

1
2
3
4
5
6
7

Section II Production

Chapter 11

Cost Certification

11.1 Introduction

8
9 Prior to final closing, the final eligible mortgage costs must be certified by both the Lender and
10 the Borrower. This chapter contains the guidance and program requirements for the Section 232
11 Office of Residential Care Facilities cost (ORCF) certification process.
12
13

11.2 Projects That Must Certify

14
15 A cost certification is required by Section 232 of the National Housing Act and its implementing
16 regulations for all mortgage insurance applications processed by FHA Lenders.
17
18

11.3 Purpose For Certification

19
20 The purpose of a cost certification is to establish the Borrower's actual costs, including the
21 contractor's cost, to establish the "maximum insurable mortgage" for Final Closing of the
22 insured mortgage.
23
24

11.4 Certifiable Costs

25
26 Certifiable costs are those costs that have been paid in cash or will be paid in cash within forty-
27 five (45) days of final closing.
28

29 The Lender's appraiser will establish land value which shall be reviewed by ORCF. Eligible
30 land cost will be determined in compliance with program guidance in Production, Chapter 3 of
31 this Handbook.
32

33
34
35
36
37
38
39
40
41
42

The following costs must always be certified, whether or not paid in cash:

- A. General overhead; and
- B. Non-profit developer’s fee, which is cost-certifiable whether or not it is paid in cash, less amounts certified to and allowed on other line items.

11.5 Types of Cost Certification

43
44
45
46
47
48
49
50
51
52

- A. In general, a standard or “long form” cost certification shall be required except for projects permitted to use the “simplified” cost certification described in Section 11.5.B.
- B. A simplified cost certification is permitted for projects with forty (40) or fewer units of proposed construction or substantial rehabilitation. A simplified cost certification is also permitted for projects refinanced under Section 232 pursuant to Section 223(f) of the National Housing Act.

11.6 Entities That Must Cost Certify

53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72

- A. The Borrower shall cost certify for all projects, except for certain projects assisted with LIHTC, Historic Tax Credits or New Market Tax Credits as outlined in 13.4.
- B. The general contractor shall cost certify where:
 - 1. The general contractor has an identity of interest with the Borrower, regardless of whether such identity of interest existed prior to initial closing (for insured advances projects) or issuance of the firm commitment (for insurance upon completion projects), or such identity of interest developed after such dates; and/or
 - 2. The general contractor used the “cost plus” principles of the Construction Contract (Form HUD-92442-ORCF), regardless of any identity of interest with the Borrower.

The general contractor and subcontractors will not be required to cost certify when the Borrower is exempt from certifying actual costs.
- C. Subcontractors at any tier, equipment lessors, materials suppliers, and manufacturers of industrialized housing shall cost certify where:

- 73 1. The total of all subcontracts, purchases, and leases exceed one-half percent (0.5%) of the
74 FHA-insured mortgage amount; and
75
76 2. An identity of interest exists or comes into being between such subcontractor,
77 equipment lessor, materials supplier, or manufacturer of industrialized housing, and
78 either:
79 a. The Borrower; or
80 b. The general contractor, if the general contractor is required to cost certify.
81
82

11.7

Final Completion Date and Cut-Off Date

83
84 The final completion date for determining actual costs is the date the HUD inspector signs the
85 final HUD Representative's Trip Report (Form HUD-95379-ORCF), provided that such trip
86 report is subsequently endorsed by the construction manager. Construction must be completed
87 by the final completion date, except for acceptable items of delayed completion approved in
88 writing by HUD. HUD will notify in writing each of the Borrower, general contractor and
89 Lender of the approved final completion date.
90

- 91 A. The final completion date is the effective date for the cost certification. However, the
92 Borrower has the option to include in the cost certification all soft costs incurred up to sixty
93 (60) days beyond such date. The date selected by the Borrower is the "cut-off date" for all
94 soft costs.
95
96 B. The Borrower's balance sheet and the Borrower or the Operator's operating statement date must
97 conform to the selected cut-off date.
98
99

11.8

Administrative Completion Date

100
101 The ORCF construction manager (the "CM") may advance the completion date to prevent
102 unnecessary accumulation of soft costs. Such advancement may be deemed warranted by HUD
103 for nearly-completed projects that face unnecessary delays.
104

- 105 A. The CM may set an administrative completion date for any project when the monthly
106 inspection reports show ninety-five percent (95%) completion of work, and thereafter less
107 than a two percent (2%) increase in percentage of completion in any subsequent month.
108
109 B. The CM shall notify in writing each of the Borrower, general contractor and Lender of such
110 administrative completion date, and the following:
111

- 112 1. That the administrative completion date shall be the effective date for cost
113 certification, except that all soft costs up to sixty (60) days beyond such date may
114 be included at the option of the Borrower.
115
116 2. That the date of the balance sheet and operating statement must be the same as the
117 cut-off date selected by the Borrower.
118 3. That all liquidated and/or actual damages for cost certification purposes shall be
119 computed using the administrative completion date. However, the general contractor
120 shall be liable for any liquidated and/or actual damages that arise after the
121 administrative completion date and before the date of substantial completion.
122
123

11.9

Submission Date

124
125 The submission date for cost certification shall be within sixty (60) days after the cut-off date.
126
127

11.10

Required Forms and Documentation

128
129 The following items shall be submitted for purposes of cost certification, as applicable:
130

- 131 A. A Mortgagor's Certificate of Actual Cost (Form HUD-92330-OHF) shall be required for the
132 cost certification of all Borrowers. Excel spreadsheets and instructions are provided in the
133 Lender Narrative Cost Certification Supplement (Form HUD-9444-ORCF).
134
135 B. A Contractor's Certificate of Actual Cost (Form HUD-92330-A) shall be required for the
136 cost certification of all general contractors. Excel spreadsheets and instructions are provided
137 in the Lender Narrative Cost Certification Supplement.
138

139 All subcontractors, materials suppliers and equipment lessors shall also use this form to
140 certify cost.
141

142 Note: When a project includes both rehabilitation and new construction, a separate form of
143 cost certification shall be required for each, as well as a master form of cost certification that
144 summarizes total project costs, including fees.
145

- 146 C. Borrower's Certificate of Actual Cost (Form HUD-2205A-ORCF) shall be required for all
147 projects refinanced under Section 232 pursuant to Section 223(f).
148
149 D. The Lender Narrative Cost Certification Supplement shall be submitted for all substantial
150 rehabilitation projects and ~~all~~ any new construction projects for which a mortgage increase is
151 requested at Final Closing. The Excel spreadsheets contained in the Lender Narrative Cost

152 Certification Supplement shall be used as a guideline for auditors and Lenders to better
153 assure consistency and accuracy of cost certification submissions.

154
155 E. A Lender Certification (Form HUD-91129-ORCF) shall be required with short form cost
156 certifications for new construction, substantial rehabilitation, supplemental loans, blended
157 rate loans and all long-form cost certifications.

158
159 F. Audited Borrower and Operator financial statements (*see* Section 11.11).

160
161 G. A Request for Final Endorsement of Credit Instrument (Form HUD-92023-ORCF). Such
162 Request for Final Closing shall be updated if there are material changes prior to Final
163 Closing.

164
165 H. A draft Maximum Insurable Mortgage Letter (*sample available on Section 232 Program*
166 *website*).

167
168 I. All invoices that have not previously been provided to ORCF (for initial closing or insured
169 advances).

