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# Management Analysis

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### 10.1

### Introduction

- A. Management agents that operate HUD-insured multifamily properties play a key role in providing quality affordable housing. This chapter reflects the policy of property owners, management agents, residents and HUD working together over the long term to meet this objective. MAP Lenders play an important role in the analysis of the proposed management program.
- B. While it is the ultimate responsibility of the project owner/mortgagor to select and oversee the management agent of an insured property, the establishment of an effective relationship among HUD, the owner, and the management agent is critical to the success of the development over the life of the mortgage. The relationship is clarified at the Firm Commitment stage, when detailed management documents are submitted with the Firm Commitment application or when there is a change in management.
- C. The Lender will review these documents to determine whether the proposed management agent demonstrates the capability and track record to assure that the development will be managed in a prudent, efficient, and cost-effective manner. The required documents help to demonstrate whether or not the agent:
1. Is eligible for approval and in good standing with HUD.
  2. Demonstrates effective management experience and acceptable operating procedures.
  3. Demonstrates adequate fidelity bond coverage.
  4. Is in compliance with civil rights laws, regulations and requirements.
  5. Is able to positively communicate and cooperate with legitimate resident associations.
- D. If the Lender favorably assesses the above items and HUD approves this assessment, then the owner may execute a Management Agreement with the proposed agent. Since the management agent's contract is with the project owner, it is HUD's policy to not unreasonably withhold approval of the management agent, consistent with the Department's responsibility to protect the public interest.

### 10.2

### Exhibits Required for Firm Commitment

- A. Exhibits

1. HUD 2530 Previous Participation Certification. For all principals and affiliates of the management agent. This form provides comprehensive information about all HUD-related experience by the management agent and is reviewed by the HUD Field Office, and at times by the HUD Washington office. This also applies to lessees.
2. HUD 9832, Management Entity Profile for the Agent. This form provides detailed information regarding the organization, operation, and experience of the proposed management agent. The management plan should provide a narrative overview as support to this exhibit and should include any pertinent leasing or management strategies that are not covered in Form HUD-9832.
3. HUD 9839 A, B, or C, Owner's/Management Agent's Certification, as appropriate. In this document, the agent and owner certify that HUD requirements and contract obligations will be complied with, and that an acceptable Management Agreement will be executed. The agent and owner also certify that no payments have been made to the owner in return for awarding the management contract to the agent, and that no such payments will be made in the future.
4. Proposed Staffing to be Charged Against the Project. Information is required regarding the job-titles, duties, and salaries of all employees to be working for the project. This information is reviewed to determine if the number, salaries, and duties of the proposed staff is reasonable for the size and type of project being proposed. If there is a non-customary situation, or arrangement, resulting in the need for more or less staff than usual, an explanation of this must be provided.
5. Resident Complaints Resolution Procedure. A description of the procedure used by the agent to resolve resident complaints, as well as examples of how the system has been implemented.
6. Management Agreement, if Applicable. 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.
7. Additional Information Required by HUD Field Office. It may be necessary to provide the HUD office with additional information so that a supportable determination of approval or disapproval can be made.

#### B. Additional Requirements for Section 232

The owner/mortgagor must select an agent which has the expertise to market and operate a nursing home, an Assisted Living, or Board & Care Facility. Inherent in this expertise is knowledge of the intended clientele, their specific health-related needs, and the best approach to meeting these needs. Skilled management is vital to the fiscal survival of the property. For Assisted Living and Board & Care, the developer or member of the development team must have a proven track record of 3 to 5 years in the Assisted Living or Board & Care market, and specifically in the developing, marketing *and* operating health care and senior housing projects. For proposals involving a niche market (e.g. Alzheimer's care, Hospice care), the Lender will review the proposed operator's track record in that specialized market. (If the mortgagor does not have the required experience to operate the facility but the project is otherwise acceptable, the Lender must condition the approval based on the mortgagor obtaining the services of a qualified management company.)

A lessee must meet the above requirements. If the license for the facility is held or is to be held by an entity other than the mortgagor, the license party must have an owner/operator lease arrangement and both parties will be required to execute a regulatory agreement.

### 10.3

## Lender Review of Management Documents

The Lender will carefully review the deliverables included in the Firm Commitment application package to determine the acceptability of the proposed management agent. The Management Entity Profile is of particular importance in determining the qualifications of the proposed agent.

The Lender must review the qualifications for the proposed agent to assess the agent's ability to manage the project effectively and in compliance with HUD requirements. The Lender must consider each of the factors below in reviewing an agent's qualifications.

#### A. Past and Current Management

1. The Lender 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
2. If problems are identified with any of these indicators, the Lender must assess whether the agent has adequately improved its procedures to prevent the recurrence of such problems or whether management initiatives by the agent and owner are sufficient to correct the problems and their causes.

#### 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, the Lender 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.
3. The Lender 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 Identity-of-Interest Contractors.

