



SUBMISSION AND REVIEW REQUIREMENTS & REMS CRITICAL DATA FIELDS FOR ANNUAL FINANCIAL STATEMENTS

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Introduction

This guidance provides procedures for collecting and reviewing financial statements. It also provides instructions for populating the Real Estate Management System (REMS) critical data fields. It describes annual financial statement (AFS) assessment and referral procedures; procedures for tracking overdue financial statements; submission requirements for specific/program types; procedures for requesting extensions, deferments, waivers, etc. These instructions are designed for Asset Management staff to use in monitoring their portfolio where program participants have a business requirement to file a financial statement.

I. REMS Critical Data Fields for AFS Submission

The operation of the Financial Assessment Subsystem – Multifamily (FASS-MF) reporting system depends on the Project Managers' (PMs) careful attention to the Real Estate Management System (REMS) critical data fields. These data fields must be complete and accurate at all times. Owners are unable to submit financial statements if required data is missing, incomplete or in error. Also, we are unable to properly enforce submission requirements if required data is missing, incomplete or in error. The relevance of these data fields is covered in the sections concerning Criteria for AFS Reporting Periods; Submission Requirements for Specific Mortgage/Program Types; and Overdue Financial Statements.

A. AFS Screen

"Financial Statement Required" indicator – this indicator must be set to "Yes" if an AFS is required. If the value is "No" the owner will be unable to file the Annual Financial Statement (AFS) and we will be unable to enforce compliance.

B. Ownership Screen

- "Name" (legal name of the owning entity)
- "TIN" (tax identification number of the owning entity)
- "Fiscal Year End Date" (e.g. mm/dd)
- "Distribution Allowed" (e.g. equity percentage, unlimited, not allowed)
- "Source Document for Distribution (e.g. Regulatory Agreement, HAPC, Use Agreement, etc.)
- "Mortgagor Type" (e.g. profit-motivated, nonprofit, limited dividend, etc.)
- "Owner Legal Structure" (e.g. sole proprietor, corporation, general partnership, limited partnership, cooperative corporation, Limited Liability Corp., etc.)
- "Date Owner Assumed Financial Responsibility (FASS)" (please see Section VII below, Criteria for Annual Financial Statement Reporting Periods)
- "Date Ownership Assumed" (.e.g. date deed is recorded)

C. Loan Information Detail Screen

- SOA code (e.g. Section of the Act)*
- Active FHA*
- HUD Held indicator*
- Current Status Detail Code
- Mortgagee-In-Possession

D. Subsidy Status Screen

- Assistance Contracts*
- IRP Information

E. Use Restriction/Lock-out Screen

Use Restriction/Lock-out Information

II. REAC FASS-MF Assessment and Referral

The FASS-MF system conducts an electronic assessment of each AFS¹. Compliance deficiencies are identified by the auditor (auditor findings) or by internal checks performed by the system (system check findings). As a result of the assessment, AFS are:

- Automatically Closed with No Compliance Deficiencies
- Automatically referred to Multifamily Housing (MFH) or the Departmental Enforcement Center (DEC) with Compliance Deficiencies
- Marked for review by a Real Estate Assessment Center (REAC) Analyst

A. Automatically Closed with No Compliance Deficiencies

Where no compliance flags or auditor findings are noted, REAC FASS-MF automatically closes the AFS submission with no conditions. A system generated project action is created in REMS titled "AFS Submission (Good) Received by FASS and No Response Due." In addition, a No Condition letter is sent to the project owner's coordinator, via e-mail, informing the owner that the assessment results are available to the PM for further consideration.

* This data cannot be corrected/edited directly in REMS. They are updated to REMS from other systems (e.g. F47, DAP, PASS, MARS, etc.).

¹ When an AFS is "not assessed" it means that some portion of the AFS did not meet reporting standards. In every case the PM must determine why the assessment could not be completed and act to remedy the situation through prompt direction to the owner.

B. Automatically Referred to MFH or the DEC with Compliance Deficiencies

FASS-MF automatically refers (without a REAC analyst review) projects with one or more of the following compliance deficiencies identified by the system:

- Failure to make residual receipts deposits
- Failure to invest residual receipts
- Failure to invest reserve for replacements
- Under-funded tenant security deposits

Additionally, FASS-MF automatically refers projects with one or more of the following auditor findings:

- Failure to properly administer the Section 8 program
- Failure to properly segregate accounting duties

If an AFS has one or more of the above compliance flags, it is automatically referred to MFH or to DEC if there is an open DEC case. In the case of MFH referrals, a compliance letter is automatically e-mailed to the owner's FASS-MF coordinator and a project action is created in REMS. The project action is titled "AFS Letter Sent to Owner and Response Due."

C. Marked for Review by REAC Analyst

If an AFS has compliance deficiencies, other than the compliance deficiencies mentioned in Section II.B, a REAC analyst will review the AFS. Based on the analyst review, AFS submissions are either:

- Closed with No Conditions
- Referred to MFH
- Referred to DEC

When the analyst refers the AFS submission to MFH, a "conditions" letter is e-mailed to the owner's FASS-MF coordinator and a project action is created in REMS. The project action is titled "AFS Letter Sent to Owner and Response Due." When a project is referred to the DEC, a system-generated project action is created titled "AFS DEC Administrative Review Required."

III. Policy on Project Managers Reviewing AFS

Owners that have a business requirement to submit an AFS are required to submit their AFS within 90 days of the fiscal year end date.

Nonprofit owners receiving greater than \$500,000² in federal financial assistance have two filing options: (1) submitting a un-audited/owner-certified (OC) financial statement (OC>\$500K) within 90 days of their fiscal year end **AND** submitting an audited financial statement no later than 9 months after their fiscal year end date **OR** (2) submitting an audited financial statement (OMB Circular A-133) within 90 days of their fiscal year end. Nonprofit owners receiving less than \$500,000 in federal financial assistance must file an unaudited /owner certified financial statement within 90 days of their fiscal year end. Financial statements are collected and assessed by PIH-REAC-FASS-MF and the results fall into one of the following categories:

- Letter to the Owner with No Conditions
- Referred to the MFH with Conditions
- Referred to the DEC
- Letter to the Owner acknowledging receipt of Owner-certified AFS with federal awards equal to or greater than \$500,000

A. Letter to the Owner with No Conditions

Owners receive a "No Conditions Letter" if the financial statements do not have any auditor findings or system check findings, or if a REAC analyst downgrades the findings. Financial statements of owners that received a "No Condition Letter" must be reviewed as follows:

1. A new requirement is being introduced for this class and every other class of review. The PM will review each financial statement and determine that it presents the entire entity-wide financial position. Recently some owners have again begun to present non-GAAP/GAAS compliant financial statements that depict only the property operations side of the entity financial position and condition. Auditors have neglected to report this as a qualification, but generally report the limitation in the notes or auditor's report. If the owner failed to submit a full entity financial report, notify the owner to correct the error within 30 days. Tell the owner that we are rejecting the earlier faulty filing and that if the fully compliant report is not in FASS-MF within 45 days that we will classify the owner as a non-filer and pursue civil money penalties and other enforcement remedies without further notice. Inform the owner that the participants in the ownership have been flagged in the Active Partner Performance System (APPS). Enter flags immediately into APPS.