170
171 **Note:** Cover sheets for invoices or other documentation shall be required for each line
172 item of the cost certification. Such cover sheets shall identify the number and name of
173 each line item by sub-category. Additional cover sheets shall be provided for each sub-
174 category and shall specifically identify the purpose of each invoice (*e.g.*, third-party
175 appraiser, PCNA, Phase I, survey, etc.). If an invoice is not available for a particular sub-
176 category, a cancelled check may be submitted in order to satisfy such requirement.

177
178
179 J. An updated third-party appraisal and Lender Narrative appraisal section (in the case of a
180 request for mortgage increase that includes a proposed revision to value).

181
182 K. A Financial Record of Mortgage Loan Transaction (Form HUD-92451) or similar advances
183 register at the option of the Lender.

184
185

11.11

Required Cost Certifications

186
187 Borrowers shall comply with either subsection A or B below, depending on the criteria described
188 in subsection A.1.

189
190 A. Simplified form of cost certification. For projects that qualify for a simplified cost
191 certification, the Borrower's Certificate of Actual Cost and Contractor's Certificate of Actual
192 Cost shall be required. Eligible projects include those that use a cost plus construction

193 contract and those for which an identity of interest exists between the Borrower and the
194 general contractor. For all such projects, an accountant's opinion shall not be required.
195

- 196 1. A simplified cost certification, in lieu of a long form cost certification, shall be
197 permitted for new construction or substantial rehabilitation projects involving forty
198 (40) or fewer units and for the refinance or acquisition of existing projects under
199 Section 232 pursuant to Section 223(f) of the National Housing Act.
200
- 201 2. If an identity of interest exists between a subcontractor, materials supplier and/or
202 equipment lessor, and the Borrower and/or the general contractor (if such general
203 contractor must cost certify), and the total of all identity of interest subcontracts,
204 purchases and leases is more than one-half of one percent (0.5%) of the FHA-insured
205 mortgage amount, the applicable party shall use the Contractor's Certificate of Actual
206 Cost. This requirement, as further described in the Agreement and Certification
207 (Form HUD-93305-ORCF), shall apply for all projects.
208
- 209 3. An unaudited balance sheet of the Borrower, as of the cut-off date, shall be required for
210 all projects. The format and content of such balance sheet shall comply with Section
211 11.11.B.4.
212
- 213 4. An unaudited operating statement (from the Borrower and/or the Operator, as applicable)
214 shall be required if occupancy commenced during the construction period. The format
215 and content of such operating statement shall comply with Section 11.11.B.5.
216

217 B. Long form cost certification. For all projects that do not qualify for a simplified cost
218 certification under the criteria of subsection A.1 above the following items shall be required:
219

- 220 1. A Borrower's Certificate of Actual Cost, supported by an accountant's opinion, shall
221 be required for all projects.
222
- 223 2. A Contractor's Certificate of Actual Cost, supported by an accountant's opinion, shall
224 be required for the general contractor if such general contractor shares an identity of
225 interest with the Borrower and/or if the "cost plus" principles of the Construction
226 Contract were used.
227
- 228 3. All subcontractors, materials suppliers, and/or equipment lessors with an identity of
229 interest with either the Borrower or the general contractor shall submit a Contractor's
230 Certificate of Actual Cost, supported by an accountant's opinion.
 - 231 a. As required, all materials suppliers shall attach to the Contractor's
232 Certificate of Actual Cost a sheet describing in sufficient detail:
 - 233 i. Quantities of such materials furnished;
 - 234 ii. Sources from which such materials were obtained; and

- 235 iii. Unit prices paid to the sources of such materials, as well as the
236 brand names, model numbers, sizes, and lumber grades of such
237 materials, etc., as applicable.
238

239 Note: No amount shall be included for general requirements (*e.g.*, job overhead).
240

- 241 b. Equipment lessors shall attach to the Contractor's Certificate of Actual
242 Cost a sheet describing in sufficient detail:
243 i. Dates such equipment was acquired;
244 ii. Ages of such equipment at acquisition date;
245 iii. Brand names and model numbers of such equipment;
246 iv. Sizes of such equipment;
247 v. Dates and length of time such equipment was used; and
248 vi. Rates charged for such equipment.
249
- 250 c. In addition, such equipment lessors shall certify that:
251 i. The rates charged were not more than the local market rate for such
252 equipment, including the maintenance and/or repair of such
253 equipment;
254 ii. The time charged for such equipment was not more than essential for
255 the project; and
256 iii. The charges did not exceed the purchase price of such equipment.
257
- 258 d. Lump Sum Basis. In lieu of providing an attachment describing the above-
259 required items, such equipment lessors may elect to certify that its rates are
260 less than or equal to eighty-five percent (85%) of the local market rate for
261 identical equipment under arms' length (lump sum) leases. When making this
262 election, the equipment lessor shall agree:
263 i. That the Closer shall be the sole judge of the reasonableness for the
264 time and rates charged; and
265 ii. That all equipment maintenance and repair expenses shall be the
266 responsibility of such equipment lessor and shall not be included as an
267 additional cost.
268
- 269 e. Subcontractor's equipment. All costs for the equipment of subcontractors,
270 whether owned or rented, shall be considered in the markup for overhead and
271 profit. Such costs shall be reflected in the total subcontract and in the prior
272 approval for identity of interest entities. A separate certification of such
273 equipment shall not be required.

- 274 4. An audited balance sheet of the Borrower, as of the cut-off date, shall be required.
275 Such balance sheet shall:
276 a. Incorporate the following certification:
277

278 “I hereby certify that the foregoing figures and statements contained herein, and as
279 submitted by me as an authorized agent of [Name of Borrower] for the purpose of
280 obtaining mortgage insurance under the National Housing Act, are true and provide a
281 full and accurate description of the current financial position of (Name of Borrower)
282 as of (date of financial statement).
283

284 Signed this __day of ____, 20__.

285
286 _____
287 (Signature of authorized agent with name printed or typed below signature)
288

289 **WARNING: Any person who knowingly presents a false, fictitious or fraudulent**
290 **statement or claim in a matter within the jurisdiction of the U.S. Department of**
291 **Housing and Urban Development is subject to criminal penalties, civil liability,**
292 **and administrative sanctions.”**
293

- 294 b. Furnish reconciling information if short-term liabilities on the balance sheet
295 do not agree with Column B of the Borrower’s Certificate of Actual Cost.
296 c. Explain the purpose of all liabilities in the notes to the financial statement and
297 include repayment requirements for such liabilities. Special care shall be
298 taken to disclose any liabilities in the balance sheet that were not disclosed
299 prior to Initial Closing. If such liabilities are disclosed, the Lender shall
300 promptly inform the Borrower that such liabilities cannot be an obligation of
301 the project and that repayment shall solely be the responsibility of the
302 Borrower. Such liabilities shall not be considered (i.e. they shall not be
303 allowed nor disallowed) in the review of the cost certification. When
304 previously non-disclosed items are disclosed in the audited balance sheet, a
305 detailed review of the Borrower’s Certificate of Actual Cost and the
306 Contractor’s Certificate of Actual Cost shall be required and may result in
307 delays in HUD’s review of the cost certification.
308 d. If any proceeds and/or obligations from a syndication of the project are passed
309 through the books and records of the Borrower, receivables shall be described
310 as an asset of the Borrower.
311 e. The notes to the balance sheet shall identify the original amount of the
312 working capital deposit and shall summarize any expenditures thereof.
313
- 314 5. An audited operating statement covering the period from the beginning of marketing
315 and rent-up activities (or the date of Initial Closing in rehabilitation projects
316 involving insurance of advances, or the date of the start of construction for
317 rehabilitation projects involving insurance upon completion) to the cost certification
318 cut-off date, shall be submitted for:
319 a. The Borrower, for all projects;
320 b. The Operator, when an identity-of-interest exists between the Borrower and
321 the Operator and the Operator has executed a Regulatory Agreement

