CHAPTER 1. INTRODUCTION

1-1 PURPOSE OF SECTION 221(d) PROGRAM.

A.The purpose of Section 221(d)(3) and Section 221(d)(4) of the National Housing Act is to assist private industry in providing comfortable and attractive rental accommodations for moderate income families, with preference or priority of occupancy to families who have been displaced from urban renewal areas or as a result of governmental action or a major disaster as determined by the President.

B.Housing developed under Section 221(d) is intended to be of modest design that is pleasant and efficient and in keeping with the Department's goal of providing affordable housing. The program's cost limits represent an upper limit on what can be built and are for use in areas with exceptionally high construction costs. The limits are meant to be maximums and not minimums.

C.All projects proposed for Section 221(d)(3) or (d)(4) must have at least five or more family units. Elderly (62 years of age or older), handicapped and displaced single persons are considered families under Section 221(d). Projects may be specifically designed for the elderly or handicapped. Projects for Single Room Occupancy (SRO) may also be insured under Section 221(d). HUD Handbook 4560.3 governs the insured SRO program.

1-2 LEGISLATIVE AUTHORITY.

The Section 221(d)(3) and (d)(4) programs are authorized by the National Housing Act, as amended. The administering office in HUD Headquarters is the Assistant Secretary for Housing-Federal Housing Commissioner.

1-3WAIVERS. Provisions of law or regulation may not be waived unless the law or regulation permit such waiver.

A.Indications whether specific provisions are statutory or regulatory are shown in this handbook by the letters "[S]" or "[R]" at the beginning of the applicable provision. In some cases, the text itself specifies that certain provisions are statutory or regulatory.

B.Waivers to a handbook provision must be fully documented in limited cases.

C.Headquarters will not entertain any requests for waivers or appeals to Field Office conclusions, unless the Field Office with jurisdiction has first acted upon the waiver request or appeal.

CHAPTER 2. PROPERTY AND MORTGAGOR ELIGIBILITY

2-1ELIGIBLE SECTION 221(d) PROJECT. Projects must meet the following eligibility requirements:

A.[R] Projects must be either new construction or substantial rehabilitation.

1.New construction is when all projects and elements are installed as part of the work.

2.Substantial rehabilitation is defined in paragraph 2-3.

3.Construction may not start before initial endorsement for insurance of advances, except upon approval by the Field Office of an early start through execution of a Form FHA-2415. Construction may not start for an insurance upon completion project until issuance of the firm commitment.

4.Start of Construction/rehabilitation is when work begins on the project. Once work begins, it must be continuous without appreciable delays. The inspection fee is earned upon placement of any permanent construction (e.g., foundations, footings, etc.).

B.[S] Projects must consist of five or more dwelling units. They may be comprised of detached, semidetached, row walk-up and/or elevator structures, and must contain efficiency, one bedroom or multiple bedroom dwelling units with complete kitchens and baths.

C.[R] The project site may consist of two or more noncontiguous parcels of land when HUD finds that the parcels:

1.Physically comprise a readily marketable real estate entity; and

2.Are within an area limited enough to allow convenient and efficient management.

D.The property of the project site, including improvements, must comply with all applicable zoning and deed restrictions and with all applicable building and other

government regulations.

E.Projects must be designed primarily for residential use. Any commercial activity must be compatible with the use of the project and primarily for the benefit of the residents. Commercial space should not exceed 10 percent of the gross floor area of the project nor should more than 15 percent of the total gross project income come from commercial sources.

2-2 INELIGIBLE PROJECT. [R] A project is not eligible when:

A.The project application is for mortgage insurance for the purpose of refinancing or purchase of an existing facility and substantial rehabilitation is not required.

B.The project is subject to State licensure, certification, or regulation as a board and care home (or similar residential care facility).

C.The project is designed for the elderly and has:

1.Mandatory nonshelter services (e.g., maid service, linens, as a condition of occupancy);

2.Institutional central kitchen facilities; or

3.Meal service provided on either a mandatory or an optional basis.

D.The project restricts occupancy to particular groups such as students or members of the sponsoring organization except as permitted by law for elderly or handicapped tenants.

2-3 SUBSTANTIAL REHABILITATION CRITERIA.

A.[R] Substantial rehabilitation proposals must meet one of the following criteria:

1.The cost of repairs, replacements, and improvements exceeds the greater of:

a.15 percent of the total estimated replacement cost of the project, or

b.$6,500 per dwelling unit (adjusted by the applicable

high cost factor).

or

2.Two or more major building components are being substantially replaced. The term "major building component" includes: roof structures; ceiling, wall or floor structures; foundations; plumbing system; heating and air conditioning system; or electrical system.

a."Major" refers to the importance of the component and the extent of replacement.

(1)The element must be significant to the building and its use, normally expected to last the useful life of the building, and not be minor or cosmetic.

Examples:
Major - roof sheathing, rafters, trusses.
Minor - shingles, built-up roofing.

(2)Total replacement is not required, but the greater part (at least 50 percent) must be replaced.

(3)The term "major" provides a great deal of latitude and, therefore, good judgment is necessary and expected.

b.The Field Office Director of Multifamily Housing Division (MHD) will make the determination.

B.Additions are permitted in substantial rehabilitation projects. However,

1.The existing facility must require substantial rehabilitation as defined above.

2.The construction costs of additions are not to be included when determining eligibility under A.1. above and additions may not be considered a major building component under A.2.

2-4REAL ESTATE REQUIREMENTS. [R] Projects must be on real estate held or to be held:

A.In fee simple;

B.Under a renewable lease for not less than 99 years; or

C.Under a lease having a period of not less than 10 years to run beyond the maturity date of the mortgage.

2-5LIENS AND MORTGAGE SECURITY. [R] The mortgagor must certify at endorsement (initial and final endorsement for insurance of advances) that:

A.The mortgage is a first lien and covers the entire project, including the equipment and fixtures financed with mortgage proceeds.

B.The property upon which the improvements have been made or constructed and the equipment and fixtures financed with mortgage proceeds are free and clear of all liens other than the HUD-insured mortgage and such other liens as may be approved by HUD.

