
CHAPTER 4. CONSTRUCTION PERIOD

- 4-1. DISBURSING CAPITAL ADVANCE PROCEEDS. Capital advance proceeds may be disbursed to Owners to meet bills which are due and payable including bills submitted by contractors covering work completed and/or materials delivered to and stored on or off the building site.
- A. General. The Owner applies for disbursements using Form HUD-92403-CA, Requisition for Disbursements of Capital Advance Funds. Disbursements are made directly by HUD:
1. To or for the account of the Owner; or
 2. Through an approved lender, mortgage servicer, title company, or other agent satisfactory to the Owner and HUD.
- NOTE: At any time the account exceeds \$100,000, the agent must provide acceptable collateral equal to the amount of the actual deposits on account in excess of \$100,000.
- B. Processing Disbursements. Processing of requests for disbursements shall be in accordance with procedures stated in Handbooks 4470.1 REV, Mortgage Credit Analysis for Project Mortgage Insurance, Section 207, and 4480.1, Multifamily Underwriting Reports and Forms Catalog, except as modified here. (See Paragraph 3-20 concerning the initial disbursement.)
1. Prompt Processing. The Field Office must completely process Form HUD-92403-CA within 2-3 workdays and send it to the Regional Accounting Division (RAD). The original Form HUD-92403-CA must be handcarried, where possible, to the RAD or sent by the quickest mail delivery.
 2. General Requirements for Owner.
 - a. On each Form HUD-92403-CA, the Owner must state the cumulative amount of all disbursements received including the one being requested. If this total differs from the amount of disbursements approved, the

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Mortgage Credit Staff must contact the Owner and resolve the difference. The first disbursement request which includes a payment for the architect also must include a Form HUD-92403-1, Mortgagor's and Architect's Certificate.

- b. With each disbursement request, the Owner must submit bills or receipts as required and current extension of title policy, as well as evidence of compliance with the Fair Labor Standards Act (FLSA), zoning, building and other local requirements. If there is any exception to clear title, the Mortgage Credit Staff must contact the Chief Counsel and the Owner to resolve the issue.
3. Amount of Disbursement. Disbursements to the Owner will be made in amounts not to exceed the HUD-approved cost for the portions of construction or rehabilitation work complete and in place, minus the appropriate holdback.
4. Monitoring Construction Progress. When processing Form HUD-92403-CA, compare construction progress with estimates on the contractor's Progress Schedule filed in the Mortgage Credit Section (see Paragraph 2-20, Handbook 4470.1 REV). If construction is behind schedule, call a meeting of all principal parties to the contract, including the Owner, supervisory architect, general contractor and bonding company, to discuss the problems and remedies.
5. Payments to Contractor. The following applies when the disbursement request includes a payment on construction costs to the contractor:
 - a. Form HUD-92403-CA must be accompanied by:
 - Contractor's Requisition (Form HUD-92448), signed by contractor and Certificate for Payments (back of form) signed by architect and HUD inspector.
 - Contractor's Prevailing Wage Certificate on the back of Form HUD-92448 (modified for Section 811 applicability) signed by contractor.

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- (4-1) b. If certification as to payment received to date (lower half of Form HUD-92448) does not agree with amount shown on Line 12 "Less Previous Payments", disbursement cannot be approved unless:
- (1) Difference is explained by data on Form-92451, Financial Record of Mortgage Transaction; or
 - (2) Owner reconciles the difference in a written explanation.
6. Materials Stored Off-Site. For instructions concerning the handling of advance of capital advance proceeds for certain materials stored offsite, see Handbooks 4430.1, REV-1, Paragraph 1-14.I. and 4435.1, REV-1.
7. Disbursements for Building Components Stored Off-Site.
- Before any disbursement:
- a. The Owner shall:
 - Provide a bill of sale for the component;
 - Provide a security agreement pledged by a first lien on the component with the exception of such other liens or encumbrances as may be approved by HUD; and
 - File a financing statement in accordance with the Uniform Commercial Code (UCC).
 - b. The manufacturer and the general contractor shall certify to HUD that the components, in their intended use, comply with HUD-approved contract plans and specifications.
8. Approving and Distributing the Requisition Form. (If application is for the final disbursement, follow additional instructions in Paragraph 6-7.)
- a. When the Mortgage Credit Staff has finished processing Form HUD-92403-CA, it goes to the
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- (4-1) Housing Development Division Director for approval. Before signing, the Director must be sure all the requirements have been met.
- b. If application is in order, the Housing Development Director signs the "Certificate of Approval" on all copies of the Form HUD-92403-CA and sends:
- (1) Original to Regional Accounting Division
 - (2) One copy to Mortgage Credit Staff for eventual filing in Field Office Docket
 - (3) One copy to Owner

