

U.S. Department of Housing and Urban Development

HOUSING

Special Attention of:

Notice H 99-13 (HUD)

All Multifamily Housing Directors
All Multifamily Hub Directors
All Multifamily Directors, Program Centers

Issued: May 17, 1999
Expires: May 31, 2000

Cross References:

Subject: Revised Asset Management Procedures

Management Reform 2020 Plan, requires the elimination, streamlining, outsourcing or centralization of many multifamily functions. This notice revises outstanding program guidance, handbooks and instructions and shall be implemented by all offices upon receipt. Changes to existing instructions are noted below in *italics*, **significant changes are noted in bold**.

I. Budget-Based Rent Adjustments

HUD Handbook 4350.1 REV-1, Multifamily Asset Management and Project Servicing, Chapter 7, outlines submission requirements and procedures for approving a budget-based rent increase. Specifically, Paragraph 7-22C. requires that if an increase in a budgeted line item amounts to five percent or more of the original line item, the basis for the increase must be documented.

On October 16, 1998, Housing issued Notice 98-34, Project-based Section 8 Contracts Expiring in Fiscal Year 1999. This Notice included a list of the Operating Cost Adjustment Factors (OCAF) for each State. These factors will be published annually.

Budget-based rent increases in which the total amount of the increase in operating expenses does not exceed the prior year's audited financial statements (debt service and other fixed costs (Reserve for Replacement (RFR) excepted) by more than the OCAF may now be approved without further review of the budget by HUD staff, provided the project meets the following requirements:

- o Owner/managers must still document and submit requests in accordance with 4350.1, Chapter 7 (including compliance with applicable tenant comment procedures);
- o This procedure is applicable only to projects with HAP Contracts that will not expire during the current fiscal year (FY). (Projects with expiring contracts are covered under HUD Notice 98-34 - Project-based Section 8 Contracts Expiring in Fiscal Year 1999.)

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- o Owners are limited to one increase within a calendar year.
- o The project has not been designated as Troubled by the appropriate level manager in your office.

Field Office staff are reminded that routine processing should be adhered to when reviewing the owner's submission (see Paragraph 7-25C, for submission requirements). Delays in processing often occur when incomplete packages are submitted while staff wait for receipt of additional items. *To expedite processing, all incomplete requests should be returned without processing and Owners/Agents notified that, upon receipt of a complete request, their requests will be processed*

II. Annual Budget Submission and Approval for Section 202 and Section 811 Projects

Outstanding guidance requires submission by the owner, and approval by HUD of an annual budget for all Section 202/811 and Section 202/8 projects. **The following revised procedures shall be implemented, after appropriate notification to owners and managers.**

The provisions of the applicable Regulatory Agreements between HUD and the Mortgagor for all properties (except those defined below), are modified by a blanket waiver. This waiver provides that owner/mortgagors continue to prepare annual budgets as required and maintain a copy for their records and at the project site, but are no longer required to submit those annual budgets to HUD for review. These budgets shall be deemed to be approved by HUD for all purposes including meeting the regulatory requirements for use of project funds in accordance with a HUD approved budget. Any property which falls into one or more of the following categories are excepted from the waiver and the budget submission and approval procedure for those properties will not change:

- o The owner/mortgagor is requesting a rental increase based on operating costs which have increased more than three percent over total operating expenses from the prior year's audited financial statement (debt service and other fixed costs (e.g., RFR) excepted);*
- o Any property designated as Troubled by the appropriate level managers in your Office;*
- o Any property specifically notified (in writing) as excluded by your Office.*

III. Annual Requisitions for Annual Contributions Contract (ACC) Projects

Outstanding Housing guidance requires submission of quarterly Requisitions for Partial Payment of Annual Contributions for Section 8 New Construction and Substantial Rehabilitation projects with ACCS, for which Housing monitors the Contract Administrator (CA).

Beginning with their next complete fiscal year, Contract Administrators shall now submit annual Requisitions for Partial Payments of annual Contributions instead of quarterly requisitions.

The annual requisition must be submitted 90 calendar days prior to the start of the Contract Administrator's fiscal year, with annual budget documents (Forms HUD 52672 Supporting Data for Annual Contributions Estimates and HUD 52673 Estimate of Total Required Annual Contributions and the revised Form HUD-52663 Requisition for Partial Payment of Annual Contributions (**Attachments 1, 2 & 3**)). Conversion to annual requisitions by Housing saves significant time for the Contract Administrators, HUD Field Offices, and Field Accounting Divisions with minimal risk. Funds will continue to be disbursed monthly in accordance with the approved payment schedule (on Form HUD 52663).

