

Dated: February 21, 1997.
LaVerne Y. Stringfield,
Committee Management Officer, NIH.
[FR Doc. 97-4739 Filed 2-25-97; 8:45 am]
BILLING CODE 4140-01-M

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following advisory committee meeting of the National Institute of General Medical Sciences Special Emphasis Panel:

Committee Name: Determinants of Individual Responsiveness to Drugs.
Dates: March 25, 1997.
Time: 8:00 a.m.—until conclusion.
Place: Union Station Hotel, 1001 Broadway, Nashville, Tennessee 37203.
Contact Person: Irene Eskstrand, Ph.D., Scientific Review Administrator, NIGMS, Office of Scientific Review, 45 Center Drive, Room 2AS-25K, Bethesda, MD 20892-6200, 301-594-0943.
Purpose: To review and evaluate program project applications.

This meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and the discussions of these could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.821, Biophysics and Physiological Sciences; 93.859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers [MARC]; and 93.375, Minority Biomedical Research Support [MBRS].)

Dated: February 20, 1997.
LaVerne Y. Stringfield,
Committee Management Officer, NIH.
[FR Doc. 97-4740 Filed 2-25-97; 8:45 am]
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National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institutes of Diabetes and Digestive and Kidney Diseases:

Name of Committee: National Diabetes and Digestive and Kidney Diseases Special Grant Review Committee, Subcommittee D.
Date: March 7, 1997.

Time: 8 a.m.—Adjournment.
Place: Hyatt Regency Bethesda Hotel, One Bethesda Metro Center, Bethesda, Maryland 20814.

Contact Person: Ann A. Hagan, Ph.D., Scientific Review Administrator, Natcher Building, Room 6AS-37F, National Institutes of Health, Bethesda, Maryland 20892-6600, Phone: 301-594-8886.

Purpose/Agenda: To review and evaluate research grant applications.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Special Grant Review Committee, Subcommittee B.

Date: March 10, 1997.
Time: 8 a.m.—Adjournment.
Place: Hyatt Regency Bethesda Hotel, One Bethesda Metro Center, Bethesda, Maryland 20814.

Contact Person: Ned Feder, M.D., Scientific Review Administrator, Natcher Building, Room 6AS-25S, National Institutes of Health, Bethesda, Maryland 20892-6600, Phone: 301-594-8890.

Purpose/Agenda: To review and evaluate research grant applications.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Special Grant Review Committee, Subcommittee C.

Date: March 21, 1997.
Time: 8:30 a.m.—Adjournment.
Place: Doubletree Hotel—Pentagon City, 300 Army Navy Drive, Arlington, Virginia 22202.

Contact Person: Daniel Matsumoto, Ph.D., Scientific Review Administrator, Natcher Building, Room 6AS-37B, National Institutes of Health, Bethesda, Maryland 20892-6600, Phone: 301-594-8894.

Purpose/Agenda: To review and evaluate research grant applications.

These meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.847-849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health.)

Dated: February 20, 1997.
LaVerne Y. Stringfield,
Committee Management Officer, NIH.
[FR Doc. 97-4741 Filed 2-25-97; 8:45 am]
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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4200-N-30]

Notice of Submission of Renewal of Information Collection Requirement to OMB

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice.

SUMMARY: The proposed renewal/reinstatement of the existing information collection requirement described below is being submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). The Department is soliciting public comments on the subject renewal.

DATES: Comment due date: April 28, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this renewal. Comments should refer to the proposal by name and should be sent to:

Joseph F. Lackey, Jr., OMB Desk, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

John J. Daly, Associate General Counsel for Insured Housing, GI, HUD Building, Room 9236, 451 7th St., SW., Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Kay Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the existing forms showing clarifications and minor changes necessary to effect the renewal and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development is submitting to OMB an information collection renewal package with respect to two guide formats (hereinafter, "the Guide") which specify the components of a legal opinion required by the Department in connection with the insurance of mortgage loans upon multifamily rental projects and health care facilities under Titles II and XI of the National Housing Act, 12 USC 1702, *et seq.*, and 12 USC 1749aaa, or in connection with the making of a capital advance under section 202 of the Housing Act of 1959, as amended. (Please note that references to section 811 of the Cranston-Gonzalez National Affordable Housing Act, as

amended, have been deleted because the Guide is no longer required in connection with that program.)

The Guide articulates those matters upon which HUD requires an opinion from private counsel as well as those matters upon which confirmations are required. The Guide also contains detailed instructions pertaining to the form as well as a format for certifications by the mortgagor as to matters particularly within the knowledge of the mortgagor upon which its legal counsel relies in rendering the opinion. The section 202 Guide format is essentially the same as the insured loan format except for some differences in terminology and program requirements.

To the extent that the Guide represents any "collection of information," the process is necessary to ensure the Department that the attorney representing the mortgagor or owner has followed the otherwise specified requirements of the Department and to ensure the Department that the attorney has exercised an acceptable degree of due diligence in representing the client and in rendering the opinion to the mortgagee and HUD. Although certain aspects of the process have been clarified in the Instructions to the Guide, the process has not changed and no substantive changes have been made the Guide itself. Further, the program coverage has been clarified, but the actual coverage has not been expanded. The extent of due diligence expected to be performed under the Guide is no different than that which HUD has required under the Guide since its approval by OMB on March 11, 1994 (OMB Number 2510-0010). Based upon the experience of HUD in using the Guide for almost three years, HUD has determined that there have been no major problems in using the Guide and that it has been received positively by virtually all of the attorneys utilizing the

format. However, there are several places in the Guide and the Instructions thereto where technical corrections are necessary and where expanded Instructions are necessary to facilitate use of the Guide by private attorneys and HUD field counsel.

The Notice is soliciting comments from members of the public and affected agencies concerning the proposed renewal of the collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

- (1) The title of the information collection proposal;
- (2) The office of the agency to collect the information;
- (3) The description of the need for the information and its proposed use;
- (4) The agency form number, if applicable;
- (5) What members of the public will be affected by the proposal;
- (6) How frequently information submission will be required;
- (7) An estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response;
- (8) Whether the proposal is new or an extension, reinstatement, or revision of

an information collection requirement; and

(9) The names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3506 of the Paperwork Reduction Act, 44 U.S.C. 3506, Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 19, 1997.
George L. Weidenfeller,
Acting General Counsel.

Proposal: Renewal or reinstatement of HUD Guide for Counsel to the Mortgagor and Renewal or reinstatement of HUD Guide for Counsel to Owner.

Office: Office of the General Counsel.

Description of the need for the information and its proposed use: Although it is questionable whether a legal opinion upon which HUD and the mortgagee rely constitutes "the collection of information," HUD is taking a conservative approach and continuing to treat its use of the Guide formats as if they are information collection to eliminate the issue at the outset. The opinion is required to provide comfort to HUD and the mortgage in multifamily rental and health care facility mortgage insurance transactions and similarly to HUD and owners in the capital advance transactions.

Form Number: None (Guide).

Respondents: Counsel to mortgagors of multifamily rental projects and health care facilities upon which the mortgage loans are insured by HUD and counsel to owners of section 202 projects which receive capital advances from HUD.

Frequency of Submission: Variable. Submitted by counsel to the mortgagor or borrower in connection with the closings of insured and direct loans.

Reporting Burden:

Number of respondents	X	Frequency of response	=	Hours per response	=	Burden hours
700		1		1		700

Total Estimated Burden Hours: 700 (Please note that this estimate is based upon an attorney preparing and completing the opinion in one hour; however, the attorney would typically perform in excess of 100 hours in representing the mortgagor or owner and performing those actions necessary to render the opinion. These numbers do not represent any significant change from the previous Guide formats which are being renewed or reinstated with certain technical corrections and

clarifications which should result in slight decreases in some cases in the time required to prepare and complete the opinion.) Even though the Guide format is no longer required in connection with the 811 program, the slight decrease in activity thereunder is expected to be off-set by increases in FHA mortgage insurance activity.

Status: Renewal or reinstatement with technical corrections and clarifications (mainly to the Instructions to the Guide). (The previous Guide was

approved by OMB on March 11, 1994 (OMB Number 2510-0010)).

Contact: Joseph F. Lackey, Jr. OMB, (202) 395-6880; John J. Daly, HUD, (202) 708-1274.

Dated: February 19, 1997.

For use in FHA Insured Transactions.
January 30, 1997.

DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT FEDERAL
HOUSING ADMINISTRATOR

GUIDE FOR OPINION OF
MORTGAGOR'S COUNSEL

(TO BE TYPED ON FIRM
LETTERHEAD)

(INSERT DATE OF ENDORSEMENT)

Re: Project Name _____
FHA Project No. _____
Location _____
Mortgagor _____

[MORTGAGEE]

[ADDRESS]

[MORTGAGEE'S ATTORNEY]

[ADDRESS]

FEDERAL HOUSING COMMISSIONER
{INSERT APPROPRIATE FIELD OFFICE
ADDRESS}

Ladies and Gentlemen: We are [I am]
[general/special] counsel to
_____ {INSERT NAME OF
MORTGAGOR} (the "Mortgagor"), a
_____ {INSERT TYPE OF
ENTITY} organized under the laws of
the State of _____ {INSERT
STATE} (the "Organizational
Jurisdiction), in connection with a
mortgage loan (the "Loan") in the
[original/increased] principal amount of
_____ Dollars (\$ _____)
from _____ {INSERT NAME
AND TYPE OF MORTGAGEE} (the
"Mortgagee") to the Mortgagor. The
proceeds of the Loan will be used to
[construct/rehabilitate/purchase/
refinance] that certain [multifamily
housing/hospital/extended care facility/
nursing home/board and care] project
(the "Project"), commonly known as
_____ and located in
_____ {INSERT COUNTY AND
STATE} (said State to be referred to
hereinafter as the "Property
Jurisdiction") on the property described
in Exhibit B {ATTACH LEGAL
DESCRIPTION} (together with all
improvements and fixtures thereon) (the
"Property"). The Loan is being insured
by the Federal Housing Administration
(FHA), an organizational unit of the
United States Department of Housing
and Urban Development ("HUD"),
pursuant to a commitment for insurance
[of advances OR upon completion OR
for refinancing] issued to Mortgagee by
_____, Agent of the Federal
Housing Commissioner, dated
_____ [as amended by that
certain letter from _____ to
_____, dated _____]
("FHA Commitment"). The Loan is
being funded from _____
{DESCRIBE FINANCING SOURCE, e.g.,
tax-exempt bonds/mortgage backed
securities guaranteed by GNMA/

participation certificates, etc.} The
Mortgagor has requested that we [I]
deliver this opinion and has consented
to reliance by Mortgagee's counsel in
rendering its opinion to Mortgagee and
to reliance by Mortgagee and HUD in
making and insuring, respectively, the
Loan and has waived any privity
between Mortgagor and us [me] in order
to permit said reliance by Mortgagee,
counsel to Mortgagee and HUD. We [I]
consent to reliance on this opinion by
Mortgagee, counsel to Mortgagee, and
HUD.

In our [my] capacity as [general/
special] counsel to the Mortgagor, we [I]
have prepared or reviewed the
following:

A. The [{DESCRIBE
ORGANIZATIONAL DOCUMENTS, e.g.
for corporations: State certified copies of
the articles of incorporation, the by-
laws, the borrowing resolution, the
incumbency certificate and the good
standing certificate(s), fictitious Name
Registration, Foreign Corporation
Registration; for partnerships: certified
copies of the partnership agreement and
any amendments thereto, the certificate
of limited partnership, and any
amendments thereto, the good standing
certificate (or its equivalent) if provided
in the Organizational Jurisdiction, etc.}]
of the Mortgagor (collectively, the
"Organizational Documents");

B. The FHA Commitment [extensions
and assignment(s) thereof, if any];

C. The Commitment issued by the
Mortgagee and accepted by the
Mortgagor, dated _____, (the
"Loan Commitment");

D. The Regulatory Agreement
(_____) {INSERT APPROPRIATE
FORM NO.} by and between HUD and
the Mortgagor, dated _____, (the
"Regulatory Agreement");

E. The Note (_____) {INSERT
APPROPRIATE FORM NO.} [in the
original principal amount of
_____ Dollars (\$ _____)
OR in the increased principal amount of
_____ Dollars (\$ _____) by
Mortgagor in favor of Mortgagee, dated
_____, (the "Note");

F. [The Mortgage OR Deed of Trust]
(_____) {INSERT APPROPRIATE FORM
NO.}, executed by Mortgagor for the
benefit of Mortgagee, granting a security
interest in the Property, dated _____,
(the "Mortgage");

G. {INSERT THE NUMBER OF UCC's
TO BE FILED} Uniform Commercial
Code Financing Statements executed by
the Mortgagor as debtor and naming the
Mortgagee and HUD as secured parties
or as their interests may appear, to be
filed in _____, {INSERT
LOCATION(S)} (the Filing Offices),

upon the {DESCRIBE EVENTS} (the
"Financing Statements");

H. The Security Agreement by and
between Mortgagor and the Mortgagee,
granting a security interest under the
Uniform Commercial Code, in those
items of personality described therein,
dated _____, (the "Security
Agreement");

[I. {TO BE INSERTED IF THE
MORTGAGE IS ON A LEASEHOLD
ESTATE} The Ground Lease executed
by _____ {INSERT LESSOR} as lessor
and Mortgagor as lessee recorded in the
land records of _____, dated _____,
(the "Ground Lease").]

[J. {TO BE INSERTED FOR
CONSTRUCTION/REHABILITATION
LOANS} The Building Loan Agreement
(2441) executed by Mortgagee and
Mortgagor, dated _____, (the Building
Loan Agreement").]

[K. {TO BE INSERTED FOR
CONSTRUCTION/REHABILITATION
LOANS} The Construction Contract
[Lump Sum (2442) or Cost Plus (2442-
A)] executed by _____ (the "General
Contractor") and Mortgagor, dated
_____, (the "Construction Contract").]