4-2. PROJECT CONTINGENCY. The two percent of funds set aside for contingency purposes can be used for certain items during development of the project.

NOTE: Any unexpended money in any account will reduce the Replacement Cost and increase the amount of savings.

A. Eligible Use of Funds.

1. Cost of necessary change orders approved before final closing.
2. Unanticipated soft costs associated with HUD-approved extension of time change orders.
3. Increased taxes and insurance caused by unavoidable delays in construction.
4. Increases in otherwise eligible nonconstruction line items.
5. Funds remaining after construction-related items are covered can be used for major moveable furnishings and equipment (e.g., typewriters and lawn mowers) essential for project operation, including but not limited to office and maintenance equipment and furnishings for public areas.
6. Costs directly related to rent-up of project.
7. Accruals for taxes and insurance after completion of construction if current income from the project is insufficient to meet such accruals.

(4-2) B. Ineligible Use of Funds.

1. Additional fees to architect, attorney, consultant or other development team members.
2. Non-major equipment and furnishings such as living room and dining room furniture in group homes.
3. Items with short-term life cycle such as office and maintenance supplies.
4. Furnishings within residential units.
5. Motor vehicles.

C. Unexpended Project Contingency Funds. Any project contingency funds remaining after cost certification will be placed in the project's Reserve for Replacement Account.

4-3. HOLDBACK OF CAPITAL ADVANCE PROCEEDS. The holdback provides an incentive for the general contractor to see that the job is completed promptly and to submit cost certification.

- A. Amount of Holdback. The Capital Advance Agreement requires HUD to retain 10 percent of mortgage proceeds from each advance.
- B. Basis for Release After Completion. After all required contractor cost certification documents are approved and if no identity of interest exists between the mortgagor and general contractor, the contractor is entitled (through the mortgagor) to the release of the holdback less escrows for:
 - items of delayed completion;
 - liquidated/actual damages; and/or
 - the net effect of negative change orders, provided the following conditions have been met:
 1. Review of the contractor's cost certification, if required, has been completed.
 2. All work under the construction contract has been

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- (4-3) inspected and approved by government authorities and by any rating or inspection organization, bureau, association or office having jurisdiction.
3. All certificates of occupancy, or other required approvals, for all units of the project have been issued by State or local governments having jurisdiction.
 4. Permission to Occupy, Form FHA-2485, has been issued for all units.
 5. All Davis-Bacon payroll requirements have been satisfied, where applicable. (For guidance concerning wage disputes refer to Handbook 1344.1 REV-1, Federal Labor Standards Compliance in Housing and Community Development Programs, and Subparagraph 3-4.k of that Handbook for procedures regarding escrow accounts for labor standards violations).
 6. Requisition is accompanied by a Contractor's Prevailing Wage Certificate, found on Form HUD-92448, and final survey.
 7. Consent of surety is received.
 8. Contractor has disclosed its final obligations on the Form HUD-90175, Request for Final Closing.

