
Special Attention of

All Multifamily Hub Directors
All Program Center Directors
All Project Managers
All Field Office Directors
All State and Local Housing Agencies

Notice H 2009-10

Issued: August 19, 2009

Expires: August 31, 2010

Cross References

24 CFR Part 891

Applicable Notice of Funding Availability
Handbook 4571.3 REV-1

Handbook 4571.5

Handbook 4590.1

Notices 04-14, 06-06, 07-04, 07-06 & 08-01

SUBJECT: Delegated Processing Procedures.

I. INTRODUCTION.

A. Purpose.

This Notice defines the Department's initial procedures for processing certain Section 202 Supportive Housing for the Elderly projects under a delegated processing system. Procedures for implementing and operating this system at both the Field Office and Headquarters level are set forth herein.

B. Overview.

The initial delegated processing procedures will complement the Department's capital advance processing mechanism by augmenting Field Office staff capacity. It will enhance the Department's ability to provide timely, high quality underwriting and to maintain a steady supply of rental housing while expanding affordable housing opportunities for the elderly.

C. Authority.

Section 2835(b) of the Housing and Economic Recovery Act of 2008 directs the Department to delegate review

Distribution: W-3-1,

and processing of certain Section 202 Supportive Housing for the Elderly projects to selected State or local housing agencies.

1. A State or local housing agency must:
 - Be in geographic proximity to the project (See Section III.B. below.);
 - Demonstrate experience and capacity for underwriting multifamily housing loans that provide housing and supportive services; and
 - Agree to issue a firm commitment within 12 months of delegation.
2. HUD retains the authority to process projects where no State or local housing agency has applied to provide delegated processing or entered into an agreement with the Secretary to serve as a delegated processing agency (DPA).
3. Delegated processing **can only be used** where the Sponsor's application in response to a notice of funding availability (NOFA) indicates that development funds for a proposed Section 202 project will be provided by a combination of capital advance funding and any other source of funding exclusive of the Sponsor's financial contribution.
4. Within 30 calendar days of the date the Sponsor signs the Agreement Letter; HUD shall delegate review and processing to a State or local housing agency. (See Section IV. below.)
5. The local Multifamily Program Center retains the authority to approve rents and development costs **after receipt** of the proposed firm commitment from the DPA. (See Section III.C.7. below.)
6. HUD will execute the Capital Advance Agreement, Form HUD 90167-CA, within 60 days of the issuance of the firm commitment for the release of capital advance proceeds during construction being issued by the DPA.

Note: In certain Section 202 mixed-finance transactions, the DPA will issue a firm commitment for the release of the capital advance proceeds upon completion of the project. In these transactions, the Capital Advance Agreement, Form HUD 90167-CA, is not used.

II. APPROVAL OF DELEGATED PROCESSING AGENCIES.

- A. All Section 524(c) Risk Sharing Lenders are automatically approved as DPAs. A Risk Sharing Lender need only execute a Delegated Processing Agreement ("Agreement") with HUD. See Appendix 2.
- B. Other State or local housing agencies must apply to be a DPA, under modified risk-sharing instructions discussed in Section VI below. Once the State or local housing agency is approved **and** signs the Agreement they will be referred to as a DPA.

III. HOW THE PROGRAM WORKS.

- A. Under the delegated procedure, a DPA is vested with the processing authority provided by section 2835(b) of the Housing and Economic Recovery Act of 2008, P.L. 110-289. The DPA must act under this authority in accordance with applicable NOFA and program regulations, notices, handbooks, forms and other directives. These materials are referred to as the Operating Procedures Guide ("Guide").
- B. Geographic proximity to the project means:
 - 1. A State housing agency approved as a DPA may process any delegated Section 202 project within the State.
 - 2. A local housing authority approved as a DPA may only process a delegated Section 202 project located within its jurisdiction.
- C. The DPA has up to 12 months from the date on which the project was added to the portfolio of projects under the Delegated Processing Agreement to issue a firm commitment. The following is a broad outline of the necessary steps to be followed before a DPA can issue a firm commitment.