² The \$300,000 combined federal assistance threshold was increased to \$500,000 effective December 31, 2003. The new threshold will apply to all projects with fiscal periods ending January 1, 2004 and thereafter.

2. The AFS for properties that are labeled by the Hub/Program Center as troubled or potentially-troubled or at risk are to be reviewed within 90 days of the REAC analyst referral or the automatic system referral (which is the “Date Received” on the AFS page in REMS). This includes all properties with a yellow or red performance designation.
3. The AFS for all others are to be reviewed as soon as possible, but no later than before the following asset management servicing actions or before the end of the project’s fiscal year, whichever occurs first:
 - Conducting a management review
 - Processing a transfer of physical assets (TPA)
 - Processing a rent increase
 - Approving a significant reserve release
 - Modification, approval of a note lockout break, HAP renewal, etc.

Questions, issues and concerns detected during the financial review must be incorporated into the management review report or sent to the owner in a separate letter. PMs must document their review of the AFS in REMS’ “Owner Annual Financial Statement Detail” screen by entering the date of the review in the “Date Reviewed (MFH or DEC if Applicable)” field, and entering date letter sent to owner, date response received and date closed in the “Comments” field.

B. Referred to MFH with Conditions

When REAC refers an AFS to Multifamily Housing (MFH), a letter is e-mailed to the owner’s FASS-MF coordinator advising the owner of compliance deficiencies that must be resolved. In addition, an event notification (icon located on REMS header) is created. The owner is required to respond to the PM within 30 days. The PM must review the full AFS when the response is received and update the “Response Received Date” on the REMS AFS screen. When the review is conducted, the PM must enter the date of the review in the “Reviewed (MFH or DEC) Date” field. If the owner fails to respond within 30 days, the PM must notify the owner in writing of their failure to respond and inform the owner that a non-compliance flag will be entered in APPS. When the owner responds and provides adequate evidence of correction or explanation, the PM must update the “Closed Date” on the REMS AFS screen and resolve the non-compliance flag in the APPS. If the owner does not respond to the compliance deficiencies or fails to provide adequate evidence of correction or explanation the PM must follow-up with the owner. The PM must not remove the flag in APPS until the owner corrects all compliance deficiencies. In addition, it is advisable in the PM’s follow-up to tell the owner that another noncompliance flag was entered into APPS for its failure to reply (a regulatory agreement violation or HAP violation).

See also Section III. A. 1. above for additional requirements.

C. Referred to the DEC

The DEC analyst, not the PM, is responsible for resolving all compliance deficiencies on AFS referrals. The DEC analyst may contact the PM for assistance in resolving deficiencies. However, the PM should coordinate with the DEC any direct contact with the owner.

D. Letter to the Owner acknowledging receipt of Owner-certified AFS with federal awards greater than or equal to \$500,000

In the past, REAC analysts reviewed both the owner-certified and the audited OMB Circular A-133 submissions for nonprofit owners and often sent two compliance letters to owners. FASS-MF is closing the OC>\$500K submissions in REMS and sending owners a letter stating:

- The owner-certified submission was received.
- The owner is required to submit an audited AFS within 9 months of the end of the fiscal year.
- REAC is deferring the compliance review until the audited AFS is received.
- Multifamily Housing may contact the owner concerning the statement.

The owner-certified AFS are available for project managers to use for rent increases and other asset management functions, but no formal review will be done until the audited AFS is received.

IV. Project Actions Related to FASS-MF Performance Issues

FASS-MF generates a performance rating for each project based on various ratios and comparative analyses. The performance rating measures the relative financial strength of a project and potential risks to HUD. One of three "ratings" is assigned: green, yellow, or red, indicating, generally, that a property may be considered either financially healthy, potentially troubled, or troubled.

If, during the automated FASS-MF review, no compliance problems are noted, but the financial performance rating is red or yellow, REMS generates a project action to inform the PM that potential financial performance problems exist. The title of the generated Project Action is "AFS Evaluation Financial Risk." The PM must examine each of these properties to determine why they were rated poorly, and whether any actions should be taken to improve the financial performance such as a rent increase, etc. Once the PM assesses the problem and takes appropriate corrective action, the Project Action should be closed in REMS if the owner is in full compliance. PMs should refer to the Field Guide for Multifamily Housing Project Financial Assessment Guide for HUD Staff, Appendix 1, which describes actions to address performance ratings.

Note: The overall performance ratings are an internal asset management tool used to identify potential financial performance weaknesses. PMs **are not authorized to release** performance ratings (i.e. red, yellow, or green.) outside HUD.

V. Overdue Financial Statements

The overdue tracking module of FASS-MF is updated nightly. If an AFS is not received by the 10th day of the month following the AFS due date, an e-mail letter is automatically sent to the owner's Secure System coordinator on the 11th day. This message informs the owner the AFS is overdue and that a noncompliance flag has been entered into APPS. It also advises the owner if the AFS is not received within the next 30 days (grace period), HUD will **refer** the owner to the DEC. If the owner does not submit the AFS within the 30-day grace period, the owner is referred to the DEC and a letter is sent to the owner announcing the referral.

This is a change to previous guidance. In the past, PMs were instructed to place a non-compliance flag in APPS when an owner was referred to the DEC for overdue AFS (approximately 41 days after the AFS due date). Current policy is that a noncompliance event occurs at the expiration of the 10-day grace period. The PM **must** decide whether to place a non-compliance flag in APPS for non-filer status. If the PM decides that a flag is not required, the PM must document the reason for the decision and indicate that s/he obtained the concurrence of their supervisor. REMS' project action screen must be updated showing the reason why the noncompliance flag was not entered into APPS along with the supervisor's name and date of concurrence. Removing the "non-filer" flag after entry is inadvisable until the DEC notifies the PM that the AFS has been submitted and that all non-filer issues have been resolved. This change is made to decrease the late filer population. Repeated failures by owners in this area indicate a real risk to HUD. The absence of a financial statement, which includes late filing, is directly and positively correlated to default and claims. In other words there is higher likelihood of a default and claim in any case where the required financial filing is not completed.

When the DEC's letter is sent to the owner, a system generated project action is created in the REMS titled "AFS Overdue: DEC Review Required." This project action can only be closed by the DEC Enforcement Analyst, not the PM.