NOTE: The Owner will submit a second Form HUD-90175-CA prior to final closing.
 9. An acceptable Contractor's Certificate of Actual Cost, Form HUD-92330-A, accompanied by a Certified Public Accountant or Independent Public Accountant's certificate, if required, has been reviewed and approved by Cost Staff.
- C. If an identity of interest exists between the mortgagor and general contractor, the full 10 percent holdback must be maintained until final endorsement.
- D. Projects In Difficulty. An earlier release of the contractor's holdback may be granted only to prevent a default of the construction loan and only if this will solve the project's problems and enable it to reach
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- (4-3) construction completion. Before releasing any funds:
1. Obtain the written consent of the surety.
 2. The mortgagee must:
 - a. Take immediate control of the disbursements of mortgage proceeds, using either their own staff or an escrow agent, and
 - b. Supervise payments to subcontractors and material suppliers (e.g., through two- or three-party checks).
- 4-4. PAYMENT FOR OFF-SITE FACILITIES. When escrow deposit has been made to assure construction of off-site facilities under the provision of Escrow Deposit Agreement for Off-Site Facilities, Form HUD-90170-CA, disbursements may be made from this escrow deposit during construction of the facilities. Disbursements will be made in proportion to the percentage of off-site work completed, less a holdback of 10 percent, as follows:
- A. Owner will submit Request for Approval of Advance of Escrow Funds, Form HUD-92464, to depository in quadruplicate.
 - B. Depository will complete its portion of Form and submit it in triplicate to HUD.
 - C. Mortgage Credit Staff will complete processing and send it to the Housing Development Director for signature.
 - D. Distribution of approved form will be as follows:
 1. Original to depository;
 2. One copy to Mortgage Credit Staff; and
 3. One copy to be filed in Field Office Docket.
 - E. If disbursement request is unacceptable, Housing Development Director will return request to Owner accompanied by a letter of explanation.
- 4-5. PROCESSING CHANGE ORDERS. All requests for changes in drawings or specifications or for extensions of time must be submitted on Form HUD-92437, Request for Construction

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- (4-5) Change on Project Mortgages, for HUD approval. Change orders are processed using instructions in this Chapter, and in Handbooks 4460.1 and 4480.1. Also,
- A. Written Approval of HUD. Such approval is required before any changes are made.
 - B. Written Approval of Surety. Housing Development Director must obtain written approval of the surety when there is a change, accumulation of changes, or increases in costs by 10 percent or more of the construction contract amount.
 - C. Increases in Construction Cost Resulting from Approved Change Orders and Construction Contract Time Extensions.
 - 1. Project Contingency may be used to cover cost of necessary change orders, not optional betterments.
 - 2. Project Contingency funds may be used if an approved time extension results in increases in taxes, insurance and general requirements.
 - 3. Should Project Contingency be insufficient to cover any increase, the Owner must escrow such additional funds in the approved depository in a separate Construction Account.

NOTE: Amounts designated for purchase of major moveable equipment must be considered in determining adequacy of Project Contingency funds available for change orders (i.e., if there are not sufficient funds in the Project Contingency to fund a change order, amounts designated for purchase of major moveable equipment must be used first to ensure that the project is completed).
 - D. Extension of Time to Complete Construction. The Owner and contractor may ask to amend the construction contract. Extension requests will be processed based on the following:
 - 1. Must be on HUD-92437, signed by Owner, general contractor and Owner's inspecting architect.
 - 2. No extension will be approved unless the delay was
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- (4-5) beyond the contractor's control (e.g., weather, strikes, differing site conditions, etc.) and is documented.
3. Housing Development Director must obtain written consent of surety prior to approving any extension of time.
 4. Where the delay is the contractor's fault or requests have not been filed promptly, the extension may not be granted and the provisions of Article 2C (actual damages clause) of the construction contract will be enforced against the contractor.
 5. Must meet the requirements outlined in Paragraph 9-5 of Handbook 4470.1.
- E. Distribution of Approved Change Orders.
1. Three copies for the Owner (one copy for the contractor and one copy for the architect).
 2. One copy for the inspector (representing HUD) assigned to the project.
 3. One copy for the Mortgage Credit Staff.
 4. One copy for the Field Office Docket (filed with master set of drawings and specifications).
- 4-6. INCREASE IN CAPITAL ADVANCE AMOUNT.
- A. Timing for Increase. Generally, requests for capital advance increases should not be considered until construction has reached final completion, but must be acted upon before final closing. If a mortgage increase is approved, the Owner is no longer entitled to share in cost savings.
- B. Basis for Increase. Subject to the availability of funds and regulatory cost limits, a capital advance increase may be approved to cover:
1. Cost to correct substantial error by HUD in the original processing which would otherwise result in serious inequities.