1. The DPA's underwriting cannot use capital advance and project rental assistance contract (PRAC) amounts that exceed the amounts obligated in the Agreement Letter without first getting written authorization from the Assistant Secretary for Housing - FHA Commissioner.
2. The DPA holds the planning conference with the Sponsor and its development team within 30-days of accepting the assignment. The local Multifamily Program Center with jurisdiction shall participate to discuss initial closing, construction loan administration, occupancy and final closing.
3. The DPA's certified general appraiser will review and approve or reject the Owner's site appraisal.
4. The Nonprofit Sponsor/Owner submits copies of the firm commitment application and the supporting documentation to both the local Multifamily Program Center and the DPA.
5. Upon receipt of the firm commitment application and the supporting documentation, the Program Center will forward:
 - To the Office of Fair Housing and Equal Opportunity, the Affirmative Fair Housing Marketing Plan (AFHMP) for review and approval, after the Multifamily staff has reviewed the AFHMP for completeness and internal consistency; and
 - If applicable, to the Office of Community Planning and Development's relocation specialist, the material needed to oversee compliance with any relocation requirements.
6. The DPA receives and reviews the firm commitment application and supporting documentation from the Sponsor, to determine feasibility and consistency with HUD's legal and programmatic requirements.
7. Before issuing the firm commitment the DPA will provide the Multifamily Program Center with a

copy of the proposed firm commitment and supporting documentation.

a. The local Multifamily Program Center has 15 business days after receipt of the draft commitment to review, approve or disapprove and comment on the reasonableness of the proposed rents and development costs, and all findings of the proposed firm commitment processing.

- 1) The 15 days will be extended if the proposed processing requires HUD approved regulatory waivers.
- 2) This review period does not count against the DPA's 12-month processing timeline.

b. If the local Multifamily Program Center rejects the reasonableness of either the development costs or the rents, the DPA and/or Sponsor have two options.

- 1) Option 1 is to accept the local Multifamily Program Center's findings and reprocess the firm commitment.
- 2) Option 2 is to appeal the local Multifamily Program Center's determination.

- Any appeal should be addressed to the Hub Director with jurisdiction.
- The time consumed by the appeal process shall not count against the DPA's 12-month processing timeline.

c. Failure of the Multifamily Program Center to respond within the comment period will constitute approval of the development costs estimate and the rents.

8. The DPA may receive an incentive payment for issuing the firm commitment earlier than the 12-month deadline or be charged a penalty for

issuing the firm commitment after the 12-month deadline. In no case can the amount of the penalty exceed the base fee.

9. The DPA is responsible for any reprocessing of the firm commitment before initial closing at no additional charge to HUD.
 - a. To assure compliance with this requirement HUD will withhold 10 percent of the DPA's base fee. The holdback will be released:
 - For the issuance of a firm commitment for the release of capital advance proceeds during construction, when the project reaches initial closing.
 - For the issuance of a firm commitment for the release of capital advance upon project completion, when the project starts construction.
 - b. Failure to comply with this requirement will result in forfeiture of the holdback.
- D. DPAs are responsible for processing and underwriting under this Delegated Processing Procedure. There are two underwriting options discussed below.
 1. Level A. The DPA will underwrite the proposed project using HUD's underwriting standards and forms.
 2. Level B. This option is only available where there is a mixed-financed transaction involving additional non-assisted units. In this case, the DPA will use HUD's underwriting standards and forms when underwriting the capital advance assisted units in the project. For the non-assisted units, the DPA may use its own underwriting standards and HUD forms.
- E. Reasonable fees.
 1. The DPA may assess a reasonable fee.

2. The DPA's fee is not part of the capital advance amount shown in the Agreement Letter. However, the fee is paid from the Section 202 appropriations.
3. The maximum DPA fees HUD will reimburse will be computed on a percentage basis of the amount of the original capital advance award. The table below represents the maximum fees HUD will pay a DPA.