- 322 c. The Borrower only, where no identity-of-interest exists between the
323 Borrower and the Operator and the Operator has executed a Regulatory
324 Agreement in favor of HUD. The Borrower's income statement shall
325 reflect a market comparable lease payment as income; and
326 d. The Borrower, where the Borrower and the Operator are the same entity and a
327 Regulatory Agreement has not been executed.
328
- 329 6. All operating statements shall include the certification described in Section 11.11.B.4,
330 and shall comply with the following additional requirements:
- 331 a. The operating statement shall be prepared on an accrual basis;
332 b. The operating statement shall cover the beginning of marketing and rent-up
333 activities (or the date of Initial Closing in rehabilitation projects where
334 occupancy is continuous) to the cost certification cut-off date;
335 c. Marketing and rent-up activities shall start no earlier than six (6) months prior
336 to the issuance of the first Permission to Occupy-Project Mortgages (Form
337 HUD-92485);
338 d. The operating statement shall sufficiently describe the dates covered by such
339 statement;
340 e. The operating statement shall sufficiently describe income from all sources, and shall
341 not consider security deposits as income;
342 f. The operating statement shall not contain any expense items that were paid or that
343 should have been paid from the working capital deposit or otherwise included in
344 the cost certification.
345 g. Operating expenses may include the following:
- 346 i. Expenses directly relating to renting the project, such as:
347 1. Rental commissions customary for the type of project, if any;
348 and
349 2. Marketing and advertising expenses.
350 ii. Expenses for the purchase of furnishings, equipment not paid from the
351 working capital deposit, and other supplies essential to project
352 operation.
353 iii. Reasonable fees for preparing any federal, state, or local tax return
354 required for the project.
355 *Note: If the Borrower is a partnership, reasonable fees for preparing*
356 *both the tax return of the partnership, shall be permitted, but the cost*
357 *of preparing a partner's personal tax returns shall not be permitted.*
358 *Note: If the Borrower is an individual, reasonable fees for preparing a tax*
359 *return for project operations shall be permitted, but not for non-project*
360 *related items on such tax return.*
361 iv. Electricity, gas, water, waste water and operating salaries
362 (maintenance, cleaners, gardeners, elevator operators, etc.) to the
363 extent they are not included in construction cost of Borrower's
364 Certificate of Actual Cost, or Contractor's Certificate of Actual Cost.
365 v. Management fee stated in the contract.

366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408

7. Operating expenses may not include:
 - a. Depreciation;
 - b. Interest, taxes, property insurance premiums, and mortgage insurance premiums that are reflected in the Mortgagors Certificate of Actual Cost;
 - c. Salaries paid to principals of the sponsor or Borrower for managing the Borrower entity.

8. Treatment of net operating income generated during construction (by the entity which operates the facility):
 - a. The windfall is the amount that will be entered as net income on the Mortgagor's Certification of Actual Cost.
 - b. The windfall calculation and explanation are provided in Appendix 11.1 and 11.2. **The windfall calculation is not applicable:**
 - i. When the Borrower and Operator are unrelated entities.
 - ii. For Section 241(a) Supplemental Loans.
 - c. If the windfall is less than or equal to zero:

- If the windfall is less than or equal to zero:
 - i.—No entry is made on the Mortgagor's Certification of Actual Cost.
 - i.
 - ii. Operating deficit may be carried over as a reduction to net income on the supplemental operating statement.

9. A certification by an independent Certified Public Accountant or an Independent Public Accountant must accompany the, Borrower's Certificate of Actual Cost, including the audited balance sheet of the Borrower and operating statement of the Borrower or Operator, and the Contractor's Certificate of Actual Cost.
 - a. The accountant must meet the auditor qualifications of the Government Auditing Standards (GAO Yellow Book), including the qualifications relating to independence and continuing professional education. The audit organization also must meet the quality control standards of the GAO Yellow Book.
 - b. Part 24 of Title 24 of the Code of Federal Regulations prohibits accountants from contracting for services when their name is shown on the HUD and General Services Administration Government-wide Consolidated List of Debarred, Suspended and Ineligible Contractors and Grantees.
 - c. The accountant must also comply with the requirements in Chapters 1, 2, and 6 of HUD Handbook IG 2000.4, (Consolidated Audit Guide for Audits of HUD Programs.)

10. The Borrower must submit a supplemental operating income statement (of the Borrower or Operator) if more than 3 months exist between the cut-off date and the start of

409 amortization. If a deferment of amortization was granted, use the new date for the start of
410 amortization in determining the need for a supplemental operating statement.

- 411 a. This requirement does not apply to non-profit Borrowers or any project where
412 the mortgage is \$200,000 or less.
- 413 b. The statement covers the period from the cost certification cut-off date to the
414 date, which is 3 months before the start of amortization. The Borrower shall
415 submit the statement within 30 days after the expiration of this period.
- 416 c. If the required original cost certification was audited, a CPA or IPA must
417 prepare and certify the supplemental statement.
- 418 d. The Borrower may advance the date of amortization to avoid submitting a
419 supplemental income statement.
- 420 e. In preparing the statement, if the operating statement submitted at cost
421 certification shows expenses in excess of income, such expenses may be
422 carried forward as "un-recovered expense—prior period."

423
424 **C. Section 232/223(f) Projects:** The Borrower certifies to the total costs incurred in the
425 acquisition or refinancing of the property using the Borrower's Certificate of Actual Cost.
426 The certification must be dated and signed by an authorized agent of the Borrower. An
427 accountant's opinion is not needed.

- 428
429 1. The certification must be submitted after all critical repairs have been completed.
- 430
431 2. The general contractor will be required to cost certify using the Contractor's
432 Certificate of Actual Cost if a cost plus construction contract is used.
- 433
434 3. A balance sheet and income statement are not required.

11.12

ORCF Closer Review of Borrower's and Contractor's Cost Certifications

437
438
439 When the cost certification package is received for processing, the Closer shall:

- 440
441 A. Complete the cost certification review checklist and determine deficiencies associated with the
442 Borrower's and contractor's cost certifications.
- 443
444 B. Send an email to the Lender stating the deficiencies and requesting further information.
- 445
446 C. The Lender shall be required to provide a full response in writing within ten (10) working days.
- 447
448 D. Send a HUD-approved maximum insurable mortgage letter to the Lender when the cost certification
449 review is complete.

11.13**Allowable Costs in Borrower's Certificate of Actual Cost**

452

453

A. Construction Contract:

454

455

456

457

458

459

460

461

462

463

464

465

466

467

468

469

470

471

472

473

474

475

476

477

478

479

480

481

482

483

484

485

486

487

488

489

490

491

1. A lump sum construction contract is permitted when no identity of interest exists between the Borrower and the general contractor. The amount allowed in cost certification shall be the lesser of:
 - a. The actual cash paid or to be paid by the Borrower under the construction contract; or
 - b. The construction contract price, as adjusted by ORCF's estimated cumulative effect of approved change orders paid, or to be paid, by the Borrower, and, if applicable, the liquidated or actual damages provision to the contract.
2. A cost-plus construction contract shall be required when an identity of interest exists between the Borrower and the general contractor.
3. 50/75 Percent Rule:
 - a. Whether or not there is an identity of interest, no general contractor's fee (general overhead and profit) shall be allowed when:
 - i. More than fifty percent (50%) of the contract sum in the Construction Contract is subcontracted to one subcontractor, materials supplier or equipment lessor; or
 - ii. More than seventy-five percent (75%) of the contract sum in the Construction Contract is subcontracted with three (3) or fewer subcontractors, materials suppliers or equipment lessors.