C.Furniture purchased with proceeds of the working capital deposit (e.g., lobby furnishing) and equipment and fixtures included in replacement cost (e.g., unit kitchen equipment), even if paid for by the mortgagor, are included and covered by a security agreement or other instrument, creating a security interest made to the mortgagee; and, further, no leasing or lease purchase agreements were entered into for these items.

2-6PROPERTY STANDARDS. Projects must comply with accepted local building codes and HUD Minimum Property Standards, MPS 4910.1.

2-7 DISPLACEMENT.

Applications under multifamily mortgage insurance programs do not trigger the requirements of the Uniform Relocation Act (URA), unless some other aspect of the proposal is covered by the URA. However, HUD's policy is to minimize displacement of tenants in its programs. Therefore, if the proposal will cause involuntary displacement of tenants, the sponsors must submit a relocation plan identifying the estimated cost of the relocation as well as the funding sources to carry out the plan.

2-8 AREA ELIGIBILITY.

A.General. HUD must consider all aspects of general livability and rentability during analysis of the location (e.g., freedom from adverse environmental conditions, accessibility to community facilities). Project location must:

1.Be acceptable for the type of housing proposed and the market to be served.

2.[R] Meet the requirements of 24 CFR Part 50, Protection and Enhancement of Environmental Quality and Part 51, HUD

Environmental Criteria and Standards.

B.[R] Flood hazard areas. HUD may not insure in areas identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards unless:

1.The community in which the project is located is participating in the National Flood Insurance Program and its regulations (see 44 CFR Parts 59-79); or

2.It has been less than a year since FEMA's designation, and flood insurance on the structure can be obtained in compliance with Section 102(a) of the Flood Disaster Protection Act of 1973 (Public Law 93-234, 42 U.S.C. 4001 et seq.); and

3.HUD has complied with Executive Order 11988, Floodplain Management, and Executive Order 11990, Protection of Wetlands.

C.[R] Historic site. HUD must ensure compliance with Section 106 of the National Historic Preservation Act (16 U.S.C. 470 et seq.) during environmental review. To speed up this process, the sponsor may contact the State Historic Preservation Officer prior to application submission to see if a project is subject to historic requirements.

D.[R] Coastal barriers. HUD may not insure any project in the Coastal Barriers Resources System established by the Coastal Barriers Resources Act (16 U.S.C. 3501 et seq.).

E.Military impact areas. HUD is prohibited from providing mortgage insurance under Title II in military impact areas unless demand from nonmilitary households is sufficient to sustain occupancy in the insured projects and the market

as a whole. Section 238(c) of the National Housing Act authorizes exceptions to this restriction when certain conditions are met. See HUD Handbook 4445.1 REV for details.

2-9 ELIGIBLE MORTGAGORS.

A.[R] The following types of mortgagors are eligible for participation in the Section 221(d) program. Section 221(d)(3) is used primarily by nonprofit, public and cooperative mortgagors in order to obtain the higher ratio loan available for those mortgagors under that Section. Profit-motivated mortgagors use Section 221(d)(4).

1.Nonprofit.

a.An entity organized for reasons other than profit or gain and not controlled or directed by persons or firms seeking profit or gain from it. Its operation must be regulated under Federal or State law or by political subdivisions of States or their agencies, or by HUD. (Section 221(d)(3).)

b.Some nonprofits need consultants to develop a project. HUD will permit a reasonable fee for such services. See reference (26) of the Foreword for a complete discussion on the use of consultants.

2.Builder-seller. An entity organized to:

a.Build or rehabilitate a project and which, by written agreement with a private nonprofit mortgagor, will sell it (at final endorsement) to that mortgagor for no more than the HUD-approved certified cost;

b.Operate the project (subject to regulation by HUD) according to HUD requirements until sold to the nonprofit mortgagor; and

c.Operate the project as a limited distribution mortgagor if it is not sold within 2 years to a nonprofit mortgagor. (Section 221(d)(3).)

3.Limited distribution. An entity restricted by Federal or State law or by HUD as to rate of return and other aspects of its operation. (Section 221(d)(3).)

4.Cooperative. A nonprofit cooperative ownership housing corporation that restricts permanent occupancy to members of the corporation and requires membership eligibility and transfers of membership in a manner approved by the Commissioner. (Section 221(d)(3).)

5.Investor-Sponsor. An entity organized as a builder-seller mortgagor (paragraph 2, above) and which is subject to the same restrictions, except that the project will be sold to a cooperative rather than a nonprofit mortgagor. (Section 221(d)(3).)

6.Public mortgagors. A Federal instrumentality, a State or political subdivision thereof, or an instrumentality of a

State or a political subdivision thereof, which certifies that it is not receiving financial assistance from the United States exclusively pursuant to the United States Housing Act of 1937 (with the exception of projects assisted or to be assisted pursuant to Section 8 of such Act) and which is acceptable to the Commissioner.

a.Such a mortgagor shall be regulated or supervised as to rent, charges, and methods of operation in such manner as in the opinion of the Commissioner will effectuate the purposes of the Section 221(d) program.

b.Local housing authorities may qualify for 100 percent mortgages as public agency mortgagors under Section 221(d)(3) of the National Housing Act. Section 221(d)(3) unsubsidized insured mortgages are available to local housing authorities only in connection with Section 8 assisted housing. Interest paid on local housing authority obligations secured by a Section 221(d)(3) mortgage financing Section 8 housing is subject to Federal income taxation.

7.General. Any mortgagor approved by HUD that does not meet any of the definitions in paragraphs 1 through 6. Profit-motivated mortgagors are general mortgagors. (Section 221(d)(4).)

B.Supervision of Mortgagors:

1.All mortgagors must be approved by HUD and regulated through a Regulatory Agreement. This agreement establishes the mortgagor's obligations in project

operations and the mortgagee's and HUD's rights if it is violated.

2.A mortgagor must possess the legal powers necessary to operate the project.

3.All mortgagors must be single asset mortgagors.

4.All mortgagors must be approved by HUD and are subject to HUD's regulation and restriction as long as HUD is the insurer, holder or reinsurer of the mortgage. This "regulation" may be the regulatory agreement, corporate charter, etc., as HUD approves.

