

[\[Search\]](#) [\[Prev List\]](#) [\[Doc List\]](#) [\[Next List\]](#) [\[First Doc\]](#) [\[Prev Doc\]](#) [\[Curr Doc\]](#) [\[Next Doc\]](#) [\[Last Doc\]](#)
[\[Bottom\]](#) [\[Next Hit\]](#) [\[Help\]](#) [\[Text Only\]](#)

Processing Plans of Action Under the Low-Income Housing

Directive Number: [\[Prev Hit\]](#)[\[Next Hit\]](#)**4350.6**

Special Attention of: Transmittal Handbook No.:4350.6 CHG-4
 All Housing Directors Issued: August 7, 1995
 All Multifamily Division Directors
 All Housing Development Branch Chiefs
 All Housing Management Branch Chiefs
 All Preservation Coordinators

1. This transmits:

Chapter 12, (ELIHPA/TITLE II) HUD Handbook 4350.6 CHG.4, Processing Plans of Action Under the Low-Income Housing Preservation and Resident Homeownership Act of 1990.

2. Chapter 12 formalizes processing of projects under Title II, Emergency Low-Income Housing and Preservation Act, 1990.

3. Highlights differences between LIHPRHA (TITLE VI) and ELIHPA (TITLE II).

Assistant Secretary for Housing-
 Federal Housing Commissioner

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

U.S. Department of Housing and Urban Development

H O U S I N G

Special Attention of: Transmittal for Handbook No.: 4350.6
 CHG-3

Regional Administrator-Regional
 Housing Commissioners, Issued: March 21, 1994
 Directors of Regional Housing,
 Managers at Category A and B Offices,
 Regional Economists, Directors of Housing Management
 Divisions, Loan Management Branch Chiefs, Assisted Housing
 Management Branch Chiefs, Directors of Housing Development,
 Field Office Economists, Contract Administrators and Project
 Owners

1. This Transmits change 3 to the new HUD Handbook 4350.6, Processing Plans of Action Under the Low-Income Housing Preservation and Resident Homeownership Act of 1990.

2. Explanation of Material Transmitted. This issue inserts chapter 9 and appendices.

- A. Chapter 9 covers the Resident Homeownership Program. It provides instructions to Resident Councils (RC) and entities working with RCs, including HUD staff and nonprofit organizations, about the procedures to follow upon the owner's decision and notification to HUD that it intends to sell the project.
 - C. The appendices contain forms, charts, and sample letters that will aid project owners, Field Office staff and other Handbook users in the calculation of funding levels for requested incentives, determination of program timeframes, and provision of information to tenants, government entities and project owners.
3. Effective Date: Upon receipt.
4. Filing Instructions:

Remove:

Pages vi, vii, viii
ix, x, xi

Insert:

Pages vi, vii,
viii, ix, x, xi, xii
Chapter 9 and Appendices

 Assistant Secretary for Housing
 - Federal Housing Commissioner

 U.S. Department of Housing and Urban Development

H O U S I N G

Special Attention of:

Transmittal for Handbook No.:
4350.6-CHG.2

Regional Administrator-Regional
 Housing Commissioners, Directors
 of Regional Housing, Managers of
 Category A and B Offices, Regional Economists, Directors of Housing
 Management Divisions, Loan Management Branch Chiefs, Assisted
 Housing Management Branch Chiefs, Directors of Housing Development,
 Field Office Economists, Contract Administrators and Project Owners

Issued: 10/8/93

 1. This Transmits

change 2 to the new HUD Handbook 4350.6,
 Processing Plans of Action Under the Low-Income Housing
 Preservation and Resident Homeownership Act of 1990.

 2. Explanation of Material Transmitted. This issue inserts
 Chapters 10 and 11.

- A. Chapter 10 covers issues relevant to any tenant displacement that may occur in conjunction with the approval of a Plan of Action. Please note that the Uniform Relocation Act does not apply to projects prepaid under the Preservation process.

- B. Chapter 11 provides guidance to the Field Office when servicing a project after execution of the Use agreement and implementation of the Plan of Action.
 - C. Contains Appendices that provide information (by way of sample letters/notices) to tenants and owners about the preservation process with respect to displaced tenants and forms to aid in the calculation of project and tenant rents.
- 3. Effective Date: Upon receipt.
 - 4. Filing Instructions: Insert Chapters 10 and 11 and corresponding appendices into HUD Handbook 4350.6.

Assistant Secretary for Housing
- Federal Housing Commissioner

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

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

Distribution to Field Offices and State Agencies

U.S. Department of Housing and Urban Development

H O U S I N G

Special Attention of:

Regional Administrator-Regional Transmittal Handbook No.: 4350.6-CHG.1
Housing Commissioners, Directors of Regional Housing,
Managers of Category A and B Issued: 1/7/93
Offices, Regional Economists, Directors of Housing Management
Divisions, Loan Management Branch Chiefs, Assisted Housing
Management Branch Chiefs, Directors of Housing Development,
Field Office Economists, Contract Administrators and Project
Owners

-
- 1. This Transmits
change 1 to the new HUD Handbook 4350.6,
Processing Plans of Action Under the Low-Income Housing
Preservation and Resident Homeownership Act of 1990.
 - 2. Explanation of Material Transmitted. This issue
inserts chapters 7 and 8 and appendices.
 - A. Chapter 7 covers the voluntary and mandatory sale
process. It provides instructions to HUD staff
and project owners about the procedures to follow
upon the owner's decision and notification to HUD
that it intends to sell the project.

- B. Chapter 8 describes the content of Plans of Action and the criteria HUD staff will use to evaluate them.
- C. The appendices contain forms, charts, and sample letters that will aid project owners, Field Office staff and other Handbook users in the calculation of funding levels for requested incentives, determination of program timeframes, and provision of information to tenants, government entities and project owners. The timelines in Appendices 1-1A, 1-1B, and 1-1C, replace those that were in the previous issue.

3. Effective Date: Upon receipt.

4. Filing Instructions:

Remove:

Pages iii, iv, v,
vi, and Appendices
1-1A, 1-1B and 1-1C
dated 4/92

Insert:

Pages iii, iv, v,
vi, vii, viii, ix, x,
xi, Chapters 7 and 8
and Appendices 1-1A,
1-1B, and 1-1C of
Handbook 4350.6
dated 1/93

Assistant Secretary for Housing
- Federal Housing Commissioner

U.S. Department of Housing and Urban Development

Office of Housing

Transmittal Handbook No.: 4350.6

Special Attention of:

Regional Administrators-Regional
Housing Commissioners, Directors
of Regional Housing, Managers of
Category A and B Offices, Regional Economists, Directors of
Housing Management Divisions, Loan Management Branch Chiefs,
Assisted Housing Management Branch Chiefs, Directors of Housing
Development, Field Office Economists, Contract Administrators,
and Project Owners

Issued: 4/10/92

1. This Transmits
The first six chapters of a new HUD Handbook 4350.6,
Processing Plans of Action Under the Low-Income Housing
Preservation and Resident Homeownership Act of 1990.
Chapters 7-11 are reserved.
2. Explanation of Materials Transmitted. The purpose of
this Handbook is to:
 - A. Provide information to HUD Field Office staff and
owners of eligible low-income housing about
processing and approving Plans of Action for
terminating or extending affordability

restrictions for eligible low-income housing under Title VI of the 1990 Act.

- B. Establish administrative and policy requirements for HUD Field Office staff to follow when owners express the intention to extend or terminate low-income affordability restrictions where there may be a need to preserve the low-income housing.
 - C. Implement the provision of the 1990 Act that delegates the responsibility of carrying out a housing preservation program to State and local governments.
- 3. Effective date: Upon receipt
 - 4. Filing Instructions: Insert Handbook 4350.6

Assistant Secretary for Housing
- Federal Housing Commissioner

Handbook 4350.6

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

Program Participant
and Departmental
Staff

April 1992 Processing Plans of
Action Under the
Low-Income Housing
Preservation and
Resident
Homeownership
Act of 1990

W-3-1, W-2 (H) , W-3 (A) (H) (OGC) (ZAS) , W-4 (H) , R-1, R-2, R-3,
R-3-1, R-3-2, R-3-3, R-6, R-6-1, R-6-2, R-7, R-7-1, R-8, Special
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[\[Bottom\]](#) [\[Next Hit\]](#) [\[Help\]](#) [\[Text Only\]](#)

Processing Plans of Action Under the Low-Income Housing

Directive Number: [\[Prev Hit\]](#)[\[Next Hit\]](#)**4350.6**

4350.6

Table of Contents

Paragraph	Page
Chapter 1. General	
1-1. Introduction.	1-1
1-2. Authority.	1-1
1-3. Purpose.	1-2
1-4. Revisions to Section 250(b) and (c).	1-2
1-5. This Handbook covers.	1-3
1-6. Exceptions.	1-3
1-7. Objectives.	1-4
1-8. Preemption of State and Local Laws.	1-4
1-9. Delegated Responsibility to State Agencies.	1-4
1-10. Consultation with Other Interested Parties.	1-7
1-11. Maintenance of Tenant Income Profiles.	1-9
1-12. Waivers.	1-10
1-13. Maintain a Log.	1-10
1-14. Timelines.	1-10
1-15. Definitions.	1-10
Chapter 2. Eligibility	
2-1. Purpose.	2-1
2-2. Eligible Low-Income Housing.	2-1
2-3. Ineligibility Due to Default Under the Mortgage.	2-3
2-4. Ineligibility Due to Use Restrictions.	2-4
2-5. Projects Governed by Section 250(a).	2-5
2-6. Projects Governed by neither Title VI nor Section 250(a).	2-6
2-7. Transition Provisions for Those Who Filed Title II Notices of Intent.	2-6
Chapter 3. Initial Notice of Intent	
3-1. Purpose.	3-1
3-2. Submission.	3-1
3-3. Content.	3-1
3-4. Findings.	3-2
3-5. Posting of the Initial Notice of Intent (NOI).	3-2
3-6. Processing the Initial Notice of Intent.	3-3

4350.6

Chapter 4. Processing Initial Notices of Intent to Terminate Affordability Restrictions

4-1. Purpose. 4-1

4-2. Action Upon Receipt of an Initial NOI. 4-1

4-3. Loan Management Staff sends Information to the Owner. 4-2

4-4. Information to Tenant Representatives and State and Local Governments. 4-2

4-5. Information to Tenants. 4-2

4-6. Submission and Evaluation of Plans of Action. 4-3

Chapter 5. Processing Initial Notices of Intent to Extend Affordability Restrictions by Retention or Sale

5-1. Purpose. 5-1

5-2. Windfall Profits Test. 5-1

5-3. Submission of the Initial NOI to Housing Programs Branch. 5-2

5-4. Information to Owners Who Requested Incentives. 5-3

5-5. Information to Tenants. 5-4

5-6. Information to State and Local Governments. 5-5

5-7. Capital Needs Assessment. 5-5

5-8. Submission of Appraisals. 5-5

5-9. Reconciliation of Appraisals. 5-7

5-10. Third Appraisal. 5-8

5-11. Sending Information to Owners. 5-10

5-12. Calculating Figures from Appraisal Data. 5-10

Chapter 6. Owner's Options

6-1 Introduction. 6-1

6-2. Owner's Initial Notice of Intent was to Terminate Affordability. 6-1

6-3. Owner's Initial Notice of Intent was to Extend Affordability Restrictions. 6-1

6-4. Sale of the Project. 6-3

6-5. If the owner changes its mind. 6-3

4/92

ii

4350.6-CHG.1

Chapter 7. Second Notice of Intent, Voluntary and Mandatory Sales

7-1. Introduction. 7-1

7-2. Review for Accuracy. 7-1

7-3. Notification to Qualified Purchasers. 7-1

7-4. Attempt to Sell the Project. 7-5

7-5. Expression of Interest. 7-6

7-6. Information from HUD: 7-7

7-7. Bona Fide and Other Offers. 7-8

7-8.	Receipt and Acceptance of an Offer.	7-11
7-9.	HUD's Determination of Acceptability of Offer.	7-13
7-10.	Final Acceptance of the Contract of Sale.	7-13
7-11.	Submission of a Plan of Action.	7-14
7-12.	Failure to Consummate Sales Transactions.	7-14
7-13.	Acceptance of Subsequent Offers.	7-15
7-14.	If there is no Purchase of the Project.	7-15
7-15.	Termination of Low-Income Affordability Restrictions Due to Not Closing the Sale.	7-17

Chapter 8. PLANS OF ACTION

Section A. General

8-1.	Purpose.	8-1
8-2.	Categories of Plans of Action and Organization of the Chapter.	8-1
8-3.	Submission of Plans of Action.	8-3
8-4.	Failure to Submit a Plan of Action.	8-6
8-5.	The Contents of All Plans of Action.	8-6
8-6.	HUD Action upon Receipt of a Plan of Action.	8-7
8-7.	State and Local Agency Responsibility.	8-11
8-8.	Deficiencies in the Plan of Action.	8-11
8-9.	Revisions.	8-12
8-10.	Retention of Materials.	8-14

4350.6-CHG.1

Section B.

Plans of Action to Terminate Low-Income Affordability Restrictions

8-11.	Timeframe for Submission of a Plan of Action.	8-15
8-12.	Contents of Plans of Action Requesting to Terminate Low-Income Affordability Restrictions.	8-15
8-13.	Review of Plans of Action to Terminate Low-Income Affordability Restrictions.	8-17
8-14.	Loan Management Review.	8-23
8-15.	If the Plan of Action is approved.	8-24

Section C.

Plans of Action to Extend Low-Income Affordability Restrictions

8-16.	Timeframe for Submission of Plan of	
-------	-------------------------------------	--

	Action (POA).	8-25
8-17.	Contents of Plans of Action.	8-25
8-18.	Reviewing POAs to Extend Low-Income Affordability Restrictions.	8-34

Section D.

Incentives to Retain the Project

8-19.	Contents of Plans of Action.	8-42
8-20.	Escrow Requirements.	8-43

Section E.

Voluntary or Mandatory Sale of the Project Other
than for Sale to Resident Councils

8-21.	Contents of Plan of Action.	8-44
8-22.	Grants to Reduce Preservation Project Rent.	8-49
8-23.	Headquarters Review of Grants.	8-50

1/93

iv

4350.6-CHG.1

Section F.

Final Decision and Action on the Plan of Action

8-24.	Delegation of Authority.	8-51
8-25.	Timeframes for Final Approval.	8-51
8-26.	Plan of Action Approval.	8-52
8-27.	Updating the Tenant Profile.	8-53
8-28.	Notifications of Approval of a POA.	8-53
8-29.	Submissions to HUD Headquarters.	8-54
8-30.	Extension of Low-Income Affordability Restrictions.	8-57
8-31.	Permissible Prepayment for Those Filing a Plan of Action to Extend Low-Income Affordability Restrictions.	8-57

Section G.

Implementation of a Plan of Action

8-32.	Effective Date.	8-60
8-33.	Failure to Consummate Sales Transactions.	8-60
8-34.	Plan of Action Expenses.	8-60
8-35.	Retroactive Incentives for Delayed POA Approval.	8-61
8-36.	Distribution of the POA.	8-61
8-37.	Provision of Incentives.	8-61

4350.6-CHG.3

Table of Contents

Paragraph		Page
	Chapter 9: Resident Homeownership Program	
9-1	Purpose.....	9-1
9-2	Forms of Homeownership.....	9-3
9-3	The Role of the Resident Initiatives Specialist (RIS).....	9-9
9-4	Organizational of and Assistance to Resident Councils (RCs).....	9-10
9-5	The RC is responsible for.....	9-15
9-6	Offer to Purchase.....	9-16
9-7	Seller Financing.....	9-19
9-8	Notification to New Tenants.....	9-19
9-9	Financial Assistance.....	9-19
9-10	Submission of the Resident Homeownership Plan of Action (RHP).....	9-22
9-11	Required Review of the RHP.....	9-22
9-12	Required Conditions of a RHP.....	9-22
9-13	Required Elements of a Resident Homeownership Program.....	9-34
9-14	Approval of a Resident Homeownership Program.....	9-43
9-15	Headquarters Review of the Required Conditions of a RHP.....	9-43
9-16	Grant and Use Agreements.....	9-44
9-17	Phase-In Period for Sales.....	9-45
9-18	Introduction.....	9-48
9-19	The Resident Initiatives Specialist (RIS).....	9-48
9-20	Organization and Responsibilities.....	9-48
9-21	Offer to Purchase.....	9-50
9-22	Receipt and Acceptance of an Offer.....	9-50
9-23	Notification to New Tenants.....	9-51
9-24	Submission and Review of a Limited Equity Cooperative Plan of Action (LEP).....	9-51
9-25	Request for Incentives.....	9-51
9-26	Components of a Resident Homeownership Program.....	9-53
9-27	Membership Fees from Initial Members.....	9-55
9-28	Resale of Memberships.....	9-57
9-29	Transfer Value.....	9-57
9-30	Subsequent Members Payment of Membership Fees.....	9-58
9-31	Final Actions and Implementation of a LEP.....	9-59
9-32	Other Requirements.....	9-59

4350.6-CHG.3

9-33	Monitoring.....	9-59
9-34	Protection of Nonpurchasing Families.....	9-60
9-35	Restrictions on Resale by Homeowners.....	9-64
9-36	Initial Homeowner's Promissory Note.....	9-65
9-37	Subsequent Homeowner's Promissory Note.....	9-71
9-38	Payment of Residual Proceeds.....	9-77
9-39	Housing Standards: Inspections.....	9-78
9-40	Section 8 Rental Assistance.....	9-78
9-41	Promissory Note.....	9-78
9-42	Audits.....	9-78
9-43	Reports.....	9-79
9-44	Tenant Selection Procedures.....	9-81

Chapters 1 through 6 issued April 10, 1992

Chapters 7 and 8 issued January 7, 1993

Chapters 10 and 11 issued October 8, 1993

Chapter 12 ELIHPA Plans of Action Reserved

3/94

vii

Chapter 10.	Prepaid Projects	
10-1.	Introduction	10-1
10-2.	Approval of a POA to Terminate the Low-Income Affordability Restrictions	10-1
10-3.	Relocation of Involuntarily Displaced Tenants Under Permissible Prepayment	10-3
10-4.	Mandatory Continued Occupancy for Permissible Prepayment	10-6
10-5.	Relocation Expenses for Permissible Prepayment	10-8
10-6.	Section 8 Assistance for Permissible Prepayment	10-10
10-7.	Applicability of the Uniform Relocation Act (URA)	10-11
10-8.	Provisions of the Use Agreement	10-11
Chapter 11.	Servicing a Project after Expansion of the Use Agreement	

Section A.

Introduction and Actions Required After Approval
of a Plan of Action to Prepay

11-1.	Introduction	11-1
11-2.	Actions After Prepayment Approval	11-1

Section B.

