

or unenforceability of the Mortgage lien or the unmarketability of the Mortgagor's title.

(c) Reasonable payments that the HFA made from its own funds and not from project income for:

(1) Preservation, operation and maintenance of the property;

(2) Repairs necessary to meet the requirements of local laws;

(3) Expenses in connection with the sale of property; and

(4) Bankruptcy expenses approved by the Office of General Counsel.

(d) The amount of HFA Debenture interest paid by the HFA to HUD.

§ 266.650 Items deducted from total loss.

In computing insurance benefits, the following items are deducted from the amounts described in § 266.646(a) and (b):

(a) All amounts received by the HFA on account of the mortgage after the date of default;

(b) All cash, and/or funds related to the mortgaged property, including deposits and escrows made for the account of the mortgagor that the HFA holds (or to which it is entitled);

(c) The amount of any undrawn balance under a letter of credit that the HFA accepted in lieu of a cash deposit for an escrow agreement;

(d) Any net income from the mortgaged property/project that the HFA received after the date of default.

(e) The proceeds from the sale of the project or the appraised value of the project as provided in § 266.642 as follows:

(1) If the HFA disposes of the project through a negotiated sale, the amount deducted shall be the higher of the sales price or the appraised value.

(2) If the HFA disposes of the project through a competitive bid procedure approved by the Commissioner, the amount deducted shall be the sales price, even if it is lower than the appraised value.

(3) If the HFA has not disposed of the project within 5 years from the date of issuance of the HFA Debentures (unless an extension has been granted pursuant to § 266.638), the amount deducted shall be the appraised value.

(f) Any and all claims that the HFA has acquired in connection with the acquisition and sale of the property. Claims include but are not limited to returned premiums from canceled insurance policies, interest on investments of reserve for replacement funds, tax refunds, refunds of deposits left with utility companies, and amounts received as proceeds of a receivership.

(g) The amount of daily HFA Debenture interest accrued but not paid from the anniversary date of the last HFA Debenture interest payment to the date an application for final claim payment is received by the Commissioner.

§ 266.652 Determining share of loss.

The total loss computed in § 266.646 shall be shared by HUD and the HFA in accordance with their respective percentage of risk as specified in the note and the addendum to the Risk-Sharing Agreement between HUD and the HFA.

§ 266.654 Final claim settlement and HFA Debenture redemption.

(a) *Final claim payment.* If the initial claim amount, as determined under § 266.628(a)(1), is less than HUD's share of the loss, HUD shall make a final claim payment to the HFA that is equal to the difference between HUD's share of the loss and the initial claim amount and shall return the HFA Debenture to the HFA for cancellation.

(b) *HFA reimbursement payment.* If the initial claim amount, as determined under § 266.628(a)(1), is more than HUD's share of the loss, the HFA shall, within 30 days of notification by HUD of the amount due, remit to HUD an amount that is equal to the difference between the initial claim amount and HUD's share of the loss. The funds must be remitted in a manner prescribed in the Commissioner's administrative procedures. The HFA Debenture will be considered redeemed upon receipt of the cash payment. A 5 percent penalty will be charged and interest at the debenture rate will begin to accrue if the cash payment is not received within the prescribed period. If an HFA is in default under an existing debenture and files a claim on another project under this part, HUD will charge the HFA's Dedicated Account for the amount owed the Department. In cases

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of top-tier or A-rated HFA's which are not required to maintain a Dedicated Account, HUD will inform the rating agencies of the HFA's failure to pay on their debt obligation and of its violation of the Risk-Sharing Agreement.

(c) *Losses.* Losses sustained as a consequence of the (sole) negligence of an HFA (*e.g.*, failure to acquire adequate hazard insurance where such insurance is available) shall be the sole obligation of the HFA, notwithstanding the risk apportionment otherwise agreed to by HUD and the HFA.

(d) *Supplemental claim.* Any supplemental claim must be filed within one year from date of final claim settlement.

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§ 266.656 Recovery of costs after final claim settlement.

If, after final claim settlement, the HFA recovers additional sums as the result of the sale of the project or otherwise, the total amount of such recovery shall be shared by HUD and the HFA in accordance with the prescribed percentage of shared risk.

§ 266.658 Program monitoring and compliance.

HUD will monitor the performance of the HFA for compliance with the provisions of this subpart.

**SUBCHAPTER C—PLANNING ASSISTANCE TO HOUSING SPONSORS [RESERVED]
SUBCHAPTER D—PUBLICLY FINANCED HOUSING PROGRAMS [RESERVED]**