2-10 CONSTRUCTION, HIRING AND WAGES.

A.[S] Prevailing wages. The Section 221(d) program requires:

1.Payment of no less than the wages prevailing in the locality as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. Section 276a-276a-5), to all laborers and mechanics employed in the construction or rehabilitation of any project, and

2.Compliance with all other related rules and regulations under Davis-Bacon (see Handbook 1344.1, Federal Labor Standards Compliance in Housing and Community Development Programs) and the Copeland Act (40 U.S.C. Section 276c).

NOTE:Section 212(a)(1) of the National Housing Act contains a limited exception to payment of prevailing wages for certain volunteer labor in cooperative projects. Contact HUD Headquarters for case-by-case approval.

B.[S] Equal employment opportunity. HUD must comply with Executive Order 11246 and 41 CFR Part 60 regarding equal employment on Federally-assisted construction contracts. They:

1.Prohibit discrimination because of race, color, religion, sex or national origin.

2.Require affirmative action to ensure fair treatment in: employment, upgrading, demotion or transfer; recruitment

or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training and apprenticeship.

3.Require incorporation into any contract for construction work, as defined in Section 130.5 of HUD regulations, of the equal opportunity clause required by 24 CFR Part 130.15(b) of the HUD regulations.

2-11 OCCUPANCY.

Mortgagors must operate projects according to HUD standards.

CHAPTER 3. GENERAL UNDERWRITING PROCEDURES

3-1[R] PROCESSING STAGES. Sponsors may elect to proceed through each of the processing stages outlined below or through any combination of stages resulting in an application for firm commitment. Sponsors are strongly encouraged to request a preapplication meeting with the HUD Field Office with jurisdiction for the project location. The preapplication meeting covers:

- general proposal acceptability
- HUD procedures and requirements
- appropriate staging of application processing
- sponsor obligations and responsibilities
- distribution of forms and instructions

A.Site Appraisal and Market Analysis (SAMA) - New Construction. A SAMA letter indicates determination of initial acceptability of the site and recognition of a specific market need. It is not a commitment and does not bind HUD to issue a commitment. It may be submitted by the sponsor without a HUD-approved mortgagee. The SAMA letter covers:

1.Acceptability of the project site, the type of project, the type and number of rental units, the total monthly rents, etc. Details of operations are reviewed, along with location, neighborhood environment, type of structure, number of units by type (efficiency, one bedroom, etc.), services, and amenities.

2.Value of the site fully improved.

3.Market for the proposed project by type of units, size, number of rooms, etc. All SAMA letters must provide that the market approval expires after 1 year and will be reanalyzed by the Field Office unless a firm commitment has been issued.

4.Environmental assessment.

B.Feasibility - Substantial Rehabilitation. The sponsor may submit for feasibility without a HUD-approved mortgagee. A Feasibility Letter is not a commitment and does not bind HUD to issue a commitment. A Feasibility Letter:

1.Provides basic preliminary underwriting analysis except for a credit and financial analysis.

2.Establishes economic feasibility, including type and extent of required rehabilitation, estimated post-rehabilitation replacement cost, and "as is" value of the property, project income, etc. The analysis should be generally comprehensive enough to move directly to the firm commitment stage.

3.Must provide that the market approval expires after 1 year and will be reanalyzed by the Field Office unless a firm commitment has been issued.

C.Conditional Commitment. Must be submitted by HUD-approved mortgagee. Issuance indicates HUD completion of technical processing involving:

1.Analysis of the proposal and its economics including project schematics and outline specifications of the development submitted by the mortgagor and its architect.

2.Examination of the credit and financial capacity of the principals and general contractor.

3.Establishment of the cost of the project, "as is" value of the site, detailed estimates of operating expenses and taxes, the supportable cost, the financial requirements and the mortgage amount.

NOTE: The Conditional Commitment stage is proposed for deletion; deletion of this stage will become effective 30 days after publication of the final rule.

D.Firm Commitment. Must be submitted by a HUD-approved mortgagee. May be either insurance upon completion or insurance of advances. Issuance evidences HUD approval of the application for insurance and sets out the terms and conditions under which the mortgage will be insured.

1.Review of updated information and final contract documents to see if they agree with findings made in earlier processing stages and meet all standards and requirements for a firm commitment.

2.Establishment of maximum mortgage amount.

E.All commitments are subject to a condition stating that market findings will be reanalyzed annually if the project has not

reached initial endorsement. This reanalysis may result in a reduction in the number of units or termination of the commitment at its expiration date.

F.Combined Stages. An applicant may elect to apply for a SAMA letter, a conditional commitment or a firm commitment, depending upon the completeness of the drawings, specifications, etc. The application for firm commitment is the only mandatory stage.

NOTE: Commitments are transferable between mortgagees with HUD Field Office approval after notification to the Office.

3-2 CHANGES IN PROPOSALS.

HUD Handbook 4445.1 REV covers significant deviations and other provisions relative to changes in proposals.

3-3DETERMINING LOAN AMOUNT AND AMORTIZATION PERIOD. Analysis of the credit risk is based on a loan for a definite amount and amortization period.

A.Mortgage. Must be a principal obligation stated in multiples of $100.

B.[R] Amortization Period of the Mortgage. The lesser of 75 percent of the estimated remaining economic life of the physical improvements or 40 years from the date of first payment to principal.

C.Interest Rate.

1.[R] The interest rate in a commitment must be agreed on by the mortgagor and mortgagee when the commitment is issued.

2.It may be increased or decreased only after reprocessing by HUD and issuance of an amended commitment.

3.It may not be increased or decreased after initial endorsement (insurance of advances) or start of construction (insurance upon completion, except that, where a mortgage increase is requested, processed and

approved, a higher (or lower) rate may be applied to the amount of the increase only and must be agreed to by the mortgagee and the mortgagor.

D.Requirement for Level Annuity Monthly Payment Plan. The mortgage must be self-amortizing and provide for equal monthly payments of

interest and principal due the first day of each month under an amortization plan agreed to by the mortgagor and lender and acceptable to HUD.