If two (2) or more subcontractors have common ownership, they shall be treated as one subcontractor for purposes of this Section.
 - b. Exceptions: The 50/75 percent rule shall not apply to:
 - i. Trade items performed by persons on the general contractor's payroll.
 - ii. The supplemental loan program.
 - iii. Rehabilitation programs other than gut rehabilitation.
 - c. The Closer shall make all final determinations on the applicability of the 50/75 percent rule.
 - d. Where the 50/75 percent rule is violated, the general contractor shall forfeit its anticipated profits.
4. The amount permitted in cost certification when a cost-plus contract is used is the lesser of:
 - a. The actual cash paid, or to be paid, by the Borrower under the construction contract.
 - b. The amounts the Closer approved for construction.

- 492 c. The construction contract price, as adjusted by the ORCF's estimated
493 cumulative effect of approved change orders paid, or to be paid, by the
494 Borrower, and, if applicable, either the incentive provision or the liquidated or
495 actual damages provision of the contract.
- 496 d. Borrowers shall be expected to adhere to the following additional guidelines:
497 i. Recognizing approved change orders necessitated by errors or
498 omissions of the architect only to the extent that such change orders
499 result in savings for the mortgage. Borrowers shall not recognize such
500 change orders when processing a mortgage increase.
501 ii. Not recognizing approved betterment change orders in calculating the
502 adjusted upset price.
503 iii. Recognizing the increase in general requirements, if any, noted on
504 approved time extension change orders. Borrowers shall not recognize
505 any increases in soft costs associated with such change order. Soft costs
506 will instead be recognized under applicable line items.
507 iv. For profit-motivated projects involving an identity of interest between
508 the Borrower and the general contractor, the amount of builder's profit
509 as shown on the Agreement and Certification shall be an eligible
510 expense whether or not it was paid in cash.
511 v. For non-profit Borrowers, the allowable builder's profit is the lesser of
512 the amount actually paid or to be paid in cash to the general contractor
513 or the amount of builder's profit shown in the Maximum Insurable
514 Loan Calculation replacement cost tab, plus or minus any applicable
515 amount due under ORCF-approved change orders.
- 516
- 517 5. An identity of interest shall be deemed to exist under any of the following
518 circumstances:
- 519 a. The Borrower has any financial interest in the general contractor, or
520 conversely, the general contractor has any financial interest in the Borrower.
521 b. Any officer, director, stockholder, member, manager, trustee or partner of the
522 Borrower is also an officer, director, stockholder, member, manager, trustee or
523 partner of the general contractor.
524 c. Any officer, director, stockholder, member, manager, trustee or partner of the
525 Borrower has any financial interest in the general contractor; or any officer,
526 director, stockholder, member, manager, trustee or partner of the general
527 contractor has any financial interest in the Borrower.
528 d. The general contractor advances any funds to the Borrower.
529 e. The general contractor supplies and pays, on behalf of the Borrower, the cost
530 of any architectural services or engineering services other than those of a
531 surveyor, general superintendent, or engineer employed by a general
532 contractor in connection with its obligations under the construction contract.
533 f. The general contractor takes stock or any interest in the Borrower or its
534 controlling stockholders, members or partners as consideration of payment.

- 535 g. There exists or comes into being any side deals, agreements, contracts, or
536 undertakings entered into by either the Borrower and/or the general contractor
537 which modifies, amends, subordinates and/or terminates any provisions and/or
538 mortgage insurance documents required by Program Obligations, except as
539 approved by ORCF.
540

541 Any relationship (e.g., familial) exists which would give the Borrower or the general
542 contractor undue control or influence over the terms and price of the contract or the
543 price paid to any subcontractors, materials suppliers and/or lessors of equipment.
544

545 6. Incentive fee payments to contractors:

546 The Borrower may request that the construction contract be modified before Initial
547 Closing to provide for an incentive fee for the general contractor for completing the
548 specified construction work in its entirety and delivering a completed project before
549 the date specified in the construction contract (or as amended by any ORCF-approved
550 time extensions). Incentive fees shall be described in sufficient detail in a rider to the
551 construction contract and shall be approved by ORCF prior to Initial Closing, or, for
552 insurance upon completion and insurance of advance projects, prior to execution of
553 the construction contract. An incentive fee rider may not be added to the construction
554 contract after Initial Closing.
555

556 In calculating an incentive fee, Borrowers shall be expected to adhere to the following
557 additional guidelines:

558 a. Identity-of-interest Borrowers.

- 559 i. The general contractor may benefit from savings in construction
560 interest, taxes, property insurance, and mortgage insurance premiums
561 to the extent there are construction cost overruns.
562 ii. The incentive payment shall be reflected in the adjusted upset price of the
563 construction contract.
564

565 If there is an identity-of-interest between the Borrower and the general
566 contractor, an incentive fee shall only be paid if there are certified cost
567 overruns that were not included in an ORCF-approved change order, and the
568 amount of such incentive fee shall not exceed the amount of certified cost
569 overruns that were actually incurred.
570

571 b. Non-identity of interest Borrowers.

- 572 i. The incentive payment shall be reflected in the Construction Contract
573 Incentive Payment (Form HUD-92443).
574 ii. Incentive fees shall be calculated in accordance with instructions of the
575 Construction Contract Incentive Payment.
576 iii. The incentive fee computed for lump sum construction contracts shall
577 not exceed fifty percent (50%) of the amount by which the estimated
578 mortgage interest, taxes, property insurance and mortgage insurance

579 premium exceeds the certified costs for those same items through the
580 actual date of completion.

581 iv. The incentive fee computed for cost plus construction contracts shall
582 be paid in an amount calculated in accordance with the incentive
583 payment computation on Page 2 of the Construction Contract
584 Incentive Payment. Additionally, when a cost plus construction
585 contract is used, the general contractor shall not receive any incentive
586 payments that exceed:

- 587 1. the actual costs of construction,
- 588 2. the cash fee provided in the construction contract, or
- 589 3. the incentive fee as determined by the incentive
590 payment computation.

591
592 In addition, the general contractor shall not be paid an incentive fee
593 that is greater than the amount of cost overruns; any excess of this
594 amount shall be refunded to the Borrower.

595
596 7. Damages clause. The Borrower shall exercise the damages clause of the construction
597 contract when the general contractor does not complete the project on time. Such
598 clause holds the general contractor financially responsible for the added soft costs
599 resulting from the delays in completion of the project.