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2. Necessary changes (see Paragraph 11-11.B.1.a-d of Handbook 4470.1) in the plans and specifications which have been approved by HUD (no optional betterments may result in an increase).
 3. Costs caused by extensions in construction time, when such extensions were: approved by HUD; justifiable under AIA General Conditions and caused by a declared natural disaster or other problems beyond the contractor's control.
 4. Other costs not known at firm commitment resulting from requirements of local authorities and beyond the Owner's control.
 5. Construction (hard) cost increases caused by a natural disaster declared by Federal or State government, to the extent not covered by casualty insurance.
 6. Cost of substituting general contractor when original contractor is terminated for cause and the surety has failed to perform.
 7. Increased costs resulting from concealed subsurface site conditions, provided HUD finds that exploratory tests during project design were sufficient and thorough and neither the architect nor engineer were at fault.
- C. Cost Overruns. A request for a capital advance increase solely due to cost overruns associated with the construction of a project according to the original drawings and specifications will not be allowed.
- D. Processing Capital Advance Increases. Upon receipt of an Owner's capital advance increase request, an evaluation must be made based on the criteria listed above and the requirements in Paragraph 11-11 of Handbook 4470.1. If the Field Office decides to recommend the increase for approval, it must take the following actions:
1. Revise Forms HUD-92264 and HUD-92264A to show the approved increases.
 - a. Do not increase or replenish Project Contingency.

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- b. Apply any project net income to offset items eligible for mortgage increase.
 - c. Compute the new mortgage amount.
 - d. Calculate any increase in operating expenses related to the capital advance increase.
2. Submit a memorandum to Headquarters (Attention: Office of Insured Multifamily Housing Development (HMIT)), together with justification(s) based on the criteria under Subparagraph B above. Attach the following exhibits:
- a. Copies of the original and reprocessed Form HUD-92264, including attachments.
 - b. Copies of the original and reprocessed Form HUD-92264A.
 - c. Copies of any approved Forms HUD-92437 (Change Orders), including attachments and pertinent correspondence.
 - d. Copies of cost certification processing, including Forms HUD-92330, Mortgagor's Certificate of Actual Cost, HUD-92330A, HUD-92331, Summary of Cost Certification Review, and FHA-2331A, Cost Certification Review Worksheet.

The memorandum also should indicate the amount of additional capital advance and project rental assistance funds required.

- E. Actions After Headquarters Approval. If the capital advance increase is approved by Headquarters, the following actions will be taken:
- 1. Headquarters will authorize use of amendment funds previously allocated to the Regional Office or issue Form HUD-185 to the Regional Office.
 - 2. The Regional Office, after verification of funds by RAD and signature of the Regional Administrator or his/her designee, will issue a Form HUD-185.1 to the Field Office.

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3. Upon receipt of funds, the MHR must prepare a revised Form HUD-718 and Form HUD-52540 if there is a PRAC increase.
 4. The Capital Advance Agreement must be revised to reflect the increase and sent to RAD prior to final disbursement of capital advance proceeds.
 5. A Supplemental Mortgage Note, Mortgage or Deed of Trust and Consolidation Agreement must be prepared to reflect the increase and sent to RAD after final closing.

4-7. WORK STOPPAGE. If a work stoppage occurs during construction, the Field Office Manager will communicate immediately with the Owner and contractor to determine the cause of the stoppage and to ascertain when construction will be resumed.

