

**Subpart D—Processing,
Development, and Approval**

§ 266.300 HFAs accepting 50 percent or more of risk.

(a) *Underwriting standards.* An HFA electing to take 50 percent or more of the risk on loans may use its own underwriting standards and loan terms and conditions (as disclosed and submitted with its application) to underwrite and approve loans without further review by HUD.

(b) *HFA responsibilities.* The HFA is responsible for the performance of all functions except those HUD-retained functions specified in §§ 266.210 and 266.225(e). After acceptance of an application for a loan to be insured under this part, the HFA must:

(1) Determine that a market for the project exists, taking into consideration any comments from the HUD Field Office relative to the potential adverse impact the project will have on existing or proposed Federally insured and assisted projects in the area.

(2) Establish the maximum insurable mortgage and review plans and specifications for compliance with HFA standards;

(3) Determine the acceptability of the proposed mortgagor and management agent;

(4) Approve the Affirmative Fair Housing Marketing Plan; and

(5) Make any other determinations necessary to ensure acceptability of the proposed project.

(c) *HUD-retained reviews.* After positive completion of the HUD-retained reviews specified in § 266.210(a), (b), and (c), the HUD Field Office will issue a firm approval letter.

(d) *Inspections and other reviews.* The HFA is responsible for inspections during construction, processing and approving advances of mortgage proceeds during construction, review and approval of cost certification, and closing of the loan.

(e) *Endorsement of mortgage note for insurance.* So long as the HFA is in good standing, and absent fraud or material misrepresentation on the part of the HFA, the Commissioner or designee will endorse the mortgage note for insurance upon presentation by the HFA of the Closing Docket and certifi-

cations required in § 266.420(b), subject to HUD's right to adjust under § 266.417.

§ 266.305 HFAs accepting less than 50 percent of risk.

(a) *Underwriting standards.* The underwriting standards and loan terms and conditions of any HFA electing to take less than 50 percent of the risk on certain projects are subject to review, modification, and approval by HUD in accordance with § 266.100(b)(2). These HFAs may assume 25 percent or 10 percent of the risk depending upon the loan-to-replacement-cost or loan-to-value ratios of the projects to be insured as specified in § 266.100(b)(2)(i) and (ii).

(b) *HFA responsibilities.* The HFA is responsible for the performance of all functions except those HUD-retained functions specified in § 266.210 and 266.225(e). After acceptance of an application for a loan to be insured under this part, the HFA must:

(1) Determine that a market for the project exists, taking into consideration any comments from the HUD Field Office relative to the potential adverse impact the project will have on existing or proposed Federally insured and assisted projects in the area;

(2) Establish the maximum insurable mortgage, and review plans and specifications for compliance with HFA standards as approved by HUD;

(3) Determine the acceptability of the proposed mortgagor and management agent;

(4) Approve the Affirmative Fair Housing Marketing Plan; and

(5) Make any other determinations necessary to ensure acceptability of the proposed project.

(c) *HUD-retained reviews.* After positive completion of the HUD-retained reviews specified in § 266.210 (a), (b), and (c), the HUD Field Office will issue a firm approval letter which, among other things, will apportion units and obligate credit subsidy to the project.

(d) *Inspections and other reviews.* The HFA is responsible for inspections during construction, processing and approving advances of mortgage proceeds during construction, review and approval of cost certification, and closing of the loan.

(e) *Endorsement of mortgage note for insurance.* So long as the HFA is in good standing, and absent fraud or material misrepresentation on the part of the HFA, the Commissioner or designee will endorse the mortgage note for insurance upon presentation by the HFA of the Closing Docket and certifications required in § 266.420(b), subject to HUD's right to adjust under § 266.417.

§ 266.310 Insurance of advances or insurance upon completion; applicability of requirements.

(a) *General.* HUD will agree to insure periodic advances of mortgage proceeds or to insure the entire mortgage upon completion of construction for projects involving new construction or substantial rehabilitation. Existing projects without the need for substantial rehabilitation will be considered insurance upon completion cases. In insurance upon completion cases, only the permanent loan is insured and a single endorsement is required after satisfactory completion of construction, substantial rehabilitation or repairs. In periodic advances cases, progress payments approved by the HFA and both an initial and final endorsement on the mortgage are required.

(b) *Insurance of advances.* Periodic advances will be authorized by the HFA subject to terms specified by the Commissioner.

(c) *Insurance upon completion—(1) New construction and substantial rehabilitation.* An HFA may approve a loan that will be insured upon completion of construction of the project. The HFA approval must prescribe a designated period during which the mortgagor must start construction or substantial rehabilitation. If construction or rehabilitation is started as required, the approval will be valid for the period estimated by the HFA for construction and loan closing, including any extension approved by the HFA.

(2) *Existing projects with no substantial rehabilitation.* Existing projects with or without repairs are only insured upon completion, although HFAs may permit noncritical repairs to be completed after endorsement upon establishment of escrows acceptable to the HFA.

(d) *Requirements applicable to both periodic advances and insurance upon*

completion cases—(1) Inspections. The HFA must inspect projects under this part at such times during construction, substantial rehabilitation, or repairs as the HFA determines. The inspections must be conducted to assure compliance with plans and specifications, work write-ups, and other contract documents.

(2) *Approval of advances.* At all times, the loan must be kept in balance, and advances approved only if warranted by construction progress evidenced through HFA inspection, as well as in accord with plans, specifications, work write-ups and other contract documents. In approving advances, HFAs must make certain that other mortgageable items are supported with proper bills and/or receipts before funds can be approved and advanced for insurance.

(3) *Cost certification.* In order to ensure that the final amount for insurance is supported by certified costs:

(i) The mortgagor (and general contractor, if there is an identity of interest with the mortgagor) must execute a certificate of actual costs, in a form acceptable to the HFA, when all physical improvements are completed to the satisfaction of the HFA and before final endorsement; and

(ii) The cost certification provided by the mortgagor must be audited by an independent public accountant.

(4) *Contestability.* Although the HFA has authority to approve the mortgagor's (and general contractor's) certification of cost, the certification will be contestable by the Commissioner during the period up to and including final endorsement of the mortgage. After final endorsement, the certification will be final and incontestable except for fraud or material misrepresentation on the part of the mortgagor (and/or general contractor).

(5) *Assurance of completion.* The mortgagor must furnish assurance of completion of the project in accordance with any requirements of the HFA as to form and amount.

(6) *Latent defects escrow.* The mortgagor must furnish an escrow or other form of assurance required by the HFA to ensure that latent defects can be remedied within the time period required by the HFA.