L. The Mortgagee's Certificate (2434),
executed by the Mortgagee, dated
_____.

M. The Mortgagor's Certificate (2433),
executed by the Mortgagor, dated
_____.

N. The Agreement and Certification
(3305 or 3305A or 3306 or 3306A),
executed by the Mortgagor, dated
_____.

O. The Mortgagor's Oath (2478),
executed by the Mortgagor, dated
_____.

P. The Mortgagor's Opinion
Certification, pertaining to factual
matters relied on by us [me] in
rendering this opinion, executed by the
Mortgagor, dated _____, a copy of
which is attached hereto as Exhibit—
(the "Certification of Mortgagor").

Q. A search conducted by _____
dated _____ {no earlier than 30 days
before this opinion} of the financing
records of the county and Property
Jurisdiction [and Organizational
Jurisdiction] (the "UCC Search").

[R. A receipt from the insurance
company providing flood insurance
evidencing payment for the premium,
date _____ (the "Flood Insurance
Receipt").]

S. The Title Insurance Policy [or date-
down if appropriate in a refinancing, for
example] issued by _____ {acceptable
company under HUD's regulations},
together with all endorsements, and
naming HUD and the Mortgagee as
insureds as their interests may appear,
dated _____, (the "Title Policy").

[T. The following documents evidencing zoning compliance, _____, {DESCRIBE ALL DOCUMENTS FULLY} (the "Zoning Certificate").]

[U. The building permit(s) issued on _____ by] _____ (the "Building Permit").]

[V. The following permits, _____, {DESCRIBE PERMITS} which are required for the operation of the project, issued by _____ on _____ ("Other Permits").]

[W. The Surveyor's Plat OR Survey showing completed project, prepared by _____, dated _____, (the "Survey").]

X. The Surveyor's Report (2457), executed by _____ dated _____, (the "Surveyor's Report").]

[Y. The deferred note (1710, 1712 or 2223) executed by Mortgagor in favor of _____, dated _____, (the "Deferred Note").]

[Z. The Performance Bond (2452) and the Payment Bond (2452-A) issued by _____ (Surety) to secure payment and performance of _____ (General Contractor) and running to _____ OR the Completion Assurance Agreement (2450) executed by the General Contractor, dated _____, (the "Assurance of Completion").]

[AA. The Owner-Architect Agreement (AIA B181 with HUD Supplement) executed by _____ {INSERT DESIGN AND/OR CONSTRUCTION ARCHITECT} and Mortgagor, dated _____, (the "Owner-Architect Agreement").]

[BB. The Off-Site Bond (2479) issued by _____ (Surety) to secure the completion of off-site work by _____ (General Contractor) and running to the Mortgagee and HUD OR Escrow Agreement for Off-Site Facilities (2446) with Schedule "A" executed by _____ dated _____ (the "Assurance of Completion of Off-Site Facilitate").]

[CC. The following documents assuring water, electricity, sewer, gas, heat or other utility services (the "Assurance of Utility Services"): _____ {DESCRIBE FULLY}.

[DD. The Contractor's and/or Mortgagor's Cost Breakdown (2328) executed by the General Contractor, dated _____, (the "Cost Breakdown").]

[EE. The Latent Defects Bond (3259) issued by _____ and securing the performance of the General Contractor and running to the Mortgagee and HUD OR Escrow executed by _____, dated _____ (the "Guarantee against Latent Defects").]

[FF. The Escrow Deposit Agreement for Incomplete On-Site Improvements (2456) with Schedule A executed by the General Contractor, dated _____, (the "On-Site Deposit Escrow").]

[GG. The Contractor's Prevailing Wage Certificate (2403-A) executed by _____, dated _____, (the "Contractor's Prevailing Wage Certificate").]

HH. The Request for Endorsement of Credit Instrument (2023) and/or Certificate of Mortgagor and Mortgagee (2455) executed by the Mortgagor and the Mortgagee, dated _____, (the "Request for Endorsement"). {MODIFY AS APPROPRIATE FOR INSURANCE UPON COMPLETION, REFINACINGS, ETC.}

III. The Operating Deficit Escrow (2476a) executed by _____, dated _____, (the "Operating Deficit Escrow").]

[JJ. The Repair Escrow executed by _____, dated _____, (the "Repair Escrow").]

[KK. All documents executed by Mortgagor and any State or local government entity pertaining to development of the Property (the "Public Entity Agreement").]

[LL. The following documents executed or delivered in connection with the financing of the loan with the proceeds of bonds exempt from federal taxation: _____ {LIST DOCUMENTS IN ACCORDANCE WITH INSTRUCTIONS} (the "Bond Documents").]

MM. The Good Standing Certificate(s) {SEE "A" ABOVE} issued by [Organizational Jurisdiction OR Property Jurisdiction, if different], dated _____ {DATE INSERTED MUST BE WITHIN 30 DAYS OF THE DATE OF ENDORSEMENT}, (the "Good Standing Certificate").]

[NN. The certificate executed by _____ {INSERT ARCHITECT OR OTHER PROFESSIONAL}, dated _____, (the "Certificate").]

OO. A search conducted by _____ dated [no earlier than 30 days before this opinion] of the public records of the federal District Court and State and local courts in: (i) the jurisdiction where the Property is located; (ii) the jurisdiction(s) where the Mortgagor is located and does business; and (iii) the jurisdiction where the general partner of the Mortgagor is organized (the "Docket Search").]

Note: Numerical references in parentheses above are to FHA and HUD form numbers.

The documents listed in B through I above are referred to collectively as the "Loan Documents." The documents listed in J through OO are referred to collectively as the "Supporting Documents." The documents listed in A through OO are referred to collectively as the "Documents."

In basing the several opinions set forth in this document on "our [my]

knowledge," the words "our [my] knowledge" signify that, in the course of our [my] representation of the Mortgagor, no facts have come to our [my] attention that would give us [me] actual knowledge or actual notice that any such opinions or other matters are not accurate. Except as otherwise stated in this opinion, we [I] have undertaken no investigation or verification of such matters. Further, the words "our [my] knowledge" as used in this opinion are intended to be limited to the actual knowledge of the attorneys within our [my] firm who have been involved in representing the Mortgagor in any capacity including, but not limited to, in connection with this Loan. We [I] have no reason to believe that any of the documents on which we [I] have relied contain matters which, or the assumptions contained herein, are untrue, contrary to known facts, or unreasonable.

In reaching the opinions set forth below, we [I] have assumed, and to our [my] knowledge there are no facts inconsistent with, the following:

(a) Each of the parties to the Documents, other than the Mortgagor (and any person executing any of the Documents on behalf of the Mortgagor), has duly and validly executed and delivered each such instrument, document, and agreement to be executed in connection with the Loan to which such party is a signatory, and such party's obligations set forth in the Documents are its legal, valid, and binding obligations, enforceable in accordance with their respective terms.

(b) Each person executing any of the Documents, other than the Mortgagor (and any person executing any of the Documents on behalf of the Mortgagor), whether individually or on behalf of an entity, is duly authorized to do so.

(c) Each natural person executing any of the Documents is legally competent to do so.

(d) All signatures of parties other than the Mortgagor (and any person executing any of the Documents on behalf of Mortgagor) are genuine.

(e) All Documents which were submitted to us [me] as originals are authentic; all Documents which were submitted to us [me] as certified or photostatic copies conform to the original document, and all public records reviewed are accurate and complete.

(f) All applicable Documents have been duly filed, indexed, and recorded among the appropriate official records and all fees, charges, and taxes due and owing as of this date have been paid.

(g) The parties to the Documents and their successors and/or assigns will: (i)

act in good faith and in a commercially reasonable manner in the exercise of any rights or enforcement of any remedies under the Documents; (ii) not engage in any conduct in the exercise of such rights or enforcement of such remedies that would constitute other than fair and impartial dealing; and (iii) comply with all requirements of applicable procedural and substantive law in exercising any rights or enforcing any remedies under the Documents.

(h) The exercise of any rights or enforcement of any remedies under the Documents would not be unconscionable, result in a breach of the peace, or otherwise be contrary to public policy.

(i) The Mortgagor has title or other interest in each item of (i) real and (ii) tangible and intangible personal property ("Personalty") comprising the Property in which a security interest is purported to be granted under the Loan Documents [and, where Personalty is to be acquired after the date hereof, a security interest is created under the after-acquired property clause of the Security Agreement].

In rendering this opinion we [I] also have assumed that the Documents accurately reflect the complete understanding of the parties with respect to the transactions contemplated thereby and the rights and the obligations of the parties thereunder. We [I] also have assumed that the terms and the conditions of the Loan as stated in the Documents have not been amended, modified or supplemented, directly or indirectly, by any other agreement or understanding of the parties or waiver of any of the material provisions of the Documents. After reasonable inquiry of the Mortgagor, we [I] have no knowledge of any facts or information that would lead us [me] to believe that the assumptions in this paragraph are not justified.

In rendering our [my] opinion in paragraph 13, we [I] also have assumed that: (i) all Personalty in which a security interest is created under the Documents (other than accounts or goods of a type normally used in more than one jurisdiction) is located at the Property and (ii) Mortgagor's [Chief Executive Office] [only place of business] [residence] is located in _____.

After reasonable inquiry of the Mortgagor, we [I] have no knowledge of any facts or information that would lead us [me] to believe that the assumptions in this paragraph are not justified.

In rendering this opinion, we [I] have, with your approval, relied as to certain matters of fact set forth in the Certification of Mortgagor, the Good

Standing Certificate(s) [and certain other specified Documents,] as set forth herein. After reasonable inquiry of the Mortgagor as to the accuracy and completeness of the Certification of Mortgagor, the Good Standing Certificate(s), [and such other Documents], we [I] have no knowledge of any facts or information that would lead us [me] to believe that such reliance is not justified.

Based on the foregoing and subject to the assumptions and qualifications set forth in this letter, it is our [my] opinion that:

{TO BE USED IN CASES WHERE ORGANIZATIONAL DOCUMENTS WERE PREPARED BY MORTGAGOR'S ATTORNEY}

1. The Mortgagor is a _____ {INSERT TYPE OF ENTITY} duly organized and validly existing under the laws of the Organizational Jurisdiction. The Mortgagor is duly qualified to do business and, based solely on the Certificate(s) of Good Standing, copy attached hereto as Exhibit [____], is in good standing under the laws of the Organizational Jurisdiction, [and is qualified to do business as a foreign _____ entity in the Property Jurisdiction based on a review of _____.]

{OR, IF THE MORTGAGOR IS A TRUST}

The Mortgagor is _____ {INSERT NAME OF THE TYPE OF TRUST} duly formed and validly existing under the laws of the Organizational Jurisdiction [, and is qualified to do business as a foreign _____ entity in the Property Jurisdiction].

{AND, IF THE GENERAL PARTNER OF A PARTNERSHIP MORTGAGOR IS AN ENTITY}

The general partner of the Mortgagor is a _____ {INSERT TYPE OF ENTITY}, duly organized, validly existing and, based solely on the Certificate(s) of Good Standing, copy attached hereto as Exhibit [____], in good standing under the laws of the Organizational Jurisdiction [and is qualified to do business as a foreign _____ {INSERT TYPE OF ENTITY} in the Property Jurisdiction].

{TO BE USED IN CASES, PRINCIPALLY REFINANCINGS, WHERE ORGANIZATIONAL DOCUMENTS WERE NOT PREPARED BY MORTGAGOR'S ATTORNEY}

1. Based solely on the Certificate(s) of Good Standing, copy attached hereto as Exhibit [____], the Mortgagor is a _____ {INSERT TYPE OF

ENTITY} validly existing under the laws of the Organizational Jurisdiction and in good standing under the laws of the Organizational Jurisdiction [and is qualified to do business as a foreign _____ entity in the Property Jurisdiction].

{OR, IF THE MORTGAGOR IS A TRUST}

The Mortgagor is _____ {INSERT NAME OF THE TYPE OF TRUST} validly existing under the laws of the Organizational Jurisdiction [and is duly qualified to do business as a foreign _____ entity in the Property Jurisdiction].

{AND, IF THE GENERAL PARTNER OF A PARTNERSHIP MORTGAGOR IS AN ENTITY}

Based solely on the Good Standing Certificate(s), copy attached hereto as Exhibit [____], the general partner of the Mortgagor is a _____ {INSERT TYPE OF ENTITY}, validly existing and in good standing under the laws of _____ {INSERT STATE} [and is qualified to do business as a foreign _____ {INSERT TYPE OF ENTITY} in the Property Jurisdiction].

2. The Mortgagor has the [corporate/partnership/trust] power and authority and possesses all necessary governmental certificates, permits, licenses, qualifications and approvals to own and operate the Property and to carry out all of the transactions required by the Loan Documents and to comply with applicable federal statutes and regulations of HUD in effect on the date of the FHA Commitment.

3. The execution and delivery of the Loan Documents by or on behalf of the Mortgagor, and the consummation by the Mortgagor of the transactions contemplated thereby, and the performance by the Mortgagor of its obligations thereunder, have been duly and validly authorized by all necessary [corporate/partnership/trust] action by, or on behalf of, the Mortgagor.

4. All authorizations, consents, approvals, and permits have been obtained from, appropriate actions have been taken by, and necessary filings have been made with all necessary Organizational and Property Jurisdictions or federal courts or governmental authorities, all as disclosed on Exhibit _____, attached hereto, and as listed and set forth in Paragraph(s) 2 and _____ of this opinion [i.e. good standing certificate]. To the best of our knowledge, these represent all such authorizations, consents, approvals, permits, actions and filings that are required in connection with the execution and delivery by the Mortgagor

of the Loan Documents and the ownership [and operation] of the Property.