Note: Hub and Program Center Directors receive a monthly report from the Office of Asset Management summarizing all overdue AFS. These reports should assist Hub and Program Center Directors in managing the overdue AFS. The report should be shared with staff.

The overdue tracking module operates by looking back twelve months from the most recent AFS due date to determine any overdue AFS. If it is determined there are overdue AFS, non-filers are notified of their status. **If a PM makes changes to the "Fiscal Year End Date" field on the AFS screen or the "Date Owner Assumed**

Financial Responsibility (FASS) “field on the Ownership screen in REMS, it could trigger overdue tracking and owners will be notified immediately of their overdue status.

In instances where changes to these data fields do not trigger overdue tracking, the PM should notify the owner of the overdue submission and take the appropriate follow-up actions (i.e. letter to the owner, flag APPS, elective referral to DEC, etc.).

VI. Criteria for AFS Reporting Periods

FASS-MF relies on REMS data to determine the proper reporting period for financial statements. Below are specific case discussions regarding the data requirements for new projects, refinanced projects, projects that have undergone a change in ownership, and other special situations. Errors in REMS critical data fields impact owners' AFS submissions and our ability to enforce compliance. The following are illustrative and are presented to assist PMs in populating REMS critical data fields.

A. New Projects

For all newly developed projects the "Date Owner Assumed Financial Responsibility (FASS)" (FASS date) is **the day AFTER cost certification cutoff**. This date should not be confused with the "Cost Certification Review" date found on the REMS Loan Information Detail screen. Cost certification cut-off is the date interest stops accruing on the construction loan. This date is found on the Cost Certification or Cost Certification Review Worksheet (HUD form 92331-A). The **day after** cost certification cut-off should be entered as the FASS date on the REMS ownership screen. For example, if cost certification cut-off is on July 15, 2004, the PM should enter July 16, 2004, in the "Date Owner Assumed Financial Responsibility (FASS)" field.

Note: During the Pre-occupancy Conference for new projects, TPA approvals, HAP contract assumptions, etc., the PM must inform the owner of the requirement to submit AFS annually, 90 days after their fiscal year end date. Also, the PM must inform the owner when the first AFS is due.

For projects under construction (i.e., In Development Pipeline), the PM must not modify the date in the "Date Owner Assumed Financial Responsibility (FASS)" field until after the cost certification cut-off date is determined. Additionally, the "Financial Statement Required" indicator **must** be set to "**No**" until the "Date Owner Assumed Financial Responsibility (FASS)" field has been populated. If the indicator is set to "Yes" FASS-MF overdue tracking will react to the erroneous "Date Owner Assumed Financial Responsibility (FASS)" and the owner's coordinator will be notified of an overdue submission. The FASS date should not be confused with the "Date Ownership Assumed." The "Date Ownership Assumed" is the date the deed was recorded.

Note: This section is not applicable when a Change in Ownership – Transfer of Physical Assets occurs and there is a subsequent application for a 221(d)(4) loan. The “Date Owner Assumed Financial Responsibility” (FASS date) field must be populated in the Ownership screen in REMS to calculate the expiration date for the former owner. See Sections VI. B. and C.

B. Change in Ownership - Transfer of Physical Assets (TPA) and Assumptions of HAP Contract

Burdens and benefits of ownership are legally transferred from the old owner to the new owner on the date the deed is signed. In no instance should a field office approve a TPA where the proposed new owner will not or cannot meet or exceed **all HUD requirements** at or shortly after HUD approval.

For a TPA, the seller must file an AFS covering the period from the beginning of their fiscal year through the day before the deed is signed. The date the deed is signed marks the beginning of the buyer's (new owner's) financial reporting responsibilities. The buyer (new owner) must file an AFS from the date the deed was signed until the end of its fiscal year. The PM must require a copy of the signed deed when the owner submits preliminary TPA documents. Once the signed deed is received, the **PM must update REMS with the buyer's profile information and tax identification number (TIN)** on the Ownership screen, and enter the "Date Owner Assumed Financial Responsibility (FASS)."

The PM must also input the date the deed was **recorded** in the "Date Ownership Assumed (Date Deed Recorded)" field on the Ownership screen. This date may differ from the date that the deed was **signed**, which is entered in the "Date Owner Assumed Financial Responsibility (FASS)" field per the instructions above.

The Ownership screen displays the current and prior owner's name and TIN. As stated earlier, the seller (old owner) is required to submit financial statements through the day before the deed was signed. FASS-MF computes the reporting period of the seller and buyer based on this stored information. Once all changes are made in REMS, either owner can submit an AFS for their respective reporting periods. BOTH accounting periods must be filed in FASS-MF. PMs may refer to the Real Estate Management System User's Guide, Chapter 4: Ownership, Adding an Owner, for additional instructions concerning REMS requirements.

If the former owner (seller) refuses to submit up through the date of their financial reporting responsibility, they must be referred to the DEC as a non-filer. The PM must flag all participants and affiliates in the selling entity in APPS and notify the seller of this action. The seller's failure to submit will not prohibit the new owner from filing its AFS. (Should the seller refuse to submit you would only consider

approving the TPA when a finding can be made that it is in the Department's best interest.)

Note: If the deed is transferred while either HUD insurance is in effect or HUD is the mortgage holder, then the owner must submit a TPA application to the local program center for approval.

HUD will not release or ignore seller non-compliance simply because of a sale. In other words a noncompliant owner cannot escape responsibility by selling a property. (One would only approve a TPA from a non-compliant owner when a finding is made that it is in the best interest of the Department.)

In the case of the AFS, the seller (old owner) remains responsible for filing all AFS covering the period until the new buyer takes financial responsibility.

In cases where the owner was previously referred to the DEC for late or non-submitted AFS, the PM should coordinate action with the DEC. This coordination should not generally delay a TPA. The intent is to enable the DEC and MFH to work cooperatively and maximize the likelihood the noncompliant seller will complete its contractual obligations by filing all required AFS. The DEC will continue on its course to seek civil money penalties, sanctions, etc.

PMs must notify the owner in writing of its action to place a risk flag in the Active Partner Performance System (APPS). The risk flag will alert all other HUD personnel that an unresolved noncompliance condition(s) exists. The PM must assure to the best of their ability that all persons and entities responsible³ for the unresolved noncompliance are flagged in APPS.

When a TPA occurs and there is a HAP contract in place, the PM must examine the HAP contract to ensure it too requires physical inspections and financial reporting. As a condition of all HAP contract assumptions, the buyer must agree to amend the contract to allow physical inspections by HUD and require full financial reporting in accordance with 24 CFR Part 5.