Projects in Which Low-Income Affordability
Restrictions Have Been Extended

11-3.	Monitoring Projects After Approval of a Plan of Action (POA) to Extend Low-Income Affordability Restrictions Through Retention or Sale	11-4
11-4.	Tenant Income Profile	11-4
11-5.	Availability of Section 8 Rental Assistance to Tenants	11-6
11-6.	Total Tenant Payment for Moderate Income Tenants	11-9
11-7.	Determination of Project Rent, General Project Rent Increases and Section 8 Contract and Gross Rents	11-10

10/93

4350.6-CHG.2

11-8	Tenant Rents	11-14
11-9.	Tenant Leases	11-20
11-10.	Receipt and Distribution of Project Funds	11-21
11-11.	Non-Renewal of Section 8 LMSA Contract and Permissible Prepayment	11-25
11-12.	Designation of a Low-Vacancy Area	11-26
11-13.	Violations of the Housing Quality Standards (HQS) or Use Agreement and Amended Regulatory Agreement	11-27
11-14.	Sale by a Priority Purchaser to a Non-Priority Purchaser	11-31
11-15.	Partially Assisted Projects	11-32
11-16.	Projects with Commercial Space	11-33

10/93

4350.6-CHG.3

APPENDICES

Appendix 1-1A	Timeline When Owner Extends Affordability Restrictions
---------------	--

Appendix 1-1B	Timeline When Owner Terminates Affordability Restrictions
Appendix 1-1C	Timeline When Owner Offers To Sell the Project
Appendix 1-2	Mortgagee Letter 91-25
Appendix 2-1	Notice H91-57. Restrictions on the Sale of Subsidized Rental Housing Imposed by Section 181(g) of the Housing and Community Development Act of 1987
Appendix 2-2	Form HUD-9610. Notice of Election to Proceed: Title II or Title VI
Appendix 2-2A	Instructions for Completing Form HUD-9610
Appendix 3	Form HUD-9608. Initial Notice of Intent
Appendix 3A	Form HUD-9608 (Reverse side) Notice to All Residents
Appendix 3B	Instructions for Completing Form HUD-9608
Appendix 3C	Notification to Tenants of the Availability of Translations of Forms HUD-9608 and 9607
Appendix 4	Letter to Owners Intending to Terminate Affordability Restrictions
Appendix 4A	Information about Market Areas
Appendix 4B	Information to Tenants
Appendix 5-1	Letter to Owner Transmitting Appraisal Guidelines
Appendix 5-1A	Notice to Tenants
Appendix 5-2	Form HUD-9607. Calculation of Information to be returned to Owner

3/94

viii

4350.6-CHG.3

Appendix 5-3	Letter to Owner Transmitting Information for Extending Affordability Restrictions Through Retention or Sale
Appendix 5-3A	Instructions for Sales of Projects: Voluntary or Mandatory Sales

Appendix 5-3B	Required Repairs and Estimated Costs
Appendix 5-3C	Notice to Tenants
Appendix 6	Form HUD-9609 Second Notice of Intent
Appendix 6A	Form HUD-9609 (Reverse side). Notice to All Residents
Appendix 6B	Instructions for Completing Form HUD-9609
Appendix 7-1	Earnest Money Deposit Worksheet
Appendix 7-2	Notification to Nonprofit Organizations of the Availability for Sale of a Multifamily Housing Project
Appendix 8-1	Form HUD-50061 Evaluation of Plan of Action for Incentives to Extend Affordability
Appendix 8-1A	Instructions for Form HUD-50061
Appendix 8-2	Form HUD-50062 Evaluation of a Plan of Action to Retain a Project
Appendix 8-2A	Instructions for Form HUD-50062
Appendix 8-3	Checklist for Submission of a Plan of Action to Retain a Project
Appendix 8-4	Checklist for Submission of a Plan of Action to Sell a Project
Appendix 8-5	Form HUD-9611 Low Income Housing Tax Credits Certification for Owners
Appendix 8-6	Memorandum to State and Local Governments
Appendix 8-7	Materials LIHTC Participants Must Submit
Appendix 8-8	Checklist for Submission of a Plan of Action to Terminate the Low-Income Affordability Restrictions

 3/94

ix

 4350.6-CHG.3

Appendix 8-9	Guidelines for Conducting the Review of a Plan of Action to Terminate Low-Income Affordability Restrictions
Appendix 9-1	Resident Homeownership Plan Checklist
Appendix 9-2	Form HUD-91110, Evaluation of Resident

	Homeownership Plan
Appendix 9-2A	Form HUD-91110-A, Worksheet for Individual Resident Homeownership Feasibility
Appendix 9-2B	Form HUD-91110-B, Summary Worksheet for Resident Homeownership Feasibility
Appendix 9-3	Limited Equity Plan of Action Checklist
Appendix 9-4	Form HUD-50007, Evaluation of Plan of Action for Limited Equity Cooperative Assuming Existing Mortgage
Appendix 9-5	Notification to Non-Purchasing Tenants of Available Protections
Appendix 10-1	Notification to Tenants of Acceptance of Prepayment
Appendix 10-2	Notification to Tenants of Available Protection
Appendix 10-3	Notification to Tenants in Low-Vacancy Areas of Available Protection
Appendix 11-1	Form HUD-90010 Owner's Calculation of Tenant Rent Phase-In Due to Approval of POA
Appendix 11-1A	Form HUD-90010A Calculation of Rent Increase Factor
Appendix 11-2	Form HUD-90011 Calculation of Section 8 Gross Rents
Appendix 11-3	Form HUD-90012 Calculation of Tenant Rents at Title VI Preservation Projects

3/94

x

4350.6-CHG.3

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10. Notice H92-54, Processing Instructions for Implementation of the Low-Income Housing Preservation and Resident Homeownership Act of 1990 by Housing Development Staff, issued July 2, 1992.

3/94

xi

4350.6-CHG.3

-
11. HUD Handbook 4350.1, REV. 1, Multifamily Asset Management and Project Servicing, issued September, 1992.
 12. HUD Handbook 4350.3, CHG 18, Occupancy Requirements of Subsidized Multifamily Housing Programs, August, 1991.
 13. Title III of the Housing and Community Development Act of 1992, 42 USC 5301.
 14. 24 CFR Part 248, Interim Rule and Notice, published in the Federal Register, July 13, 1993.
 15. HUD Handbook 4550.1 Basic Cooperative Housing Insurance Handbook
 16. HUD Handbook 4381.5 Management Documents; Agents and Fees

17. HUD Handbook 4350.1 Management of HUD-Insured Multifamily Projects
18. Form HUD-1, Settlement Statement
19. Section 234 of the National Housing Act of 1937
20. HUD Notice 92-32, Processing Instructions for the Fiscal Year 1992 for Homeownership of Multifamily Units Program (HOPE 2) - Applications for Grants

3/94

xii

10/93

[\[Search\]](#) [\[Prev List\]](#) [\[Doc List\]](#) [\[Next List\]](#) [\[First Doc\]](#) [\[Prev Doc\]](#) [\[Curr Doc\]](#) [\[Next Doc\]](#) [\[Last Doc\]](#)
[\[Top\]](#) [\[Prev Hit\]](#) [\[Help\]](#)

[\[Search\]](#) [\[Prev List\]](#) [\[Doc List\]](#) [\[Next List\]](#) [\[First Doc\]](#) [\[Prev Doc\]](#) [\[Curr Doc\]](#) [\[Next Doc\]](#) [\[Last Doc\]](#)
[\[Bottom\]](#) [\[Next Hit\]](#) [\[Help\]](#) [\[Text Only\]](#)

Processing Plans of Action Under the Low-Income Housing

Directive Number: [\[Prev Hit\]](#)[\[Next Hit\]](#)4350.6

4350.6

Chapter 1. General

- 1-1. Introduction. This Handbook provides information to Field Office staff about processing Plans of Action for terminating or extending affordability restrictions for eligible low-income housing under Subtitle A of Title VI of the National Affordable Housing Act, the Low Income Housing Preservation and Resident Homeownership Act of 1990.
- 1-2. Authority.
- A. Subtitle A of Title VI of the National Affordable Housing Act of 1990 (Title VI), which repealed and replaced Title II of the Housing and Community Development Act of 1987 (Title II), restricts an owner of "eligible low-income housing," insured, formerly insured or assisted under Section 221(d) (3) or Section 236 of the National Housing Act, from prepaying a project's mortgage note after 20 years if the mortgage note is eligible to be prepaid without HUD's consent. In this Handbook, all references to "prepaying a project's mortgage" also covers "involuntarily terminating the mortgage insurance." In other words, HUD may approve a Plan of Action that provides for termination of the low-income affordability restrictions through prepayment of the mortgage or voluntary termination of the mortgage insurance contract. Each of the actions has the same effect. That is they each terminate the low-income affordability restrictions of the project Regulatory Agreement. Title VI provides permanent authority to address certain low-income housing as further defined.
- B. These legislative provisions have been implemented in 24 CFR Part 248, Subpart B (in this Handbook, subsequent references to any Part of 24 CFR will be limited to using the word Part or Section and its number), with conforming amendments in Parts 50, 219, 241, 221 and 236. The requirements of Part 248 apply to any project that is eligible low-income housing, as defined in Section 248.101 and Paragraph 1-15

4350.6

below, on or after November 1, 1987. Subpart C pertains only to administering Title II. Subpart A of Part 248 consists of provisions which are applicable to both Subpart B and Subpart C. While Subparts A and B of Part 248 are covered by this Handbook, Subpart C is covered in Notice H91-29. Instructions for implementing Subpart D will be published later. An Interim Rule, for effect amending Part 248 in order to implement Title VI, was published in the Federal Register on April 8, 1992.

- C. Section 602(b) of the National Affordable Housing Act amends Section 250(b) and (c) of the National Housing Act so that a mortgagee may foreclose a mortgage on any eligible low-income housing project, only if the mortgagee also agrees to convey the title to the project to HUD.
- D. Section 602(b) applies regardless of whether the mortgage or applicable regulations permit prepayment without HUD's consent.

1-3. Purpose. The purpose of this Handbook is to provide comprehensive guidance to HUD Field Offices regarding requests to prepay mortgages or extend affordability on eligible low-income housing. This Handbook:

- A. Covers all aspects of receiving, processing, evaluating, and approving Notices of Intent and Plans of Action;
- B. Establishes the procedure for requesting appraisals of eligible low-income housing for which the owner has submitted a Notice of Intent to transfer the project or to extend its low-income affordability restrictions;
- C. Provides standards for evaluating Plans of Action to terminate or extend the current affordability restrictions;
- D. Provides standards for organizing a Resident Council for the purpose of developing a Resident Homeownership Program; and

4/92

1-2

4350.6

- E. Provides an application and approval procedure for a State Agency to be delegated some or all

responsibility for receiving Notices of Intent and processing Plans of Action.

- 1-4. Revisions to Section 250(b) and (c) of the National Housing Act were implemented by Mortgagee letter [91-25](#) in Appendix 1-2.
- 1-5. This Handbook covers all Plans of Action (POAs) filed under Title VI. Since the new law (Title VI), under certain circumstances, maintains the provisions of the old law (Title II), old law provisions will be referred to as Title II and new law provisions will be referred to as Title VI.
- 1-6. Exceptions.
 - A. The requirements of Title VI will not apply to a project that has received approval of a Homeownership Plan under the HOPE Program. Projects receiving an implementation grant under the HOPE Program are not eligible for assistance under Title VI.
 - B. This Handbook does not govern the prepayment of Section 202 mortgages.
- 1-7. Objectives. HUD will approve POAs submitted by owners of eligible low-income housing when the plans meet the statutory and regulatory criteria for approval. Owners whose contractual right to mortgage prepayment has been limited by Title VI are entitled to prompt, efficient processing by the Department. It is HUD's objective to make decisions without delay and in conformance with statutory and regulatory timeframes.
- 1-8. Preemption of State and Local Laws. Title VI provides that a fair Federal preservation policy must apply uniformly to all affected properties regardless of location. For that reason, pursuant to Section 232 of Title VI, HUD may preempt State and local laws that target only prepayment projects for special treatment. Any questions about preemption of State and local laws should be referred to the Field Office Chief Counsel.

1-3

4/92

4350.6

- 1-9. Delegated Responsibility to State Agencies.
 - A. In General, HUD may delegate some or all responsibility for implementing Plans of Action (POAs) to a State Housing Agency if such agency submits a State Preservation Plan acceptable to the Department. State agencies may redelegate such authority to local housing authorities at their discretion. In those cases where such

redelegation takes place, the local housing authority must meet the requirements of Paragraph B below. Headquarters staff must review, evaluate and approve a State's Preservation Plan in accordance with the criteria set forth below.

- B. Implementation. In order to implement a State Preservation Plan, the State agency must submit the following information to the Director of the Office of Multifamily Housing Preservation and Property Disposition in Headquarters:

1. An inventory of low-income housing within the State that is, or will be, eligible low-income housing under Title VI within five years. The inventory must include:
 - a. A brief description of the Federal or State housing program under which the project was built;
 - b. Project name, location, owner and mortgage amount;
 - c. Number of units by income category;
 - d. Type of rent subsidy in effect; and
 - e. The date the project becomes eligible for prepayment.
2. A description of the agency's experience in the area of multifamily financing and restructuring which includes:
 - a. A narrative describing the types of housing produced or rehabilitated;

4/92

1-4

4350.6

- b. The number of units of new or rehabilitated property currently in the inventory; and
 - c. The types and amounts of multifamily financing undertaken (i.e., tax exempt bonds, State programs, Federal programs, and conventional financing).
3. Descriptions of the means available to process Plans of Action including:
 - a. A description of administrative resources that will enable the agency to:

- i. Review appraisals;
 - ii. Assist priority purchasers;
 - iii. Process POA's with incentives;
and
 - iv. Conduct monitoring duties in
connection with approved POA's.
- b. A description of the staffing available to process the State's Plans of Action including, as an attachment:
- i. Resumes of key staff persons who will be directly involved in this activity;
 - ii. Job descriptions and salary rates per job category for the staff that will be involved with this activity; and
 - iii. An organization chart indicating lines of responsibility.
- c. A description of the administrative resources that the agency will commit to the monitoring of approved Plans of Action in accordance with this Title VI.

1-5

4/92

4350.6

4. An independent analysis of the performance of the multifamily housing financed or otherwise monitored by the agency. Loan Management staff review of this data may include but not be limited to:
 - a. Reviewing the State agency's data against Standard and Poor's (S&Ps) "top tiered" bond rating certification as a measure to satisfy the independent analysis requirement.
 - b. Using the annual independent audit of the State Housing Finance Authority's operations and an annual or other periodic review conducted by HUD to satisfy this independent analysis requirement.
- C. Implementation Agreements. The Department may enter into any agreements necessary to implement and approve a State Preservation Plan.

D. Certifications Required:

1. A certification by the public official responsible for submitting the comprehensive housing affordability strategy (CHAS) under Section 105 of the National Affordable Housing Act that the proposed activities are consistent with the approved housing strategy of the State within which the eligible low-income housing is located; and
2. Such other certifications or information that the Department determines to be necessary to implement an approved State Preservation Plan.

E. Fees. Any State agencies participating in HUD's affordable housing program may not charge any fee for accepting Notices of Intent, processing Plans of Action or performing any other duties related to the approval of a Plan of Action. This prohibition does not preclude:

4/92

1-6

 4350.6

1. An owner from paying for its appraisal or share of a joint appraisal under Title VI; or
2. A State agency from collecting fees normally associated with providing and processing loans insured under Part 241.

1-10. Consultation with Other Interested Parties.

- A. The Chief, Loan Management Branch, will designate a person to serve as the liaison between HUD and States, local governments, and other interested parties to:
 1. Ensure that the Initial and Second Notices of Intent (NOIs) are sent to the Chief Executive Officer (CEO), or its designee, at the lowest level of government in a metropolitan area (eg., the CEO of the city rather than the county or State) and to the CEO, or its designee, at the highest level of government, which would be the State, in a non-metropolitan area.
 2. Elicit feedback from State and local governments where projects are located to make sure that the owner has filed the Initial Notice of Intent and the Second Notice of Intent (where applicable) with them and that all Federal requirements have

been met.

3. Gather information specified in Paragraph A.2. above and find out if the owner has provided other information, required by Title VI, to the appropriate State or local agencies, including appraisal information it received from HUD.
4. Develop a list which contains the name of the person, designated by the State or local CEO, to be responsible for implementing the low-income affordable housing program so that HUD:

1-7

4/92

4350.6

- a. Can submit the POA to the appropriate State or local agency to which the owner was not required to send a copy;
 - b. Can ensure that the statutory purpose of Title VI is carried out;
 - c. Can ensure that the POA reaches the person at the agency closest to the task of reviewing and approving the POA so that it will receive the most expeditious review possible.
- B. The Affordable Housing Branch in Headquarters will undertake outreach efforts with National State organizations such as the Council of State and County Agencies (COSCA) and the National Council of State Housing Agencies (NCSHA) to obtain information that will aid in HUD's goal to preserve affordable housing stock. Headquarters staff will compile the information gathered and provide it to Loan Management staff as needed.
- C. Loan Management staff must confer with any appropriate State or local government agency to confirm any State or local assistance that is available to help low-income families preserve and retain their residences as affordable housing. The Loan Management Branch must also consider such views when making determinations about Plans of Action or a Resident Homeownership Plan of Action.
- D. The Department must confer with appropriate interested parties (e.g., community groups, nonprofit organizations, tenant groups) that it believes could assist in the development of a Plan of Action that best achieves the purpose of preserving and maintaining, to the maximum

extent possible, housing that is affordable to low-income families or persons; minimizes the involuntary displacement of tenants currently residing in low-income housing; or facilitates the sale of housing to residents under a Homeownership Program.

4/92

1-8

4350.6

- 1-11. Maintenance of Tenant Income Profiles. Loan Management staff should warn owners of projects that may become eligible to prepay that they must maintain an income profile of tenants as of January 1, 1987. HUD is authorized to approve POAs extending affordability restrictions only if the project maintains the same proportions of very low-, low- and moderate-income families or persons as resided in the project as of January 1, 1987, or as of the date of the POA approval, whichever date results in the highest proportion of very low-income families. If the tenant profile for January 1, 1987 is no longer available, the owner will be able to certify to this effect and will have to submit the earliest available profile of January 1, 1988, or January 1, 1989.
- 1-12. Waivers. Upon making a determination and finding a good cause, the Commissioner may waive any provision of this Handbook or regulations, subject to statutory limitations. Each waiver request must be in writing and must be supported by documentation of the facts and reasons that form the basis for the waiver.
- 1-13. Maintain a Log. The Multifamily Housing Preservation staff in Headquarters will develop a log (automated and manual) which Loan Management staff may use to record the receipt of an Initial Notice of Intent (NOI). Information on the log will include, but will not be limited to, the date of receipt of the Initial NOI, the project name and number, the type of action the owner intends to take (i.e., terminate, extend or transfer) and POA approval date. The log format will allow recordation of data in a sequential, on-going manner and will complement the Plan of Action tracking system now under development in Headquarters. Loan Management staff should also enter information on the log, as specified in this Handbook, whenever the word LOG appears.
- 1-14. Timelines. Appendix 1-1A, 1-1B and 1-1C are timelines that contain the clock Loan Management staff must adhere to when processing NOIs and Plans of Actions.
- 1-15. Definitions.

1-9

4/92

4350.6

Acquisition Loan. A loan or advance of credit made to a qualified purchaser of eligible low-income housing and insured by the Department under Section 241(f) of the National Housing Act for which regulations are promulgated under 24 CFR Part 241, Subpart E.

Adjusted Income. Annual income, as specified in Section 813.106, less allowances specified in the definition of "Adjusted Income" in Section 813.102.

Aggregate Preservation Rent. The extension preservation rent or transfer preservation rent, as defined under this Paragraph for the project.

Annual Authorized Return. The total amount an owner of an eligible low-income housing project may receive in distributions from the project each year, calculated as a percentage (i.e., 8%) of the project's extension preservation equity. This amount may be taken as distribution and/or be used to pay debt service for the equity take-out portion of any loan approved under the Plan of Action.

Basic Rents. The HUD-approved monthly rent for a unit in a Section 236 project determined on the basis of operating the project with payments of principal and interest at the rate of one percent per annum in accordance with Section 236.2.