5. Each of the Loan Documents has been duly executed and delivered by the Mortgagor and constitute the valid and legally binding promises or obligations of the Mortgagor, enforceable against the Mortgagor in accordance with its terms, subject to the following qualifications:

(i) The effect of applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally; and

(ii) The effect of the exercise of judicial discretion in accordance with general principles of equity (whether applied by a court of law or of equity); and

(iii) Certain remedies, waivers, and other provisions of the Loan Documents may not be enforceable, but, subject to the qualifications set forth in this paragraph at (i) and (ii) above, such unenforceability will not preclude (a) the enforcement of the obligation of the Mortgagor to make the payments as provided in the Mortgage and Note (and HUD's regulations), and (b) the foreclosure of the Mortgage upon the event of a breach thereunder.

[6. {TO BE INSERTED WHEN ANY OR ALL OF THE LOAN DOCUMENTS ARE NOT HUD APPROVED FORMS OR WHEN HUD APPROVED FORMS HAVE BEEN REVISED OR MODIFIED IN CONNECTION WITH THE LOAN} The execution and delivery of, and the performance of the obligations under, the Loan Documents will not violate the Organizational Documents of the Mortgagor or any applicable provisions of local or State law.

[7. {INSERT FOR LOANS INVOLVING CONSTRUCTION OR REHABILITATION} To our [my] knowledge there are no proposed change(s) of law, ordinance, or governmental regulation (proposed in a formal manner by elected or appointed officials) which, if enacted or promulgated after the commencement of construction/rehabilitation, would require a modification to the Project, and/or prevent the Project from being completed in accordance with the plans and specifications, dated _____, executed by _____ {INSERT MORTGAGOR} and _____ {INSERT GENERAL CONTRACTOR}, and referred to in the Construction Contract (the "Plans and Specifications").]

[8. {INSERT IF THERE IS NO ZONING ENDORSEMENT INCORPORATED INTO THE TITLE POLICY} The attached Zoning Certificate states that the Property

appears on the zoning maps of [Property jurisdiction] as being located in a _____ zone. According to the zoning ordinance of the Property Jurisdiction, the use of the Property as a _____ is a permitted use in such zone.

OR

Based solely on the Zoning Certificate, the Property may be used for _____ as a permitted use.]

[9. {USE FOR NEW CONSTRUCTION OR SUBSTANTIAL REHABILITATION IN CASES WHERE THE DEPARTMENT DOES NOT RECEIVE A CERTIFICATE DIRECTLY FROM THE PROFESSIONAL} Based solely on the

Certificate, construction/rehabilitation of the Project in accordance with the Plans and Specifications will comply with all applicable land use and zoning requirements.

{USE FOR REFINANCINGS} Based solely on the Certificate, the Project complies with all applicable land use and zoning requirements.]

10. Based solely on (a) our [my] knowledge and (b) the Certification of Mortgagor, the execution and delivery of the Loan Documents will not: (i) Cause the Mortgagor to be in violation of, or constitute a default under the provisions of, any agreement to which the Mortgagor is a party or by which the Mortgagor is bound, (ii) conflict with, or result in the breach of, any court judgment, decree or order of any governmental body to which the Mortgagor is subject, or (iii) result in the creation or imposition of any lien, charge, or encumbrance of any nature whatsoever on any of the property or assets of the Mortgagor, except as specifically contemplated by the Loan Documents.

11. Based solely on (a) our [my] knowledge, (b) the Certification of Mortgagor and (c) the Docket Search; there is no litigation or other claim pending before any court or administrative or other governmental body or threatened in writing against the Mortgagor, or the Property, [{TO BE INSERTED WHEN MORTGAGOR IS NOT A SOLE-ASSET MORTGAGOR} or any other properties of the Mortgagor] [, except as identified on Exhibit _____].

12. The Mortgagor is in appropriate form for recordation in _____ {INSERT PROPER NAME OF LOCAL LAND RECORDS OFFICE} _____ {INSERT COUNTY OR CITY} of the Property Jurisdiction, and is sufficient, as to form, to create the encumbrance and security interest it purports to create in the Property.

13. Filing of the Financing Statements in the Filing Offices will perfect the

security interest in the Personality of the Mortgagor located in the Project Jurisdiction, but only to the extent that, under the Uniform Commercial Code in effect in the Project Jurisdiction, a security interest in each described item or Personality can be perfected by filing. The Filing Offices are the only offices in which the Financing Statements are required to be filed in order to perfect the Mortgagee's security interest in the Personality.

14. The Loan does not violate the usury laws or laws regulating the use or forbearance of money of the Property Jurisdiction.

[15. {FOR USE ONLY IF MORTGAGOR IS A TRUST} The Mortgagor is an irrevocable trust that has a term consistent with HUD's requirements and the term of the irrevocable trust is not affected by the terms of any of the beneficiaries' interests.] [The laws of the Property Jurisdiction govern the interpretation and the enforcement of the Loan Documents notwithstanding that the Mortgagor may be formed in a jurisdiction other than the Property Jurisdiction. The Mortgagor can sue and be sued in the Property Jurisdiction without the necessity of joining any of the beneficiaries of the Mortgagor, including without limitation, a suit on the Note or a foreclosure proceeding arising under the Mortgage. Venue for any foreclosure proceeding under the Mortgage may be had in [Property jurisdiction].

[16. {USE IN CASES INVOLVING BOND FINANCING} Based solely on the opinion of _____ {INSERT BOND COUNSEL}, dated as of the date hereof and attached hereto as Exhibit _____, to the extent that any of the provisions of the Bond Documents are inconsistent with any of the provisions of the Loan Documents or Supporting Documents, the provisions of the Loan Documents or Supporting Documents shall govern.]

[17. {USE IN CASES WHERE THE DEVELOPMENT OF THE PROPERTY IS GOVERNED BY AN AGREEMENT WITH A PUBLIC ENTITY} Based upon our knowledge and the Certification of Mortgagor, there is no default under the Public Entity Agreement, and construction in accordance with the Plans and Specifications and within the time frame specified in the Construction Contract will not lead to a default under the Public Entity Agreement.]

In addition to the assumptions set forth above, the opinions set forth above are also subject to the following qualifications:

(i) The Uniform Commercial Code of the Property Jurisdiction requires the

periodic filing of continuation statements with _____ [and _____] not more than _____ prior to and not later than the expiration of the _____ year period from the date of filing of the Financing Statements and the expiration of each subsequent _____ year period after the original filing, in order to maintain the perfection and priority of security interests and to keep the Financing Statements in effect.

(ii) We express no opinion as to the laws of any jurisdiction other than the laws of the Property jurisdiction [and the Organizational Jurisdiction, if it is different,] and the laws of the United States of America. The opinions expressed above concern only the effect of the laws (excluding the principles of conflict of laws) of the Property Jurisdiction [and the Organizational Jurisdiction, if it is different] and the United States of America as currently in effect. We assume no obligation to supplement this opinion if any applicable laws change after the date of this opinion, or if we become aware of any facts that might change the opinions expressed above after the date of this opinion.

We [I] confirm that:

(a) based on the Organizational Documents, the name of the Mortgagor in each of the Documents and the Title Policy and FHA Commitment is the correct legal name of the Mortgagor;

(b) the legal description of the Property is consistent in the Documents wherein it appears and in Exhibit B hereto;

(c) we [I] do not have any financial interest in the Project, the Property, or the Loan, other than fees for legal services performed by us, arrangements for the payment of which has been made; and we [I] agree not to assert a claim or lien against the Project, the Property, the Mortgagor, the Loan proceeds or income of the Project;

(d) other than as counsel for the Mortgagor, we have no interest in the Mortgagor (or any principal thereof) or the Mortgagor or any other party involved in the Loan transaction and do not serve as [a director, officer or] [an] employee of the Mortgagor or the Mortgagee. We have no undisclosed interest in the subject matters of this opinion. We do not represent the mortgagee-of-record, any investing lender or investor in the loan transaction, any bridge lender involved in the loan transaction, any lender with a commitment to purchase the loan or any interest therein or any other party involved in the Project or the loan transaction;

(e) based solely on the Surveyor's Report and the Surveyor's Plat, flood insurance [is OR is not] required pursuant to 42 U.S.C. 4012a(a); [INSERT IF FLOOD INSURANCE IS REQUIRED] Based solely on the Flood Insurance Receipt, flood insurance is in effect which satisfies the requirements of 42 U.S.C. 4012a(a); and

(f) to our knowledge, there are no liens or encumbrances against the Property which are not reflected as exceptions to coverage in the Title Policy.

The foregoing opinions are for the exclusive reliance of [Mortgagee, its counsel] and HUD; however, they may be made available for informational purposes to, but not for the reliance of, the assigns or transferees of Mortgagee, or prospective purchasers of the Loan. We [I] acknowledge that the making, or causing to be made, of a false statement of fact in this opinion letter and accompanying materials may lead to criminal prosecution or civil liability as provided pursuant to applicable law, which may include 18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802.

Sincerely,

[Authorized Signature]

For use in HUD-Insured Transactions.

January 30, 1997.

DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT FEDERAL
HOUSING ADMINISTRATION

INSTRUCTIONS TO GUIDE FOR
OPINION OF MORTGAGOR'S
COUNSEL

EXPLANATORY COMMENTS

The Guide for this opinion was originally prepared in 1994 in view of changes in opinion practice as reflected by the ABA Accord and various State law bar reports on opinion letters and has been revised to reflect approximately three years experience in using the Guide. The principal purpose of this Guide remains to achieve a uniform format which can be utilized throughout the Nation and which will be familiar to HUD counsel in all jurisdictions. Such a standardized format is crucial in an era when less resources are available to the Department; however, it should be emphasized that certain limited changes can be authorized by HUD field counsel as required by local law or by the unique nature of the transaction. An effort has been made in these revised instructions to specify examples in more (but not all) of those areas where such changes can be authorized. Otherwise, the format of the Guide must be

followed and is not open to negotiation. In this regard, revisions cannot be justified because of a particular Opinion having been approved by another HUD field office. The exercise of discretion by one HUD field counsel in unique circumstances cannot become the basis for any modification to the Opinion. Any requested modification must be analyzed on its own merit and in a particular context. In these explanatory comments, the document may be referred to as the "Guide" or the "Opinion," depending upon the context.

The Department regards the counsel to the Mortgagor as the crucial, central figure in the process of preparing and executing the legal and administrative documents necessary to achieve a closing where the mortgage note is endorsed for mortgage insurance by the Department. Pursuant to 24 CFR Part 24, § 24.105(p), attorneys or others in a business relationship with the Mortgagor are defined as "principals." Even though the Guide is quite different in form from its predecessor (FHA Form No. 1725), the substance is not intended to be substantially different and the revision does not in any fashion relieve the counsel to the Mortgagor of its obligations to its client, the Mortgagee and the Department. In part, these responsibilities entail the exercise of due diligence to assure the accurate and timely preparation, completion and submission of the forms required by the Department in connection with the transaction. Further, the counsel to the Mortgagor and any other attorneys involved in the transaction should be thoroughly familiar with the regulations, procedures and directives of the Department pertaining to each mortgage insurance transaction in which counsel participates. The Department takes seriously the preparation and completion of the various documents involved in the mortgage insurance process (most of which are HUD form documents) and cannot overemphasize the importance of the following:

"Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)"

With limited State law related exceptions, we expect that Mortgagor's counsel will be able to follow the Guide in rendering an Opinion and HUD field counsel should not accept Opinions that otherwise substantially or materially deviate from the Guide. Although we understand that attorneys and law firms may have evolved particular styles and forms of opinion, HUD field counsel do

not have time to negotiate each and every Opinion for stylistic changes and it is essential that the Guide be followed in both style and substance in order to ensure a timely closing. The counsel to the Mortgagor is expected to complete a draft Opinion for submission to HUD field counsel at least ten days prior to the closing along with the other closing documents. Any deviations should be specifically identified (redlined or highlighted) and discussed with field counsel at that time. Any material deviation not required by State or local law or otherwise authorized by these instructions must be brought to the attention of the Assistant General Counsel, Multifamily Mortgage Division, by field counsel along with an explanation as to the necessity for the deviation.

It was anticipated that the Guide could be utilized in connection with all types of closings: insured advances or insurance upon completion (for new construction or substantial rehabilitation); final closings (for refinancings, etc.). This has proved to be the case and, furthermore, the Guide format has been adapted and used in Transfers of Physical Assets (TPAs). However, numerous questions have been raised—particularly in cases involving Section 241 supplemental and equity loans and the various refinancing transactions under Section 223. Therefore, it is important that the correct options be selected in instances where choices are provided and that appropriate deletions or modifications be made to accommodate unique circumstances or programs. On the other hand, it should be emphasized that this does not authorize field counsel to approve changes to the Guide in cases other than where the Guide is being adapted for a special use, e.g. refinancing or equity loan transaction, TPA, etc. Furthermore, HUD has made an administrative policy decision to not require an opinion by counsel to the mortgagor for projects within the "Small Projects Mortgage Insurance Pilot Program (SPP)." A Notice will be issued defining small project and clarifying the parameters of the SMPP. The mortgagee will have the option of requiring an opinion by counsel to the mortgagor if the mortgagee so elects. It is anticipated that the Certification of the Owner will be expanded slightly for use in the SMPP to provide assurances and comfort to HUD in such cases. Otherwise, the Guide or a variation thereof should be utilized in all FHA-insured multifamily rental project and health care facility closings.

The Guide is not intended to serve as a closing checklist; therefore, HUD field

counsel may update or modify existing closing checklists as necessary to meet constantly changing program needs and handbook instructions and directives. For example, many deletions from the list of Guide documents are appropriate for various types of refinancings, operating loans, equity loans, etc. whereas several additions are necessary in the case of loans for health care facilities (e.g. certificate of need), supplemental loans, and certain complex refinancings.

Brackets continue to be used in the Guide to indicate alternate language, insertions, documents, or instructions depending on the applicable facts and underlining is used to indicate blanks that must be completed.

The Guide contains some instructions and definitions and is largely self-explanatory; however, the following expanded instructions and clarifications should provide additional assistance to both private counsel and HUD counsel. The numbers and letters used below relate to the paragraph numbers and letters in the Guide unless page numbers are specifically designated.

