
Special Attention of
All Multifamily Regional Center Directors
All Production Division Directors
All Underwriting Branch Chiefs
All State and Local Housing Agencies

Notice H 20-2

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Expires:

Cross References

24 CFR Part 891

24 CFR 266.100

Applicable Notice of Funding Availability
Handbook 4571.3 REV-1

Handbook 4571.5

Handbook 4590.1

Notices 11-18, 04-14, & 06-06

SUBJECT: Delegated Processing for Certain Capital Advance Projects

I. **INTRODUCTION.**

A. Purpose

This Notice updates and replaces Notice 2013-12 that defined the Department's procedures for processing certain Section 202 Supportive Housing for the Elderly projects and Section 811 Supportive Housing for Persons with Disabilities under a delegated processing system. Procedures for implementing and operating this system are set forth herein.

B. Overview

The delegated processing procedures complements the Department's capital advance processing mechanism. The program enhances the Department's ability to provide timely, high quality underwriting, while streamlining the compliance process for sponsors/owners undertaking mixed-finance transactions. The delegated processing program gives selected State and Local Agencies the choice to review and process certain Capital Advance projects.

C. Authority

Section 2835(b) of the Housing and Economic Recovery Act of 2008 ("HERA"), Public Law 110-289, amended section 202 of the Housing Act of 1959 ("Section 202"), 12 U.S.C. 1701q(f). Section 202, as amended by HERA, directs the Department to delegate review and processing of

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

The Frank Melville Supportive Housing Investment Act of 2010 (“SHIA”), Public Law 111 - 374 amended section 811 of the Cranston-Gonzalez National Affordable Housing Act of 1990, 42 U.S.C. 8013. SHIA directs the Department to delegate review and processing of certain Section 811 Supportive Housing for Persons with Disabilities multifamily projects with supportive services (but not including any project that is a group home or independent living facility) to selected State or local housing agencies. Selected State or local housing agencies are termed Delegated Processing Agencies (“DPA”).

1. A State or local housing agency must:
 - Be in geographic proximity to the project (See Section V.B. below.);
 - Demonstrate experience and capacity for underwriting multifamily housing loans that provide housing and supportive services
 - Agree to issue a firm commitment within 12 months of delegation; and
 - Not be required to provide low-income housing tax credits in combination with the capital advance.
2. HUD retains the authority to process projects where no State or local housing agency has applied or been approved to provide delegated processing.
3. Delegated processing **can only be used** where the Sponsor’s application in response to a notice of funding availability (NOFA) indicates that:
 - a. 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.
 - b. Development funds for a proposed multifamily project with Section 811 units (but not including any project that is a group home) will be provided by a combination of capital advance funding and any other source of funding exclusive

of the Sponsor's financial contribution. Note that only 25 percent or fewer of units in a multifamily project may receive Section 811 funding.

4. Within 30 calendar days of the date the Sponsor accepts the Capital Advance award, HUD must delegate review and processing to a State or local housing agency. (See Section IV. below.)
5. The assigned HUD processing office retains the authority to approve rents and development costs. .
6. HUD will execute the Capital Advance Agreement, Form HUD 90167-CA, within 60 days of the DPA's issuance of the firm commitment for the release of capital advance proceeds during construction.

Note: In certain Section 202/811 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) HFA Risk Sharing Lenders are automatically approved as DPAs. A Risk Sharing Lender need only to 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 the modified risk-sharing instructions discussed in Section III below. Once the State or local housing agency is approved **and** signs the Agreement they will be referred to as a DPA.
- C. **Existing DPA:** All DPAs previously approved under Notice 2013-12 or 2009-10 need to sign the new Delegated Processing Agreement, Form HUD 90001 within 60 days of the date of this Notice.
- D. **New DPA:** Agencies can apply to be a DPA at any time. Instructions on becoming a DPA can be found in Section III of this notice.