Bona Fide Offer. A certain and unambiguous offer to purchase an eligible low-income housing project pursuant to Subpart B of Part 248 made in good faith by a qualified purchaser with the intent that such offer result in the execution of an enforceable, valid and binding contract.

Capital Improvement Loan. A direct loan to the owner or purchaser originated by the Department under Part 219.

Community-Based Nonprofit Organization (CBO). A private nonprofit organization that:

A. Is organized under State or local laws;

4/92

1-10

4350.6

B. Has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual;

C. Is neither controlled by, nor under the direction of, individuals or entities seeking to

- derive profit or gain from the organization;
- D. Has applied for, or has a tax exemption ruling from the Internal Revenue Service under Section 501(c) of the Internal Revenue Code of 1986;
 - E. Does not include a public body (including the participating jurisdiction) or an instrumentality of a public body. An organization that is State or locally chartered may qualify as a CBO. However, the State or local government may not have the right to appoint more than one-third of the membership of the organization's governing body and no more than one-third of the board members can be public officials;
 - F. Has standards of financial accountability that conform to Attachment F of OMB Circular No. A-110 (Rev.) "Standards for Financial Management Systems";
 - G. Has among its purposes the provision of decent housing that is affordable to low-income and moderate-income persons, as evidenced in its charter, articles of incorporation, resolutions or by-laws;
 - H. Maintains accountability to low-income community residents by:
 - 1. Maintaining at least one-third of its governing board's membership for low-income neighborhood residents, other low-income community residents, or elected representatives of low-income neighborhood organizations.
 - a. For urban areas, "community" may be a neighborhood or neighborhoods, city, county, or metropolitan area;

1-11

4/92

4350.6

- b. For rural areas, "community" may be neighborhood or neighborhoods, town, village, county, or multi-county area (but not the entire State), provided the governing board contains low-income residents from each county of the multi-county area; and
 - 2. Providing a formal process for low-income, program beneficiaries to advise the organization on its decisions regarding the acquisition, rehabilitation and management of affordable housing.

Debt Service Coverage. An amount reserved to make loan payments in the event of unanticipated project expenses. For purposes of determining preservation rents, debt service coverage (DSC) will be the amount needed to bring debt service (DS) to 90 percent of the total debt service and the amount reserved, i.e., debt service coverage is set to the amount such that:

Example: $DS = .90(DS + DSC)$
 $DSC = 1/9 DS$
 $DSC = .111 DS$

Default. For purposes of determining eligibility for filing a Notice of Intent, default is the failure of the owner to make any payment due under the mortgage (including the full amount of the debt if the mortgagee has accelerated the debt on the basis of a non-monetary default) within 30 days after such payment becomes due.

Eligible Low-Income Housing. Any project that is not subject to a use restriction, imposed by the Department, which restricts it to low and moderate income use for a period at least equal to the remaining term of the mortgage, and;

A. That is financed by a loan or mortgage:

1. Insured or held by the Secretary under Section 221(d)(3) of the National Housing Act and assisted under Part 215 or project-based assistance provided under Sections 880, 881 or 886;

4/92

1-12

4350.6

2. Insured or held by the Secretary under Section 221 of the National Housing Act and bearing a below market interest rate as provided under Section 221.518(b);
 3. Insured, assisted, or held by the Department or a State or State agency under Section 236 of the National Housing Act; or
 4. A purchase money mortgage held by the Department for a project which, immediately prior to HUD's acquisition, would have been classified under Paragraph A.1., 2., or 3. of this definition; and
- B. That, under regulation or contract in effect before February 5, 1988, is or will within 24 months become eligible for prepayment without prior approval of the Department.

Equity Loan. A loan or advance of credit to the owner of eligible low-income housing and insured by the Department under Section 241(f) of the National Housing Act, for which regulations are promulgated under 24 CFR Part 241, Subpart E.

Extension Preservation Equity. The extension preservation equity of a project is:

- A. The extension preservation value of the project determined under Section 248.111; less
- B. The outstanding balance of any debt secured by the property.

Extension Preservation Rent. The extension preservation rent is the gross potential income for the project that would be required to support:

- A. The annual authorized return;
- B. Debt service on any rehabilitation loan for the project;
- C. Debt service on the federally-assisted mortgage for the project;

1-13

4/92

4350.6

- D. Project operating expenses; and
- E. Adequate reserves.

Extension Preservation Value. The fair market value of the project based on the highest and best use of the project as multifamily market-rate rental housing.

Fair Market Rent. The Section 8 existing fair market rent (FMR) in effect and as defined under Section 882.102. Section 8 FMRs are applicable to the jurisdiction in which the project is located and are adjusted, where appropriate, for projects in which tenants pay their own utilities. However, no utility adjustments will be made to the fair market rent for purposes of determining the Federal Cost Limit.

Federal Cost Limit. The greater of 120 percent of the Section 8 existing fair market rent for the market area in which the project is located or 120 percent of the prevailing rents in the relevant local market area in which the project is located.

Federally-Assisted Mortgage. Any mortgage, as defined in this Paragraph, any insured operating loss loan secured by the project and any loan insured by the Department under Part 241.

Floor Rents. Floor rents are those rents paid by moderate income tenants in the case of a reduction in income. The floor rents protect owners from large or sudden decreases in rental income.

Good Cause. With respect to displacement, the temporary or permanent uninhabitability of the project justifying relocation of all or some of the project's tenants (except where such uninhabitability is caused by the actions or inactions of the owner), or actions of the tenant that, under the terms of the tenant's lease and applicable regulations, constitute a basis for eviction.

HOME Investment Trust Fund. A public fund established in the general local or State government in which a project is located pursuant to Title II of the National Affordable Housing Act.

4/92

1-14

4350.6

Homeownership Program. A program developed by a Resident Council for the sale of an eligible low-income housing project to the tenants in accordance with the standards in Section 248.173 or 248.175 and Chapter 9 of this Handbook.

Initial Notice of Intent. An owner's notification to the Department of its intention to terminate the low-income affordability restrictions on the project through prepayment of the mortgage or voluntary termination of the insurance contract, to extend the low-income affordability restrictions on the project, or to transfer the project to a qualified purchaser.

Interest Reduction Payments. Payments made by the Department pursuant to a contract to reduce the interest costs on a mortgage insured under Section 236 of the National Housing Act.

Limited Equity Cooperative. A cooperative housing corporation in which the income eligibility of purchasers or appreciation upon resale of membership shares, or both, are restricted in order to maintain the project as available to and affordable by low and moderate income families and persons.

Low-income Affordability Restrictions. Limits imposed by regulation or regulatory agreement on tenant rents, rent contributions, or income eligibility with respect to eligible low-income housing.

Low-income Families. Families or persons whose incomes do not exceed the levels established for low-income families under Part 813.

Low Vacancy Area. A local market area in which the current supply of decent, safe and sanitary, vacant, available rental units, as a proportion of the total overall rental inventory in the area is not sufficient to allow for normal growth and mobility. This determination takes into account the need for vacancies resulting from turnover and the need to meet growth in renter households. The determination of a low vacancy area will be made by the Department, using the most recent available data for the market area on the rental inventory, renter households,

1-15

4/92

4350.6

rental vacancy rates and other factors as appropriate.

Mandatory Sale. When an owner submits a Second Notice of Intent to prepay the mortgage note and terminate the affordability restrictions because the transfer preservation rent exceeds the Federal Cost Limit, the owner must offer the project for sale and must accept any bona fide offer equal to the transfer preservation value and sell the project to the purchaser.

Moderate Income Families. Families or persons whose incomes are between 80 and 95 percent of median area income, as determined by the Department, with adjustments for smaller and larger families.

Mortgage. The mortgage, security deed or deed of trust insured or held by the Secretary or a State or State agency under Parts 221 or 236. Also, the purchase money mortgage taken back by the Secretary in connection with the sale of a HUD-owned project and held by the Department, where such mortgage, security deed, or deed of trust or purchase money mortgage is secured by eligible low-income housing.

Nonprofit Organization Eligible to Purchase or Otherwise Participate. Any private, nonprofit organization or association that:

- A. Is incorporated under State or local law;
- B. Has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual;
- C. Complies with standards of financial accountability acceptable to the Department; and
- D. Has among its principal purposes, significant activities related to the provision of decent housing that is affordable to very low, low, and

moderate income families.

Notice of Intent. Initial Notice of Intent or Second Notice of Intent as defined in this Paragraph.

4/92

1-16

4350.6

Offering Price. The price that a purchaser offers a seller for the Project.

Owner. The mortgagor or trustor under the mortgage secured by eligible low-income housing.

Participating Jurisdiction. For purposes of the Resident Homeownership program established in, Section 248.173, any State or unit of general local government that has been designated eligible to maintain a HOME Investment Trust Fund in accordance with Section 216 of Title II of the National Affordable Housing Act.

Personal Benefit Expenses (PBEs). HUD's or the contract administrator's estimate of the average monthly utility bills (except telephone) for an energy-conscious household paid directly by the tenant.

Plan of Action. A plan providing for the termination of the low-income affordability restrictions on the project through prepayment of the mortgage or voluntary termination of the insurance contract, for extension of the low-income affordability restrictions on the project, or for the transfer of the project to a qualified purchaser. A plan for a Homeownership Program constitutes a plan of action for a Resident Homeownership program.

Prepayment. Prepayment in full of a mortgage, or a partial payment or series of partial prepayments that reduces the mortgage term by a least six months, except where the prepayment in full or partial prepayment results from the application of condemnation proceeds.

Preservation Equity. The extension preservation equity or transfer preservation equity, as defined under this Paragraph.

Preservation Value. The extension preservation value or transfer preservation value, as defined under this Paragraph.

Prevailing Rents. Gross rents established for the relevant local market, as defined in this Paragraph,

1-17

4/92

4350.6

and adjusted where appropriate, for projects in which tenants pay their own utilities. It is the gross rent a tenant is likely to pay for this particular housing at market rate rental conditions in this location.

Priority Purchaser. Any entity that is not a related party to the owner and that is either:

- A. A Resident Council organized to acquire the project in accordance with a Resident Homeownership program that meets the requirements of Section 248.173 or 248.175; or
- B. Any nonprofit organization or State or local agency that agrees to maintain low-income affordability restrictions for the remaining useful life of the project.

NOTE: A nonprofit organization or State or local agency that is affiliated with a for-profit entity for purposes of purchasing a project under Subpart B of Part 248 will not be considered a priority purchaser.

Public Housing Agency. A public housing agency means any State, county, municipality, or other governmental entity or public body (or its agency) which is authorized to engage in or assist in the development or operation of lower income housing.

Purchase Price. The maximum sales price that HUD will use to determine the amount of incentives. The actual purchase price of the project must not exceed the offering price minus any residual receipts that will be transferred with the project.

Qualified Purchaser. Any entity that is not a related party to the owner and that agrees to maintain low-income affordability restrictions for the remaining useful life of the project. Qualified purchasers include for-profit entities and priority purchasers.

Regulatory Agreement. The agreement executed by the owner and the Department or a State agency providing for the regulation of the operation of the project.

4/92

1-18

4350.6

Related Party. An entity that, either directly or indirectly, is wholly or partially owned or controlled by the owner of the project being transferred under Part 248, Subpart B, is under whole

or partial common control with such owner, or has any financial interest in such owner or in which such owner has any financial interest. However, this will not prohibit a nonprofit organization from buying-out the interest of its limited dividend or for-profit partners in connection with the sale of eligible low-income housing under Subpart B of Part 248, as long as the sale is made on an arms length basis. Also, the partners who sell their interest must completely divest themselves of any input in the continued operation of the project.

1. The purchaser and the owner will not be deemed related parties on the basis that financing is provided to the purchaser by the seller or a management company affiliated with the seller, as long as:
 - A. Only a loan, and not a grant, is provided;
 - B. The financing is provided for the acquisition of the project, the rehabilitation of the project, or both;
 - C. In the case of financing for the acquisition of the project, the sum of the principal amount of the loan, plus the amount of the Section 241(f) acquisition loan and any Federal grant to cover acquisition of the project, does not exceed the sum of the sales price and the expenses associated with the acquisition, loan closing and implementation of the plan of action and, in the case of financing for the rehabilitation of the project, the principal amount of the loan does not exceed the equity requirements applicable to the rehabilitation loan or capital improvement loan obtained by the purchaser under Part 241 or Part 219;

1-19

4/92

4350.6

- D. The loan is not a condition of accepting a bona fide offer or entering into a sales contract;
- E. The seller has no input in the continued operation of the project as a result of the loan; and
- F. In the case of a loan provided by a management company that is affiliated with the seller, the execution of a management contract between the purchaser and the management company is not a condition of the loan.

2. This rule does not bar an owner, or former owner, from membership on a nonprofit organization's board of directors, as long as:
 - A. The owner, or former owner, participates only in its personal capacity, without compensation, and holds a nonvoting membership; and
 - B. The purchaser and the owner will not be deemed related parties solely by reason of the purchaser's retention of a property management entity of a company that is owned or controlled by the owner or a principal thereof, if retention of the management company is neither a condition of sale nor part of consideration paid for the project and the property management contract is negotiated by the qualified purchaser on an arm's length basis.

Relevant Local Market. An area geographically smaller than the market area established by the Department for purposes of determining the Section 8 existing fair market rent. The area is identifiable as a distinct rental market area in which similar projects and units would effectively compete with the subject project for potential tenants.

Relocation Expenses. Relocation expenses consist of payment for:

1-20

4/92

4350.6

- A. Advisory services that include timely information, counseling (including the provision of information on a resident's rights under the Fair Housing Act), and referrals to suitable, affordable, decent, safe and sanitary alternative housing; and
- B. Actual and reasonable moving expenses.

Remaining Useful Life. With respect to eligible low-income housing, the period during which the physical characteristics of the project remain in a condition suitable for occupancy, assuming normal maintenance and repairs are made and major systems and capital components are replaced as becomes necessary.

Reserve for Replacements. The escrow fund established under the Regulatory Agreement for the purpose of ensuring the availability of funds for needed repair and replacement costs.

Resident Council. Any incorporated nonprofit organization or association in which membership is available to all the tenants, and only the tenants, of a particular project and:

- A. Is representative of the residents of the project;
- B. Adopts written procedures providing for the election of officers on a regular basis; and
- C. Has a democratically elected governing board, elected by the residents of the project.

Residual Receipt Fund. The fund established under the Regulatory Agreement for holding cash remaining after the distribution of all allowable distributions from surplus cash as it is defined in the Regulatory Agreement.

Return on Investment. The amount of allowable distributions that a purchaser of a project may receive under a Plan of Action under Section 248.157 or 248.161.

1-21

4/92

4350.6

Secretary. The Secretary of Housing and Urban Development.

Second Notice of Intent. An owner's notification of its intent to transfer the project. An owner submits a Second NOI after it receives the information which HUD staff developed and sent to it after evaluating data from the appraisal(s).

Section 8 Assistance. Rental assistance provided under Parts 880 through 887.

Special Needs Tenants. Those elderly persons, 62 years of age or older, elderly families, or families that include disabled persons, as defined in Section 812.2. Special needs tenants also means large families requiring units with three or more bedrooms.

State Assisted or Subsidized Mortgage. A mortgage which is assisted or subsidized by an agency of a State government without any Federal mortgage subsidy.

Tenant Representative. A designated officer of an organization of the project's tenants, a tenant who has been elected to represent the tenants of the project, or a person or organization that has been formally designated or retained by an organization of the project's tenants to represent the tenants with respect to Subpart B of Part 248.

Termination of Low-income Affordability Restrictions. The elimination of low-income affordability restrictions under the Regulatory Agreement through termination of mortgage insurance or prepayment of the mortgage.

Transfer Preservation Equity. The transfer preservation equity of a project is:

- A. The transfer preservation value of the project determined under Section 248.111; less
- B. The outstanding balance only of the federally-assisted mortgage(s) secured by the project prior to the granting of incentives.

1-22

4/92

4350.6

Transfer Preservation Rent. For purposes of receiving incentives pursuant to a sale of the project, transfer preservation rent is the gross income for the project that would be required to support:

- A. Debt service on the loan for acquisition of the project;
- B. Debt service on any rehabilitation loan for the project;
- C. Debt service on the federally-assisted mortgages secured by the project;
- D. Project operating expenses; and
- E. Adequate reserves.

Transfer Preservation value. The fair market value of the project based on its highest and best use.

Very Low-Income Families. Families or persons whose incomes do not exceed the level established for very low-income families under Section 813.102.

Voluntary Sale. When an owner submits a Second Notice of Intent to transfer the project, it must offer the project for sale to a qualified purchaser if the transfer preservation rent does not exceed the Federal Cost Limit. The owner, however, is not obligated to accept any offer under this category.

Voluntary Termination of Mortgage Insurance. The termination of all rights under the mortgage insurance contract and of all obligations to pay future insurance premiums.

Windfall Profits. Receipt of incentives under this Act by owners who, in the absence of Title VI, would not have prepaid their mortgages given local market conditions. To prevent windfall profits, the Secretary may make available incentive payments only to owners in those rental markets where there is an inadequate supply of decent, affordable housing or where necessary to accomplish the other public policy objectives under Title VI.

1-23

4/92

[\[Search\]](#) [\[Prev List\]](#) [\[Doc List\]](#) [\[Next List\]](#) [\[First Doc\]](#) [\[Prev Doc\]](#) [\[Curr Doc\]](#) [\[Next Doc\]](#) [\[Last Doc\]](#)
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Processing Plans of Action Under the Low-Income Housing

Directive Number: [\[Prev Hit\]](#)[\[Next Hit\]](#)4350.6

4350.6

Chapter 2. Eligibility

- 2-1. Purpose. This chapter sets forth the criteria that will be used to identify housing projects covered by Title VI.
- 2-2. Eligible Low-income Housing.
- A. Title VI covers projects whose mortgages are insured, HUD-held, or assisted under the National Housing Act as follows:
1. Section 221(d) (3) Market Rate and receiving assistance under a Section 8 contract or a Rent Supplement Contract which has been converted to a Section 8 Contract. This includes any Section 8 New Construction, Substantial Rehabilitation, or Loan Management Set-Aside projects insured under Section 221(d) (3);
 2. Section 221(d) (3) below market interest rate (BMIR), with a Limited Dividend owner, which is receiving a below market interest rate pursuant to Section 221(d) (5);
 3. Section 236, including State agency (non-insured) projects;
 4. Formerly insured under one of the above sections of the National Housing Act, acquired by the Department at a foreclosure sale, and subsequently sold with a purchase money mortgage held by the Department, regardless of the assistance rendered at the time of sale.
- B. The owner must, by regulation or contract that was in effect on or before February 5, 1988, be eligible, or within 24 months become eligible for prepayment without the Department's approval.
- C. If a project was covered by Title VI at any time on or after February 5, 1988, (that is, if it met both criteria A. and B. above on or after

2-1

4/92

4350.6

February 5, 1988), it retains its eligibility until the expiration of its original mortgage or until the Plan of Action (POA) is approved;

- D. If the project meets the criteria in Paragraph B above, it also retains its eligibility until the owner voluntarily enters into an agreement (e.g., receipt of flexible subsidy funds or a transfer of physical assets governed by Section 181(g) of the HCD Act of 1987) to extend low and moderate income use.

2-3. Ineligibility Due to Default Under the Mortgage.