3-4[R] AMOUNT OF LOAN - NEW CONSTRUCTION. Includes construction of all types of projects not involving substantial rehabilitation. The insurable amount is the lowest of:

A.Application amount.

B.Applicable percentage of HUD's estimate of the replacement cost after completion, less the amount of grant/loan funds attributable to replacement cost items.

	Section	Mortgagor	Percent
(1)	221(d)(3)	Limited Distribution	90
(2)	221(d)(3)	Cooperatives	100
(3)	221(d)(3)	All others	100
(4)	221(d)(4)	All Mortgagors	90

C.Debt service that does not exceed the applicable percentage of the project's estimated net income. The mortgage may exceed this limit by capitalizing the savings from any tax abatement.

	Section	Mortgagor	Percent
(1)	221(d)(3)	Limited Distribution	90
(2)	221(d)(3)	All others (including Cooperatives)	95
(3)	221(d)(4)	All Mortgagors	90

D.Construction cost attributable to dwelling use, excluding exterior land improvements, not to exceed:

1.For walk-up structures:

a.Projects involving eligible nonprofit mortgagors to be

insured under Section 221(d)(3) of the Act - the per family unit limits in 24 CFR 221.514(a)(1)(i).

b.Projects involving eligible mortgagors other than nonprofit mortgagors to be insured under Section 221(d)(3) of the Act - the per family unit limits in 24 CFR 221.514(a)(1)(ii).

c.Projects involving eligible mortgagors to be insured

under Section 221(d)(4) of the Act - per family unit limits in 24 CFR 221.514(a)(1)(iii).

2.For elevator structures:

a.Projects involving eligible nonprofit mortgagors to be insured under Section 221(d)(3) of the Act - the per family unit limits in 24 CFR 221.514(b)(1).

b.Projects involving eligible mortgagors other than nonprofit mortgagors to be insured under Section 221(d)(3) of the Act - the per family unit limits in 24 CFR 221.514(b)(2).

c.Projects involving eligible mortgagors to be insured under Section 221(d)(4) of the Act - the per family unit limits in 24 CFR 221.514(b)(3).

3.Exceptions to insurable amount limitations:

a.The mortgage may exceed these limits by the percentage of the cost not attributable to dwelling use, including exterior land improvements.

	Section	Mortgagor	Percent
(1)	221(d)(3)	General and Limited Distribution	90
(2)	221(d)(3)	Cooperatives	100
(3)	221(d)(3)	All others	100
(4)	221(d)(4)	All Mortgagors	90

b.Per family unit limits may be increased by:

(1)The approved high cost percentage for the jurisdiction in which the project will be located.

(2)A percentage above the approved high cost

percentage up to 140 percent maximum with the approval of the Commissioner on a case-by-case basis.

(3)No more than 90 percent if the mortgage has been, or is committed to be, purchased by GNMA in implementing its Special Assistance Functions under Section 305 of the National Housing Act (as Section 305 existed immediately before its repeal on November 30, 1983).

(4)If the Commissioner finds good cause in Alaska, Guam or Hawaii, the maximum, including high cost area increases, if any, may be increased by no more than one-half thereof.

c.The limits for walk-up and elevator structures may be increased up to 20 percent if necessary for purchase and installation of a qualified solar energy system. This is on top of any increase in a high cost area.

3-5[R] AMOUNT OF LOAN - REHABILITATION. (This includes only projects involving substantial rehabilitation or reconstruction.) The loan must be the lower of:

A.Amounts in paragraph 3-4, except for B.

B.Applicable percentage of HUD's cost estimate of rehabilitation and fair market value of the land and existing improvements before rehabilitation, less the amount of grant/loan funds attributable to replacement cost items.

Section		Mortgagor	Percent
(1)	221(d)(3)	General and Limited Distribution	90
(2)	221(d)(3)	Cooperatives	100
(3)	221(d)(3)	All others	100
(4)	221(d)(4)	All Mortgagors	90

3-6UNDERWRITING CONSIDERATIONS. This section describes, in general terms, certain special features of HUD mortgage underwriting and the Section 221(d) program. Specific instructions regarding these items are found in the applicable technical and underwriting handbooks.

A.[S] Builder's and Sponsor's Profit and Risk Allowance (BSPRA). An amount included in replacement cost for profit-motivated and limited distribution mortgagors where an identity-of-interest exists between the mortgagor and general contractor. BSPRA is no more than 10 percent of the total estimated cost of: on-site land improvements, structures, general requirements, general overhead expenses, architect's fees, carrying and financing charges, legal, organizational and audit expense.

B.[R] Sponsor's Profit and Risk Allowance (SPRA). An amount included in replacement cost where no identity-of-interest exists between the general contractor and mortgagor. SPRA is no more than 10 percent of the total estimated cost of: architect's fees, carrying and financing charges, legal, organizational and

audit expenses.

C.[R] Construction Inspection. HUD inspects all projects during construction or rehabilitation to evaluate performance of contractor and architect and see that the project is constructed according to the approved drawings and specifications and construction contract.

D.[S] Cost Certification. Required by Section 227 of the National Housing Act and HUD regulations for all rental housing projects. The following entities must certify actual costs before a project can be finally endorsed.

1.Mortgagors, in all cases.

2.General contractors, when there is a cost-plus construction contract.

3.General contractors having an identity-of-interest with the mortgagor or sponsor.

4.Subcontractors, material suppliers, and equipment lessors having an identity-of-interest with the mortgagor or sponsor.

E.Rate of Return on Investment. Nonprofit and public mortgagors are not entitled to distributions of project funds; the rate of return for other mortgagors varies from project to project.

1.Limited Distribution Mortgagors. Distributions may not

exceed the lesser of surplus cash or the distributions, as defined in the Regulatory Agreement, Form HUD-92466, available as of the end of the previous fiscal period. Projects receiving subsidy payments are also subject to the regulations and administrative procedures of the applicable subsidy program.

2.General Mortgagors. All surplus cash generated during the previous fiscal period may be distributed. See Handbook 4350.1, Insured Project Servicing, for details.

F.Tax exempt Financing. If tax exempt financing is used for the project, follow the instructions in Handbook 4470.1, Mortgage Credit Analysis.