- A. Effect of Stoppage. The seriousness of any work stoppage must be impressed upon the parties concerned, and particularly that a stoppage of 20 days or more constitutes a default under the Capital Advance Agreement.
- B. Report by Field Office. If a work stoppage has continued for 20 days, the Field Office Manager must notify the Regional Labor Relations Officer and the Director, Office of Elderly and Assisted Housing, HMEE, by priority mail and request special guidance as to action to be taken to protect the Secretary's interest. The Headquarters referral shall include, at a minimum, the information as itemized under Paragraph 1-13 of Handbook 4435.1. This notification will be in addition to any steps that may be prescribed under contractual documents.

4-8. MANAGEMENT PROCESSING DURING CONSTRUCTION. At this stage, the Loan Management staff will be responsible for the following processing steps:

- A. Change Order Requests.
 1. The Housing Development Director must give the Loan Management Specialist a copy of any change order request which may affect the management of the project.

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2. If any change order is considered adverse to project management, the Loan Management Specialist must resolve the matter with the MHR.
 3. In instances where the problem cannot be resolved by mutual agreement, the Director of Housing or the Field Office Manager (as appropriate) must make the final determination.
- B. Scheduling the Pre-Occupancy Conference. The Loan Management Branch Chief is responsible for scheduling a pre-occupancy conference with the Owner and the Project Administrator (if self-managed) or Management Agent at least 120 days prior to the first units being completed for occupancy. At this conference, at least the following items must be reviewed and applicable handbooks distributed:
1. Provisions of Regulatory Agreement.
 2. Submission of Form HUD-92458, Rent Schedule - Low Rent Housing.
 3. Tenant selection during the rent-up period.
 4. HUD requirements relating to income limits and income certification.
 5. Inspection of units prior to accepting for occupancy.
 6. Tenant orientation program.
 7. Review lease form provisions.
 8. PRAC voucher procedure.
 9. Insurance requirements.
 10. Marketing requirements of the Affirmative Fair Housing Marketing Plan.
 11. PRAC vacancy payment requirements.
 12. Project management, including regular and preventive maintenance (Management Agreement).
 13. HUD's accounting requirements (Handbook 4370.2,

- (4-8) Financial Operating and Accounting Procedures for Insured Multifamily Projects).
14. Auditing of financial statements (Handbook IG 4372.1, Audit Guide for Mortgagors Having HUD Insured or Secretary Held Multifamily Mortgages).
 15. Monthly accounting reports of income and expenses (Forms HUD-93479, Monthly Report/Establishing Net Income - Schedule A; HUD-93480, Schedule of Disbursements - Schedule B; and HUD-93481, Schedule of Accounts Payable - Schedule C).
 16. Tax and insurance reserve account.
 17. Owner's Supportive Services Plan.
- C. Accounting and Reporting Requirements. Project accounts must be maintained as prescribed in Chapter 4 of Handbook 4370.2, Financial Operations and Accounting Procedures for Insured Multifamily Projects. Required financial reports are also detailed in the same Handbook.
- D. Monthly Accounting.
1. Owners must submit Forms HUD-93479, HUD-93480 and HUD-93481 monthly to HUD (Housing Management Division Director).
 2. These reports must be submitted from the first day of the month of initial occupancy through the month in which the project attains 95 percent occupancy or through the first full year of project operations, whichever occurs later.
 3. If no income is being realized, the report should reflect operating expenses.
 4. Loan Management staff will review these reports from the aspect of early warning of any developing problems. Particular attention must be paid to:
 - a. Status of tax and insurance reserve accounts;
 - b. Cash flow;
 - c. Occupancy ratio;

