

# DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4064-N-01]

## Office of the Assistant Secretary for Housing—Federal Housing Commissioner; Availability of Additional Units for the Housing Finance Agency Risk-Sharing Program

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Notice of the Availability of Additional Units for the Housing Finance Agency Risk-Sharing Program.

**SUMMARY:** This Notice announces the availability of an additional 10,000 units for the Housing Finance Agency Risk-Sharing program and invites qualified Housing Finance Agencies (HFAs) that are not yet approved to participate in the program (new applicants) to apply for approval to participate in the program. HFAs that are currently approved to participate in the program will be notified by certified mail that they may request additional units by letter to the Department.

The Housing Finance Agency Risk-Sharing program is authorized under section 542(c) of the Housing and Community Development Act of 1992, as amended. Section 8 of the Housing Opportunity Program Extension Act of 1996 extends section 542(c) by authorizing the Secretary to enter into HUD mortgage insurance commitments processed by State and local HFAs for an additional 12,000 multifamily units for Fiscal Year 1996. Ten thousand of those units are being made available by this invitation. The balance of the 12,000 new units (2,000) are being retained by HUD Headquarters to meet the immediate needs of current risk-sharing participants so that they can maintain essential risk-sharing operations and staff resources.

**APPLICATION DEADLINE:** The deadline for receipt of applications from new applicants to participate in this program is 4:00 pm, Eastern Daylight Savings Time on July 22, 1996. Applications received after the date and time stated herein will not be accepted and will be returned to the sender. HFAs are encouraged to submit applications prior to the end of the 60-day period, as applications will be reviewed and approved as they are received. Applicants should obtain a copy of the program handbook (Handbook 4590.01 REV-1) and the program regulations at 24 CFR part 266 to become familiar with program requirements. If there are differences between the handbook and

this Notice, the requirements of this Notice shall prevail. Qualified agencies may call Jane Luton at 202-708-2556 for a copy of the handbook and regulations. This is not a toll-free number. Hearing- or speech-impaired persons may access that number by calling toll-free the Federal Information Relay Service at (800) 877-8339.

**ADDRESS FOR SUBMISSION:** Applications for participation in the program must be identified on the envelope or wrapper and be submitted as follows: Director, Office of Multifamily Housing Development, Application for Housing Finance Agency Risk-Sharing Program, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6142, Washington, DC 20410.

HFAs shall submit an original and three copies (a FAX copy is NOT acceptable) of the application to the above address by the application deadline.

**Note:** Any new applicant that is not a HUD-approved mortgagee at the time of its application to participate in the program (see 2. (ii) under Application Requirements below) must submit an Application for Approval as a HUD-Approved Mortgagee. Such applications must be identified on the envelope or wrapper as such and submitted by the application deadline to the following address: Director, Office of Lender Activities and Land Sales Registration, Application for Housing Finance Agency Risk-Sharing Program, U.S. Department of Housing and Urban Development, Room 9156, Washington, DC 20410.

**APPLICATION FEE:** New applicants must submit an application fee of \$10,000 through FEDWIRE. The Federal Deposit System offers individual and corporate remitters the ability to move funds electronically from their bank account to the Treasury. The remitter identifies the payment and the Department of Housing and Urban Development as the government agency to be credited on the funds transfer message. Instructions for your bank to follow to complete a FEDWIRE are listed in Attachment A.

**FOR FURTHER INFORMATION CONTACT:** Jane Luton, Director, New Products Division, Office of Multifamily Housing Development, Room 6142, U.S. Department of Housing and Urban Development, Washington, D.C. 20410. Telephone: (202) 708-2556; (This number is not toll-free.) Hearing- or speech-impaired persons may access that number by calling toll-free the Federal Information Relay Service at (800) 877-8339.

### SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The information collection requirements contained in this Notice

have been approved by the Office of Management and Budget (OMB), under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), and assigned OMB Control Number 2502-0500. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

### Purpose and Program Summary

Section 542(c) of the Housing and Community Development Act of 1992 authorized the Department to implement a multifamily mortgage insurance risk-sharing pilot program with qualified State and local Housing Finance Agencies (HFAs). On December 3, 1993, the Department promulgated interim regulations implementing the pilot program, the purpose of which was to demonstrate the effectiveness of providing new forms of Federal credit enhancement for the development of affordable multifamily housing by State and local HFAs. On December 5, 1994, the Department promulgated final regulations for the program. To date, the Department has allocated 30,000 units which were available for Fiscal Years 1993, 1994, and 1995 to 31 participating HFAs. These HFAs have received HUD Firm Approval Letters (notifications that units have been reserved for proposed projects) for over 14,000 units.

The program has been designed to increase the supply of affordable multifamily housing through partnerships between HUD and State and local housing finance agencies. Qualified HFAs are authorized to originate, underwrite, and close loans for multifamily housing projects requiring new construction and substantial rehabilitation as well as certain acquisitions and refinancings. HUD will endorse such loans for full mortgage insurance upon presentation of appropriate certifications. HFAs will be responsible for the full range of loan management, servicing, and property disposition activities associated with these projects.

Through a Risk-Sharing Agreement between HUD and the HFA, the HFA contracts to assume a portion of the risk on each loan it underwrites. HUD, in turn, commits to pay 100 percent of the outstanding principal mortgage balance upon default of the loan and filing of a claim. The HFA will issue a debenture for the amount of the claim pending the final settlement of the loss. HUD and the HFA will share in any loss in accordance with the amount of risk assumed by each under the Risk-Sharing Agreement.

HFAs will be approved on one of the following three levels: (1) Level I; (2) Level II; or (3) a combination of Level I and Level II. The primary distinction between Level I and Level II is in the level of risk apportionment an HFA agrees to accept. HFAs participating at Level I are those that will assume 50 percent or more of the risk associated with a loan default. These HFAs may use their own underwriting standards and loan terms and conditions without further approval from HUD. HFAs participating at Level II will assume less than 50 percent of the risk and must have their underwriting standards and loan terms and conditions approved by HUD.

This document contains information concerning: (a) Deadline and address for submission of applications; (b) eligibility requirements; (c) allocation of units; (d) application requirements; (e) establishment of dedicated account; (f) application review procedures; (g) approval of applications; and, (h) authorization to use the unit set-aside.

#### Eligibility

To participate in the program, an HFA must meet the qualifications set forth in 24 CFR 266.100 and the requirements in 24 CFR 266.105 (a).

#### Allocation of Units

HUD will set aside units for approved HFAs as follows:

(1) *Unit set-aside.* Each approved HFA will receive a set-aside of units based upon an assessment of their previous multifamily housing experience, their current capacity to utilize the number of units requested, the population size of the HFA's jurisdiction in comparison to other new applicants and participating HFAs, and the number of units requested by the HFA. The unit set-aside will be reserved in a Risk-Sharing Agreement executed by the HFA and HUD.

