services. Interpreting for individuals who are deaf-blind is an intensive, one-to-one exercise, requiring significant skill. Expertise in the training of interpreters for individuals who are deaf-blind needs to be developed and made available to the field. A national project is needed that will give primary focus to training interpreters for individuals who are deaf-blind to better enable regional projects supported under this program to meet the communication needs of individuals who are deaf-blind. A national project is also needed to assist in improving the training of interpreters for individuals who are deaf.

There is also need for technical assistance to regional projects on curriculum development for interpreters to serve deaf-blind individuals and on model methods of instruction for use in the training of interpreters. The Secretary has identified a maximum possible project period of 60 months. The Secretary believes that at least 36 months will be necessary to meet the requirements of the priority. The Secretary will be assessing, during the third year of the project period, whether there is a need to provide funding beyond 36 months.

Priority

This project must—

• Be of national scope;

• Concentrate on curriculum development for training interpreters for individuals who are deaf-blind in order to improve the capabilities of regional projects;

• Furnish technical assistance to the regional projects in training interpreters to meet the communication needs of individuals who are deaf;

• Establish cooperative relationships with the regional interpreter training projects to be funded by the Secretary in fiscal year 1995;

• Use collaborative training approaches, such as workshops and seminars, to address curriculum development, classroom training of interpreters, preparation of interpreter trainers (faculty development), and other activities that will increase the number of interpreters and the skills and knowledge of interpreters to meet the communication needs of individuals who are deaf and individuals who are deaf-blind.

Priority 2—National Project to Address the Interpreting Needs of Culturally Diverse Communities

Background

A national project is needed that will provide technical assistance to interpreter training projects to improve the recruitment of interpreters who are minority group members and to improve the training of interpreters to better meet the special needs of minority individuals who are deaf or deaf-blind. This project would assist all other projects funded under this program in increasing their efforts in these areas and in better meeting the interpreting needs of different cultures.

The interpreter service needs of minority group individuals who are deaf or hard of hearing is an issue that has been raised nationally. An RSA-funded evaluation study reported that approximately 90 percent of graduates from the interpreter training programs around the country are White, while 4 percent are African-American and 5 percent are Hispanic. The National Registry of Interpreters for the Deaf reported that, in a given year, of 2,057 interpreters certified by their registry, only 20 were non-White persons. A Health Interview Survey, conducted by the National Center for Health Statistics in 1990–91, reported that of the 20 million individuals who are deaf or hard of hearing, 1.2 million are Afro-American and 900,000 are Hispanic.

A national project is needed to concentrate on curriculum that will improve the skills of interpreters working with minority group members. Strategies for the recruitment of minority interpreters also need to be developed and made available to the field.

The Secretary has identified a maximum possible project period of 60 months. The Secretary believes that at least 36 months will be necessary to meet the requirements of the priority. The Secretary will be assessing, during the third year of the project period, whether there is a need to provide funding beyond 36 months.

Priority

This project must—

• Be of national scope;

• Provide technical assistance to the regional interpreter training projects supported under this program in recruiting and training interpreters to meet the communication needs of culturally diverse populations;

• Develop curriculum to improve the knowledge of interpreters with respect to social and cultural concepts of interpreting, such as body language, spatial considerations, and communication between individuals from different cultures;

• Establish cooperative relationships with the regional projects to be funded by the Secretary during fiscal year 1995 by conducting workshops and seminars to improve curriculum development, classroom training of interpreters, preparation of interpreter trainers, recruitment outreach to members of racial and ethnic minority groups, and other activities that will increase the number and skills of interpreters to help meet the communication needs of individuals from different cultures; and

• In carrying out project activities, address at a minimum the needs of the minority populations referred to in section 21 of the Rehabilitation Act, including African-Americans, Hispanics, American Indians, and Asian-Americans.

Applicable Program Regulations: 34 CFR Part 396.

Program Authority: 29 U.S.C. 771a(f).

Intergovernmental Review

These programs are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

(Catalog of Federal Domestic Assistance Number 84.264 Rehabilitation Continuing Education Program; 84.246 Rehabilitation Short-Term Training; 84.275 Rehabilitation Training—General; and 84.160 Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind)

Dated: November 30, 1994.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 94–29859 Filed 12–2–94; 8:45 am]

BILLING CODE 4000–01–P

[CFDA No.: 84.275A]

Rehabilitation Training—National Clearinghouse of Rehabilitation Training Materials

Notice inviting applications for a new award for fiscal year (FY) 1995.

Purpose of Program: The Rehabilitation Training program supports projects to ensure that skilled personnel are available to provide rehabilitation services to individuals with disabilities through vocational, medical, social, and psychological rehabilitation programs, through supported employment programs, through independent living services programs, and through client assistance programs. The program supports projects to maintain and upgrade basic skills and knowledge of personnel employed to provide state-of-the-art service delivery systems and rehabilitation technology services.

Deadline for Transmittal of Applications: February 28, 1995.

Deadline for Intergovernmental Review: April 29, 1995.

Applications Available: December 29, 1994.

Available Funds: $250,000.

Estimated Range of Awards: $250,000.

Estimated Average Size of Awards: $250,000.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, and 86; and (b) The regulations for this program in 34 CFR Part 385, except §§ 385.31 and 385.32.

Priorities: The priority in the notice of final priorities for this program, as published elsewhere in this issue of the **Federal Register**, applies to this competition. For the purpose of this notice, the Secretary designates that priority as absolute for FY 1995. Under an absolute priority the Secretary funds only applications that meet the priority (34 CFR 75.105(c)(3)).

Selection Criteria:

In evaluating applications for grants under this competition, the Secretary uses the EDGAR selection criteria in 34 CFR 75.210.

The regulations in 34 CFR 75.210 provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition, the Secretary distributes the additional 15 points as follows:

Plan of operation (34 CFR 75.210(b)(3)). Fifteen points are added to this criterion for a possible total of 30 points.

For Applications or Information Contact: Robert Werner, U.S. Department of Education, 600 Independence Avenue, S.W., room 3322 Switzer Building, Washington, DC 20202–2649. Telephone: (202) 205–8291. Individuals who use a telecommunications device for the deaf may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 29 U.S.C. 774.

Dated: November 30, 1994.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 94–29860 Filed 12–2–94; 8:45 am]

BILLING CODE 4000–01–P

[CFDA No.: 84.264B]

Rehabilitation Continuing Education Programs

Notice inviting applications for new awards for fiscal year (FY) 1995.

Purpose of Program: The Rehabilitation Continuing Education Programs are designed to support training centers that serve either a Federal region or another geographical area and provide for a broad integrated sequence of training activities throughout a multi-State geographical area.

Eligible Applicants: Applications are invited for the provision of training for Department of Education Regions I, III, VI, and VIII only.

Deadline for Transmittal of Applications: February 28, 1995.

Deadline for Intergovernmental Review: April 29, 1995.

Applications Available: December 29, 1994.

Available Funds: $2,000,000.

Estimated Range of Awards: $490,000–510,000.

Estimated Average Size of Awards: $500,000.

Estimated Number of Awards: 4.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, and 86; and (b) The regulations for this program in 34 CFR Part 389.

Priorities: The priority in the notice of final priorities for this program, as published elsewhere in this issue of the **Federal Register** applies to this competition. For the purpose of this notice, the Secretary designates that priority as absolute for FY 1995. Under an absolute priority the Secretary funds only applications that meet the priority (34 CFR 75.105(c)(3)).

For Applications or Information Contact: Beverly Steburg, U.S. Department of Education, 600 Independence Avenue S.W., Room 3328 Switzer Building, Washington, D.C. 20203–2649. Telephone: (202) 205–9817. Individuals who use a telecommunications device for the deaf may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 29 U.S.C. 774.

Dated: November 30, 1994.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 94–29861 Filed 12–2–94; 8:45 am]

BILLING CODE 4000–01–P

[CFDA No.: 84.246]

Rehabilitation Short-Term Training

Notice inviting applications for new awards for fiscal year (FY) 1995.

Purpose of Program: The purpose of the Rehabilitation Short-Term Training Program is to provide Federal support for developing and conducting special seminars, institutes, workshops, and technical instruction in areas of special significance to the delivery of vocational, medical, social, and psychological rehabilitation services.

Eligible Applicants: Public and private nonprofit agencies and organizations, including institutions of higher education, are eligible for assistance under this program.

Deadline for Transmittal of Applications: February 28, 1995.

Deadline for Intergovernmental Review: April 29, 1995.

Applications Available: December 29, 1994.

Available Funds: $945,000.

Specific information regarding the estimated range of awards, estimated average size of awards, and estimated number of awards appears in the chart in this notice.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR Part 390.

Priorities: The priorities in the notice of final priorities for this program, as published elsewhere in this issue of the **Federal Register**, apply to these competitions. For the purpose of this notice, the Secretary designates those priorities as absolute for FY 1995. Under an absolute priority the Secretary funds only applications that meet the priority (34 CFR 75.105(c)(3)).

For Applications or Information Contact: For CFDA Nos. 84.246J and 84.246K, contact Beverly Steburg, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3328, Switzer Building, Washington, D.C. 20202–2649. Telephone: (202) 205–9817. For CFDA No. 84.246B, contact Ellen Chesley, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3318, Switzer Building, Washington, D.C. 20202–2649. Telephone: (202) 205–9481. For CFDA No. 84.246A, contact Sylvia Johnson, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3328, Switzer Building, Washington, D.C. 20202–2649. Telephone: (202) 205–9312. Individuals who use a telecommunications device for the deaf may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 29 U.S.C. 774.

Dated: November 30, 1994.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

CFDA No.	Priority area	Estimated range of awards	Estimated average size of awards	Estimated number of awards
84.246K	Personnel specifically trained to deliver services in client assistance programs	N/A	$200,000	1
84.246B	Training rehabilitation and mental health personnel to provide improved rehabilitation services to individuals with mental illness.	$190,000–$210,000	$200,000	2
84.246A	Training members of American Indian Tribes, State Vocational Rehabilitation Agency Staff, and Rehabilitation Educators on services for American Indians with Disabilities.	N/A	$200,000	1
84.246J	Training impartial hearing officers on provisions of the act	$130,000–$145,000	$145,000	1

[FR Doc. 94–29862 Filed 12–2–94; 8:45 am]

BILLING CODE 4000–01–P

[CFDA No.: 84.160A]

Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind

Notice inviting applications for new awards for fiscal year (FY) 1995.

Purpose of Program: The purpose of this program is to train a sufficient number of skilled interpreters to meet the communication needs of individuals who are deaf and individuals who are deaf-blind.

Eligible Applicants: Public and private nonprofit agencies and organizations, including institutions of higher education, are eligible for assistance under this program.

Deadline for Transmittal of Applications: February 28, 1995.

Deadline for Intergovernmental Review: April 29, 1995.

Applications Available: January 3, 1995.

Available Funds: $2,100,000.

Estimated Range of Awards: Regional projects: $120,000-$160,000; National projects: $250,000-$300,000.

Estimated Average Size of Awards: Regional projects: $140,000; National projects: $270,800.

Estimated Number of Awards: Regional projects: 11; National projects: 2.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR Parts 385 and 396.

Priorities

The priorities in the notice of final priorities for this program, as published elsewhere in this issue of the **Federal Register**, apply to these competitions. For the purpose of this notice, the Secretary designates those priorities as absolute for FY 1995. Under an absolute priority the Secretary funds only applications that meet the priority (34 CFR 75.105(c)(3)).

Project Budget: The Department plans to have a project directors' meeting for this program this fiscal year and expects to have annual meetings in future years. The Department, therefore, recommends that travel costs to attend an annual meeting be included in the application budget for the project period.

For Applications or Information Contact: Victor Galloway, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3228 Switzer Building, Washington, D.C. 20202–2736. Telephone: (202) 205–9152. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8352.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 29 U.S.C. 771a(f).

Dated: November 30, 1994.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 94–29863 Filed 12–2–94; 8:45 am]

BILLING CODE 4000–01–P

federal register

Monday
December 5, 1994

Part VI

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 246 and 266

Housing Finance Agency Risk-Sharing Program for Insured Affordable Multifamily Project Loans; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 246 and 266

[Docket No. R-94-1685; FR-3383-F-02]

RIN 2502-AF94

Housing Finance Agency Risk-Sharing Program for Insured Affordable Multifamily Project Loans

AGENCY: Office of Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: On December 3, 1993, the Department published an interim rule which introduced a new mortgage insurance program authorized by the Housing and Community Development Act of 1992. The program is designed to increase the supply of affordable multifamily units by allowing State and local housing finance agencies (HFAs) to originate and service mortgage loans that are fully insured by HUD's Federal Housing Administration. Under the program, participating HFAs are required to share in the risk associated with monetary losses that may be incurred as a consequence of any loan defaults. Under the interim rule, 33 HFAs were approved to participate in the program. This rule finalizes the standards and procedures of the interim rule after taking into account the concerns expressed, and the recommendations made, during the rule's public comment period.

DATES: Effective date: January 4, 1995.

FOR FURTHER INFORMATION CONTACT: For questions concerning Subparts A-E, contact Jane Luton, Acting Director, Policies and Procedures Division, Office of Insured Multifamily Housing Development, room 6116, (202) 708-2556; Subpart F, contact Albert B. Sullivan, Director, Office of Multifamily Housing Management, room 6160, (202) 708-3730; Subpart G, contact John Stahl, Director Multifamily Accounting and Servicing Division, room 6258, (202) 708-0223; Department of Housing and Urban Development 451 Seventh Street SW., Washington, DC 20410. Hearing- and speech-impaired persons may call (202) 708-4594. (The above listed telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520), and have been assigned OMB control number 2502-0500.

I. Introduction

Section 542(c) of the Housing and Community Development Act of 1992 (Pub. L. 102-550, approved October 28, 1992) (1992 Act) as amended by the Multifamily Housing Property Disposition Reform Act of 1994 (Pub. L. 103-233, approved April 11, 1994) (1994 Act) authorizes the HUD Secretary to enter into risk-sharing agreements with qualified State or local Housing Finance Agencies (HFAs) to test the effectiveness of certain Federal mortgage loan credit enhancements. (Section 542(c) is a part of subtitle C, title V of the 1992 Act. Section 541 provides that subtitle C, which consists of sections 541 through 544, may be cited as the "Multifamily Housing Finance Improvement Act." This rule implements only section 542(c).) The purpose of section 542(c) is to increase the supply of affordable multifamily housing through partnerships with housing finance agencies (HFAs) where the Department provides full insurance under a risk-sharing agreement to test the effectiveness of providing new forms of Federal credit enhancement for multifamily loans, an intended benefit of which would be increased credit ratings on bond-financed mortgage loans. HUD envisions that, under this program, HFAs will have greater access to capital markets and be able to provide affordable housing in a manner that is both timely and efficient.

The term "partnership" as used in the preceding paragraph and in section 542 is used in the generic sense and not in the technical legal sense. It is not intended to impose any partnership liability on HUD in the event of negligence or other actionable misconduct by an HFA.

The basic structure of the program allows HFAs to carry out certain HUD functions under the program, including the assumption of loan management and property disposition responsibilities for defaulted loans. In the event of a loan default, the HFA is required to share with HUD in any loss arising as a consequence of the loan default.

Section 542(c) prescribes certain requirements for this program, and also authorizes the Secretary to issue such regulations as may be necessary to carry out the program.

II. Legislative Background

The 1992 Act contains definitions for what constitutes "multifamily housing" (section 544(1)), a "qualified" HFA (section 544(2)), and "affordable housing" (section 542(c)(7)). These definitions have been incorporated into the regulation at 24 CFR 266.5.

In addition, section 542(c) prescribes a number of requirements for the program, which may be summarized as follows:

General: HUD is required to execute risk-sharing agreements with qualified HFAs.

Mortgage insurance: Risk-sharing agreements must provide for HUD to fully insure mortgage loans originated by or through HFAs, and for reimbursement to HUD by HFAs for a portion of any losses incurred on the insured loans.

Risk apportionment: The percentage of loss assumed by HUD and the HFA (risk apportionment) must be specified in the risk-sharing agreement between HUD and the HFA. HUD intends to execute a single agreement with each HFA, but the agreement will recognize that the risk apportionment may vary among project loans that are originated by a single HFA. The loan loss percentage for a particular project will be reflected in that project's underlying loan documentation and in an addendum to the risk-sharing agreement.

Reimbursement capacity: The application for participation in this program must demonstrate that the HFA has the financial capacity to fulfill its reimbursement obligations.

Underwriting standards: A qualified HFA that agrees to accept 50 percent or more of the risk of loss on a loan may employ its own underwriting standards, loan terms and conditions. However, where HUD retains more than 50 percent of the risk, it may impose additional underwriting standards, and loan terms and conditions.

Other requirements: Section 542(c) also requires HUD to establish a schedule for mortgage insurance premiums that reflects the risk apportionment for the loan. Lower or nominal premiums will apply to HFAs that assume a greater share of the risk of loss. In addition, HUD is prohibited from applying "identity of interest" provisions in risk-sharing agreements (section 542(c)(5)); and GNMA is prohibited from issuing securities for loans insured under the program (section 542(c)(6)).

Finally, HUD may issue commitments for mortgages that, in the aggregate, do not exceed 30,000 units between now and September 30, 1995 (section 542(c)(4)). The Congress may expand the program after that date, but no determination will be made until the Secretary has submitted reports (including any recommendations for legislation) to the Congress, as required under section 542(d)(3). (*See*, section 542(c)(4).)