C. Change in Ownership (Non-insured Projects) - Assignment of Housing Assistance Payments (HAP) Contract

When a buyer purchases a noninsured property and is assigned an existing HAP contract that has an AFS filing requirement, financial reporting obligations for the new owner begins on the date that the HAP contract is assigned. The seller is responsible for filing an AFS through the day before the assignment date. The assignee (buyer) is responsible for filing the AFS from the date of the HAP

³ Responsible parties are all individuals and entities considered to be sellers, typically, all limited and general partners, members in an LLC, corporate officers and directors and all stockholders owning or controlling 10% or more of corporate stock.

assignment through the end of the buyer's fiscal year. If the project owner has been referred to the DEC for late or non-submitted AFS, the PM should coordinate with the DEC to explore the best course of action for getting the seller's AFS filed or resolved prior to HUD approval of the HAP assignment. This should not delay an assumption, but would enable the DEC and MFH to maximize pressure on a seller to get the AFS filed. After the assignment occurs, the momentum and ability to compel the owner to file decreases significantly. If the assignee (buyer) subsequently refinances the project using HUD/FHA insurance, the "Date Owner Assumed Financial Responsibility (FASS)" remains unchanged. (See above in cases where there is a non-compliant seller.)

When a buyer purchases a noninsured property and requests the assignment of the HAP contract, the PM must examine the HAP contract to ensure it requires physical inspections and financial reporting⁴.

D. Prepayment - Combined with Assignment of HAP Contract

In the event an owner (seller) prepays a HUD-insured mortgage and assigns a HAP contract with financial reporting requirements to a new owner (buyer), the "Date Owner Assumed Financial Responsibility (FASS)" is the date of the Assignment of the HAP contract. The former owner must file an AFS with a reporting period that begins on the first day of the fiscal year and ends on the day before the assignment. The new owner must file from the date of the assignment until the end of the buyer's fiscal year end. If the former owner (seller) refuses to submit up through the date of their financial reporting responsibility, they will be referred to the DEC as a non-filer. The PM should flag the former owner and its principals and affiliates in APPS. The former owner's failure to submit will not prohibit the new owner from filing its AFS.

E. Refinance - Replacing an Old FHA Loan with a New FHA Loan – No change in Ownership or Control

When a HUD-insured loan is replaced with a new HUD-insured loan with no changes in ownership, there is no break in financial reporting. The owner must file a full twelve-month AFS. REMS ownership information, including the "Date Owner Assumed Financial Responsibility (FASS)" (FASS date) remains unchanged. *If the new loan is a new construction or substantial rehabilitation loan, then the FASS date is the day after cost certification cut-off.*

The PM must associate the new FHA loan in REMS with the property identification (ID) number of the old FHA loan. Housing policy requires that each property carry a single property identification number (a.k.a. REMS ID or Property ID). Therefore, both the prior (old) loan and the refinanced (new) loan must be associated with the original property ID number.

⁴ As a condition of all HAP assumptions, the buyer must agree to amend the contract to allow physical inspections by HUD and require full financial reporting in accordance with 24 CFR Part 5.

PMs may refer to the Real Estate Management System User's Guide, Chapter 15: Property Association, Making a New Financing Association, for additional instructions concerning REMS requirements.

F. Refinance - Replacing a Conventional Mortgage with a FHA Insured Mortgage

The "Date Owner Assumed Financial Responsibility (FASS)" is the initial/final endorsement date of the new FHA mortgage. This is true unless the new loan is a new construction or substantial rehabilitation loan (e.g. 221(d)(4), 221(d)(3), 232), which requires a cost-certification. If a cost certification is required, the "Date Owner Assumed Financial Responsibility (FASS)" is the day after cost certification cut-off (see section VI.A. - New Projects). The FASS date should not be confused with the "Date Ownership Assumed." The "Date Ownership Assumed" is the date the deed was recorded.

G. Refinance - Replacing an Old FHA Loan with a New FHA Loan – A change in Ownership or Control Occurs

When a TPA and a refinance occur simultaneously, the "Date Owner Assumed Financial Responsibility (FASS)" is the date the deed was signed, not the final endorsement date of the new loan. **PM must update REMS with the buyer's profile information and tax identification number (TIN)** on the Ownership screen, and enter the "Date Owner Assumed Financial Responsibility (FASS)" on the AFS screen.

VII. Submission Requirements for Specific Mortgage/Program Types

The Uniform Financial Reporting Standards rule, published in the Federal Register on September 1, 1998, requires owners of HUD-assisted properties to submit entity-level AFS electronically. AFS that exclude ownership level activity or state that only property activity is presented are to be rejected in their entirety; such AFS do not meet HUD standards. The following are the specific requirements for various submission types.

A. Consolidated Submissions

There are instances where multiple projects were developed under a single owning entity, i.e., two or more projects owned and operated by a single owning entity with the **same tax identification number (TIN)**. If the TIN is **not identical** an owner may not file a consolidated statement as described below.

Note: The single asset mortgagor entity requirement is regulatory. Hub and Program Center Directors do not have authority to waive the regulations or this requirement.

The FASS-MF system permits profit-motivated, limited distribution and nonprofit owners, legitimately holding and operating more than one property, to submit consolidated financial statements. The consolidated submission consists of all basic financial statements; Balance Sheet, Statement of Cash Flows, etc., covering the combined operations for all of the properties being submitted. The FASS-MF templates also require separate basic statements for each project, as part of the supporting data. Separate supporting data schedules such as the Computation of Surplus Cash, Schedule of Reserve for Replacements, etc., are required in all cases for each project in the group. All properties covered in the submission share certain schedules and reports such as Notes to Financial Statements, Auditor's Opinion, Reports on Compliance, etc. Owners having multiple properties (sharing the same TIN) that were developed under a single owning entity may choose either to file individual program-level audited AFS for each project or to file a consolidated submission. If the individual program-level AFS filing is chosen then the entity level transactions and reports MUST still be provided in each separate filing.

1. Consolidated Submissions - Nonprofit Properties

The consolidated submission for nonprofit properties may include operating information for non-HUD businesses in which the entity is engaged. For example, a nonprofit entity may own a thrift store, or a rehabilitation center, or other business, and also own a HUD project under the same tax identification number. The owning entity may submit a consolidated financial statement that covers both HUD and non-HUD operations. The non-HUD operations would be included in the consolidated financial statements, and the HUD operations would be reported separately in the program-level supplemental schedules. These owners have the option of filing individual program-level audited AFS's for each HUD-assisted project.

2. Consolidated Submissions - MF Properties owned by Public Housing Authorities (PHAs)

PHAs are required to submit consolidated financial statements to REAC via FASS-PHA. When FASS-PHA submissions include financial and audit information concerning a PHA-owned multifamily property, HUD will not require PHAs to also submit separate audited information on these multifamily properties (In these cases the TIN of the PHA is the same as the TIN of the project). Instead, PHAs must submit separate owner-certified (unaudited) information for each multifamily property they own via FASS-MF.