600
601 In applying the damages clause, Borrowers shall be expected to adhere to the
602 following additional guidelines:

- 603 a. Borrowers shall calculate the amount of actual and liquidated damages, as
604 further defined by the construction contract, using the lesser to determine the
605 adjusted upset price.
- 606 b. To determine actual damages, Borrowers shall compute the actual cost of
607 mortgage interest, taxes, insurance and mortgage insurance premiums for the
608 period from the scheduled completion date (as amended by any ORCF-
609 approved change orders) through the substantial completion date.
- 610 c. To determine liquidated damages, Borrowers shall multiply the daily
611 liquidated damages rate from the construction contract by the number of days
612 between the scheduled completion date specified in the construction contract,
613 as amended by any ORCF-approved time extensions, through the substantial
614 completion date.
- 615 d. Borrowers shall reduce the calculated damages by the portion of the net
616 operating income earned during the respective periods for calculating the
617 liquidated or actual damages.
- 618 e. For those cases where an administrative completion date has been established,
619 Borrowers shall use the administrative completion date for computing
620 damages for cost certification purposes. However, the general contractor shall
621 remain liable for damages through the date of substantial completion.
622

623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653

654
655
656
657
658
659
660
661
662

8. If the Borrower acts as its own general contractor:
 - a. A construction contract shall not be required. Instead, the Building Loan Agreement Supplemental (Form HUD-92441a-ORCF) shall be incorporated into the Building Loan Agreement (Form HUD-92441-ORCF).
 - b. The upset price for construction shall be described in Line 51 of the ORCF-approved Contractor's and/or Borrower's Cost Breakdown (Schedule of Values (Form HUD-2328) as adjusted by the cumulative effect of any ORCF-approved change orders and/or incentive provisions, as applicable.
 - c. All incentive payment clauses shall be incorporated by an addendum to the Construction Contract Incentive Payment (Form).
 - d. There shall be no liquidated and/or actual damages clause.

NOTE: The Borrower may serve as its own general contractor only when the Borrower is an individual or a general partnership.

9. Incomplete minor items. The Borrower's certification of the amount due under the terms of the construction contract may include the cost of minor items of on-site work that remain incomplete under the terms of the construction contract.

B. Owner-Architect Agreement. Architect's fees shall be limited to amounts paid in cash. Borrowers shall be expected to adhere to the following additional guidelines:

1. Borrowers shall recognize the cost of additional services set forth in Article 10 of the Standard Form of Agreement between Owner and Architect for Housing Services (AIA Document B108).
2. Borrowers shall not recognize the following costs:
 - a. Any portion of the architect's fee paid in stock.
 - b. Any costs associated with a clerk of the works.

Note: Clerk of the works are individuals (in addition to the supervisory architect) who represent the Borrower on the job site during construction of large and/or complex construction projects. Their cost may be allowable when included in underwriting as a Mortgagor Other Fee.

3. If any identity of interest exists or comes into being between the architect and either the Borrower or the general contractor, or both, during project construction:
 - a. The design architect's fee shall be limited for cost certification purposes as set forth in the Agreement and Certification; and
 - b. Borrowers shall not be permitted to allow a fee for supervisory services.
4. Borrowers shall apply any unused balance of the total architect's fee as a direct reduction of the allowable cost.

663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706

C. Interest shall be allowable on the amount accrued on the first mortgage between Initial Closing (or the start of construction, for insurance upon completion projects) and the cut-off date. Borrowers shall be expected to adhere to the following additional guidelines:

1. Borrowers may recognize interest costs associated with an approved early start, provided that:
 - a. The Borrower entered into a binding agreement with the general contractor which:
 - i. Was previously approved in writing by ORCF;
 - ii. Agrees to reimburse the general contractor for interest on money borrowed for construction prior to Initial Closing; and
 - iii. States that reimbursement will be made only to the extent that the Borrower has funds available in the amount estimated for interest during construction.
 - b. The certified amount of such interest, when added to the interest costs incurred directly by the Borrower, does not exceed the total amount of interest estimated in the Maximum Insurable Loan Calculation replacement cost tab.
 - c. A Request for Permission to Commence Construction Prior to Initial Endorsement for Mortgage Insurance (Form FHA-2415) was executed and previously approved in writing by ORCF.
 - d. The interest costs reflect the general contractor's actual cost of money borrowed to cover the cost of construction between the early start date and Initial Closing as adjusted by subsection (e) below.
 - e. The rate of interest does not exceed the rate of interest approved for the FHA-insured loan.
2. The interest rate paid on the construction loan shall not exceed the rate stated in HUD's firm commitment.
3. Borrowers shall deduct accrued interest forgiven by the Lender or otherwise not paid in cash.
4. Borrowers shall treat any refunds from the Lender and/or bond underwriters of any portion of the construction loan interest as a reduction to the allowable cost.
5. If the construction interest rate change prior to Initial Closing, and it was not feasible to reprocess the project, or if a state housing agency sold bonds to finance the construction loan and the true interest rate was not known until cost certification:
 - a. Interest savings may be created from the difference between the processed interest rate and the actual final interest rate approved by ORCF.
 - b. Borrowers may treat such savings as a reduction to the allowable cost if the following condition is included in HUD's firm commitment:

707 “Any interest savings resulting purely from a differential between the HUD-
708 processed interest rate and the actual construction interest rate may not be
709 construed as excess funds that may be used to offset costs in other categories
710 at the time of cost certification. Any such saving must be applied as an
711 allowable cost reduction.”
712

713 6. Neither the interest on subordinated liens nor other obligations of the Borrower shall
714 be allowed as certifiable costs.
715

716 D. Costs for taxes and insurance shall be allowable in the amount accrued on the first mortgage
717 between Initial Closing (or the start of construction, for insurance upon completion projects)
718 and the cut-off date as defined in Section 11.7 of this Chapter. Borrowers shall not recognize
719 costs accrued during the early start period.
720

721 E. The exact amount of mortgage insurance premium due during the construction period will
722 not be finally computed until the project has been completed. Such premium shall be
723 calculated as follows:
724

725 1. The mortgage insurance premium shall be based on the applicable regulatory annual
726 percentage of the mortgage amount on the basis of accrual for the number of days in
727 the period described in Section 11.13.C of this Chapter, for projects involving
728 insurance upon advances.
729

730 2. No mortgage insurance premium shall be paid during construction for projects
731 involving insurance upon completion.
732

733 F. HUD application, commitment and inspection fees shall be allowable as amounts paid. Fees
734 paid to re-open an expired or terminated commitment shall not be allowable costs.
735

736 G. Financing expenses shall include any initial service charges, discount fees, Federal National
737 Mortgage Association (FNMA), Government National Mortgage Association (GNMA) or
738 other permanent Lender commitment and marketing fees, and other similar fees. Borrowers
739 shall be expected to adhere to the following additional guidelines:
740

741 1. Permitted expenses shall include the lesser of:

742 a. All expenses paid, or to be paid, in cash.

743 b. All expenses described in the Lender’s Certificate (Form HUD-92434-
744 ORCF), or the Request for Endorsement of Credit Instrument & Certificate of
745 Lender, Borrower & General Contractor (Form HUD-92455-ORCF) and
746 approved by ORCF prior to Initial Closing (or issuance of the firm
747 commitment, for insurance upon completion projects).
748

749 2. The construction Lender’s initial service charge:

750 a. May cover:

