credit subsidy is subject to outstanding Department instructions and is subject to availability.
- C. HUD Office Action When Credit Subsidy Is Not Available. It is possible that there will be insufficient credit subsidy available at the end of a quarter. In such case, the local HUD Office should notify the HFA of this temporary unavailability of credit subsidy and advise them that the Firm Approval Letter may not be issued until there is new credit subsidy available. The Office may informally provide the results of the HUD-retained reviews in this circumstance pending issuance of the Firm Approval Letter.
- D. Rejection of Project. The Field Office must notify the HFA in writing if the project is not approvable due to location in a military impact area or for an adverse environmental condition requiring rejection that cannot be mitigated.