<u>New Construction or Rehabilitation</u>		
1	Issue the firm commitment within 12 months of the delegation or issue a rejection letter resulting in HUD's termination of the funding.	100 basis points
2	A sliding scale bonus for a firm commitment issued before the 12 month deadline.	8.3 basis points per month
3	A sliding scale penalty for every month beyond the original 12 month deadline for issuing the firm commitment.	8.3 basis points per month

<u>Acquisition of Existing Project with or without Repairs</u>		
1	Issue the firm commitment within 12 months of the delegation or issue a rejection letter resulting in HUD's termination of the funding.	75 basis points
2	A sliding scale bonus for a firm commitment issued before the 12 month deadline.	8.3 basis points per month
3	A sliding scale penalty for every month beyond the original 12 month deadline for issuing the firm commitment.	8.3 basis points per month

Note: A basis point is defined as one one-hundredth of one percent.

Compensation Examples

The firm commitment for a new construction project was issued in 11 months.

Estimated development cost - \$1,250,000

Capital advance amount - \$1,000,000

The base fee $\$1,000,000 \times .01 = \$10,000$

Incentive fee $\$1,000,000 \times .00083 \times 1 = + \underline{830}$

Total fee paid $\$10,830$

The firm commitment for a substantial rehabilitation project was issued in 14 months.

Estimated development cost -	\$2,000,000	
Capital advance amount -	\$1,855,000	
The base fee	\$1,855,000 X .01 =	\$18,550.00
Penalty fee	\$1,855,000 X .00083 X 2 =	<u>- 3,079.30</u>
Total fee paid		\$15,470.70

- 4. Other fees paid to the DPA.
 - a. The DPA cannot be paid twice for the same services. For example the DPA also underwrites a construction loan in a mixed-finance transaction. Any underwriting fees charged to the Owner must be reduced by the amount HUD is paying.
 - b. In the case of a mixed-finance transaction with additional non-assisted units, if the DPA chooses to charge reasonable additional fees based on increased work load of the additional non-assisted units, the amount of these fees is to be negotiated between the Owner and the DPA. The DPA's fees, if any, charged to the owner will not be paid using HUD funds.

- F. All delegated processing cases must reach within the 18 month timeline either:
 - 1. Initial closing with release of capital advance funds during construction; or
 - 2. Start of construction where capital advance funds are released upon project completion.
- G. The DPA may provide financial assistance to the project. For example, the DPA may be awarding Home funds and/or low income housing tax credits.

If financing is provided, the local Multifamily Program Center Director may subject the DPA's underwriting to such additional review as deemed necessary.

IV. ASSIGNING A DPA TO A PROJECT.

A. General Rule.

1. Once the awards are announced, the local Multifamily Program Center Director must offer to assign a project with non-HUD financing to a DPA.

a. The local Multifamily Program Center immediately notifies the DPA, by letter, of the proposed assignment. The letter and Appendix 1 provide the DPA with basic project information for each project that may be assigned to the DPA. See Appendix 1, Proposed Delegation of Processing.

b. The DPA has 5 business days to accept or reject the assignment by responding to local Multifamily Program Center Director's letter by completing Appendix 1. In its response, the DPA will indicate its level of involvement with the project. See section III.D. above.

Note: The DPA may refuse an assignment without giving a reason. If the DPA does reject the assignment then the local Multifamily Program Center will process the project.

c. If the DPA accepts the assignment, the local Multifamily Program Center Director will provide the DPA with a complete copy of the application for funding and all supporting documentation, and the Agreement Letter.

2. The local Multifamily Program Center Director will immediately notify the Sponsor in writing that the project has or has not been formally assigned to the DPA.

B. Exceptions to the General Rule.

Once the awards are announced, if more than one DPA has jurisdiction over a particular project:

1. The local Multifamily Program Center Director will immediately:
 - a. Notify the Sponsor by letter that more than one DPA has jurisdiction over the project; and
 - b. Request that the Sponsor select one of the DPAs to process its project.
2. The Sponsor has 5 business days to make a selection.
3. If the Sponsor does not select a DPA, the local Multifamily Program Center Director will select one the DPAs and propose the assignment.
4. If the selected DPA does not accept the assignment within 5 business days then the local Multifamily Program Center Director will immediately offer the project to the other DPA.
5. If neither DPA accepts the assignment then the local Multifamily Program Center will process the project.