An owner of eligible low-income housing intending to prepay the mortgage or voluntarily terminate the mortgage insurance contract, extend the low-income affordability restrictions of the housing, or transfer the housing to a qualified purchaser, may file an Initial Notice of Intent (NOI) unless the mortgage covering the project:

- A. Continued in default or fell into default on or after November 28, 1990, and the mortgage has been assigned to HUD as a result of such default; or
- B. Continued in or fell into default on or after November 28, 1990, while the mortgage was held by the Department; or
- C. Fell into default prior to November 28, 1990, and the owner entered into a workout agreement prior to that date, but again defaulted on or after November 28, 1990, under the workout agreement, (and if the agreement was with an insured mortgagee, the mortgage has been assigned to HUD as a result of the default under the workout agreement); or
- D. Fell into default prior to November 28, 1990, but has been current since that date and the owner has not agreed to recompense the appropriate insurance fund for losses, if any, as determined by HUD, sustained by the fund as a result of any workout or other arrangement agreed to by the Department and the owner with respect to the defaulted mortgage. The owner

2-2

4/92

4350.6

must submit a letter with its Initial NOI agreeing to recompense the insurance fund for any losses resulting from such default.

2-4. Ineligibility Due to Use Restrictions. Projects listed in Paragraph 2-2.A. above are ineligible if:

- A. A flexible subsidy loan was made on or after December 21, 1979;
- B. A project with a HUD-held mortgage subject to a Transfer of Physical Assets (TPA) or HUD-insured TPA with additional assistance occurred pursuant to the provisions of HUD Notice H91-57, Restrictions on the Sale of Subsidized Rental Housing Imposed by Section 181(g) of the Housing and Community Development Act of 1987 in Appendix 2-1, effective June 16, 1989;
- C. The project is currently receiving payments under a Rent Supplement Contract; or
- D. The project was originally developed by non-profit sponsors and received preliminary approval of a TPA to a limited dividend ownership after September 15, 1980 (the effective date of the regulations at Part 265). Projects transferred before that date are eligible low-income housing projects.

2-5. Projects Governed by Section 250(a).

- A. Section 250(a) of the National Housing Act, and not Title VI, governs the prepayment of mortgages in cases where, under the terms of the mortgage and applicable program regulations, HUD's approval is required for such prepayment. However, HUD may approve the prepayment of such a mortgage only if the project is no longer meeting a need for rental housing for lower income families in the area and if requirements concerning displacement and tenant notice and comment are met. HUD construes Section 250(a) as being applicable only in cases where the project receives subsidy that is tied to the mortgage.

2-3

4/92

4350.6

- B. Thus, Section 250(a) governs the prepayment of Sections 221(d)(3) market rate mortgages with Rent Supplement Assistance, as well as Section 221(d)(3) BMIR and Section 236 mortgages if less than 20 years have expired from the date of final endorsement or if the project is owned by a non-profit mortgagor. Section 250(a) is not

applicable to a Section 221(d)(3) market rate project with Section 8 LMSA assistance, or to a purchase money mortgage.

- C. Exception. During the 20th year from final endorsement, a project may be subject to Section 250(a) and yet still be eligible to file a POA under Title VI. In such cases, the mortgage may be prepaid during the 20th year only if HUD makes the determinations listed in Section 250(a). Once the 20th year has ended, the mortgage may be prepaid only in accordance with a POA approved by HUD under Title VI.

- 2-6. Projects Governed by neither Title VI nor Section 250(a). The prepayment of certain mortgages (eg., Section 221(d)(3) market rate mortgages with a limited distribution type mortgagor where prepayment occurs during the first twenty years, and purchase money mortgages with prepayment prohibitions) requires HUD's approval, but is subject to neither Section 250(a) nor Title VI. Loan Management staff should contact the Office of Multifamily Housing Preservation and Property Disposition, Affordable Housing Branch, in Headquarters, regarding the standards for approval of prepayment of such mortgages.

- 2-7. Transition Provisions for Those Who Filed Title II Notices of Intent.

- A. Eligibility for Transition Election. An owner of eligible low-income housing may, under certain circumstances, choose whether to proceed under the provisions of Title II or Title VI. Owners may elect to be subject to provisions of either Title II or Title VI if:

1. Their projects became eligible low-income housing before January 1, 1991, because the

4/92

2-4

 4350.6

20th anniversary of final endorsement was on or before December 31, 1992; and

2. They filed a valid NOI under the provisions of the Notice H90-88 "Transition Rule for Filing NOIs Pursuant to Section 604(a) of the Cranston Gonzalez National Affordable Housing Act of 1990," on or before December 31, 1990; and
3. They did not submit a POA on or after October 11, 1990; and
4. They are eligible under Title VI pursuant

to the default provisions listed in Paragraph 2-3 above.

- B. Retention of Eligibility for Transition Election. An owner who filed a POA prior to October 11, 1990, remains eligible to convert to Title VI even if the POA has been approved and/or funded under Title II. The owner must submit a Form HUD-9608, Initial NOI, Appendix 3, to the Loan Management Branch within 30 days after the effective date of the Interim Rule as specified in Paragraph 1-2.B. or within 30 days after Field Office notification of its final approval of the POA under Title II, whichever is later. The Initial NOI must state that the owner is exercising its conversion right pursuant to Section 248.5(b). In awarding incentives to an owner who previously submitted a POA under Title II and now wishes to proceed under Title VI, the Loan Management staff will make adjustments for incentives already received under Title II.
- C. Procedures for Conversion.
1. Submission of Election to Proceed. An owner who meets the qualifications of Paragraph A above and desires to proceed under Title II, or desires to maintain the choice for Title II incentives while proceeding through the Title VI appraisal process must submit to the Loan Management Branch within 30 days after the effective

2-5

4/92

4350.6

date of the Interim Rule, as specified in Paragraph 1-2.B., a Form HUD-9610, Notice of Election to Proceed, Appendix 2-2.

2. Owners choosing to Proceed in Title VI. An owner who elected to proceed through the Title VI appraisal process while maintaining its option for Title II incentives must designate their choice by filing a NOI pursuant to Notice H91-29, Processing Plans of Action under the Housing and Community Development Act of 1987, within 30 days of receiving the Information from HUD about the appraisal process as specified in Chapter 5, Paragraph 5-6.
3. An owner who meets the qualifications of Paragraph B above and desires to proceed under Title VI must submit to the Loan

Management Branch within 30 days of the effective date of the interim rule or within 30 days after the Department notifies the owner of HUD's final approval of the Title II POA, whichever is later, a Form HUD-9610, Notice of Election to Proceed, Appendix 2-2.

- D. Failure to Take Appropriate Action for Transition Election.
1. Forfeit Right to Elect Title II Provisions.
 - a. Any eligible owner who failed to file a Form HUD-9610 within 30 days of publication of the Interim Rule, may not proceed under Title II, but may proceed only under Title VI by filing a new Form HUD-9608.
 - b. Any owner who filed a Form HUD-9610 within 30 days after the effective date of the Interim Rule and chose to proceed through the Title VI appraisal process, but did not choose Title II incentives by submitting a NOI within 30 days of receiving the information

2-6

4/92

4350.6

from HUD, as described in Paragraph C.2. above, may not proceed under Title II. Such owner is subject to the timeframe provisions of Paragraph E below.

2. Forfeit Right to Elect Title VI Provisions. If an owner eligible under Paragraph B above fails to file a NOI within the timeframe specified in Paragraph C.3. above, it forfeits its right of conversion.
- E. Deadlines for Further Action. The date on which the Notice of Election to Proceed, Form HUD-9610, or a new Initial NOI, Form HUD-9608, is received in the Field Office will be deemed the date of the filing of the Initial NOI for all deadlines required of the owner or of the Department.
- F. Owner Changes Mind after Conversion. Any owner, who exercised its option under the Transition Provisions and then decides to switch its participation from Title VI to Title II after the Department incurs the cost of having an appraisal performed, as required under Title

VI, must reimburse HUD for any cost incurred by HUD for the appraisals within 30 days of receipt of a bill covering these expenses.

2-7

4/92

[\[Search\]](#) [\[Prev List\]](#) [\[Doc List\]](#) [\[Next List\]](#) [\[First Doc\]](#) [\[Prev Doc\]](#) [\[Curr Doc\]](#) [\[Next Doc\]](#) [\[Last Doc\]](#)
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Processing Plans of Action Under the Low-Income Housing

Directive Number: [\[Prev Hit\]](#)[\[Next Hit\]](#)**4350.6**

4350.6

Chapter 3. Initial Notice of Intent

- 3-1. Purpose. This chapter describes proper submission and filing of an owner's Initial Notice of Intent (NOI), which will initiate participation in this program. The Loan Management Branch will process the Initial NOI in accordance with Paragraph 3-6.
- 3-2. Submission. Not sooner than 24 months prior to becoming eligible under the mortgage for prepayment without the prior approval of the Department, owners wishing to participate in the program must submit Form HUD-9608, Initial NOI, Appendix 3.
- 3-3. Content.
- A. Using Form HUD-9608, an owner must submit information about the project and the mortgage to Loan Management. Further, the owner will check one of three boxes to indicate whether it intends to request incentives for extending the low income affordability restrictions, transfer the project to a new owner who agrees to maintain such restrictions or prepay the mortgage and terminate the low income affordability restrictions. The owner will also certify that the Initial NOI has been submitted and distributed as required in Paragraphs 3-4 and 3-5.
 - B. The reverse side of Form HUD-9608, Appendix 3A, provides a letter to the tenants. The letter contains:
 - 1. Information about the owner's plans;
 - 2. A request to tenants to notify the owner and HUD about any individual or organization they (the tenants) have retained or designated to represent them;
 - 3. An invitation to tenants to provide input to a Capital Needs Assessment, when appropriate; and

4350.6

4. An advisory that if the project is sold, Resident Councils may be able to purchase it for continued rental or under a Homeownership Program.
 - C. If the mortgage for the property had fallen into default prior to November 28, 1990, but since that time has been current under a workout agreement, as specified in Chapter 2 Paragraph 2-3.D, the owner must submit with its initial NOI a letter agreeing to recompense the FHA insurance fund for losses resulting from that default.
- 3-4. Filing. Owners must simultaneously submit Form HUD-9608 to the parties listed below:
- A. The appropriate HUD Field Office;
 - B. The relevant State or Local Agency as determined in Paragraph 1-10.A.1.;
 - C. The mortgagee; and
 - D. Each occupied unit in the project and any tenant representative known to the owner. If, to the best of the owner's knowledge, no such tenant representative exists, then the owner must certify that he knows of no such representative. The owner must also include with the Initial NOI, a Form-HUD 9608A, Notification of the Availability of Translations, Appendix 3C, which advises tenants in 10 languages of the availability of translations.
- 3-5. Posting of the Initial Notice of Intent.
- A. The owner must post a copy of the Initial NOI in a readily accessible location within each affected building of the project. Appendix 3C must be posted alongside the Initial NOI.
 - B. Upon the request of any non-English speaking tenants residing in the project, the owner must provide a translation of the Initial NOI to such tenant. To obtain one or more translations, the owners should contact the Loan Management

3-2

4/92

4350.6

Branch, which will provide translations. The Multifamily Housing Preservation Branch, in

Headquarters, has arranged for the translation of the Initial NOI into ten languages: Arabic, Chinese, Farsi, French, Japanese, Korean, Russian, Spanish, Thai, and Vietnamese. Loan Management staff may ask the Regional Contracting Officer to contract locally for the translation of the initial NOI into languages not listed above. If such translations are made, the Loan Management staff should notify the Multifamily Housing Preservation staff in Headquarters who in turn may provide them to other Field Offices requesting such translations.

- 3-6. Processing the Initial Notice of Intent.
- A. Upon receipt of an Initial NOI, Loan Management staff will begin a log for the project. LOG date received.
 - B. Loan Management staff will determine if the project is eligible to submit an Initial NOI in accordance with Chapter 2.
 - C. If the Initial NOI is to terminate the affordability restrictions, Loan Management staff will process it according to the guidelines in Chapter 4.
 - D. If the Initial NOI is to extend the affordability restrictions by accepting incentives or transferring the project, Loan Management staff will process it according to the guidelines in Chapter 5.
 - E. If a letter agreeing to recompense the insurance fund in accordance with Paragraph 3-3.C. is submitted with the Initial NOI, Loan Management staff must immediately contact the Office of Mortgage Insurance Accounting and Servicing (MIAS) for a determination of losses to the FHA insurance fund as a result of the default of the mortgage. Once this determination is made, Loan Management will send a request for repayment to the owner LOG date sent . The owner must

3-3

4/92

4350.6

recompense the Department within 30 days of receipt of a letter indicating the amount of such losses, or the Initial NOI will be considered void. If a determination is made that the default resulted in no loss to the insurance fund, Loan Management staff will send a letter to the owner indicating that no repayment is necessary.

4/92

3-4

[\[Search\]](#) [\[Prev List\]](#) [\[Doc List\]](#) [\[Next List\]](#) [\[First Doc\]](#) [\[Prev Doc\]](#) [\[Curr Doc\]](#) [\[Next Doc\]](#) [\[Last Doc\]](#)
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Processing Plans of Action Under the Low-Income Housing

Directive Number: [\[Prev Hit\]](#)[\[Next Hit\]](#)**4350.6**

4350.6

Chapter 4. Processing Initial Notices of Intent (NOIs) to Terminate Affordability Restrictions

- 4-1. Purpose. This Chapter outlines the steps Loan Management staff must take when it receives an Initial NOI to terminate affordability. It explains what Loan Management must return to the owner and what it must instruct the owner to do.
- 4-2. Action Upon Receipt of an Initial Notice of Intent.
- A. Loan Management Staff will Distribute Initial Notice of Intent. Within five days of receipt of an Initial NOI to terminate affordability restrictions, LOG date distributed Loan Management staff will distribute it, by overnight mail if mailing is necessary, to the Economic and Market Analysis Staff (EMAS), the Office of Fair Housing and Equal Opportunity (FHEO), and the Housing Programs Branch, Attention: Valuation Branch, with a request that they supply information relevant to the market area.
 - B. Other Branches Provide Information. Within 90 days of receipt of the Initial NOI, EMAS, FHEO, and Valuation Branch will provide:
 - 1. Any readily available data and information on the characteristics and market conditions of comparable affordable housing and the overall rental market in the housing market area; including such things as estimates of the current supply of subsidized and market rate rental housing, occupancy and vacancy conditions in rental housing, rent ranges and recent trends in rents, studies or reports on the overall rental market supply demand conditions previously prepared by EMAS, and vacancy rates and length of waiting lists in assisted housing in the market area.
 - 2. The impact of the termination of affordability restrictions on minorities in the market area.

4-1

4/92

4350.6

- 4-3. Loan Management Staff sends Information to the Owner. Within six-months after HUD receives the Initial NOI, Loan Management staff will send Appendix 4, Letter to Owner Transmitting Information for Terminating Affordability Restrictions. LOG date letter sent This letter advises the owner of the requirements for submitting a Plans of Action (POA) to terminate affordability restrictions and, by means of Appendix 4A, Information About Market Areas, transmits the information provided by other Divisions/Branches which the owner will need to develop the POA.
- 4-4. Information to Tenant Representatives and State and Local Governments. Simultaneously with notifying the owner, Loan Management staff will send the tenant representative(s) and the appropriate State and local government agencies any information it provided to the owner by sending them a copy of the letter sent to the owner and all attachments (see Appendix 4A and 4B) LOG date sent .
- 4-5. Information to Tenants. It is Loan Management's responsibility to make the information sent to owners available to tenants by posting. Therefore, the letter sent to the owner in accordance with Paragraph 4-3, will instruct the owner to post the letter with all attachments including Appendix 4B, Information for Tenants. The owner must post this information which contains the rights and opportunities of tenants in each affected building. By means of Appendix 4B, Information for Tenants, tenants must be informed of:
- A. The opportunity to provide comments to the Loan Management Branch at all stages of the decision-making process;
 - B. The name, address, and phone number of any tenant representative(s) who has been provided this information, and may be expected to consult with, provide guidance, and act on behalf of the tenants;
 - C. Assistance which may be provided to tenants if the project mortgage is prepaid including Section 8 rental assistance and guarantees of

4/92

4-2

4350.6

continued occupancy in accordance with Chapter

10 of this Handbook; and

D. Information about the market area sent to owner by Appendix 4A.

4-6. Submission and Evaluation of Plans of Action. POAs will be evaluated in accordance with the guidelines provided in Chapter 8 reserved .

4-3

4/92

[\[Search\]](#) [\[Prev List\]](#) [\[Doc List\]](#) [\[Next List\]](#) [\[First Doc\]](#) [\[Prev Doc\]](#) [\[Curr Doc\]](#) [\[Next Doc\]](#) [\[Last Doc\]](#)
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Processing Plans of Action Under the Low-Income Housing

Directive Number: [\[Prev Hit\]](#)[\[Next Hit\]](#)**4350.6**

4350.6

Chapter 5. Processing Initial Notices of Intent (NOIs) to Extend Affordability Restrictions by Retention or Sale

- 5-1. Purpose. The purpose of this Chapter is to outline the steps Loan Management staff must take when it receives an Initial Notice of Intent to extend affordability by either retaining the project or selling it. It explains what Loan Management staff need to know about the Capital Needs Assessment and Appraisal process and explains how the information developed in these steps will be used.
- 5-2. Windfall Profits Test.
- A. To prevent windfall profits to owners, the Department may make available incentives only to owners in those rental markets where there is an inadequate supply of decent, affordable housing or where it is necessary to accomplish the other public policy objectives. The preservation solution is not to be used to provide incentives to owners who would not have prepaid, given local market conditions. Therefore, this test is part of the criteria for determining a project's eligibility to receive incentives.
- B. Consistent with the statutory requirements, the test will be carried out in three parts in a manner to encompass the concerns about affordability and adequacy of supply and other public policy objectives.
1. The Windfall Profits Test will be conducted in accordance with the Notice published in Federal Register 3177.
 2. Immediately upon receiving an Initial NOI to extend affordability by retention or sale, Loan Management staff will forward the Initial NOI to the Economic and market Analysis Staff (EMAS) for review under the Windfall Profits Test LOG date sent .
 3. If the Loan Management staff determines that the owner should be denied eligibility

5-1

4/92

4350.6

to apply for incentives because of the results of the Windfall Profits Test, the owner will be informed within 30 days of submitting an Initial NOI and the process under this Handbook will end. LOG end of process If Loan Management staff determines that the project is eligible to receive incentives, it will continue the process as described in the remainder of this Handbook.

5-3. Submission of the Initial Notice of Intent to Housing Programs Branch.

A. Concurrently with submission of the Initial NOI to EMAS, Loan Management staff will also forward three copies of the Initial NOI to the Housing Programs Branch, Attention: Architectural and Engineering (A & E) Branch and Valuation Branch. LOG date sent Loan Management staff must also provide the following information:

1. Last three years' physical inspection reports and owner's responses and clearance of findings from the Housing Management loan files;
2. Any correspondence relating to the condition of the project during the last three years;
3. Last three years of project financial statements;
4. As-built plans and specifications (if available);
5. Page 1 of Form HUD-92013, completed by Housing Management;
6. Expiration date of the current Section 8 contracts.

B. A & E will perform a Capital Needs Assessment in accordance with Housing Development's Processing Instructions for Implementing Title VI (Implementation Memorandum), but if unable to do

4/92

5-2

4350.6

so, will arrange with the Regional Contracting Officer (RCO) to contract for a Capital Needs Assessment. Within 15 days of receipt of the Initial NOI, the RCO will contract for the Capital Needs Assessment, if applicable, and Housing Development staff will schedule the Assessment and report the date to the Loan Management Branch. LOG receipt of date for inspection Please note that since a portion of the Capital Needs Assessment, in accordance with Paragraph 5-7, must be completed within 60 days of receipt of the initial NOI, Loan Management staff should not wait for the results of the Windfall Profits Test before scheduling the inspection. The inspection may have to be cancelled if the project does not pass the Windfall Profits Test.

