

## CHAPTER 5

### HFA PROCESSING, UNDERWRITING, & CONSTRUCTION

- 5-1 PROCESSING & UNDERWRITING - GENERAL. HFAs have maximum possible responsibility for processing and underwriting under the Risk-Sharing program. An HFA taking 50 percent or more of the risk on loans may use its own underwriting standards and loan terms and conditions (as disclosed and submitted with its application) to underwrite and approve loans without further review by HUD. HUD underwriting standards and loan terms and conditions for HFAs taking less than 50 percent of the risk may be imposed in whole or in part by HUD as a condition of approval pursuant to Chapter 2.
- 5-2 HFA RESPONSIBILITIES. The HFA is responsible for the performance of all functions except the HUD-retained functions specified in Chapter 4 and the environmental review. After acceptance of an application for a loan to be insured under this program, the HFA must process the application and underwrite the project and must, among other things:
- A. Determine that a market for the project exists, taking into consideration any comments from the local HUD Office relative to the potential adverse impact the project will have on proposed or existing Federally insured and assisted projects in the area;
  - B. Establish the maximum insurable mortgage and review plans and specifications for compliance with HFA standards;
  - C. Determine the acceptability of the proposed mortgagor and management agent;
  - D. Approve the Affirmative Fair Housing Marketing Plan;
  - E. Make any other determinations necessary to ensure acceptability of the proposed project; and
  - F. Ensure that the environmental review is conducted in accordance with 24 CFR Part 58 prior to the request for HUD-retained reviews.
  - G. Ensure that any required subsidy layering review is completed by the applicable Housing Credit Agency or HUD prior to loan approval.
- 5-3 CONSTRUCTION PERIOD. The HFA is responsible for inspections during construction, processing and approving advances of mortgage proceeds during construction, routine labor standards administrative and enforcement functions, review and approval of cost certification, and closing of the loan.

- A. INSPECTIONS DURING CONSTRUCTION. The HFA must inspect projects at such times during construction or substantial rehabilitation as the HFA determines. The inspections must be conducted to ensure compliance with the contract documents.
  
- B. FEDERAL LABOR STANDARDS PROVISIONS AND RESPONSIBILITIES. HFAs are responsible for routine labor standards administration and enforcement functions. In performing these functions, HFAs must use the policies and procedures in HUD Handbook 1344.1, REV-1, CHG.1 (7/87), Federal Labor Standards Compliance in Housing and Community Development Programs.
  - 1. Applicability. All laborers and mechanics employed by contractors or subcontractors on a Risk-Sharing project shall be paid not less than the wages prevailing in the locality in which the work is performed for the corresponding classes of laborers and mechanics employed in construction of a similar character, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended, where the project meets all the following conditions:
    - a. The project involves new construction or substantial rehabilitation;
    - b. Advances are insured; and
    - c. The project will contain 12 or more dwelling units.

Projects that do not meet these conditions must also comply with Davis-Bacon if it is required as a condition of other Federal assistance.

- 1. HFA Duties. Each HFA is responsible to HUD for ensuring compliance with Federal labor standards requirements on covered projects as follows:
  - a. Designating appropriate staff before start of construction to ensure compliance with all applicable labor standards requirements and to act for and in liaison with HUD. The name(s) of staff must be provided to the Labor Relations staff of the local HUD Office with jurisdiction.
  - b. Establishing a construction contract management system that meets the standards of 24 CFR Part 85.
  - c. Obtaining from local HUD Office staff the appropriate Federal labor standards contract provisions and applicable U.S. Department of

Labor wage rate determinations, and ensuring that all bid documents, contracts, and subcontracts contain such provisions and wage determination.

- d. Ensuring that the prime contractor(s) and any subcontractors are not debarred, suspended or otherwise ineligible to perform work on Federally assisted projects. The List of Parties Excluded from Federal Procurement or Nonprocurement Programs may be obtained by contacting the Superintendent of Documents U.S. Government Printing Office, Washington, D.C., 20402, telephone: (202) 783-3238.
- e. Conducting preconstruction conferences to inform all contractors and subcontractors performing contract construction work of their labor standards obligations.
- f. Conducting on-site project inspections that include interviews with laborers and mechanics engaged in the construction work, and ensuring that the applicable Federal wage rate determination and Notice to Employees (WH-1321) are displayed at the job site and are accessible to all construction employees.
- g. Collecting weekly certified payroll reports from all contractors and subcontractors, reviewing such payrolls and ensuring the prompt correction of any discrepancies and labor standards violations, including the provision of wage restitution where underpayments of wages are found to have occurred.
- h. Receiving any complaints concerning labor standards requirements from construction laborers or mechanics performing work on the covered project(s), reviewing such complaints to determine the validity of any allegation(s) of noncompliance and taking any necessary actions to resolve the complaints, including referral to HUD where appropriate under subparagraph i.
- i. Referring to local HUD Office Labor Relations staff for investigation any labor standards violations that are not readily adjustable or are serious in nature, including those that appear willful, aggravated or criminal, as well as any cases involving recommendations concerning liquidated damages assessments for violation of the overtime provisions of the Contract Work Hours and Safety Standards Act and recommendations concerning debarment.