G.Low Income Housing Tax Credits and Other Government Assistance. May be used in accordance with HUD administrative guidelines on

limitations on combining other Government assistance with HUD housing assistance May result in mortgage amounts that are lower than the limits described in paragraphs 3-4 and 3-5.

3-7 IDENTITY OF INTEREST.

Covered in HUD Handbook 4430.01 REV-1.

CHAPTER 4. PROJECT PROCESSING

4-1[S] ENVIRONMENTAL REVIEW. HUD will insure a mortgage only if an environmental review is completed and the project meets required environmental standards. The HUD appraiser is responsible for conducting the environmental review. The environmental review procedures for new construction and substantial rehabilitation are similar. However, a Form HUD-4128, Environmental Assessment, is not required for a rehabilitation project when HUD completes the Form HUD-4128.1 and determines that the project does not:

A. Increase the number of dwelling units per acre by more than 20 percent;

B. Result in a change in land use from non-residential to residential;

C. Involve rehabilitation costs above 75 percent of the post-rehabilitation replacement cost of the project; and

D. Involve demolition of one or more buildings containing the primary use served by the project.

Details on environmental requirements are in Handbooks 1390.2, 1390.4 and 24 CFR Parts 50 and 51.

4-2[R] PROCEDURES FOR PREVIOUS PARTICIPATION REVIEW. Principals participating in a planned or existing multifamily project must first disclose all past participation in HUD-FHA programs (except home mortgage) and the nature of their proposed interest. (See Handbook 4065.1, Previous Participation Handbook, for further details.)

4-3 MARKET ANALYSIS REVIEW.

A. The Field Office is responsible for making an independent determination of whether there is a market for the units in each proposal. The Economic and Market Analysis Staff (EMAS) conducts this review to determine:

1. if there is sufficient market demand for the number of

units at the proposed rents, and

2. that the units will not adversely impact existing housing in

the market area.

B.The review must include a recommendation of approval or disapproval on the basis of market considerations. Where the recommendation is to disapprove the proposal because of insufficient demand, the market review may include a suggested counter proposal, if one is considered feasible, that modifies the number of units, the bedroom size mix, or the rent levels.

The market review may also include an advisory opinion on characteristics of the proposal that will have a significant bearing on its market prospects.

C.All SAMA commitments and Feasibility letters and commitments must contain a condition specifying that the market analysis will be reviewed annually if the project has not reached initial endorsement. The updated market review may result in reduction or termination of the commitment at its expiration date.

4-4AFFIRMATIVE FAIR HOUSING MARKETING (AFHM) PLAN. The mortgagor must submit the mortgagor's proposed AFHM Plan to the HUD Field Office when the mortgagor's first application for commitment is received. (See Appendix 4 of Handbook 8025.1 REV-1, Implementation of Affirmative Fair Housing Marketing Requirements Handbook, for AFHM Plan, Form HUD-935.2.)

A.The Field Office will not issue a commitment without approval of the AFHM Plan.

B.HUD must advise the mortgagor of its responsibilities under the plan, including reporting requirements. Details of plan implementation are in Handbook 8025.1 REV-1.

4-5INTERGOVERNMENTAL REVIEW REQUIREMENTS. See Handbook 4445.1 REV.

4-6 FAIR HOUSING AND EQUAL OPPORTUNITY REVIEW.

A.GENERAL. Fair Housing and Equal Opportunity (FHEO) staff should follow the guidance contained in the following:

1.HUD Handbook 4065.1, Previous Participation.

2.HUD Handbook 4381.5 REV-1, Management Documents, Agents and Fees.

3.HUD Handbook 4050.4, Reporting Requirements for Automated Systems for Public Housing, Indian Housing Agencies and Private Owners.

4.HUD Handbook 8025.1 REV-1, Implementation of Affirmative Fair Housing Marketing Requirements for Multifamily Housing.

B.FHEO RESPONSIBILITIES.

1.SAMA - Check for HUD Forms-92010 and 2530.

2.Conditional Commitment - Same as above, plus review/approval of Affirmative Fair Housing Marketing Plan (AFHMP). (See note in paragraph 3-1C regarding the Conditional Commitment stage.)

NOTE:FHEO staff should follow the guidance contained in HUD's Affirmative Fair Housing Marketing Handbook, 8025.1 REV-1 CHG-1 regarding deletion of data formerly requested by HUD in block no. 7 (estimated applicant or occupancy goals or other methods of assessing AFHMP implementation through anticipated application or occupancy results).

3.Firm Commitment - Same as above.

4.Preconstruction Conference - As directed by the MHD, FHEO staff may participate in preconstruction conferences to provide guidance on equal opportunity requirements. If so, FHEO staff must ensure that appropriate reference to Executive Order 11246 is included in the contract and advise contractors of the appropriate Office of Federal Contract Compliance Program offices where Executive Order 11246 advice and assistance can be obtained. FHEO staff also advises on the Department's Minority Business Goals and Minority Bank Deposit Program.

5.Permission to Occupy - FHEO may be asked to provide comments on the applicant's compliance with equal

opportunity requirements prior to issuance of the permit to occupy.

6.Initial and Final Closing - At closing, the Field Counsel reviews grant and loan documents to assure legal sufficiency. As part of that review, Counsel may ask FHEO to indicate whether the project's Affirmative Fair Housing Marketing Plan has been approved.

7.Project Management - During the operation of the project, the Equal Opportunity Specialist handles equal opportunity

considerations such as commenting upon any prepayment requests, monitoring of affirmative marketing, tenant selection, unit assignments, the provision of maintenance and other tenant services.

CHAPTER 5. TECHNICAL PROCESSING

SECTION 1, ARCHITECTURAL

5-1GENERAL. Architectural analysis is to determine the acceptability of the improvements essential to effective mortgage underwriting. Detailed instructions are in Handbook 4460.1 REV-2, Architectural Analysis and Inspections for Project Mortgage Insurance.

5-2PROJECT ACCEPTABILITY. The project must be financially feasible and appropriate for the moderate income housing market and the proposed resident profile. The project must also comply with the HUD approved project design program upon which the appraiser based rents, expenses and project value.

