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Assistant Secretary for Housing
- Federal Housing Commissioner

2/94

W-3-1, W-2(H), W-3 (A)(OGC)(ZAS), W-4(H), R-1, R-2,
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R-3-1 Bulk shipment to Regional Offices for selective
distribution by program area
R-3-2 Directors, Administrative Services Divisions and
Administrative and Management Services Divisions, and
Administrative staffs
R-3-3 Category D offices - bulk
R-6 Category A offices - Office Managers and Deputy Office
Managers
R-6-2 Category A offices - Division Directors
R-7 Category B offices - Office Managers and Deputy Office
Managers
R-7-2 Category B offices - Division Directors
R-8 Category C offices - Office Managers and Deputy Office
Managers

U.S. Department of Housing and Urban Development

H O U S I N G

Special Attention of:

Transmittal Handbook No.:

Issued: 8/28/92

1. This Transmits:

HUD Handbook 4500.1 REV-2, Allowances for Making Nonprofit Projects Operational (AMPO) and Use of Housing Consultants.

2. Explanation of Material Transmitted:

This revised Handbook sets forth the changes, policies, procedures, and requirements applicable to allowances for making nonprofit projects operational (AMPO) and the use of housing consultants and fee schedule.

- a. This revision does not apply to the Section 202 and Section 811 programs.
- b. AMPO funds may be used to pay for necessity change orders.
- c. Unused balance of AMPO will be deposited in the replacement reserve account for insurance of advances and insurance upon completion cases.

3. Filing instructions:

Remove:
Handbook 4500.1 REV-1
dated March 1981

Insert:
Handbook 4500.1 REV-2
dated 8/92

Assistant Secretary for Housing
- Federal Housing Commissioner

Handbook

4500.1 REV-2

U.S. Department of Housing and Urban Development
Washington, D.C. 20410

Program Participants
and Departmental Staff

August 1992

Allowances for
making Nonprofit
Projects Operational

(AMPO) and use of
Housing Consultants

4500.1 REV-2

FOREWORD

Chapter 1 of this Handbook contains instructions and procedures prescribed by the Assistant Secretary for Housing-Federal Housing Commissioner for instituting the Allowance for Making the Project Operational (AMPO). The procedures governing the use of housing consultants and fee schedule are contained in Chapter 2.

Statutory Provisions may not be waived.

Waivers to a handbook provision may be justified in limited cases. Send all requests, with full details and supporting documents, to the Regional Office with jurisdiction for the area in which the project is located. If the Regional Office concurs with the Field Office, it will forward the request to Headquarters for approval.

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

8/92

W-3-1, W-2(H), W-3(A)(OGC)(ZAS), W-4(H), R-1, R-2, R-3, R-3-1,

R-3-2, R-3-3, R-6, R-6-1, R-6-2, R-7, R-7-1, R-7-2, R-8

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FORMS REFERENCE:

HUD-92531	Housing Consultants Certificate
HUD-92531A	Standard Contract for Housing Consultant Services for Nonprofit Projects under HUD Programs for Sections 221(d)(3), 221(d)(4), 231, 232 and 244
HUD-92531B	Consultant's Certified Receipt
HUD-92013SUPP	Supplement to Form HUD-92013, Application - Project Mortgage Insurance

CHAPTER 1. ALLOWANCE FOR MAKING NONPROFIT PROJECTS OPERATIONAL

1-1. PURPOSE.

Allowance for Making Nonprofit Projects Operational (AMPO) provides public nonprofit and private nonprofit mortgagors for projects insured under Sections 221(d)(3), 221(d)(4), 231, 232 and 242 sufficient capital to make the project operational. (Public nonprofit mortgagors under Section 232 are not eligible to own either an Intermediate Care Facility or a Board and Care Home.)

- A. A working capital deposit is not required for the nonprofit mortgagors under the Sections of the National Housing Act indicated above.
- * B. In lieu thereof, there shall be included in the estimated replacement cost an allowance equal to 2 percent of the mortgage. *
- C. For any project constructed by a builder/seller or investor/sponsor mortgagor for sale to a nonprofit corporation, the mortgagor will be required to set-up a 2 percent working capital deposit. AMPO will also be included in the estimated replacement cost, but will be held back until the sale to the nonprofit mortgagor is consummated.