(2) *Headquarters reserve.* HUD may hold back a small portion of the 10,000 units for future use in FY 1996 to meet unforeseen needs of current and new HFA participants.

(3) *Credit subsidy.* The set-aside of units will be subject to the availability of credit subsidy which will be obligated and allocated in accordance with outstanding Department instructions.

#### Application Requirements

New applicants must submit an application containing the following information:

(1) *Name, title, telephone and fax numbers.* Provide the name, title, telephone and fax numbers of the

person most familiar with the material contained in the application in case HUD needs to contact the HFA for clarification and/or further information.

(2) *Evidence of eligibility.* The HFA must provide evidence that it meets the following:

(i) Be a HUD-approved mortgagee in good standing;

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

(ii) Has at least five years experience in multifamily underwriting; and

(iii) Carries the designation of "top tier" or its equivalent, as evaluated by Standard and Poors or any other nationally recognized rating agency; OR

(iv) Has a current overall rating of "A" for its general obligation bonds from a nationally recognized rating agency; OR

(v) For HFAs not qualifying as (iii) or (iv), the Housing Finance Agency Questionnaire (Attachment B to this Notice)

(3) *Application fee.* Evidence that the application fee of \$10,000 has been wire-transferred to the U.S. Treasury. This fee will not be refunded once the application has been accepted for review.

(4) *Units requested.* A statement indicating the number of units the HFA is requesting as well as the number of units the HFA proposes to process to firm approval letter by September 30, 1997.

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

(6) *Legal opinion.* A letter from the HFA's legal counsel providing its opinion, after careful review of the HFA's program, that the HFA has the necessary powers and ability to comply with all program requirements. The opinion for an HFA with an overall rating of "A" on its general obligation bonds must also state that the general obligation will extend to the HFA's responsibilities under the Risk-Sharing Agreement and any debenture issued by the HFA to the Commissioner. If the opinion of counsel does not include this statement, the HFA must establish a dedicated reserve account in the amount of \$500,000 in accordance with the requirements in 24 CFR 266.110 (b).

(7) *Underwriting procedures, loan terms and conditions, investment*

*policies and business and financial practices.* A description of the following: (i) The manner in which the HFA will process mortgage loans, including its underwriting procedures and loan terms and conditions as follows: (A) The approval process and fee schedule, (B) maximum mortgage term, (C) minimum debt service coverage, (D) maximum loan-to-value ratio, (E) maximum loan amount, (F) minimum equity requirement, (G) minimum income-to-expense ratio, (H) prepayment requirements, (I) title requirements, (J) escrow and reserves (including replacement reserves), and (K) hazard insurance requirements; (ii) loan management, loan servicing and property disposition activities; (iii) the manner in which the HFA's and mortgagor's reserves and escrows (including letters of credit) will be established and controlled; and (iv) a description of the HFA's investment policies and overall business practices.

(8) *Underwriting staff.* Identification, background description and years of experience of individuals with final underwriting approval authority (e.g., chief underwriter) and the individual responsible for project management, loan servicing and property disposition (e.g., asset manager). These functions may not be contracted out by the HFA.

(9) *Default history.* A description of the default history (including workouts) for all HFA-financed multifamily projects.

(10) *Oversight.* A description of oversight by State or local government agencies.

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

(12) *Certification.* A certification (Attachment C to this Notice) signed by an authorized official from the HFA that certifies to the following:

(i) The HFA will at all times comply with the financial requirements of 24 CFR 266.110 and, where applicable, maintain required reserves in a dedicated account in liquid funds (i.e., cash, cash equivalents, or readily marketable securities) in a financial institution acceptable to HUD;

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

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

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

(13) Sample debenture form issued by the HFA.

(14) The Housing Finance Agency Questionnaire (Attachment B) The Questionnaire is to be completed only by HFAs that do *not* carry the designation "top-tier" or its equivalent, or do *not* currently receive an overall rating of "A" for their general obligation bonds from a nationally recognized rating agency.

#### Establishment of Dedicated Account

Prior to execution of the Risk-Sharing Agreement, HFAs that do not have a top-tier rating, have not received an overall rating of "A" on their general obligation bonds or those whose opinion of legal counsel (required above) did not state that the general obligation will extend to the HFA's responsibilities under the Risk-Sharing Agreement and any debenture issued by the HFA to the Commissioner must establish a specifically identified dedicated account (see Attachment D). This account must consist entirely of liquid assets (i.e., cash, cash equivalents, or readily marketable securities) and be located in a financial institution acceptable to HUD. Such an institution has assets of not less than \$100,000,000; is organized under the laws of the United States or a State thereof; and is regulated and examined by the Comptroller of the Currency, Federal Deposit Insurance Corporation or the Federal Reserve Board, has a long-term bank deposit rating of "A-1" or better by Moody's Investors Service or "A+" rating by Standard and Poors. Reserve requirements are set forth in 24 CFR 266.110 of the regulations.

#### Application Review Procedures

1. *Additional Information.* If HUD requires additional data from a new applicant, the new applicant will have 5 business days from the date of notification to submit such data to the appropriate HUD official. (If notification is by mail, an HFA will be presumed to receive notification five business days from the date of such notification.)

2. *Review Criteria.* HUD will review each application to determine if the applicant meets all the requirements of the regulation and this Notice and

demonstrates the ability to underwrite, originate, process, close, service, manage, and dispose of multifamily loans in a prudent manner.

3. *Acceptability Standards.* HUD will review the submissions of HFAs which do not have a top-tier rating or have not received an overall rating of "A" on their general obligation bonds in accordance with the above Review Criteria and the standards set forth below:

(i) Demonstrated capability to carry out program responsibilities, including: (A) continuity of management; (B) staff qualifications and experience; and (C) the HFA's established track record of performing multifamily loan processing, servicing, loan management (including capability to enforce regulatory agreements and to perform workouts), and property disposition for the types of loans eligible under this program.

(ii) Adequacy of the HFA's administrative capabilities to ensure sound underwriting and loan management.

(iii) Soundness of the HFA's multifamily portfolio, including default experience.

(iv) Strength of the relationship between the HFA and the State or local government.

(v) The HFA's fiscal soundness, including (A) amounts and sources of revenues for housing activities and its investment policies for fund balances (if any); (B) how it proposes to meet any monetary obligations required under this program; and (C) the adequacy of funding to commit to the level requested in the application.

#### Approval of Applications

1. *Notification.* HUD will notify new applicants of approval or disapproval within 60 days of the deadline for applications.

2. *Approval Levels.* HFAs will be approved to operate under one of three requested risk-sharing arrangements as follows:

(i) Level I—the HFA is approved to originate, service and dispose of multifamily mortgages using its own underwriting standards and loan terms and conditions. The HFA assumes 50 to 90 percent of the risk in increments of 10 percent.