III. HOW TO BECOME A DELEGATED PROCESSING AGENCY.

Any State or applicable housing agency that is interested in becoming a DPA, and is neither currently a risk-sharing lender, nor seeking approval as a risk-

sharing lender, will seek approval under 24 CFR 266.100 – Qualified Housing Finance Agency. Since the prospective DPA is not a risk-sharing lender and is not seeking approval as a risk-sharing lender, the following requirements do not apply:

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

The Agency must submit an application for approval including the exhibits listed in Appendix 2 of Handbook 4590.1. The application can be sent as a PDF via email, followed by a hard copy to:

Director
Office of Insured Multifamily Housing Production
Room 6134
451 7th Street, SW
Washington, DC 20410

Note: *At such time that automated signature becomes available, you must comply with the guidance set forth.*

IV. ASSIGNING A DPA TO A PROJECT.

A. General Rule.

1. Each Multifamily Regional Center Director will receive a list of approved Delegated Processing Agencies from the Assisted Housing Oversight Division (AHO).
2. Once the awards are announced and within 14 business days, the applicable Multifamily Regional Center Director must offer to delegate the review and processing of the Section 202 or 811 capital advance to a DPA. This delegation is made for projects, for which financing is provided by a combination of capital advance with other sources of financing.
3. The applicable Multifamily Regional Center immediately notifies the DPA, and sponsor by e-mail of the proposed assignment. The offer must include a completed Appendix 1, Schedule of Projects, Form HUD 90000. Appendix 1 provides the DPA with basic project information for each project that may be assigned.

4. The DPA has 14 business days to accept or reject the assignment by executing Appendix 1, Schedule of Projects, Form HUD 90000. 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 applicable Multifamily Regional Center will process the project.

5. If the DPA accepts the assignment, the applicable Multifamily Regional Center Director will provide the DPA with a complete copy of the application for funding and all supporting documentation, and the Agreement Letter.
6. The applicable Multifamily Regional Center Director will immediately notify the Sponsor in writing that the project has or has not been formally assigned to the DPA.
7. The DPA holds the planning conference with the Sponsor and its development team within 30 days of accepting the assignment. The applicable Multifamily Regional Center shall participate to discuss initial closing, construction administration, occupancy and final closing.

B. Exceptions to the General Rule.

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

1. The applicable Multifamily Regional 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 five (5) business days to make a selection.
3. If the Sponsor does not select a DPA, the applicable Multifamily Regional Center Director will select one of the DPAs and propose the assignment.

4. If the selected DPA does not accept the assignment within five (5) business days then the applicable Multifamily Regional Center Director will immediately offer the project to the other DPA.
5. If neither DPA accepts the assignment then the applicable Multifamily Regional Center will process the project.

V. HOW THE PROGRAM WORKS.

- A. Under the delegated procedure, a DPA:
 1. Is vested with the processing authority provided for section 202 projects by 12 U.S.C. 1401q(f)(2) and/or for section 811 projects by 42 U.S.C. 8013(g)(2).
 2. 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 Authorities and Guidance.
- B. Geographic proximity to the project means:
 1. A State housing agency approved as a DPA may process any delegated Section 202/811 project within the State.
 2. A local housing authority approved as a DPA may only process a delegated Section 202/811 project located within its jurisdiction.
- C. DPAs are responsible for processing and underwriting under this Delegated Processing Procedure. There are three underwriting options discussed below.
 1. Level A. The DPA will underwrite the proposed project using HUD's underwriting standards and forms.
 2. Level B. The DPA will underwrite the proposed project using HUD's underwriting standards and forms and act as the construction administrator.
 3. Level C. If the project is a mixed-financed transaction involving capital advance and non-assisted units, the DPA will underwrite the proposed project using HUD approved underwriting standards and forms. Furthermore, the DPA may or may not act as construction administrator.