On September 16, 1994, the Office of Public and Indian Housing issued Notice PIH 94-64, Revised Submission Requirements for Requisition for Partial Payment of Annual Contributions, Form HUD-52663. This Notice informed HUD Field Offices and Public Housing Agencies of new submission requirements for HUD-52663, Requisition for Partial Payment of Annual Contributions for Mod Rehab and Section 8 Existing Contracts. In place of submitting quarterly requisitions, PHAs were permitted to submit an annual requisition for their entire fiscal year. Housing has determined that the same policy implemented through PIH 94-64 shall be applicable to projects with ACCs monitored by Housing.

IV. Reliance on Monitoring by Partners

HUD has many partners in the delivery of assisted housing, including Housing Finance Agencies (HFAs) and Public Housing Authorities (PHAs). Many are Contract Administrators for projects with ACCS. Others provide financing as mortgagees for insured projects. In their capacity as mortgagee, they perform many functions which are mandated by their own internal (non-HUD) policies and procedures. These are often the same or similar to functions ordinarily performed by HUD's Project Management staff for insured and/or subsidized projects. Examples of these functions include: management reviews, occupancy reviews, physical inspections, and reviews of audited annual financial statements.

Reviews by HUD staff are not required under the following circumstances:

- o Industry partners such as a State HFA, PHA or other partner has performed a review of the project, AND***
- o HUD staff have reviewed the report and determined that it is substantially similar to that required by HUD; AND***
- o The project received a Satisfactory or above rating on the most recent HFA/PHA review, AND***
- o The latest HUD review of, or experience with the partner indicates satisfactory performance.***

Deferring reviews of projects, which are being monitored and found to be acceptably performing by HUD's partners, poses little additional risk to the Department and the savings in both staff time and travel resources are significant.

V. Delegation of Signature Authority

Signature authority for routine project management activities for projects which are not "troubled" shall be delegated immediately from Directors or Chiefs of Project Management to Project Managers. (Management retains the responsibility for determining when/if additional review is routinely warranted, based on the specific experience, knowledge or ability of subordinates.) Managers remain responsible for the actions of their subordinates and should institute adequate quality controls to assure the delegated authority is properly used.

Routine project management activities include (but are not limited to) the following:

1. Letters to participants requesting or providing specific information and reports; general correspondence; including requests for information, clarification of handbook requirements, responses to tenant complaints and transmittals of complaints to management agents. Also, requests for supporting documentation or clarifications and meeting summaries.
2. Letters to participants approving budget based rent increases, annual adjustment and operating cost factors and rent schedules (excluding special rent adjustments or increases in excess of five percent).
3. Authorizations to release reserve for replacement funds which do not deplete the reserve account below acceptable minimum levels (as established by the program manager) or increases in reserve payments but excluding requests for suspension of deposits.
4. Letters to participants transmitting results of reviews of financial statements (except when serious infractions of the Regulatory Agreement are found, e.g., unallowable distributions), approving requests for extensions of due dates, and results of review of monthly accounting reports (except when serious infractions are found).
5. Letters to participants approving management certifications (except for new management agent approvals requiring 2530 clearance).
6. Letters to participants transmitting results of management reviews and physical inspections reflecting satisfactory or higher ratings.
7. Authorizing service coordinator funding draws.

8. Letters to participants releasing residual receipts.
9. Authorizing approval of special claims under Section 8 contracts.
10. Internal memoranda to other areas within the local Office of Housing.

By delegating signature authority for routine project management activities, we place decision making authority at the operating level, in support of Departmental policy, reducing our processing times and providing better service to our customers.

VI. Reserve for Replacement Processing & Bid Approvals

Outstanding guidance allows for release from the Reserve for Replacement Account in accordance with either Paragraph 4-15 or 4-17 of Handbook 4350.1 REV-1, (issued 9/22/92) at Field Office discretion. Paragraph 4-15 requires a detailed description of the work done (or to be done), copies of paid invoices, and bids and specifications for advances from the fund while the Optional Method described in Paragraph 4-17 streamlined the process to expedite approvals.