*1-2. DISBURSEMENTS FROM AMPO.

The Director of Housing Development approves the use of AMPO funds.

- A. AMPO is used to meet necessary expenses for the following types of items:
 - 1. Additional costs resulting from unavoidable construction delays, incurred without the fault or negligence of either the contractor or the mortgagor. Construction delays would cause shortfalls in interest, taxes, property insurance premiums, mortgage insurance premiums, ground rents and special assessments.
 - 2. Necessity change orders.
 - a. Changes essential for acceptable project completion, changes necessitated by

- (1-2) construction conditions not foreseen at the time of firm commitment processing or requirements imposed by the local authorities subsequent to the start of construction.
- b. Payment from AMPO funds for necessity change order, is exclusive of those changes which the design architect and contractor should had knowledge of or should have known would be required prior to the start of construction.
- 3. The cost of the second year's MIP, the real estate taxes due in the first year after project completion and permanent property insurance policies.
 - 4. Costs incidental to project operations involving the purchase of:
 - a. Intangibles such as sales advertisements, model furnishings, equipment and other supplies essential to the renting of the project.
 - b. Personal items such as office equipment and supplies for recreational facilities, lobby furniture.
- B. AMPO cannot be used:
- 1. To purchase items, or equipment that is not essential to the operation of the project.
 - 2. To cover additional profits and fees to architects, attorneys, or other developing team members.
 - 3. To lease or purchase motor vehicles or the cost to maintain the vehicles.

*

1-3. INITIAL ENDORSEMENT.

Include in Paragraph 4 of the Building Loan Agreement, Form HUD-92441, the amount of AMPO with the following note:

"Any mortgage proceeds attributable to this allowance, not drawn at final endorsement will be transferred to the replacement reserve account and drawn down for such transfer in the same manner as other nonconstruction items listed herein."

1-4. FINAL ENDORSEMENT.

The unused balance of AMPO:

- A. Will be transferred to the replacement reserve for future project needs.
- B. Will not be released in any case involving a builder/seller or investor/sponsor as the original mortgagor, until the sale to the nonprofit corporation is consummated.
 1. When the nonprofit corporation attains title to the completed project, reimbursement to the builder/seller or investor/sponsor will be made from AMPO for approved expenditures for items covered by the allowance. The remaining allowance will be deposited in the replacement reserve account for future project needs.
 2. If the sale to a nonprofit corporation is not consummated, the full amount of the AMPO will be applied as a direct mortgage reduction.

1-5. INSURANCE UPON COMPLETION CASES.

The mortgagor must include in the certification of actual costs an itemized statement reflecting all expenditures for the items covered by the 2 percent allowance. Mortgage proceeds equal to the amount of approved expenditures will be released to the mortgagor. The unused balance of AMPO will be handled by following the instruction in paragraph 1-4 above.

CHAPTER 2. USE OF HOUSING CONSULTANTS BY
NONPROFIT SPONSORS

- 2-1. PURPOSE. This Chapter outlines the use of technical consultants by nonprofit sponsor groups in the development of housing projects to be insured under Sections 221(d)(3), 221(d)(4), 231, 232, and 244. These instructions and procedures do not apply to Section 242, nonprofit hospital projects.
- 2-2. WHO IS ELIGIBLE. A housing consultant is defined as an individual or firm possessing experience and competence in the organization and planning of housing projects, housing market evaluation and marketing, procurement of financing, evaluation and selection of attorneys, architects, building contractors, property managers, and other required participants, and preparation of applications and other necessary documents.
- 2-3. USE OF CONSULTANTS.
- A. Consultants are used to:
 - 1. Expedite development of the proposal;
 - 2. Improve quality of design, and lower construction and other costs; and
 - 3. Assist the sponsor/mortgagor in handling all aspects of project development through to final closing.
 - B. Consultant efforts must be directed exclusively towards serving the nonprofit sponsor/mortgagor to be formed.
 - C. HUD permits reasonable consultant fees to be included in a project's estimated replacement cost. However, the Field Office should reduce the organizational allowance when a housing consultant is used to avoid duplication.
 - D. A consultant is not required for participation in HUD programs.