- D. The DPA agrees to issue a firm commitment within 12 months from the date of delegation. The date of delegation is the date the DPA accepts the assignment and executes Appendix 1, Schedule of Projects, Form HUD 90000. Within 24 months of the date of delegation, all Section 202 and 811 projects, including delegated processing cases, must either reach initial closing with release of capital advance funds during construction or start construction where capital advance funds are released upon project completion.
- E. 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's certified general appraiser will review and approve or reject the Owner's site appraisal.
 3. The Nonprofit Sponsor/Owner submits copies of the firm commitment application and the supporting documentation to both the applicable Multifamily Regional Center and the DPA. Upon receipt of the firm commitment application and the supporting documentation, the assigned HUD Office will complete the Environmental Review and inform the DPA of its findings. See Environmental Review Section IX.
 4. 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.
 5. Before issuing the firm commitment, the DPA will provide the assigned HUD Office with a copy of the proposed firm commitment and supporting documentation.
 - a. The assigned HUD Office 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.
 - 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 assigned HUD Office disallows the development costs or rents, the DPA and/or Sponsor have two options:
- 1) Option 1 is to accept the findings and reprocess the firm commitment.
 - 2) Option 2 is to appeal the determination.
 - Any appeal should be addressed to the applicable Multifamily Regional Center Director.
 - The time consumed by the appeal process shall not count against the DPA's 12-month processing timeline.
- c. If the assigned HUD Office fails to respond within the comment period, the development costs estimate, and the rents will be automatically approved.

F. Construction administration activities

1. If the DPA chooses to act as construction administrator, the following are required activities in order to reach final closing:
 - a. Initial Closing
 - b. Construction loan inspections
 - c. Review and approval of construction change orders, including assuring that the funds are available. Change orders resulting in an increase to the total development cost must be approved by HUD.
 - d. Davis Bacon wage issues, if any
 - e. Releases for escrows
 - f. Processing of construction draws
 - g. Permission to Occupy

- h. Cost certification
 - i. Final Closing
 2. If the DPA chooses to act as the construction administrator, the DPA is responsible for any reprocessing during construction administration before final closing at no additional charge to HUD. To assure compliance with this requirement HUD will withhold 10 percent of the DPA's base fee until the project reaches final closing.

VI. FEE

1. The DPA will receive an administrative fee for underwriting the project. For new construction or rehabilitation, the maximum base fee administered by HUD will be equaled to 1% of the amount of the original capital advance award. For acquisition of an existing project, the maximum base fee administered by HUD will be equaled to .75% of the amount of the original capital advance award.
2. The DPA's fee is not part of the capital advance amount shown in the Agreement Letter. However, the fee is paid from either the Section 202 or the Section 811 available appropriations.
3. Subject to the availability of funds, the DPA will receive an incentive payment for reaching initial closing with release of capital advance funds during construction or starting construction where capital advance funds are released upon project completion, within 18 months.
4. HUD reserves the right to impose a penalty fee for any projects that request a waiver under 24 CFR 891.165.
5. 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.
6. 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.
 7. 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 50 percent.
 - 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 workload 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.
 8. The table below represents the maximum fees HUD will pay a DPA.

<u>New Construction or Substantial Rehabilitation</u>		
1	Agree to issue the firm commitment within 12 months of the delegation	100 basis points or 1%
2	Sliding scale penalty for each month needed to extend the fund reservation beyond 36 months.	8.3 basis points or .083% per month
3	Incentive Payment for reaching Initial Closing within 18 months	8.3 basis points or .083%
4	Incentive Payment for acting as Construction Administration	50 basis points or .5%

<u>Acquisition of Existing Project with or without Repairs</u>		
1	Agree to issue the firm commitment within 12 months of the delegation	75 basis points or .75%

2	Sliding scale penalty for each month needed to extend the fund reservation beyond 36 months.	8.3 basis points or .083% per month
3	Incentive Payment for reaching Initial Closing within 18 months	8.3 basis points or .083%
4	If applicable: <ul style="list-style-type: none"> • Inspections of critical and non-critical repairs completed before initial/final closing; and • Inspection of non-critical repairs after initial/final closing 	100 basis points of the cost of repairs or \$30 per dwelling unit, whichever is greater

Compensation Examples

New Construction or Substantial Rehabilitation

The DPA agreed to issue the firm commitment for a new construction project within 12 months. The DPA also reached Initial Closing within 18 months and chose to act as the construction administrator.