- 751 i. Processing fees;
- 752 ii. All expenses of counsel for the Lender paid directly from the initial
- 753 service charge; however, any such expenses shall not be permitted if
- 754 they cause the initial service charge to exceed two percent (2%) the
- 755 mortgage amount. Lenders shall be responsible for reconciling
- 756 separate invoices or bills with such itemized costs; and/or
- 757 iii. All other charges of the construction Lender.
- 758 b. Shall exclude:
- 759 i. Any construction loan discounts.
- 760 ii. Any construction loan extension fees.
- 761
- 762 3. The permanent Lender's placement fee:
- 763 a. Shall cover all permanent placement expenses, except discounts and certain
- 764 fees associated with a bond financed transaction, if applicable.
- 765 b. Shall not incorporate any additional charges for a GNMA mortgage backed
- 766 security application fee or other custodial or delivery fees.
- 767 NOTE: Construction and permanent Lenders' initial service charges and
- 768 placement fees in the aggregate shall not exceed three and one-half percent
- 769 (3.5%) (or 5.5 percent for bond-financed projects), and the parties involved
- 770 may divide such fees as negotiated.
- 771
- 772 4. The following costs shall additionally be permitted for cost certification:
- 773 a. Any reasonable discounts based on current interest rates at the time of HUD's
- 774 issuance of the firm commitment, for projects involving insurance of advances
- 775 and insurance upon completion charged by the construction and/or permanent
- 776 Lenders. Extension fees charged by the construction Lender shall also be
- 777 permitted, if funded at Initial Closing and disclosed in the Lender's
- 778 Certificate.
- 779 b. Any permanent Lender extension fees, as disclosed in the Lender's
- 780 Certificate, and if funded before the substantial completion date.
- 781 c. Any construction and/or permanent loan extension fees for insurance upon
- 782 completion projects, as disclosed in the Request for Endorsement, and if
- 783 funded before the cost certification cut-off date.
- 784 d. Any financing fees (including extension fees and discounts) paid on behalf of
- 785 the Borrower by a third party and as disclosed by the Lender's Certificate or
- 786 the Request for Endorsement, if shown as a current liability on the Borrower's
- 787 balance sheet, and to the extent that such fees result in savings for the
- 788 mortgage. At final closing, a promissory note in a format approved by HUD
- 789 shall be used for any unpaid balance of such obligations recognized in cost
- 790 certification.
- 791 e. Any costs of issuance, discounts, and financing fees in excess of five and one-
- 792 half percent (5.5%) for bond-financed projects; provided that the cost
- 793 certification evidences that the sponsor and Borrower shall not benefit

794 monetarily from any excess investment income derived from the proceeds of
795 any invested obligations.

- 796
- 797 5. The following costs shall not be permitted for cost certification:
- 798 a. Any “side deals” (except for discounts previously approved by ORCF) by
799 which the Borrower agrees to pay for the “added cost of money.”
- 800 b. The four percent (4%) construction loan and 1.75 percent permanent loan
801 indemnification escrows required by GNMA.
- 802 c. Any discounts required to buy down the construction and/or permanent rate to
803 a below market rate.
- 804 d. Any amount of the bond premium distributed to the Borrower, Operator
805 and/or any of their principals.

- 806
- 807 6. The following items shall be treated as reductions for cost certification:
- 808 a. Premiums paid by the Lender to the Borrower or sponsor for acquiring the
809 construction or permanent loan.
- 810 b. Partial refunds of the processing commitment fee, which are returned to the
811 Borrower or sponsor.
- 812 c. Discounts or other fees paid for by a contribution of a portion of the initial
813 service charge by the Lender and/or bond underwriter.
- 814 d. Rebates paid to the Borrower or sponsor by the Lender and/or bond
815 underwriter for bond-financed mortgages.

816

817 H. Title and recording expenses shall be limited to cash paid for:

- 818
- 819 1. Title searches and/or title insurance policies required by HUD for Initial Closing;
- 820
- 821 2. Recording fees for mortgage insurance documents at HUD Initial Closing;
- 822
- 823 3. Mortgage and stamp taxes;
- 824
- 825 4. Survey fees;
- 826
- 827 5. Updates required by HUD for the title insurance policy during construction;
- 828
- 829 6. Title searches, title insurance policies and recording charges required by HUD at
830 Final Closing; and
- 831
- 832 7. Legal fees incurred for the preparation of any of the above.

- 833
- 834 I. Legal, organization and audit expenses shall be limited to expenses incurred in organizing the
835 Borrower and/or updating its governing documents in order to comply with Program
836 Obligations, developing the financing proposal for HUD and other necessary governmental
837 agencies, and for providing additional services during closing and construction.

838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880

1. Organizational expenses shall be further limited as follows:
 - a. Borrowers shall be limited to the amount described in the Maximum Insurable Loan Calculation Replacement Cost Tab for the organizational fee, unless sufficient justification is submitted for the need for, and reasonableness of, any additional expenses, including fully supporting documentation such as receipts or cancelled checks.
 - b. Additional information on organizational fees is provided in the LNCCS.
2. Legal expenses shall be further limited to those legal expenses incurred for representation of the Borrower during its organization and at initial and final closing, tax advice provided to the Borrower solely during its organization, and preparation of legal documents required for initial and/or final closing of the FHA-insured loan.
 - a. Borrowers are permitted to include customary expenditures expected to be incurred before and during initial closing, over the construction period, and at final closing. This may include legal expenditures for any identity of interest Operator or Management Agent if they are directly related to the specific HUD- insured transaction.
 - b. Borrowers shall not include:
 - i. Customary expenses for land acquisition which are already incorporated in, or contributing to:
 1. Title and recording expenses;
 2. The estimated market price of the acquisition site; and/or
 3. Expenses related to changes, variances and/or special use permits for zoning.
 - ii. The costs of legal services to create tax shelters and trusts.
3. Borrowers are permitted to include the cost of a “package deal” for organization and legal services, provided:
 - a. The supplier of such services is qualified to furnish the respective services; and
 - b. The costs do not duplicate expenses for the same services.
4. Audit fees shall be further limited to those expenses related to a qualified accountant’s audit and opinion of the Borrower’s certificate of costs.
5. Amounts included in the Maximum Insurable Loan Calculation Replacement Cost Tab for legal and audit expenses are not blanket allowances, but ordinarily set an upper limit on allowable amounts.
 - a. Non-typical fees (i.e. those that exceed the above-described upper limits) shall be borne by the Borrower, unless in an exceptionally complex case, a higher fee is sufficiently demonstrated by the Borrower to be necessary and reasonable. Detailed invoices and/or other documentation shall be required to

881 evidence the reasonableness, purpose, necessity, and proper classification of
882 all non-typical fees.

883 b. The restrictions of this Section are not flexible where Borrowers are permitted
884 to include the cost of a “package deal” for organization and legal services, and
885 where a substantial amount of such organization and legal services are
886 performed by the same firm.

887
888 J. Offsite costs: Where the Borrower enters into a supplemental contract for constructing
889 offsite improvements, the costs of such improvements shall be calculated using the lesser of
890 the following:

- 891
- 892 1. The offsite construction contract price as adjusted by ORCF’s estimated cumulative
893 effect of approved offsite change orders;
 - 894 2. The actual cash paid or to be paid for such offsite work; or
 - 895 3. The amount approved by ORCF for offsite construction.

896
897 Offsite costs shall be further limited as follows:

- 898
- 899 a. HUD shall adjust the as-is land value of the project, if the permitted amount
900 for offsite and demolition differs from HUD’s estimate on the Maximum
901 Insurable Loan Calculation land tab issued with HUD’s firm commitment.
 - 902 b. Offsite costs shall not be permitted for leasehold estates when the ground
903 lease rent is based on a land value that reflects all required offsite
904 improvements, since the Borrower has not or will not pay for such
905 improvements.
 - 906 c. If the Borrower certifies to off-site costs, the land value utilized to determine
907 the maximum insurable mortgage shall be reduced by the amount of such off-
908 site costs.