To complete the filing process, after the PHA has submitted an Owner-Certified \geq \$500,000 AFS, the PHA must request a waiver of the MFH audit requirement. The waiver must be requested to avoid improper labeling of the PHA as a late filer later in the year when the OMB Circular A-133 audited reports are due. The request for waiver is made on-line under the "Select An

Option Menu" in the Financial Assessment Subsystem – Submission (FASSUB), located on the REAC Secure Systems website located at:

<http://www.hud.gov/offices/reac/online/reasyst.cfm>

Waiver of the audit requirement for the multifamily project(s) will not be granted unless the PHA has successfully submitted the consolidated un-audited AFS for the housing authority to REAC via FASS-PHA.

Note: PHAs who participate in the Moving to Work program are not required to file financial statements electronically via FASS-PHA. These PHAs submit hard copy financial statements to the local field office. Moving to Work PHAs who own multifamily projects must submit separate Owner-Certified \geq \$500,000 AFS via FASS-MF for each multifamily project they own and request a waiver of the audit requirement. The waiver will be granted after REAC verifies that the local field office has received the hard copy PHA consolidated audit.

3. Consolidated Submissions – Multiple Non-insured MF Properties with Housing Assistance Payment (HAP) Contracts

A single owning entity (i.e. two or more projects sharing the same tax identification number (TIN)) that owns multiple non-insured projects with Housing Assistance Payment (HAP) Contracts have the option of filing a consolidated financial statement. If the TIN is not identical for each project, an owner may not file a consolidated statement. Nonprofit owners that choose to file a consolidated submission would file an individual OMB Circular A-133 audited financial statement. The consolidated submission consists of all basic financial statements; Balance Sheet, Statement of Cash Flows, etc., covering the combined operations for all of the properties being submitted. The FASS-MF templates also require separate basic statements for each project, as part of the supporting data. Separate supporting data schedules such as the Computation of Surplus Cash, Schedule of Reserve for Replacements, etc., are required for each project in the group. All properties covered in the submission share certain schedules and reports such as Notes to Financial Statements, Auditor's Opinion, Reports on Compliance, etc. Owners the have multiple properties (sharing the same TIN) that were developed under a single owning entity may choose either to file individual program-level audited AFS for each project or to file a consolidated submission. Owners that opt to file program-level audited AFS must submit individual audits for each project (i.e., HAP Contract) pursuant to IG Handbook 2000.04 REV-1, Consolidated Audit Guide for Audits of HUD Programs. Additionally, the Notes to the Financial Statements must indicate that the financial report was prepared at the entity level.

B. Small Project Processing (SPP) Program

HUD implemented the SPP program with the issuance of HUD Notice H 97-4, later revised by HUD Notice H 99-9. Projects developed under this program do not have a regulatory requirement to submit **audited** financial statements. Instead, these owners submit owner-certified (un-audited) AFS.

FASS-MF relies on the "Small Project Processing" indicator, located in the Loan Information Detail screen in REMS, to determine whether properties are eligible to access a template to file the owner-certified AFS. **It is important that the Project Manager set the indicator to "Yes" to allow the submission of the AFS. Only projects processed under the Small Project Processing Program notices are eligible to file owner-certified AFS. PMs must check the MFH Closing Memorandum (form HUD 290) to confirm the processing method. The SPP Program requirements are very specific. *Projects with a small number of units or small principle balances are not automatically included.* PMs must check the financial reporting requirements in the project's Regulatory Agreement.**

C. Non-insured Projects

Owners of non-insured projects are required to submit an AFS only where there is a financial filing requirement in their business agreement (i.e., HAP Contracts Part II – Paragraph 2.6, Use Agreements, etc.). PMs are responsible for assuring that REMS is properly updated for each non-insured property. The PM can determine this only by reading the business agreement. In all cases where the business agreement requires a submission the PMs must place a "Yes" in the "Financial Statement Required" indicator in REMS.

State Housing Finance Agency (HFA) financed properties and HFA Risk-sharing projects, with project-based Section 8 assistance have a requirement to file AFS with the HFA. There is no requirement for these owners to file an AFS with HUD, so the "Financial Statement Required" indicator must be set to "No." **If the owner prepays the HFA mortgage, and HUD becomes the contract administrator, the HAP contract must be modified at the time of prepayment to require the owner to file AFS with HUD.**

D. Mortgage Note Prepayments

If there are no ongoing financial reporting requirements, owners who prepay their mortgage are required to submit an AFS for the full fiscal year ending prior to the prepayment year. For example, if an owner prepays in March 2004, the AFS for the fiscal year ending December 31, 2003, is required. No AFS for 2004 will be required as long as the owner prepays the mortgage on or before the project's fiscal year end date. **However, if the owner has other business agreements**

(i.e., HAP contracts, Use Agreements, etc.) that require ongoing financial reporting, then no lapse in reporting is allowed. For example, if the owner prepays the mortgage in February 2004, but the owner has a HAP contract that requires financial reporting, then the owner must submit a full twelve-month AFS for 2004 and thereafter until the HAP is terminated. **If the owner sells the project in conjunction with a prepayment, and the project has ongoing financial reporting requirements (i.e., HAP contract, Use Agreement, etc.), then the seller must submit an AFS covering the period up through the date before the HAP or Use Agreement is assigned.**

After prepayment, and the PM confirms that there are no ongoing reporting requirements, the PM must set the "Financial Statement Required" indicator to "No." The indicator **must** only be changed after the PM verifies that the owner has **fulfilled all AFS submission requirements** and confirms that the mortgage note was actually prepaid. Verification can be ascertained by checking the REMS Loan Information screen, which is updated nightly by Headquarters' F47 System for insured loans. The Comprehensive Servicing and Monitoring System (CSMS) updates the loan information for HUD-held loans weekly; the Loan Accounting System (LAS) updates the loan information for Section 202 Direct Loans monthly; and the Program Accounting System (PAS) updates the loan information for Section 811 properties monthly. Failure to change the indicator to "No" will trigger overdue tracking.

Owners that require HUD's approval to prepay the mortgage will not be allowed to prepay until all required AFS have been submitted electronically via FASSUB. The ownership and all principals and affiliates must be flagged in APPS if they fail to submit AFS.

Owners whose mortgage note does not require HUD's approval to prepay and fail to file all required AFS must be flagged in APPS. Headquarters Desk Officers must forward an e-mail reminder to the appropriate Hub/Program Center to assure that the flag is placed in APPS. The Previous Participation Review Committee will review future participation requests until the owner resolves the flag. Finally, in cases where the mortgage was prepaid, the property was in acceptable physical condition, and there are no other AFS filing requirements, the PM must determine if it is appropriate to make an elective referral to the DEC because of the owner's AFS non-filer status as well as any other non-compliance conditions.

E. Multifamily Note Sale Program

Owners of mortgages sold in the MF Notes Sale Program are required to submit an AFS covering the fiscal year ending prior to the year in which closing occurs. The policy on AFS submission for note sales is the same as the policy for mortgage note prepayment (see above).