Page 1 and Introductory Paragraph

- Letterhead and date: The Opinion must be typed on the firm letterhead and dated the date of endorsement of the mortgage note by HUD.
- Reference: Data regarding the project (name, HUD project number, and location and the name or title of the Mortgagor must be accurate and inserted in the appropriate blanks.
- Addressees: The Opinion must be delivered to HUD as well as the Mortgagee making the loan to establish the explicit right of each to rely on the Opinion. The Mortgagee's counsel may be relying on the Opinion for certain aspects of its opinion. If so, the Opinion must also be addressed to counsel to the Mortgagee. HUD is aware that recent case law has raised issues about the extent to which a mortgagee can rely upon such an opinion; therefore, this matter of reliance by the mortgagee could be clarified by the parties at the outset in jurisdictions where the issue has been raised. Regardless of case law, HUD continues to believe that this is a unique transaction where the federal interest as insurer of the mortgagee is clear from the outset and that it is as a result of the unique federal requirements that counsel to the mortgagor is retained to represent the mortgagor in such a fashion that the Opinion rendered by counsel to the mortgagor necessarily must be addressed to, and relied upon by, HUD as the insurer of the mortgagee and the mortgagee in order for the loan

transaction to go forward. In cases where counsel to the mortgagee elects not to rely upon the Opinion or counsel to the Mortgagor does not wish to permit reliance by counsel to the mortgagee, the Opinion should not be addressed to and/or delivered to the mortgagee's counsel.

- Description of the Loan: The loan amount is the original principal amount of the loan being insured unless a modification is necessitated in connection with the closing.
- Source of funds for the Loan: In the second full sentence on page 2 the source of funds must be accurately identified.

List of Documents

- In General: If there are no brackets around a particular document, the document is one which is commonly used for initial endorsements for insured advances completion cases; however, it should be emphasized that it is impossible to list every document for every insured loan. Further, no attempt has been made to list all documents utilized in all types of refinancings and certain specialized programs, e.g., certificates of need and licenses for health care programs. Conversely, some documents may not be utilized in a particular transaction and should be deleted from the list in the actual Opinion. Brackets around the name of the document indicate that the document may or may not be used for every loan. If bracketed documents are not used in a particular loan transaction, then delete such documents from the list in the actual Opinion. Each document executed in connection with the loan must be listed by its correct title, showing each party executing it and its date. If documents are dated "as of" a particular date, then such phrase should be included in the description in the text. It is imperative that care must be taken to compile a list that accurately and completely reflects the transaction in the submission to HUD of the initial draft. After HUD review of the initial draft, the Opinion may have to be modified, as necessary, to satisfy HUD.

All documents executed in connection with the loan transaction must be listed regardless of whether the document is required by HUD or whether the Mortgagor is a party to the document. It should be emphasized that counsel to the Mortgagor is not assuming resuming responsibility for the content of documents that counsel does not prepare and that the Mortgagor does not execute. The review is necessary to provide assurance of consistency from document to document. The appropriate HUD or

FHA form number, if applicable, must be indicated in parenthesis after each document. Please note that the Guide lists a four digit number after virtually all of the standard HUD documents. In many instances as these forms have been updated, the four digit numbers have been changed so that they are now preceded by a "9." The ultimate plan is to standardize a four digit number for each form; therefore, the four digit number has been used to avoid any need for future change.

A. Organizational Documents: All of the Organizational Documents must be reviewed and care should be taken to ensure adherence to the HUD guidelines and directives pertaining to such documents as set forth in:

1. The Instructions to HUD Form 92466 which pertains to corporate, partnership and trust mortgagors;

2. HUD Form 1732 which pertains to nonprofit corporations; and

3. HUD Notice H-95-66 which pertains to partnerships and limited liability companies (LLCs).

G. In the original version of the Guide, the requirement that HUD be named in the Financing Statements as a secured party or as its interests may appear was standardized through requiring the insertion of appropriate language in the Security Agreement. The purpose was to clarify that, under certain circumstances, HUD may assert some rights in the personalty arising under the Regulatory Agreement which would precede an assignment of the mortgage. Based upon experience to date, a decision has been made that HUD need not be so named in the Financing Statements and Security Agreement. This decision makes it more imperative that there be specificity in the UCC documentation with respect to the securitization of items such as receivables (particularly in the case of hospitals and nursing homes for example) in order to protect the interest of HUD in the securitization of personalty.

J. Building Loan Agreement: This document is a "bracketed document" which should only be used in cases involving new construction or substantial rehabilitation. Hence, the document is not required in equity loan transactions and most refinancing transactions and many supplemental loan transactions.

K. Construction Contract. See J. above.

L. Mortgagee's Certificate: It has been argued that this document is unnecessary in the context of certain insured secondary loan transactions because the form is used to document the first mortgagee's consent to the second loan. The first mortgagee would

not be involved in such situations. In cases where the consent of the first lender is obtained for a second mortgage insured by HUD, a separate document (for which there is no specified format) is utilized.

The Mortgagee's Certificate is executed by the lender making the loan being insured, which in the cases at issue would be the lender making the second loan, and is one of the most significant closing documents. HUD places great reliance upon the mortgagee's certificate and considers it necessary to reveal all fees, side transactions, etc. Counsel to the Mortgagor is not responsible for the execution of the document and only needs to review the document in the capacity as counsel to the mortgagor.

M. Mortgagor's Certificate: This document may overlap somewhat with other documents as several private attorneys have indicated; nonetheless, the mortgagor's certificate is a significant document upon which HUD relies. This document and the Opinion should be dated the date of the closing.

P. Certification of Owner: Several persons have questioned whether the references in Paragraph 6 to the Public Entity Agreement and the Regulatory Agreement should be changed so that both refer instead to the Public Entity Agreement. The references should not be changed because HUD wants assurance that there will be no violations of the Regulatory Agreement as a result of events that have occurred with the passage of time.

Q. UCC searches: The UCC Search must be conducted within thirty days of closing and can be conducted by either the title insurance company, a reputable document search firm, the counsel to the Mortgagor or any other attorney licensed in the jurisdiction.

R. Flood insurance receipt: Arguments have been made that this document is not necessary in equity loan, supplemental loan and refinancing transactions. Flood plain maps change. In insuring a first or a second mortgage, it is just as significant that HUD know whether the property is located in an area where flood insurance is required and, if so, whether the insurance is in effect regardless of whether a prior HUD-insured first mortgage is in effect. HUD would not necessarily have the data on file, and it was determined that this is a matter which counsel to the mortgagor could confirm under item (e) near the end of the Guide. Note that no opinion is required, and the factual determinations necessitated by the Guide are considered within the usual duties of counsel to the mortgagor.

S. Title Insurance Policy: Currently the 1992 ALTA Format (with appropriate endorsements) is required by HUD in most jurisdictions.

T. Evidence of zoning compliance: The evidence of zoning compliance will vary depending on the circumstances. The evidence should establish that the building, if constructed according to plans and circumstances, will comply with all zoning requirements. The evidence may be in the form of a letter or certificate from the appropriate local official stating that, if the building is constructed according to the plans and specifications submitted for review, the building will comply with all zoning requirements. In refinancing cases where no construction is involved, the evidence may be in the form of a letter certifying that the existing building(s) is (are) in compliance with outstanding zoning requirements or, if not, the nonconforming variance, etc., is acceptable. If the locality has no zoning ordinance, a letter should be submitted from the chief executive stating such. In those circumstances, it may be necessary to obtain a letter from the local planning body of the county in which the project is located, that the proposed development is compatible with the county's comprehensive plan. If the zoning approval is based upon a variance or other special action, the closing may have to be delayed until the time for appeals has run. In extremely complex cases, an opinion may need to be obtained from legal counsel specializing in local zoning matters. Such letter must be attached as an exhibit and referenced in the appropriate paragraphs of the Opinion.

In cases involving refinancings, it has been suggested by some attorneys that HUD should have zoning information on hand either as a result of the closing of the first HUD-insured loan or due to periodic site reviews. HUD would not normally maintain data pertaining to local zoning law and the data with respect to the first loan would only be valid with respect to the closing date of that loan. Paragraphs 7, 8 and 9 of the Opinion contain several options with respect to local zoning law. It has also been suggested that evidence of zoning compliance should not be required in Section 241(f) equity loans. The only language applicable to Section 241(f) equity loans is the wording at the end of 9 which pertains to refinancings, viz. "Based solely on the Certificate, the Project complies with all applicable land use and zoning requirements." After considering the issue, it has been determined that a zoning certificate is not essential in Section 241(f) equity loan cases; however, the attorney for the

mortgagor will have to state: "The project complies with all applicable land use and zoning requirements." It is important that HUD be assured that there have been no changes in the land use or zoning which would adversely affect the continued use of the property as a rental housing project. In this context, we reemphasize that the attorney responsible for this matter must be licensed in the property jurisdiction.

U. Building permit(s): If no building permit is required (as would normally be the case in a pure Section 241(f) equity loan), this document is not applicable and should be deleted from the Opinion. (This would also be true with respect to occupancy permits (under V.) unless new permits are required under local law in connection with "pure" refinancing transactions.)

V. Permits required for the operation of the project: Several practitioners have argued that the documentation is unnecessary in equity loan and refinancing transactions; however, they have not indicated whether such a position would affect their wording of Paragraph 4 of the Guide. In all cases (including Section 241(f) equity loans), HUD is concerned that any permits required for the continued operation of the project be proper and in place such that an opinion can be rendered with respect to Paragraph 4. It is crucial in existing projects that HUD be assured that no new requirements have been imposed which would thwart continued operation of the project. If no such permits are required, Paragraph 4 should be amended accordingly. This is a matter which counsel to the mortgagor, as a specialist in the property jurisdiction, should be able to ascertain.

W. Surveyor's plat or survey: The survey must be signed, sealed and dated within 90 days of the closing. In a pure Section 241(f) equity loan and certain refinancing transactions, a survey would not normally be required because no new construction would have taken place and, presumably, nothing would have changed with respect to the building(s) and the site. In such situations, if there is other satisfactory evidence that no site changes have occurred, an administrative waiver would necessitate the deletion of the item from the Opinion. See X. below. If the mortgagor's attorney were to become aware of any changes, this would have to be addressed in the Opinion and a survey could be required by HUD depending upon the circumstances.

X. Surveyor's Report: Unless there is a title endorsement protecting against any encroachments, etc., there will have to be a surveyor's certificate indicating that nothing has changed since the last

survey with respect to encroachments, lot line violations, construction activity, etc. HUD should not be incurring the risk of insuring any loan if there has been any action which would impair the lender's and HUD's respective positions. As an alternative to a surveyor's certificate, the mortgagor's attorney could rely upon an appropriate certificate from a qualified architect and insert appropriate language in the Opinion.

Z. Assurance of completion (bonds or agreements): This documentation (now bracketed) would not be utilized in a pure refinancing or equity loan transaction and, therefore, would only be used in cases involving some construction where the regulation pertaining to assurance of completion is applicable.

AA. Owner-Architect Agreement: This document (now bracketed like Documents J and K) should only be indicated (where the Guide indicates "{INSERT DESIGN AND/OR CONSTRUCTION ARCHITECT}") in cases involving new construction or substantial rehabilitation.

BB. Off-Site Bond or Agreement: This document should only be used in cases where off-site work is involved. As such, the document would not normally be used in pure equity loan transactions or in refinancing transactions involving no construction.

CC. Assurance of utility services: These documents do not pertain to pure Section 241(f) equity loan transactions and certain refinancing transactions and, therefore, should be deleted in those instances.

FF. Escrow Deposit for On-Site Improvements: If any such improvements are required in connection with an equity loan, supplemental loan or refinancing transaction, the form document specified should be tailored to the situation as determined by field counsel. In a situation where such an escrow is necessary, counsel to the mortgagor should modify the form as necessary and present it to field counsel for review.

GG. Contractor's Prevailing Wage Certificate: This item is no longer required in the HUD closing checklist; therefore, some attorneys have taken the position that it can be eliminated from the Opinion. HUD believes the item should be reviewed by counsel to the Mortgagor for the purpose of assuring consistency between the documents and performance under the Construction Contract to which the Mortgagor is a party.

KK. Public Entity Agreement: The references to this document and to the

Regulatory Agreement in Paragraph 6 of the Certification of Mortgagor have created some confusion about whether the reference to the Regulatory Agreement should be changed to Public Entity Agreement. The two separate references were intended, and no change should be made.

LL. Bond Documents: This does not include all documents involved in the typical bond financing. It does include those principal documents such as the Prospectus, the Indenture, a sample Bond, etc. All documents executed by the Mortgagor or which establish or describe any obligations of the Mortgagor must be included.

NN. Certificate issued by architect or other professional: Normally such a document would not be necessary in the case of a pure Section 241(f) equity loan and certain refinancing transactions and should be deleted unless those circumstances mentioned under the last sentence pertaining to Document X, above, make the certificate appropriate. Note that "Certificate" is a defined term and that the Certificate can come from "an architect or other professional." Consequently, there is no form for the Certificate and HUD field counsel should defer to HUD administrators specializing in architectural and engineering matters in determining the acceptability of the Certificate.

It is referenced in Paragraph 9 of the Opinion and should not be confused with the Zoning Certificate which is also a defined term and is referenced in Paragraph 8.

OO. Docket search: The Docket Search can be conducted by either the title insurance company, a reputable document search firm, the counsel to the Mortgagor or any other attorney licensed in the jurisdiction. Arguments have been made by private counsel that such a docket search is not necessary in all transactions. One of the main purposes of the new Guide was to clearly define the work to be performed by counsel to the mortgagor. It was determined that such a search was within the scope of the fees permitted as a mortgage line item for counsel to the mortgagor. Such a search is important in the case of an existing subsidized project where matters of public record could reveal circumstances wherein it would be inadvisable for HUD to go forward with insuring another loan.