Capital Advance Amount:	\$7,000,000	
Base Fee Calculations	$\$7,000,000 \times .01 =$	\$70,000
Incentive Payment (for reaching Initial Closing within 18 months)	$\$7,000,000 \times .00083 =$	\$5,810
Incentive Payment (for acting as construction administrator)	$\$7,000,000 \times .005 =$	\$35,500
Total Payment		\$111,310

Acquisition of Existing Project with or without Repairs

The DPA agreed to issue the firm commitment for an existing project being acquired with repairs within 12 months. The DPA also reached initial closing within 18 months and inspected all critical and non-critical repairs.

Capital Advance Amount:	\$2,000,000	
Estimated Cost of Repairs:	\$300,000	
# of units	80	
Base Fee Calculations	$\$2,000,000 \times .0075 =$	\$15,000
Incentive Payment (for reaching Initial Closing within 18 months)	$\$2,000,000 \times .00083 =$	\$1,660

Incentive Payment (for inspecting repairs)	$\$300,000 \times .01 =$	\$3,000
Total Payment		\$19,660

New Construction or Substantial Rehabilitation with Penalty

The DPA agreed to issue the firm commitment for a new construction project within 12 months. The DPA reached Initial Closing within 27 months and declined to act as the construction administrator.

Capital Advance Amount:	\$7,000,000	
Base Fee Calculations	$\$7,000,000 \times .01 =$	\$70,000
Penalty (for reaching Initial Closing after 24 months)	$\$7,000,000 \times .00083 \times 3 =$	-\$17,430
Total Payment		\$52,570

VII. 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 Authorizing Official a request for a regulatory waiver along with any supporting documentation.
2. The DPA's Authorizing Official may reject the proposal or forward the request to the assigned HUD Office, specifying the grounds for granting the waiver **and** recommending its approval.
3. The assigned HUD Office will review the waiver request and either rejects the request or prepares a recommendation for approval to the Assisted Housing Oversight Division (AHO). AHO will review and recommend approval for the Assistant Secretary for Housing-FHA Housing Commissioner.
4. The Assistant Secretary for Housing-FHA Housing Commissioner will either approve or disapprove the waiver request.
5. Headquarters notifies the assigned HUD Office and the applicable Multifamily Regional 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. The assigned HUD Office retains any approved regulatory waivers and related documentation for five (5) years from the date the waiver is granted.
8. To the extent that any waiver takes longer than 30 days to approve or disapprove, such additional days shall not count against the overall 12-month timeframe for taking the project to firm commitment.

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’s Authorizing Official, a request for a directive waiver along with any supporting documentation.
2. The DPA’s Authorizing Official may reject the proposal or prepare and forward form HUD-2, Request for Waiver of Housing Directive, to the applicable Multifamily Regional Center Director, specifying the grounds for granting the waiver **and** recommending its approval.
3. The applicable Multifamily Regional Center will either approve or disapprove the waiver request and notify the DPA of the approval or rejection of the waiver request. This decision should be made in consultation with Headquarters.
4. 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 three (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 applicable HUD Multifamily Regional Center.
5. Processing and granting Regulatory and Directive waivers will be done in accordance with 73 F.R. 76614 (December 12, 2008).
 6. Applicable Multifamily Regional Center Director and DPAs have **no authority** to waive provisions of this notice. Submit any waiver requests for provisions of this notice to, Director, Assisted Housing Oversight Division (AHO).

VIII. SUBSIDY LAYERING REVIEW.

- A. If a DPA accepts a project assignment, it must perform the subsidy layering review.
- B. Some State and applicable housing agencies have already signed a Memorandum of Understanding (MOU) with the applicable Multifamily Regional Center to perform subsidy layering reviews.
- C. If no MOU exists then the DPA must sign a memorandum of understanding (MOU) with the applicable Multifamily Regional Center. The standard MOU for subsidy layering reviews may be modified to cover only the Section 202 and Section 811 delegated processing projects.