All Offices shall implement the following recommendations, after providing notification to owners, managers and/or mortgagees, as appropriate:

A. *Requests for releases from the RFR account shall now be processed under the Optional Method (Paragraph 4-17) for all projects EXCEPT those meeting the following criteria (which must instead comply with Paragraph 4-15):*

- o Those designated as Troubled by the appropriate level managers in your Office;*
- o Any property specifically notified (in writing) as excluded by your Office;*
- o Requests resulting in a remaining balance in the RFR account, (after approval of the withdrawal) which is below acceptable minimum levels (as established by your Office);*
or
- o Requests which include payment of special fees to the management agent.*
- o Requests which include payments for identity of interest transactions, where excessive costs for identity of interest entities are a problem.*

B. **Requests for Advance Release of Funds For Work that is To-Be-Done - Based on Bids :** When the request for Release of funds is for work that is to be done (an advance from the account), bids must be obtained and used to support the request. Specific submission requirements for advances from the RFR account are addressed in Handbook 4350.1 REV-1: Paragraphs 4-15 (D) for the old method and 4-17(F) for the Optional Method.

1. ***For projects eligible (see VII.A. above) to submit RFR release requests using the Optional Method; when processing requests for advance release of funds based on bids (4-17(F)), copies of all bids are now required to be submitted for prior approval only for requests which exceed the following (revised), threshold:***

100 units or less	\$25,000
101 - 250 units	\$50,000
over 250 units	\$100,000

2. The required documentation under the old method (4-15(D)) does not change.
3. The process of obtaining bids for the RFR work items must still comply with outstanding instructions relating to HUD bidding and contracting procedures, including, but not limited to, identity of interest issues.
4. Managers remain responsible for program operations and should institute reasonable quality controls and checks.

C. The Optional Procedures have been successfully implemented in several Field Offices. Implementation nationwide, will reduce workload during the transition and reduce HUD response times. In summary, the Optional Method for processing releases from the Reserve for Replacement Account requires the following:

1. A transmittal requesting release of funds, submitted by the Mortgagor/Agent to HUD.
2. A Mortgagor Certification with each request in accordance with the existing requirements of Paragraph 4-17B.1 through 9 (the owner may combine the transmittal and certification into a standard format which incorporates both, *see Attachment 4 for suggested format*).
3. No more than one request for releases will be processed each quarter. (Exceptions shall only be considered for properties experiencing cash flow problems and must be processed in accordance with Paragraph 4-15.)
4. Copies of invoices need not be submitted, as long as the request describes the work/items (i.e., invoice number, serial number, vendor, location, etc.) sufficiently to allow for subsequent inspection and verification. All invoices must be retained in the property's file for three years and be available for review.
5. A form HUD-9250, Reserve Fund for Replacements Authorization, submitted by the Mortgagor/Agent for each quarterly request.

VII. Revised Procedures for Reviewing and Approving Transfers of Physical Asset (Handbook 4350.1 REV-1, Chapter 13)

This revises outstanding guidance in Handbook 4350.1 REV-1, Multifamily Asset Management and Project Servicing, Chapter 13, Change in Ownership: Transfer in Physical Assets. **The following guidance should be implemented by all Offices, after appropriate notification to owners, managers, and/or mortgagees.**

The Full TPA Review Process is summarized below. Attachments 5-8 of this Notice consolidate, to the maximum extent feasible, materials from several sections and chapters of Handbook 4350.1, and present the current steps for processing TPA requests, in a more methodical and expeditious manner (they will also be forwarded as WORD documents to facilitate their use). The Attachments are:

Attachment 5 - a revised list of required documents for submission for full TPA review at the Preliminary Approval Stage (modifies parts of Appendix A, C and D of Chapter 13 of 4350.1, but does not replace in entirety).

Attachment 6 - a detailed checklist for Field Office use in performing full TPA review at the Preliminary Approval Stage (replaces Appendix E of Chapter 13 of 4350.1).

Attachment 7 - a summary of the Full TPA Analysis and conclusions, prepared by the HUD Project Manager at the Preliminary Stage (supplements and helps summarize information contained in 4350.1, Chapter 13, Section 3).

Attachment 8 - a revised list of all required documents to be submitted for full TPA review at the Final Approval Stage (modifies parts of Appendix A, C and D of Chapter 3 of 4350.1, but does not replace in entirety).

FULL TPA REVIEW PROCESS:

A. Preliminary Stage

1. ***Pre-submission meeting - staff should meet with an owner and purchaser before submission of the TPA package in order to review HUD's requirements with the parties (Attachment 5) and to provide copies of model HUD documents. Advise the mortgagor and mortgagee that the application fee is due and payable with the application and considered earned immediately upon receipt of that application (no refunds).*** Such a pre-submission meeting may be particularly useful with a purchaser who has not previously done business with the Department and should assist in facilitating and expediting the TPA process.