- C. Valuation staff will work with the RCO to contract for an appraisal of the project. The appraisal may have to be cancelled if the project does not pass the Windfall Profits Test.

5-4. Information to Owners Who Requested Incentives. Within 20 days of receipt of the Initial NOI to extend affordability restrictions, Loan Management staff will send the Letter to Owner Transmitting Appraisal Guidelines, Appendix 5-1, which contains the information the owner needs to proceed with the Capital Needs Assessment and appraisal process. LOG date sent The information explains:

- A. The requirements for a Capital Needs Assessment that will be conducted by HUD or a HUD contractor as set forth in Paragraph 5-7 and the Implementation Memorandum. Loan Management staff will tell the owner the scheduled date for the Assessment, if known. Otherwise, the owner will be told that HUD will advise it later of the date and time for the Capital Needs Assessment physical inspection and exit conference.
- B. The need for, and the rules and guidelines governing an appraisal of the project. All appraisals conducted on eligible low-income

5-3

4/92

4350.6

housing must comply with the "Guidelines for Determining Appraisals of Preservation Value Under the Low-Income Housing Preservation and Resident Homeownership Act of 1990" (Appraisal Guidelines). The owner is responsible for forwarding these guidelines to the appraiser it selects;

- C. The filing deadline for submission of the appraisal which is four months from receipt of the initial NOI;
 - D. The need for an appraiser retained by HUD to appraise the project in accordance with the Appraisal Guidelines and inspect the project's financial records in order to make determinations required by Appendix 5-2, Form HUD-9607, Calculation of Information to be Returned to the Owner; and
 - E. That HUD will delegate to an appropriate State agency, if applicable, the responsibilities regarding the performance of an appraisal. This statement will be added to Appendix 5-1, if relevant.
- 5-5. Information to Tenants. By means of Appendix 5-1, the owner will be advised that it must post Notice to Tenants, Appendix 5-1A, which advises tenants of the project about the appraisal and the Capital Needs Assessment physical inspection and exit conference. This letter will give tenants and tenant representatives, if any, the right and opportunity:
- A. To provide input into the Capital Needs Assessment up to the time of the exit conference for the inspection, the date of which will be posted at least two days prior to the inspection;
 - B. For tenant representatives to attend the physical inspection and all tenants to attend the exit conference, for which the date and time will be posted at least two days in advance;

4/92

5-4

4350.6

- C. To be provided further information by both HUD and the owner at various stages of the extension process and to be given further opportunity to comment; and
 - D. To obtain the name, address, and phone number of any tenant representative who has been provided this information and who will be expected to consult with, provide guidance to, and act on behalf of the tenants.
- 5-6. Information to State and Local Governments. Simultaneously with sending Appendix 5-1, Loan Management staff will make information about the Capital Needs Assessment and appraisal process available to State and local governments LOG date sent by sending them a copy of Appendix 5-1 and its

attachment, Appendix 5-1A. By means of this letter, Loan Management staff will advise State and local governments that they have the right to provide input into the Capital Needs Assessment, including having local code enforcement officials participate in the physical inspection and exit conference, and to provide further input at various other stages of the decision-making process. Any information provided to the owner under this Chapter, subsequent to the appraisal, will also be provided to the State and local governments.

- 5-7. Capital Needs Assessment. The Capital Needs Assessment will be conducted in accordance with the Implementation Memorandum. LOG date of Assessment The Assessment will be conducted in two parts: the physical inspection and the exit conference. The exit conference will be held within one day of the physical inspection. At the exit conference, the contractor will discuss the findings of the physical inspection and obtain additional input from those in attendance. A & E Branch will provide Valuation and Loan Management Branches with the results of the first portion of the Capital Needs Assessment within 60 days of the Initial NOI. LOG date received The portion that must be forwarded, at this point, is the portion that refers to the repairs required to bring the property up to good condition, exclusive of HUD regulatory requirements, if not required by the local

5-5

4/92

4350.6

governing body. Valuation Branch will forward the results to HUD's appraiser and Loan Management staff will forward the results to the owner who must forward the information to its appraiser. LOG date sent to owner/appraiser The total Capital Needs Assessment need not be completed until 120 days after receipt of the Initial NOI. The results will be forwarded to the owner for its review at that time.

LOG dates received and forwarded

Submission of Appraisals. Within four months of filing the Initial NOI, the owner must submit an appraisal, conducted by a qualified appraiser selected by the owner, to the Valuation Branch. LOG date appraisal received At the same time, Valuation Branch must receive an appraisal from an independent qualified appraiser contracted by HUD. LOG date appraisal received Both appraisals will conform to the instructions in the Appraisal Guidelines. Valuation Branch will forward a copy of HUD's appraisal to the owner. LOG date sent Each appraisal must show two appraised values, Extension Preservation Value (EPV) and Transfer Preservation Value (TPV), in accordance with Paragraphs A. and B.

below. Neither appraisal may be more than 30 months old at the time of Plan of Action (POA) approval (unless POA approval was delayed by HUD for reasons beyond the owner's control). All appraisals must be updated if a new Initial NOI to extend affordability is filed for any reason.

A. Extension Preservation Value: Highest and Best Use as Residential Rental Property. The Appraisal Guidelines require that the appraiser assume the conversion of the project to market rate rental housing for determining the EPV. Other factors that must be taken into account in determining these values include:

1. The Amount of Required Repairs necessary to sustain the property to a good condition consistent with the Implementation Memorandum. A and E staff will determine the repairs that are required to bring the property up to good condition in addition to those required by HUD regulatory

5-6

4/92

4350.6

requirements. Valuation Branch will provide this data to both appraisers. The appraiser will use the upgrading improvements in determining their costs and will reflect the required repairs and upgrades in the final estimate of the EPV.

2. Non-Rehabilitation Costs of converting to market rate rental housing. These would include the costs of conversion of a project occupied by subsidized tenants to one occupied by market rate tenants and the costs of advertising, turnover, vacancies, unpaid rents, evictions, etc.; and
3. Operating Expenses. Operating expenses used for the appraisal will be the greater of the following expenses which will be determined by the appraiser(s), subject to HUD's approval:
 - a. Average operating expenses during the preceding three years or the operating expenses for the past year, depending on whether the last year's or the average of three year's operating expenses are a more realistic estimate of future expenses; or
 - b. Projected operating expenses after conversion.

- B. Transfer Preservation Value: Highest and Best Use. The Appraisal Guidelines require that the appraiser assume conversion of the project to the highest and best use for the property. If the highest and best use is a market rate rental project, the value determination will be the same as in Paragraph A. If the highest and best use is as a condominium, cooperative, etc., the conversion costs will be handled in the same manner as in Paragraph A. If the highest and best use is for another use, the appraiser will determine the rehabilitation, conversion, demolition, and other costs associated with achieving the highest and best use of the

5-7

4/92

4350.6

project. These costs must be reflected in the appraiser's final estimate of the TPV. Depending on what the highest and best use for the project is determined to be, the issues outlined in Paragraph A above should be addressed. Projected operating expenses after conversion must be used if the project is being appraised for purposes other than as rental housing.

5-9. Reconciliation of Appraisals.

- A. Review of Appraisals. Upon receipt of the appraisals submitted by the owner and by HUD's appraiser, valuation Branch will review the appraisals for accuracy, sufficiency, and compliance with the Appraisal Guidelines. The Valuation Branch may consult with both appraisers, if necessary. The appraised values will be accepted if they meet the review requirements.
- B. Determination of Values. Within 30 days of receipt of the appraisals, Valuation Branch will determine the two reconciled preservation values. LOG date of determination If necessary, Valuation staff will hold discussions with both appraisers and the owner in order to reconcile the differences. As a final recourse to achieve reconciliation, the owner may wish to accept an appraised value in accordance with the guidelines below.
1. The values determined by the owner's appraisal will be used in all cases where the values do not exceed 105 percent of the value in HUD's appraisal.
 2. If either of the owner's appraised value(s)

exceed 105 percent of HUD's comparable value, Valuation Branch will negotiate with both appraisers in an attempt to bring the two appraised values into the required range, giving them an opportunity to reconcile the differences.

5-8

4/92

4350.6

3. If the appraisers cannot agree on a reconciled range which meets the criteria in Paragraph 2 above, the owner may agree to accept 105 percent of HUD's appraised value as the reconciled value, so that a third appraisal will not be required.
4. If either or both EPV or TPV cannot be reconciled in accordance with Paragraphs 1 through 3 above, a third appraisal must be conducted for either or both values, depending on which are not reconciled. The third appraisal will be conducted in accordance with Paragraph 5-10.

5-10. Third Appraisal. A third appraisal will be conducted if the owner wishes a third appraisal to establish a value for one or both unreconciled value(s). The owner should be advised of the timeframe for selecting the appraiser in accordance with Paragraph A. below.

- A. The appraiser for the third appraisal must be selected by the end of six months from the date that the Initial NOI was filed (or one month from the date the owner requests a third appraisal), whichever is sooner. LOG date appraiser selected
- B. Loan Management staff must send appraisal guidelines and the results of the Capital Needs Assessment to the third appraiser. However, Loan Management staff will not give information about the first two appraisals to the third appraiser.
- C. The appraiser will be selected and contracted with by the owner from a list provided by HUD.
- D. The owner will provide the appraiser the Appraisal Guidelines. The owner will be advised that it must not provide the appraiser with any information from the previous appraisals.
- E. The appraiser must submit the third appraisal to the Valuation Branch within two months of

5-9

4/92

4350.6

accepting the assignment. LOG date received
The owner must be sent a copy of the third
appraisal for review LOG date sent

- F. Third appraisal results will be binding subject to HUD and owner review for compliance with Appraisal Guidelines and regulations. This is true even if the value(s) determined is/are higher or lower than the value(s) in both previous appraisals.
- G. Upon completion of an acceptable third appraisal, the owner submits a copy of the appraisal and an invoice for the full amount to the RCO. HUD will pay half the amount on the invoice.

5-11. Sending Information to Owners. Within nine months of receipt of the Initial NOI:

- A. Valuation staff must complete its review and calculate the figures described in Paragraph 5-12.
- B. Valuation staff must complete Form HUD-9607.
- C. Loan Management staff must work with the Valuation Branch to complete Letter to Owner Transmitting Information for Extending of Affordability Restrictions Through Retention or Sale, Appendix 5-3.
- D. Loan Management staff must send Form HUD-9607 and Appendix 5-3 to the owner, along with Appendices 5-3A, and 5-3B, which address repairs and sales and 5-3C, the Notice to Tenants. LOG date sent The letter instructs the owner to post this information at all affected buildings.

5-12. Calculating Figures from Appraisal Data. Valuation Branch will calculate the following figures from the appraisal data, working jointly with Loan Management staff when necessary. The owner will use this information to determine whether to retain or sell the project.

5-10

4/92

4350.6

- A. Preservation Values. See Sections I and II on Form HUD-9607.

- B. Preservation Equity. See Sections III and IV on Form HUD-9607.
- C. Annual Authorized Return to Owner. (See Section V on Form HUD-9607.) Restrictions on its receipt will be in accordance with Chapter 8 Reserved .
- D. Federal Cost Limit. See Section VI on Form HUD-9607 for the market area (or relevant local market, if applicable) in which the project is located. The Federal Cost Limit (FCL) does not represent the unit rents that will actually be charged at the project after the incentives are granted or any transfer takes place. It does represent the maximum rent that may be supported by incentives. The limit is the same for any one project whether the owner chooses retention or transfer.
- E. The Aggregate Preservation Rents. See Sections VII and VIII on Form HUD-9607 for the project are the total annual gross rents needed by the project to pay specific costs. These rents will be used solely for the purposes of comparison against the FCL and will not necessarily reflect the final rents that will be needed to operate the project. Two preservation rents will be calculated:
 - 1. Extension Preservation Rent. The extension preservation rent (EPR) is the gross potential annual income for the project, as determined by HUD, which would be required to support:
 - a. The annual authorized return on equity used as an incentive for the current owner to maintain affordability over and above any amount needed to support debt service coverage for the underlying mortgage and any rehabilitation loans on the project;

5-11

4/92

4350.6

- b. Debt Service, including debt service coverage, on any rehabilitation loan which the Capital Needs Assessment has determined necessary, in accordance with the Implementation Memorandum. This calculation must take into account:
 - i. That any grants for rehabilitation anticipated to be

provided by State or Local Governments have been deducted from the amount of any loan required;

- ii. The assumption that the loan has a market rate of interest and a 20-year amortization period;
 - iii. The assumption that only 90 percent of rehabilitation costs may be provided by a loan; and
 - iv. That the rehabilitation requirements and projected costs which the Capital Needs Assessment determines for this purpose do not necessarily reflect the final rehabilitation requirements and/or costs when the incentives are granted.
- c. Debt Service, including debt service coverage, on the federally-assisted mortgage for the project;
 - d. Project operating expenses as determined by a consultation between the Valuation Branch and Loan Management staff. NOTE: Any expense that is paid by the tenants (Personal Benefit Expense) must be included in the project expense estimate . These expenses will assume that all required repairs have been completed;

5-12

4/92

4350.6

- e. Adequate reserves, as determined by Valuation, based on the Capital Needs Assessment. The amount of reserve deposits used will be the amount which, when added to existing reserves, are sufficient to maintain the project after required repairs have been made to bring the project to Housing Quality Standards; and
 - f. Three percent vacancy allowance.
- 2. Transfer Preservation Rent. The transfer preservation rent (TPR) is the gross potential annual income for the project, as determined by HUD, which would be required to support:

- a. Debt Service, including debt service coverage, on a loan for acquisition, which may not exceed 95 percent of Transfer Preservation Equity, and the requirements set forth in Chapter 8 Reserved ;
- b. Debt Service, including debt service coverage, on any rehabilitation loan which the Capital Needs Assessment has determined necessary, in accordance with the Implementation Memorandum. This calculation must take into account:
 - i. That any grants for rehabilitation anticipated to be provided by State or Local Governments have been deducted from the amount of any loan required;
 - ii. The assumption that the loan has a market rate of interest and a 20-year amortization period;

5-13

4/92

4350.6

- iii. The assumption that only 90 percent of rehabilitation costs may be provided by a loan; and
- iv. That the rehabilitation requirements and projected costs which the Capital Needs Assessment determines for this purpose do not necessarily reflect the final rehabilitation requirements and/or costs when the incentives are granted.
- c. Debt Service, including debt service coverage, on the federally-assisted mortgage for the project;
- d. Project operating expenses as determined by the Valuation Branch in consultation with the Loan Management staff. NOTE: Any expense that is paid by the tenants (Personal Benefit Expense) must be included in the project expense estimate. These expenses will assume that all required repairs have been completed;
- e. Adequate reserves, as determined by Valuation, based on the Capital Needs

Assessment. The amount of reserve deposits used will be the amount which, when added to existing reserves, are sufficient to maintain the project after required repairs have been made to bring the project to Housing Quality Standards; and

f. Three percent vacancy allowance.

F. Comparison of Preservation Rents and Federal Cost Limit.

1. Owner's Options. (See Section IX on Form HUD-9607.) Both EPR and TPR are compared to the FCL to determine the owner's options when submitting a POA. These options are

5-14

4/92

4350.6

explained to the owner, along with a summary of the above factors, in Appendix 5-3. They are also described in Chapter 6.

2. Transfer Preservation Rent Exceeds the Federal Cost Limit. (See X on Form HUD-9607.) In order to help owners make an informed choice of available options, in all cases where TPR exceeds the FCL, Loan Management Branch will determine the maximum acquisition loan which would bring the TPR down to the FCL. The maximum sales price which can be supported by this acquisition loan, based on current rates and terms, may be provided to the owner.

5-15

4/92

[\[Search\]](#) [\[Prev List\]](#) [\[Doc List\]](#) [\[Next List\]](#) [\[First Doc\]](#) [\[Prev Doc\]](#) [\[Curr Doc\]](#) [\[Next Doc\]](#) [\[Last Doc\]](#)
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Processing Plans of Action Under the Low-Income Housing

Directive Number: [\[Prev Hit\]](#)[\[Next Hit\]](#)**4350.6**

4350.6

Chapter 6. Owner's Options

6-1 Introduction. This Chapter outlines the options available to owners based on the choice indicated on the Initial Notice of Intent (NOI) and the information that the owner received from HUD in accordance with Chapters 4 or 5 in response to the NOI.

6-2. Owner's Initial Notice of Intent was to Terminate Affordability. The owner may decide to:

- A. Continue with Initial Intent and Terminate Affordability. Within six months after receiving the information from HUD in accordance with Chapter 4, Paragraph 4-3, the owner must submit a Plan of Action (POA) to terminate the affordability restrictions in accordance with the guidelines established in Chapter 8 Reserved of this Handbook.

Change Initial Intent and Extend Affordability. If the owner changes its mind and does not submit a POA to terminate affordability restrictions within six months after receiving the information from HUD in accordance with Chapter 4, Paragraph 4-3, the owner may submit a new Initial NOI to extend affordability. The new NOI may not be submitted prior to six months after the deadline for submitting the POA and must meet all requirements for an Initial NOI set forth in Chapter 3. The Field Office will take the actions outlined in Chapter 5 in response to the new Initial NOI.

6-3. Owner's Initial Notice of Intent was to Extend Affordability Restrictions. The owner may decide to:

- A. Retain ownership of the project and extend affordability as originally requested.
1. All owners have this option.
 2. Within six months after receiving the information from HUD in accordance with Chapter 5, Paragraph 5-11, the owner must

submit a POA meeting the requirements set forth in Chapter 8 Reserved .

6-1

4/92

4350.6

- B. Sell the project through a voluntary sale. In a voluntary sale, the owner retains the option to choose the purchaser, refuse any bona fide offer, or accept an offer for less than Transfer Preservation Value (TPV).
1. All owners have this option. However, if Transfer Preservation Rent (TPR) exceeds the Federal Cost Limit (FCL), the incentives received by the purchaser may not require gross annual rents which exceed the FCL.
 2. Within 30 days after receiving the information from HUD in accordance with Chapter 5, Paragraph 5-11, the owner must submit Form HUD-9609, "Second NOI," Appendix 6.
 3. All requirements for submission of a Second NOI are the same as for submission of an Initial NOI as outlined in Chapter 3, except the Second NOI does not have to be sent to each occupied unit unless there is no known tenant representative. Notification of the Availability of Translations, Form-HUD 9608A, Appendix 3C, must be sent to any tenant who receives the NOI, any Tenant Representative known to the owner, and posted in each affected building, alongside the Second NOI. Chapter 7 Reserved provides instructions for processing a Second NOI.
- C. Attempt to prepay the mortgage by first offering the project for a mandatory sale. Before an owner may prepay a project, the project must be offered for mandatory sale for the entire sale period specified in Paragraph 6-4. During the sale period, the owner must accept any bona fide offer at the TPV.
1. The owner may choose this option if the TPR exceeds the FCL and the owner wishes to prepay the mortgage.

4/92

6-2

4350.6

2. Within 30 days after receiving the

information from HUD in accordance with Chapter 5, Paragraph 5-11, the owner must submit Form HUD-9609, "Second NOI."

3. All requirements for submission of a Second NOI are the same as for submission of an Initial NOI as outlined in Chapter 3, except the Second NOI does not have to be sent to the mortgagee. Notification of the Availability of Translations, Form-HUD 9608A, Appendix 3C, must also be sent to each occupied unit, any Tenant Representative known to the owner, and posted in each affected building, alongside the Second NOI. Chapter 7 Reserved provides instructions for processing a Second NOI.