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

A. When the loan-to-replacement cost ratio for new construction and substantial rehabilitation projects or the loan-to-value ratio for existing projects

are greater than or equal to 75 percent, the HFA shall assume at least 25 percent of the risk.

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

(iii) Combined Levels I/II—For HFAs which plan to use Level I and Level II process, the underwriting standards and loan terms and conditions to be used on Level II loans must be approved by HUD as described in (ii), above.

3. *Risk-Sharing Agreement.* When an HFA is determined by HUD to be qualified to participate in the program, the Department will grant tentative approval to the HFA and forward the Risk-Sharing Agreement (similar to that shown in Attachment E) to the HFA for signature. The Risk-Sharing Agreement will set aside the number of units for the HFA. It will also set forth other obligations of the HFA. The HFA must return the executed document, along with evidence that the dedicated reserve account has been established (where appropriate).

#### Authorization to Use Unit Set-Aside

After receipt of the signed Risk-Sharing Agreement, HUD will return a copy of the Risk-Sharing Agreement executed on behalf of the Department and notify the HFA that it may begin using its unit set-aside. No HFA will be authorized to process loans for mortgage insurance until it has received HUD-approved mortgagee status, been approved under the Risk-Sharing program, has executed a Risk-Sharing Agreement and, where required, provided evidence to the Department that it has established a dedicated reserve account.

#### Other Matters

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

*Executive Order 12612, Federalism.* The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies and procedures contained in this Notice will

not have substantial direct effects on States or their political subdivisions, or the relationship between the federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the Notice is not subject to review under the Order.

*Executive Order 12606, The Family.* The General Counsel, as the Designated Official for Executive Order 12606, *The Family*, has determined that this Notice will likely have a beneficial impact on family formation, maintenance and general well-being. Accordingly, since the impact on the family is beneficial, no further review is considered necessary.

*Accountability in the Provision of HUD Assistance.* The Department has promulgated a final rule to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act). The final rule is codified at 24 CFR part 12. Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by the Department. On January 16, 1992, the Department published at 57 FR 1942, additional information that gave the public (including applicants for, and recipients of, HUD assistance) further information on the implementation, public access, and disclosure requirements of section 102. The documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under this Notice as follows:

(1) *Documentation and Public Access.* The Department will ensure that documentation and other information regarding each application submitted pursuant to this Notice are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C.

552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this Notice in its Federal Register notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the Federal Register on January 16, 1992 (57 FR 1942), for further information on these requirements.)

(2) *HUD Responsibilities—Disclosures.* The Department will make available to the public for five years all applicant disclosure reports (Form HUD-2880) submitted in connection with this Notice. Update reports (also Form HUD-2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports, both applicant disclosures and updates, will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR part 12, Subpart C, and the notice published in the Federal Register on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

*Prohibition Against Advance Information on Funding Decisions.* HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants or employees who have ethics related questions should contact the HUD Office of Ethics (202) 708-

3815. Hearing- or speech-impaired individuals may access this number via TTY by calling the Federal Information Relay Service at 1-800-877-8339. (With the exception of the "800" number, these are not toll-free numbers.) For HUD employees who have specific program questions, such as whether particular subject matter can be discussed with persons outside HUD, the employee should contact the appropriate Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

*Prohibition against Lobbying Activities.* The use of assistance under this Notice is subject to the disclosure requirements and prohibitions of section 319 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352)(the "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients and subrecipients of assistance exceeding \$100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance.

*Catalog of Federal Domestic Assistance Program.* The Catalog of Federal Domestic Assistance program title and number is 14.188, Housing Finance Agency Risk-Sharing Program.

Authority: Section 542(c) of the Housing and Community Development Act of 1992, as amended, 12 U.S.C. 1707.

Dated: May 16, 1996.  
Stephanie A. Smith,  
Acting General Deputy Assistant Secretary  
for Housing, Federal Housing Commissioner.

BILLING CODE 4210-27-P

## ATTACHMENT A

## FEDWIRE INSTRUCTIONS

INSTRUCTIONS FOR COMPLETING REQUEST TO TRANSFER FUNDS BY FEDWIRE

- ITEM 1 - RECEIVER-DFI#: The Treasury Department's ABA number for deposit messages is 021030004. This number should be entered by the sending bank for all deposit messages sent to the Treasury.
- ITEM 2 - TYPE-SUBTYPE-CD: The type and subtype code will be provided by the sending bank.
- ITEM 3 - SENDER-DFI#: This number will be provided by the sending bank.
- ITEM 4 - SENDING-REF#: The sixteen character reference number is inserted by the sending bank at its option.
- ITEM 5 - AMOUNT: The transfer amount must be punctuated with commas and decimal points; use of the "\$" is optional. This item will be provided by the depositor.'
- ITEM 6 - SENDER-DFI-NAME: This information is automatically inserted by the Federal Reserve Bank.
- ITEM 7 - RECEIVER-DFI-NAME: The Treasury Department's name for deposit messages is "TREAS NYC". This name should be entered by the sending bank.
- ITEM 8 - PRODUCT CODE: A product code of "CTR" for customer transfer should be the first data in the RECEIVER - TEXT field. Other values may be entered, if appropriate, using the ABA's options. A slash must be entered after the product code.
- ITEM 9 - AGENCY LOCATION CODE: THIS ITEM IS OF CRITICAL IMPORTANCE. IT MUST APPEAR ON THE FUNDS TRANSFER DEPOSIT MESSAGE IN THE PRECISE MANNER AS STATED TO ALLOW FOR THE AUTOMATED PROCESSING AND CLASSIFICATION OF THE FUNDS TRANSFER MESSAGE TO THE AGENCY LOCATION CODE OF THE APPROPRIATE AGENCY. The agency's unique code must be specified in the funds transfer message in order for the funds to be correctly classified to the respective agency. The ALC identification sequence includes the beneficiary code field tag, BNF=, and identifier code, "/AC", followed by the appropriate ALC number. This component must be in the following format:

**BNF=/AC-86090300**

The ALC identification sequence can, if necessary, begin on one line and end on the next line; however, the field tag "BNF=" must be one line and cannot contain any spaces.