2. *Review for completeness using the attached checklist (Attachment 6). **If the package is incomplete, it should be returned without processing (with the application fee retained by HUD) and the purchaser and owner advised of the deficiencies.** (In analyzing the processing of TPAS, the single largest factor contributing to delays is the acceptance of incomplete TPA packages.)*
3. Review the purchaser's letter.
4. *If there will be any secondary financing, the HUD Project Manager must determine if the administrative requirements of Paragraph 13-15 of HB 4350.1 have been met before referring the TPA application for legal review. If the secondary financing proposal does not meet HUD's administrative requirements, notify the owner of the deficiencies and stop processing until the secondary financing either meets the administrative requirements, the secondary financing proposal is withdrawn or the application is withdrawn. **If acceptable exhibits are not received within 10 business days, the application will be rejected and HUD will retain the fee.** This is not a review of the legal acceptability of the documents evidencing the secondary financing. That will occur when the TPA application goes to the Office of Counsel for review.*
5. Refer the TPA package to the Office of Counsel for review (only those documents identified in the preliminary review checklist for legal review shall be forwarded to the Office of Counsel).
6. Determine acceptability of the Purchaser and Management Agent:
 - a) *Process form HUD-2530, Previous Participation Clearance for Purchaser and Agent.*
 - b) *Review Management Certification and Management Entity Profile.*
 - c) ***Credit reports must now be submitted as part of the TPA application package; must be from an acceptable credit reporting agency and must include an original on the agency's letterhead.** Review Credit reports on proposed mortgagor entity/principals.*
 - d) ***HUD staff will perform management reviews for subsidized projects only.** The extent of review required (limited versus comprehensive) shall be determined at the local office based on project data and history. Project files must be reviewed for all projects (subsidized or unsubsidized) to evaluate the purchaser and proposed management agent's previous performance and acceptability.*

- e) *Review the purchaser's resume.*
 - f) *Determine compliance with Notice H 95-66 if the purchaser is a Limited Liability Corporation/Partnership.*
7. Determine if the physical needs of the property will be met through the proposed TPA.
- a) Review MIO Plan, if any.
 - b) In lieu of outstanding procedures (HB4350.1, Paragraph 13 - 12.B.1.) and allowing FO discretion whether to require a physical inspection by HUD, or allow the Purchaser to submit a physical inspection/assessment of the project ***henceforth, all physical inspections should be submitted by the applicant, pursuant to Paragraph 13-12.B.2. The inspection shall comply with the requirements of Handbook 4350.1, Paragraph 13-12.B.2 and C as modified by the following:***
 - i) *Shall be completed by a professional multifamily inspector licensed in the state where the project is located In States without licensing programs, the owner must submit evidence that the inspector is experienced and qualified to inspect multifamily projects.*
 - ii) *At least 25% of the units must be inspected as well as all the common areas.*
 - iii) *Shall include an analysis of the adequacy of the Replacement Reserve Account including an assessment of the need for an initial deposit and adequacy of monthly deposits.*
 - iv) *HUD may require that all or part of the inspection be redone if the HUD project manager determines either the inspector is not a qualified inspector or the inspection does not comply with these requirements.*
 - c) ***The cost of the inspection is not an eligible project expense. (An analysis of the condition of the property is standard due diligence for any purchaser).***

8. Determine if the financial needs of the project are met through review of:
 - a) Pro-forma Balance Sheet,
 - b) Interim unaudited financial statements,
 - c) Mortgagee confirmation of escrows and reserves
 - d) Sources and Uses Statement
9. Review the checklist (**Attachment 6**) to ensure that all necessary documents have been reviewed and complete the summary analysis (**Attachment 7**).
10. Determine if Flexible Subsidy has been provided to the project and ensure that:
 - a) the Flexible Subsidy funds have been or will be paid back by the time of Preliminary Approval and
 - b) that a mortgage modification or Use Agreement are in place before the transfer occurs or will be put in place as part of the sale.
11. Document the Full TPA Analysis and conclusions using **Attachment 7**, in conjunction with 4350.1, Chapter 13, Section 3.
12. Recommend approval or rejection of the TPA, incorporate comments from the Office of Counsel and issue letter (original to Purchaser with copies to seller and mortgagee).

B. Final Stage

1. Requirements for final review and approval, summarized in attached Final Approval Checklist (**Attachment 8**), are unchanged from outstanding guidance.

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Attachments