F. Foreclosure Sale

Owners of HUD-held properties included in a foreclosure sale, that have a business requirement to submit an AFS, are required to submit financial statements covering the fiscal year ending prior to the year in which the foreclosure sale occurs.

G. Nonprofit Entity Submissions

1. Nonprofit Entities Receiving \$500,000 or more Annually in Combined Federal Assistance

Nonprofit entities receiving \$500,000 or more annually in combined federal assistance are required to submit electronic owner-certified (un-audited) AFS within 90 days after the end of the fiscal year. An electronic audited financial statement is due no later than nine months after the end of the fiscal year pursuant to OMB Circular A-133.

The owner may opt to submit the audited financial statement within 90 days after the end of the fiscal year. By submitting the audited AFS within 90 days the owner can eliminate the additional step of submitting an owner-certified AFS. Combined federal assistance is calculated at the owning entity level and is comprised of:

- The outstanding balance of all FHA-insured and HUD-held mortgages and any direct loans (including the original principal amount received under the 202/811 capital advance program)
- Section 8 assistance or other project-based rental assistance received during the audit year
- Grant funds received during the year, including flexible subsidy, drug-elimination, and service coordinator
- Section 236 Interest Reduction Payments
- All other Federal assistance received during the audit year

Note: Tenant-based assistance (e.g. vouchers, certificates, Medicare/Medicaid) is not included when calculating combined federal assistance.

2. Nonprofit Entities Receiving Less than \$500,000 annually in Combined Federal Assistance

Nonprofit entities receiving less than \$500,000 annually in combined federal assistance are required to submit owner-certified AFS, within 90 days after the end of the fiscal year.

H. AFS Requirements for Owners Receiving Interest Reduction Payments (IRP) – Non-insured Section 236 Properties (Decoupling)

Under Section 236(e)(2) of the National Housing Act, as amended, a Section 236 mortgage may be prepaid and the IRP subsidy continued provided the owner enters into an IRP Agreement and Use Agreement that require the continuation of the low-income housing resource for at least 5 years beyond the maturity date of the original Section 236 mortgage. In these cases, the owner must execute an IRP Agreement and Use Agreement that requires, among other things, that accurate records and accounts be maintained in a manner prescribed by the Department, including compliance with Subpart H of Part 5 of Title 24 of the Code of Federal Regulations (CFR), which requires that all AFS be submitted electronically via FASSUB. Owners with active “Agreement for Interest Reduction Payments” and Use Agreements are required to submit audited financial statements annually to the Department.

PMs must enter the subsidy information for all IRP Decoupling Agreements in the “IRP Information” section of Subsidy Status screen in REMS, and the corresponding Use Agreement, in the “User Restriction\Lock-out” section of REMS, and set the “Financial Statement Required” indicator to “Y.” These are two separate entries when there is an IRP Agreement. The PM must also populate the “Distribution Allowed” field on the Ownership screen in REMS. Some IRP Agreements allow an unlimited distribution of Surplus Cash and others are limited distribution with a cumulative annual earned distribution.

I. Leased Nursing Homes

The owner’s (lessor’s) Regulatory Agreement requires the owner to submit audited AFS to HUD. Information in the owner’s/lessor’s AFS is limited in that it only shows the transactions involving the owning entity and does not show the actual operating activities of the nursing home. The owner’s/ (lessor’s) AFS should be prepared using the accounting rules for an operating lease, and lease revenue should be reported in account 5195 - Lease Revenue (Nursing Homes) on the Statement of Profit and Loss.

The lessee’s regulatory agreement, unless amended, typically does not require the lessee to submit financial statements covering the operations of the project, unless there is a default under the lease agreement. On January 10, 1997, HUD published Notice 97-1, which required HUD Hub/Program Centers to amend the lessee’s regulatory agreements on new leased nursing homes adding a provision to require the lessee to submit AFS covering the project operations. REAC is currently unable to accept the lessee AFS electronically. The lessee’s AFS must be submitted in hard copy to the local Program Center.

J. Nonprofit Owners Who Are Allowed to Take a Distribution

The business agreements for certain nonprofit owners allow the owner to take a distribution.

FASS-MF does not currently have the functionality to collect and display limited distribution accounts for nonprofit owners who are allowed to take a limited distribution. These owners will be required to enter the distribution earned and accrued information in the notes to financial statements. It is anticipated that this problem will be corrected as part of a future FASS-MF system release. However, FASS-MF does accommodate submission for nonprofit owners with unlimited distributions.

Where the PM determines a nonprofit owner is allowed to take a distribution, the PM must change the "Distribution Allowed" field on the REMS ownership screen to reflect the appropriate distribution allowance (e.g., Unlimited Distribution Allowed, Distribution Allowed 10%, etc.). The PM must also complete the "Source Document for Distribution" field to indicate which document authorized the owner to take a distribution (e.g. HAP Contract, Regulatory Agreement, etc.). Changing these fields in REMS modifies FASS-MF submission templates and allows the owner to access a Computation of Surplus Cash template like the one used for profit-motivated owners. This template allows owners to enter an "Amount Available for Distribution During the Next Fiscal Period" and prevents FASS-MF from generating a non-compliance indicator when distributions are taken during the next fiscal year.

K. Section 202 Refinanced Properties

Owners of Section 202 or 202/8 Direct Loans who prepay and refinance their loan pursuant to Notice H 2002-16 - Revised Prepayment of Direct Loans on Section 202 and 202/8 Projects with Inclusion of FHA Mortgage Insurance Guidelines (reinstated and extended by Notice 04-02) are required to execute and record a Use Agreement to maintain the low-income affordability of the property. The Use Agreement requires, among other things, the books and accounts of the property's operations be kept in accordance with the requirements of HUD. The Use Agreement requires owners to submit audited financial statements annually to the Department, including compliance with Subpart H of Part 5 of Title 24 of the Code of Federal Regulations (CFR), which requires that all AFS be submitted electronically via FASSUB. PMs must enter the Use Agreement information in the "Use Restriction/Lock-out Detail" screen in REMS, select "HUD – approved prepayment – 202/811" from the "Reason(s) for Restrictions" drop-down list, and set the "Financial Statement Required" indicator to "Y" on the "AFS" screen. These are two separate entries when there is a 202 Use Agreement.

L. Mark-to-Market (M2M)

1. Profit-motivated and Nonprofit Owners

The M2M program is designed to lower property rents to prevailing market levels and reduce Section 8 outlays. The process often results in restructuring the existing mortgage. The mechanics of the program are as follows:

- The HUD-insured first mortgage is written down so that it can be supported by market rents, provide funds for repairs and eliminate factors that may lead to a future default on the first mortgage.
- The amount of the unsupported first mortgage is secured by a new second mortgage (and sometimes a new third mortgage).
- The second mortgage is payable from surplus cash (usually 75 percent of surplus cash generated in the prior year).
- The third mortgage is non-amortizing until the first and second loans have been paid in full.