- TEM 10 THIRD PARTY INFORMATION: This contains the appropriate information to identify the reason for the funds transfer. The Originator to Beneficiary information field tag "OBI=" is used to signify the beginning of the free-form third party text. The field tag "OBI=" must be on the same line and cannot contain any spaces. The field tag is placed following the ALC identification sequence and preceded by a space. An example of this data line is as follows:

**BNF=/AC-86090300 OBI=Housing Finance Agency  
Risk-Sharing Program for MF Project Loans**

(1)	(2)	
021030004		
(3)	(4)	(5)
		\$10,000.00
(6)		
(7)	(8)	
TREAS NYC/CTR/		
(9)	(10)	
BNF=/AC-86090300 OBI=		
HOUSING FINANCE AGENCY RISK-SHARING PROGRAM FOR MF		
PROJECT LOANS		

#### Attachment B—Housing Finance Agency Questionnaire

Responses to this questionnaire fulfill the documentation requirements pursuant to 24 CFR 266.10(d)(4)(iii). All Housing Finance Agencies (HFAs) seeking approval to participate in the HFA Risk-Sharing program who do not have "top-tier" designation or an overall rating of "A" on their general obligation bonds from one of the nationally recognized rating agencies must complete this questionnaire.

The questionnaire addresses 5 different aspects of the HFA and are consistent with conditions set forth in Section 542(d)(2) of the Housing and Community Development Act of 1992. Applicants should be careful to craft responses so that they clearly address the issues set forth in the body of this Notice. Responses should represent a summary of the detailed information that may be found in the HFA's operating, administrative and quality control manuals or guidelines. In order to ensure that the Department can expeditiously review and approve applications, ALL NARRATIVE RESPONSES ARE LIMITED TO 15 PAGES. Responses to questions related to the portfolio (item II) may be presented in tabular form, where appropriate, and attached as exhibits to the 15 page narrative responses. The Department encourages HFAs to prepare responses in a manner similar to that which might be used for the HFAs Annual Reports and reports to the Board of Directors.

#### I. Organizational History

Describe the history and organizational background of the HFA. Indicate how long it has been in existence, when it began to finance multifamily loans, and an overall description of its multifamily lending activities.

Describe the HFA's relationship to the State or local government, as appropriate. Clearly indicate whether or not State or local government officials serve on the HFA's board of directors and describe, if any, the role State or local officials play in the HFA's program operations.

Discuss any State or local appropriations for the past 5 years and any anticipated appropriations over the next 3 years to support the HFA's multifamily housing goals.

#### II. Portfolio Information

Indicate how many multifamily loans have been financed within the past 10 years (dates specified), by year. Include the number and type of projects (family, elderly, assisted living, cooperative, etc.) and units in each, type of loan (first mortgage, second, gap loan, credit support, new construction, rehabilitation, refinancing with or without repairs, etc.) and original mortgage amounts, outstanding principal balances, status (current, default, foreclosed, workout) and location (urban/suburban/central city/rural).

For the multifamily loans currently in the HFA's portfolio, indicate how many are HFA owned, owned by other public agencies, nonprofit organizations, privately owned and other ownership types.

#### III. Staff Capacity

Describe general background and indicate years of experience of individual responsible

for the overall underwriting decision (e.g., chief underwriter) and for project management, loan servicing and property disposition (e.g., Director of Asset Management). Note that these functions may not be contracted out by the HFA.

#### IV. Operating Procedures

##### A. Cost Certification

Describe the HFA's cost certification process. Explain how it will prevent fraud and misrepresentation, ensure legitimate costs and completion of repairs prior to acceptance of certification. Describe how mortgage excesses and mandatory prepayments will be handled.

##### B. Loan Approval

Describe the loan approval process. Describe circumstances if any, under which the chief underwriter's recommendations can be overridden.

Describe any situations where loans are not referred to a committee, what they are and to whom they are referred.

##### C. Loan Servicing

Describe the HFA's overall loan servicing system and the procedures for enforcing the Regulatory Agreement.

Describe the computerization of its portfolio, project audits/reviews and procedures for resolving deficiencies.

##### D. Workout Procedures

State the number of workout plans developed by the HFA over the last five years, elements of the agreement and current status. If there is no previous experience with workouts, describe plans, tools or strategies proposed to establish workout agreements.

#### V. Financial Capability

Describe the amount and sources of funds the HFA has available to support multifamily housing programs. If funds are earmarked for specific projects or programs, or otherwise have a contingent liability, indicate how much and for what purpose. Indicate how much of the funds are unrestricted, how those funds are governed (e.g., approval of the board of directors or state or local government) and the eligible uses of these funds. Identify any funding sources available to supplement less than break-even projects.

Indicate the overall percentage of total unrestricted funds to total debt and the percentage of liquid unrestricted funds to total mortgages outstanding.

Describe the collateral the HFA will use if it does not have the authority to pledge its full faith and credit to back debentures issued against claims.

Describe how the HFA intends to fund the dedicated account, its procedures for ensuring required balances are in place at all times and that the amounts are increased at each loan closing. Describe the funding source (all funds in the account must be liquid) for the dedicated account and identify the financial institution in which the HFA proposes to maintain these funds.

Describe the circumstances or conditions under which other governmental entities or public bodies have access to the HFA's funds.

Describe briefly, the types of financial and quality control audits performed on the HFA.

Indicate the State or local HFA or authority that has responsibility for conducting the annual financial audit and when that audit is conducted.

Describe the mechanism for disposing/resolving audit findings.

Identify any periodic reports required for the board of directors and/or other organizational oversight body.

Describe the procedures in place to generate financial reports, changes in fund balances, and changes in financial position. Describe procedures in place for the prompt notification to HUD of negative changes in the HFA's financial position.

#### Attachment C—Certifications Housing Finance Agency Letterhead

I \_\_\_\_\_ (name of authorized official) hereby certify that I am the \_\_\_\_\_ (title) of the \_\_\_\_\_ (name of housing finance agency) "the Agency", and that I am authorized to make the certifications set forth below on behalf of the Agency.

I hereby certify that:

(1) The Agency will at all times comply with the financial requirements of 24 CFR 266.110 of the Risk-Sharing Program and, where applicable, maintain required reserves in a dedicated account in liquid funds (i.e., cash, cash equivalents, or readily marketable securities) in a financial institution acceptable to HUD.

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

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

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

Dated: \_\_\_\_\_

Name of Agency \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

#### Attachment D—Housing Finance Agency Risk-Sharing Program Section 542(C)

##### Dedicated Reserve Account

The following information is required to evidence establishment of a dedicated reserve account in an initial amount of \$500,000 to be used solely in connection with the Housing Finance Agency (HFA) Risk-Sharing Program. Thereafter, the HFA shall make additional deposits at each loan closing in accordance with 24 CFR 266.110.

Duplicate originals of the attached agreement and one copy must be forwarded by the HFA to a financial institution with whom it intends to establish a Dedicated Reserve Account. In each of the attached agreements and on the copy, such financial

institution will certify to the existence of the dedicated reserve account by inserting the date the account was established, the account number, and the account balance. Upon completion of the certification, the financial institution shall sign and return an original and one copy to the HFA which, in turn, will forward the original to HUD. The HFA should retain a duplicate copy for its records. This information must be submitted to Linda D. Cheatham, Director, Office of Multifamily Housing Development, Room 6134, 451 Seventh Street, S.W., Washington, D. C. 20410 prior to the HFA's approval to participate in the program.