III. The Regulation

The legislation authorizing this program prescribes certain requirements in relation to eligibility and risk apportionment. As a matter of policy, in its formulation of this regulation, HUD has decided to afford qualified HFAs very broad responsibility for the administration of the program, although HUD will monitor HFAs' activities. In addition to underwriting and processing loans, HFAs will service loans, provide management oversight of the projects, and dispose of properties subject to mortgages that fall into default. The regulation provides for sanctions in the event that an HFA is found to be in noncompliance with the requirements of the regulation.

It is to be noted that for this program the Congress, in section 542(c)(2)(E) of the 1992 Act, has assigned to qualified HFAs the responsibility for using their own "underwriting standards and loan terms and conditions for purposes of loans to be insured under this subsection" without further review by the Secretary, except that the Secretary may impose "additional underwriting criteria and loan terms and conditions" in cases where the Secretary retains more than 50 percent of the risk of loss. Further, Congress has authorized HUD through section 542(c)(8) to issue such regulations as may be necessary to carry out this risk-sharing program.

In cases involving "insurance upon completion," HUD will be responsible for final endorsement of the mortgage note for insurance. In cases involving "insurance of advances," HUD will be responsible for the initial and final endorsement of the mortgage note for insurance in a maximum amount set forth on the note. The amount of the insurance, however, will be only to the extent of advances approved during the construction process. The Department has decided to delegate to HFAs the responsibilities for the insurance of advances and cost certification functions. These functions are relevant to the insurance process and are carried out by HUD in full insurance programs under the National Housing Act.

Since the functions proposed for delegation are integral to the insurance process, the Department has determined that the delegation would be legally sustainable if HUD retains the authority to make adjustments to the insured mortgage amount during the period up to and including the time of final endorsement, which it has done in § 266.417 of the rule.

HUD's reservation of final authority to adjust the insured mortgage amount is not meant to suggest that HUD will, as a matter of policy, routinely review all decisions of HFAs about the insurance of advances and cost certification processes. For example, the Commissioner could review the insurance of advances and cost certification processes on a random basis and, up to and including the time of final endorsement, correct errors by adjusting the amount of mortgage insurance. Examples of such reviews of the insurance of advances process could involve a HUD evaluation of an HFA's approval of advances to determine whether such approval is consistent with construction progress. The Department could assess whether other mortgageable items were supported with proper bills and/or receipts before funds were approved. The Department also could consider whether the loan remains in balance by comparison of actual disbursements against a project completion schedule and other loan closing documents. Unless additional requirements are imposed by HUD because it insures more than 50 percent of the risk, the review at cost certification would only involve an assessment that the maximum insurable mortgage amount is supported by costs incurred and approved for the project by the HFA. By this reservation of authority to adjust the mortgage amount, HUD also is reducing any adverse effect from fees, which are linked to mortgage amount, that the HFAs may earn in connection with the project loan.

Notwithstanding the retention by HUD of ultimate authority to adjust the insured mortgage amount, the HFAs still would be carrying out an important function in connection with the insurance of advances and cost certification processes. The delegation of this function is consistent with Congress' view in section 542(a) of the 1992 Act that the relationship between HUD and HFAs is to be a partnership and that major functions are to be the responsibilities of the HFAs as evidenced by the direct assignment of underwriting functions in section 542(c)(2)(E).

The regulation will be contained in a new part 266 in title 24 of the Code of Federal Regulations, which consists of six subparts. A brief summary of each subpart follows.

Subpart A—General Provisions

Subpart A sets forth the purpose and scope of the regulation. It cites the legislative background, and indicates HUD's policy decision to vest broad responsibility for the conduct of the program in participating HFAs. Subpart A also includes definitions of terms used throughout the regulation.

Section 266.10, Allocations of Authority and Credit Subsidy, states that HUD will issue notices in the **Federal Register** inviting State and local HFAs to apply for participation in the program. Earlier provisions contained in the interim rule relating to planned HUD allocations and state-wide caps on the amount of assistance are deleted in this final rule. Those topics instead will be covered in the **Federal Register** Notice.

Section 266.15 describes key components that must be included in the risk-sharing agreement executed between HUD and the HFA. Among other things, the risk-sharing agreement will reflect the agreed upon risk apportionment; the number of units allocated to the HFA; description (*i.e.*, incorporation by reference) of the HFA's standards and procedures for underwriting and servicing of loans; and a list of required HFA certifications designed to assure its proper performance under the program. (The list of certifications is not comprehensive and is subject to change as circumstances and experience dictate.)

Appraisals of all properties must be performed by Certified General Appraisers, licensed in the State in which the property is located, and must be completed in accordance with the Uniform Standards of Professional Appraisal Practice. In addition, 24 CFR part 267 (see final rule published October 3, 1994 at 59 FR 50456), establishes a reporting requirement for the gender and minority classification for appraisers. Compliance with this reporting requirement will be included in the risk sharing agreement.

Subpart A contains sections indicating that future regulatory amendments will not impair previously recognized contract rights and that HUD has no obligation to recognize or deal with parties other than the HFA, in the latter's role as mortgagee of record under a contract of mortgage insurance. Section 266.30 provides that the provisions of 24 CFR part 246 (Local Rent Control) do not apply to this program. The Department will not be utilizing its constitutional authority to preempt local rent control laws for projects with mortgages insured under part 266. Representatives of HFAs have advised the Department that many HFAs, both State and local, already have such authority and, therefore, the absence of access to the Federal preemption authority would in no way restrict or interfere with the manner in which HFAs currently operate. Since the program involves risk to both HFAs and the Federal government, the Federal interest will be adequately protected by HFAs who use their preemption authority to protect their own interests.

The interim rule also contains a general waiver provision in § 266.35. Under that section, the Commissioner may, upon a finding of good cause, waive any provision in part 266 that is not a statutory requirement, except that the Commissioner will not consider waivers of financial requirements for participating HFAs or underwriting standards required by HUD for Level II participants. All waivers granted under § 266.35 will be in writing and will be published in the **Federal Register**, as required by section 7(q) of the Department of Housing and Development Act (42 U.S.C. 3535(q)).

Subpart B—Agency Requirements

Subpart B describes the criteria HFAs must meet to qualify under the program. It became evident during HUD's review of the applications for participation in the pilot program that there was some confusion as to the interpretation of the term in section 544(2)(B) which defines a qualified housing agency as one that "receives a rating of 'A' for its general obligation bonds." Some agencies interpreted this to mean that an "A" rating on bonds financing a particular project met the definition.

This interpretation would be inconsistent with sections 544(2)(A) and (2)(C), which require evidence of a strong financial capacity on the part of the agency. Such a construction would permit an HFA with one strong bond issue and several other issuances with ratings below "A" to claim that they met the qualified agency criteria. The Department does not construe this to be in accordance with the intent of Congress. In this final rule, HUD interprets the phrase "general obligation bonds" to mean the rating on bonds issued by the HFA based on the strength of the general obligation of the agency itself. Like the "top-tier" rating, a rating of "A" on general obligation bonds is provided by nationally recognized rating agencies only after thorough review and analysis of an agency's financial, administrative and operational capacity. This rating based on the strength of an agency's general obligation pertains to issuance of bonds and other debt instruments that are backed by income/resources from unencumbered fund balances rather than by cash flow from a particular project or projects.

Two levels of approval—Level I and Level II—are described in § 266.100. The primary distinction between the two levels is in the level of risk apportionment an HFA agrees to undertake. HFAs participating at Level I are those that will assume 50 percent or more of the risk associated with a loan default. Level II participants will assume 10 or 25 percent of the risk.

The regulation requires any applicant HFA (whether it selects either Level I or Level II, or both Level I and Level II approval) to meet eligibility standards and application requirements. Eligibility is predicated on an HFA's demonstrable high financial capacity and/or experience and capability in the field of multifamily housing. Application requirements are designed to elicit the HFA's (legal and other) capacity to function in the program.

Subpart B also sets forth minimum reserve requirements that must be met by participating HFAs (§ 266.110). An HFA is required to maintain its basic sound financial capacity at all times. An HFA that qualifies for the program under the criteria in section 544(2) (A) or (B) of the 1992 Act (*i.e.*, is designated "top-tier, or the equivalent thereof" or receives an overall rating of "A" on its general obligation bonds from a nationally recognized rating agency) will not be required to maintain additional reserves unless determined necessary by the Commissioner. "Other agencies," *i.e.*, those that qualify based on other criteria, will be required to establish minimum reserve requirements that are set forth in § 266.110(b). Any HFA that initially qualifies under, but later loses, the "top-tier or equivalent" designation or an overall rating of "A" on its general obligation bonds will be required to immediately establish and maintain the reserve amounts required for "other agencies" by § 266.110(b).

The final rule clarifies two requirements set forth in the interim rule. First, it makes clear (§ 266.105(b)(1)) that there must be documentation satisfactory to the Commissioner that the HFA meets the qualification requirements of § 266.100(a). This documentation must be submitted as a part of its application. Second, it provides that any dedicated account required under § 266.110(b) must be established prior to execution of any Risk Sharing Agreement.

Sections 266.115–266.125 describe the monitoring and evaluation activities and requirements of the program, the kinds of HFA conduct that could give rise to sanctions by the Department, and the nature of sanctions that HUD may impose. The rule provides HFAs the right to an informal hearing where sanctions have been applied.

In this final rule, the language of § 266.15(b)(5) relating to the availability of HFA financial and other records for HUD inspection is revised to reflect the statutory phrasing enacted as section 307(b)(2) of the 1994 Act.

Finally, § 266.130 provides that HFAs may obtain reinsurance for their portion of the risk and describes the conditions under which reinsurance will be permitted.

Subpart C—Program Requirements

Subpart C contains program requirements such as project eligibility and fair housing and equal opportunity requirements. It also describes review functions to be retained by HUD as well as those delegated to HFAs.

Project size and affordability requirements in the rule follow the authorizing legislation. Subject to requirements in the regulation, mortgage insurance will be available under this program for project new construction and substantial rehabilitation, and for existing projects without substantial rehabilitation. Similarly, projects receiving section 8 or other rental subsidies are eligible for insurance under the program, subject to limitations on the rent levels. These limits are designed to ensure that project rents are clearly adequate to support the mortgage. Other eligible projects include single room occupancy (SRO) projects, board and care and assisted living facilities, and projects designed for persons 62 years of age or more. In response to providers of affordable housing, mobile home parks (exclusive of the mobile homes) have been added as an eligible housing type. This will permit HFAs to provide this important type of affordable housing through the Risk-Sharing Program. Transient housing, hotels, nursing homes and intermediate care facilities, and projects located in military impact areas are ineligible for insurance under this program.

The final rule makes clear that, for purposes of this pilot program, cooperative properties are considered rental housing, just as they are under the National Housing Act (see § 266.200(a)). While section 542(c)(7) refers to rents, and section 544 defines multifamily housing as covering not less than five (5) "rental" units on one (1) site, cooperative carrying charges are similar to rents and HUD does not believe that Congress intended to preclude the insurance of mortgages for cooperatives under the program.

HUD will retain responsibility for assessing the "previous participation" of mortgagors, contractors, consultants or management agents in HUD programs and for intergovernmental and environmental review. HUD will delegate to HFAs the functions pertaining to a project's affirmative fair housing marketing plan and certain activities under the Davis-Bacon Act.

With respect to HUD environmental reviews, it should be noted that section 307(b)(4) of the 1994 Act authorizes the Secretary of HUD, under such regulation in lieu of the environmental protection procedures otherwise applicable, to provide for agreements to endorse for insurance mortgages under this pilot program upon the request of qualified HFAs if the State or unit of general local government, as designated by the Secretary, assumes all of the responsibilities for environmental review, decision making, and action pursuant to the National Environmental Policy Act of 1969 and other relevant laws. The statute goes into further detail as to what specific provisions will be contained in any regulations the Secretary may issue. The Department has in process draft regulations to implement this section 307(b)(4) of the '94 Act, which will be promulgated in the **Federal Register** as a separate rule, which will amend both this final rule and 24 CFR part 58—Environmental Review Procedures for the Community Development Block Grant, Rental Rehabilitation, and Housing Development Grant Programs. Until such time as this new rule takes effect, the Department will retain responsibility for assuring compliance with the National Environmental Policy Act of 1969 and related laws.

Section 542(c) of the Act does not statutorily require payment of prevailing wage rates determined by the Secretary of Labor under the Davis-Bacon Act on projects receiving mortgage insurance under the pilot program. However, the Department has administratively determined that it will require payment of Davis-Bacon wage rates on certain projects receiving mortgage insurance under the program. As provided in § 266.225 of the rule, Davis-Bacon wage rates will be required to be paid to all laborers and mechanics (except volunteers) employed by contractors and subcontractors on projects (1) for which advances are insured under this part; (2) which involve new construction or substantial rehabilitation; and (3) which will contain 12 or more dwelling units. Davis-Bacon requirements will apply only if all of these conditions are met, unless Davis-Bacon wage rates are applicable by reason of assistance from another Federal program. (For example, if assistance under Section 8 is also used in connection with a project under this part that involves minor rehabilitation, Davis-Bacon requirements would apply to the project if it contains nine or more Section 8-assisted units.) The Department has decided to require payment of Davis-Bacon wage rates to ensure that prevailing wage requirements under this program are generally comparable to similar provisions required by statute for multifamily mortgage insurance programs under the National Housing Act.

The rule also states that while the Commissioner retains responsibility for enforcement of labor standards under this section, the Commissioner may delegate to the HFA information collection (*e.g.*, payroll review and routine interviews) and other routine administration and enforcement functions, subject to monitoring by the Commissioner. The Department intends to delegate such routine administration and enforcement functions to HFAs. This delegation is consistent with the Department's decision to delegate many of the functions relating to insurance of individual projects to the HFAs. The delegation is also consistent with the Department's longstanding delegation of routine Davis-Bacon functions to States and local governments under the Community Development Block Grant program.

Subpart D—Processing, Development, and Approval

Subpart D describes functions that the HFA and HUD will undertake in relation to a loan origination and HUD insurance endorsement.

An HFA that assumes 50 percent or more of the risk associated with a loan may use its own underwriting standards and loan terms and conditions to underwrite and approve loans. Where an HFA assumes less than 50 percent of the risk, underwriting standards and loan terms and conditions are subject to HUD review, modification and approval. The rule provisions also cover responsibilities of HFAs concerning such matters as project feasibility, acceptability of the mortgagor, and inspections during the project construction period.

Section 266.310 provides the circumstances where HUD will insure loan advances, or agree to insure the entire mortgage upon completion of construction. Where a mortgage is endorsed for insurance, the interim rule provides that the HFA must remain the mortgagee of record for as long as mortgage insurance is in force.

Subpart E—Mortgage and Closing Requirements; HUD Endorsement

Subpart E contains requirements that relate to the mortgage and the property that secures the insured loan.

The Department recognizes that section 542(c)(2)(E) provides that HFAs are permitted to use their own underwriting standards and loan terms and conditions for purposes of underwriting loans to be insured under this program where the HFA is assuming 50 percent or more of the risk of loss. Where the Secretary retains more than 50 percent of the risk of loss, section 542(c)(2)(E) permits the Secretary to impose additional underwriting criteria and loan terms and conditions on loans to be insured under the program. However, it is the Department's view that Congress intended, in enacting section 542(c), to develop a fiscally prudent mortgage insurance program. The interim rule cited several examples of HUD regulations being imposed by the Department, including the requirement that the HUD-insured mortgage constitute a first lien. Subsequent to publication of the interim rule, Congress expressly amended the Act to establish as a program requirement that the insured mortgage be a first lien. However, the Department believes that Congress did not intend to preclude other HUD regulations that would provide: (1) that the HUD-insured mortgage be regularly amortizing; (2) that the insured mortgage contain a covenant against the change in use of the insured property; (3) that the insured mortgage contain a covenant requiring the mortgagor to keep the property, which is security for the mortgage, insured against loss due to fire or other hazards; and (4) that the regulatory agreement executed by the mortgagor contain a provision requiring that the mortgagor be a sole asset mortgagor.

Amortization. The Department does not believe that Congress, in its enactment of section 542(c), intended to permit the use of riskier financing practices such as balloon payment terms and negative amortization. Use of these types of financing practices in insured programs could increase the chances that an insured mortgage would go into default or otherwise increase the Department's exposure on a mortgage where the terms of the financing permitted negative amortization. It is the Department's view that requiring a mortgage to be regularly amortizing would curtail the use of riskier financing practices that could jeopardize the stability of the insured loan.

Change in use. The Department's purpose in requiring that a mortgage insured under this program contain a covenant prohibiting a change in use of the insured property was to carry out the intent of Congress that the mortgage insurance be used to provide affordable residential housing, rather than for some commercial enterprise, such as a hotel or office building. It has been HUD's view in all of its insurance programs, and it is HUD's view in this rule, that such a provision is not intended to preclude the conversion of a project from rental to cooperative housing since both rental and cooperative housing are residential housing. The "change in use" provision is intended to preclude the conversion of a project from residential use to some other form of use, *e.g*, commercial use.

Hazard insurance. The Department does not believe that Congress, in enacting the section 542(c) risk-sharing program, intended for the Secretary to insure a mortgage on a project that is not insured against damage or destruction due to fire or other hazards. Additionally, the Department cannot conceive of an HFA making a loan on a project that is not insured against loss due to hazards. The requirement that a mortgagor under a mortgage have hazard insurance is a standard mortgage industry practice. Additionally, it is the Department's position that hazard insurance is a fundamental requirement of Federal mortgage insurance to protect the public fisc against loss of public assets and, therefore, must be required in this program.