Owners are required to loan funds to the project for required repairs. This is termed a Capital Recovery Payment (CRP) and is an amortizing loan payable from the project's operating account. Owners may also receive an Incentive Performance Fee (IPF) payable from surplus cash. The IPF amount is usually 3 percent of net rental receipts. The owners of M2M projects can be profit-motivated or non-profit; surplus cash and distribution rules are the same for both ownership types.

The following example shows Part B of the Computation of Surplus Cash for a M2M Profit-motivated or Non-profit Project:

	2003
Surplus Cash	75000
1. Incentive Performance Fee Payable	12000
2. Surplus Cash Available for Distribution	63000
3. Percentage Surplus Cash Split (M2M)	.75
4. Surplus Cash for M2M Note Payment	47,250
5. Surplus Cash Available for Distribution (M2M)	15,750

In the above example, the project generated \$75,000 in surplus cash. Since the Incentive Performance Fee (IPF) was less than the surplus cash amount, the owner will be able to take the entire IPF of \$12,000 during the next fiscal year. Surplus cash remaining after the IPF is \$63,000. This remaining cash is split between a required payment on the second mortgage and an owner

distribution. The percentage split in this case is 75 percent; 75 percent of the remaining surplus cash must be paid toward the second mortgage and the remaining 25 percent can be distributed to the owner. In this example, the owner must make a second mortgage payment during the next fiscal year of \$47,250, and the owner can take a distribution of \$15,750.

2. Cooperative Owners

Owners of cooperatives can also participate in the M2M program; however, they are not allowed to take a distribution. Cooperatives compute surplus cash and an IPF, but the IPF must be deposited into the residual receipts account. In addition, any surplus cash remaining after the second mortgage payments must also be deposited in the residual receipts account.

The following example shows Part B of the Computation of Surplus Cash for a Cooperative M2M owner:

	2003
Surplus Cash	75000
1. Incentive Performance Fee Payable	12000
2. Surplus Cash Available for Distribution	63000
3. Percentage Surplus Cash Split (M2M)	.75
4. Surplus Cash for M2M Note Payment	47,250
5. Deposit Due Residual Receipts	27,750

An IPF is calculated although cooperative owners are not allowed a distribution. The 75 percent split is applied to the surplus cash remaining after the IPF is subtracted out. In this case, surplus cash was \$75,000, minus the IPF of \$12,000 equals remaining surplus cash of \$63,000. The 75 percent split is applied to the \$63,000 to compute the required payments on the second mortgage, \$47,250. The additional 25 percent of remaining surplus cash, plus the IPF must be deposited into the residual receipts account during the next fiscal year. In this case the remaining surplus cash was \$15,750 and the IPF was \$12,000 so the deposit due residual receipts is \$27,750.

3. Financial Statements During the Initial Year of Restructuring

Owners may compute surplus cash on the date of restructuring in order to determine if they are entitled to any pre-restructuring distributions. When the AFS are submitted electronically, the computation of surplus cash prepared on the restructuring date should be submitted using the mid-year computation of surplus cash data template. Any allowable distribution amount should be included as a current obligation on the year-end computation of surplus cash, and can be taken during the next fiscal year. If restructuring occurs after mid-year, and the owner decides to take a mid-year distribution, then the

restructuring computation of surplus cash must be included in the notes to financial statements.

Note: When a limited distribution project is restructured, it ceases to be a limited distribution project. Any distributions earned but unpaid are eliminated. **The project manager must change the mortgagor type from Limited Distribution to Profit Motivated on the REMS ownership screen once the restructuring is complete**

M. Property Distribution (PD) Properties

Purchasers of PD property without a project-based Housing Assistance Payment (HAP) Contract generally do not have a requirement to submit AFS to the Department. In the past, purchasers of PD property with an existing project-based HAP contract may or may not have been required to file AFS. PMs must review the HAP to determine if the owner has an AFS filing requirement. If the HAP indicates that the owner has an AFS submission requirement, the PM must enter the HAP information in the "Subsidy Status" screen in REMS, and set the "Financial Statement Required" indicator to "Y" on the "AFS" screen. These are two separate entries.

VIII. Changes in the Fiscal Year End

Profit-motivated and limited dividend owning entities must submit requests to change their fiscal year end to the Internal Revenue Service (IRS) on Form 1128 – "Application To Adopt, Change, or Retain a Tax Year." Upon receipt of this request, the IRS issues a "Private Letter Ruling" indicating its decision.

Nonprofit or tax-exempt entities under section 501(c) are not required to submit Form 1128 to change the fiscal year end, unless the owning entity has changed its tax year at any time within the last 10 years. This procedure is called "Expedition Approval." The IRS permits nonprofit entities to change their fiscal year end without prior approval if they meet the above requirement.

PMs **must not** change the fiscal year end information in REMS for profit-motivated and limited-dividend entities until they receive a copy of IRS's "Private Letter Ruling." If the property is owned by a nonprofit entity, the owner must submit a letter to the local Hub/Program Center certifying that the fiscal year end has not changed within ten years. If this letter is not received, the PM **must not** change the fiscal year end date in REMS.

Fiscal year end dates apply to owning entities, not to projects. In cases where the owning entity has multiple properties, the PM must verify that the ownership information and TIN in REMS are the same for those properties before changing the fiscal year end date.

Within 30 days of approving a fiscal year end change, the PM must inform the REAC Technical Assistance Center (TAC) (888-245-4860) of a change in fiscal year end. Changing the “Fiscal Year End” in REMS triggers overdue tracking. FASS-MF must be informed of these changes to override the overdue tracking to prevent referral of the owner to the DEC.

Example: if the fiscal year end is 12/31 and is being changed to 06/30 during calendar year 2004, overdue tracking will look back twelve months for the 06/30/2003 AFS submission. The owner’s coordinator will receive a notice indicating that the 06/30/2003 AFS is overdue. Contacting the TAC within 30 days of the change allows REAC to override overdue tracking and prevents an unnecessary referral to the DEC.

IX. Extensions

Neither Hubs/Program Centers nor the DEC are authorized to approve extensions to AFS filing due dates. The Office of Asset Management has defined specific criteria and provided REAC limited authority to approve or deny extension requests. The criteria are in an agreement between the offices (see Attachment 1). The agreement describes the:

- Procedures owners must follow to request an extension
- Criteria REAC uses when approving or denying extensions
- Appeal process for denied requests

All extension requests must be filed electronically according to the instructions in the Industry User Guide for the Financial Assessment Subsystem - Multifamily Housing (FASSUB). Owners needing additional assistance may be referred to the REAC Technical Assistance Center (TAC) at 1-888-245-4860. When a Hub/Program Center or the DEC receives an extension request from an owner or owner representative, direct the requester to the REAC Website (<http://www.hud.gov/offices/reac/online/reasyst.cfm>), where the request can be filed online.

