

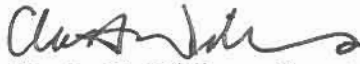


U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-  
FEDERAL HOUSING COMMISSIONER

APR 18 2006

MEMORANDUM FOR: MF HQ OFFICE DIRECTORS, MF HUB/PC DIRECTORS

FROM:   
Charles H. Williams, Deputy Assistant Secretary, Office of  
Multifamily Housing Programs

SUBJECT: Clarifications of Developer Fee and Use of Reserve for Replacement pursuant to Notice 04-21, Amendments to Notice H2002-16: Underwriting Guidelines for Refinancing of Section 202 and 202/8 Direct Loan Prepayments

We have received requests for clarification on Notice 04-21, primarily about the developer fee, the use of existing reserve for replacement funds for various costs and appraisal related matters. We have restated the questions received and provided responses that clarify the instructions in Notice 04-21. These clarifications are effective immediately for all applications for which an FHA commitment has not been issued. Lenders with outstanding FHA commitments that have not yet closed may request reprocessing under these provisions.

### Developer Fee

**Question 1:** Notice 04-21, Section IV states that when LIHTC are not used, the developer fee is limited to 15% of acceptable development costs. What has HUD defined as "acceptable development costs" to determine the developer fee?

**Response:** "Acceptable development costs" for projects being refinanced under Section 207/223(f) are the critical and noncritical repair costs approved by HUD. The repair costs are included in the "Remarks" Section of Form HUD-92264. For arms length purchase transactions, include the developer fee in the acquisition costs and for refinance and identity-of-interest transactions, the fee is to be included in the cost to refinance.

**For Section 221(d)(3) and Section 231 nonprofit mortgagors, acceptable development costs are the substantial rehabilitation costs (line 50 of Form HUD-92264). Include the developer fee on Line G69.**

There is no developer fee in the replacement cost for Section 221(d)(4) and Section 231(profit motivated) projects since the National Housing Act requires these programs to include a 10% Builder-Sponsor Profit and Risk Allowance (BSPRA) or Sponsor's Profit and Risk Allowance (SPRA) depending on the identity of interest relationship between mortgagor and general contractor.

Should these transactions include LIHTC's, the developer may be entitled to a fee of up to 15% of acceptable development costs in accordance with Notice 04-21 and Subsidy Layering requirements in Notice 95-4 as modified by Assistant Secretary Apgar's memorandum of September 23, 1999.

**Question 2:** In preparing mortgage insurance applications for refinancing Section 202 and Section 202/8 Direct loans, nonprofits may encounter situations where they require outside consultations. In these cases, is a separate line item for such consultants permitted in the FHA replacement cost and/or mortgage calculation?

**Response:** No. Any consultants hired by the nonprofit sponsor/borrower would be paid from their developer fee. There is no separate line item for nonprofit consultants.

### **Reserve for Replacement**

**Question:** Please clarify whether Replacement Reserves can be used to fund the 10% completion assurance for repair requirements pursuant to the refinance of Section 202 and Section 202/8 Direct Loans under the Section 223(f) mortgage insurance program.

**Response:** Funds in the project's existing replacement reserve account in excess of the required \$1,000 per/unit may be used by the owner to meet the completion assurance escrow requirement of the Section 207/223(f) program. In these cases, funds remaining in the escrow account after completion of the repairs must be deposited with the mortgagee into the replacement reserve account.

### **Appraising**

**Question 1:** In performing appraisals for the purpose of refinancing a subject that is currently financed with Section 202 or 202/8 Direct Loan, the completion of the Cost Approach is often viewed as unnecessary and as an extra expense. Can the Cost Approach be omitted under this program?

**Response:** Yes. Omission of the Cost Approach is permitted exclusively in performing appraisals for the purpose of refinancing Section 202 and 202/8 properties since all Section 202 Direct Loan projects are more than ten years old. This is done at the discretion of the appraiser, after determining that this approach is not applicable to the assignment. The omission of the Cost Approach in these cases is not considered to be a use of the Departure Rule.

**Question 2:** In performing appraisals for the purpose of refinancing a subject that is currently financed with Section 202 and 202/8 Direct loan, in most cases, all of the units will be fully subsidized. The statute that authorizes the refinancing of these properties states that we are to assume that subsidy will continue for the purposes of our underwriting. If there are no market rate units in the project to be refinanced, is it necessary to complete a comparable rental analysis on the form HUD 92273?

**Response:** No. In performing appraisals that are exclusively for the purpose of refinancing Section 202 or 202/8 projects where there are no market rate units, it will not be necessary to complete a comparable rental analysis. Therefore the form HUD 92273 is not required.

Any questions regarding this memorandum should be directed to Minnie Monroe-Baldwin, Headquarters Office of Multifamily Development, at (202) 708-0614 extension 2636.