**Agreement for HFA's Dedicated Reserve Account**

HFA Name \_\_\_\_\_  
Address \_\_\_\_\_  
(Street Number) \_\_\_\_\_  
(City, State and Zip Code) \_\_\_\_\_  
Date \_\_\_\_\_

(Name of Institution) \_\_\_\_\_

(Street) \_\_\_\_\_

(City, State, and Zip Code) \_\_\_\_\_

You are authorized and requested to establish a Reserve Account to be specifically designated "(HFA Name)/HUD Risk-Sharing". This account may be drawn upon by the Department of Housing and Urban Development (hereinafter "HUD") and may be used by the HFA only with the prior written approval of HUD for the purpose of meeting the HFA's risk-sharing obligations under this program.

This letter is submitted to you in duplicate originals. Please execute the duplicate originals of the certification below, acknowledging the existence of such account, so that we may present an original signed by you to HUD. Specimen signatures of HFA representatives and identification of authorized HUD signatory positions are enclosed.

(Signature of HFA authorized official) \_\_\_\_\_

To Be Completed By the Financial Institution  
To: The Department of Housing and Urban Development

The undersigned institution certifies to HUD that the above account was established on \_\_\_\_\_ in the amount of \_\_\_\_\_ in this institution under account number \_\_\_\_\_ and agrees with the HFA named above and HUD to honor withdrawals from the account as set forth above and agrees to send quarterly statements regarding the account to both HUD and the HFA. The financial institution further certifies that it:

- (1) has assets of not less than \$100,000,000;
- (2) is organized under the laws of the United States or a State thereof;
- (3) is regulated and examined by the Comptroller of the Currency, Federal Deposit Insurance Corporation or the Federal Reserve Board; and
- (4) has a long-term bank deposit rating of "A-1" or better by Moody's Investors Service or "A+" by Standard and Poor's.

(Name of Institution) \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Authorized HUD Signatory Positions**

Persons in the following positions are authorized to withdraw from the HFA/ HUD Risk-Sharing Account on behalf of HUD and/or approve on behalf of HUD, the withdrawal of funds from the Account by the HFA:

Director, Office of Multifamily Housing Development  
Deputy Director, Office of Multifamily Housing Development  
Director, Office of Multifamily Asset Management and Disposition  
Associate Director for Program Management, Office of Multifamily Asset Management and Disposition  
Associate Director for Program Operations, Office of Multifamily Asset Management and Disposition

**Specimen Signatures of HFA Authorized Officials**

Based upon prior approval from HUD, the following individuals are authorized to withdraw funds from the HFA/ HUD Risk-Sharing Account on behalf of the HFA:

(Name) \_\_\_\_\_  
(Title) \_\_\_\_\_  
(Name) \_\_\_\_\_  
(Title) \_\_\_\_\_

**Attachment E—Sample Risk-Sharing Agreement and Addendum**  
(subject to revision)

This Risk-Sharing Agreement (hereinafter referred to as "Agreement") is entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by and between \_\_\_\_\_ whose address is \_\_\_\_\_ and its successors (hereinafter referred to as "HFA") and the undersigned Secretary of Housing and Urban Development and his/her successors and assigns acting by and through the Assistant Secretary for Housing-Federal Housing Commissioner (hereinafter referred to as "Commissioner").

WHEREAS, the Housing and Community Development Act of 1992 authorizes, under Section 542(c) thereof, the development of a Risk-Sharing Pilot Program under which the Commissioner will enter into Risk-Sharing Agreements with qualified housing finance agencies and provide for full mortgage insurance through the Federal Housing Administration of loans for affordable housing originated by the qualified housing finance agencies;

WHEREAS Section 8 of the Housing Opportunity Program Extension Act of 1996 extends Section 542(c) through the end of Fiscal Year 1996;

WHEREAS, under the authority of Section 542(c), the Commissioner has published implementing regulations at 24 CFR Part 266.

WHEREAS, the HFA seeks to participate in the Risk-Sharing Program, in accordance with Section 542(c), the regulations issued pursuant thereto and the terms set forth herein, in order to obtain full insurance on loans made by the HFA for affordable multifamily housing for persons in its community;

WHEREAS, the Commissioner seeks to enter into this Agreement with the HFA in order to test the effectiveness of Federal credit enhancement for loans for affordable multifamily housing through a system of risk-sharing agreements with the HFA; and

NOW THEREFORE, in consideration of the foregoing, the parties agree as follows:

**Article I—Allocation/Credit Subsidy**

In furtherance of this Agreement,

A. The Commissioner has set aside \_\_\_\_\_ units of affordable multifamily housing to be originated by the HFA.

B. The Commissioner reserves the right to modify the number of units set forth in this Agreement to: (1) Allocate additional units in excess of the number set aside above, or (2) to reduce such allocation based on the Commissioner's review of the HFA's use of its prior set-aside(s). Any such changes shall be incorporated by an addendum to this Agreement.

C. Credit subsidy is required for all insured projects, including projects insured pursuant to this Agreement. Credit subsidy is subject to availability in accordance with the Commissioner's outstanding instructions. The HFA shall be notified that the Firm Approval Letter will be delayed if credit subsidy has been exhausted.

**Article II—Definitions**

As used in this Agreement the term:

"Addendum" means that document attached to this Agreement, which shall be used for reserving units and establishing the risk share percentage for specific projects, modifying the number of units set aside to the HFA and for other purposes.

"Amendment" means a modification of the terms and conditions of this Agreement requiring the consent of both the Commissioner and the HFA or a modification by HUD to 24 CFR Part 266.

"Contract of Insurance" means the agreement evidenced by the endorsement of the Commissioner upon the credit instrument given in connection with a mortgage, incorporating by reference the regulations in 24 CFR Part 266 and the applicable provisions of Section 542(c).

"Credit Subsidy" means the cost of a direct loan or loan guarantee under the Federal Credit Reform Act of 1990 as defined in Subpart B of Title 13 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508, approved November 5, 1990).

"Dedicated Account" means an account maintained in a financial institution acceptable to the Commissioner which consists entirely of liquid assets (i.e., cash or cash equivalents or readily marketable securities.)

"Exhibit" means a document which provides names, titles and/or specimen signatures of principal staff of the HFA.

"Firm Approval Letter" means a letter issued by the Commissioner or his/her designee to an HFA upon the positive completion of the HUD-retained reviews described in 24 CFR Section 266.210. The letter will apportion units and obligate credit subsidy to the property and provide that, so long as the HFA complies with any conditions included therein or attached



thereto, is in good standing, makes the required certifications at the time of the HUD closing, and absent fraud or misrepresentation by the HFA, the Commissioner shall endorse the property mortgage for insurance.