X. Waivers and Deferments

A. Waivers of AFS Submission

Only the Assistant Secretary for Housing (FHA Commissioner) in Headquarters has authority to waive the requirement to submit an AFS. Generally, the AFS filing requirement **will not** be waived. The procedures for processing are presented in Attachment 2.

B. Waivers to Defer Partial Year Submission

As with extensions, the Office of Asset Management provided REAC limited authority to approve or deny deferment requests of less than or equal to 90 days. A waiver to defer is an option, not a right. The owner's coordinator **MUST** submit the request on-line under the "Select An Option Menu, Waiver" in FASSUB on the REAC Secure Systems website (See Attachment 2).

Guidance Dissemination Requirements:

All PMs must be given a copy of this document to be used as a Desk Guide. This guidance will be posted on the MFH website at:

<http://hudweb.hud.gov/po/h/hm/fog/finstat.htm>

Local industry representatives, owners and management companies should be encouraged to access and review this information. HUD staff should contact their Headquarters' Desk Officer in Asset Management with any questions concerning this policy.

Attachments

08/09/01

**Agreement between Multifamily Housing and REAC
Processing Extension Requests for Annual Financial Statement Submissions**

A. Extension Request Procedures

The procedures for the submission and review of the requests are:

1. The owner's coordinator accesses FASS and enters an explanation as to why the owner believes an extension is warranted, and enters personal contact information in case REAC needs to discuss the request.
2. The request is electronically transmitted to REAC via FASSUB.
3. The REAC analyst assigned to that Hub would act on the request based on the Office of Asset Management's approval/denial criteria as outlined below.
4. Once the request is approved or denied, the decision, and an explanation for the decision, is posted in FASSUB and is available for viewing in the submitter's online Administrative Request Status Box.
5. If the request is approved, then the due date is automatically changed in the FASS-MF overdue tracking module, thus preventing an overdue letter from being emailed to the owner's coordinator.

B. Appeal Procedures

To appeal a denied extension request the owner must submit a written appeal to the PM in the local Hub/Program Center. If the PM believes the request has merit, they must send it with their recommendation to the Hub/Program Center's assigned Desk Officer in the Office of Asset Management in Headquarters for a decision.

If the appeal is approved the:

1. Office of Asset Management notifies the PM and REAC by email that the extension is approved.
2. The PM informs the owner that the extension appeal has been approved, and REAC will reverse the previously denied request.

If the appeal is denied the:

1. Office of Asset Management notifies the PM by email that the appeal is denied.
2. The project manager notifies the owner in writing that the appeal is denied.

C. Approval and Denial Criteria

Headquarters will use the following criteria in approving and denying extension requests:

Approvals may occur when:

- Circumstances exist that are beyond the owner's control
- Database problems beyond the control of the Project Manager and the owner prevent the owner from filing (examples include situations in which a former owner's information was deleted from REMS, or problems with the FASS effective date or expiration date)

Denials may occur when:

- The hard copy audit report was not prepared in time to meet the electronic submission deadline
- The owner failed to register as a coordinator in secure systems at least 30 days prior to the end of the fiscal year
- The owner does not have Internet access
- The owner has overdue submissions from previous years that have not been received
- The owner fails to engage an auditor at least 60 days prior to the end of the fiscal year

REAC understands that these criteria constitute a Housing policy decision and that the Office of Asset Management retains the authority to amend, adjust, or suspend these criteria at its discretion.

/s/Beverly J. Miller
Beverly J. Miller, Director,
Office of Asset Management, HTG

/s/Peter B. Bell
Peter B. Bell, Director,
PIH-REAC-FASS-MF

08/09/01

Agreement between Multifamily Housing and REAC Processing Requests for Waivers and Deferments of Financial Statements

A. Waiver Request Procedures

The authority to waive financial statements and to develop policy on waivers rests solely with the Assistant Secretary-FHA Commissioner. The requirement to submit financial statements to HUD electronically cannot be waived unless HUD has entered into a legally binding agreement with the owner that waives the owner's contractual requirement to submit financial statements. The procedures for processing waivers are:

1. The owner must submit a written request for a waiver to the local Hub or Program Center along with supporting documentation indicating the reasons they believe HUD should waive the financial submission requirements.
2. Project Managers should review the request and determine if it has merit for approval. If the decision is affirmative, the project manager must forward the request with their recommendation via memorandum to the Office of Asset Management. However, if the project manager determines that the request lacks a basis for approval, the Hub/Program Center should deny the request.
3. The Office of Asset Management will review the request to determine if HUD has authority under the existing regulations and business agreements with the owner to extend a waiver that was previously approved, or approve a new waiver.
4. The Office of Asset Management will notify the field office and REAC in writing if the request is approved or disapproved, and the project manager will inform the owner in writing accordingly. If the request is approved, the PM should instruct the owner to submit a waiver request electronically to FASS-MF.
5. Upon receipt of the approval letter from the Hub/Program Center, the owner must submit a waiver request electronically via the FASS-MF system, and REAC will approve the request in the system.
6. If the Hub/Program Center denies the waiver request, the owner may appeal the decision to the Office of Asset Management.

B. Waiver Criteria

1. The request must specify the specific terms or conditions and the time period for the waiver.

2. The waiver cannot be for a period over one year.

C. Waivers to Defer Partial Year Submissions

During the normal course of business, situations may arise for which an owner is responsible for submitting financial statements with a reporting period of less than 12 months. Auditors refer to these as “stub” period financial statements. If the stub period is equal to or less than 90 days, HUD allows the owner to defer reporting, and to add the stub period to the next full year financial statements (e.g. the owner would submit financial statements covering up to 15 months). This procedure is known as a deferment of the reporting period. A deferment is different from a waiver in that the financial submission requirement is not waived, but the timing of the submission is deferred to a later date. HUD regularly approves the deferment of stub period reporting as part of Transfers of Physical Assets (TPA), refinances, and new project development thus ensuring that the owners are not flagged as being overdue. The owner's coordinator submits this request on-line under the "Select An Option Menu, Waiver" in FASSUB on the REAC Secure Systems website located at <http://www.hud.gov/offices/react/online/reasyst.cfm>. The above language permitting a stub period of equal to or less than 90 days supersedes the submission requirement in Chapter 2, paragraph 2-2 of HUD Handbook 4370.1 REV-2.

/s/ Beverly Miller
Beverly J. Miller, Director,
Office of Asset Management, HTG

/s/ Peter B. Bell
Peter B. Bell, Director,
PIH-REAC-FASS-MF