- j. Maintaining full documentation attesting to all administrative and enforcement activities with respect to Federal labor standards requirements, which must be freely available for HUD review or review by authorized representatives of the Department of Labor. This documentation includes the contract and/or contract specifications containing applicable wage rate determinations, modifications, changes, additions, and labor standards provisions; preconstruction conference minutes; notices of construction start; all weekly certified payroll reports; on-site inspection reports and employee interviews; communication with contractors and subcontractors concerning their labor standards compliance or correction of violations; and any other records used in the administration or enforcement of labor standards, including records of wage restitution.
  - k. Preparing and submitting to HUD, as needed, reports of labor standards enforcement pursuant to 29 CFR 5.7(a).
  - l. Complying with other requirements that may be imposed by HUD concerning Federal labor standards, special requirements of law, or other program or administrative requirements.
- C. LEAD-BASED PAINT. Risk-sharing projects must comply with the lead-based paint requirements in 24 CFR Part 35 for HUD-associated housing and 24 CFR Section 200.820, paragraphs (a) through (d). HFAs are responsible for monitoring and for ensuring that lead-based paint requirements are followed.
- D. INSURANCE OF ADVANCES. Periodic advances are permitted in the Risk-Sharing program. In periodic advances cases, progress payments approved by the HFA and both an initial and final endorsement on the mortgage are required.
- 1. Advances may only be used for projects involving new construction or substantial rehabilitation.
  - 2. In approving advances, the HFA must ensure that the loan is kept in balance, and advances are approved only if warranted by construction progress evidenced through HFA inspection, as well as in accord with plans, specifications, work write-ups and other contract documents. HFAs must also make certain that other mortgageable items are supported with proper bills and/or receipts before funds can be approved and advanced for insurance.
  - 3. The local HUD Office may reduce the mortgage based

on their pre-endorsement monitoring functions as described in paragraph 6-3D.

E. INSURANCE UPON COMPLETION. In insurance upon completion cases, only the permanent loan is insured and a single endorsement is required after satisfactory completion of construction, substantial rehabilitation or repairs. Existing projects without the need for substantial rehabilitation are only insured upon completion.

1. New construction/substantial rehabilitation. The HFA approval of an insurance upon completion project must prescribe a designated period during which the mortgagor must start construction or substantial rehabilitation. If construction or rehabilitation is started as required, the approval will be valid for the period estimated by the HFA for construction and loan closing, including any extension approved by the HFA.
2. Existing projects without substantial rehabilitation. Existing projects with or without repairs are only insured upon completion, although HFAs may permit noncritical repairs to be completed after endorsement upon establishment of escrows acceptable to the HFA.

Noncritical repairs are those that do not:

- a. endanger the safety and well-being of tenants, visitors and passersby,
- b. adversely affect ingress and egress, or
- c. prevent the project from reaching sustaining occupancy.

F. COST CERTIFICATION. To ensure that the final amount of insurance is supported by certified costs, the mortgagor (and general contractor, if there is an identity of interest with the mortgagor) must execute a certificate of actual costs, in a form acceptable to the HFA, when all physical improvements are completed to the satisfaction of the HFA.

1. Auditing. The cost certification provided by the mortgagor must be audited by an independent public accountant in accordance with requirements established by HUD.
2. Contestability. Although the HFA has authority to approve the mortgagor's (and general contractor's) certification of cost, the certification will be contestable by HUD up to and including final endorsement of the mortgage based on its pre-endorsement monitoring functions described in

paragraph 6-3C. After final endorsement, the certification will be final and incontestable except for fraud or material misrepresentation on the part of the mortgagor (and/or general contractor).

3. The local HUD Office may reduce the mortgage based on its pre-endorsement monitoring functions as described in paragraph 6-2D.

G. OTHER REQUIREMENTS. The mortgagor must furnish:

1. Assurance of completion in accordance with any requirements of the HFA as to form and amount.
2. Latent defects escrow or other form of assurance required by the HFA to ensure that latent defects can be remedied within the time period required by the HFA.

5-4 RECORDKEEPING. The mortgagor and the builder, if there is an identity of interest with the mortgagor, must keep and maintain records of all costs of any construction or other cost items not representing work under the general contract and to make available such records for review by the HFA or HUD, if requested.

5-5 PROJECT INFORMATION DISKETTE. HFAs are responsible for providing information about risk-sharing projects to HUD for statistical, programmatic, and monitoring purposes. The project information diskette is submitted with the closing docket as described in Chapter 6 at initial closing for insurance of advances cases and/or final closing for insurance upon completion cases. When a new construction or substantial rehabilitation project will be insured upon completion (i.e., no initial endorsement), the diskette must be transmitted to the local HUD Office when construction begins. The cover letter should specify the date of construction start.