2-4. SELECTION OF THE HOUSING CONSULTANT IS THE RESPONSIBILITY OF THE NONPROFIT SPONSOR/OWNER.

- A. The nonprofit sponsor is discouraged from selecting a housing consultant located at an unreasonable distance from the project site.
- * B. The nonprofit sponsor/owner enters into a Contract with the consultant, using Form HUD-92531A, Standard Contract for Housing Consultant Services for Nonprofit Projects Under HUD Programs, and obtains:
 - 1. A resume on the consultant.
 - 2. A completed Form HUD-2530, Previous Participation Certificate, prepared by the consultant.
- C. Consultants should have experience in the type of project they would consult on. For example, a consultant should have experience in the health care industry for Section 232 projects if the sponsor/mortgagor is requesting mortgage insurance for a nursing home.

*

2-5. CONSULTANT'S RELATIONSHIP WITH THE SPONSOR AND OTHERS.

- A. The consultant's efforts must be directed exclusively toward serving the nonprofit sponsor and the tenants. The consultant certifies on Form HUD-92531 that no payment has been or will be received either in the form of stock, options to buy stock, or compensatory professional or financial services from any parties to the transaction. The prohibited identity of interest will include, but not be limited to the seller of the land, attorney, architect, mortgagee, surety, title company, general contractor, and any subcontractor or materialman other than the consultant's fee specified in the contract with the nonprofit sponsor.
 - 1. The certification assures the complete independence of the consultant and precludes any other party, including the builder, the attorney, the architect, and the mortgagee from receiving payment for consultant services.

-
- (2-5) 2. Exception to this requirement may be granted at the discretion of the Field Office Manager in the case of management services.

B. The Field Office Manager may approve the participation of the consultant as the Management Agent where the Field Office Manager determines that:

1. The consultant is highly qualified in the area of management; and
2. A benefit will accrue to the project through increased efficiency and/or lower costs.

C. If the housing consultant acts as Management Agent:

Reduce the Supplemental Management Fund, if applicable, by \$25 per unit. This represents the amount included in the Fund to compensate the management agent for review of the feasibility of the project and management plan, during the development stage of the project. The housing consultant is already compensated for this service, and the disallowance is to avoid duplication of payment for the same service.

2-6. CONFLICT OF INTEREST.

A. Neither the sponsor or mortgagor may receive a fee as consultant. If staff of the sponsor/mortgagor performs the services typically provided by the consultant:

1. Mortgage proceeds cannot cover the cost of salaries and overhead associated with these services;
2. However, the sponsor/mortgagor is entitled to a typical organizational expense to cover actual costs of establishing the mortgagor entity and submitting the application (i.e., photocopying, stamps, etc.).

B. No individual or entity having an identity of interest with the sponsor/mortgagor may earn a fee for providing services that would otherwise be provided on a fee basis by a housing consultant (for example, an executive director or other employee of the sponsor/mortgagor).

2-7. MAXIMUM ALLOWABLE CONSULTANT'S FEES.

A. The actual fee for consultant services:

1. Is a matter between the sponsor and the consultant.
2. Should be based upon the number and types of services agreed to under the Contract, and the total fee allowable under the mortgage cannot exceed the maximum fee. Funds for Contracts in excess of the base maximum fee allowed in the mortgage must be escrowed from the nonprofit's resources at or prior to initial endorsement.
3. The maximum fee should be reduced for each type of service that is not performed. The maximum fee allowable for inclusion in a project's replacement cost estimate shall follow the schedule below, for the full range of consultant services:

Mortgage Amount	Fee
Up to \$1,500,000	\$20,000*
From \$1,500,000 to \$3,150,000	\$20,000 plus 1% of excess over \$1,500,000
Over \$3,500,000	\$40,000
Maximum Allowable Fee	\$40,000

*Projects with fewer than 25 units may be eligible for a fee up to 5 percent of the mortgage, not to exceed \$20,000 at the discretion of the Field Office Manager.

B. The above represents maximum allowable fees.

1. The nonprofit sponsor may lower the fee stated in the Contract based on its determination of nonperformance by the housing consultant of any of the covenants, agreements and stipulations of said Contract.
2. In processing, the consultant's fee will be allowed in the estimate of replacement cost on Rental Housing Income Analysis and Appraisal, Form HUD-92264, as a separate line item.