- D. Do Nothing at this Time. If a Second NOI to sell is not filed within 30 days or a POA to extend affordability is not filed within six months of receipt of the information from HUD in accordance with Chapter 5, Paragraph 5-11, the process is ended. If the owner wishes to participate in the program at a later date, a new Initial NOI must be submitted after the owner has waited six months from the deadline for submitting the POA.

6-4. Sale of the Project. The Second NOI initiates a 15-month offering period for sale of the project.

6-5. If the owner changes its mind after submitting a Second NOI to proceed through a voluntary or mandatory sale of the project and, instead decides to request incentives, the owner must submit a POA for incentives within six months of receiving the information from HUD in accordance with Chapter 5, Paragraph 5-11, as if no Second NOI had been submitted. If it fails to submit a POA for incentives within six months, it must wait six months from the deadline for filing the POA before filing a new Initial NOI.

6-3

4/92

4350.6

6-6. Submission of new Initial Notices of Intent. The submission of a new Initial NOI will be handled in the same manner as submission of the original Initial NOI. If a new initial NOI is submitted, the original appraisals may not be used.

4/92

6-4

[\[Search\]](#) [\[Prev List\]](#) [\[Doc List\]](#) [\[Next List\]](#) [\[First Doc\]](#) [\[Prev Doc\]](#) [\[Curr Doc\]](#) [\[Next Doc\]](#) [\[Last Doc\]](#)
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Processing Plans of Action Under the Low-Income Housing

Directive Number: [\[Prev Hit\]](#)[\[Next Hit\]](#)4350.6

4350.6-CHG.1

Chapter 7. Second Notice of Intent: Voluntary and Mandatory Sales

- 7-1. Introduction. Within 30 days of receiving information from HUD, in accordance with Chapter 5, the owner must submit a Second Notice of Intent (NOI) if it wishes to sell the project. LOG date received This Chapter describes what Loan Management staff must do when it receives a Second NOI to sell the project, whether through a voluntary or mandatory sale process. It also describes the owner's role in this process and includes information about advertising the project for sale and accepting bona fide offers.
- 7-2. Review for Accuracy. Within five days of receipt of a Second NOI, Loan Management staff must review it for accuracy and compliance with the regulations. This review includes, but is not limited to, ensuring that the owner selected an appropriate option based on the comparison of Transfer Preservation Rent (TPR) and the Federal Cost Limit (FCL) and stated its requirements for an earnest money deposit. If the Second NOI is not complete or accurate, Loan Management staff should return it to the owner indicating that the NOI must be returned to HUD within the 30-day deadline if it is to be considered. LOG date returned To meet the 30-day deadline, the owner must deliver a complete and accurate Second NOI to the Loan Management Branch and distribute it in accordance with the instructions on form HUD-9609, Second Notice of Intent in Appendix 6A and Chapter 6.
- 7-3. Notification to Qualified Purchasers. HUD staff must take certain actions to notify potential qualified purchasers, defined in Chapter 1, Paragraph 1-15, of the availability of the property for sale. LOG date notifications begin The owner must also take certain actions under this notification process. Following is a list of required actions:

7-1

1/93

4350.6-CHG.1

- A. Within five days of determining that the Second NOI is complete and accurate, Loan Management staff will:
1. Send written notification, which contains the data cited in Paragraph 2.a. through e. below, about the sale of the property to any known potential qualified purchasers, including potential purchasers identified in accordance with Paragraph B.1.e. below:
 2. Provide the Preservation Division in Headquarters (Preservation Division) with:
 - a. The name and address of the property;
 - b. The name and address of the owner and any owner representatives;
 - c. The sizes, types and number of units;
 - d. The amount of earnest money deposit required;
 - e. The Transfer Preservation Value (TPV) of the property;
 - f. The names and addresses of major general circulation newspapers in the project area; and
 - g. The names and addresses of minority newspapers and newsletters in the area.
 3. Provide the Resident Initiative Specialist (RIS) with the information in Paragraphs 2.a. through e. above.
- B. Within five days of receiving the information from the Loan Management Branch, the Preservation Division will:
1. Contract for services to place notices in the major local newspapers in the project area and the regional edition of

1/93

7-2

4350.6-CHG.1

the Wall Street Journal. If several projects are available for sale at the same time, the notices may list more than one project. Each notice will include:

- a. The information contained in Paragraphs A.2.a. through e. above;
 - b. All timeframes during which potential purchasers may submit offers to purchase the project in accordance with Paragraph 7-4;
 - c. The procedure for submitting an expression of interest to the Loan Management Branch in accordance with Paragraph 7-5;
 - d. Brief information about use restrictions and submission of a POA;
 - e. A statement advising potential purchasers that they may place their names on a general mailing list, being developed by the Preservation Division, to receive copies of future notices; and
 - f. The address of the Preservation Division where the mailing list is being developed.
2. Ensure that notices are placed at least once weekly and Sunday at each of the times shown below or until the owner accepts a bona fide offer. Some projects may be advertised more often if group advertisements are used. The Preservation Division should place the advertisements:
- a. Within 25 days of receipt of a Second NOI;
 - b. Six months after receipt of a Second NOI; and

7-3

1/93

4350.6-CHG.1

- c. 12 months after receipt of a Second NOI.
 3. Place notices in the local minority newspapers and newsletters in the project area at the times and manner shown in Paragraphs B.1. and 2. above.
 4. When appropriate, place notices in the national edition of the Wall Street Journal or other national newspapers in the same manner as specified in Paragraphs B.1. and 2. above. Generally, national advertisements will be used only for large projects that will generate more than local interest and when group notices are used.
 5. Send the mailing list, developed in accordance with Paragraph B.1.e. above, to appropriate Loan Management staff.
- C. Within five days of receiving the information from the Loan Management Branch, the RIS will mail notices that provide the information shown in Paragraphs A.2.a. through e. above, in the form of Appendix 7-2, Notification to Nonprofit Organizations of the Availability For Sale of a Multifamily Housing Project, to the following organizations:
1. Any known Resident Council (RC), community-based nonprofit organization or housing sponsor in the project's community;
 2. Other nonprofit organizations; and
 3. Nonprofit clearinghouse networks.
- D. Owners may use any other means they wish to advertise the project. If the owner uses a broker, the costs may not be included as allowable costs in the POA. However, the broker may be paid by the owner from the net proceeds of the sale.

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- 7-4. Attempt to Sell the Project. Owners may accept bona fide offers, in accordance with Paragraph 7-8, only from certain categories of purchasers during the timeframes shown below. Except for RCs which purchase the project by prepaying the mortgage with a grant under a Resident Homeownership Program, all purchasers will be required to maintain the low-income affordability restrictions for the remaining useful life of the project,
- A. Offer For Sale to Specific Priority Purchasers. For the first six-month period beginning on the date that HUD receives a complete and accurate Second NOI reflecting the owner's intention to sell the project, the owner may accept a bona fide offer only from:
1. A RC that is organized to develop and implement a Resident Homeownership Program in accordance with Chapter 9. The RC must demonstrate that tenants representing at least 50 percent of all units and 75 percent of the occupied units, have expressed an interest in participating in the Resident Homeownership Program to be developed by the RC. They must evidence this interest by submitting a certified list of project tenants who have shown an interest in participating. A RC seeking to purchase the project as a Limited Equity Cooperative, whether it assumes the mortgage or receives a grant to pay off the mortgage, will be treated as a RC seeking to purchase under a Resident Homeownership Program.
 2. A RC incorporated as a nonprofit organization intending to purchase the project and retain it as rental housing. The RC may demonstrate, by a resolution of the Board of Directors and a petition signed by tenants representing a majority of the occupied units, that it has the support of a majority of the tenants.

-
3. A qualified community-based nonprofit

organization, as defined in Chapter 1, Paragraph 1-15. Such groups may demonstrate by a resolution of the RC (if one exists) and a petition signed by tenants representing a majority of the occupied units that it has the support of a majority of the tenants. These groups may only purchase the project to use as rental housing.

- B. Offer For Sale to All Priority Purchasers. For the second six-month period, an owner may also accept an offer from a State or local housing agency or any other nonprofit organization that agrees to maintain the low-income affordability restrictions for the remaining useful life of the project.
- C. Offer For Sale to All Qualified Purchasers. During the next three-month period, the owner may offer the project for sale to any qualified purchaser.

7-5. Expression of Interest.

- A. Priority Purchasers. During the initial 12-month period, any priority purchaser seeking to make an offer to purchase the project must submit a written expression of interest (EOI) to the Loan Management Branch. The EOI from priority purchasers must contain all of the following:
 - 1. A statement identifying the priority purchaser as a RC, a nonprofit organization (whether or not community-based), or a State or local government agency;
 - 2. If the purchaser is a RC or a nonprofit organization, a copy of its articles of incorporation, charter or bylaws, and a list of officers or directors;
 - 3. If the purchaser is a nonprofit organization, proof that the organization is, or has applied to be, a tax exempt organization under Section 501(c) of the Internal Revenue Code;

1/93

7-6

4350.6-CHG.1

- 4. A statement as to whether the purchaser is affiliated with any other entity for

purposes of purchasing the project; and

5. If applicable, a statement from a community-based nonprofit organization or State or local government indicating that a separate subsidiary has been established to purchase the project.

- B. Non-priority Purchasers. For-profit qualified purchasers are not required to submit written EOIs to HUD, but may do so if they wish. The EOI should contain all relevant information about the offering entity and include a statement as to whether any Low-Income Housing Tax Credits (LIHTCs) may be awarded in connection with the purchase of the project.

7-6. Information from HUD:

- A. To Priority Purchasers. Within 30 days of receipt of each EOI from a priority purchaser, until a bona fide offer has been approved by HUD, Loan Management staff will:
 1. Determine the eligibility of the priority purchaser in accordance with Paragraph 7-4;
 2. Notify the owner in writing of the purchaser's EOI;
 3. Direct the owner to provide the potential purchaser with any relevant information necessary to complete the sale, including but not limited to: access to any expense analyses, operating income, and rehabilitation estimates for the project; and
 4. Provide the potential purchaser with:
LOG date information sent
 - a. A list of all possible assistance available from HUD, in accordance with Paragraphs 8-17 and 8-21 to facilitate the transfer of the project;

- b. Copies of all appraisal reports performed by HUD's or the owner's appraiser;

- c. Loan Management Branch's determination as to the priority status of the purchaser and whether it qualifies as a RC, community-based nonprofit organization or State or local government entity;
- d. Information about the level of the earnest money deposit required upon submission of a bona fide offer in accordance with the calculations computed using the worksheet in Appendix 7-1 or about the owner's waiver or an agreement to accept a reduced earnest money deposit in the Second NOI;
- e. A statement about its right to inspect the property; and
- f. Any other relevant financial information Loan Management Branch has about the project, including information the owner received in response to the Initial NOI.

B. To Non-Priority Purchasers. If the Loan Management Branch receives an EOI from a for-profit purchaser, they must hold it until the end of the 12-month period. Loan Management staff should process the EOI only if the owner has not accepted a bona fide offer from a priority purchaser by the end of that period. At the end of the 12-month period, Loan Management staff will send the information listed in Paragraphs A.4.a. through f. above, with the exception of Paragraph 4.c.

7-7. Bona Fide and Other Offers. Any qualified purchaser, who is eligible to make an offer during the timeframes specified in Paragraph 7-4, may submit a bona fide offer to the owner and must

submit a copy to the Loan Management Branch. Loan Management staff is not required to review all offers submitted by qualified purchasers. It must review only those offers accepted by the owner and maintain a file of the other offers to review in the event that questions arise about the manner in which the owner handled the acceptance. LOG date

offer received. In the case of mandatory sales, offers which are not bona fide may in some cases be acceptable in accordance with Paragraph B.2. below. A qualified purchaser may submit such an offer to the owner. However, the purchaser need not submit a copy of its offer to HUD because Loan Management staff is not required to maintain or review this type of offer to determine whether it is bona fide. If the owner accepts the offer, then Loan Management staff will review it, in accordance with Paragraph 7-9, to determine its acceptability. A bona fide offer must include:

- A. A Contract for Sale signed by the purchaser which includes a provision that acceptance of the contract by the owner is contingent upon Loan Management Branch's approval of the offer as a bona fide or otherwise acceptable offer and later approval of a POA.
- B. Offering Price.
 1. Voluntary Sale. The offering price may not exceed the TPV of the project.
 2. Mandatory Sale. The offering price of the project must equal the TPV. The owner may accept, at its option, an offer which is not bona fide because the offering price is lower than the TPV. For such an offer to be acceptable, it must meet all other conditions of a bona fide offer.
- C. An Earnest Money Deposit.
 1. Purchasers Other Than RCs Purchasing under a Resident Homeownership Program.
 - a. Purchasers must submit an earnest money deposit in the amount of the lowest of:

7-9

1/93

4350.6-CHG.1

- i. one percent of TPV;
- ii. \$50,000; or
- iii. \$500 per unit

- b. Loan Management staff should use the Earnest Money Deposit Worksheet, Appendix 7-1, to determine the amount of the required earnest money deposit if

it has not been waived in accordance with Paragraph c. below.

- c. The owner, at its option, may waive all or part of the earnest money deposit in its Second NOI or during the sales process for all qualified purchasers except for RCs intending to purchase the project pursuant to a Resident Homeownership Program. If an owner decides to waive or decrease the amount of the earnest money deposit during a selling period, rather than with the Second NOI, the RIS must notify all potential purchasers that it contacted, in accordance with Paragraph 7-3.C., and Loan Management staff will notify the Preservation Division and all qualified purchasers who have already submitted EOIs. Future newspaper notices also must contain this information.

2. Resident Councils Purchasing under a Resident Homeownership Program.

- a. RCs, purchasing under a Resident Homeownership Program, must submit an earnest money deposit of \$200 for each unit of the required 75 percent of the occupied units. Loan Management staff should use the Earnest Money Deposit Worksheet, Appendix 7-1, to determine the amount of the required earnest money deposit.

1/93

7-10

4350.6-CHG.1

- b. A waiver of the earnest money deposit is not allowed for RCs. However, the owner, at its option, may accept an assignment of the portion of the security deposits to be returned with a minimum of \$200 from each prospective purchasing tenant, in lieu of the earnest money deposit, if allowed by State and local law.

- D. A RC, purchasing under a Resident Homeownership Program, must identify itself

as such. It must also submit a certified list of tenants who have expressed an interest in purchasing a unit and represent at least 50 percent of all units in the project AND 75 percent of the occupied units.

- E. A RC or a community-based nonprofit organization intending to retain the project as rental housing must include a resolution of the RC, if one exists, or a petition signed by tenants representing a majority of the units in the project to demonstrate tenant support for the purchaser.

7-8. Receipt and Acceptance of an Offer.

A. Owner's Decision to Accept Offer.

1. Voluntary Sale. The owner may accept any offer at or below the TPV. The owner is also free to reject any offer. Loan Management staff should tell owners whose Transfer Preservation Rent (TPR) exceed the Federal Cost Limit (FCL) that they may have to reduce the purchase price in order to achieve preservation project rents, as defined in Chapter 1, Paragraph 1-15, that do not exceed the FCL.
2. Mandatory Sale. The owner is obligated to accept the first bona fide offer it receives to purchase the project unless an offer at a lower price has already been accepted. The owner is not obligated to accept any offer at less than the TPV.

7-11

1/93

4350.6-CHG.1

B. Purchase Price.

1. Loan Management staff will use the purchase price to determine the level of incentives. The purchase price of the project shall not exceed the lower of TPV, or the purchaser's offering price if lower than TPV. Any residual receipts for the project, which are retained by the owner, must be deducted from the purchase price of the project.
2. For example, if the offering price for the project is \$1,000,000 and there are

\$20,000 of residual receipts being retained by the owner, the purchase price may not exceed \$980,000.

C. Acceptance or Rejection of the Offer.

1. Within 30 days of receipt of a bona fide offer, the owner must reject or accept the offer, conditioned upon HUD's certification that the offer is bona fide. For mandatory sales, the owner, at its option, may also accept any offer at less than the TPV so long as a bona fide offer has not already been received. In the latter case, the owner may choose to wait as long as it wishes to respond to the offer. However, if the owner accepts the offer, Loan Management staff must still review and determine whether the offer is acceptable.
2. If an owner rejects an offer or Loan Management staff finds that the offer is not bona fide or not acceptable, the owner must return the earnest money deposit with the rejection letter.
3. If an offer is rejected, it will continue to be considered an offer and the owner may notify the potential purchaser that the offer may be reactivated. The potential purchaser

1/93

7-12

4350.6-CHG.1

may then choose to renew its offer. It may do so by resubmitting the earnest money deposit within 30 days of the owner's notification that the offer will be reactivated, or within 60 days if the offer is being reconsidered because another sales transaction was terminated.

7-9. HUD's Determination of Acceptability of Offer.

- A. Owner Submits Acceptance to HUD. The owner must notify the Loan Management Branch when it accepts an offer subject to HUD's certification that it is bona fide. LOG date owner accepted offer
- B. HUD's Review of the Offer. The Loan

Management staff will review the offer to determine if it meets the requirements of a bona fide offer or is acceptable in accordance with Paragraph 7-7. Within 30 days of receipt of the owner's notice of acceptance, the Loan Management staff must notify the owner in writing to advise whether or not the offer is bona fide or acceptable.

LOG date owner notified

1. Loan Management's determination that an offer is bona fide or acceptable does not constitute an approval of the transaction, the POA, or the Transfer of Physical Assets.
2. If the Loan Management staff determines that an offer is not bona fide nor acceptable and accordingly notifies the owner, the offer will be null and void. The letter to the owner must list the deficiencies which made the offer not acceptable. Loan Management staff must send a copy of the letter to the potential purchaser.

7-10. Final Acceptance of the Contract of Sale. Within ten days of receipt of HUD's determination that an offer may be accepted, the owner must send the potential purchaser a final acceptance of the

7-13

1/93

4350.6-CHG.1

Contract for Sale, contingent upon satisfactory completion of the POA requirements referenced in Paragraph 7-11. The owner must also send the Loan Management Branch a copy of this letter. LOG date letter received

- 7-11. Submission of a Plan of Action. The owner and the purchaser must jointly submit a POA to the Loan Management Branch. The requirements for a POA and the conditions for approval are contained in Chapter 8, Sections A, C, and E. The POA must be submitted within the following timeframes:
- A. Under the voluntary sales process, within six-months of acceptance of an offer by the owner; or
 - B. Under the mandatory sales process, within six months of the owner receiving an offer from the purchaser.

7-12. Failure to Consummate Sales Transactions. If an owner accepts an offer and the sales transaction is terminated for any reason, the owner must immediately notify the Loan Management Branch of the termination. Failure to close a transfer within 90 days of POA approval will be treated as a terminated sales transaction, and the provisions of Paragraph 7-8.C.3. must be followed. Previous offerors who were rejected due to the acceptance of the offer will be notified by the owner of the renewed availability of the project for sale and will be given a minimum of 60 days to resubmit an offer in accordance with Paragraphs A. and B. below. The time period in which the sales transaction fell through will determine what action the Loan Management Branch must take.

- A. Sales Transaction was Terminated During 15-Month Offering Period. The owner must resume offering the project for sale and accepting offers for the remainder of the 15-month period in accordance with Paragraph 7-4 or 60 days, whichever is longer.
- B. Sales Transaction was Terminated after the 15-Month Offering Period. The owner must offer the project for sale for an additional 60-day period.