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

"Mortgagee" refers to the original lender under a Mortgage and its successors approved by the Commissioner.

"Project" means the mortgaged property and all assets wherever situated, used in or owned by the owner of the Mortgaged property in the business conducted on the Mortgaged property.

"Reservation" means the number of units from an HFA's set-aside committed upon issuance of a Firm Approval Letter. The number of units reserved may be adjusted upon endorsement, for a specific project to be insured under Section 542(c).

"Set-aside" includes the total number of units allocated for use by an HFA under Section 542(c) which allocation may be increased or decreased from time to time by the Commissioner in accordance with the Commissioner's administrative instructions.

#### Article III—Certifications

In consideration of the endorsement for full insurance by the Commissioner of loans covering the units set aside in Article I, Paragraph A of this Agreement, and in order to comply with the requirements of the risk-sharing program established by Section 542(c) and the regulations adopted by the Commissioner pursuant thereto, the HFA agrees and certifies for itself, and its successors, that in connection with any mortgage insured under Section 542(c) and so long as the Commissioner is obligated to insure mortgages pursuant to this Agreement that:

A. The HFA has been approved by the Commissioner as a Level I \_\_\_\_ and/or Level II \_\_\_\_ [check one or both, as appropriate] Participant as defined in 24 CFR Sections 266.5 and 266.100(b).

B. The individuals (principal staff) employed by the HFA as the persons responsible for the overall underwriting decision and for project management, loan servicing and property disposition with respect to loans insured or to be insured under Section 542(c) are listed in Exhibit A to this Agreement. The HFA agrees to notify the Commissioner promptly in writing any time the HFA changes principal staff.

C. The individuals, whose names, titles and specimen signatures appear in Exhibit B have authority to sign loan documents on behalf of the HFA and otherwise commit the HFA under the Section 542(c) Risk-Sharing Program. The HFA agrees to notify the Commissioner promptly in writing of any changes of individuals authorized to sign loan documents on behalf of the HFA and provide the Commissioner with specimen signatures of such new individuals.

D. The HFA shall allow periodic auditing and review by the Commissioner, the

Inspector General and the General Accounting Office or their duly authorized agents regarding the HFA's participation in the risk-sharing program.

E. The HFA shall permit an inspection and examination of its financial records and records associated with loans insured under Section 542(c) by the Commissioner and/or his duly authorized agents upon reasonable notice.

F. The HFA has fully disclosed and provided copies of all of its underwriting standards and procedures, loan terms and conditions to the Commissioner, and, if the HFA operates as, or originates or processes any loans as a Level II agency, it has obtained the Commissioner's prior written approval to utilize such underwriting standards and procedures, loan terms and conditions. The HFA's originating, underwriting, closing, project management, servicing and property disposition procedures utilized in processing and servicing the loans insured or to be insured under Section 542(c) are incorporated herein by reference and made a part hereof.

G. The HFA shall notify the Commissioner before implementing any amendment to the HFA's underwriting standards and procedures, loan terms and conditions and will provide the Commissioner with copies of any amendments within \_\_\_\_ business days before implementation of such amendments by the HFA. If the HFA operates as, or originates or processes any loans as a Level II agency, it shall also obtain the prior written approval of the Commissioner before implementing any amendment to its underwriting standards and procedures, loan terms and conditions.

H. If the HFA (a) does not meet the qualification requirements of 24 CFR 266.110(a) (i.e., top-tier rating or equivalent designation or has an overall "A" rating on its general obligation bonds), or (b) has an overall "A" rating but cannot provide the necessary legal opinion of counsel requisite to participation in the risk-sharing program, it has established a specifically identified Dedicated Account (meeting the requirements of 24 CFR 266.110(b) and the administrative requirements of the Commissioner) in \_\_\_\_ (insert name of financial institution) a financial institution which has assets of not less than \$100,000,000, is organized under the laws of the United States or a State thereof and is regulated and examined by the Comptroller of the Currency, Federal Deposit Insurance Corporation or the Federal Reserve Board, and has a long term bank deposit rating of "A-1" or better by Moody's Investors Service or "A+" by Standard and Poor's. The Commissioner may determine that higher levels of reserves may be necessary.

I. If at any time the HFA loses the designation or rating, as applicable, set forth in 24 CFR 266.110(a), or can no longer provide the legal opinion requisite to participation in the program, it shall, within 5 business days, provide the Commissioner with notice of the loss of its designation or rating or of its inability to provide the statement noted above. Within 15 business days after the loss of the HFA's designation or rating or its inability to provide the

requisite legal opinion, the HFA shall establish a Dedicated Account funded in accordance with Paragraph H above. The HFA must calculate the deposits to this Dedicated Account in accordance with the requirements of 24 CFR 266.110(b) so that the account reflects all loans in the HFA's portfolio insured under Section 542(c).

J. Within 90 days following the end of its fiscal year, the HFA shall furnish the Commissioner with a complete annual financial audit based upon an examination of the books and records of the HFA prepared and certified in accordance with the requirements of the State or locality in which the HFA is located.

K. The HFA shall at all times comply with the financial requirements of the Section 542(c) program and it shall notify the Commissioner of any pending or actual changes in its financial status that would adversely affect the HFA's operating or financial status within 5 business days after becoming aware of such pending or actual changes.

L. Within 90 days following the end of its fiscal year, the HFA shall furnish the Commissioner, along with a copy of the audit specified in Paragraph J above, a certification signed by an authorized official of the HFA that there have been no changes that would adversely affect the HFA's organization, business activities, financial status and other information submitted with its application to participate in the Section 542(c) program and that the HFA has complied with all eligibility requirements for participation in the program during the past year. If there has been a change in information submitted with the HFA's application relating to the HFA's organization, business activities, financial status or other information submitted with its application, the certification will state the nature of the change.

M. The HFA shall comply with the Fair Housing Act, as implemented by 24 CFR Part 100; titles II and III of the Americans with Disabilities Act of 1990, as implemented by 28 CFR Part 35; Section 3 of the Housing and Urban Development Act of 1968, (12 U.S.C. Section 1701u), implemented by 24 CFR Part 135, the Equal Credit Opportunity Act, implemented by 12 CFR Part 202; Executive Order 11063, as amended, and implemented by 24 CFR Part 107; Executive Order 11246, as implemented by 41 CFR Part 60; other applicable Federal laws and regulations issued pursuant to these authorities; and applicable State and local fair housing and equal opportunity laws. In addition, the HFA shall require that mortgagors which receive Federal financial assistance must also certify to the HFA that, so long as the mortgage is insured under Section 542(c), it shall comply with title VI of the Civil Rights Act of 1964, as implemented by 24 CFR Part 1; the Age Discrimination Act of 1975, as implemented by 24 CFR 146; and section 504 of the Rehabilitation Act of 1973, as implemented by 24 CFR Part 8.