V. **WAIVERS.**

A. Regulatory Waivers.

Many of HUD's regulations are based on statutory requirements and cannot be waived. Only non-statutory regulatory requirements may be waived.

1. The Sponsor/Owner submits to the DPA's Director a request for a regulatory waiver along with any supporting documentation.
2. The DPA's Director may reject the proposal or forward the request to the Office of Housing Assistance and Grant Administration (HAGA) in Headquarters, specifying the grounds for granting the waiver **and** recommending its approval. In addition, the DPA will provide a courtesy copy of the waiver request to the local Multifamily Program Center with jurisdiction.

3. HAGA reviews the waiver request and either rejects the request or prepares a recommendation for approval for the Assistant Secretary for Housing-FHA Housing Commissioner.
4. The Assistant Secretary for Housing-FHA Housing commissioner or his/her designee will either approve or disapprove the waiver request.
5. Headquarters notifies the DPA and the local Multifamily Program Center of the approval or rejection of the waiver request.
6. Regulatory waivers granted by HUD are published in the Federal Register on a quarterly basis.
7. HAGA retains any approved regulatory waivers and related documentation for 5-years from the date the waiver is granted.

B. Directive Waivers.

The term "Directive" includes handbooks, guidelines, notices, interim notices and special directives such as Mortgage Letters.

1. The Sponsor/Owner submits to the DPA Director, a request for a directive waiver along with any supporting documentation.
2. Upon receipt of the request, the DPA Staff will prepare form HUD-2, Request for Waiver of Housing Directive, for the DPA's signature.
3. The DPA's legal counsel is required to review and sign form HUD-2 before it is sent to the DPA's Director, to determine if the proposed waiver request conflicts with any statutory or regulatory provisions.
 - a. If the waiver request conflicts with statutory provisions, the request will be denied; or
 - b. If the waiver request conflicts with regulatory provisions, the DPA must request

a regulatory waiver using the procedures in paragraph A, above.

4. The DPA's Director, or his/her designee, will either approve or disapprove the waiver request.
5. The DPA will:
 - a. Notify the Sponsor/Owner in writing of the approval or disapproval of the waiver request;
 - b. Retain the original form HUD-2 and related documentation for 3-years from the date the waiver is granted;
 - c. Make the form HUD-2 available for public inspection; and
 - d. Distribute copies of the form HUD-2:
 - 1) Following the instructions on the form, and
 - 2) With a copy sent to the local Multifamily Program Center with jurisdiction.
6. Local Multifamily Program Center Directors and DPAs have **no authority** to waive this notice.

Address any waiver requests of this notice to:

Director
Office of Housing Assistance and Grant
Administration (HAGA)
Room 6134
Department of Housing and Urban Development
451 7th Street, SW
Washington, DC 20410
Telephone No. 202.708.3000
FAX No. 202.708.3104

VI. HOW TO BECOME A RISK-SHARING LENDER OR A DELEGATED PROCESSING AGENCY.

Any State or local housing agency that is not an approved risk sharing lender may apply for approval under HUD Handbook 4590.1, *Housing Finance Agency Risk-Sharing Pilot Program*.

Any State or local housing agency that only wants to be a DPA will still seek approval under Handbook 4590.1. However, since it is not seeking approval as a risk-sharing lender certain requirements of the program do not apply:

- The \$10,000 application fee;
- The reserve requirements; and
- Approval levels for risk-sharing.