Single asset mortgagor. The requirement that a mortgagor be a single asset mortgagor is a requirement that is critical to the Department's ability to prevent the mortgagor of an insured project from commingling funds of the insured project with other assets that a mortgagor entity might own, if permitted. If the Department were to allow a mortgagor entity to own assets other than the insured project, this would increase the chances of a mortgagor siphoning off funds from an insured project for use in a conventionally financed project. This could result in the mortgagor of the insured mortgage suffering severe financial difficulty, possibly defaulting on the insured mortgage and a subsequent insurance claim being filed by the HFA. In addition, the assets of an insured project could become at risk, as a result of their application to the debts of a conventionally financed project in financial difficulty where both projects have the same owner.

Other provisions in subpart E pertain to the closing of a mortgage loan. The closing will be held by the HFA, which is then required to submit a closing docket (with required documentation) to HUD for insurance endorsement. The required documentation is set forth in the interim rule as well.

Subpart F—Project Management and Servicing

Subpart F sets out the rules for HFAs to service loans and manage projects.

The HFA will have broad responsibility for the administration of this program, including monitoring and determining the compliance of the project owner with the requirements of this rule. HUD will not hold or be a party to any mortgage or note instruments between the mortgagor and the HFA. HUD will, however, monitor the performance of the HFA to determine its compliance with this subpart.

Section 266.505 lists certain requirements that must be included in the regulatory agreement that is executed by the HFA and the project owner. Those requirements are necessary to assure that the owner will maintain the sound financial and physical condition of the project, and maintain the project as an affordable housing resource. Section 266.510 describes the responsibilities of the HFA for annual project inspections, review of an owner's compliance with the affirmative fair housing marketing plan, and analysis of the owner's annual audit and recordkeeping.

Subpart G—Contract Rights and Obligations

Subpart G contains provisions with regard to the mortgage insurance premium (MIP) in §§ 266.600–266.608. In accordance with section 542(c)(3), the rule provides for a "sliding scale" of MIP payments, with reduced amounts payable in inverse proportion to the increase in an HFA's risk apportionment. Risk apportionment percentages range from 10 to 90 percent. At the high end, an HFA assuming 90 percent of the risk would be required to pay a .05 percent MIP based upon the average outstanding principal balance (without taking into account delinquent payments or prepayments) per annum. At the other end of the spectrum, an HFA assuming 10 percent of the risk would be required to pay a .45 percent MIP based upon the average outstanding principal balance per annum.

Subpart G also contains provisions on insurance endorsement and assignments. Endorsement of the original credit instrument will indicate the Commissioner's insurance of the mortgage. Section 542(c)(2)(B) of the 1992 Act provides for full mortgage insurance for loans originated by or through qualified HFAs. While this provision clearly permits qualified HFAs to underwrite loans for other HFAs or mortgage entities or to sell their loans in the secondary market, the Department discussed this option with HFA representatives with particular concern about how the HFA would maintain its risk-sharing obligation in such transactions. In view of the complexities of implementing this aspect of the statute and the desire to implement the pilot program in a timely manner, it was agreed between the HFAs and HUD that entities other than approved HFAs would not be permitted to be mortgagees originating loans to be insured under this program. The one exception was with respect to the transfer of partial interest under a participation agreement. Section 266.616 permits the transfer of up to 100 percent of the beneficial interest in a loan or a pool of loans insured under part 266, provided that, among other things, the HFA remains the mortgagee of record and is the party with whom the Commissioner deals under the contract of mortgage insurance.

Section 266.620 describes the circumstances under which the contract of insurance will terminate. These are (1) payment in full of the mortgage; (2) acquisition of the mortgaged property by the HFA and notification to the Commissioner that no claim for insurance benefits will be made; (3) acquisition of the property at a foreclosure sale by a party other than the HFA; (4) notification by the HFA to the Commissioner of voluntary termination; (5) a finding of fraud or material misrepresentation on the part of the HFA or its successors with respect to the contract of insurance; or (6) receipt by the Commissioner of an application for final claims settlement.

The latter part of subpart G describes the procedures for filing a claim upon a default, determining the amount of the claim, and payment of the claim. Section 266.630 describes the requirements for filing for a partial payment of a claim. This section is intended to avoid full insurance claim payments by providing the HFA with flexibility to deal with a nonperforming mortgage where the default is due to circumstances beyond the mortgagor's control and the financial relief provided by the HFA is sufficient to restore the financial viability of the project. When the conditions of this section are met, an HFA may reduce the unpaid principal balance of the insured mortgage by up to 50 percent and may defer delinquent interest. The HFA must secure the mortgagor's repayment of this relief with a second mortgage, which can have deferred amortization thereby allowing the mortgagor to repay the second mortgage in increasingly larger amounts as the project's cash flow improves.

Under this partial claim procedure, upon the HFA providing the above-described relief, HUD makes a partial claim payment to the HFA in an amount that is a percentage of the relief provided by the HFA to the mortgagor. The percentage is equal to HUD's percentage of the risk of loss on the original mortgage loan or 50 percent, whichever is less. The HFA, in turn, must remit to HUD the same percentage of all amounts that it collects on its second mortgage.

When HUD pays a claim (*i.e.*, entire amount, in cash), § 266.638 provides that the HFA will issue a debenture (or a promissory note, a bond, or any other instrument, hereinafter referred to as "debenture") to HUD for the full amount of the claim. The debenture will have a term of five years in order to afford the HFA ample time to work with the mortgagor to cure the default or foreclose and/or resell the project. During the five year period, the HFA will pay HUD interest on the debenture, due and payable on the anniversary of the claim payment. At the end of five years, or at the point of settlement when the debenture is paid, HUD will determine the amount of losses to be apportioned between HUD and the HFA.

Sections 266.640 through 266.656 concern the final disposition of a claim, including the HFA's ability to accept a deed-in-lieu of foreclosure; the use of an appraisal to determine property value in the absence of a foreclosure sale; the manner in which the amount of a loss is determined; and final settlement.

IV. Public Comment on Interim Rule

On December 3, 1993 the Department published in the **Federal Register** (58 FR 64032) an interim rule entitled Housing Finance Agency Risk Sharing Program for Insured Affordable Multifamily Loans. What follows is a description of the significant issues raised by the public in written comments on the rule along with HUD's responses to each of these issues.

During the public comment period, the Department received 12 comments from the following commenters:

1. Idaho Housing Agency
2. Massachusetts Housing Finance Agency
3. National Association of Home Builders
4. Congressman Owen Pickett (2nd Dist., Virginia)
5. American Institute of Certified Public Accountants
6. Colorado Housing and Finance Authority
7. National Council of State Housing Agencies
8. Association of Local Housing Agencies
9. Mortgage Bankers Association
10. American Association of Retired Persons
11. President, Hoover Mortgage Company, Spokane, WA
12. Michigan State Housing Development Authority

The commenters generally favored the program, with comments or recommendations on the specific areas discussed below. The commenters are referred to by their corresponding numbers as listed above.

Section 266.10 Fund allocations.

Comments. Commenter 7 pointed out that the rule states that HUD will allocate unused insuring authority at the beginning of FY 1995, and the draft handbook indicates that HUD may increase or decrease these allocations at the end of FY 1994 depending upon the number of units that have received initial endorsement. The commenter recommended that since HFAs will only have six months to process applications in FY 1994, HUD reduce a participating HFA's allocations only if the HFA agrees that it will be unable to use all its insurance authority by the end of FY 1995. Commenter 1 was also concerned about the short time left in FY 1994 after the application process, and asked whether an HFA would risk the possibility of losing units that are in the application process but which have not reached initial endorsement. That commenter believed that the September 30, 1994 deadline for achieving initial endorsement seemed very unrealistic.

Commenter 9 referred to the limit of 30,000 units that may be insured under the pilot program through Fiscal Year 1995, stating that it does not believe the program will produce a high level of production. Citing the complicated, staff-intensive, and time-consuming transactions involved in underwriting loans of this type, the commenter is of the opinion that risk-sharing with HFAs can only serve as a modest supplement to existing FHA programs. The commenter recommended that HUD improve the delivery of multifamily mortgage insurance under its regular insurance programs as well as under special programs and initiatives such as this one.

Commenter 11 expressed somewhat similar views and urged improvement and augmentation of HUD's multifamily housing staff capabilities.

HUD Response. Because the publication of the interim rule and approval of qualified HFAs occurred later than anticipated, the interim rule and draft administrative handbook do not reflect the correct schedule for reallocation of units for the Pilot program. Unit set-asides and allocations were made in March 1994. Unit allocations may not be used by an HFA until a Risk-Sharing Agreement (RSA) is executed. The time required for HFAs to sign RSAs and return them to HUD has been longer than expected. It is likely that some HFAs may not even have an executed RSA until some time in FY 1995. Therefore, rather than reallocating units at the end of FY 1994, HUD will wait until January 1995 to assess usage and reallocate if necessary.

In the meantime, the Department will use a portion of the 10,000 unit holdback on a "first come, first served" basis for increases to HFA set-asides that have been exhausted. In addition, units will be considered used at an earlier stage—when the Firm Approval Letter is issued—not at initial endorsement. Credit subsidy for a project will also be obligated by the firm approval stage which is a change from the language in the interim rule. Credit subsidy will be obligated and allocated in accordance with outstanding Department instructions.

With respect to the comment regarding use of the units, the Department anticipates that the 30,000 units allocated to the program will be used for the demonstration. The delivery of multifamily mortgage insurance under HUD's regular programs is not the subject of this interim rule. The Risk-Sharing program is a partnership with State and local HFAs to increase the supply of affordable housing; it is not meant to be a substitute for other HUD insurance programs. However, the Department does anticipate that the pilot will become a model for augmenting mortgage insurance capability. In any event, the Department will carefully study the results of the pilot period and expand the program accordingly.

In this regard, although not in response to public comment, we note that it is likely that the program will be expanded, perhaps by another 30,000 units for use beyond the end of FY 1995. The regulation and the above comments do not currently assume this extension. Should this occur during the regulation process, further consideration about reopening the window for application submission and methods for reallocation of units will be required.

Section 266.15 Risk-Sharing Agreement.

Comments. Commenter 12 suggested that the requirement in § 266.15(b)(5)(viii) for a certification from the HFA that it has errors and omissions insurance should be changed or eliminated to reflect situations where HFA employees are covered by a fidelity bond that covers all state employees. The same commenter stated that the requirement in § 266.15(b)(8) for the highest level of appraiser certification is not necessary. The commenter does not employ the use of appraisals for the purpose of establishing completed project value or mortgage amount, but rather to determine the maximum amount of land value (or an existing building's value in the case of rehab) to be recognized in the mortgage calculation.

HUD Response. The program does require that HFAs have errors and omissions insurance and this is reflected in the Risk-Sharing Agreement. If there is an impediment that precludes the HFA from obtaining this insurance, the Department will consider waivers for good cause and with adequate protection under some other means. This provision has, in fact, been waived for two HFAs that were either covered under State provisions or where the State was self-insured. In these cases, this provision of the RSA was modified.

With respect to the comment about use of certified appraisers, the Risk-Sharing program regulation does require compliance with the Uniform Standards of Professional Appraisal Practice (USPAP). USPAP requires use of a Certified General Appraiser for work done under either Standard 1, for determining value, or Standard 4, real estate consultations. This latter Standard covers multifamily cases where value is not determined using the standard three approaches to value but the appraiser does a rental and expense analysis and calculates a capitalized value, similar to what HUD does in the Section 221(d)(4) program.

Subpart B—Housing Finance Agency Requirements

Section 266.100 Qualified HFA.

Comments. Commenter 9 expressed a concern that the number of HFAs qualified to originate, underwrite, service and manage multifamily loans is severely limited. The commenter did not question the importance or relevance of the rule's criteria for an HFA to have a certain level of internal staff capacity to review and evaluate work of any contractors it may hire to perform technical services, to make underwriting conclusions, and to oversee its loan portfolio, and that an HFA have an established record in multifamily loan processing, servicing and property disposition, but believes the ability of most HFAs to hire experienced personnel or train existing staff is limited because of local and state budget constraints. The commenter believes that this limited ability to participate will leave many parts of the country with no representation or service.

HUD Response. The Department was pleased to approve 33 applicants under the Risk-Sharing Pilot including 26 States, the District of Columbia, Puerto Rico and 5 localities. The States approved included many of the most populous States—California, New York, Texas, Florida, Pennsylvania, Illinois, Michigan, New Jersey and Massachusetts.

Section 266.105 Application requirements.

Comments. Commenter 5 questioned the requirement in § 266.105(b)(12) for an unaudited interim financial statement if the latest audit statement of an HFA is more than six months old. The commenter stated that the requirement should be more specific about the information to be provided, the time period to be covered, and the standard of accounting to be used. The same commenter stated that the information requested in the additional application requirements for HFAs without top-tier designation or overall rating of "A" (paragraph (c)) could be derived from an HFA's comprehensive annual financial report that also includes its audited financial statements. The commenter suggested that the information be provided only if unavailable in other documents submitted.

Commenter 12 stated that the "highest quality compliance plan" requirement in § 266.105(b)(4) is redundant, since other requirements in the application process will ensure the same result.

HUD Response. The Department has determined after reviewing the large number of applications submitted for participation in the pilot program that the requirement in paragraph § 266.105(b)(12) for an unaudited interim financial statement if the latest HFA audit is more than 6 months old is not only unclear but is unnecessary. This requirement has been removed from the text of this final rule.

However, the requirement for submission of the Questionnaire outlined in the Notice of Invitation and referred to in § 266.105(c) is critical to HUD's capacity to review applications. HFAs with a "top-tier" designation or "A" rating on their general obligation bonds from a national rating agency are subject to an intensive in-depth review of their operations, financial status, administrative capability and a host of other components comprising the other items on the Questionnaire by the rating agencies. Absent that review, HUD must make the same kind of analysis based on the Questionnaire, which is in a clear, concise and focused form. It also affords the HFA the opportunity to present their operations and capacity in a concise and positive way to the Department during the review process.

The quality control plan supplements the other descriptive material submitted relative to underwriting standards and procedures, staff capacity, etc., by indicating the checks and balances within the HFA to ensure compliance with procedures and requirements whether performed by in-house staff or, more particularly, by contract personnel.

Section 266.115 Program monitoring and evaluation.

Comments. Commenter 9 expressed a concern about the program allowing Level I participants to use their own underwriting criteria, fearing that it will make monitoring and reviewing by HUD more difficult. The commenter used the example of HUD's failure to adequately monitor coinsuring lenders who used HUD-established underwriting criteria and to impose sanctions when necessary. The commenter recommended that HUD reconsider its ability to monitor before delegating so much authority to third parties.

Commenter 12 suggested that the § 266.115 requirement for semiannual reports is burdensome, and should be changed to annual reports. The commenter also believes that these reports should only contain information indicating a problem or workout. The commenter also suggested that annual physical inspection and audit reports be sent to HUD only in cases where the

HFA determines there is a likelihood of a claim.

HUD Response. With respect to Level I participants using their own underwriting criteria, the statute specifies that HFAs taking 50 percent or more of the risk (i.e., Level I participants) may use their own underwriting standards and loan terms and conditions. As to the comment on semiannual reports, the Department feels it is imperative that we be able to assess the progress and identify any impending problems through this reporting system. The data requested will also help HUD track other matters, such as MIP. Coupled with annual physical inspection reports and project audit reports, this data will aid HUD in meeting its oversight and monitoring responsibility to make its own informed decision as to whether there is a likelihood of a claim.

Sections 266.120, 266.125 Sanctions.

Comments. Commenter 12 pointed out that § 266.120(e)(13) should be changed to make clear that Level I lenders cannot potentially be penalized for following their own underwriting standards. The commenter also recommended eliminating the provision in § 266.125(a)(4) that allows HUD to terminate insurance in cases of fraud or material misrepresentation by the HFA. The commenter fears that the provision will be unacceptable to bond holders or secondary mortgage market investors who will not be able to rely on the insurance. According to the commenter, the government's interests are adequately protected under § 266.125(a)(2) by the HFA being required to assume a higher risk level.

HUD Response. Level I HFAs may use their own underwriting standards but must, nevertheless, also act prudently in accordance with generally accepted practices. This provision is not intended to penalize participants for plausible judgments about underwriting considerations but, rather, to prohibit the wide-scale abuse that occurred under the coinsurance program. We also note that the provision in § 266.125(a)(4) that allows HUD to terminate insurance in cases of fraud or material misrepresentation by the HFA is the same as for HUD-processed insurance programs under the National Housing Act. Projects insured under the National Housing Act are often bond-financed or sold on the secondary market, so this provision should not be unacceptable to bond holders or secondary markets. Moreover, two of the major rating agencies have thoroughly reviewed this program and have determined this provision, among others, to be satisfactory. They anticipate that they will be rating such loans with bond financing as AAA.

Subpart C—Program Requirements

Sections 266.200, 266.205 Eligible and ineligible projects.

Comments. Transaction costs. Three commenters (1, 2, 7) objected to the requirement that HUD determine whether the transaction costs for existing projects to be acquired are reasonable. The commenters believe this is inconsistent with the statute that allows HFAs to use their own underwriting standards.

Section 8 projects. Commenter 7 also objected to the provision that Section 8 projects may be insured under the program only if the mortgage does not exceed an amount supportable by the lower of the unit rents being collected under the rental assistance agreement or market rents in similar projects. The commenter stated that HUD should allow HFAs to insure Section 8 project mortgages without restriction, because it is common for Section 8 rents to exceed market rents, and the restriction unnecessarily and unreasonably limits the use of the program to support financing those projects. Further, the commenter stated that HUD does not provide incentives to reduce the cost of Section 8 projects through refinancing, and believes HFAs should be allowed to retain savings from refinancing those projects.

Board and care/assisted living facilities. Two comments (10, 12) were directed to the restrictions on services that can be provided by board and care/assisted living facilities. Both commenters recommended clarification with regard to the ineligibility of retirement service centers, stating that central kitchens and dining rooms are not necessarily "luxury accommodations," especially where residents are not required to use them. Commenter 10 stated that a strict interpretation of the provision would effectively forbid financing of board and care or assisted living facilities despite its explicit intention of doing so.