An argument has also been made that several record searches in separate jurisdictions could be necessitated in some cases and that this would cost a significant amount of money with little benefit. As the Guide was being developed, HUD was cognizant of such

a scenario; however, the benefit to HUD of establishing that the public records are clear outweighs the costs to the mortgagor of conducting such searches. In the case where a sole-asset mortgagor is being created, however, a search of the public records in the jurisdiction where the mortgagor is located (assuming a different location from the others iterated) is unnecessary. The Opinion could be amended in those instances to indicate that particular state of facts; however, all of the other searches would have to be done.

Opinions

1. This paragraph contains several options depending upon whether the Mortgagor's organizational documents were prepared by counsel rendering the Opinion and the type of mortgagor entity. Care should be taken to ensure that the correct option is selected and that the requisite information is inserted correctly. It is intended that, where the mortgagor entity or general partner of the mortgagor entity is established by counsel to the Mortgagor, no reliance on other sources is permitted and counsel must opine as to the due organization of the Mortgagor. If a Certificate of Good Standing is not available in the State, but an equivalent document is (i.e., Certificate of Existence), then the bracketed language must be revised to reflect the name/title of the equivalent document so obtained. Any Certificate of Good Standing or equivalent document issued by the applicable governmental authority must be dated no more than 30 days prior to the date of the Opinion of Mortgagor's counsel. If the Mortgagor is a foreign corporation or partnership, the Opinion must recite the review of all government approvals required to do business in the Property jurisdiction. If a Certificate of Good Standing or equivalent document cannot be obtained from the applicable governmental authority (e.g., for general partnerships, then the Mortgagor's attorney will be required to do the due diligence necessary to give the opinion or may engage other counsel to render such opinion). If the Property jurisdiction is not the State of formation for the mortgagor entity, counsel must also opine that the Mortgagor is qualified to transact business in the Property jurisdiction. Such opinion may be made solely on the basis of a certificate from the applicable governmental authorities of the Property jurisdiction, and if counsel is relying on such certificate(s), then the opinion must expressly identify those certificate(s) and they must be attached to the Opinion as an exhibit. If the

Mortgagor is an individual, paragraph one should be deleted from the Opinion.

2. This paragraph provides, among other things, that the Mortgagor possesses all the necessary governmental certificates, permits, licenses, qualifications and approvals to own and operate the Property. This particular provision has generated considerable controversy—particularly where health care facilities are being constructed or substantially rehabilitated in large, urban jurisdictions having a multitude of regulatory requirements pertaining to ownership and operation. Consequently, field counsel have discretion to permit a modification in which Counsel to the Mortgagor itemizes those local governmental requirements which have been evaluated and indicates that, after due diligence inquiry and insofar as the attorney is aware, these local requirements comprise the entire universe of such requirements. The Opinion should further state that, based upon such itemized local requirements and compliance therewith (with all permits, certificates, etc. being itemized), the Mortgagor possesses the power and authority necessary to own and operate the Property and to carry out all of the transactions required by the Loan Documents and to comply with applicable federal statutes and regulations of HUD in effect on the date of the FHA commitment. In most instances involving new construction, a certificate of occupancy will not have been obtained by the time of closing. In such instances, field counsel have discretion to permit an appropriate clarification with respect to that particular instrument.

11. If the Mortgagor or any principal of the Mortgagor is involved in any litigation, all such litigation matter(s) must be disclosed in writing to HUD field counsel in order that the Department can determine whether the endorsement of the loan is possible. Note that litigation involving a principal of the Mortgagor must be disclosed. Confusion has developed when there has been litigation involving lower tiers of a partnership. If the issue cannot be resolved through reference to the definition of "principal" in the 2530 regulations, HUD field counsel should consult with HUD program administrators and determine whether the litigation should be disclosed. If the litigation involves HUD's compliance with civil rights requirements, it must immediately be brought to the attention of appropriate Fair Housing and Equal Opportunity personnel (regardless of whether a "principal" or some lesser component of the Mortgagor is the

subject of the litigation). As an example, it is not uncommon for neighbors of a proposed site for a group home for persons with disabilities to harbor discriminatory attitudes toward persons with disabilities and to sue to attempt to block the establishment or operation of a group home.

13. If any UCC Financing Statements have been filed on the Personalty in conjunction with any transaction other than the Loan, they must be identified to the HUD field counsel as well as details with respect to how such Financing Statements will be terminated at the time of closings.

If the property is an elderly housing project or a health care facility of if the loan otherwise is to be secured by significant amounts of personal property, the matter should be discussed with field counsel. In the event further discussion is necessary, field counsel should contact the Assistant General Counsel, Multifamily Mortgage Division. For projects in which the personalty is mostly household appliances (e.g., refrigerators) or a limited quantity of smaller equipment, the Opinion will be limited as shown. In other instances, the Opinion may have to be expanded particularly with respect to ensuring that items such as receivables, income stream, etc. are security property.

One or more UCC searches performed not more than 30 days prior to the date of the Opinion must be made and attached to the Opinion.

15. If the Mortgagor is a trust (other than a land trust), then Paragraph 15 must be included in the Opinion. The second sentence need only be included if the trust was formed in a jurisdiction other than the Property jurisdiction.

Acceptability of Counsel

- Mortgagor's counsel must opine as to the law of the Property jurisdiction and the State of Mortgagor's organization, if different from the Property jurisdiction. HUD requires that Mortgagor's counsel be admitted to practice law in each jurisdiction in which such admission is required by the laws or ethical considerations of the bar to be able to give the opinion. If multiple jurisdictions are involved, two opinions may be required: one with respect to the organization of the Mortgagor and another with respect to the real property and loan issues. A combination of the Mortgagor's regular counsel and special local counsel may be required to satisfy this requirement. If counsel's satisfaction of these requirements is not evident from the letterhead of the firm, the field counsel should include a written explanation in

the Washington docket. In all events, each provision in the Guide must be addressed whether one or more opinions is required to do so.

Signatures

- The Opinion may be signed by an authorized person of the law firm, in that person's name.

Certification of Mortgagor

- A form of Certification of Mortgagor is attached. The form represents the minimum amount of information that should be obtained from the Mortgagor (but additions, revisions and rephrasings are acceptable so long as the Mortgagor is certifying as to factual matters and not legal conclusions). The Certification of Mortgagor must be dated the same date as the Loan Documents.

Identity of Interest

- Numerous issues have been raised with respect to the confirmation in (d) of the penultimate paragraph of the Guide. A decision was made that the attorney signing the Opinion could not have an identity of interest with the Mortgagor entity. No waivers are possible in such instance. In instances where other members of the firm have an interest in the Mortgagor entity, such interest must be disclosed and such interest must be acceptable to field counsel based upon the ethics rules of the applicable bar. Furthermore, any interest must be administratively acceptable to HUD and 2530 clearance must be obtained. In addition, there appears to be an increasing trend wherein mortgagees are insisting upon using counsel to the mortgagee to handle many aspects of the transaction even though the Opinion is being signed by a separate attorney. There have been some instances where counsel to the mortgagee have asked to represent the mortgagor in whole or in part and to provide all or a part of the Opinion. Confirmation (d) in the penultimate paragraph has been clarified to reflect the intent of HUD from the inception of the Opinion that any such representation of both parties is not permitted.

Liens

- Paragraph (f), which is in the penultimate paragraph of the Opinion, contains a statement that there are no liens or encumbrances against the Property. Several attorneys have objected to making the statement because they indicate that, at the time of closing, there may be liens that have actually not been released even though the title company has received funds and/or release documents to do so and

intends to process the release after the closing. Except in cases involving the insurance of secondary loans, HUD is only authorized to insure first mortgages; consequently, there cannot be any liens and encumbrances on the property when HUD endorses the mortgage note for insurance. As a result, there cannot be any liens outstanding which would prime the insured mortgage loan. Hence, Paragraph (f) should not be changed.

Reliance on Other Opinions

- The issue of proper wording and format has probably surfaced most often in cases where counsel to the mortgagor is relying on opinions issued by other attorneys. This has occurred most often in cases involving a separate opinion for bond financing documentation, property jurisdiction vs. organizational jurisdiction, zoning, etc. In this area, it is imperative that counsel to the Mortgagor specifically reference and attach the additional opinion(s) and that such opinions track the language of the Guide as close as is practical under the circumstances. HUD field counsel should exercise discretion in this area, taking the unique circumstances into account.

For use in the Section 202, Supportive Housing for the Elderly Program

DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT, FEDERAL
HOUSING ADMINISTRATION
GUIDE FOR OPINION OF OWNER'S
COUNSEL

{TO BE TYPED ON FIRM
LETTERHEAD}

{INSERT CAPITAL ADVANCE INITIAL
CLOSING DATE}

Re: Project Name _____
202 Project No. _____
Location _____

[OWNER]
[ADDRESS]
FEDERAL HOUSING COMMISSIONER
{INSERT APPROPRIATE FIELD OFFICE
ADDRESS}

Ladies and Gentlemen: We are [I am]
[general/special] counsel to
_____ {INSERT NAME OF
OWNER} (the "Owner"), a _____
{INSERT TYPE OF ENTITY} organized
under the laws of the State of
_____ {INSERT STATE,
INCLUDES THE DISTRICT OF
COLUMBIA AND PUERTO RICO} (the
"Organizational Jurisdiction"), in
connection with a first Mortgage (Deed
of Trust) and Mortgage Note ("Capital
Advance") in the amount of
_____ Dollars (\$_____) from HUD to the Owner. Such Capital

Advance is being made pursuant to a Capital Advance Agreement dated as of the date hereof, by and between HUD and the Owner and will be used to construct, rehabilitate or acquire and maintain the captioned 202 project ("Project"), commonly known as _____ and located in _____ {INSERT COUNTY AND STATE} (said State to be referred to hereinafter as the "Property Jurisdiction") on the property described in Exhibit _____ {ATTACH LEGAL DESCRIPTION} (together with all improvements and fixtures thereon) (the "Property"). The Capital Advance is being issued, pursuant to Section 202 of the Housing Act of 1959, as amended, a firm commitment dated _____ and which expires on _____ ("Commitment"). The Owner has requested that we [I] deliver this opinion and has consented to reliance by HUD in making the Capital Advance and has waived any privity between Owner and us [me] in order to permit such reliance by HUD. We [I] consent to reliance on this opinion by HUD.

In our [my] capacity as [general/special] counsel to the Owner, we [I] have prepared or reviewed the following Capital Advance Documents, Organizational Documents and Collateral Documents (will be collectively referred to as "the Documents" unless expressly limited to a group of the above referenced documents).

Note: Numerical references in parenthesis following the Documents listed below are to HUD form numbers:

CAPITAL ADVANCE DOCUMENTS:

A. BEFORE INITIAL CLOSING

1. Capital Advance Agreement (HUD 90167-CA).
2. Requisition for Disbursement of Capital Advance Funds (HUD-92403-CA).
3. Direct Deposit Sign-up Form (SF 1199A)
4. Project Rental Assistance Contracts (PRAC) documents:
 - a. Part I of Agreement to Enter into PRAC (HUD 90172A-CA);
 - b. Part II of Agreement to Enter into PRAC (HUD 90172B-CA);
 - c. Part I of the PRAC (HUD 90173A-CA); and
 - d. Part II of the PRAC (HUD 90173B-CA).

B. INITIAL CLOSING

1. Firm Commitment for Capital Advance Financing (HUD-92432-CA) [including reissued, revised or amended commitments, thereof, if any].
2. Owner's Certificate (HUD 92433-CA).

3. Evidence of Owner's Deposit (minimum capital investment) (escrow agreement, see 6(q)(1) of commitment) and ability to provide moveable furnishings and equipment not covered by capital advance, if necessary.

4. Agreement and Certification (HUD 93566-CA).

5. Mortgage Note (HUD-93432-CA).

6. Mortgage (Deed of Trust) (HUD-90165-CA).

7. Regulatory Agreement (HUD-92466-CA).

8. Use Agreement (HUD 90163-CA).

9. Owner's assurance of funds to cover costs over and above capital advance (if applicable).

ORGANIZATIONAL DOCUMENTS

(Documents regarding Organization of Non-Profit Owner)

1. Approved and certified articles of organization (Certificate of Incorporation (HUD-91732A-CA).

2. Certificate of Good Standing.

3. By-laws.

4. Incumbency Certificate.

5. Owner's I.R.S. Tax-Exemption Ruling.

6. Corporate Resolution.

COLLATERAL AND OTHER

DOCUMENTS ("Collateral Documents")

1. Collateral Agreements, if any.

2. {INSERT THE NUMBER OF UCC'S TO BE FILED} Uniform Commercial Code Financing Statements executed by the Owner as debtor and naming HUD as secured party as its interest may appear, to be filed in _____, {INSERT LOCATION(S)} (the Filing Offices), upon the {DESCRIBE EVENTS} (the "Financing Statements");

3. The Security Agreement by and between Owner and HUD, granting a security interest under the Uniform Commercial Code, in those items of personalty described therein, dated _____, (the "Security Agreement");

4. A search conducted by _____ dated _____ {no earlier than 30 days before this opinion} of the financing records of the county and Property Jurisdiction [and Organizational Jurisdiction] (the "UCC Search").

5. A receipt from the insurance company providing flood insurance evidencing payment for the premium, dated _____, (the "Flood Insurance Receipt").

6. The Title Insurance Policy issued by _____ {acceptable company under HUD's regulations}, together with all endorsements, and naming HUD as insured, dated _____, (the "Title Policy").

[7. The Surveyor's Plat OR Survey showing completed project, prepared by _____, dated _____, (the "Survey").]

8. The Surveyor's Report (HUD-92457), executed by _____, dated _____, (the "Surveyor's Report").

[9. The following documents

evidencing zoning compliance _____, {DESCRIBE ALL DOCUMENTS FULLY} (the "Zoning Certificate").]

[10. The building permit(s) issued on _____, by _____ (the "Building Permit").]

[11. The following permits, _____, {DESCRIBE PERMITS} which are required for the operation of the project, issued by _____ on _____ ("Other Permits").]