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- d. Accounts payable;
 - e. Tenants accounts receivable; and
 - f. Management fee.
5. Remedial action must be taken promptly if the accounting reports indicate problems are developing.
6. If a review indicates the project is being operated appropriately and it is apparent that operating expenses have been underestimated, an increase in operating expenses should be processed as soon as possible to avoid an inordinately large increase at a later date.
- E. Tax and Insurance Reserve Accounts. In order to provide for timely discharge of such obligations as taxes and property insurance during the mortgage period, the following procedure will be established:
- 1. Not later than 30 calendar days prior to first occupancy of the project, the Owner must establish a tax and insurance reserve account with a depository which is a member of the Federal Deposit Insurance Corporation, Savings Association Insurance Fund, or the National Credit Union Share Insurance Fund and make monthly deposits into the account sufficient to provide for the timely payment of taxes and insurance premiums. The said account may be interest-bearing.
 - 2. As part of the Owner's monthly accounting report, amounts deposited in the tax and insurance reserve account must be shown as the first item on HUD-93480, Schedule of Disbursements. The Loan Management Branch must monitor this financial report to assure that Owners are properly maintaining tax and insurance reserves.
 - 3. Expenditures from the escrow accounts are made as the tax assessments and insurance premiums become due. No prior HUD approval is needed for these disbursements, but the Owner will be responsible for the timely discharge of these obligations and the appropriate accounting in the project's books and records.

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4. The Loan Management Branch must monitor the payment of the tax and insurance obligations by means of the Owner's annual financial statement.
5. Should the interest in an interest-bearing account cumulate in an amount equal to three monthly deposits for taxes and insurance premiums, the said cumulated interest must be transferred to the Replacement Reserve Account.

F. Technical Assistance. Section 8.6 of the Section 504 Regulations requires recipients to take appropriate steps to ensure effective communication with applicants, beneficiaries and members of the public who are disabled.

1. FHEO should encourage Owners to utilize outreach procedures that afford persons with disabilities an equal opportunity to participate in, and enjoy the benefits of, the project. Any outreach efforts by the Owner should include information on the services offered by the project. This would enable the applicant to determine if the project offers the services necessary to meet the obligations of tenancy or if the applicant would have to make other arrangements to obtain the services necessary to meet the obligations of tenancy.
2. In addition to utilizing newspapers and radio stations, Owners may also use qualified sign language and or oral interpreters, readers or taped and Braille materials. Owners should also inform those organizations which serve the disabled community, in order to reach persons with all types of disabilities, such as those with visual and hearing impairments, those who are developmentally disabled with minimal reading skills, or persons confined to their homes.
3. Owners are not required to submit their outreach procedures to HUD for approval (as is the case with the Affirmative Fair Housing Marketing Plan); however, documentation of the outreach efforts should be maintained on the site in the rental office and available for HUD inspection.

4-9. OPERATING BUDGET APPROVAL. The proposed operating budget for the project must be approved by HUD before

initial occupancy. At the pre-occupancy conference, therefore, the Owner will be asked to submit a current estimate of operating expenses. As this is the amount on which project assistance payments will be based, it is imperative that these estimates be current and approved by HUD prior to occupancy.

- A. Approval of Schedules. After review, the Field Office must notify the Owner of the approved operating expense budget. The approval letter will also advise that any future revisions must be substantiated and receive HUD's prior approval.
 - B. Increase in Operating Costs. If, during construction, there has been an increase in replacement cost over the estimated replacement cost shown in the applicable Form HUD-92264 that may increase the estimate of other operating costs or taxes, such increase(s) may be considered. However, they must be substantiated with supporting documentation to the satisfaction of the Field Office Manager and on file in the Field Office Docket.
 - C. Additional Charges. No charges to tenants will be made by the Owner beyond those established by a HUD-approved operating budget. Cost or charges for services provided through management efforts or obtained individually by a resident must be paid directly by the resident to the provider and must not be a part of the operating budget. Any charges not contemplated at the time of processing require the approval of the Field Office Manager.
- 4-10. INSPECTION AT PROJECT COMPLETION. When the construction is completed, HUD will make a final inspection with the Owner's architect. If construction is found to be acceptable, the HUD inspector's report, prepared on Form HUD-5379, HUD Representative's Public Housing Trip Report, and subsequently endorsed by the Chief Architect, will constitute the final inspection report. Any on-site items qualifying as Items of Delayed Completion and not completed by the time of final closing will be subject to an escrow arrangement (see Paragraph 6-3).
- 4-11. REQUESTS TO OCCUPY. Prior to occupancy the Owner must request from HUD and receive permission to occupy. Such

(4-11) requests may be submitted as portions of the project become ready for occupancy (staged construction).