Commenter 10 also included a lengthy discussion of the need for special regulations and underwriting standards to govern the financing of assisted living facilities under the risk-sharing demonstration. The commenter pointed out that HUD's own findings when it issued new underwriting standards for the Retirement Service Center (RSC) program just before suspension of the program strongly argue for different underwriting standards for such projects. The commenter argues that the program did not fail because too many services were offered, but rather because the Department underestimated the care needs of the residents and did not adequately examine the financing of necessary services. According to the commenter, the HFA Risk-Sharing program ignores the fundamental lesson of the RSC program that supportive services are essential to a project's success.

Military impact area. Commenters 3 and 4 objected to the definition of "military impact area," stating that it is too broad. First, they argue that the designation of such an area as one in which military-connected households comprise 20 percent or more of the total households in the market area would exclude areas with stable military populations at installations with a certain future. Further, they state that the definition of a "military-connected household" is too broad and the data to ascertain such households are unavailable. Secondly, the commenters object to the total reduction in military households test, stating that it does not apply to many areas in the country where a "total" reduction is not a meaningful possibility.

HUD Response. Transaction costs and Section 8 projects. It was not the original intent of the Department to include either existing projects or Section 8 (or other rental assistance) projects in the Risk-Sharing program. The legislation and legislative history emphasize the expansion of affordable housing opportunities through the program. However, discussions with the industry convinced us that there were certain limited circumstances where the Risk-Sharing program might be warranted for such projects. The compromise reached as a result of these consultations was: (1) the limitation on transaction costs for existing projects, and (2) the requirements relative to establishing the processing rents to be used in determining the maximum insurable mortgage for Section 8 projects that would ensure that project rents are clearly adequate to support the insured mortgage even when the rental assistance contract is shorter than the mortgage term. (This provision is similar to procedures for processing of Section 8 projects by HUD Field Offices.) To permit insurance of Section 8 projects without restriction would either create risk or put the Department in the position of ensuring the continued funding of the Section 8 Contract.

Board and care/assisted living facilities. The definition of board and care/assisted living facilities stands on its own. Projects meeting the definition are eligible. These facilities are residential health care facilities regulated by State or local government. The Department knows of no States that do not require food service in such facilities. The definition of board and care/assisted living does not conflict with that of retirement service centers. Retirement service centers are unassisted rental projects, not residential health care facilities such as board and care and assisted living, that include luxurious accommodations (such as large living units, and amenities such as tennis courts etc.), mandatory services, and central kitchens and dining rooms. While it is unlikely that such projects could be developed within the affordability parameters of the Risk-Sharing program, the Department wants to exclude any possibility of insuring this kind of rental project which has been so unsuccessful under the regular insurance programs. A discussion of why this kind of project was unsuccessful is not a subject of this preamble.

Military impact area. This definition of military impact area is the general definition the Department has been using for some time. Although few areas have been designated as military impact areas, the ones that have been so designated have been isolated markets with little housing market other than the military base. However, based on the comments, we have revised the interim rule language to clarify and expand the definition of military impact areas. The administrative instructions will also discuss procedures for making of military impact determinations based on these regulatory standards.

Section 266.210 HUD-retained review functions.

Comments. Commenters 3 and 9 expressed concerns about the review functions retained by HUD. The commenters believe that the "dual processing" will result in processing delays, stating that this may limit the program's effectiveness. Both commenters commended the Department's efforts to seek statutory changes in the legislation that would eliminate any legal requirements for the dual processing system.

HUD Response. The major HUD-retained review is the environmental review. At the time of the interim rule, HUD was not authorized to delegate this review. The Multifamily Housing Property Disposition Reform Act of 1994 has now provided authority to delegate this review. The Department currently is developing a rule to implement this new delegation authority.

Section 266.215 Functions delegated by HUD to HFAs.

Comments. Two comments (1, 7) addressed the rule's requirement that cost certification functions be performed subject to terms specified by the Commissioner, and a provision in the draft handbook that the cost certification be in a form acceptable to the HFA. The commenters recommended that these two provisions, which seem to be conflicting, be clarified. The commenters believe that, under the statute authorizing the program, HFAs are to use their own underwriting standards.

HUD Response. The regulation and handbook procedures which relate to cost certification referenced by the commenter are not in conflict with one another. Each provision relates to a different stage of the cost certification process. The handbook provision sets forth what procedures that a mortgagor of a mortgage insured under section 542(c) must follow when submitting cost certification to the HFA. Section 266.215 sets forth what standards (those established by the Commissioner) the HFA must follow in developing cost certification procedures to impose on mortgagors of projects to be insured pursuant to section 542(c). HUD standards require that HFAs establish cost certification procedures which take into consideration the underwriting procedures utilized by the HFA to process the loan. These cost certification procedures are designed to ensure that the actual costs approved were in fact incurred by the mortgagor and that such costs bear a direct relationship to the underwriting utilized in processing the loan.

Section 266.225 Labor standards.

Comments. Three commenters (1, 6, and 7) objected to the requirement that HFAs monitor the administration of the Davis-Bacon Act. Commenter 6 stated that compliance monitoring should not be delegated to entities without authority or compensation for its enforcement. Commenter 1 objected to the provision that HFAs bear financial responsibility for violations, stating that compliance with Davis-Bacon is the responsibility of the owner and contractor. Commenter 7 agreed, stating that no financial liability should be placed on HFAs except for gross negligence in fulfilling reasonable responsibilities to notify applicants of the applicability of Davis-Bacon.

HUD Responses. The Risk-Sharing program delegates to HFAs, to the maximum extent possible, the responsibilities for processing, underwriting, servicing and other aspects of program operation of projects. The ministerial functions of labor standards requirements comprise one of those delegated tasks. While HUD retains the enforcement function for labor standards, HFAs are delegated the payroll review and routine interviews generally carried out as part of the construction inspection function. This is consistent with the Department's long-standing delegation of routine Davis-Bacon functions to States and localities under the Community Development Block Grant program. The financial liability provision is the same as other delegations of labor standards functions.

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

Comment. Commenter 12 asked that "completion of construction" in paragraph (c) be defined so as not to preclude closing subject to escrows acceptable to the HFA, in order to assure completion of non-critical items that remain to be done.

HUD Response. The regulation does not define "completion of construction" since the exact definition will likely vary among the procedures of the 33 approved program participants. Because the Department wishes to allow HFAs to use their own procedures to the maximum extent possible, we do not think that a specific definition is necessary or desirable. This issue will be addressed further in the administrative instructions.

Section 266.405 Title.

Comment. Commenter 12 recommended deleting the requirement that marketable title to the mortgaged property be vested in the mortgagor on the date the mortgage is filed for record, stating that adequate protection is provided in § 266.405(b) and § 266.410(c).

HUD Response. The meaning of this comment is obscure. Paragraph (a) states that marketable title is required and when. Paragraph (b) describes what evidence of title consists of. Section 266.410(c) discusses that the mortgage must be a first lien.

Section 266.410 Mortgage provisions.

Comments. Commenter 3 objected to the requirement that the mortgage provide for full amortization of the loan over the term of the mortgage. The commenter stated that an HFA should be allowed to set the amortization period and term of the mortgage in order to have full access to capital resources. Commenter 12 suggested that use restrictions (paragraph (f)) should also be included in the regulatory agreement. The same commenter stated that the provision in paragraph (h) regarding modification of terms of the mortgage must result in a reduction of Section 8 rents should be deleted. The commenter stated that the Section 8 statute, regulations, and contract rights should determine HUD's rights to adjust rents, and that this provision could prove harmful where a project is in trouble financially and refinancing at a lower rate could provide the means to address the problem without causing a claim on the insurance fund.

HUD Response. Fully amortizing loan. While the Department wishes to permit HFAs participating in the program to use their own standards and requirements as much as possible, we nevertheless are obliged to develop a fiscally prudent program. Mortgages that are not fully amortizing have an inherent risk that the Department does not wish to incur, particularly in a pilot program that will test so many aspects of this new partnership.

Use restriction. The commenter suggests that the use restriction in the insured mortgage prohibiting the use of the property for any purpose other than that intended on the day the mortgage is executed also be included in the regulatory agreement between the HFA and the mortgagor. Section 266.505(b)(4) on the requirements of the regulatory agreement already contains this provision.

Section 8 projects. Section 8 projects are subject to the Section 8 statute, regulations and contract rights, as well as other HUD guidelines that may arise from time to time in response to Congressional or other requirements. This provision in the Risk-Sharing rule merely notifies participants of current requirements relative to reduction of Section 8 rents in certain circumstances.

Section 266.415 Mortgage lien and other obligations.

Comment. Commenter 12 suggested adding language to the end of paragraph (b) (contractual obligations) to allow a final closing to occur where there may be outstanding lien claims not yet determined by a court in situations where a mortgage lien is protected through title insurance.

HUD Response. The commenter's point is unclear. Paragraph (a) on liens and paragraph (b) on contractual obligations permit inferior liens and obligations that are acceptable to the HFA as long as the HUD mortgage is first in line for payment. If the commenter is referring to mechanics' and similar liens, HUD permits such liens in its own projects where the title company is willing to insure over such liens. There is nothing to preclude HFAs from using this procedure if it is acceptable to them.

Section 266.417 Authority to adjust mortgage insurance amount.

Comments. Three commenters (1, 7, and 12) raised questions about HUD retaining the authority to adjust the insured mortgage amount at any time up to final endorsement. The commenters are concerned that this will undermine the underwriting authority of HFAs.

HUD Response. The authority to adjust the mortgage amount is discussed at length in the preambles to both this rule and the interim rule. It is required because neither the current statutory language in section 542(c) nor the legislative history contains a delegation to HFAs for insurance of advances and cost certification, among other things. In developing the interim rule, the Department examined the legal propriety of such delegations because of the desire to make these delegations to HFAs for maximum program efficiency and determined that such delegations would be sustainable if HUD retains the authority to make adjustments to the insured mortgage amount up to and including the time of final endorsement. As long as the Department retains such ultimate authority, case law supports the legality of such delegation.

HUD's reservation of final authority to adjust the insured mortgage amount is not meant to suggest that HUD will, as a matter of policy, routinely review all decisions about insured advances and cost certification. On the contrary, the draft administrative instructions advise HUD Field Office staff to review a random sample against the HFA's procedures, not HUD's. Further, it states that few projects would likely be subject to any reduction in the mortgage amount. It is noted further that in HUD's own cost certification processes, few mortgage reductions are actually made. It has been emphasized in both written and oral communications to the Field staff that the Risk-Sharing program is a partnership and that the HUD Offices and HFAs should develop a strong working relationship where expectations on both sides are clear, including procedures for insured advances and cost certification.

Section 266.510 HFA responsibilities.

Comment. Commenter 12 suggested that annual audits (paragraph (b)) be required to be sent to HUD only when conditions are discovered which, in the judgment of the HFA, are likely to result in a claim.

HUD Response. With respect to the suggestion that annual project audits be submitted to HUD only when the HFA determines that there is a problem, please see discussion of § 266.115 relative to HUD's monitoring responsibilities. Receipt of the annual project audit and physical inspection report is essential to this monitoring responsibility.

Section 266.616 Assignments.

Comment. Commenter 12 objected to the prohibition against assignment of a mortgage and the requirement that legal title to the mortgage be held by the HFA. The commenter stated that substantial interest rate savings can be generated if insured loans can be sold directly in the market rather than being used as collateral for a bond issue. The commenter urged that these requirements be deleted, at least for Level I participants, where an HFA has a significant residual interest and risk, and where the HFA retains servicing.

HUD Response. The regulations require that the HFA be the mortgagee of record throughout the period of insurance. For the pilot program, HUD has determined that this provision is desirable to ensure that the HFA fully maintain its risk-sharing obligation in these transactions. However, the interim and final rules do allow transfer of up to 100 percent of the beneficial interest in a loan or pool of loans.

Section 266.656 Recovery of costs after final claim settlement.

Comment. Commenter 12 suggested deleting this section unless HUD also is willing to share additional losses incurred by an HFA after a final claim settlement.

HUD Response. The Department has provided for a full 5 years after a claim is paid for an HFA to dispose of a project. HUD must be able to assess its total liability and 5 years was considered to be a reasonable time period. This should be ample time for disposition by the HFA, and the Department fully expects projects to be disposed of within this time. Sales of projects within this 5-year period will result in a final claim settlement based on the sales price and an actual loss amount. However, a final settlement established through appraisals that may be artificially low based on failure to sell during the 5-year period could result in a significant windfall at the Government's expense within a short time. The Department must preclude this from happening. In any event, we anticipate and expect that HFAs will endeavor to dispose of defaulted properties well within the 5 years and receive a final claim settlement based on an actual loss amount.

V. Other Matters

National Environmental Policy Act

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations at 24 CFR part 50 implementing section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) at the time of development of the proposed rule and remains applicable to this final rule. The Finding is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the Office of Rules and Docket Clerk, 451 Seventh Street SW., Room 10276, Washington, DC 20410–0500.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that the rule will not have a significant economic impact on a substantial number of small entities. The program will provide a new system of federal credit enhancements to expand the Nation's supply of affordable housing. Qualified State and local housing finance agencies will participate in the program on a voluntary basis.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that the provisions of this rule will not have a significant impact on family formation, maintenance or well being, except to the extent that the program authorized by the rule will increase the supply of affordable housing, thereby improving the ability of families to find decent and affordable housing. Any such impact is beneficial and merits no further review under the Order.

Executive Order 12611, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12611, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. The Department has specifically provided in this rule that its regulation on preemption of State or local rent control laws does not apply to this program. Any preemption of those laws for purposes of the housing provided under the program will be done under authority granted the HFAs by State or local law. All authority delegated to HFAs by HUD under this program was done so because the Department believes that is the intent of Congress under section 542(c).

Semiannual Agenda of Regulations

This rule was listed as item number 1792 in the Department's Semiannual Agenda of Regulations published on November 14, 1994 (59 FR 57632, 57654) under Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 246

Grant programs—housing and community development, Intergovernmental relations, Loan programs—housing and community development, Low and moderate income housing, Rent subsidies.

24 CFR Part 266

Aged, Fair housing, Intergovernmental relations, Mortgage insurance, Low and moderate income housing, Reporting and recordkeeping requirements.

In accordance with the reasons set forth in the preamble, title 24 of the Code of Federal Regulations is amended as follows:

CHAPTER II—OFFICE OF ASSISTANT SECRETARY FOR HOUSING—FEDERAL HOUSING COMMISSIONER, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

1. The heading of subchapter B of chapter II is revised to read

SUBCHAPTER B—MORTGAGE AND LOAN INSURANCE PROGRAMS UNDER NATIONAL HOUSING ACT AND OTHER AUTHORITIES

PART 246—LOCAL RENT CONTROL

2. The authority citation for part 246 is revised to read as follows:

Authority: 12 U.S.C. 1715b; 42 U.S.C. 3535(d).

3. Section 246.1 is amended by adding paragraph (e) to read as follows:

§ 246.1 Scope and effect of regulations.

* * * * *

(e) This part applies to mortgages insured under the National Housing Act. It does not apply to mortgages insured under section 542(c) of the Housing and Community Development Act of 1992 (12 U.S.C. 1707).

4. Title 24 of the Code of Federal Regulations is amended by adding a new part 266 to read as follows:

PART 266—HOUSING FINANCE AGENCY RISK-SHARING PROGRAM FOR INSURED AFFORDABLE MULTIFAMILY PROJECT LOANS

Subpart A—General Provisions

Sec.

Subpart B—Housing Finance Agency Requirements

Subpart C—Program Requirements

Subpart D—Processing, Development, and Approval

Subpart E—Mortgage and Closing Requirements; HUD Endorsement

Subpart F—Project Management and Servicing

Authority: 12 U.S.C. 1707; 42 U.S.C. 3535(d).

Subpart A—General Provisions

§ 266.1 Purpose and scope.

(a) *Authority and scope.* (1) Section 542 of the Housing and Community Development Act of 1992 directs the Secretary of the Department of Housing and Urban Development, acting through the Federal Housing Administration, to carry out programs that will demonstrate the effectiveness of providing new forms of Federal credit enhancement for multifamily loans. Section 542, entitled, "Multifamily Mortgage Credit Demonstrations," provides new independent insurance authority that is not under the National Housing Act.

(2) Section 542(c) of the Housing and Community Development Act of 1992 specifically directs the Secretary to carry out a pilot program of risk-sharing with qualified State and local housing finance agencies (HFAs). The qualified HFAs are authorized to underwrite and process loans. HUD will provide full mortgage insurance on affordable multifamily housing projects processed by such HFAs under this program. Through risk-sharing agreements with HUD, HFAs contract to reimburse HUD for a portion of the loss from any defaults that occur while HUD insurance is in force.

(3) The extent to which HUD will direct qualified HFAs regarding their underwriting standards and loan terms and conditions is related to the proportion of the risk taken by an HFA.

(b) *Purpose.* The primary purpose of this pilot program is to test the effectiveness of providing new forms of credit enhancement for multifamily loans, *i.e.*, utilization of full insurance by HUD, pursuant to risk-sharing agreements with qualified housing finance agencies, for the development of affordable housing. The utilization of Federal credit enhancements should increase access to capital markets and, thereby, increase the supply of affordable multifamily housing. By permitting HFAs to underwrite, process, and service loans and to manage and dispose of properties that fall into default, HUD expects affordable housing to be made available to eligible families and individuals in a timely manner.

§ 266.5 Definitions.

Act means the Housing and Community Development Act of 1992, as amended.