N. During the period that the Commissioner is the insurer of any mortgage endorsed under Section 542(c), the HFA shall remain the mortgagee of record and shall perform all functions in connection with loans originated under the 542(c) program

including loan servicing (including workouts), property management and property disposition functions. The Commissioner shall have no obligation to recognize or deal with anyone other than the HFA in its role as mortgagee of record with respect to the rights and obligations of the HFA under the contract of mortgage insurance and this agreement.

O. The HFA shall retain records pertaining to origination and servicing of all mortgages insured under Section 542(c) for as long as the mortgage insurance remains in effect. In the event of a default and mortgage insurance claim, all records pertaining to the insured mortgage, the mortgage default and insurance claim shall be retained three (3) years after the date of final settlement as final settlement is described in 24 CFR Section 266.654.

P. The HFA shall maintain a Lender's Fidelity Bond/Surety Bond and Errors and Omissions Insurance in a form and amount satisfactory to the Commissioner.

Q. The HFA shall issue Debentures as defined in 24 CFR Section 266.638 acceptable to the Commissioner as collateral for the full amount of its risk-sharing obligation under this agreement pending final settlement of any insurance claim. The Debentures shall be backed by the full faith and credit of the HFA. If the HFA operates as a department or division of the State in which it is located, or as a unit of local government, and the HFA cannot pledge the full faith and credit of the HFA, the HFA shall collateralize its obligation through a letter of credit, reinsurance, or other form of credit acceptable to the Commissioner.

R. Any reinsurance obtained by the HFA to cover its portion of the risk shall: (i) Be subordinate to the HUD-insured mortgage; (ii) not affect reimbursement to the Commissioner, notwithstanding the timing of the actual settlement between the HFA and the reinsurer; (iii) not be used to reduce any reserve or fund balance requirements established by the Commissioner; and (iv) not result in the Federal Government incurring any liability as a result of the reinsurance agreement.

S. With respect to any project mortgage endorsed for insurance under Section 542(c), the HFA shall furnish to the Commissioner project information in a format specified by the Commissioner in HUD Handbook 4590.01. Basic underwriting and closing information shall accompany the initial and final closing dockets submitted for each project. Information relating to project management, servicing and disposition shall be submitted to the Commissioner on a periodic basis after endorsement in accordance with the requirements set forth in Handbook 4590.01.

T. The HFA shall enforce the Regulatory Agreement between the HFA and mortgagor and take action against the mortgagor for violation of any provision(s) thereof.

U. The HFA shall perform annual physical inspections of all projects insured under Section 542(c) and shall submit a copy of the inspection report to the Commissioner (i.e., showing and certifying that the project is in safe and sanitary condition). If a project is not in safe and sanitary condition, the HFA will provide the Commissioner with a

summary of required actions, with target dates, to correct unresolved findings.

V. The HFA shall analyze the project's annual audit and within 30 days of the date of the audit, provide the Commissioner with a summary of unresolved findings disclosed in the audit and a summary of actions planned, with target dates, to correct unresolved findings. The HFA shall analyze the project's annual audit and within 6 months of the date of the audit, provide the Commissioner with a summary of unresolved findings disclosed in the audit and a summary of actions planned, with target dates, to correct unresolved findings.

W. The HFA shall submit semi-annual reports to the Commissioner for all projects insured under Section 542(c) setting forth the original mortgage amounts and outstanding principal balances on mortgages the HFA has underwritten, the status of all projects (e.g., whether current, in default, acquired, under workout agreement, in bankruptcy, etc.). For projects where the mortgagor has declared bankruptcy, the HFA will submit information containing the date the bankruptcy was filed and the date the HFA requested the Court to dismiss the bankruptcy proceedings.

X. All appraisal functions will be completed by Certified General Appraisers licensed in the state in which the property is located, and all appraisal functions will be completed in accordance with the Uniform Standards of Professional Appraisal Practice.

Y. In the event of a default on a multifamily mortgage insured under Section 542(c) which results in the Commissioner having to pay a claim under a Contract of Insurance to the HFA, the HFA will, upon determination of the loss, assume the percentage of loss specified in an Addendum to this Agreement (such Addendum being made a part of this Agreement) and in the endorsement panel of the mortgage note, and reimburse the Commissioner, pursuant to administrative instructions of the Commissioner, the amount based on that percentage pursuant to 24 CFR Section 266.654. (The HFA's percentage of loss specified in the Addendum for a particular project must be consistent with the percentage of loss associated with the HFA's approval level specified in Paragraph A of Article III of this Agreement. A loan which refinances an HFA-financed loan which was in monetary default (as that term is defined in 24 CFR Section 266.626) 12 months prior to the application for refinancing hereunder, the HFA's percentage of loss specified in the Addendum shall be at least 50 percent of the risk). An HFA-financed loan which goes into default after the submission of an application for refinancing of such loan under Section 542(c) will not be eligible for insurance under Section 542(c).

Z. The HFA shall require that the mortgagor keep the improvements now existing or hereafter erected on the mortgaged property insured against loss by fire and such other hazards, casualties, and contingencies, as may be stipulated by the Commissioner upon the insurance of the mortgage and other hazards as may be required from time to time by the HFA. All such insurance shall be evidenced by a standard Fire and Extended Coverage Insurance Policy or policies, in

amounts not less than necessary to comply with the applicable coinsurance clause percentage, but in no event shall the amounts of coverage be less than eighty per centum (80%) of the actual cash value of the insurable improvements and equipment of the project, and in default thereof the HFA shall have the right to obtain such insurance in accordance with the mortgage. Such hazard insurance policies shall be endorsed with the standard mortgagee clause with loss payable to the HFA. The hazard insurance policy shall be deposited with the HFA.

AA. The HFA shall ensure that loans insured hereunder shall be on properties which comply with the affordable housing requirements defined in 24 CFR 266.5.