If the agent purchases goods or services from identity-of-interest companies and has previously managed HUD-insured projects, the Lender 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 11(b) 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 HUD contracting and hiring guidelines.

E. The Lender can utilize the following additional sources to determine the capability and expertise of the proposed management agent.

1. Management Entity Profile. The Lender can use the information listed on the form to solicit opinions from HUD Offices that have worked with this agent.
2. 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.
3. Monthly and Annual Financial Statements of the Project including the Independent Public Auditor (IPA) Internal Controls Questionnaire.
4. Additional Documentation. Additional documentation that the Lender may review includes:
  - a. HUD/mortgagee on-site review reports;
  - b. Correspondence;
  - c. Resident complaint files; and
  - d. Previous management reviews.

- A. In addition to providing the names of all principals and affiliates of the proposed management agent, management company, or lessee, the 2530 also lists the names and locations of any previous housing projects in which they have participated, as well as the ratings given on HUD's most recent management review or physical inspection. The 2530 is another source that HUD may use to inquire with an agency or other HUD Field Office about the proposed agent's management experience on a particular property.
- B. The Previous Participation submission will be reviewed to determine whether any of the following indicators (flags) are present:
  1. The agent or any of its principals have been suspended or debarred.
  2. The agent or any of its principals have been placed in ineligible status by HUD Headquarters.
  3. The agent or any of its principals have been placed under a Limited Denial of Participation (LDP) by the Field Office in whose jurisdiction the proposed project is located. Field Offices may also disapprove a management agent based on an LDP issued by another Field Office.
  4. A HUD Field Office has raised concerns regarding the management practices of the proposed management agent.

## 10.5

### Bonding Requirements for Agents

The Lender must also determine whether the agent has adequate bonding 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:
  5. All principals of the management entity, and
  6. 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 the 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.

**10.6****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.
      - (1) Immediately, in the event a default under the Mortgage, Note, Regulatory Agreement, or Subsidy Contract attributable to the management agent occurs;
      - (2) Upon 30 days written notice, for failure to comply with the provisions of the Management Certification or other good cause; or
      - (3) When HUD takes over as Mortgagee in Possession (MIP).
  - 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.
- C. **Length/term of the Agreement.** The length/term of the Agreement is negotiated between the owner and the management agent. HUD may impose a maximum term on the Management Agreement if the HUD 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.

**10.7****Approval/Disapproval of Proposed Management Agent**

- A. Generally, the Lender will recommend approval to HUD of the proposed agent as long as the HUD 2530, Previous Participation Certification is approved, the proposed agent has demonstrated capacity to effectively manage the property within HUD requirements, and the management agent has shown adequate fidelity bond coverage. In some instances, the Lender may find it necessary to recommend conditional approval if there are areas of the agent's procedures that are considered weak or that need to be changed. All conditional approvals will be discussed with the proposed agent and any agreements/conditions settled upon will be shown both in the letter approving the agent, and in HUD's Firm Commitment.
- B. The Lender will provide a report to HUD regarding its review and recommendation to HUD which includes the following information:
1. Name of the proposed management agent.
  2. Composition of the proposed management agent.
  3. Narrative of the agent's experience and capacity to operate the subject property.
  4. Demonstration that adequate fidelity bond coverage is in effect and that the proposed management agreement meets HUD's requirements.
  5. The Lender's recommendation to HUD to approve or disapprove the proposed management agent.
- C. The HUD Office may disapprove a proposed management agent based on the decision of HUD Headquarters' Participation Control Office/Review Committee's decision to deny or withhold approval for the proposed agent's participation. To proceed with Firm Commitment review, the owner must then either propose another management agent (and supply all required documentation) or appeal the decision of the Previous Participation Committee under 24 CFR, Part 200.241.
- D. HUD will review the Lender's report and the management entity profile for the agent (HUD-9832) and make the final determination to accept or reject the proposed management agent.

**10.8****Affirmative Fair Housing Marketing**

The Affirmative Fair Housing Marketing Requirements (24 CFR 200.600, Subpart M) apply to all insured multifamily projects of five or more units. Each applicant for the programs addressed in this Guide must submit an Affirmative Fair Housing Marketing Plan or Form HUD-935.2. The plan must describe an affirmative program to attract tenants regardless of race, color, religion, sex, disability, familial status or national origin to the housing for initial rental. The affirmative advertising program shall use majority and minority media and shall identify those groups within the eligible population that are considered least likely to apply for the housing without special outreach. The plan should also include information on the

applicant's nondiscriminatory hiring policy, its training program on nondiscrimination for its rental staff, and the display of the Department's Equal Housing Opportunity logotype and slogan. HUD shall review and approve the Plan prior to the issuance of the Firm Commitment.

Mortgage Insurance under Section 223(f) of the National Housing Act while covered by the nondiscrimination provisions of the Fair Housing Act and Executive Order 11063, is exempt from the submission of a written plan. However, a Section 223(f) applicant is required to conceive, implement and maintain records for its affirmative marketing efforts.