Affordable housing means a project in which 20 percent or more of the units are both rent-restricted and occupied by families whose income is 50 percent or less of the area median income as determined by HUD, with adjustments for household size, or in which 40 percent (25 percent in New York City) or more of the units are both rent-restricted and occupied by families whose income is 60 percent or less of the area median income as determined by HUD, with adjustments for household size. A residential unit is rent-restricted if the gross rent with respect to such unit does not exceed 30 percent of the imputed income limitation applicable to such unit.

Board and Care/Assisted Living Facility means a residential facility for independent living that is regulated by State or local government that provides continuous protective oversight and assistance with the activities of daily living to frail elderly persons or other persons needing such assistance. Continuous protective oversight may range from as little as awareness on the part of management staff of residents' whereabouts (and the ability to intervene in the event of crisis) to a higher level of services and assistance. Assistance with the activities of daily living may include, but is not limited to, bathing, dressing, eating, getting in and out of bed or chairs, walking, going outdoors, using the toilet, laundry, home management, meal preparation, shopping, supervision of medication, and housework.

Commissioner means the Federal Housing Commissioner or his or her authorized representative.

Contract of insurance means the agreement evidenced by the endorsement of the Commissioner upon the credit instrument given in connection with an insured mortgage, incorporating by reference the regulations in this part and the applicable provisions of the Act.

Credit subsidy means the cost of a direct loan or loan guarantee under the Federal Credit Reform Act of 1990 as defined in subpart B of title 13 of the Omnibus Budget Reconciliation Act of 1990 (Pub.L. 101-508, approved Nov. 5, 1990).

Debenture means the instrument issued by the HFA to HUD upon payment of an insurance claim by HUD. The instrument must be in the standard form of a State or Municipal Debenture issued under the Uniform Commercial Code, where applicable, and must be supported by the full faith and credit of the HFA. The instrument must define the terms and conditions and the risk-sharing portion which the HFA will pay at the end of the term of the Debenture, and must be for the full amount of the claim payment. The term *Debenture* may include similar instruments, such as promissory notes and bonds, as mutually agreed upon by the Commissioner and the HFA.

Designated offices means the HUD Field Offices that are assigned the responsibility for program monitoring, imposing or recommending sanctions for program violations, and conducting informal hearings.

Firm approval letter means a letter issued by HUD to an HFA upon the positive completion of the HUD-retained reviews described in § 266.210. The letter will apportion units to the project and provide that, so long as the HFA is in good standing and absent fraud or misrepresentation by the HFA, HUD will endorse the project mortgage for insurance upon presentation by the HFA of the required Closing Docket and certifications required by this part and the Commissioner's administrative requirements.

Gross rent includes any utility allowance (including charges for the occupancy of a cooperative unit) determined by the Secretary after taking into account such determination under section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f). It does not include any payment under section 8 or any comparable rental assistance program (with respect to such unit or occupants thereof), nor does it include any fee for a supportive service that is paid to the owner of the unit (on the basis of the low-income status of the tenant of the unit) by any governmental program of assistance (or by an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) and exempt from tax under section 501(a) of the Code (26 U.S.C. 501(a)) if such program (or organization) provides assistance for rent and the amount of assistance provided for rent is not separable from the amount of assistance provided for supportive services. It also does not include any rental payment to the owner of the unit to the extent such owner pays an equivalent amount to the Farmers Home Administration under section 515 of the Housing Act of 1949 (42 U.S.C. 1485).

Housing finance agency or *HFA* means any public body, agency, or instrumentality created by a specific act of a State legislature or local municipality empowered to finance activities designed to provide housing and related facilities, through land acquisition, construction or rehabilitation. The term State includes the several States, Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, American Samoa and the Virgin Islands.

Insured mortgage means a valid single first lien given to secure advances on, or the unpaid purchase price of, real estate, under the laws of the State in which the real estate is located, together with the credit instrument, if any, secured thereby. Any other financing permitting on property insured under this part must be expressly subordinate to the insured mortgage.

Level I participants means HFAs that elect to take 50 percent or more of the risk of loss in 10 percent increments on mortgages issued under this program.

Level II participants means HFAs that elect to take 10 or 25 percent of the risk of loss on mortgages issued under this program, dependent on the loan-to-replacement cost or loan-to-value ratio of the project to be insured.

Mortgage means such a single first lien upon the real estate as is commonly given to secure advances on, or the unpaid purchase price of, real estate under the laws of the jurisdiction where the real estate is situated, together with the credit instruments, if any, secured thereby.

Mortgagee means the original lender under a mortgage and its successors and assigns approved by the Commissioner.

Mortgagor means the original borrower under a mortgage and its successor and assigns.

Multifamily housing means housing accommodations on the mortgaged property that are designed principally for residential use, conform to standards satisfactory to the Secretary, and consist of not less than 5 rental units (including cooperative units) on 1 site. These units may be detached, semidetached, row house, or multifamily structures.

Qualified HFA means an HFA that meets the requirements described in § 266.100(a).

Risk-Sharing Agreement means a contract between an HFA and the Commissioner that incorporates the terms, obligations, and conditions specified in this part.

Secondary financing means any grant, loan, inferior lien, or other form of indebtedness used during loan origination prior to HUD endorsement to finance a multifamily property insured under this part which is inferior to the insured mortgage as defined above and does not have first priority for payment.

Single Room Occupancy, or SRO, projects means multifamily projects consisting of units that are not required to contain food preparation or sanitary facilities for occupancy by single individuals capable of independent living.

Supportive services means any service provided under a planned program of services designed to enable residents of a residential rental property to remain independent and avoid placement in a hospital, nursing home, or intermediate care facility for the mentally or physically handicapped. In the case of a single room occupancy unit, the term includes any service provided to assist tenants in locating and retaining permanent housing. This definition is to be used in conjunction with the "gross rent" calculation.

§ 266.10 Allocations of Assistance and Credit Subsidy.

(a) *Notice of availability of assistance.* HUD will announce the availability of assistance under this program through publication of a Notice in the **Federal Register**. Such Notice will invite qualified HFAs to submit an application for approval and/or for additional units under this part. The Notice will indicate the deadline date for submission of applications, required documentation, the address to which the applications must be submitted and other relevant information.

(b) Credit subsidy will be obligated and allocated in accordance with outstanding Department instructions.

§ 266.15 Risk-Sharing Agreement.

(a) *Requirement for participation.* Execution of a Risk-Sharing Agreement is a prerequisite to participation in this program.

(b) *Provisions.* The Agreement will include, but not necessarily be limited to, the following:

(1) The allocation of units for the HFA;

(2) The risk sharing level or levels at which the HFA has been approved to participate in the program;

(3) The standards and procedures, and loan terms and conditions, to be used by the HFA in originating, underwriting, closing, project management and servicing of loans and for disposing of defaulted properties (which may be incorporated by reference to existing HFA documents);

(4) The identification of the individuals responsible for the overall underwriting decision (Chief Underwriter) and for project management, servicing, and property disposition (Housing Management Director), principal staff, and identification of individuals, with specimen signatures, with authority to sign loan documents or otherwise commit the HFA;

(5) Certifications by the HFA that it:

(i) Will allow periodic auditing and review by the Commissioner and the HUD Inspector General and their authorized agents regarding the HFA's participation in the program and permit an inspection and examination of its financial and other records as the Commissioner deems necessary for program review and monitoring purposes.

(ii) Will notify HUD promptly in writing any time the HFA changes principal staff, persons authorized to commit the HFA, and operating procedures, underwriting standards and procedures, and loan terms and conditions. Level II HFAs must also obtain the prior written approval of the Commissioner before implementing any amendment to the HFA's underwriting standards and procedures, and loan terms and conditions.

(iii) Has fully disclosed all underwriting standards and procedures, loan terms and conditions;

(iv) Will at all times comply with program financial requirements and notify HUD of any pending and actual changes that would adversely affect HFA operations or financial status;

(v) Will provide HUD with a copy of its annual certified audit report;

(vi) Will comply with all Fair Housing and Equal Opportunity requirements, *i.e.*, the Fair Housing Act (42 U.S.C. 3601–3619), as implemented by 24 CFR part 100; title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), as implemented by 24 CFR part 1; the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107), as implemented by 24 CFR part 146; section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by 24 CFR part 8; titles II and III of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101–12213), as implemented by 28 CFR part 35; section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), as implemented by 24 CFR part 135; the Equal Credit Opportunity Act (15 U.S.C. 1691–1691f), as implemented by 12 CFR part 202; Executive Order 11063, as amended by Executive Order 12259) (3 CFR 1958–1963 Comp., p. 652 and 3 CFR 1980 Comp., p. 307), as implemented by 24 CFR part 107; Executive Order 11246 (3 CFR 1964–1965 Comp., p. 339), as implemented by 41 CFR part 60; other applicable Federal laws and all regulations issued pursuant to these authorities in lending or investing funds in real estate mortgages; and applicable State and local fair housing and equal opportunity laws.

(vii) Will perform all functions in connection with loans originated under this program including underwriting, loan approval, servicing (including workouts), and disposition functions;

(viii) Has Lender's fidelity bond/surety bond and errors and omissions insurance;

(ix) Will abide by all applicable requirements issued by HUD for performing its functions under this part;

(x) Will issue debentures acceptable to HUD as collateral pending final settlement of a claim;

(xi) Will comply with the affordable housing requirements set forth under this part;

(xii) Will remain mortgagee of record on each loan underwritten under this part for the term of the mortgage insurance;

(xiii) Will follow other applicable Federal rules and regulations.

(6) An agreement to submit an annual certification that there has been no basic change in its organization, business activities, financial status or other information that was submitted in its application to participate in the program, and that the HFA has complied with all eligibility requirements during the past year, and if there has been any such change, the certification required by this paragraph must state the nature of the change;

(7) An agreement that any reinsurance of the HFA's share of the loss will be subordinate to the HUD insured first mortgage and will not affect reimbursement to HUD notwithstanding the timing of the actual settlement between the HFA and the reinsurer; and

(8) An agreement that all appraisal functions will be completed by Certified General Appraisers, licensed in the State in which the property is located, that all appraisal functions will be completed in accordance with the Uniform Standards of Professional Appraisal Practice, and that the HFA will comply with the gender and minority status reporting requirement of 24 CFR 267.3(c) and submit data as required by 24 CFR 267.3(c)(5)(i). In the selection of an appraiser, there shall be no discrimination on the basis of race, color, religion, national origin, sex, age or disability.

§ 266.20 Effect of amendments.

The Commissioner may amend the regulations in this part from time to time. Amendments to the regulations will not adversely affect the interest of a lender under a Contract of Insurance on any mortgage already insured or on any mortgage to be insured on which HUD has already issued its firm approval letter.

§ 266.25 Limitation on HUD insurance liability.

The Commissioner shall have no obligation to recognize or deal with anyone other than the HFA in its role as mortgagee of record and as party to a risk-sharing agreement with HUD with respect to the rights, benefits, and obligations of the HFA under the contract of insurance.

§ 266.30 Nonapplicability of 24 CFR part 246.

The provisions of 24 CFR part 246 do not apply to projects that are security for mortgages insured under this part.

§ 266.35 Waivers.

Upon completion of a determination and finding of good cause, the Commissioner may waive any provision of this part in any particular case subject only to statutory limitations, except that no waivers will be provided with respect to financial requirements for participating HFAs or underwriting standards required for Level II participants. Each waiver must be in writing supported by documentation of the facts and reasons that formed the basis for the waiver. HUD will publish a **Federal Register** notice informing the public of all waivers granted under this section in accordance with section 7(q) of the Department of Housing and Urban Development Act and HUD policies regarding publication of waivers.

Subpart B—Housing Finance Agency Requirements

§ 266.100 Qualified housing finance agency (HFA).

(a) *Qualifications.* To participate in the program, an HFA must apply and be specifically approved for the pilot program described in this part, in addition to being a HUD-approved mortgagee in accordance with 24 CFR 202.10 through 202.19. The HFA must maintain eligibility by continuing to comply with the requirements set forth in the Risk-Sharing Agreement and this part. To qualify for participation in the program described in this part, an HFA must:

(1) Carry the designation of "top tier" or its equivalent as evaluated by Standard and Poor's or any other nationally recognized rating Agency; or

(2) Receive an overall rating of "A" for the HFA for its general obligation bonds from a nationally recognized rating agency; or

(3) Otherwise demonstrate its capacity as a sound and experienced HFA based on, but not limited to, experience in financing multifamily housing, fund balances, administrative capabilities, investment policy, internal controls, financial management, portfolio quality, and State or local support; and

(4) Be a HUD-approved multifamily mortgagee in good standing; and

(5) Have at least five years experience in multifamily underwriting; and

(6) Certify that:

(i) The Department of Justice has not brought a civil rights suit against the Agency, and no suit is pending;

(ii) There has not been an adjudication of a civil rights violation in a civil action brought against the HFA by a private individual, unless the HFA is operating in compliance with a court order, or implementing a HUD-approved compliance agreement designed to correct the areas of noncompliance;

(iii) There are no outstanding findings of noncompliance with civil rights statutes, Executive Orders, or regulations as a result of formal administrative proceedings, or the Secretary has not issued a charge against the HFA under the Fair Housing Act, unless the HFA is operating under a compliance agreement designed to correct the areas of noncompliance.

(b) *Approval levels.* Approval levels consist of the following:

(1) Level I approval to originate, service, and dispose of multifamily mortgages where the HFA uses its own underwriting standards and loan terms and conditions, and assumes 50 to 90 percent of the risk of loss (increments of 10 percent).

(2) Level II approval to originate, service, and dispose of multifamily mortgages where the HFA uses underwriting standards and loan terms and conditions approved by HUD, and:

(i) When the loan-to-replacement cost ratio for new construction and substantial rehabilitation projects or the loan-to-value ratio for existing projects is greater than or equal to 75 percent, the HFA shall assume 25 percent of the risk of loss.

(ii) When the loan-to-replacement cost ratio for new construction and substantial rehabilitation or the loan-to-value ratio for existing projects is less than 75 percent, the HFA shall assume 10 percent, or 25 percent at the HFA's option, of the risk of loss.

(3) For HFAs who plan to use Level I and Level II processing, the underwriting standards and loan terms and conditions to be used on Level II loans must be approved by HUD.

§ 266.105 Application requirements.

(a) *Applications for approval as a HUD-approved multifamily mortgagee.* HFAs that are not HUD-approved mortgagees at the time of their application to participate in the pilot program must submit, concurrently, separate applications for approval to participate in the program and for approval to operate as a HUD-approved mortgagee. Application for approval as HUD-approved mortgagee must be submitted to HUD in accordance with the requirements established under 24 CFR 202.10 through 202.19.

(b) *Applications for participation in pilot program.* Applications from HFAs for approval to participate in the pilot program under this part must contain:

(1) Documentation satisfactory to the Commissioner that it meets the qualification requirements set forth in § 266.100(a).

(2) Evidence that the application fee of $10,000 has been wire-transferred to the U.S. Treasury in accordance with instructions in the Notice described in § 266.10(a). This fee will not be refunded once the application has been accepted for review.

(3) Opinion of legal counsel that the HFA has the necessary powers to participate in the pilot program. The opinion for an HFA with an overall rating of "A" on its general obligation bonds must also state that the general obligation will extend to the HFA's responsibilities under the Risk-Sharing Agreement and any debenture issued by the HFA to the Commissioner. If the opinion of counsel does not include this statement, the HFA must comply with the provisions of § 266.110(b).

(4) A copy of the HFA's procedures manual which describes, among other things, the manner in which the HFA will process mortgage loans, including their underwriting standards; a description of the approval process; the HFA fee schedule; a description of loan management, loan servicing, and property disposition activities; and the manner in which the HFA's and mortgagor's reserves and escrows (including letters of credit) will be established and controlled. The manual must also include a processing flow chart and an organizational chart.

(5) A plan describing how the HFA will ensure the highest quality compliance with all HFA and HUD requirements for the origination, processing, underwriting, insurance of advances, cost certification, loan closing, construction and permanent loan management, servicing and disposition of all projects insured or proposed to be insured under this part and for monitoring all work performed by contract personnel, if any.

(6) Identification of the individual responsible for the overall underwriting decision (chief underwriter), and the individual responsible for project management, loan servicing and property disposition (housing management director). These functions may not be contracted out by the HFA. The HFA may contract with outside sources for technical processing and loan servicing services. However, the application must demonstrate internal staff capacity to review and evaluate the work product of the contract sources and to make final underwriting, servicing, and property disposition conclusions.

(7) A description of oversight by State or local governmental agencies.

(8) A copy of the HFA's administrative manual covering its investment policies and overall business and financial practices.

(9) A statement containing the number of units the HFA proposes to process to firm approval letter during the period specified in the relevant **Federal Register** Notice published pursuant to § 266.10 of this part.

Note: The Federal Fiscal Year begins on October 1st, and ends on September 30th.

(10) HFA declaration of the risk-sharing arrangement it has selected i.e., Level I, Level II, or both Level I and Level II.

(11) Documentation containing:

(i) For HFAs that carry the designation of "top tier" or its equivalent, as evaluated by Standard and Poors or any other nationally recognized rating agency, evidence of such designation;

(ii) For HFAs that currently receive an overall rating of "A" for their general obligation bonds from a nationally recognized rating agency, evidence of such a rating; or

(iii) For any other HFA, evidence, as described in paragraph (c) of this section, that demonstrates its capacity as a sound and experienced agency based on, but not limited to, its experience in financing multifamily housing, fund balances, administrative capabilities, investment policy, internal controls and financial management, portfolio quality and State or local support.

(12) A certification from the HFA that it will at all times comply with the financial requirements in § 266.110 and, where applicable, maintain required reserves in a dedicated account in liquid funds (*i.e.*, cash, cash equivalents, or readily marketable securities) in a financial institution acceptable to HUD.