A. Submission Requirements

1. Form FHA-2485, Permission to Occupy-Project Mortgages, in an original and three copies. All copies must be signed by the Owner, supervisory architect and contractor.
2. Attach to the Form FHA-2485, the following:
 - a. Form HUD-92458, Rental Schedule and Information on Rental Project, in triplicate. (Not required if previously submitted.)
 - b. Certificate of occupancy and/or license to operate a rental project as issued by public authorities having jurisdiction.

B. Review for Project Occupancy.

1. The Field Office will verify the receipt of the certificate of occupancy and/or license to operate a rental project as issued by the local public authorities.
2. HUD will make an on-site inspection of living units proposed for occupancy and will recommend occupancy of the units if found to be acceptable.

NOTE: If the final inspection report has been completed, the inspection as reported on the Form HUD-5379 may be used to satisfy this requirement.

3. If concurred by the Chief Architect, the Housing Development Director will indicate approval on the Form FHA-2485.
4. FHEO may be asked to comment on the Owner's compliance with equal opportunity requirements prior to granting permission to occupy.

C. Permission to Occupy. The Housing Development Division Director/Field Office Manager will grant permission to occupy by signing Form FHA-2485 upon:

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- (4-11) 1. Approval for occupancy by the Housing Development Division.

2. Determination that the operating expenses proposed on Form HUD-92458 are acceptable.

4-12. REVIEW FOR PROJECT ACCEPTANCE. Upon completion of the project and prior to execution of the Project Rental Assistance Contract (PRAC), Forms HUD-90173A-CA and 90173B-CA, the project must be cleared by the Housing Development, Housing Management and Fair Housing and Equal Opportunity Divisions.

- A. Housing Development Division: Execution of Form FHA-2485, Permission to Occupy - Project Mortgages, will constitute acceptance by this Division.
- B. Housing Management Division must ensure that:
 1. Previously-approved management plan, management agreement and lease remain acceptable.
 2. Pre-occupancy meeting has been held and all marketing requirements have been met.
- C. Fair Housing and Equal Opportunity Division must ensure compliance with:
 1. Approved Affirmative Fair Housing Marketing Plan.
 2. All other applicable equal opportunity requirements.
- D. When all three Divisions have indicated project acceptance, the preparation of the PRAC Contract may be initiated.

4-13. PROJECT RENTAL ASSISTANCE CONTRACT (PRAC).

- A. General. Although not a Federal contract within the meaning of 331 U.S.C. 6303, the PRAC sets forth rights and duties of the Owner and HUD with respect to the project and subsidy payments.
- B. Preparation of Contract
 1. Immediately after review and acceptance of the project as set forth in Paragraph 4-12 above, the

(4-13) MHR will prepare a memorandum to the Legal Division for the Housing Development Director's signature, requesting that the PRAC be prepared.

2. The Legal Division must prepare one original and two copies of the PRAC based on the Contract previously prepared as an exhibit to the PRAC Agreement.
3. Any change to the PRAC at this stage may be made only if authorized by the regulations or the Agreement, and must be explained and justified to the Owner in the transmittal letter.
4. The effective date of the PRAC will be the date the permission for occupancy is granted on Form FHA-2485. The initial term of the contract shall be 240 months.
5. The transmittal letter will require the Owner to submit with the executed Contract, a list of leased and unleased units (bedrooms in a group home) along with justification for any unleased units (bedrooms in a group home) for which vacancy payments will be requested.
6. The PC&R staff will transmit the PRAC to the Owner for execution.

C. Execution of Contract

1. When executed by the Owner, all copies of the PRAC will be returned to HUD together with the information regarding leased and unleased units (bedrooms in a group home).
2. PC&R will route the PRAC to the Legal Division for final review and the information regarding leased and unleased units (bedrooms in a group home) to Housing Management.
3. Housing Management will advise Housing Development whether any unleased units (bedrooms in a group home) qualify for vacancy payments.
4. Housing Development, in the letter transmitting the PRAC, will advise the Owner of any unleased units (bedrooms in a group home) qualifying for vacancy payments.