#### *Article IV—Mortgage Insurance Endorsement*

Absent fraud or material misrepresentation on the part of the HFA, the Commissioner shall endorse any mortgage presented for mortgage insurance by the HFA in accordance with the provisions of Section 542(c), subject to the Commissioner's right to adjust the amount of mortgage insurance in accordance with 24 CFR Section 266.417, so long as the HFA is in good standing with the Commissioner, has been issued a Firm Approval Letter pursuant to 24 CFR Section 266.300(c) and/or Section 266.305(c), and complies with any conditions therein or attached thereto, and submits with each loan to be endorsed a closing docket in accordance with 24 CFR Section 266.420(b) and written certifications that:

a. The property covered by the mortgage is free from all liens other than the lien of the FHA insured mortgage, except that the property may be subject to such inferior lien or liens, as approved by the HFA, as long as the insured mortgage has first priority for payment.

b. All contractual obligations in connection with the mortgage transaction, including the purchase of the property and the improvements to the property, have been paid. An exception is made for obligations that are approved by the HFA and determined by the HFA to be inferior to the lien of the insured mortgage.<sup>1</sup>

c. The property owner has submitted and the HFA has approved an Affirmative Fair Housing Marketing Plan which complies with the provisions set forth in 24 CFR Part 200, Subpart M.

d. Equal employment requirements were followed by the property owner pursuant to Executive Order 11246 as implemented by 41 CFR Part 60.

e. The property owner has executed the regulatory agreement which complies with the provisions set forth in 24 CFR Section 266.505.

f. The property has been processed, prudently underwritten (including a determination that a market exists for the project), cost certified (if the loan is being submitted for final endorsement) and closed in full compliance with the HFA's standards and requirements and are in full compliance with HUD standards established in connection with approval of advances for

<sup>1</sup> Pursuant to 24 CFR Section 266.415(b), this certification is made at final closing only.

insurance and cost certification. (Note: For mortgages originated under Level II, the certification will state "in full compliance with the underwriting standards and loan terms and conditions as approved by the Commissioner.") Further, the loan shall be serviced and the property managed in accordance with procedures disclosed and made a part of this Agreement.

g. For periodic advances cases, that each advance made was proportionate to construction progress as evidenced by HFA inspection prior to approval of the advance.

h. The HFA's Dedicated Account, if required, has been established and has been increased by the amounts required pursuant to 24 CFR Section 266.110(b).

i. For properties subject to Davis-Bacon requirements under 24 CFR Section 266.225, laborers and mechanics employed in the construction of the project have been paid not less than the prevailing wages determined by the Secretary of Labor in accordance with 24 CFR Section 266.225(a).

#### Article V—Sanctions

Upon a violation of any of the provisions of this Agreement by the HFA, or upon commission of any violation cited in 24 CFR Section 266.120, or of the administrative requirements established by the Commissioner for the Section 542(c) program, the Commissioner or his designee may declare a default under this agreement and impose any of the sanctions set forth at 24 CFR Section 266.125. Any sanction imposed by the Commissioner will be in accordance with the provisions of 24 CFR Section 266.125(d). Any sanction involving a suspension or withdrawal of the HFA's participation in the Section 542(c) program will not affect any mortgage insurance endorsement in effect on the date of the suspension or withdrawal action.

#### Article VI—Amendments/Modifications

A. This Agreement shall not be modified or amended without the consent of both parties hereto, except for changes made by the Commissioner to items covered by Article VII, and amendments or modifications that may be made by the Commissioner as set forth in the attached Addendum to this Agreement which: (1) Specify the number of units set aside to the HFA, and (2) other changes that conform to statutory or regulatory amendments. No such modification or amendment will adversely affect the interest of a HFA for any project for which a Firm Approval letter has been issued.

B. The HFA hereby agrees that its written consent to an Addendum executed by the Commissioner which modifies this Agreement to list: (1) Changes in its principal staff or individuals with authority to sign loan documents; (2) changes to existing HFA underwriting standards and procedures, loan terms and conditions; and/or (3) a change in the financial institution in which the Dedicated Account is deposited, will not be necessary if such change(s) was requested by the HFA in writing.

#### Article VII—Incorporation of Regulations

The regulations set forth in 24 CFR Part 266 are incorporated into this Agreement by reference and made a part hereof. The HFA shall, at all times, comply with the applicable regulations and with all other applicable Federal laws, rules and regulations.

#### Article VIII—Warranty

The HFA warrants that it has not, and will not, execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and that, in any event, the requirements of this Agreement and the regulations set forth in 24 CFR Part 266 and any administrative requirements established by the Commissioner are paramount and controlling as to the rights and obligations set forth herein and supersede any other requirements in conflict herewith.

#### Article IX—Miscellaneous

The Article headings set forth in this Agreement are not intended to be a limitation on what materials are included within each Article.

This Agreement shall bind, and the benefits shall inure to, the parties, their successors and assigns so long as any Contract of Insurance remains in full force and effect.

The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions hereof.

In witness hereof, the undersigned have caused this Agreement to be duly executed as of the date and year first written above.

Department of Housing and Urban  
Development

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Housing Finance Agency

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Warning: U.S. Criminal Code, Section 1001, Title 18 U.S.C., "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully \* \* \* makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both."

#### Addendum to Risk-Sharing Agreement

HQ [ ]

FO [ ]

Number \_\_\_\_\_

This addendum modifies the Risk-Sharing Agreement, and/or any addendum thereto, by and between \_\_\_\_\_ (HFA) whose address is \_\_\_\_\_ and the Assistant Secretary for Housing—Federal Housing Commissioner (the Commissioner) dated the \_\_\_\_ day of \_\_\_\_\_, 199\_\_\_\_.

The purpose of this addendum is to [check one]:

A. ( ) Reserve units and to establish the risk-share percentage between the HFA and Commissioner for Project Number \_\_\_\_\_ located at \_\_\_\_\_.

Units reserved \_\_\_\_\_  
Risk-share apportionment  
HUD \_\_\_\_\_/HFA \_\_\_\_\_

B. ( ) Modify the present set-aside of units.

The number of units presently set-aside is \_\_\_\_\_, which is ( ) increased by \_\_\_\_\_ units, ( ) decreased by \_\_\_\_\_ units to a total of \_\_\_\_\_ units.

C. ( ) New principal staff or individuals with authority to sign loan documents or commit the HFA under the Section 542(c) program are:

D. ( ) New provisions, or changes to existing, HFA underwriting standards and procedures, loan terms and conditions are incorporated by reference into the Risk-Sharing Agreement and are as follows:

E. ( ) The name and address of the new financial institution in which dedicated account is deposited is:

\_\_\_\_\_  
(Name of Financial Institution)

\_\_\_\_\_  
(Address)

F. [Reserved for other purposes.]

Department of Housing and Urban  
Development

Authorized Agent

Date \_\_\_\_\_

#### Exhibit A

The following individuals (principal staff) are employed by the HFA as the persons responsible for the overall underwriting decision and for project management, loan servicing and property disposition with respect to loans insured or to be insured under Section 542(c):

\_\_\_\_\_  
(Name and Title)

\_\_\_\_\_  
(Name and Title)

#### Exhibit B

The following individuals, whose names, titles and specimen signatures appear below, have the authority to sign loan documents on behalf of the HFA and otherwise commit the HFA under the Section 542(c) Risk-Sharing Program.

\_\_\_\_\_  
(Name and Title)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name and Title)

\_\_\_\_\_  
(Signature)

[FR Doc. 96-12795 Filed 5-21-96; 8:45 am]

BILLING CODE 4210-27-P