For additional information about the risk sharing program please contact:

Director
Office of Insured Multifamily Housing Development
Room 6134
Department of Housing and Urban Development
451 7th Street, S.W.
Washington, D.C. 20410
Telephone No. 202.708.1142
FAX No. 202.708.3104

VII. SUBSIDY LAYERING REVIEW.

- A. If a DPA accepts a project assignment, it must perform the subsidy layering review.
- B. Some State and local housing agencies have already signed a memorandum of understanding (MOU) with the local Multifamily Program Center to perform subsidy layering reviews.
- C. If no MOU exists then the DPA must sign a memorandum of understanding (MOU) with the local Multifamily Program Center. The standard MOU for subsidy layering reviews may be modified to cover only the Section 202 delegated processing projects.

VIII. ENVIRONMENTAL REVIEW.

HUD will have completed its environmental review on the project prior to awarding the capital advance and assigning the project to a DPA. However, should a new site become necessary after award, HUD retains responsibility for all environmental reviews that may be required after a project is assigned to a DPA. In such cases, property acquisition and construction activities at the new site may not proceed or be contracted until HUD's environmental review is completed and HUD approves the new site. In all cases, the DPA shall refer to HUD any environmental issues, including unanticipated site conditions or historic or archaeological discoveries that arise during its assignment.

IX. Certifications.

The DPA must submit signed certifications, found in Appendix 3, from staff and subcontractors that worked on the project underwriting.

X. MULTIFAMILY HUB LOG.

Each local Multifamily Program Center must maintain a log to make sure that delegated processing applications are properly identified and processed in a timely manner. Additional details about the DPA log will be forthcoming at a later date.

XI. QUALITY CONTROL MONITORING.

Monitoring of a DPA will be based on Chapter 7 of HUD Handbook 4950.1, Housing Finance Agency Risk-Sharing Pilot Program.

XII. TERMINATION OF THE DELEGATED PROCESSING AGREEMENT.

Since a DPA is under contract to HUD, unsatisfactory performance may result in contract termination.

A. The local Multifamily Program Center will document the basis for any termination of the Delegated Processing Agreement ("Agreement") in accordance with Article 14 of the Agreement. The copies of the material will be sent to both the DPA and the Office of Housing Assistance and Grant Administration ("HAGA").

- B. HAGA will review the documentation and determine if there is sufficient reason to either:
 - 1. Issue a warning letter to the DPA; or
 - 2. Recommend to the Deputy Assistant Secretary for Multifamily Housing or their designee that a termination hearing is warranted.
- C. The Deputy Assistant Secretary for Multifamily Housing or their designee will hold a hearing on the charges.
 - 1. The DPA will be given an opportunity to present evidence that refutes the charges.
 - 2. HAGA will present the local Multifamily Program Center's case at the hearing.
- D. Within 10 business days of the hearing, the Deputy Assistant Secretary for Multifamily Housing or their designee will issue a final ruling on the matter.

XIII. ANNUAL REPORT.

Each DPA shall submit to the Director of HAGA an annual summary of the DPA's experience under the Agreement and the DPA's evaluation and recommendations for improving the Section 202 program based on its participation in the delegate processing under the Section 202 Program.

IX. PROCEDURE FOR COMPENSATING A DPA.

- A. The DPA submits to the local Multifamily Program Center Director two invoices for payment of fees.
 - 1. The first invoice covers:
 - a. The base fee less the holdback; and
 - b. Any incentive fee earned or any penalty fee deducted.
 - 2. The final invoice is for the release of the holdback.

Note: An invoice can only cover one project.

- B. The local Multifamily Program Center Director, acting for the Deputy Assistant Secretary for Multifamily Housing Programs shall review and approve all disbursements.
- C. Invoices must be paid within 30 days of receipt.
- D. Additional details will be forthcoming in the near future.

XV. PAPERWORK REDUCTION ACT.

The information collection requirements contained in this Notice have been submitted to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3520). Once an OMB approval number has been assigned, HUD will announce the approval number. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number. HUD has submitted the information collection requirements contained in this document to OMB for review, but those requirements have not yet been approved by OMB.

David H. Stevens
Assistant Secretary for Housing-
Federal Housing Commissioner

Appendices:

- [Appendix 1](#) - Proposed Delegation of Processing
- [Appendix 2](#) - Delegated Processing Agreement
- [Appendix 3](#) - Certifications