IX. ENVIRONMENTAL REVIEW.

HUD must complete an Environmental Review under 24 CFR Part 50 following the guidance set forth in the Multifamily Accelerated Processing (MAP) Guide for every application selected for funding prior to Firm Commitment. HUD will complete its full environmental review using the HUD Environmental Review Online System (HEROS) after awarding the capital advance and assigning the project to a DPA. The applicant must submit the information to HUD using HEROS, as required in the Section 202 and 811 NOFAs. Additional information about HEROS and the environmental requirements for the Section 202 and 811 NOFA applications can be found on the Office of Housing Environmental Review Resources website. (<https://www.hudexchange.info/programs/environmental-review/housing/#2019-202-nofa-environmental-information>)

The site is not approved until the environmental review is complete, therefore the firm commitment will not be issued until HUD has reported its findings to the DPA. The environmental review time does not count against the DPA's 12-month processing timeline. If the environmental review is not complete at the time the DPA has performed all other possible underwriting duties, the DPA will notify the applicable HUD Multifamily Regional Center and meet to discuss a revised timeline based upon HUD's completion of the environmental review.

- A. If HUD finds the site acceptable but only with mitigation and the Project Owner cannot meet the mitigation requirements, or if HUD determines that even with mitigation, the site is unacceptable, the Fund Reservation award will be terminated. If the award is terminated the project will be withdrawn from the DPA. See Appendix 2, article 9 for compensation for withdrawn projects.
- B. In the event of mitigation, the DPA will administer HUD's mitigation requirements as part of their responsibilities for processing the firm commitment. If mitigation is to occur during the construction period and the DPA did not elect to act as construction administrator under Section III.C, HUD will administer the mitigation requirements.
- C. If a new site is 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.

X. CERTIFICATIONS.

The DPA must submit signed certifications, found in Appendix 3, Delegated Processing Certifications, Form HUD 90002, from staff and subcontractors that worked on the project underwriting.

XI. PROJECT LOG.

Each applicable Multifamily Regional Center must maintain a log to make sure that delegated processing applications are properly identified and processed in a timely manner. At a minimum, the log should contain the following fields:

- Project Number
- Project Name
- Name of the DPA

- Date Assigned to the DPA
- Expected Date of Firm Commitment Issuance
- Actual Date of Firm Commitment Issuance
- Amount of the DPA's Estimated Fee
- Amount of Incentives Earned, if applicable
- Amount of Penalty Fee assessed, if applicable
- Total Fee to be Paid

XII. QUALITY CONTROL MONITORING.

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

XIII. TERMINATION OF THE DELEGATED PROCESSING AGREEMENT.

Since a DPA enters into an agreement with HUD, unsatisfactory performance may result in termination of the agreement.

- A. The applicable Multifamily Regional 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 AHO.
- B. AHO 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 is warranted.
- C. Any determinations by HUD must be in writing and be supported by an administrative record that demonstrates the decisionmaker's reasoned connection between the facts found and the decision made. This record would be needed to defend HUD in any challenge to a termination.

XIV. ANNUAL REPORT.

Each DPA shall submit to the Director of AHO its project log, as well as an annual summary of the DPA's experience under the Agreement and the DPA's evaluation and recommendations for improving the Section 202 and Section 811 programs based on its participation in the delegated processing program.

XV. PROCEDURE FOR COMPENSATING A DPA.

- A. The DPA submits to the applicable Multifamily Regional 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 applicable Multifamily Regional 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. See Appendix 2 for further instruction.

XVI. PAPERWORK REDUCTION ACT.

The information collection requirements contained in this Notice are pending approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control number 2502-0590. 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.

Brian Montgomery
Assistant Secretary for
Housing-Federal Housing Commissioner