1/93

7-14

4350.6-CHG.1

7-13. Acceptance of Subsequent Offers. Offers received under the provisions of Paragraph 7-12 will be handled in the same manner as offers received in accordance with Paragraphs 7-4 through 7-11. However, if a sales transaction for a project advertised in accordance with 7-12.B. is terminated because a sale was not closed within 90-days after POA approval, due to circumstances wholly beyond the owner's control, the provisions of Paragraph 7-15 will apply. If the sale was not closed due to circumstances wholly or partially within the owner's control, the project must be offered for sale in accordance with Paragraph 7-12.B.

7-14. If there is no Purchase of the Project.

- A. Voluntary Sale:
 - 1. Owner Decides to Retain Project with Incentives.
 - a. If the owner makes the decision to

retain the project within six months of receiving the information from HUD in accordance with Paragraph 5-11, it may submit a POA for incentives in accordance with Chapter 8, Sections C and D within that six month period. LOG date received

- b. If the owner does not receive, or receives but does not accept a bona fide offer within the sixth to the fifteenth month of the offering period, it may, after waiting an additional six months, submit a new Initial NOI to request incentives to retain the project and extend the low-income affordability restrictions. LOG renewed eligibility

7-15

1/93

4350.6-CHG.1

2. Owner Decides to Prepay Project.

- a. If the owner does not receive a bona fide offer to purchase the project within the 15-month offering period, it may, at its option, prepay the mortgage and terminate the low-income affordability restrictions;
- b. An owner, who meets the criteria of Paragraph 2.a. above and wishes to prepay its mortgage, must submit its written request to the mortgagee with a copy to the Loan Management Branch. LOG date request received . If it is a HUD-held mortgage, the owner will write to the Multifamily Notes Servicing Branch in Headquarters in lieu of the mortgagee. The letter will notify them of the date of anticipated pay-out and request the pay-off amount. The Loan Management Branch will notify the Preservation Division that they have received the request and recommend approval. The mortgagee or Multifamily Notes Servicing Branch must obtain approval from the Preservation Division before

sending a reply to the owner. Loan Management Branch will accept prepayment in accordance with Chapter 11. The termination of the low-income affordability restrictions is subject to compliance with the provisions of Chapter 10 covering displaced tenants.

3. The owner's final alternative is to allow the Initial NOI to lapse and do nothing.

B. Mandatory Sale: If an owner does not receive a bona fide offer within the 15-month offering period, it may, at its option:

1/93

7-16

4350.6-CHG.1

1. Prepay the mortgage and terminate the low-income affordability restrictions. An owner, who meets the above criteria and wishes to prepay its mortgage, must submit a written request to the mortgagee with a copy to the Loan Management Branch. LOG request received. If it is a HUD-held mortgage, the owner will write to the Multifamily Notes Servicing Branch in Headquarters in lieu of the mortgagee. The letter will notify them of the date of anticipated pay-out and request the pay-off amount. Loan Management Branch will notify the Preservation Division that the request has been received and recommend approval. The mortgagee or Multifamily Notes Servicing Branch must obtain approval from the Preservation Division before sending a reply to the owner. The Loan Management Branch will accept approval in accordance with Chapter 11. The termination of low-income affordability restrictions is subject to compliance with the provisions of Chapter 10 covering displaced tenants.
2. After waiting an additional six months, submit a new Initial NOI to request incentives to retain or sell the project in accordance with Chapter 3. LOG expiration of six months ; or

3. The owner's final alternative is to allow the Initial NOI to lapse and do nothing.

7-15. Termination of Low-Income Affordability Restrictions Due to Not Closing the Sale. If the owner accepts an offer submitted during the 60-day period specified in Paragraph 7-12.B., jointly submits a POA with the purchaser, and does not consummate the sale within 90 days of HUD's approval of the POA due to circumstances wholly beyond its control, the owner may prepay the mortgage and terminate the low-income affordability restrictions. Prepayment will be accepted in accordance with Chapter 11. The

7-17

1/93

4350.6-CHG.1

termination of low-income affordability restrictions is subject to compliance with the provisions of Chapter 10 covering displaced tenants.

1/93

7-18

[\[Search\]](#) [\[Prev List\]](#) [\[Doc List\]](#) [\[Next List\]](#) [\[First Doc\]](#) [\[Prev Doc\]](#) [\[Curr Doc\]](#) [\[Next Doc\]](#) [\[Last Doc\]](#)
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Processing Plans of Action Under the Low-Income Housing

Directive Number: [\[Prev Hit\]](#)[\[Next Hit\]](#)**4350.6**

4350.6-CHG.1

Chapter 8. PLANS OF ACTION

Section A. General

- 8-1. Purpose. This Chapter describes the requirements for Plans of Action (POAs) to terminate or extend low-income affordability restrictions. It also sets forth guidelines the Field Office staff must follow when processing and either approving or recommending a POA for approval.
- 8-2. Categories of Plans of Action and Organization of the Chapter. Owners may submit POAs to achieve one of three purposes: terminate, extend through retention or extend by sale of the project the low-income affordability restrictions. This Chapter is divided into Sections A through G. It is organized, as stated in Paragraphs A through G below, to specify what is required in a POA for each category. Paragraph H tells where to find information about the requirements of Resident Homeownership Plans (RHPs), and Paragraph I describes a hybrid POA/RHP.
- A. Requirements for all POAs. Section A describes the requirements for all POAs, regardless of purpose.
- B. Prepayment of the Mortgage and Termination of Low-Income Affordability Restrictions. Section B describes the requirements which apply only to POAs to prepay the mortgage and terminate low-income affordability restrictions. A POA to prepay a mortgage must therefore meet the requirements of Sections A and B. The owner must have submitted an Initial Notice of Intent (NOI) in accordance with Chapter 3 and received information from HUD in accordance with Chapter 4. Under this category, the owner has sole responsibility for submitting the POA.

4350.6-CHG.1

- C. Extension of Low-Income Affordability Restrictions by Retention or Sale of the Project. Section C describes the requirements which apply to all POAs to extend low-income affordability restrictions, whether the owner wishes to retain the project or sell it. A POA to extend low-income affordability restrictions must also meet the requirements described in either Section D or E, depending on whether the owner will retain or sell the project. Therefore, the POA must meet the requirements contained in both Sections A and C and also in either Section D or E.
- D. Extension of Low-Income Affordability Restrictions by Retention of the Project. Section D describes the requirements which apply to all POAs to extend low-income affordability restrictions by the owner retaining the project. A POA to extend low-income affordability restrictions by retaining the project must meet all requirements contained in Sections A, C, and D. The owner must have submitted an Initial NOI in accordance with Chapter 3 and received information from HUD in accordance with Chapter 5. Under this category, the owner has sole responsibility for submitting the POA.
- E. Extension of Low-Income Affordability Restrictions by Selling the Project. Section E describes the requirements which apply to all POAs to extend low-income affordability restrictions by selling the project. A POA to extend low-income affordability restrictions through the sale of the project must meet all requirements contained in Sections A, C, and E. The owner must have submitted an Initial NOI in accordance with Chapter 3, received information from HUD in accordance with Chapter 5, submitted a Second NOI in accordance with Chapter 7,

and received (under a mandatory sale) or accepted (under a voluntary sale) a bona fide offer to purchase in accordance with Chapter 7. Under this category, the owner and purchaser have the responsibility to submit the POA jointly.

- F. Approval of a Plan of Action. Section F describes the procedures that the Loan Management Branch must follow to approve and fund a POA.
- G. Implementation of a Plan of Action. Section G describes the procedures that the owner must follow to implement a POA.
- H. A Resident Council Purchasing the Project Under a Resident Homeownership Program. Chapter 9 describes the Resident Homeownership Plan (RHP) required when a Resident Council (RC) purchases the project under a Resident Homeownership Program.
- I. A Resident Council Purchasing Under a Resident Homeownership Program but Forming a Limited Equity Cooperative may purchase the project in one of two ways. If it purchases the project with a grant, only the RHP requirements of Chapter 9 will apply. However, if the RC intends to assume the mortgage, some of the benefits outlined in Sections C and E of this Chapter may be applicable. This is a hybrid POA/RHP and will be explained in Chapter 9.

8-3. Submission of Plans of Action.

A. Submission to HUD.

- 1. Timeframes for Submission. The owner, or owner and purchaser, where applicable, must submit six copies of a complete POA to the Chief, Loan Management Branch within the timeframes specified below. LOG date POA package is received, whether complete or not The date a

complete or incomplete POA package is received will be used to determine the time frame for Loan Management staff's evaluation of the POA for completeness in accordance with Paragraph 8-6.B. The timeframes for submission are:

- a. Prepayment of the Mortgage and Termination of Low-Income Affordability Restrictions. Within six months of receiving economic and market analysis information from HUD in accordance with Chapter 4;
 - b. Extension of Low-Income Affordability Restrictions by Retention of the Project. Within six-months of receiving the reconciled appraised values and corollary information from HUD in accordance with Chapter 5;
 - c. Extension of Low-Income Affordability Restrictions by Selling the Project. For offers approved by HUD, in accordance with Chapter 7:
 - i. Under the voluntary sales process, within six months of the owner's acceptance of a bona fide offer; or
 - ii. Under the mandatory sales process, within six months of the owner's receipt of a bona fide offer.
2. Complete POAs. POAs will not be considered to have been submitted nor will the clock for processing POAs in accordance with Paragraph 8-6.A. begin until the Loan Management Branch receives a complete POA package. To be considered complete,

the POA package must contain all the pieces of information, completed to the best ability of the owner, required by the applicable Sections of this Chapter and the appropriate checklist contained in Appendix 8-3 or 8-4 for those planning to extend low-income affordability restrictions or Appendix 8-8 for owners who intend to terminate low-income affordability restrictions. If the owner submits a POA that is incomplete because required project information is not available, e.g., poor financial records or lack of required tenant certifications, then it may miss submitting a complete POA package within the required timeframe. In such a case, the owner would have to wait six months and begin the process over by submitting a new Initial NOI.

- B. Submission to Tenants. Simultaneously with submission to HUD, the owner must notify the tenants about the Plan by posting a summary of the POA in each occupied building. This summary must state that the tenants have 60 days to comment on the POA to the Loan Management Branch. The owner must also give a copy of the entire POA to the tenant representative, if any, and send a copy of the summary to the Loan Management Branch. The summary must indicate that a copy of the POA is available for inspection and copying, at a reasonable cost, during normal business hours through:
1. The tenant representatives, whose names, addresses and telephone numbers are listed on the summary. If the owner knows of no current tenant representative, the owner must so certify to HUD along with submission of the POA. Owners should be aware that if any new

tenant representatives have been established since the submission of the POA, it must notify those tenant

representatives along with all others;

2. The Chief of the Loan Management Branch whose name, address, and phone number are shown on the summary; and
3. The on-site office for the project or, if there is none, the local office where rents are collected.

C. Submission to State or Local Government. Simultaneously with submission to HUD, the owner must submit the POA to that officer of State or local government to whom the owner submitted an Initial NOI and must include with its POA to HUD, a certification to confirm this action. Loan Management staff should send a letter to all State and local government agencies referenced in Chapter 1, Paragraph 1-10.A.4. Requesting comments within 50 days of HUD's receipt of a complete POA. The letter should address all issues referenced in Paragraph 8-7. Appendix 8-6, Letter to State and Local Governments, may be used as a guide. LOG date letter sent

8-4. Failure to Submit a Plan of Action. If the owner or owner and purchaser fail to submit a POA to HUD within the six-month period specified in Paragraph 8-3.A., the Initial NOI will expire, and the owner will be prohibited from submitting another Initial NOI until six months after that expiration.

8-5. The Contents of All Plans of Action. The specific requirements for the three categories of POAs are outlined in Sections B, C, D and H of this Chapter. However, the following elements are required of all POAs:

1/93

8-6

4350.6-CHG.1

- A. A description of any proposed changes in the status or terms of the mortgage or regulatory agreement or a statement that there are no changes;
- B. A description of any proposed changes in the low-income affordability restrictions, i.e., rents, occupancy

restrictions, etc., and a detailed assessment of the effect of these proposed changes on each of the tenants or a statement that there are no changes. Relocation and displacement requirements are described in Chapter 10;

- C. A description of any outstanding audit findings or findings of noncompliance with the Fair Housing Act; Title VI of the Civil Rights Act of 1964; Executive Order 11063; Section 504 of the Rehabilitation Act of 1973; the project Regulatory Agreement along with a description of the resolution, or proposed resolution, of any such findings, or a certification that no violations exist. If there are violations, the owner must correct them prior to POA approval; and
- D. Any waivers requested by the owner or a statement that it has not requested any waivers.

8-6. HUD Action upon Receipt of a Plan of Action.

- A. Loan Management staff must review and process LOG date a complete POA is received the complete POA within 180 days of its submission. WARNING: Loan Management staff should be aware that if it does not send a letter approving an acceptable POA or disapproving an unacceptable POA within the 180-day deadline, upon approval, the owner will receive incentives retroactive to the 180th day, in accordance with Paragraph 8-35. If a POA is not

8-7

1/93

4350.6-CHG.1

acceptable within the 180 days, the owner may request an extension. Requests for extensions may not result in a total time of more than 365 days until approval. The following reviews must be completed:

1. An initial evaluation of the adequacy of the POA as described in Paragraph B below.
2. A review of the POA for deficiencies and conformity to the following applicable Sections of this Chapter:

- a. Section B for termination of low-income affordability restrictions;
 - b. Sections C and D and Appendix 8-1 for extension of low-income affordability restrictions through retention of the project; and
 - c. Sections C and E and Appendix 8-2 for extension of low-income affordability restrictions through the sale of the project.
3. Approval of the POA as described in Section F of this Chapter.
- B. Initial Evaluation. Loan Management staff will:
1. Review the POA for:
 - a. Timeliness. The POA must have been submitted within the time specified in Paragraph 8-3 of this Chapter; and
 - b. Completeness. The POA must contain the major components of a POA in accordance with Paragraph 8-5. It must also contain the components for specific types of POAs in

1/93

8-8

4350.6-CHG.1

accordance with the applicable Sections of this Chapter and the applicable submission checklists. These checklists are contained in Appendix 8-3 for owners wishing to extend low-income affordability restrictions by retaining the project, or 8-4 for owners who wish to extend low-income affordability restrictions by selling the project, or Appendix 8-8 for owners who wish to terminate low-income affordability restrictions.

2. Send the owner a letter within ten working days of receipt of the POA stating whether or not the package is complete. LOG date of acknowledgement letter. If components are missing, the POA should be returned to the owner along with a letter identifying the missing component(s) and stating that:
 - a. HUD cannot begin its review until a complete POA is submitted; and
 - b. Submission of the complete POA must be made within the required six-month period. If the owner fails to meet such deadline, its Initial NOI will become ineffective and the owner may not submit another Initial NOI until six months after the expiration of such deadline.
3. Date stamp all six copies of the POA as of the date a complete POA is received. The date that HUD receives a complete POA will be the date of record and will be the date used to determine deadlines required to complete the review process.

8-9

1/93

4350.6-CHG.1

- C. Distribution of POA. Within ten working days of receipt of a POA, the Loan Management staff must: LOG distribution dates
 1. Distribute a copy of the complete POA, as appropriate to the requirements of Sections B through E, to other Divisions/Branches including the Field Counsel, Fair Housing and Equal Opportunity (FHEO), Economic and Market Analysis Staff (EMAS), the Environmental Officer, and Housing Programs Branch, Attention: Valuation Branch. Loan Management staff also should send a copy of the Transfer of

Physical Assets (TPA) to the Field Counsel; and

2. Request their evaluations and comments on the POA within 30 days. LOG date distributed and date comments received These Branches/Divisions should comment on any aspect of the POA which they feel is relevant to their areas of concern. For example, FHEO and EMAS should be certain that market issues addressed by the owner are accurate when prepayment of the mortgage is requested; Housing Programs Branch should be certain that POAs to extend low-income affordability restrictions contain accurate preservation values, preservation rents, and Federal cost limits and that the rehabilitation requested along with the costs are appropriate. Loan applications, TPA packages and other submissions which are not specific to the POA must be evaluated in accordance with their own applicable procedures.

1/93

8-10

4350.6-CHG.1

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- 8-7. State and Local Agency Responsibility.
 - A. State or local officials should review POAs within 50 days of HUD's receipt of a complete POA. LOG date comments received
 - B. In cases where the POA indicates possible displacement or relocation of tenants due to prepayment of the mortgage, State or local agencies should advise the tenants, in a timely manner, of any local programs that could assist them in retaining their residences as affordable housing, or minimize the effects of displacement, without restricting the owner's rights.
 - C. In the case of an expressed interest from a RC to purchase the project, the agencies should advise the RC of local programs that would facilitate the purchase of the project under a Resident Homeownership Program.

- D. The agencies should advise HUD of any deficiencies and other information of which they are aware that would affect processing the POA. This could include:
1. Information about the violation of building codes, fair housing and equal opportunity or other infractions;
 2. Information about the project's financial situation which is not adequately addressed in the POA; or
 3. Any other information that could influence approval of the POA.

8-8. Deficiencies in the Plan of Action.

- A. A deficiency is anything in a POA which prohibits HUD from approving it, e.g., a projected budget which does not accurately reflect past expenses or requested incentives which are greater

8-11

1/93

4350.6-CHG.1

than those allowed. However, a deficiency does not include issues not specific to the POA such as errors in a Section 241 loan application.

- B. Not later than 60 days after the receipt of a POA, Loan Management staff must notify the owner (or owner and purchaser, if applicable), in writing, if there are any deficiencies that prevent approval. To make this decision, Loan Management Branch will use information received from other Divisions/Branches and State and local governments. In the letter, Loan Management staff must identify the deficiencies LOG date of deficiency notice and suggest alternative ways in which the POA may be revised to meet the criteria for approval. Also, the letter should advise the owner that the Loan Management Branch will forward any comments about deficiencies which it receives from State and/or local governments after their 50-day comment period.
- C. If Loan Management staff request legal

advice from the Field Counsel about any issue concerning the POA, the request must contain a statement advising Field Counsel of the status of its evaluation of the POA and how quickly it needs a legal response.

8-9. Revisions.

A. Timeframes for Revisions.

1. The owner or owner and purchaser, if applicable, may revise and amend the POA to obtain approval. No matter how many revisions are necessary, however, the POA must be approved within 365 days of submission or the owner will have to begin the Initial NOI process over again.

1/93

8-12

4350.6-CHG.1

2. Circumstances under which HUD Must Require a POA Revision.
 - a. Deficiencies in the initial submission of the POA. The owner must submit all revisions within 60 days of notification from HUD that the initial submission of the POA has deficiencies.
 - b. After HUD denies approval of the POA, the owner has up to 60 days to revise it.
 - c. Amendments to Information Submitted in the POA. Within 30 days of receiving changes in information required in the POA, such as in the address of the owner or purchaser, participating parties, types of incentives, or receipt of assistance from another source, etc., the owner must amend the POA by submitting POA revisions to HUD.
 - d. Deficiencies in Subsequent Revisions. The timeframes specified in Paragraphs a., b., and c. above will apply no

matter how many times Loan Management staff returns the POA. If the owner fails to comply with the 60-day time period cited in Paragraphs a. and b. above, the project will not be eligible for relief in accordance with Paragraphs 8-25.D, and 8-35 which address delayed approval.