12. Construction Contract:

a. Lump Sum (HUD 92442-CA) OR Cost Plus (HUD 92442A-CA), as appropriate;

b. Contractor's Requisition (HUD 92448); and

c. Construction Contract, Incentive Payment (HUD 92443-CA), if applicable.

[13. The Contractor's and/or Mortgagor's Cost Breakdown (HUD 92328) executed by the General Contractor, dated _____, (the "Cost Breakdown").]

14. Assurance of Completion:

a. Performance/Payment Bond 100% Dual-Obligee (92452-CA); OR

b. Performance Bond (FHA 2452) and Payment Bond (FHA 2452A) and Surety Company's Telegram or Facsimile; OR

c. Completion Assurance Agreement (HUD 92450-CA).

[15. Owner-Architect Agreement (AIA Document B181) (see attached to Capital Advance Agreement; HUD 90167-CA) and HUD Amendment (HUD 90169-CA) executed by _____ {INSERT DESIGN AND/OR CONSTRUCTION ARCHITECT} and Owner, dated _____, (the "Owner-Architect Agreement").]

16. Real Estate Tax Exemption (if applicable).

[17. Lease (if mortgage is on leasehold) (Lease Addendum at Appendix 14 of HUD Handbook 4571.5).]

18. Land-Dispositions Contract and Deed (required only for projects in urban renewal areas).

19. Insurance and fidelity bonds:

a. All applicable insurance policies per Property Insurance Requirements (HUD-90164-CA), including Property Insurance Schedule (HUD-92329); and

b. Blanket Fidelity Bond.

20. Assurance of Completion of Off-site Facilities, if applicable:

a. Off-site Bond (HUD 90177-CA); OR

b. Escrow Agreement for Off-site Facilities (HUD 90170-CA).

21. Fair Housing

a. FHEO Certification in Connection with the development and operation of the project (assurance of compliance with HUD regulations (HUD Form 915); and

b. Affirmative Fair Housing Marketing Plan (HUD will determine if administratively satisfied; Exhibit 3 to PRAC).

[22. The following documents assuring water, electricity, sewer, gas, heat or other utility services (the "Assurance of Utility Services"):

_____ {DESCRIBE FULLY}.

[23. The certificate executed by _____ {INSERT ARCHITECT OR OTHER PROFESSIONAL}, dated _____, (the "certificate").]

[24. A search conducted by _____ dated [no earlier than 30 days before this opinion] of the public records of the federal District Court and State and local courts in (i) the jurisdiction where the Property is located; and (ii) the jurisdiction(s) where the Owner is organized, located and does business ("Docket Search").]

[25. Additional Closing Requirements (State or local requirements).]

In basing the several opinions set forth in this document on "our [my] knowledge," the words "our [my] knowledge" signify that, in the course of our [my] representation of the Owner, no facts have come to our [my] attention that would give us [me] actual knowledge or actual notice that any such opinions or other matters are not accurate. Except as otherwise stated in this opinion, we [I] have undertaken no investigation or verification of such matters. Further, the words "our [my] knowledge" as used in this opinion are intended to be limited to the actual knowledge of the attorneys within our [my] firm who have been involved in representing the Owner in any capacity including, but not limited to, in connection with the Capital Advance. We [I] have no reason to believe that any of the documents on which we [I] have relied contain matters which, or the assumptions contained herein, are untrue, contrary to know facts, or unreasonable.

In reaching the opinions set forth below, we [I] have assumed, and to our [my] knowledge there are no facts inconsistent with, the following:

(a) Each of the parties to the Documents, other than the Owner (and any person executing any of the Documents on behalf of the Owner), has duly and validly executed and delivered each such instrument, document, and

agreement to be executed in connection with the Capital Advance to which such party is a signatory, and such party's obligations set forth in the Documents are its legal, valid, and binding obligations, enforceable in accordance with their respective terms.

(b) Each person executing any of the Documents, other than the Owner (and any person executing any of the Documents on behalf of the Owner), whether individually or on behalf of an entity, is duly authorized to do so.

(c) Each natural person executing any of the Documents is legally competent to do so.

(d) All signatures of parties other than the Owner (and any person executing any of the Documents on behalf of the Owner) are genuine.

(e) All Documents which are submitted to us [me] as originals are authentic; all Documents which were submitted to us [me] as certified or photostatic copies conform to the original document, and all public records reviewed are accurate and complete.

(f) All applicable Documents have been duly filed, indexed, and recorded among the appropriate official records, and all fees, charges, and taxes due and owing as of this date have been paid.

(g) The parties to the Documents and their successors and assigns will: (i) act in good faith and in a commercially reasonable manner in the exercise of any rights or enforcement of any remedies under the Documents; (ii) not engage in any conduct in the exercise of such rights or enforcement of such remedies that would constitute other than fair and impartial dealing; and (iii) comply with all requirements of applicable procedural and substantive law in exercising any rights or enforcing any remedies under the Documents.

(h) The exercise of any rights or enforcement of any remedies under the Documents would not be unconscionable, result in a breach of the peace, or otherwise be contrary to public policy.

(i) The Owner has title or other interest in each item of (i) real and (ii) tangible and intangible personal property ("Personality") comprising the Property in which a security interest is purported to be granted under the Documents [and, where Personality is to be acquired after the date hereof, a security interest is created under the after-acquired property clause of the Security Agreement].

In rendering this opinion we [I] also have assumed that the Documents accurately reflect the complete understanding of the parties with respect to the transactions contemplated

thereby and the rights and the obligations of the parties thereunder. We [I] also have assumed that the terms and the conditions of the Capital Advance as stated in the Documents have not been amended, modified or supplemented, directly or indirectly, by any other agreement or understanding of the parties or waiver of any of the material provisions of the Documents. After reasonable inquiry of the Owner, we [I] have no knowledge of any facts or information that would lead us [me] to believe that the assumptions in this paragraph are not justified.

In rendering our [my] opinion in paragraph 13, we [I] also have assumed that: (i) all Personality in which a security interest is created under the Documents (other than accounts or goods of a type normally used in more than one jurisdiction) is located at the Property and (ii) Owner's [Chief Executive Office] [only place of business] [residence] is located in _____. After reasonable inquiry of the Owner, we [I] have no knowledge of any facts or information that would lead us [me] to believe that the assumptions in this paragraph are not justified.

In rendering this opinion we [I] have, with your approval, relied as to certain matters of fact set forth in the Owner's Opinion Certificate, the Certificate of Good Standing [and certain other specified Documents,] as set forth herein. After reasonable inquiry of the Owner as to the accuracy and completeness of the Owner's Opinion Certificate, the Certificate of Good Standing, [and such other Documents], and we [I] have no knowledge of any facts or information that would lead us [me] to believe that such reliance is not justified.

Based on the foregoing and subject to the assumptions and qualifications set forth in this letter, it is our [my] opinion that:

{TO BE USED IN CASES WHERE ORGANIZATIONAL DOCUMENTS WERE PREPARED BY OWNER'S ATTORNEY}

1. The Owner is a private non-profit corporation, duly organized and validly existing under the laws of the Organizational Jurisdiction. The Owner is duly qualified to do business and, based solely on the Certificate(s) of Good Standing, copy attached hereto as Exhibit _____, is in good standing under the laws of the Organizational Jurisdiction and is qualified to do business as a foreign _____ entity in the Property Jurisdiction based on a review of _____.

2. The Owner has the corporate power and authority and possesses all necessary governmental certificates, permits, licenses, qualifications, tax exempt status and approvals to own (including the authority to borrow the proceeds of the Capital Advance, to encumber the Property with the Security Instrument, to execute the Capital Advance Documents) and operate the Property and such other assets as is necessary to carry on its business and to carry out all of the transactions contemplated by the Capital Advance Documents and Collateral Documents as of the date of this opinion and to comply with all applicable statutes and regulations of the Federal Housing Commissioner in effect on the date of the Firm Commitment.

3. The execution and delivery of the Capital Advance Documents and Collateral Documents (where applicable) by or on behalf of the Owner, and the consummation by the Owner of the transactions contemplated thereby, and the performance by the Owner of its obligations thereunder, have been duly and validly authorized by all necessary corporate action by, or on behalf of, the Owner.

4. All authorizations, consents, approvals, and permits have been obtained from, appropriate actions have been taken by, and necessary filings have been made with all necessary Organizational and Property Jurisdictions or federal courts or governmental authorities, all disclosed on Exhibit _____, attached hereto, and as listed and set forth in Paragraphs ____ of this opinion [i.e., good standing certificate]. To the best of our knowledge, these represent all such authorizations, consents, approvals, permits, actions and filings that are required in connection with the execution and delivery by the Owner of the Capital Advance Documents and Collateral Documents (where applicable) and the ownership [and operation] of the Property.

5. Each of the Capital Advance Documents and Collateral Documents (where applicable) has been duly executed and delivered by the Owner and constitute the valid and legally binding promises or obligations of the Owner, enforceable against the Owner in accordance with its terms, subject to the following qualifications:

(i) the effect of applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally;

(ii) the effect of the exercise of judicial discretion in accordance with general

principles of equity (whether applied by a court of law or of equity); and

(iii) certain remedies, waivers, and other provisions of the Documents may not be enforceable, but, subject to the qualifications set forth in this paragraph at (i) and (ii) above, such unenforceability will not preclude (a) the enforcement of the obligation of the Owner to make the payments as provided in the Mortgage and Note (and HUD's regulations), and (b) the foreclosure of the Mortgage upon the event of a breach thereunder.

[6. {TO BE INSERTED WHEN ANY OR ALL OF THE LOAN DOCUMENTS ARE NOT HUD APPROVED FORMS OR WHEN HUD APPROVED FORMS HAVE BEEN REVISED OR MODIFIED IN CONNECTION WITH THE LOAN}] The execution and delivery of, and the performance of the obligations under, the Capital Advance Documents and Collateral Documents (where applicable), will not violate the Organizational Documents of the Owner or the applicable provisions of local or State law.]

[7. {INSERT FOR LOANS INVOLVING CONSTRUCTION OR REHABILITATION}] To our [my] knowledge there are no proposed change(s) of law, ordinance, or governmental regulation (proposed in a formal manner by elected or appointed officials) which, if enacted or promulgated after the commencement of construction/rehabilitation, would require a modification to the Project, and/or prevent the Project from being completed in accordance with the plans and specifications, dated _____, and executed by _____ {INSERT OWNER} and _____ {INSERT GENERAL CONTRACTOR}, and referred to in the Construction Contract (the "Plans and Specification").]

[8. {INSERT IF THERE IS NO ZONING ENDORSEMENT INCORPORATED INTO THE TITLE POLICY}] The attached Zoning Certificate states that the Property appears on the zoning maps of [Property Jurisdiction] as being located in a _____ zone. According to the zoning ordinance of the Property Jurisdiction, the use of the Property as a _____ is a permitted use in such zone.

Based solely on the Zoning Certificate, the Property may be used for _____ as a permitted use.]

[9. {USE FOR NEW CONSTRUCTION OR SUBSTANTIAL REHABILITATION IN CASES WHERE HUD DOES NOT RECEIVE A CERTIFICATE DIRECTLY FROM THE PROFESSIONAL}] Based solely on the Certificate, construction/rehabilitation of the Project in

accordance with the Plans and Specifications will comply with all applicable land use and zoning requirements.]

10. Based solely upon (a) our [my] knowledge and (b) the Owner's Opinion Certification, the execution and delivery of the Capital Advance Documents and Collateral Documents (where applicable) will not: (i) cause the Owner to be in violation of, or constitute a default under the provisions of, any agreement to which the Owner is a party or by which the Owner is bound, (ii) conflict with, or result in the breach of, any court judgment, decree or order of any governmental body to which the Owner is subject, and (iii) result in the creation or imposition of any lien, charge, or encumbrance of any nature whatsoever upon any of the property or assets of the Owner, except as specifically contemplated by the Capital Advance Documents or Collateral Documents.

11. Based solely upon (a) our [my] knowledge, (b) the Owner's Opinion Certification and (c) the Docket Search; there is no litigation or other claim pending before any court or administrative or other governmental body or threatened in writing against the Owner, or the Property, [except as identified on Exhibit _____].

12. The Mortgage is in appropriate form for recordation in _____ {INSERT PROPER NAME OF LOCAL LAND RECORDS OFFICE} of _____ {INSERT COUNTY OR CITY} of the Property Jurisdiction, and is sufficient, as to form, to create the encumbrance and security interest it purports to create in the Property.

13. Filing of the Financing Statements in the Filing Offices will perfect the security interest in the Personalty of the Owner located in the Project Jurisdiction, but only to the extent that, under the Uniform Commercial Code as in effect in the Project Jurisdiction, a security interest in each described item of Personalty can be perfected by filing. The Filing Offices are the only offices in which the Financing Statements are required to be filed in order to perfect the security interest in the Personalty.

14. The Capital Advance does not violate the usury laws or laws regulating the use or forbearance of money of the Property Jurisdiction.

15. The laws of Property Jurisdiction govern the interpretation and the enforcement of the Capital Advance Documents and Collateral Documents (where applicable) notwithstanding that the Owner may be formed in a jurisdiction other than Property Jurisdiction. The Owner can sue and be

sued in Property Jurisdiction, including without limitation, a suit on the Note or a foreclosure proceeding arising under the Mortgage. Venue for any foreclosure proceeding under the Mortgage may be had in Property Jurisdiction.

[16. {APPLIES TO CASES WHERE THE LAND IS BEING PURCHASED FROM A PUBLIC BODY}] There is no default under the Public Entity Purchase Agreement, and construction in accordance with the Plans and Specifications and within the time frame specified in the Construction Contract will not lead to a default under the Public Entity Purchase Agreement. {RELIANCE IS PERMITTED ON THE BASIS OF KNOWLEDGE AND OWNER'S CERTIFICATE}]

[17. {APPLIES TO CASES WHERE THE PROJECT IS IN AN URBAN RENEWAL AREA}] There is no default under the Land Disposition Contract between _____ and _____, dated _____ and the time within which construction must be completed under the Capital Advance Agreement is within the time specified for completion in said Land Disposition Contract.]