(13) Copies of audited financial statements for the HFA's last three fiscal years.

(14) Sample debenture form issued by the HFA.

(c) *Additional application requirements for HFAs without top-tier designation or overall rating of "A" on general obligation bonds.* HFAs without top-tier designation or an overall rating of "A" on general obligation bonds must submit, in addition to the items described in paragraph (b) of this section, such further information specified and required in the Federal Register notice published pursuant to § 266.10 of this part. This may include, but is not limited to, information concerning the geographic boundaries served (*e.g.*, city, county); a description of the organizational history which includes the authority to issue bonds and tax credits; length of time in business; general portfolio statistics; a description of all mortgage lending activities, including volume and default and foreclosure rates; a summary of delinquent loans in the last 12 months and the present status of each; relationship to the State or local Government, subsidiary or similar entity; and experience in multifamily housing.

§ 266.110 Reserve requirements.

(a) *HFAs with top-tier designation or overall rating of "A" on general obligation bonds.* An HFA with a top tier or equivalent designation or an HFA with an overall rating of "A" on its general obligation bonds is not required to have additional reserves so long as the HFA maintains that designation or rating, unless the Commissioner determines that a prescribed level of reserves is necessary. If the designation or rating is lost, the HFA must immediately establish a reserve account funded in accordance with the requirements set forth in paragraph (b) of this section. The reserve account must reflect all loans in the HFA's portfolio endorsed under this part.

(b) *Other HFAs.* (1) For other HFAs, a specifically identified dedicated account consisting entirely of liquid assets (*i.e.*, cash or cash equivalents or readily marketable securities) must be established and maintained in a financial institution acceptable to HUD. This account may be drawn upon by HUD and may be used by the HFA only with the prior written approval of HUD for the purpose of meeting the HFA's risk-sharing obligations under this part. The account must be established prior to the execution of any Risk Sharing Agreement under this part in an initial amount of not less than $500,000. Thereafter, the HFA must deposit at each loan closing and thereafter maintain the following additional amounts in the dedicated account:

(i) $10.00 per $1,000 of the unpaid principal balance that is equal to or less than $50 million; plus

(ii) $7.50 per $1,000 of the unpaid principal balance that is greater than $50 million and less than $150 million; plus

(iii) $5.00 per $1,000 of the unpaid principal balance that is greater than $150 million.

(2) The Commissioner may determine that higher levels of reserves may be necessary.

§ 266.115 Program monitoring and evaluation.

(a) *HFA certifications.* HUD will rely heavily on the certifications required of an HFA under this part and such additional certifications as the Commissioner may require in his or her administrative procedures. An HFA's continued participation in the program is predicated upon compliance with these certifications and its recommending for endorsement only those mortgages that comply with requirements of the program, including the HFA's origination, underwriting and closing procedures incorporated by reference into the Risk-Sharing Agreement.

(b) *Monitoring and evaluation.* Monitoring and evaluation activities will focus on compliance with program requirements and performance of the HFA in meeting program objectives of providing affordable housing. They will enable HUD to evaluate the effectiveness of the program as required by section 542(d)(3) of the Act.

(c) *Responsibility for monitoring and evaluation.* The Commissioner or his or her designee will be responsible for overall program monitoring and evaluation.

(d) *HFA submissions.* (1) For each loan insured under this part, basic underwriting and closing information must be submitted in a format specified by HUD and must accompany the closing docket submitted in accordance with § 266.420(b). Information relative to project management and servicing (including disposition) will be required after endorsement.

(2) The HFA must submit semi-annual reports setting forth the original mortgage amounts and outstanding principal balances on mortgages the HFA has underwritten, and the status of all projects insured under this part (*e.g.*, current, in default, acquired, under workout agreement, in bankruptcy). For projects where the mortgagor has declared bankruptcy, the HFA must submit information containing the date the bankruptcy was filed and the date the HFA requested the Court to dismiss the bankruptcy proceedings.

§ 266.120 Actions for which sanctions may be imposed.

Results of monitoring or other reviews may serve as the basis for the Commissioner's imposing sanctions on the HFA. Violations for which sanctions may be imposed include, but are not limited to:

(a) Commission of fraud or making a material misrepresentation by the HFA with respect to any mortgage insured or to any other matter under this part.

(b) Assignment or transfer of interest in any insured mortgage not in accord with the requirements of this part.

(c) Engagement in business practices that do not conform to generally accepted practices of prudent lenders or that demonstrate irresponsibility.

(d) Actions or conduct for which sanctions may be imposed against the HFA by HUD's Mortgagee Review Board under 24 CFR 25.9.

(e) Failure to:

(1) Reveal in its application for participation in the program all the information required by this part;

(2) Notify HUD in a timely manner of any pending or actual changes that would adversely affect HFA operations or financial status;

(3) Comply with all eligibility requirements for participation in the program;

(4) Issue debentures in the event of an initial claim payment by HUD, or to reimburse HUD for payment of a claim;

(5) Maintain its top tier designation or overall rating of "A" on general obligation bonds (or if such designation or rating is lost, comply with paragraph (e)(6) of this section);

(6) Establish and maintain a dedicated account, if required, or meet other financial obligations under this program;

(7) Perform underwriting, insurance of advances, cost certification, management, servicing or property disposition functions in a prudent and acceptable manner based on the standards incorporated by reference into the Risk-sharing Agreement;

(8) Submit financial and other reports required by this part;

(9) Comply with any regulatory requirement or with the Risk-Sharing Agreement;

(10) Maintain any other standards HUD may establish for participation in this program;

(11) Enforce the regulatory agreement provisions with respect to individual projects;

(12) Maintain a default ratio acceptable to HUD relative to the HFA's own portfolio and the defaults experienced under this part by other program participants;

(13) Consider adequately special risk circumstances without compensating for the higher risks of such transactions (*e.g.*, high loan-to-value ratios in areas with high vacancy or default rates); or

(14) Remit mortgage insurance premiums on a timely basis or failure to refund or credit mortgagor's accounts with overpaid mortgage insurance premiums.

§ 266.125 Scope and nature of sanctions.

(a) *Actions by Designated Office.* Depending on the nature and extent of the noncompliance with the requirements of this part, the Designated Office may take any of the following actions:

(1) Require that the HFA execute a trust agreement, establish a trust account in accordance with such agreement, and fund such account which may be drawn upon by HUD for purposes of meeting the HFA's risk-sharing obligations;

(2) Require the HFA to assume a higher portion of risk for the subject and future mortgages;

(3) Recommend to the Commissioner that the HFA be required to contract its loan servicing or property disposition functions to a third party;

(4) Recommend to the Commissioner that the mortgage insurance be terminated in cases of fraud or material misrepresentation by the HFA, or transfer of interest in an insured mortgage or assignment of the mortgage not in accord with the requirements of this part;

(5) Recommend to the Commissioner that approval for the HFA to participate in the program be suspended or withdrawn;

(6) Recommend to the Commissioner that the HFA's mortgagee approval be withdrawn pursuant to 24 CFR part 25 and/or that penalties be imposed pursuant to 24 CFR part 30;

(7) Require additional financial or other reports as may be necessary to monitor the activities of the HFA more closely.

(b) *Actions by Headquarters.* HUD Headquarters may impose any of the sanctions set forth or recommended in paragraph (a) of this section based upon its responsibilities for monitoring and overall program oversight.

(c) *Effect of suspension or withdrawal.* A suspension or withdrawal action will not affect any mortgage insurance endorsement in effect on the date of the suspension or withdrawal action.

(d) *HFA right to informal hearing.* (1) Any sanction imposed by a Designated Office in writing will be immediately effective, will state the grounds for the action, and provide for the HFA's right to an informal hearing before the Designated Office Representative or his or her designee in the Designated Office. The HFA may request an informal hearing within 10 working days of receipt of the suspension or withdrawal action and the Designated Office shall give the HFA an opportunity to be heard within 10 working days of receipt of the HFA's request. The HFA may be represented by counsel. The Designated Office Representative, or his or her designee, will advise the HFA in writing of the decision within 10 working days of the informal hearing, which decision will constitute final HUD action.

(2) Sanctions imposed by Headquarters will be handled in a similar manner, except that the informal hearing shall be before the Commissioner or his or her designee.

§ 266.130 Reinsurance.

Reinsurance will be permitted for the portion of the HFA risk, subject to the following requirements:

(a) Neither HUD's nor the HFA's position shall be subordinated;

(b) The reinsurance may not be used to reduce any reserve or fund balance requirements; and

(c) Such reinsurance does not incur an obligation to the Federal Government.

Subpart C—Program Requirements

§ 266.200 Eligible projects.

(a) *Minimum project size.* Projects insured under this part must consist of five or more rental dwelling units (including cooperative dwelling units) on one site. The site may consist of two or more non-contiguous parcels of land situated so as to comprise a readily marketable real estate entity within an area small enough to allow convenient and efficient management. The units may be detached, semi-detached, row houses, multifamily structures, or mobile home parks (exclusive of the mobile homes).

(b) *New construction or substantial rehabilitation.* Insurance under this part shall be for the purpose of financing the new construction or substantial rehabilitation of projects meeting the other requirements of this part as follows:

(1) *New construction* occurs when all project and construction elements are installed as part of the work.

(2) *Substantial rehabilitation* is any combination of the following work to the existing facilities of a project that aggregates to at least 15 percent of project's value after the rehabilitation and that results in material improvement of the project's economic life, liveability, marketability, and profitability: Replacement, alteration and/or modernization of building spaces, long-lived building or mechanical system components, or project facilities. Substantial rehabilitation may include but not consist solely of any combination of: minor repairs, replacement of short-lived building or mechanical system components, cosmetic work, or new project additions.

(c) *Existing projects.* Financing of existing properties without substantial rehabilitation is allowed.

(1) If an existing multifamily project is being acquired and HUD insurance under this part will be used to facilitate the acquisition of projects to increase the supply of affordable housing, such acquisitions are permissible if the HUD insured mortgage does not exceed the sum of the total cost of acquisition, cost of financing, cost of repairs, and reasonable transaction costs as determined by the Commissioner.

(2) If the property is subject to an HFA-financed loan to be refinanced and such refinancing will result in the preservation of affordable housing, refinancing of these properties is permissible if project occupancy is not less than 93 percent (to include consideration of rent in arrears), based on the average occupancy in the project over the most recent 12 months, and the mortgage does not exceed an amount supportable by the lower of the unit rents being collected under the rental assistance agreement or the unit rents being collected at unassisted projects in the market area that are similar in amenities and location to the project for which insurance is being requested. The HUD-insured mortgage may not exceed the sum of the existing indebtedness, cost of refinancing, the cost of repairs and reasonable transaction costs as determined by the Commissioner. If a loan to be refinanced has been in default within the 12 months prior to application for refinancing, the HFA must assume not less than 50 percent of the risk.

(d) *Projects receiving Section 8 rental subsidies or other rental subsidies.* Projects receiving project-based housing assistance payments under section 8 of the U.S. Housing Act of 1937 or other rental subsidies and meeting the requirements of this part may be insured under this part only if the mortgage does not exceed an amount supportable by the lower of the unit rents being or to be collected under the rental assistance agreement or the unit rents being collected at unassisted projects in the market that are similar in amenities and location to the project for which insurance is being requested.

(e) *SRO projects.* Single room occupancy (SRO) projects, as defined in § 266.5, are eligible for insurance under this part. Units in SRO projects must be subject to 30-day or longer leases; however, rent payments may be made on a weekly basis in SRO projects.

(f) *Board and care/assisted living facilities.* Board and care projects and assisted living facilities may be insured if the facilities meet the definition of those terms in § 266.5.

(g) *Elderly projects.* Projects or parts of projects specifically designed for the use and occupancy by elderly families. An elderly family means any household where the head or spouse is 62 years of age or older, and also any single person who is 62 years of age or older.

(h) *Zoning requirements.* Projects insured under this part must meet applicable zoning and other State/local government requirements.

§ 266.205 Ineligible projects.

The following projects and facilities are not eligible for insurance under this part:

(a) *Transient housing or hotels.* Rental for transient or hotel purposes. For purposes of this part, rental for transient or hotel purposes means:

(1) Rental for any period less than 30 days, or

(2) Any rental, if the occupants of the housing accommodations are provided customary hotel services such as room service for food and beverages, maid service, furnishing and laundering of linens, or valet service.

(b) *Projects in military impact areas.* A project located in a military impact area, as determined by HUD. A military impact area is generally a small or medium size metropolitan housing market area or a remote or isolated nonmetropolitan area where:

(1) Military-connected households comprise 25 percent or more of the total households in the market area. Military-connected households include active duty military personnel, civilian employees of the military service (Department of Defense) or other Federal agency at or in support of the installation, and employees of contractors and sub-contractors directly associated with the military installation, and their dependents. Unaccompanied active duty military personnel housed in military-controlled group quarters housing (barracks, BOQ's) are excluded; and

(2) There is concern about the continued stability of the current level of military strength and mission at the installation based on public announcements from the Department of Defense or the military service of impending changes; and

(3) The complete reduction of military-connected households living in nonmilitary rental housing over a 5 year period, at an annual average decline of 20 percent, would, taking into account growth in the civilian economy and normal changes in the housing inventory, cause an adverse impact on the private rental market resulting in an increase in the rental vacancy rate in the housing market of 10 percent or more at the end of that period.

(c) *Retirement service centers.* Projects designed for the elderly with extensive services and luxury accommodations that provide for central kitchens and dining rooms with food service or mandatory services.

(d) *Nursing homes or intermediate care facilities.* Nursing homes and intermediate care facilities licensed and regulated by State or local government and providing nursing and medical care.

§ 266.210 HUD-retained review functions.

Certain functions are retained by the Commissioner. The HFA must submit any information or certification required by the Commissioner to permit determination of compliance with requirements concerning:

(a) *Previous participation of principals.* Previous participation of the principals of the mortgagor, general contractor, consultant or management agent in accordance with the Previous Participation and Clearance Review Procedures of 24 CFR 200.210 through 200.218.

(b) *Environmental review requirements.* To determine compliance with the requirements of the National Environmental Policy Act of 1969 and related laws and authorities, the HUD Field Office will visit each project site proposed for insurance under this part and prepare the applicable environmental reviews as set forth in 24 CFR part 50 and for the related environmental criteria and standards in 24 CFR part 51. These requirements must be completed before HUD may issue the firm approval letter.

(c) *Intergovernmental review.* Intergovernmental review of Federal programs under Executive Order 12372, as implemented in 24 CFR part 52.

(d) *Subsidy layering.* The Commissioner, or Housing Credit Agencies through such delegation as may be in effect by regulation hereafter, shall review all projects receiving tax credits and some form of HUD assistance for any excess subsidy provided to individual projects and reduce subsidy sources in accordance with outstanding guidelines.

(e) *Davis-Bacon Act.* The Commissioner shall obtain and provide to the HFA the appropriate Department of Labor wage rate determinations under the Davis-Bacon Act, where they apply under this part.

§ 266.215 Functions delegated by HUD to HFAs.

The following functions are delegated by HUD to the HFAs:

(a) *Affirmative Fair Housing Marketing Plan (AFHMP).* The HFA will perform information collection, reviews and ministerial activities associated with the review and approval of the AFHMP for all projects. (Enforcement of fair housing and equal opportunity laws is the responsibility of HUD.)

(b) *Labor standards and prevailing wage requirements.* The HFA will perform information collection (e.g., payroll review and routine interviews) and other routine administration and enforcement functions regarding labor standards, in accordance with § 266.225(e). (Enforcement of Davis-Bacon prevailing wage requirements and labor standards is the responsibility of HUD.)

(c) *Insurance of advances.* In cases involving insured advances, the HFA will approve periodic advances of mortgage insurance proceeds during construction of the project subject to terms specified by the Commissioner.

(d) *Cost certification.* The HFA will perform cost certification functions on each insured loan subject to terms specified by the Commissioner.

(e) *Lead-Based Paint.* The HFA will perform functions related to Lead-Based Paint requirements subject to terms specified by the Commissioner.

§ 266.220 Nondiscrimination in housing and employment.

The mortgagor must certify to the HFA that, so long as the mortgage is insured under this part, it will:

(a) Not use tenant selection procedures that discriminate against families with children, except in the case of a project that constitutes "housing for older persons" as defined in section 807(b)(2) of the Fair Housing Act (42 U.S.C. 3607(b)(2));

(b) Not discriminate against any family because of the sex of the head of household;

(c) Comply with the Fair Housing Act (42 U.S.C. 3601-3619), as implemented by 24 CFR part 100; titles II and III of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101-12213), as implemented by 28 CFR part 35; section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), as implemented by 24 CFR part 135; the Equal Credit Opportunity Act (15 U.S.C. 1691-1691f), as implemented by 12 CFR part 202; Executive Order 11063, as amended by Executive Order 12259 (3 CFR 1958-1963 Comp., p. 652 and 3 CFR 1980 Comp., p. 307), and implemented by 24 CFR part 107; Executive Order 11246 (3 CFR 1964-1965 Comp., p. 339), as implemented by 41 CFR part 60; other applicable Federal laws and regulations issued pursuant to these authorities; and applicable State and local fair housing and equal opportunity laws. In addition, a mortgagor that receives Federal financial assistance must also certify to the HFA that, so long as the mortgage is insured under this part, it will comply with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), as implemented by 24 CFR part 1; the Age Discrimination Act of 1975 (42 U.S.C.

6101-6107), as implemented by 24 CFR part 146; and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by 24 CFR part 8.

§ 266.225 Labor standards.