5-3DESIGN. Housing for moderate income families must provide a continuing market appeal. Amenities, space and aesthetics must be competitive with other properties catering to the same market segment. The project must be visually pleasing, well suited to the needs of the occupants, and of good design reflecting the architectural standards of the neighborhood and of the community in which it is situated. Site, building and dwelling unit designs must be practical and use space effectively.

A.COST CONCERNS. The design should incorporate proven construction cost-saving techniques, durable cost-effective materials suitable for the intended use, energy saving features, and cost-efficient mechanical systems. Minimizing initial construction costs and continuing operating and maintenance costs are essential to reducing mortgage risk.

B.ACCESSIBILITY. The design must consider occupancy and use of the project by the mobility impaired, elderly and children. Designs that meet these special needs benefit all residents and can be economically achieved, when considered from initial concept design studies.

C.CRIME PREVENTION. The concepts of defensible space and security by casual observation must be reflected in site and building designs to minimize the potential of physical acts of crime against project residents and

property.

D.RECREATIONAL FACILITIES. Suitable on-site recreational facilities are necessary, except where otherwise reasonably available to project residents. Recreational facilities for children should be located where security by casual observation can be provided by adults engaged in their normal routines. Tot-lots should have permanent seating arranged for the convenience of supervising adults.

5-4STANDARDS. Project improvements must comply with applicable Federal, State and local laws, regulations, ordinances, codes and other workings of the law. HUD design standards are reflected in the Minimum Property Standards, MPS 4910.1, by direct requirement and referenced standards. Project designs and work must also satisfy imposed environmental requirements, lead-based paint hazard elimination, site conditions, and provisions of special testing and engineering analysis. Handbook 4460.1 REV-2 provides detailed information.

5-5FIRM APPLICATION. Drawings and specifications submitted with the firm application must satisfy the requirements for paragraphs 5-2 through 5-4 and be in the form and detail required by Handbook 4460.1 REV-2.

5-6REQUIRED ARCHITECT SERVICES. The services of a professional, licensed to provide the required services in the State where the project is located, are required, except in limited circumstances, for both project design and contract administration.

A.An Owner-Architect Agreement (AIA Document B-181) and HUD Amendment, are required for each prime architect.

B.The selected architect(s) must conform to the HUD selection criteria in Handbook 4460.1 REV-2.

C.The architect administering the construction contract may not have an identity-of-interest with the owner or contractors.

5-7 DESIGN REPRESENTATIVE.

A.CLIENT SERVICES. The design representative must provide the sponsor's design consultants guidance in meeting

program and project design requirements. Assistance must be timely, and suggested/required design features supported by impartial reason. The HUD design representative must work with the sponsor and its design consultants from the preapplication meeting through firm application to best help achieve program objectives.

B.FIELD OFFICE SERVICES. The design representative must monitor the progress of construction document development, advise the DHD of unsatisfactory progress and recommend an appropriate HUD response. The design representative must also identify when drawings and specifications are acceptable for receipt of the Conditional and/or Firm application.

5-8SUBSTANTIAL REHABILITATION. Following is a summary of application processing for substantial rehabilitation projects. Handbook 4460.1 REV-2 provides complete details.

A.JOINT INSPECTION. An on-site inspection will occur as soon as possible with HUD's architectural, cost and valuation staff and the sponsor's architect and business representative to determine the project's condition and eligibility.

B.ENGINEERING REPORTS. Engineering and/or other technical reports may be required of the sponsor to evaluate project feasibility. These may include analysis of/for mechanical and structural systems, lead-based paint hazard, termite hazard, etc.

C.WORK WRITE-UP. The sponsor's architect must prepare a work write-up, drawings and specifications to define the extent of rehabilitation work.

D.CONTRACT DOCUMENTS. The exact requirements for specific contract documents will be made by the Design Representative after the joint inspection.

5-9INSPECTION. The HUD field representative must keep the Chief Architect/DHD advised by filed reports of any condition, event or other occurrence that constitute a potential project mortgage risk, including lack of satisfactory progress and reported instances of nonpayment of entities for which mortgage proceeds have been disbursed. The HUD field representative must also certify to the reasonableness of payment for completed work and stored

materials, and to acceptable completion of work for occupancy and contract completion. Handbook 4460.1 REV-2 provides complete details.

SECTION 2 - CONSTRUCTION COST PROCESSING

5-10COST OVERVIEW. Cost estimation is done at the following stages of project processing: Conditional and Firm Commitment, and construction changes. Detailed instructions for cost estimation are in HUD Handbook 4450.1 REV-1. The cost estimate is used to arrive at a Total for All Improvements, which is entered on line 50 of Section G of Form HUD-92264. The Total for All Improvements consists of Structure and

Land Improvement costs, General Requirements, and fees directly related to the construction of the project.

A.At Conditional and Firm stages, a Replacement Cost Estimate (Commissioner's Estimate) is made to arrive at the Total for All Improvements.

B.In addition to the Replacement Cost Estimate, supplemental cost estimates are made to assist Valuation in determining the Total Estimated Replacement Cost. These supplemental cost estimates consist of Unusual Land Improvements, Demolition, Cost Not Attributable to Dwelling Use, and Offsite costs.

C.During Firm Commitment processing, the cost analyst examines the Contractor's and/or Mortgagor's Cost Breakdown, Form HUD-92328, comparing it to the Commissioner's Estimate and resolving any significant differences between the two estimates.

D.The cost analyst completes Firm Commitment processing by preparing a temporary Property Insurance Schedule, Form HUD-92329.

E.Should changes be made to the construction contract during the construction stage (Change Orders), cost estimates are made for these changes. The cumulative cost change may effect the final mortgage amount.

F.At the close of construction, the cost analyst performs a review of the general contractor's Cost Certification. Detailed instructions for this are found in HUD Handbooks 4450.1 REV-1 and 4470.2 REV-1.

G.Finally, the cost analyst prepares a permanent Property Insurance Schedule, Form HUD-92329.