909
910 K. Other permitted costs include all costs and/or recovery of costs which are not provided for
911 elsewhere and which are clearly attributable to the actual cost of the project, including, but
912 not limited to, the following items:

- 913
- 914 1. Any costs attributable to acquiring a leasehold interest in the project, provided that
915 any such acquisition costs, ground rents and/or offsite costs are paid by the Borrower,
916 do not exceed HUD’s calculation of the fair market value of the land fully improved
917 (from the land tab of the Maximum Insurable Loan Calculation. Any excess costs
918 shall be reflected as a disallowed cost of acquiring the leasehold.
 - 919 2. Any ground rents paid from Initial Closing of the FHA-insured loan (or the start of
920 construction, for insurance upon completion projects) to the cut-off date.
- 921
922

- 923 3. Any incentive payments paid to a non-identity of interest contractor for completing
924 construction before the scheduled completion date, as amended by any ORCF-
925 approved change orders.
926
- 927 4. Any bond premium for the general contractor, if paid by the Borrower. If the
928 construction contract includes any expenses for the bond premium, this amount shall
929 be subtracted from the construction contract amount when calculating the adjusted
930 upset price.
931
- 932 5. Any other fees, including fees required for an engineering and/or topographical
933 survey. The Lender shall be responsible for determining whether such costs are
934 reasonable and not duplicated in those costs attributed to the general contractor.
935
- 936 6. Any grants, loans or tax credit equity of the Borrower and/or principals of the
937 Borrower used to pay for allowed items of cost, but limited as follows:
938 a. The deduction of such grants, loans or tax credit equity shall be treated as a
939 recovery of such costs by the Borrower and/or its principals; and
940 b. The Borrower shall not deduct grant, loan or tax credit equity funds from the
941 total recognized costs when such funds were used to pay for certain non-
942 replacement cost items (e.g., they were used for acquisition costs of the land
943 in excess of the HUD allowance, operating deficits, working capital, and/or
944 other items disclosed in the Applicant/Recipient Disclosure (Form HUD-
945 2880).
946 7. Any residential relocation costs. Further instructions are provided in the LNCCS.
947
948

949 Note: Cost certification footnotes may use vendor names to identify third party costs.
950 However, such footnotes shall describe in sufficient detail the services provided by
951 such vendor. This requirement is critical to further assure that there are no
952 duplication of costs between contractors, subcontractors, architects and subcontract
953 engineers, etc. For rehabilitation projects, any costs that may be construed as
954 maintenance costs attributable to ongoing operations shall also be described in
955 sufficient detail in the audit footnotes.

956
957 L. Non-Profit Developer and Housing Consultant Fees: Non-profit Developer and Housing
958 Consultant Fees are not permitted as mortgageable expenses on Section 232 projects.
959

960 M. Major Movable Equipment: Instructions are provided in the LNCCS.
961
962

11.14

Cost review of the General Contractor's Cost Certification

963

- 964 A. Actual costs shall be defined as all costs paid by the general contractor pursuant to the terms
965 of the construction contract for completion of the project, and to which the general contractor
966 certifies, using the Contractor's Certification of Actual Cost. Such costs shall include:
967
- 968 1. Actual costs paid in cash, or to be paid in cash (for items of delayed completion)
969 within forty-five (45) days after the date of substantial completion, for all labor,
970 materials, equipment, subcontract work, general requirements (including job
971 overhead), fees, general overhead, and estimated costs for any items requiring an
972 escrow.
 - 973 a. Actual costs are further limited as follows:
 - 974 i. The salaries of clerical staff for time actually spent at the project shall
975 be permitted; however, the prorating of annual salaries on a percentage
976 basis shall not be permitted.
 - 977 ii. Salaries of executives shall not be included in the calculation of
978 general requirements, but shall instead be included in calculation of
979 general overhead.
 - 980 iii. Any kickbacks, rebates, adjustments, discounts, or other similar
981 devices which the general contractor has received or is entitled to
982 receive from the Borrower or any subcontractors, materials suppliers
983 or equipment lessors, shall be deducted from actual costs.
 - 984 b. General overhead expenses are further limited as follows:
 - 985 i. Such expenses shall include only the amount of the accepted Schedule
986 of Values, adjusted by any ORCF-approved change orders.
 - 987 ii. Itemization shall not be required for general overhead expenses.
- 988
- 989 B. An ORCF cost review of the general contractor's cost certification shall be conducted in
990 accordance with the following guidelines:
991
- 992 1. ORCF shall conduct a detailed review if the Borrower applies for a mortgage
993 increase.
994
 - 995 2. Such review shall include a sufficiency and consistency review of all certifications
996 required from the contractor and/or any subcontractors, materials suppliers and
997 equipment lessors.
998
 - 999 3. The following documents, as applicable, shall be audited in the context of such
1000 review:
 - 1001 a. Borrower's Certificate of Actual Cost;
 - 1002 b. Contractor's Certificate of Actual Cost;
 - 1003 c. Agreement and Certification;
 - 1004 d. Request for Construction Changes--Project Mortgages--all approved for the
1005 project (Forms HUD-92437);
 - 1006 e. Project Cost Estimate (Lender's Third Party Estimate) (Form HUD-92326);
 - 1007 f. Contractor's and/or Borrower's Cost Breakdown.

- 1008 g. Trip Report (all for projects).
- 1009
- 1010 4. Such review shall determine the following:
- 1011 a. Whether the 50/75 percent rule applies. Such determination shall be based
- 1012 in part on the disclosures described in the “total” and “name of
- 1013 subcontractor or payee” columns of the general contractor’s cost
- 1014 certification, and if such rule does apply, t the general contractor’s general
- 1015 overhead and profit shall not be permitted as expenditures.
- 1016 b. Whether any identity of interest exists among the Borrower, the general
- 1017 contractor and/or any subcontractors, materials suppliers and equipment
- 1018 lessors.
- 1019 i. Such determination shall be based in part on the disclosures described
- 1020 in the Agreement and Certification.
- 1021 ii. HUD shall review each cost certification for identity of interest
- 1022 subcontractors for compliance; however, if such cost certification is
- 1023 not submitted, such subcontractor’s overhead, profit and other
- 1024 questionable costs shall not be permitted as expenditures. Permitted
- 1025 expenditures shall be further limited as follows:
- 1026 1. If such subcontractor was not previously approved as an
- 1027 identity of interest subcontractor, such subcontractor’s
- 1028 overhead and profit shall not be permitted as expenditures.
- 1029 2. If such subcontractor was previously approved as an identity of
- 1030 interest subcontractor, all **subcontract overhead and profit**
- 1031 **previously approved by ORCF, plus or minus the effect of**
- 1032 **any approved change orders, shall be permitted as**
- 1033 **expenditures. Previously-approved subcontract overhead**
- 1034 **and profit shall not be reduced in the event that the**
- 1035 **certified cost for such work is less than the prior approved**
- 1036 **maximum subcontract price.**_(c) Permitted expenditures
- 1037 may include up to the previously-approved maximum
- 1038 subcontract amount for work, plus or minus the effect of
- 1039 any ORCF-approved change orders.
- 1040
- 1041 5. HUD shall additionally review trade line item costs in accordance with the following
- 1042 guidelines:
- 1043 a. HUD shall utilize the general contractor and subcontractor cost certification
- 1044 sections of the LNCCS as a template for calculations under this Section and
- 1045 pursuant to the following formula:
- 1046 i. Enter all trade line costs from HUD’s estimate or the applicable
- 1047 contractor’s schedule of values after adjusting for any ORCF-
- 1048 approved change orders.
- 1049 ii. Enter all trade line costs from the general contractor’s cost
- 1050 certification.