(a) *Applicability of Davis-Bacon.* (1) All laborers and mechanics employed oy contractors or subcontractors on a project insured under this part shall be paid not less than the wages prevailing in the locality in which the work was performed for the corresponding classes of laborers and mechanics employed in construction of a similar character, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5), where the project meets all of the following conditions:

(i) Advances for the project are insured under this part;

(ii) The project involves new construction or substantial rehabilitation; and

(iii) The project will contain 12 or more dwelling units.

(2) Projects that do not meet these conditions are not subject to Davis-Bacon wage rates except to the extent required as a condition of other Federal assistance to the project.

(b) *Volunteers.* The provisions of this section shall not apply to volunteers under the conditions set out in 24 CFR part 70. In applying part 70, insurance under this part shall be treated as a program for which there is a statutory exemption for volunteers.

(c) *Labor standards.* Any contract, subcontract, or building loan agreement executed for a project subject to Davis-Bacon wage rates under paragraph (a) of this section shall comply with all labor standards and provisions of 29 CFR parts 1, 3 and 5 that would be applicable to a mortgage insurance program to which Davis-Bacon wage rates are made applicable by statute.

(d) *Advances.* (1) No advance under a mortgage on a project subject to Davis-Bacon wage rates under paragraph (a) of this section shall be eligible for insurance under this part unless the HFA determines (in accordance with the Commissioner's administrative procedures) that the general contractor or any subcontractor or any firm, corporation, partnership or association in which the contractor or subcontractor has a substantial interest was not, on the date the contract or subcontract was executed, on the ineligible list established by the Comptroller General, pursuant 29 CFR 5.12, issued by the Secretary of Labor.

(2) No advance under any mortgage on a project subject to Davis-Bacon wage rates under paragraph (a) of this section shall be insured under this part unless there is filed with the application for the advance, and no such mortgage shall be insured under this part unless there is filed with the HFA after completion of the construction or substantial rehabilitation, a certificate or certificates in the form required by the Commissioner, supported by such other information as the Commissioner may prescribe, certifying that the laborers and mechanics employed in the construction of the project involved have been paid not less than the wages determined by the Secretary of Labor to be prevailing in accordance with paragraph (a) of this section.

(e) *Responsibility for enforcement and administration.* The Commissioner retains responsibility for enforcement of labor standards under this section, but the Commissioner may delegate to the HFA information collection (*e.g.*, payroll review and routine interviews) and other routine administration and enforcement functions, subject to monitoring by the Commissioner. Where routine administration and enforcement functions are delegated to the HFA, the HFA shall bear financial responsibility for any deficiency in payment of prevailing wages or, where applicable under 29 CFR part 1, any increase in compensation to a contractor, that is attributable to any failure properly to carry out its delegated functions. For example, failure of an HFA to supply or ensure inclusion of the proper contract clauses or wage determination in a contract or building loan agreement may require the HFA to fund increased compensation to a contractor as the result of increased wages attributable to incorporation of the proper clauses and wage determination.

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 certifications 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.

(e) *Mortgagee of record.* The HFA must remain the mortgagee of record as long as mortgage insurance is in force.

§ 266.315 Recordkeeping requirements.

The mortgagor and the builder, if there is an identity of interest with the mortgagor, shall keep and maintain records of all costs of any construction or other cost items not representing work under the general contract and to make available such records for review by the HFA or HUD, if requested.

Subpart E—Mortgage and Closing Requirements; HUD Endorsement

§ 266.400 Property requirements—real estate.

The mortgage must be on real estate held:

(a) In fee simple;

(b) Under a renewable lease of not less than 99 years; or

(c) Under a lease executed by a governmental agency, or other lessor approved by the HFA, that has a term at least 10 years beyond the end of the mortgage term.

§ 266.402 Recordation.

At the time of initial endorsement in the case of insurance of advances or at the time of final endorsement in the case of insurance upon completion, the HFA shall make certain that the mortgage and the regulatory agreement are recorded.

§ 266.405 Title.

(a) *Eligibility of title.* Marketable title to the mortgaged property must be vested in the mortgagor on the date the mortgage is filed for record.

(b) *Title evidence.* The HFA must receive a title insurance policy that ensures that marketable title is vested in the mortgagor, that a survey acceptable to the HFA has been performed, and that no existing impediments to title concern, or exist on, the property.

§ 266.410 Mortgage provisions.

(a) *Form.* The mortgage and note must be executed on a form approved by the HFA for use in the jurisdiction in which the property is located.

(b) *Mortgagor.* The mortgage must be executed by a mortgagor determined eligible by the HFA.

(c) *First lien.* The mortgage must be a single first lien on property that has first priority for payment and that conforms with property standards prescribed by the HFA.

(d) *Single asset mortgagor.* The mortgage must require that the mortgagor is a single asset mortgagor.

(e) *Amortization.* The mortgage must provide for complete amortization (*i.e.*, regularly amortizing) over the term of the mortgage.

(f) *Use restrictions.* The mortgage must contain a covenant prohibiting the use of the property for any purpose other than the purpose intended on the day the mortgage was executed. The conversion of a project from rental to cooperative is not a "change in use" as that term is employed in the mortgage since the property will continue to have a residential use both before and after conversion.

(g) *Hazard insurance.* The mortgage must contain a covenant, acceptable to the HFA, that binds the mortgagor to keep the property insured by one or more standard policies for fire and other hazards stipulated by the HFA. A standard mortgagee clause making loss payable to the HFA must be included in the mortgage. The HFA is responsible for assuring that insurance is maintained in force and in the amount required by this paragraph and the mortgage. The HFA must ensure that the insurance coverage is in an amount that will comply with the coinsurance clause applicable to the location and character of the property, but not less than 80 percent of the actual cash value of the insurable improvements and equipment. If the mortgagor does not obtain the required insurance, the HFA must do so and assess the mortgagor for such costs. These insurance requirements apply as long as the HFA retains an interest in the project and final claim settlement has not been completed or the contract of insurance has not been otherwise terminated.

(h) *Modification of terms.* The mortgage must contain a covenant requiring that, in the event that the HFA and owner agree to a modification of the terms of the mortgage (*e.g.*, to reflect a reduction of the interest rate if reductions are realized in the underlying bond rates for the project), Section 8 rents would be reduced in accordance with HUD guidelines.

(i) *Regulatory Agreement.* The mortgage must contain a provision incorporating the Regulatory Agreement by reference.

§ 266.415 Mortgage lien and other obligations.

(a) *Liens.* At the initial and final closing of the loan, the mortgagor and the HFA must certify, and the HFA must determine, that the property covered by the mortgage is free from all liens other than the lien of the insured mortgage, except that the property may be subject to such inferior lien or liens as approved by the HFA as long as the insured mortgage has first priority for payment.

(b) *Contractual obligations.* At the final closing of the loan, the mortgagor and the HFA must certify, and the HFA must determine, that all contractual obligations in connection with the mortgage transaction, including the purchase of the property and the improvements to the property, are paid. An exception is made for obligations that are approved by the HFA and determined by the HFA to be of a lesser priority for payment than the obligation of the insured mortgage.

§ 266.417 Authority to adjust mortgage insurance amount.

In order to protect the mortgage insurance funds, the Commissioner has authority in his or her sole discretion, at any time prior to and including final endorsement, to adjust the amount of the mortgage insurance.

§ 266.420 Closing and endorsement by the Commissioner.

(a) *Closing.* Before disbursement of loan advances in periodic advances cases, and in all cases after completion of construction, repair or substantial rehabilitation, the HFA must hold a closing and submit a closing docket with required documentation to the Commissioner or the Commissioner's authorized Departmental representative for insurance of the mortgage by endorsement of the mortgage note. The note must provide that the mortgage is insured under section 542(c) of the Housing and Community Development Act of 1992 and the regulations set forth at 24 CFR part 266 in effect on the date of endorsement. The note must also specify the date of endorsement, *i.e.*, the date of HUD endorsement of the project mortgage, and the risk of loss assumed by the HFA and by HUD.

(b) *Closing docket.* The HFA's submission must include a certification that it has obtained written HUD approval of compliance with the requirements referred to in § 266.210, and certifications and information as follows:

(1) Information concerning the mortgage amount and term, location, number and type of units, income and expenses, rents, projects and market occupancy percentages, value/replacement cost, interest rate, and similar statistical information in accordance with the Commissioner's administrative procedures.

(2) Copies of the amortization schedule, Note and Risk-Sharing Agreement.

(3) Certification that the loan has been processed, prudently underwritten (including a determination that a market exists for the project), cost certified (if the project is being submitted for final endorsement) and closed in full compliance with the HFA's standards and requirements (or where the mortgage is insured under Level II, in full compliance with the underwriting standards and loan terms and conditions as approved by HUD).

(4) At the time of final endorsement, a certification for periodic advances cases, if submitted for final endorsement, that advances were made proportionate to construction progress.

(5) A copy of the HFA-approved cost certification if the project is submitted for final endorsement.

(6) A certification that equal employment requirements are followed.

(7) A certification that the HFA has reviewed and approved the Affirmative Fair Housing Marketing Plan and found it acceptable.

(8) A certification that a dedicated account, if required, has been increased in accordance with § 266.110(b).

(9) Certifications required under § 266.415 concerning liens and contractual obligations.

(10) Copies of the Hazard Insurance Policy with a clause making the loss payable to the HFA.

(11) For projects subject to Davis-Bacon prevailing requirements under § 266.225, the certification and information concerning payment of prevailing wage rates required by § 266.225(d).

(12) Certified copies of mortgage (deed of trust) with attached regulatory agreement, and note for HUD files.

Subpart F—Project Management and Servicing

§ 266.500 General.

The HFA will have full responsibility for the administration of the provisions of this subpart and for managing and servicing projects insured under this part. The HFA is responsible for monitoring and determining the compliance of the project owner in accordance with the provisions of this subpart. HUD will monitor the performance of the HFA, not the project owner, to determine its compliance with the provisions covered under this subpart.

§ 266.505 Regulatory agreement requirements.

(a) *General.* (1) The HFA must execute a Regulatory Agreement, in recordable form, between the mortgagor and the HFA to be in force for the duration of the insured mortgage and note or bond. The Regulatory Agreement must include a description of the property. The Regulatory Agreement must be incorporated by reference into the mortgage and recorded with the mortgage.

(2) The Regulatory Agreement executed between the HFA and the mortgagor must be binding upon the mortgagor and any of its successors and assigns and upon the HFA and any of its successors for so long as the mortgage is insured by HUD or HUD holds an HFA debenture issued in connection with a claim arising from the insured mortgage. The HFA may not assign the Regulatory Agreement.

(3) The HFA will enforce the Regulatory Agreement and take actions against any mortgagors who violate its provisions. Such actions may involve a declaration of default and application to any court for specific performance of the agreement.

(b) *Requirements.* The Regulatory Agreement must require the mortgagor to comply with the provisions of this part and obligate the mortgagor, among other things, to:

(1) Make all payments due under the mortgage and note/bond.

(2) Where necessary, establish a sinking fund for future capital needs.

(3) Maintain the project as affordable housing, as defined in § 266.5.

(4) Continue to use dwelling units for their original purposes.

(5) Comply with such other requirements as may be established by the HFA and set forth in the Regulatory Agreement.

(6) Maintain the project in good physical condition.

(7) Maintain complete books and records established solely for the project and provide the HFA with an audited financial statement based on these books and records and performed in accordance with standards for financial audits of the U. S. General Accounting Office's government auditing standards, issued by the Comptroller of the United States.

(8) Comply with the Affirmative Fair Housing Marketing Plan and all other fair housing and equal opportunity requirements.

(9) Operate as a single asset mortgagor.

(10) Make books and records available for HUD or General Accounting Office (GAO) review with appropriate notification.

(11) Permit HUD officials or employees to inspect the project upon request by the Commissioner.

(c) *Enforcement.* The Regulatory Agreement shall be enforced by the HFA.

§ 266.510 HFA responsibilities.

(a) *Inspections.* The HFA must perform annual physical inspections of the projects and provide a copy of the inspection report to HUD. If a project is not in safe and sanitary condition, the HFA must provide a summary to HUD of actions required, with target dates, to correct unresolved findings.

(b) *Annual audits of projects.* The HFA must analyze projects' annual audits and provide a copy to HUD along with a summary of unresolved findings and actions planned, with target dates, to correct unresolved findings.

(c) *HFA's annual financial statement.* The HFA must provide HUD with an annual audited financial statement in accordance with the requirements of 24 CFR part 44.

§ 266.515 Record retention.

(a) *Loan origination and servicing.* Records pertaining to the mortgage loan origination and servicing of the loan must be maintained for as long as the insurance remains in force.

(b) *Defaults and claims.* Records pertaining to a mortgage default and claim must be retained from the date of default through final settlement of the claim for a period of no less than three years after final settlement.

§ 266.520 Program monitoring and compliance.

HUD will monitor the performance of the HFA in accordance with the provisions covered under this subpart.

Subpart G—Contract Rights and Obligations

Mortgage Insurance Premiums

§ 266.600 Mortgage insurance premium: Insurance upon completion.

(a) *Initial premium.* For projects insured upon completion, on the date of the final closing, the HFA shall pay to the Commissioner an initial premium equal to the prescribed percentage, in the sliding scale chart that is shown in § 266.604(b), of the face amount of the mortgage.

(b) *Premium payable with first payment of principal.* On the date of the first payment of principal the HFA shall pay a second premium (calculated on a per annum basis) equal to the prescribed percentage of the average outstanding principal obligation of the mortgage from the final closing date to the year following the date of the first principal payment, less the amount paid on the date of the final closing.

(c) *Subsequent premiums.* Until one of the conditions is met under § 266.606(a), the HFA on each anniversary of the date of the first principal payment shall pay to the Commissioner an annual mortgage insurance premium equal to the prescribed percentage of the average outstanding principal obligation of the mortgage, without taking into account delinquent payments, or partial claim payment under § 266.630, or prepayments, for the year following the date on which the premium becomes payable.

§ 266.602 Mortgage insurance premium: Insured advances.

(a) *Initial premium.* For projects involving insured advances, on the date of the initial closing, the HFA shall pay to the Commissioner an initial premium equal to the prescribed percentage, in the sliding scale chart that is shown in § 266.604(b), of the face amount of the mortgage.

(b) *Interim premium.* On each anniversary of the initial closing, the HFA shall pay an interim mortgage insurance premium equal to the prescribed percentage of the face amount of the mortgage. The HFA shall continue to pay the interim mortgage insurance premiums until the date of the first principal payment.

(c) *Premium payable with first payment of principal.* On the date of the first principal payment, the HFA shall pay a mortgage insurance premium equal to the prescribed percentage of the average outstanding principal obligation of the mortgage for the year following the date of the first principal payment. The HFA shall adjust this payment by deducting an amount equal to the portion of the last premium paid that is attributable to the months after the date of the first payment to principal. Any partial month is to be counted as a whole month. The HFA shall remit the net adjusted mortgage premium to the Commissioner and refund the amount of the adjustment (overpayment) to the mortgagor.

(d) *Subsequent premiums.* Until one of the conditions is met under § 266.606(a), the HFA on each anniversary of the date of the first principal payment shall pay to the Commissioner an annual mortgage insurance premium equal to the prescribed percentage of the average outstanding principal obligation of the mortgage, without taking into account delinquent payments, prepayments, or a partial claim payment under § 266.630, for the year following the date on which the premium becomes payable.

§ 266.604 Mortgage insurance premium: Other requirements.

(a) *Premium calculations on or after first principal payment.* The premiums payable to the Commissioner on and after the first principal payment shall be calculated in accordance with the amortization schedule prepared by the HFA for final closing and the prescribed percentage as set forth in the sliding scale chart in paragraph (b) of this section without taking into account delinquent payments or prepayments.

(b) *Prescribed percentages.* The following sliding scale chart provides the prescribed percentage, based upon the respective share of risk, that is to be used in calculating mortgage insurance premiums under this section:

Percentage share of risk		Prescribed percentage for calculating HFA's annual MIP
HUD	HFA	
90	10	.45
75	25	.375
50	50	.25
40	60	.2
30	70	.15
20	80	.1
10	90	.05

(c) *Closing information.* The HFA shall provide final closing information to the Commissioner within 15 days of the final closing in a format prescribed by the Commissioner. In addition, the HFA shall submit a copy of the amortization schedule. This amortization shall be used to compute and collect all future mortgage insurance premiums subject to § 266.600(c) or § 266.602(d). If the mortgage is modified, the HFA shall submit to the Commissioner a copy of the revised amortization schedule, which shall be used to compute and collect all future mortgage insurance premiums subject to § 266.600(c) or § 266.602(d).

(d) *Due date for premium payments.* Mortgage insurance premiums are due on the first day of the month of the anniversary of the first payment to principal. Any premium received by the Commissioner more than 15 days after the due date shall be assessed a late charge of 4 percent of the amount of the premium payment due. Mortgage insurance premiums that are paid to the Commissioner more than 30 days after the due date shall begin to accrue interest at the rate prescribed by the Treasury Fiscal Requirements Manual.

§ 266.606 Mortgage insurance premium: Duration and method of paying.

(a) *Duration of payments.* Mortgage insurance premium payments must continue annually until one of the following occurs:

(1) The mortgage is paid in full;

(2) A deed to the HFA is filed for record;

(3) An application for initial claim payment is received by the Commissioner; or

(4) The Contract of Insurance is otherwise terminated.

(b) *Method of payment.* The HFA shall pay any mortgage insurance premium required by this part in cash.

§ 266.608 Mortgage insurance premium: Pro rata refund.