5-11BUILDER'S AND SPONSOR'S PROFIT AND RISK ALLOWANCE (BSPRA). BSPRA is used in-lieu-of Builder's Profit on Form HUD-92326 and line 44 of Section G of Form HUD-92264 where an identity-of-interest exists between the General Contractor (Builder) and the Sponsor.

A.When BSPRA is used, the Builder's Profit has a value of zero for the purpose of calculating the Total for All Improvements.

B.For data purposes, estimate a normal builder's profit and use this amount to establish a working subtotal consisting of Total Structures, Land Improvements, General Requirements, General Overhead and Builder's Profit. Architects' Fees, Other Fees and Bond Premium are each divided into this subtotal and the

quotients, expressed as percentages, are entered into the Field Office data bank. Do not include the estimate for normal builder's profit in the Total for All Improvements when BSPRA is used.

SECTION 3 - VALUATION PROCESSING

5-12 GENERAL.

A. Purpose of Valuation Processing. Valuation evaluates the property as security for a long-term insured mortgage.

B. Primary Distinction; Finding of "acceptable risk" in-lieu-of "value":

1. Eligible projects must represent a degree of mortgage risk acceptable to the Commissioner.

2. Estimates of "value" by the capitalization and market comparison approaches are not required. The estimate of project replacement cost substitutes for value when applying certain criteria which limit the mortgage.

3. There must be a reasonable expectation that project income will be adequate for the duration of the mortgage term to maintain the property, pay all required project expenses, and meet the debt service requirements.

4. Under Section 221(d), HUD insures multifamily housing for moderate income households. Whether applications are brought under 221(d)(3) or (4), this means that certain income restrictions may apply through the use of tax exempt financing, Low Income Housing Tax Credits or other assistance as are more fully explained in the references listed below.

5-13 PRINCIPAL FORMS AND REFERENCES.

A. Forms.

1. Form HUD-92264; Valuation Analysis and Conclusions recorded in Sections B-G, I-J, & O.

2. Form HUD-92273; Unit Type Rental Analyses, supporting rents used in Section C of HUD-92264.

3. Form HUD-92264-TE; Rental Analysis control form for projects receiving tax exempt financing, supporting rents used in

Section C of Form HUD-92264.

4.Form HUD-92274; Project Operating Expense Analysis, supporting expense estimates recorded in Section E of Form HUD-92264.

5.Trial Form HUD-92264-A; completed to preliminarily determine the mortgage amount assumed for certain Section G, Form HUD-92264 "soft costs."

6.Form HUD-4128; completed to assess the project site's environmental suitability.

7.Other Supporting Documentation

a.Replacement Cost Formula; approximates project replacement cost before Section G, Form HUD-92264 is completed.

b.Rent Formula; required for Section 221(d) projects receiving Section 8 rent subsidies to support rents used in Section C, Form HUD-92264.

c.Market Absorption Data Form; supports the Section I, Form HUD-92264 Estimate of Operating Deficit, as well as the basic determination of whether a market exists for the project at the rents shown in Section C, Form

HUD-92264.

d.Form HUD-9184, Rental Data Cards, records data transferred to Form HUD-92273 analyses.

e.Land Sales Data Cards, records data transferred to Section J of Form HUD-92264 analysis.

B.References.

1.Procedural References

a.HUD Handbooks

(1)Handbook 4465.1, "Valuation Analysis for Project Mortgage Insurance"

(2)Notice H 93-93, "Multifamily Underwriting Reports and Forms Catalog"

(3) Handbook 1390.2, "Environmental Assessment Guide for Housing Projects"

b. Regulations at 24 CFR, Parts 50 and 221

2. Substantive References

a. Data collected from private sources

(1) tenants, landlords, lessors, lessees, buyers, sellers, owners and operators of rental properties

(2) management companies

(3) mortgage lending institutions

(4) private real estate appraisers who specialize in multifamily appraisals

(5) other real estate professionals including environmental engineers, brokers, accountants, consultants, lawyers, and others

(6) various professional and trade publications

b. Data collected from public sources

(1) HUD project inventory

(2) Other HUD professionals including economists, environmental staff, mortgage credit examiners, architectural and cost analysts, loan management specialists, lawyers, and others

(3) State and local property tax assessment professionals and records

(4) Other governmental agencies that possess data about housing environmental impacts, or income property appraisal

5-14 PRIMARY PROCESSING RESPONSIBILITIES.

A. Project Income. The assigned appraiser uses the forms and references listed above to estimate the most probable or allowable project income, and records results in Section C, "Estimate of Income," Form HUD-92264.

B. Project Expenses. The appraiser uses the forms and references above to estimate the most probable total project expenses, and

records results in Section E, "Estimate of Annual Expense," Form HUD-92264.

C.Land Value/"As Is" Value. The appraiser uses the forms and references above to estimate the "Warranted Price of Land" for new construction, or the "as is" value for substantial rehabilitation proposals, and records the results in Section G, Form HUD-92264.

D.Environmental Assessment. The appraiser uses the forms and references above to assess whether a project site is approved with a Finding of No Significant Impact (FONSI), approved with a FONSI subject to conditions which may or may not be included in the commitment, or is rejected for reasons cited on the Form HUD-4128.

E.Site and Market Acceptability. The appraiser uses the forms and references above to determine if the site is acceptable, and the project is marketable at the rents reflected in Section C of Form HUD-92264, and records the results in Section J.

F.Occupancy for Income-Producing Spaces. The appraiser uses the forms and references above to estimate the vacancy and loss factors for the proposal's income-producing space, both residential and commercial, and conversely, occupancy percentages for the same. Residential and ancillary income source occupancy rates cannot exceed 93 percent, and commercial income source occupancy rates cannot exceed 80 percent unless justified by leases signed by financially responsible tenants. The appraiser uses these rates to estimate the project's effective gross income and records the results in Section F of Form HUD-92264. The appraiser completes the mathematic calculations in Section F to estimate net operating income (NOI), and NOI is then transferred to the Trial Form HUD-92264A to estimate the criterion 5 debt service mortgage.