-
- (2-7) 3. The consultant's services normally duplicate most

of the items included in the organization allowance on Form HUD-92264. Therefore, reduce the organization allowance where a consultants fee is included in the replacement cost estimate.

C. Approval by HUD. Mortgage Credit will:

1. Consider the Field Office's working experience with a potential consultant;
2. Review the:
 - a. Qualifications and suitability of any proposed housing consultant and terms and conditions of the Contract.
 - b. Quality and the adequacy of the proposed services.
3. Determine if:
 - a. Conflicts of interest or identities of interest exist.
 - b. Services proposed are sufficient to permit development, completion and successful operation of the project, and the proposed fee is reasonable for the services provided.
4. Compare the services specified in the Contract with those listed in Form HUD-92531A. Since the maximum allowable fees established in subparagraph A.3. above contemplate the provision of the full range of services set forth in Form HUD-92531A, reduce the allowable fee where analysis reveals that the executed Contract does not include the full range of services.
 - a. Use the following schedule to determine the maximum allowable fee when less than the full range of services is being rendered:

(2-7)	Service to be Performed by Housing Consultant	Percentage of Total Fee
	Initial meeting with nonprofit sponsor and formation of nonprofit corporation	6%

Selection of development team	4%
Preparation and submission of SAMA/Feasibility Application	8%*
Preparation and submission of Conditional Commitment Application	22%
Preparation and submission of Firm Commitment Application	12%
Initial Endorsement	8%
Construction Period - site visits, preparation of construction draws, preparation of and advice regarding change orders and application for mortgage increase.	15%
Cost Certification	7%
Rent-Up	9%
Final Endorsement	9%

* If sponsor chooses to bypass the SAMA and/or conditional commitment phase of processing, the percentage attributable to the bypassed phase or phases will be added to the next phase.

b. Example:

Step 1: The maximum insurable mortgage is \$4,000,000. Therefore, the maximum allowable consultant's fee \$40,000.

Step 2: If the Contract between the consultant and the nonprofit sponsor does not provide for participation by the consultant in construction related activities, but includes all other services set forth in Form HUD-02531A, the maximum allowable

5. Evaluate the required Form HUD-2530 and the housing consultant's resume.
 - a. Initiate the 2530 review process and credit investigation on the consultant. This will take place simultaneously with the determination of eligibility of the nonprofit sponsor.
 - * b. At SAMA/Feasibility stage of processing, order credit report(s) as part of the credit investigation.
 - c. If the evaluation occurs at the Conditional or Firm stage of processing the mortgagee will order credit report(s) as part of the credit investigation.
 - d. Once the consultant is approved no additional credit reports are required at the next stage of processing.
6. Approve, approve with modifications, or disapprove the proposed Contract. *
7. Upon completion of the evaluation of the housing consultant, prepare a letter to the nonprofit sponsor for the signature of the Director of Housing Development advising of approval, disapproval, or suggested revisions to the Contract. Disapproval of the housing consultant will not constitute rejection of the project or the nonprofit sponsor. However, the nonprofit sponsor must either select another housing consultant and enter into a Contract, subject to approval by HUD, or proceed with the project without using the services of a consultant.
- D. The Field Office may authorize the payment of the consulting fee under the criteria set forth below:
 1. At Initial Endorsement - up to 60 percent of the consultant's fee.
 2. During the construction period - up to 75 percent less any previous payments. This represents an

the fee shall be made at the time construction draws are made, based on percentage of completion.

3. At Final Endorsement, the remaining balance may be approved for payment.

E. Neither the mortgagee, sponsor, nor any other entity having an identity of interest with the mortgagor or sponsor, may earn any fees for providing services which otherwise would be provided on a fee basis by a housing consultant.

2-8. ENFORCEMENT OF CONTRACT. Although HUD reserves the right to approve the terms and conditions of the Contract between the nonprofit sponsor and the housing consultant, HUD is not a party to the Contract, and the nonprofit sponsor has the sole responsibility of enforcing the covenants, agreements and stipulations of said Contract.