In addition to the assumptions set forth above, the opinions set forth above are also subject to the following qualifications:

(i) The Uniform Commercial Code of the Property Jurisdiction requires the periodic filing of continuation statements with _____ [and _____] not more than _____ prior to and not later than the expiration of the _____ year period from the date of filing of the Financing statements and the expiration of each subsequent _____ year period after the original filing, in order to maintain the perfection and priority of security interests and to keep the Financing Statements in effect.

(ii) We express no opinion as to the laws of any jurisdiction other than the laws of the Property Jurisdiction and [and the Organizational Jurisdiction, if it is different,] and the laws of the United States of America. The opinions expressed above concern only the effect of the laws (excluding the principles of conflict of laws) of the Property Jurisdiction [and the Organizational Jurisdiction, if it is different] and the United States of America as currently in effect. We assume no obligation to supplement this opinion if any applicable laws change after the date of this opinion, or if we become aware of any facts that might change the opinions expressed above after the date of this opinion.

We [I] confirm that:

(a) based on the Organizational Documents, the name of the Owner in

each of the Capital Advance Documents and Collateral Documents (where applicable) and the Title Policy and Firm Commitment is the correct legal name of the Owner;

(b) the legal description of the Property is consistent in the Documents wherein it appears and in Exhibit _____ hereto;

(c) we [I] do not have any financial interest in the Project, the Property, or the Capital Advance, other than fees for legal services performed by us, payment for which has been made; and we [I] agree not to assert a claim or lien against the Project, the Owner, the Capital Advance proceeds or income of the Project;

(d) other than as counsel for the Owner, we have no interest in the Owner or any other party involved in the Capital Advance transaction and do not serve as [a director, officer or] [an] employee of the Owner. We have no undisclosed interest in the subject matters of this opinion;

(e) based solely upon the Surveyor's Report and the Surveyor's Plat, flood insurance [is OR is not] required pursuant to 42 U.S.C. 4012a(a). [INSERT IF FLOOD INSURANCE IS REQUIRED: Based solely on the Flood Insurance Receipt, flood insurance is in effect which satisfies the requirements of 42 U.S.C. 4012a(a).]

(f) we [I] do not represent any development team member or any other party or interest in connection with the above referenced housing project other than the Owner except for representation as the personal attorney for an individual associated with a development team member in matters not involving the housing project. If a dispute arises between the Owner and a development team member, my efforts will be directed exclusively towards serving the Owner. We [I] have submitted to HUD an Identity of Interest and Disclosure Certification; and

(g) to our knowledge, there are no liens or encumbrances against the Property which are not reflected as exceptions to coverage in the Title Policy.

The foregoing opinions are for the exclusive reliance of HUD; however, they may be made available for informational purposes to, but not for the reliance of, the assigns or transferees of the Owner, or prospective purchasers of the Project. We [I] acknowledge that the making, or causing to be made, of a false statement of fact in this opinion letter and accompanying materials may lead to criminal prosecution or civil liability as provided pursuant to applicable law, which may include 18

U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802.

Sincerely,

[Authorized Signature]

To be used in FHA Insured Transactions.

JANUARY 30, 1997.

EXHIBIT A TO OPINION OF MORTGAGOR'S COUNSEL
CERTIFICATION OF MORTGAGOR

This Certification of Mortgagor is made the _____ day of _____, 19____, by _____, (the "Mortgagor") for reliance upon by _____ (the "Mortgagor's Counsel") in connection with the issuance of an opinion letter dated of even date herewith (the "Opinion Letter") by ("Mortgagor's Counsel") as a condition for the provision of mortgage insurance by the Department of Housing and Urban Development ("HUD") of the \$_____ loan (the "Loan") from _____ (the "Mortgage") to Mortgagor. In connection with the Opinion Letter, the Mortgagor hereby certifies to Mortgagor's Counsel for its reliance, the truth, accuracy and completeness of the following matters:

1. The Organizational Documents are the only documents creating the Mortgagor or authorizing the Loan, and the Organizational Documents have not been amended or modified except as stated in the Opinion Letter.

2. The terms and conditions of the Loan as reflected in the Loan Documents have not been amended, modified or supplemented, directly or indirectly, by any other agreement or understanding of the parties or waiver of any of the material provisions of the Loan Documents.

3. All tangible personal property of the Mortgagor in which a security interest is granted under the Loan Documents [other than off-site construction materials and/or accounts or goods of a type normally used in more than one jurisdiction and/or additional collateral personality] is located at the Property (as defined in the Opinion Letter) and the Mortgagor's [Chief Executive Office] [only place of business] [residence] is located in _____.

4. The execution and delivery of the Loan Documents will not (i) cause the Mortgagor to be in violation of, or constitute a material default under the provisions of any agreement to which the Mortgagor is a party or by which the Mortgagor is bound, (ii) conflict with, or result in the breach of, any court judgment, decree or order of any

governmental body to which the Mortgagor is subject, and (iii) result in the creation or imposition of any lien, charge, or encumbrance of any nature whatsoever upon any of the property or assets of the Mortgagor, except as specifically contemplated by the Loan Documents.

5. There is no litigation or other claim pending before any court or administrative or other governmental body or threatened against the Mortgagor, the Property, or any other properties of the Mortgagor [except as identified on Exhibit [___], List of Litigation, in the Opinion Letter.]

6. There is no default under the Public Entity Agreement (as defined in the Opinion Letter) nor have events occurred which with the passage of time will result in a default under the Regulatory Agreement.

Note: All capitalized terms not defined herein shall have the meanings set forth in the Opinion Letter.

IN WITNESS WHEREOF, the Mortgagor has executed this Certification of Mortgagor effective as of the date set forth above.

MORTGAGOR:

For use in the Section 202, Supportive Housing for the Elderly Program.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FEDERAL HOUSING ADMINISTRATION

INSTRUCTIONS TO GUIDE FOR OPINION OF OWNER'S COUNSEL

EXPLANATORY COMMENTS

The Guide for this opinion was originally prepared in 1994 in view of changes in opinion practice as reflected by the ABA Accord and various State law bar reports on opinion letters and has been revised to reflect approximately three years experience in using the Guide. The principal purpose of this Guide remains to achieve a uniform format which can be utilized throughout the nation and which will be familiar to HUD counsel in all jurisdictions. Such a standardized format is crucial in an era when less resources are available to the Department; however, it should be emphasized that certain limited changes can be authorized by HUD field counsel as required by local law or by the unique nature of the transaction. An effort has been made in these revised instructions to specify examples in more (but not all) of those areas where such

changes can be authorized. Otherwise, the format of the Guide must be followed and is not open to negotiation. In this regard, revisions cannot be justified because of a particular Opinion having been approved by another HUD field office. The exercise of discretion by one HUD field counsel in unique circumstances cannot become the basis for any modification to the Opinion. Any requested modification must be analyzed on its own merit and in a particular context. In these explanatory comments, the document may be referred to as the "Guide" or the "Opinion," depending upon the context.

The Department regards the counsel to the Owner as the crucial, central figure in the process of preparing and executing the legal and administrative documents necessary to achieve a closing in connection with a first Mortgage (Deed of Trust) and Mortgage Note ("Capital Advance") from HUD to the Owner. Pursuant to 24 CFR 24.105(p), attorneys or others in a business relationship with the Owner are defined as "principals." Even though the Guide is quite different in form from its predecessor (HUD 90166-CA), the substance is not intended to be substantially different and the revision does not in any fashion relieve the counsel to the Owner of its obligations to its client and the Department. In part, these responsibilities entail the exercise of due diligence to assure the accurate and timely preparation, completion and submission of the forms required by the Department in connection with the transaction. Further, the counsel to the Owner and any other attorneys involved in the transaction, should be thoroughly familiar with the regulations, procedures and directives of the Department pertaining to each transaction in which counsel participates. The Department takes seriously the preparation and completion of the various documents involved in the Capital Advance Program (most of which are HUD form documents) and cannot overemphasize the importance of the following:

"Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)"

With limited state law related exceptions, we expect that Owner's counsel will be able to follow the Guide in rendering an opinion and HUD field counsel should not accept opinions that otherwise substantially or materially deviate from the Guide. Although we understand that attorneys and law firms may have evolved particular styles and

forms of opinion, HUD field counsel do not have time to negotiate each and every Opinion for stylistic changes and it is essential that the Guide be followed in both style and substance in order to ensure a timely closing. The counsel to the Owner is expected to complete a draft Opinion for submission to HUD field counsel at least ten days prior to the closing along with the other closing documents. Any deviations should be specifically identified (redlined or highlighted) and discussed with field counsel at that time. Any material deviation not required by State or local law must be brought to the attention of HUD's Office of General Counsel by field counsel along with an explanation as to the necessity for the deviation.

The Guide is not intended to serve as a closing checklist; therefore, HUD field counsel may update or modify existing closing checklists as necessary to meet constantly changing program needs and handbook instructions and directives.

Brackets continue to be used in the Guide to indicate alternate language, insertions, documents, or instructions depending on the applicable facts and underlining is used to indicate blanks that must be completed.

The Guide contains some instructions and definitions and is largely self-explanatory; however, the following expanded instructions and clarifications should provide additional assistance to both private counsel and HUD counsel. The numbers and letters used below relate to the paragraph numbers and letters in the Guide unless page numbers are specifically designated.

Page 1 and Introductory Paragraph

- Letterhead and date: The Opinion must be typed on the firm letterhead and dated the date of the Capital Advance by HUD.
- Reference: Data regarding the project (name, HUD project number, and location must be accurate and inserted in the appropriate blanks.
- Addressees: The opinion must be delivered to HUD to establish the explicit right to rely on the Opinion.
- Description of the Capital Advance: The Capital Advance amount is the original principal amount of the Capital Advance unless a modification is necessitated in connection with the closing.

List of Documents

- In General: If there are no brackets around a particular document, the document is one which is commonly used for capital advance closings; however, it should be emphasized that it is impossible to list every document for every capital advance. Some

documents may not be utilized in a particular transaction and should be deleted from the list in the actual Opinion. Brackets around the name of the document indicate that the document may or may not be used for every capital advance. If bracketed documents are not used in a particular capital advance transaction, then delete such documents from the list in the actual Opinion. Each document executed in connection with the Capital Advance must be listed by its correct title. It is imperative that care must be taken to compile a list that accurately and completely reflects the transaction prior to submission to HUD of the initial draft. After HUD review of the initial draft, the opinion may have to be modified, as necessary, to satisfy HUD.

All documents executed in connection with the Capital Advance must be listed regardless of whether the document is required by HUD. The appropriate HUD or FHA form number, if applicable, must be indicated in parens after each document.

All of the Documents must be reviewed. The following HUD guidelines should be followed in preparing or reviewing the Documents.

1. HUD Handbook 4571.5, Supportive Housing for the Elderly—Conditional Commitment—Final Closing, dated July 1992, should be followed. This Handbook provides copies of most of the Documents required by HUD to be used in the 202 Program Closings.

2. All 202 Owners must adopt the model Certificate of Incorporation (HUD-91732-A-CA) except for Field Counsel modifications related to State law or modifications required by the Internal Revenue Service. All other modifications must be approved by HUD.

3. The HUD field counsel have not been consistent in requiring HUD to be named in the Financing Statements as a secured party or as its interests may appear; consequently, the requirement that HUD be so named is now being standardized. This should be clarified through appropriate language in the Security Agreement. The purpose is to clarify that, under certain circumstances, HUD may assert some rights in the personalty arising under the Regulatory Agreement which would precede an assignment of the mortgage. This is desirable in the event HUD exercises some of its remedies under the Regulatory Agreement in cases where the mortgage has not been assigned to HUD. It will not be necessary for HUD to consent to every UCC termination, renewal, assignment, etc. until HUD's rights as a secured party are established. HUD is being named "as its interests

appear" so that, for example, where HUD obtains a court order, HUD will be able to establish a paramount interest in the Project income stream, and other personalty pursuant to the Regulatory Agreement.

4. UCC searches: The UCC Search can be conducted by either the title insurance company, a reputable document search firm, the counsel to the Owner or any other attorney licensed in the jurisdiction. One or more UCC searches performed not more than 30 days prior to the date of the opinion of Owner's counsel must be made and retained by the field counsel in the Capital Advance file.

5. Flood insurance receipt: Arguments have been made that this document is not necessary. Flood plain maps change. HUD must know whether the property is located in an area where flood insurance is required and, if so, whether the insurance is in effect. HUD would not necessarily have the data on file, and it was determined that this is a matter which counsel could confirm near the end of the Guide. Note that no opinion is required, and the factual determinations necessitated by the Guide are considered within the usual duties of counsel.

6. Title Insurance Policy: Currently the 1992 ALTA Format (with appropriate endorsements) is required by HUD in most jurisdictions.

7. Evidence of zoning compliance: The evidence of zoning compliance will vary depending on the circumstances. The evidence should establish that the building, if constructed according to plans and circumstances, will comply with all zoning requirements. The evidence may be in the form of a letter or certificate from the appropriate local official stating that, if the building is constructed according to the plans and specifications submitted for review, the building will comply with all zoning requirements. If the locality has no zoning ordinance, a letter should be submitted from the chief executive stating such. In those circumstances, it may be necessary to obtain a letter from the local planning body of the county in which the project is located, that the proposed development is compatible with the county's comprehensive plan. If the zoning approval is based upon a variance or other special action, the closing may have to be delayed until the time for appeals has run. In extremely complex cases, an opinion may need to be obtained from legal counsel specializing in local zoning matters. Such letter must be attached as an exhibit and referenced in the appropriate paragraphs of the Opinion.

8. Building permit(s): If no building permit is required, this document is not applicable and should be deleted from the Opinion. This would also be true with respect to occupancy permits unless new permits are required under local law.

9. Permits required for the operation of the project: Several practitioners have argued that the documentation is unnecessary. HUD is concerned that any permits required for the continued operation of the project be proper and in place such that an opinion can be rendered. If no such permits are required, the Opinion should be amended accordingly. This is a matter which counsel to the Owner, as a specialist in the property jurisdiction, should be able to ascertain.