G.Replacement Cost. The appraiser uses the forms and references above to estimate total project replacement cost, and transfers the results to the Trial Form HUD-92264A. After a tentative mortgage amount has been established, the appraiser recalculates "unknown" project soft costs based on the controlling mortgage criterion (i.e., those soft costs that function as percentages of the mortgage), and transfers the results to Section G of Form HUD-92264.

H.Absorption Rate and Operating Deficit. The appraiser uses the forms and references above to estimate the project's probable residential and commercial absorption rate, and thereupon,

estimates operating deficit amounts during initial project rent-up.

I.Narrative Explanations and Remarks. The appraiser briefly summarizes any steps in the analysis of rents, expenses, or land or property valuation that are not self-explanatory, or are not clearly supported by documented facts, or do not clearly support reported conclusions, and supplies such explanations or remarks in relevant sections of Forms HUD-92273, HUD-92274, and Sections J and O of Form HUD-92264.

SECTION 4 - THE MORTGAGE CREDIT PROCESS (ANALYSIS)

5-15BASIC SOURCE BOOKS. Except as modified here, basic mortgage credit processing instructions are in HUD Handbook 4470.1, Mortgage Credit Analysis for Project

Mortgage Insurance, Section 207, and HUD Handbook 4550.3, Investor-Sponsor and Nonprofit Sponsorship of Housing Cooperatives.

5-16 MORTGAGE CREDIT OVERVIEW.

The steps in mortgage credit processing involve: credit investigation; amount and amortization period of loan; determination of estimated requirements for completion of project; determination of mortgagors ability to close the transaction; analysis of acceptability of sponsorship; assurance of completion; insurance of advances; construction changes; and cost certification.

5-17 BUILDER-SELLER MORTGAGOR UNDER SECTION 221(d)(3).

A.Before applying for project mortgage insurance, the mortgagor enters into an agreement (satisfactory to HUD) with a private nonprofit corporation eligible for insurance.

1.The builder-seller mortgagor agrees to sell the project, on completion, to the nonprofit for no more than certified cost of the project.

2.If the sale is not consummated, the project will be operated as a limited distribution rental project.

B.The Mortgage Credit Examiner (MCE) will prepare two Forms HUD-92264-A to determine the Maximum Insurable Mortgage (MIM) for:

1.Limited distribution mortgagor.

2.Nonprofit mortgagor.

C.The difference between the two MIMs developed above must be withheld until the project is sold.

5-18INVESTOR-SPONSOR MORTGAGOR UNDER SECTION 221(d)(3) certifies its intention to sell the project to a management-type cooperative within 2 years after project completion.

A.The MCE prepares two Forms HUD-92264-A to determine the MIM for:

1.Limited distribution mortgagor.

2.Management-type cooperative.

B.The difference between the MIM amount available to the cooperative and the lesser amount available to the investor-sponsor will be escrowed.

1.At final endorsement, the mortgagee will hold the escrow until the project is converted to a cooperative.

2.If the project is not converted to a cooperative form of operation within 2 years from the date of completion, the escrow will be applied:

a.Against the mortgage or

b.In such other manner as the Commissioner may direct.

5-19COST CERTIFICATION PROCEDURES. Use basic Section 207 instructions except as modified here.

A.Certification purposes in builder-seller and investor-sponsor cases:

1.To establish the maximum insurable mortgage for the project based on the allowed cost of the completed project.

2.To establish the ceiling price at which the project may be sold.

B.Legal, organization and marketing expense in investor-sponsor cases:

1.Two sets of legal and organizational expenses are involved in addition to marketing expense and should be shown separately in Form HUD-92330:

a.Expenses involving the mortgagor (investor-sponsor).

b.Expenses involving the cooperative corporation formed to buy the project.

2.Since the investor-sponsor is legally bound to use its best efforts to sell the project to a cooperative, its marketing expenses should be

included.

3.If the legal and organizational sum attributable to the cooperative has been exhausted before final endorsement:

a.Investor-sponsor may deposit more money with the mortgagee before final endorsement for application against further organizational expenses of the cooperative (as approved by HUD).

b.The additional deposits may be included in cost certification.

CHAPTER 6. SPECIAL FEATURES FOR NONPROFIT OR PUBLIC MORTGAGORS

6-1USE OF CONSULTANTS. May be used to help nonprofit organizations and public mortgagors that lack the staff and experience to develop a project. Must have residential rental experience and expertise in market evaluation, procurement of financing, evaluation of attorneys, architects, building contractors, etc., and provide assistance in the preparation of applications and related documents. A reasonable fee for such service may be included in the mortgage.

A.Selection and Approval. Responsibility of the mortgagor subject to HUD approval. (See Form HUD-92531A, Standard Contract for Housing Consultant Services.)

B.Consultant's Relationship with the Mortgagor. To make sure the consultant's efforts are directed exclusively toward serving the mortgagor, the consultant must certify on Forms HUD-92531 and HUD-92532B that he/she has not and will not receive payment from any parties to the transaction other than the consultant's fee specified in the contract with the mortgagor. No other party, including the builder, architect, and mortgagor, may receive payment for consultant services in addition to fees from other work for the project.

C.Allowable Consultant's Fee. The actual fee for consultant services is negotiated between the mortgagor and consultant, subject to the limitations in HUD Handbook 4500.1 REV-1. When a consultant's fee is included, the Organization Expense should be reduced accordingly.

D.See HUD Handbook 4500.1 REV-1, Allowance for Making Nonprofit Projects Operational and Use of Housing Consultant.

6-2LOANS AND DONATIONS. Nonprofit mortgagors may borrow funds for project purposes under certain conditions.

A.Loans from Parties Involved with the Project.

1.Funds may be borrowed from the contractors or other parties furnishing supplies and services only for items covered in the mortgage.

2.Loans must be repaid:

a.For insurance of advances, when mortgage proceeds are advanced for the item for which the loan was made.

b.For insurance upon completion, when the note is endorsed.

B.Loans from Sponsors or Disinterested Third Parties May Be Used for any Project Purpose as long as:

1.The indebtedness does not create a situation where the third party can exercise any direction or control over the mortgagor.

2.Loans for items not included in the mortgage are secured by a promissory note executed by the mortgagor on Form FHA-1710. The form provides for prior written approval by HUD for payments on the loan.