If the Contract of Insurance is terminated by payment in full or is terminated by the HFA on a form prescribed by the Commissioner, after the date of the first payment to principal, the Commissioner shall refund any mortgage insurance premium for the period after the effective date of the termination of insurance. The refund shall be mailed to the HFA for credit to the mortgagor's account. In computing the pro rata portion of the annual mortgage insurance premium, the date of termination of insurance shall be the last day of the month in which the mortgage is prepaid or the Commissioner receives a notification of termination, whichever is later. No refund shall be made if the insurance was terminated because of the submission of an application for initial claim payment or if the termination occurs before the date of the first payment to principal.

Insurance Endorsement

§ 266.612 Insurance endorsement.

(a) *Initial endorsement.* The Commissioner shall indicate his or her insurance of the mortgage by endorsing the original credit instrument.

(b) *Final endorsement.* When all advances of mortgage proceeds have been made and all other applicable terms and conditions have been complied with to the satisfaction of the Commissioner, the Commissioner shall indicate on the original credit instrument the total of all advances that have been approved for insurance and again endorse such instrument.

(c) *Effect of endorsement.* From the date of initial endorsement, the Commissioner and the HFA shall be bound by the provisions of this subpart to the same extent as if they had executed a contract including the provisions of this subpart and the applicable sections of the Act.

Assignments

§ 266.616 Transfer of partial interest under participation agreement.

The HFA may not assign the mortgage. However, a partial interest in an insured mortgage or pool of insured mortgages may be transferred under a participation agreement or arrangement (such as a declaration of trust or the issuance of pass-through certificates), without obtaining the approval of the Commissioner, if the following conditions are met:

(a) Legal title to the insured mortgage or mortgages shall be held by the HFA; and

(b) The participation agreement, declaration of trust or other instrument under which the partial interest is transferred shall provide that:

(1) The HFA shall remain mortgagee of record under the contract of mortgage insurance;

(2) The Commissioner shall have no obligation to recognize or deal with anyone other than the HFA with respect to the rights, benefits, and obligations of the mortgagee under the contract of insurance; and

(3) The mortgagor shall have no obligation to recognize or do business with any one other than the HFA or, if applicable, its servicing agent with respect to rights, benefits, and obligations of the mortgagor or the mortgagee under the mortgage.

Termination

§ 266.620 Termination of Contract of Insurance.

The Contract of Insurance shall terminate if any of the following occurs:

(a) The mortgage is paid in full;

(b) The HFA acquires the mortgaged property and notifies the Commissioner that it will not file an insurance claim;

(c) A party other than HFA acquires the property at a foreclosure sale;

(d) The HFA notifies the Commissioner of Termination of Insurance (voluntary termination);

(e) The HFA or its successors commit fraud or make a material misrepresentation to the Commissioner with respect to information culminating in the Contract of Insurance on the mortgage or while the Contract of Insurance is in existence;

(f) The receipt by the Commissioner of an Application for Final Claims Settlement;

(g) If the HFA acquires the mortgaged property and fails to make an initial claim.

§ 266.622 Notice and date of termination by the Commissioner.

The Commissioner shall notify the HFA that the Contract of Insurance has been terminated and shall establish the effective date of termination. The termination shall be the last day of the month in which one of the events specified in § 266.620 occurs.

Claim Procedures

§ 266.626 Notice of default and filing an insurance claim.

(a) *Definition of default.* (1) A monetary default exists when the mortgagor fails to make any payment due under the mortgage.

(2) A covenant default exists when the mortgagor fails to perform any other covenant under the provision of the mortgage or the regulatory agreement, which is incorporated by reference in the mortgage. An HFA becomes eligible for insurance benefits on the basis of a covenant default only after the HFA has accelerated the debt and the owner has failed to pay the full amount due, thus converting a covenant default into a monetary default.

(b) *Date of default.* For purposes of this subpart, the date of default is:

(1) The date of the first uncorrected failure to perform a mortgage covenant or obligation; or

(2) The date of the first failure to make a monthly payment that is not covered by subsequent payments, when such subsequent payments are applied to the overdue monthly payments in the order in which they were due.

(c) *Notice of default.* If a default (as defined in paragraph (a) of this section) continues for a period of 30 days, the HFA must notify the Commissioner within 10 days thereafter, unless the default is cured within the 30-day period. Unless waived by the Commissioner, the HFA must submit this notice monthly, on a form prescribed by the Commissioner, until the default has been cured or the HFA has filed an application for an initial claim payment. In cases of mortgage acceleration, the mortgagee must first give notice of the default.

(d) *Timing of claim filing.* Unless a written extension is granted by HUD, the HFA must file an application for initial claim payment (or, if appropriate, for partial claim payment) within 75 days from the date of default and may do so as early as the first day of the month following the month for which a payment was missed. Upon request of the HFA, HUD may extend, up to 180 days from the date of default, the deadline for filing a claim. In those cases where the HFA certifies that the project owner is in the process of transacting a bond refunder, refinancing the mortgage, or changing the ownership for the purpose of curing the default and bringing the mortgage current, HUD may extend the deadline for filing a claim beyond 180 days, not to exceed 360 days from the date of default.

§ 266.628 Initial claim payments.

(a) *Determination of initial claim amount.* (1) The initial claim amount is based on the unpaid principal balance of the mortgage note as of the date of default, plus interest at the mortgage note rate from date of default to date of initial claim payment. The mortgage note interest component of the initial claim amount is subject to curtailment as provided in paragraph (b) of this section.

(2) HUD shall make an initial claim payment to the HFA that is equal to the initial claim amount, less any delinquent mortgage insurance premiums, late charges and interest, assessed under § 266.604(d).

(3) The HFA must use the proceeds of the initial claim payment to retire any bonds or any other financing mechanisms securing the mortgage within 30 days of the initial claim payment. Any excess funds resulting from such retirement or repayment shall be returned to HUD within 30 days of the retirement.

(b) *Curtailment of interest for late filings.* In determining the mortgage note interest component of the initial claim amount, if the HFA fails to meet any of the requirements of this section within the specified time (including any granted extension of time), HUD shall curtail the accrual of mortgage note interest by the number of days by which the required action was late.

(c) *Method of payment.* HUD shall pay the claim in cash.

§ 266.630 Partial payment of claims.

(a) *General.* When the Commissioner receives a claim for a partial payment under § 266.626(d), the Commissioner may make a partial payment of claim in accordance with the requirements of this section. If the HFA has not previously received a partial claim payment, the HFA may file a claim for a partial claim payment under § 266.630. Otherwise, the HFA must file for an initial claim payment under § 266.628.

(b) *HFA submission.* In addition to any other requirements set forth in administration instructions, the HFA must provide the following information with its application for a partial claim payment:

(1) The amount by which the HFA will reduce the principal on the insured mortgage and the amount of delinquent interest on the insured mortgage that the HFA will defer based on the anticipated closing date; and

(2) A certification that:

(i) The amount of the principal reduction of the insured first mortgage does not exceed 50 percent of the unpaid principal balance;

(ii) The relief resulting from the partial claim payment when considered with other resources available to the project are sufficient to restore the financial viability of the project;

(iii) The project is or can (at reasonable cost) be made structurally sound;

(iv) The management of the project is satisfactory;

(v) The default under the insured mortgage was beyond the control of the mortgagor.

(c) *Claim processing.*—(1) *Acceptable application.* If the HFA's application is acceptable, the Commissioner shall notify the HFA to process the partial payment, which will include the modification of the existing mortgage and the execution by the mortgagor of a second mortgage payable to the HFA. When the second mortgage is closed, the HFA shall notify the Commissioner, in a form and manner prescribed in administrative instructions. Upon receipt of notice from the HFA, the Commissioner shall make the partial claim payment.

(2) *Unacceptable application.* If the application is unacceptable, the Commissioner shall either advise the HFA of the information needed to make the application acceptable or return the application for further action. The HFA is granted an extension of 30 days from the date of any notification for further action.

(d) *Requirements*—(1) *One partial claim payment.* Only one partial claim payment may be made under a contract of insurance.

(2) *Partial claim payment amount.* The amount of the partial claim payment is equal to the amount of relief provided by the HFA in the form of a reduction in principal and a reduction of delinquent interest due on the insured mortgage times the lesser of HUD's percentage of the risk of loss or 50 percent.

(3) *HFA second mortgage.* Repayment of the relief provided by the HFA must be secured by a second mortgage to the HFA. This second mortgage may provide for postponed amortization and may not be assigned by the HFA. This second mortgage is not insured under this part and may not be insured under any other HUD-related insurance program.

(4) *Partial claim repayment by HFA.* The HFA must remit to HUD a

percentage of all amounts collected on the HFA's second mortgage within 15 days of receipt by the HFA. The applicable percentage is equal to the percentage used in paragraph (d)(2) of this section to determine the partial claim payment amount. Payments made after the 15th day must include a 5 percent late charge plus accrued interest at the debenture rate.

(5) *Certified statements of amounts collected.* As long as the second mortgage remains of record, the HFA must submit to the Commissioner an annual certified statement of the amounts collected by the HFA. The HFA must submit a final certified statement within 30 days after the second mortgage is paid in full, foreclosed, or otherwise terminated.

§ 266.632 Withdrawal of claim.

In case of a default and subsequent filing of claim, the HFA shall determine the form of workout or modification and will inform HUD of the type of mortgage relief determined to be appropriate. If the default is cured after the claim is made but before the initial claim payment is paid by HUD, the HFA may, in writing, withdraw the claim, and insurance will continue as if the default had not occurred.

§ 266.634 Reinstatement of the contract of insurance.

(a) *Conditions for reinstatement.* After the initial claim payment, HUD may reinstate the contract of insurance on the following conditions:

(1) The HFA has not acquired the project;

(2) The mortgagor has cured the default; and

(3) The HFA requests that HUD reinstate the contract of insurance.

(b) *Notification of reinstatement.* If reinstatement is acceptable to HUD, HUD shall notify the HFA of the date the contract of insurance will be reinstated and shall advise the HFA of the payment needed to reinstate the contract of insurance.

(c) *Payment.* Within 30 days of the date of the notice under paragraph (b) of this section, the HFA shall pay HUD an amount equal to the initial claim amount, as determined under § 266.628(a)(1), plus an amount equal to the accrued and unpaid interest on the HFA Debenture through the reinstatement date, plus an amount equal to the mortgage insurance premium for the period from the date of reinstatement of the contract of insurance to the next anniversary date for payment of the mortgage insurance premium.

(d) *Cancellation of debenture.* Upon receipt from the HFA of the amount specified in paragraph (c) of this section, HUD shall return the HFA debenture for cancellation.

(e) *Continuation of contract of insurance.* Upon reinstatement, the contract of insurance shall continue as if the default had not occurred.

§ 266.636 Insuring new loans for defaulted projects.

The HFA may not make another loan that is insured under this part to the same owner in the same project if HUD has paid a claim under this part.

§ 266.638 Issuance of HFA Debenture.

(a) *Condition to initial claim payment.* The HFA must issue an instrument in the form of a debenture to HUD within 30 days of receiving the initial claim payment. The HFA Debenture shall meet the following requirements and shall be in a form that has been approved by HUD as part of the application approval process.

(b) *Term of HFA Debenture.* The HFA Debenture shall be dated the same date that the initial claim payment is issued. The HFA Debenture shall have a term of five years in order to afford the mortgagor ample time to cure the default or the HFA time to foreclose and/or resell the project. HUD may provide a written extension of the five year term if the HFA certifies and provides documentation that the project owner has filed bankruptcy and the HFA is taking action to have the project discharged from the bankruptcy. The HFA Debenture shall, during this extended period, continue to bear interest as described below at HUD's published debenture rate at the earlier of initial endorsement or final endorsement. Interest shall be due and payable annually on the anniversary date of the initial claim payment. Interest is due on the full face amount of the HFA Debenture through the term of the HFA Debenture or through the date an application for final claim payment is received by the Commissioner.

(c) *HFA Debenture amount.* (1) The HFA Debenture shall be for the full initial claim amount as determined under § 266.628(a)(1) (minus any excess funds returned to HUD under § 266.628(a)(3)).

(2) The full amount of the HFA Debenture shall be payable to HUD upon maturity, unless the HFA Debenture is canceled because of:

(i) A reinstatement of the contract of insurance under § 266.634; or

(ii) Final claim settlement under § 266.654.

(d) *HFA Debenture interest rate.* The HFA Debenture shall bear interest at HUD's published debenture rate at the earlier of initial endorsement or final endorsement. Interest shall be due and payable annually on the anniversary date of the initial claim payment and on the date of redemption when redeemed or canceled before an anniversary date. Interest shall be computed on the full face amount of the HFA Debenture through the term of the HFA Debenture.

(e) *Form of HFA Debenture.* The HFA Debenture should follow the standard form of a State/Municipal Debenture issued under the Uniform Commercial Code, where applicable, and shall be supported by the full faith and credit of the HFA. For HFAs that operate as departments or divisions of States or units of local government and where such HFAs cannot pledge the full faith and credit of the HFA, such HFAs may collateralize their obligation through a letter of credit, reinsurance, or other forms of credit acceptable to the Commissioner.

(f) *Debenture registration.* Unless otherwise required by law, including State or local laws, or other governing bodies, HUD will not require the HFA Debenture to be "Registered" (with the Securities and Exchange Commission) as it is a direct, or private, placement, and not a public offering, that is supported by the full faith and credit of the HFA.

§ 266.640 Foreclosure and acquisition.

The HFA is not required to foreclose the insured mortgage. It may accept a deed-in-lieu of foreclosure.

§ 266.642 Appraisals.

Where actions taken or caused to be taken by the HFA have the effect of the recovery of less than the face amount of the HFA Debenture held by HUD, an appraisal should be made to determine the value of the project. The appraisal should assume a willing buyer and a willing seller. The appraisal must be done within the 45-day period immediately preceding the date when the HFA files an application for final claim settlement. If at the time of final claim settlement the HFA has not sold the project, an appraisal should be made to determine the value of the project at its highest and best use.

§ 266.644 Application for final claim settlement.

The HFA shall file an application for final settlement in accordance with the Commissioner's administrative procedures not later than 30 days after any of the following:

(a) Sale of the property after foreclosure or after acquisition by deed-in-lieu of foreclosure; or

(b) Expiration of the term of the HFA debenture.

§ 266.646 Determining the amount of loss.

The amount of the total loss to be shared by HUD and the HFA is equal to:

(a) The amount of the initial claim payment;

(b) Plus all items set forth in § 266.648; and

(c) Less all items set forth in § 266.650.

§ 266.648 Items included in total loss.

In computing the total loss, the following items are added to the amount described in § 266.646(a):

(a) The amount of all payments that the HFA made from its own funds and not from project income for:

(1) Taxes, special assessments, and water bills that are liens before the Mortgage; and

(2) Fire and hazard insurance on the property.

(b) A reasonable amount of acquisition costs actually paid by the HFA. These costs may not include loss or damage resulting from the invalidity 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 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.

§ 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.

Dated: November 29, 1994.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 94-29835 Filed 12-2-94; 8:45 am]

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federal register

Monday
December 5, 1994

Part VII

Department of Education

Library Research and Demonstration Program; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.039D]

Library Research and Demonstration Program: Demonstration Project Making Federal Information and Other Databases Available For Public Use by Connecting a Multistate Consortium of Public and Private Colleges and Universities to a Public Library and an Historic Library Notice; Inviting Applications for a New Award for Fiscal Year (FY) 1995

Purpose of Program: The Library Research and Demonstration Program provides grants to institutions of higher education and other public or private agencies, institutions, and organizations for research and demonstration programs related to the improvement of libraries, including the promotion of economical and efficient delivery of information, cooperative efforts, developmental projects, education in library and information science, and dissemination of information derived from such projects. The competition announced in this notice is for a demonstration project making Federal information and other databases available for public use by connecting a multistate consortium of public and private colleges and universities to a public library and an historic library.

Eligible Applicants: Institutions of higher education that meet the definition of eligibility under the terms of 20 U.S.C. 1141(a) and other public or private agencies, institutions, and organizations.

Deadline for Transmittal of Applications: February 6, 1995.

Deadline for Intergovernmental Review: April 7, 1995.

Applications Available: December 7, 1994.

Available Funds: $1.5 million.

Estimated Average Size of Award: $1.5 million.

Estimated Number of Awards: One.

Project Period: Up to 24 months.

Budget Period: Same as project period.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 82, 85, 86; and (b) the regulations for this program in 34 CFR Part 777.

Priority: Under 34 CFR 75.105(c)(3) and the FY 1995 Appropriations Act (Pub. L. 103–333), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

A demonstration project making Federal information and other databases available for public use by connecting a multistate consortium of public and private colleges and universities to a public library and an historic library.

SUPPLEMENTARY INFORMATION: Public Law 103–333, enacted September 30, 1994, provides FY 1995 appropriations for federally-assisted library programs. That legislation specifies that, of the total funds appropriated for federally-assisted library programs, $1.5 million shall be used to address the priority as stated above.

Any institution of higher education that wishes to apply for funds under one of the programs authorized by Title II of the Higher Education Act (HEA) (20 U.S.C. 1021 et seq.) must be an eligible institution under the terms of 20 U.S.C. 1141(a). If you wish to apply to the Department of Education for a determination of institutional eligibility, you may contact: Ms. Lois Moore, U.S. Department of Education, Office of Postsecondary Education, 600 Independence Avenue, SW, room 3522, ROB–3, Washington, DC 20202–5323.

For Applications or Information Contact: Christina Dunn, U.S. Department of Education, 555 New Jersey Avenue, NW, room 404, Washington, DC 20208–5571. Telephone (202) 219–1315.

For Users of TDD or FIRS: Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

For Electronic Access to Information: Information about the Department's funding opportunities, including copies of application notice for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 1033.

Dated: November 30, 1994.

Sharon P. Robinson,

Assistant Secretary for Educational Research and Improvement.

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