10. Surveyor's plat or survey: The survey must be signed, sealed and dated within 90 days of the closing.

11. Surveyor's Report: There needs to be a surveyor's certificate indicating that nothing has changed since the last survey with respect to encroachments, lot line violations, construction activity, etc. As an alternative to a surveyor's certificate, the Owner's attorney could rely upon an appropriate certificate from a qualified architect and insert appropriate language in the Opinion.

12. Owner-architect Agreement: This document should only be indicated (where the Guide indicates "[Insert Design and or Construction Architect"] in cases involving new construction or substantial rehabilitation.

13. Certificate issued by architect or other professional: Normally such a document would not be necessary and should be deleted unless those circumstances mentioned under the last sentence in paragraph 11, above, make the certificate appropriate. Note that "Certificate" is a defined term and that the Certificate can come from "an architect or other professional." Consequently, there is no form for the Certificate and HUD field counsel should defer to HUD administrators specializing in architectural and engineering matters in determining the acceptability of the Certificate. It is referenced in Paragraph 9 of the Opinion and should not be confused with the Zoning Certificate which is also a defined term and is referenced in Paragraph 8.

14. Docket search: The Docket Search can be conducted by either the title insurance company, a reputable document search firm, the counsel to the Owner or any other attorney licensed in the jurisdiction.

Opinions

1. This paragraph requires an opinion regarding the organization of the Owner. Care should be taken to ensure that the requisite information is inserted correctly. Any Certificate of Good Standing or equivalent document issued by the applicable governmental authority must be dated no more than 30 days prior to the date of the Opinion of Owner's counsel. If the Property jurisdiction is not the State of formation for the Owner, counsel must also opine that the Owner is qualified to transact business in the Property jurisdiction. Such opinion may be made solely on the basis of a certificate from the applicable governmental authorities of the Property jurisdiction, and if counsel is relying on such certificate(s), then the opinion must expressly identify those certificate(s) and they must be attached to the Opinion as an exhibit.

2. This paragraph provides, among other things, that the Owner possesses all the necessary governmental certificates, permits, licenses, qualifications and approvals to own and operate the Property. Field counsel have discretion to permit a modification in which Counsel to the Owner itemizes those local governmental requirements which have been evaluated and indicates that, after due diligence inquiry and insofar as the attorney is aware, these local requirements comprise the entire universe of such requirements. The Opinion should further state that, based upon such itemized local requirements and compliance therewith (with all permits, certificates, etc. being itemized), the Owner possesses the power and authority necessary to own and operate the Property and to carry out all of the transactions required by the Documents and to comply with applicable federal statutes and regulations of HUD in effect on the date of the FHA commitment. In most instances involving new construction, a certificate of occupancy will not have been obtained by the time of closing. In such instances, field counsel have discretion to permit an appropriate clarification with respect to that particular instrument.

11. If the Owner is involved in any litigation, all such litigation matter(s) must be disclosed in writing to HUD field counsel. If the litigation involves HUD's compliance with civil rights requirements, it must immediately be brought to the attention of appropriate Fair Housing and Equal Opportunity personnel.

13. If any UCC Financing Statements have been filed on the Personalty in conjunction with any transaction other

than the Capital Advance, they must be identified to the HUD field counsel as well as details with respect to how such Financing Statements will be terminated at the time of closings. One or more UCC searches performed not more than 30 days prior to the date of the Opinion must be made and attached to the Opinion.

Acceptability of Counsel

- Owner's counsel must opine as to the law of the Property jurisdiction and the State of Owner's organization, if different from the Property jurisdiction. HUD requires that Owner's counsel be admitted to practice law in each jurisdiction in which such admission is required by the laws or ethical considerations of the bar to be able to give the opinion. If multiple jurisdictions are involved, two opinions may be required: one with respect to the organization of the owner and another with respect to the real property and loan issues. A combination of the Owner's regular counsel and special local counsel may be required to satisfy this requirement. If counsel's satisfaction of these requirements is not evident from the letterhead of the firm, the counsel should include a written explanation in the Washington docket. In all events, each provision in the Guide must be addressed whether one or more opinions is required to do so.

Signatures

- The Opinion may be signed by an authorized person of the law firm, in that person's name.

Owner's Certification

- A form of Owner's Certification is attached. The form represents the minimum amount of information that should be obtained from the Owner (but additions, revisions and rephrasings are acceptable so long as the Owner is certifying as to factual matters and not legal conclusions). The Owner's Certification must be dated the same date as the Capital Advance Documents.

Identity of Interest

- Numerous issues have been raised with respect to the confirmation in (d) of the penultimate paragraph of the Guide. A decision was made that the attorney signing the Opinion could not have an identity of interest with the Owner. No waivers are possible in such instance. In instances where other members of the firm have an interest in the Owner entity, such interest must be disclosed and such interest must be acceptable to field counsel based upon the ethics rules of the applicable bar. Furthermore, any interest must be

administratively acceptable to HUD and 2530 clearance must be obtained. In addition, there appears to be an increasing trend wherein FHA mortgagees are insisting upon using counsel to the mortgagee to handle many aspects of the transaction even though the Opinion is being signed by a separate attorney. There have been some instances where counsel to the mortgagee has asked to represent the mortgagor in whole or in part and to provide all or a part of the Opinion. Confirmation (d) in the penultimate paragraph has been clarified to reflect the intent of HUD from the inception of the Opinion that any such representation of both parties is not permitted.

Liens

- Paragraph (f), which is in the penultimate paragraph of the Opinion, contains a statement that there are no liens or encumbrances against the Property. Several attorneys have objected to making the statement because they indicate that, at the time of closing, there may be liens that have actually not been released even though the title company has received funds and/or release documents to do so and intends to process the release after the closing. Unless authorized by HUD, as in cases involving secondary loans, there cannot be any liens and encumbrances on the property when HUD makes a capital advance. As a result, there cannot be any liens outstanding which would prime the mortgage. Hence, Paragraph (f) should not be changed.

Reliance on Other Opinions

- The issue of proper wording and format has probably surfaced most often in cases where counsel to the Owner is relying on opinions issued by other attorneys. This has occurred most often in cases involving a separate opinion for property jurisdiction vs. organizational jurisdiction, zoning, etc. In this area, it is imperative that counsel to the Owner specifically reference and attach the additional opinion(s) and that such opinions track the language of the guide as close as is practical under the circumstances. HUD field counsel should exercise discretion in this area, taking the unique circumstances into account.

For use in the Section 202, Supportive Housing for the Elderly Program

EXHIBIT A TO OPINION OF OWNER'S COUNSEL

CERTIFICATION OF OWNER

This Certification of Owner is made the _____ day of _____,

19____, by _____, (the "Owner") for reliance upon by _____ (the "Owner's Counsel") in connection with the issuance of an opinion letter dated of even date herewith (the "Opinion Letter") by ("Owner's Counsel") as a condition for the making of a capital advance by the Department of Housing and Urban Development ("HUD") in the amount of \$_____ (the "Capital Advance") to the Owner. In connection with the Opinion Letter, the Owner hereby certifies to Owner's Counsel for its reliance, the truth, accuracy and completeness of the following matters:

1. The Organizational Documents are the only documents creating the Owner or authorizing the Capital Advance, and the Organizational Documents have not been amended or modified except as stated in the Opinion Letter.

2. The terms and conditions of the Capital Advance as reflected in the Capital Advance Documents have not been amended, modified or supplemented, directly or indirectly, by any other agreement or understanding of the parties or waiver of any of the material provisions of the Capital Advance Documents.

3. All tangible personal property of the Owner in which a security interest is granted under the Capital Advance Documents [other than off-site construction materials and/or accounts or goods of a type normally used in more than one jurisdiction and/or additional collateral personality] is located at the Property (as defined in the Opinion Letter) and the Owner's [Chief Executive Office] [only place of business] [residence] is located in

4. The execution and delivery of the Capital Advance Documents will not (i) cause the Owner to be in violation of, or constitute a default under the provisions of any agreement to which the Owner is a party or by which the Owner is bound, (ii) conflict with, or result in the breach of, any court judgment, decree or order of any governmental body to which the Owner is subject, and (iii) result in the creation or imposition of any lien, charge, or encumbrance of any nature whatsoever upon any of the property or assets of the Owner, except as specifically contemplated by the Capital Advance Documents.

5. There is no litigation or other claim pending before any court or administrative or other governmental body or threatened against the Owner, the Property, or any other properties of the Owner [, except as identified on Exhibit _____, List of Litigation, in the Opinion Letter.]

6. There is no default under the Public Entity Agreement (as defined in the Opinion Letter) nor have events occurred which with the passage of time will result in a default under the Regulatory Agreement.

Note: All capitalized terms not defined herein shall have the meanings set forth in the Opinion Letter.

In Witness Whereof, the Owner has executed this Certification of Owner effective as of the date set forth above.
OWNER:

[FR Doc. 97-4685 Filed 2-25-97; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Office of the Assistant Secretary; Water and Science Central Utah Project Completion Act; Uintah Unit Replacement Project

AGENCIES: The Department of the Interior (Department) and the Central Utah Water Conservancy District (District).

ACTION: Notice of availability of the Draft Environmental Impact Statement: DES 97-7.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department, and the District have issued a joint Draft Environmental Impact Statement (Draft EIS) on the Uintah Unit Replacement Project (Uintah Unit). The Draft EIS consists of a proposed action and alternatives to construct a combination of features that will develop water supplies for the Uintah Unit of the Central Utah Project in the Uinta Basin of northeastern Utah. The Draft EIS evaluates the environmental impacts of water storage reservoirs, improved diversion and distribution of water, water conservation, stabilization of high mountain lakes, instream flows, fish and wildlife mitigation and enhancement, recreation developments and land retirement.

There is a need to manage the water supply within the Uintah Unit to develop resources of the Ute Indian Tribe of the Uintah and Ouray Reservation, provide early and late season irrigation water, and provide water and facilities for environmental and recreation purposes. The proposed action and alternatives seek to meet

these needs by providing storage, improved distribution of water, water conservation, instream flows, fish and wildlife enhancements, and recreation developments.

Public participation has occurred throughout the EIS process. A Notice of Intent was filed in the Federal Register on December 31, 1992. Since that time, open houses, public meetings, and mail-outs have been conducted to solicit comments and ideas. Any comments received throughout the process have been considered.

DATES: Written comments on the Draft EIS must be submitted or postmarked no later than April 29, 1997. Comments on the Draft EIS may also be presented verbally or submitted in writing at the public hearings to be held at the following times and locations:

- Tuesday, April 1, 1997, 1:00 p.m., Ute Tribal Auditorium, Tribal Headquarters, Fort Duchesne, Utah.
- Tuesday, April 1, 1997, 6:00 p.m., Union High School Auditorium, 135 North Union, Roosevelt, Utah.
- Wednesday April 2, 1997, 6:00 p.m., Salt Lake County Commission Chambers, Room N1101, 2001 South State Street, Salt Lake City, Utah.

The public hearings are being held to address the Draft EIS for the proposed Uintah Unit Replacement Project. In order to be included as part of the hearing record, written testimony must be submitted at the time of the hearing. Verbal testimony will be limited to 5 minutes. Those wishing to give testimony at a hearing should submit a registration form, included at the end of the Draft EIS, to the address listed below by, March 25, 1997.

ADDRESS: Comments on the Draft EIS should be addressed to: Terry Holzworth, Project Manager, Central Utah Water Conservancy District, 355 West 1300 South, Orem, Utah 84058.

FOR FURTHER INFORMATION: Additional copies of the Draft EIS, copies of the resources technical reports, Draft Feasibility Study, or information on matters related to this notice can be obtained on request from: Ms. Nancy Hardman, Central Utah Water Conservancy District, 355 West 1300 South, Orem, Utah 84058, Telephone: (801) 226-7187, Fax: (801) 226-7150.

Copies are also available for inspection at:

Central Utah Water Conservancy District, 355 West 1300 South, Orem, Utah 84058

Department of the Interior, Natural Resource Library, Serials Branch, 18th and C Streets, NW, Washington, D.C. 20240

Department of the Interior, Central Utah Project Completion Act Office, 302 East 1860 South, Provo, Utah 84606
Bureau of Indian Affairs, Uintah and Ouray Agency, 988 South 7500 East, Fort Duchesne, Utah 84026.

Dated: February 21, 1997.

Ronald Johnston,

CUPCA Program Director, Department of the Interior.

[FR Doc. 97-4753 Filed 2-25-97; 8:45 am]

BILLING CODE 4310-RK-P

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, et seq.):

PRT-824747.

Applicant: Zoological Society of San Diego, San Diego, CA.

The applicant requests a permit to import one female captive born Pink pigeon (*Columba mayeri*) from Jersey Wildlife Preservation Trust for the purpose of enhancement of the species through propagation.

PRT-825321.

Applicant: U.S. Fish and Wildlife Service—Ecological Services, Pierre, SD.

The applicant requests a permit to export 5 pairs Black-footed ferret (*Mustela nigripes*) carcasses to National Museums of Scotland, Edinburgh, Scotland for the purpose of enhancement of the survival of the species through scientific research.

PRT-825316.

Applicant: Wildlife Waystation, San Fernando, CA.

The applicant requests a permit to import one female captive-born tiger (*Panthera tigris*) from the Irish Seal Sanctuary, Garristown, Ireland, for the purpose of enhancement of the survival of the species through conservation education.

PRT-678845.

Applicant: Mesa Garden, Belen, NM.

The applicant requests renewal of a permit to export and sell in interstate and foreign commerce artificially propagated seeds and whole plants of tobusch fishhook cactus (*Anicistocactus tobuschi* syn. *Sclerocactus breviamatus*), Nellie's cory cactus (*Coryphantha* (= *Escobaria*) *minima*), Sneed pincushion cactus (*Coryphantha* (= *Escobaria*) *sneedii* var. *Sneedii*),