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- (4-13) 5. When approved by the Legal Division, the Housing Development Director/Field Office Manager will

sign the original and two copies of the PRAC for HUD.

6. The executed PRAC will be distributed as follows:
 - a. Original will be sent to the RAD;
 - b. One executed copy to the Owner; and
 - c. One executed copy to Housing Management.

D. PRAC Payments. The PRAC payments are made monthly by HUD upon requisition by the Owner.

4-14. MARKETING AND INITIAL RENT-UP. The initial rent-up of the project must be carried out according to Handbook 4350.3, Occupancy Requirements for Subsidized Multifamily Housing Programs, except as modified here.

A. Selection of Tenants. Selection of tenants from among eligible applicants and the usual landlord-tenant relationship are the responsibility of the Owner.

B. Applicant Eligibility Criteria

1. Must be a household composed of one or more persons at least one of whom at the time of initial occupancy is 18 years of age or older and has a disability. (See Paragraph 1-5A of Handbook 4571.2 for the definition of disability and more detailed eligibility criteria.)
2. Must be within established income limits.
3. Must be capable of accessing needed services if they are not provided through the facility.

C. Restricted Occupancy. The Owner may design a supportive services program for a specific project that provides the type of services generally needed by persons having a particular disability (i.e., persons who are mentally retarded). However, the Owner is required to admit any other person with similar disabilities who could make use of the service program.

(4-14) D. Waiting Lists. A waiting list of applicants will be maintained if no suitable unit is available, but the Owner may refuse to take further applications if the waiting list is so long that the average wait for a

unit will be a year or longer.

- E. Affirmative Fair Housing Marketing. Owners must comply with the requirements of their HUD-approved Affirmative Fair Housing Marketing Plan (AFHMP), Form HUD-935.2. The AFHMP is designed to promote equal housing choice for all prospective tenants regardless of race, color, religion, sex, creed, age, national origin, familial status or handicap.
- F. Non-discrimination. Owners must comply with all HUD regulations and requirements and all State and local requirements prohibiting discrimination based on race, color, creed, religion, sex, national origin, age, familial status or handicap.

4-15. JOINT PRE-COST CERTIFICATION CONFERENCE. The Cost and Mortgage Credit staffs must hold a joint pre-cost certification conference with the Owner, general contractor, and accountant when the project has attained no more than 90 percent completion to discuss the following:

- A. Requirement for Cost Certification and provisions of Handbook 4470.2 plus any modifications as found in Chapter 5 of this Handbook.
- B. Necessity for Completeness of required documentation, dates and signatures.
- C. Importance of Careful Review by all parties prior to submitting cost certification documents to HUD.
- D. Timeliness of Submission. The Owner is expected to submit an acceptable cost certification and bring the project to final endorsement/closing within 90 calendar days of cost certification cut-off, exclusive of the time required by HUD to review the cost certification and issue Form HUD-92580-CA.
 - 1. The Owner's and general contractor's cost certifications must be submitted within 45 calendar days of cost certification cut-off and final completion, respectively.

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- (4-15) 2. Final endorsement/closing must be achieved within 45 calendar days of HUD's issuance of Form HUD-92580.
 - 3. The time frames in paragraphs 1) and 2) above may vary from the 45-day period provided the 90-day

limitation is not exceeded.

EXAMPLE: If the Owner submits its cost certification in 30 days, final endorsement/closing may occur within 60 days of HUD's issuance of Form HUD-92580.

4. Two 30-day extensions may be granted by the Director of Housing Development if the delay is through no fault or neglect of the Owner or general contractor, e.g., preparation of documents during tax season.
5. Failure to meet the timeframes in paragraphs 1) and 2) may result in the previous participation disapproval of the principals of the Owner or general contractor, whichever is applicable, in future HUD multifamily projects.