- 1051 iii. Using dollar and percentage variance columns, compare each trade's
1052 actual cost with the estimate and determine permitted expenditures.
1053 b. Permitted expenditures shall not be limited by the estimates described in
1054 Section 11.14.B.5(a) above; rather, HUD reserves the discretion to base any
1055 such determination on distinctions in the contracted work, in part based on the
1056 following criteria:
1057 i. Actual costs paid to complete the work in accordance with the
1058 construction contract shall be permitted; and
1059 ii. Actual costs incurred due to unusual circumstances shall be permitted
1060 (e.g., bankruptcy of the subcontractor, code changes, required
1061 replacement of completed work and/or replacements due to natural
1062 occurrences, such as storms, floods, earthquakes, etc.).
1063 c. HUD shall only review expenditures under this Section if such expenditure is
1064 substantially in excess of the above-described estimates (i.e., those greater
1065 than ten percent (10%) of the estimated trade line cost). If expenditure
1066 requires such review, HUD shall:
1067 i. Contact the Lender to request an explanation of such expenses,
1068 including supporting documentation, as applicable.
1069 ii. Make disallowances if the requested explanation and/or documentation
1070 is not submitted in a reasonable amount of time.
1071 iii. Request that the Lender submit an amended Contractor's Certification
1072 of Actual Cost.
1073 d. HUD shall not permit any amount not justified or supported as being part of
1074 the construction contract work.
1075 e. HUD shall not permit costs for duplication of work due to a contractor's error
1076 or negligence (e.g., improper placement of construction, failure to protect the
1077 construction and/or noncompliance with the terms of the contract, etc.).

1078
1079 C. Lump sum construction contract cost certification

1080
1081 HUD shall review the cost certification of any subcontractor that has an identity of interest
1082 with the Borrower.
1083
1084

11.15

**Section 232/223(f) and 232/223(a)(7)
Modified Form of Cost Certification**

- 1085
1086 A. Borrowers shall complete and submit for review a modified form of cost certification
1087 prior to the Initial/Final Closing of a loan for insurance for all projects insured under
1088 Section 232 pursuant to Sections 223(f) or 223(a)(7) that include repairs without a
1089 PCNA (Project Capital Needs Assessment). Such cost certification shall comply with the
1090 following requirements:
1091

1092 1. Borrowers shall be required to certify to the total actual costs incurred in the
1093 acquisition or refinancing of the project. Such certification shall be submitted with
1094 the Borrower's Certificate of Actual Cost and shall be dated and signed by an
1095 authorized agent of the Borrower.

1096
1097 Invoices shall be submitted to describe in sufficient detail all third-party costs,
1098 including cover sheets for each invoice and/or document submitted for each line item
1099 of the cost certification. Such cover sheet shall identify the number and name of the
1100 applicable line item and any subcategories. Additional cover sheets shall be
1101 submitted for each subcategory and shall identify the purpose of each invoice. If no
1102 invoice is available for a particular line item, a cancelled check may be submitted in
1103 lieu of such requirement.

1104
1105 The following categories of line items shall be further documented as follows:

1106
1107 a. Purchase Price or Existing Indebtedness
1108 Purchase prices shall be evidenced by the relevant portion of the applicable
1109 purchase agreement and shall be supplemented by any necessary explanation
1110 and/or clarification.

1111
1112 Existing indebtedness shall be evidenced by pay-off letters from all existing-
1113 debt holders dated the month of closing. Per-diem amounts (including all
1114 calculations for taxes and insurance) shall be evidenced as follows:

1115 i. Prepayment fees shall be evidenced with documentation of the relation
1116 of such fees to the project and the basis for their calculation.
1117 ii. Any existing indebtedness of a Real Estate Investment Trust shall
1118 be calculated using the same methodology as utilized for
1119 determining existing indebtedness in the Maximum Insurable Loan
1120 calculation attached to HUD's firm commitment.
1121 iii. Any portion of a bond premium being distributed to the Borrower,
1122 the Operator or any of their principals shall not be included.

1123 a.b. Repairs shall reflect the actual amount paid for repairs, and shall be evidenced
1124 by photographs, invoices and the Borrower's certification for critical repairs.
1125 If the Borrower performs such repairs, itemization of the labor, material,
1126 equipment rent and overhead, shall be identified by trade in Schedule A of the
1127 Borrower's certification for critical repairs. Permitted expenditures for such
1128 repairs shall not exceed the estimated cost of repairs from HUD's firm
1129 commitment.

1130 c. All HUD-required fees (including the Application Fee, Inspection Fee and
1131 Mortgage Insurance Premium) shall be itemized on the bottom of Page 2 of
1132 the Borrower's Certificate of Actual Cost.

1133 d. The Lender's fees shall not exceed three and one-half percent (3.5%) of the
1134 mortgage amount; however, higher fees (up to five and one-half percent
1135 (5.5%)) may be permissible for bond transactions.

- 1136 i. The Lender's fee shall include the Lender's legal expenses, which
1137 shall be identified on Schedule B and additionally included in this line
1138 item.
1139 ii. Any broker's fee shall be identified (with the name and address of the
1140 broker) on Schedule B and additionally included in this line item.
1141 iii. Any placement fee (GNMA, etc.) shall be identified on Schedule B
1142 and additionally included in this line item.
1143 iv. Security extension fees are not an allowable mortgageable cost.
1144 e. Recording expenses shall include any recording taxes.
1145 ~~e.~~ Legal and organizational expenses shall be itemized on the bottom of Page 2
1146 of the Borrower's Certificate of Actual Cost and shall be further supported by
1147 invoices of third-parties.
1148 f. Other expenses shall be described in sufficient detail in Schedule C and
1149 supported by invoices and/or other relevant documentation. All third party
1150 reports (appraiser, PCNA, environmental, survey, etc.) and the initial deposit
1151 to the R4R account shall additionally be included in this line item. All
1152 previously FHA-insured projects shall describe in sufficient detail the
1153 proposed disposition of the current R4R fund in Schedule C.
1154
1155 2. The Lender shall be responsible for submitting its certification to ORCF for
1156 computation of the maximum insurable mortgage and completion of Section II of the
1157 Borrower's Certificate of Actual Cost.
1158
1159 B. In circumstances where the actual costs are less than estimated, the Borrower shall deposit any
1160 remaining funds in the R4R account.
1161

11.16

Mortgage Reduction After Cost Certification

- 1162 A mortgage reduction is not required under Section 232.
1163
1164 A. The Lender must recalculate the replacement cost based on allowable cost.
1165
1166 B. The Lender must recalculate the mortgage determinants.
1167
1168 C. If the new mortgage amount is less than the firm commitment mortgage amount the Lender
1169 may request either:
1170 1. The difference may be added to the R4R account, or
1171 2. The mortgage will be reduced.
1172
1173 The Lender request and explanation will be included as a part of the Lender's draft Maximum
1174 Insurable Mortgage Letter.
1175
1176
1177

11.17**Increase in Mortgage Amount**

- 1178
1179 A. Any requests for an increase in the mortgage amount shall be presented by the Lender and
1180 described in sufficient detail as part of the Lender's draft Maximum Insurable Mortgage Letter.
1181
1182 B. All mortgage increase requests shall require a detailed Lender review of the cost certification
1183 documents. Documentation of this review shall be evidenced by the LNCCS.
1184

11.18**Inspector General Audit**

1185 ORCF reserves the discretion to request that the District Inspector General for Audit perform an
1186 audit the Borrower's and/or contractor's books where discrepancies appear to arise from other
1187 than inadvertent error or creditable misinterpretation of applicable criteria. ORCF additionally
1188 reserves the discretion to delay final closing if an audit will also be requested for any suspected
1189 fraud or material misrepresentation that arises prior to final closing.
1190
1191

11.19**Cost Certification Incontestability**

1192 After ORCF approves the respective cost certifications and signs the Maximum Insurable
1193 Mortgage Letter, such cost certifications shall be deemed final and incontestable unless there is
1194 determined to be fraud or material misrepresentation by the Borrower, the general Contractor or
1195 any subcontractors.