3. Loan Management Review of Revisions. Loan Management staff must always be allowed 60 days from the date a revised POA is submitted to approve or disapprove it. Therefore, revisions and/or amendments required

8-13

1/93

4350.6-CHG.1

by Paragraph 8-8 must be submitted no later than 60 days after notification of deficiencies or 305 days after HUD's receipt of the POA, whichever is earlier. LOG date changes were received

4. Waiver of the Time Limit to Submit a POA. In the event the owner feels there are compelling reasons for waiving the 365 day limitation to submit a POA, it may submit justification to the Loan Management Branch. Such a waiver request must document how a good faith effort was made to meet the deadline. Loan Management staff may, at its option, recommend to the Preservation Division that the time limit be waived. However, in no case may the 30-month limit on the use of appraisals be waived.
 - B. The owner, or owner and purchaser, must submit six copies of any revision and/or amendments to the same HUD Field Office to which the original POA was submitted. The revised POA must also be submitted to all the individuals and agencies and in the same format required for the original POA. The owner must certify to HUD that all these submissions have been made.
 - C. Loan Management staff will, to the

greatest extent possible, facilitate the efforts of the owner or owner and purchaser to obtain HUD approval of the POA by giving assistance in meetings or by telephone.

- D. Loan Management staff must notify the owner or owner and purchaser, as applicable, within 60 days of receipt of the corrected POA, if deficiencies still exist.

- 8-10. Retention of Materials. One copy of the original POA should remain in the Loan Management Branch along with one copy of all revisions.

1/93

8-14

4350.6-CHG.1

Section B.

Plans of Action to Terminate Low-Income Affordability Restrictions

- 8-11. Timeframe for Submission of a Plan of Action (POA). Within six months of receipt of the information about the market area from HUD in accordance with Chapter 4, Paragraph 4-3, an owner seeking to terminate the low-income affordability restrictions through prepayment of the mortgage must submit its POA. A checklist of items required for a complete POA for terminating low-income affordability restrictions is contained in Appendix 8-8, Checklist for Submission of a Plan of Action To Terminate the Low-Income Affordability Restrictions.
- 8-12. Contents of Plans of Action Requesting to Terminate Low-Income Affordability Restrictions. In addition to the requirements specified in Paragraph 8-5, POAs to terminate low-income affordability restrictions will contain:
- A. An assessment of the effect of the proposed changes on each tenant living at the project at POA approval so that HUD can make the findings in accordance with Paragraph 8-13.A.1.;
- B. Evidence and an analysis of the effect of the proposed changes on the supply of housing affordable to low- and very

low-income families or persons in the housing market area within which the project is located so that the Economic and Market Analysis Staff (EMAS) can make the findings in accordance with Paragraph 8-13.A.2. This analysis must focus on the area that the housing could reasonably be expected to serve;

- C. The following occupancy information at the time of POA submission:

8-15

1/93

4350.6-CHG.1

1. A rent roll showing current income and total tenant payment (TTP) for rent and utility allowance for all residents of the project;
 2. A copy of any tenant waiting list at the project with family size and incomes of the applicants or documentation of the project's vacancy rate, if there is no waiting list; and
 3. Vacancy and turnover rates at the project for the past three years along with documentation of the data;
- D. A description of any change in ownership that is related to prepayment of the mortgage;
- E. A statement of the intention of the owner to sign a Use Agreement, consistent with Paragraph 8-13.A.1., to maintain low-income affordability restrictions. The intent of the Use Agreement is to protect tenants living in the project at the time of POA approval from displacement. It will include any plans for tenants who voluntarily move when comparable and affordable housing is available;
- F. If owners provide incentives and relocation assistance to tenants to induce them to move voluntarily, where comparable, decent, safe, sanitary and affordable housing is available, they should include an explanation of such plans in the POA, although HUD staff will not use evaluation of these plans to make

the findings required by Paragraph 8-13. If such arrangements are made between the tenant and owner, they must be made on an individual basis since no tenant may be involuntarily displaced.

- G. Any other information the owner feels is needed by HUD, or that HUD has asked the owner to submit, to make the findings in Paragraph 8-13.

1/93

8-16

4350.6-CHG.1

8-13. Review of Plans of Action to Terminate Low-Income Affordability Restrictions. In addition to those requirements cited in Paragraph 8-12, the following guidelines for review and evaluation apply to POAs involving prepayment and the termination of low-income affordability restrictions:

- A. Findings. Using information provided by EMAS, FHEO, and the Valuation Branch, Loan Management staff may approve a POA to terminate the low-income affordability restrictions if it can make the following findings:
1. Tenant Economic Hardship. The owner must sign a Use Agreement in accordance with Paragraph 8-12.E. Therefore, the findings required by Paragraphs a. and b. below may be made by virtue of the owner signing the Use Agreement guaranteeing continued occupancy by tenants living at the project at POA approval until the date the initial mortgage terminates.
 - a. Tenants living in the project, at the time of POA approval, will not experience a material increase in economic hardship as a result of the prepayment:
 - i. For a tenant currently paying 30 percent, or less, of adjusted monthly income for Total Tenant Payments (TTP), an economic hardship is defined as a monthly TTP increase greater than the

lesser of: (a) a TTP exceeding 30 percent of the monthly adjusted income of the tenant, or (b) an increase in the TTP in any year that exceeds ten percent; or

8-17

1/93

4350.6-CHG.1

ii. For a tenant currently paying more than 30 percent of adjusted monthly income for TTP, an economic hardship is defined as an increase in the TTP in any year that exceeds the lesser of the increase in the Consumer Price Index (urban all items for the four census regions and for 72 metropolitan areas for which local indices are available), or ten percent of the current TTP.

b. Involuntary Displacement.

i. Tenants living at the project at POA approval will not be involuntarily displaced (except for good cause) where comparable and affordable housing is not readily available. Involuntary displacement will be presumed to occur not only if the owner evicts the tenant or refuses to renew the lease, but also (a) if rents are raised above the amounts allowed by Paragraph a. above, or (b) if the conditions of occupancy, (e.g., project rules or additional charges such as late fees, lock-out charges, etc.) are changed to deter low-income residents from continuing to reside at the project.

1/93

8-18

4350.6-CHG.1

- ii. The findings in Paragraphs A.1.a. and b.i. above, must be made without regard to the availability of Federal rental housing assistance (Section 8 certificates and vouchers) that would address any such hardship or involuntary displacement. The owner must comply with the Use Agreement until the date of termination of the initial mortgage or until all tenants living in the project at POA approval move voluntarily, despite the lack of Section 8 rental assistance. Notwithstanding this limitation, HUD may provide housing assistance to tenants, if such assistance is not essential to making these findings.
2. Market Impact. The supply of vacant, comparable housing is sufficient to ensure that such prepayment will not materially affect:
- a. The availability of decent, safe and sanitary housing affordable to low- and very low-income families or persons in the area that the housing could reasonably be expected to serve;
 - b. The ability of low- and very low-income families or persons to find affordable, decent, safe and sanitary housing near employment opportunities; and

8-19

1/93

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- i. For the purposes of a POA that terminates low-income affordability restrictions, an adequate supply of housing is defined as a surplus of rental housing (soft market conditions) in the overall rental market. The guidelines for determining whether an area should be determined to be a soft market are set forth in Appendix 8-9, Guidelines for Conducting the Review of a Plan of Action to Terminate Low-Income Affordability Restrictions.
 - ii. The analysis should include an assessment of the current and anticipated supply/demand conditions within the overall rental market in the housing market area that the housing could reasonably be expected to serve. The analysis should also take into consideration the occupancy and vacancy situation in assisted housing projects in the area, as well as information on waiting lists for assisted housing and the experience of certificate and voucher holders in finding units.
- b. The second part of the review involves a determination of whether the prepayment would materially affect the housing opportunities of very low- and low-income families in the

characteristics of the project, and violate the public policy objectives.

- i. A market area may have an abundant supply of housing (soft market conditions), but a shortage of the particular type of rental housing provided by the project.
- ii. The analysis should take into account such characteristics as the type of tenancy of the project (elderly, disabled, or large family); the bedroom sizes of the units (three or more bedroom units); the location of the project with respect to its proximity to employment opportunities; and the availability of other assisted housing within the immediate area (the project may be the only source of such housing in that part of the community).

2. FHEO is responsible for:

- a. Evaluating the impact of the potential prepayment on the ability of minorities to find housing in the area, and recommending whether the FHEO staff can make the finding that prepayment would not materially affect the housing opportunities of minorities in the community within which the housing is located; and

8-22

4350.6-CHG.1

- b. Informing Loan Management Staff whether the owner of the project has any outstanding findings of noncompliance with the Fair Housing Act, Title VI

of the Civil Rights Act of 1964, Executive Order 11063, Age Discrimination Act of 1975, Section 504 of the Rehabilitation Act of 1973, regulations or the regulatory agreement.

3. Valuation Branch is responsible for providing whatever data is already available on rents for comparable, unsubsidized housing in the area to both Loan Management staff and EMAS.

C. Timeframes for Response. EMAS, FHEO, and Valuation Branch must provide a response to the Loan Management staff within 40 days of HUD's receipt of the POA.

8-14. Loan Management Review.

A. On the basis of responses from EMAS, FHEO, and the Valuation Branch, any comments received from tenants or State or local Governments, and its own review, Loan Management staff will determine whether a POA to prepay a mortgage and terminate low-income affordability restrictions meets the requirements under this Chapter. Within 60 days of completion of the combined reviews, but not later than 180 days of receipt of the complete POA (unless the owner requests an extension), Loan Management staff will send a letter to the owner informing it of HUD's approval or disapproval. LOG date letter sent .

B. If the POA is disapproved, the letter must cite the reasons for disapproval and suggest alternatives, including advising the owner that, after six months, a new Initial NOI may be submitted to request incentives to extend low-income

affordability in accordance with Sections C, and D or E of this Chapter. The owner should be offered the opportunity to meet with Loan Management staff for further assistance.

C. If the POA cannot be approved because of

an outstanding civil rights violation, audit finding, or finding of non-compliance with the Regulatory Agreement, the finding must be closed before HUD may approve the POA. Please note that findings need not necessarily be those which existed prior to submission of the Initial NOI. It could be any finding made during the POA approval process, including deficiencies found due to the POA process itself.

- 8-15. If the Plan of Action is approved, Loan Management staff will process it in accordance with Section F.

1/93

8-24

4350.6-CHG.1

Section C.

Plans of Action to Extend Low-Income
Affordability Restrictions

- 8-16. Timeframe for Submission of Plan of Action (POA).
- A. Retention of Project by Current Owner. Within six months of receipt of the information from HUD, in accordance with Chapter 5, an owner seeking to extend low-income affordability restrictions by retaining the project must submit a POA. A checklist of items required for a complete POA for retention of projects is contained in Appendix 8-3, Checklist for Complete Plan of Action for Owner's Retention of Project.
 - B. Sale of Project. Within six months of the owner's acceptance of a bona fide offer under the voluntary sale process or within six months of the purchaser making a bona fide offer under the mandatory sale process, an owner and purchaser who propose to extend low-income affordability restrictions through sale of the project, must jointly submit a POA to transfer the project. A checklist of items required for a complete POA for transferring a project is contained in Appendix 8-4, Checklist for Complete Plan of Action for Sale of Project.
- 8-17. Contents of Plans of Action. In addition to

the requirements specified in Paragraph 8-5, POAs that propose extension of the low-income affordability restrictions must include the information shown below. This information should be in narrative form with documentation consisting of any relevant materials such as budgets, Management Agreements, tenant rent rolls, contractor estimates, etc.

- A. Amounts of Assistance Requested. The owner may request and HUD may approve incentives to:

8-25

1/93

4350.6-CHG.1

1. Pay the debt service on the federally-assisted mortgage covering the project;
 2. Pay the debt service on any rehabilitation loan for the project amortized over a 20-year period;
 3. Meet project operating expenses and establish adequate reserves; and
 4. Provide additional assistance:
 - a. For owners retaining their projects, see Section D, Paragraph 8-19.A.; or
 - b. For projects which are being sold, see Section E, Paragraphs 8-21.A. and D. and 8-22.
- B. Methods for Funding the Requested Federal Incentives which the owner may request and HUD may approve:
1. An increase in the rents permitted under an existing project-based Section 8 contract to produce a Gross Rent Potential (GRP) to fund the incentives under the POA, with limitations in accordance with Paragraph C. below;
 2. Additional project-based Section 8 assistance to very low- and low-income tenants, or an extension of any project-based assistance attached to the housing;

3. An increase in the total tenant payment (TTP) on each unit up to the lower of 100 percent of Fair Market Rents (FMRs) or 30 percent of the tenant's adjusted monthly income (AMI) with a Minimum Rent for moderate-income tenants in accordance with Paragraph 8-18.A.13.

1/93

8-26

4350.6-CHG.1

Please note that the TTP may not be reduced for those tenants not receiving Section 8 rental assistance to achieve this purpose;

4. Financing of capital improvements through provision of a Flexible Subsidy Capital Improvement Loan;
5. Insuring rehabilitation loans of up to the value of the improvements, additions, or equipment with the maximum loan based on the equity requirements of the program under which the loan is made;
6. Redirection of the Interest Reduction Payment subsidies to a second mortgage for projects which are insured, assisted or held by HUD or a State or State Agency under Section 236. This incentive has no effect on project finances;
7. Increased access to residual receipts as needed to enable the owner or purchaser to realize the annual authorized return in accordance with Paragraphs 8-19.B. or 8-21.B.2.;
8. Any additional incentives, in accordance with Section D, Paragraph 8-19.B., for owners planning to retain the project and Section E, Paragraph 8-21.B., for projects being sold under voluntary or mandatory sale; and
9. Any other incentives authorized by law.

C. Determination of Annual Gross

Preservation Project Rent (PPR). A projected budget for the year following POA approval should show all expenses and rents required to meet project expenses. The budget must take all the following requirements into account.

8-27

1/93

4350.6-CHG.1

1. The PPR has two components; the GRP plus all tenant-approved utility allowances. The GRP is determined in accordance with procedures outlined in HUD Handbook 4350.1, Insured Project Servicing Handbook Chapter 7. For preservation projects, the GRP also includes the income needed to fund all approved assistance. The PPR may not exceed the Federal Cost Limit (FCL). However, project income to fund all assistance in projects being sold may be subject to the higher limitations described in Paragraph 8-21.C.
 - a. The FCL used to determine PPR will be based on 120 percent of the Section 8 Existing Fair Market Rents (FMRs) or 120 percent of the prevailing rents in the local market area at the time of POA approval. The FMRs will be used in all cases except where the prevailing rents were used to determine Extension and Transfer Preservation Rents for the information returned to owner in accordance with Chapter 5. In those cases, the Valuation Branch will be asked to determine the current prevailing rent in the market area unless the owner requests use of the FMRs.
 - b. In the case of some sales, in accordance with Paragraph 8-21.D.3., operating deficits caused by limitations in PPR may be compensated by grants calculated in accordance with Paragraph 8-22.

1/93

8-28

4350.6-CHG.1

2. The total of annual Section 8 Gross Rents will be the amount necessary to produce a PPR sufficient to fund all approved assistance, after subtracting out the sum of the annual TTPs projected to be made by moderate-income tenants. The projected annual TTPs are the sum of the projected monthly TTPs multiplied by 12. The projected sum of monthly TTPs to be made by moderate-income tenants will be calculated as the lower of:

- a. FMR for the unit size; or
- b. Thirty percent of the applicable Section 8 low-income limit, adjusted for family size to reflect the number of bedrooms in the unit, divided by 12. This amount is calculated by multiplying the income limit determined for bedroom size by .025. The income limit used for each bedroom size is as follows:

Family Size	No. of Bedrooms
1	studio
2	1
4	2
6	3
8	4
10	5+

3. Excess Rents. The method for projecting moderate-income TTP may lead to receipt of excess rents for the project. Excess rents collected must be treated by the owner as follows:

8-29

1/93

4350.6-CHG.1

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- a. Section 236 Projects.
- i. Total project basic rent is established as the (annual) GRP divided by 12 (months).
 - ii. The project's specific annual subsidy amount, (the amount by which interest is subsidized to produce the Basic Rent), divided by 12, is the project's specific monthly subsidy amount.
 - iii. Total project market rent is established by adding the project's specific monthly subsidy amount to the basic rent.
 - iv. In any month in which the project receipts exceed the basic rent, the excess amount, but never more than the project's specific monthly subsidy amount, will be returned to HUD as excess rents.
 - v. Any amount, over that remitted to HUD, will be deposited annually to the residual receipts account. These funds may be used to pay shortfalls in the annual authorized return on investment and any future shortfalls in operating expenses.
- b. Below Market Interest Rate (BMIR) Projects. Any amount collected over the GRP must be deposited annually to the residual receipts account.

1/93

8-30

4350.6-CHG.1

These funds may be used to pay shortfalls in the annual

authorized return on investment and any future shortfalls in operating expenses.

- D. Budgets, Management Plan and Occupancy Policy for the Project including, but not limited to:
1. Budgets with cash flow projections for the first three years after POA approval;
 2. An analysis of how the owner or purchaser will address any physical and/or financial deficiencies of the project;
 3. An explanation of how the low-income affordability restrictions of the project will be maintained;
 4. Any tenant preferences that will be used and/or other occupancy requirements that do not violate the tenant profile requirements in accordance with Paragraph F;
 5. Anticipated utility allowances with justification of how they were derived; and
 6. Any other conditions Loan Management staff or the owner feels need to be addressed in order to evaluate the Management Plan, Occupancy Policy and projected cash flow.
- E. A Description of Assistance from State or Local Government Agencies or Other Sources along with an analysis of how this assistance will reduce costs to HUD. For example, State and local assistance may enable HUD to reduce the amount of loan guarantees, Section 8 rents, and/or grants.

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1. The description should include information about any Low Income Housing Tax Credits (LIHTC) that have been offered to the owner or non-priority purchaser or for which the owner or non-priority purchaser

has applied or intends to apply. If the transaction involves the use of LIHTC, information about the allocation of credits by the State Agency required by HUD Notice H90-17, Combining Low Income Housing Tax Credits with HUD Programs, must be included with the submission. The list of information that must be submitted may be found in Appendix 8-7, Materials LIHTC Participants Must Submit. If the owner or non-priority purchaser will not receive LIHTC, it must so certify on Form HUD-9611, Owner's Certification that Project Will Not Participate in the Low-Income Housing Tax Program, Appendix 8-5. PLEASE NOTE: Priority purchasers are not eligible for LIHTCs.

2. Loan Management staff should advise and encourage any qualified purchaser to secure funding and other assistance from State and local governments or other sources. Such other assistance may include tax and assessment reductions or direct financial assistance from governments, private foundations, or corporate sources.

- F. Tenant Income Profiles. The owner must submit two income profiles of the tenants. One profile should reflect tenant data as of the date of POA submission, and the second, as of January 1, 1987 (based on the median income limits established by HUD in February, 1987) or if the January 1, 1987 profile is unavailable, a certification from the owner stating its unavailability and a profile as of January 1, 1988, or, if

that is also unavailable, a profile as of January 1, 1989 (each based on appropriate income limits). The profile as of the past date must include the information for each unit requested in Paragraphs 1-5 and 9 below as of the date of the profile. The profile as of POA submission must include the following

information for each unit as of the date of the profile:

1. A code number to maintain tenant anonymity;
2. Unit type;
3. Family size;
4. Family's gross annual income;
5. Family's adjusted gross annual income (in accordance with the definition in Chapter 1) and its classification as very low-, low-, or moderate-income;
6. Rent and utility allowance for the unit;
7. Proposed utility allowance for the unit;
8. Section 8 Existing FMR for the unit type;
9. A summary showing the number and proportion of very low-, low- and moderate-income (based on gross income) tenants at the project, rounded to the nearest full percentage, using the following considerations:
 - a. Vacant units should be allocated to very low-, low- and moderate-income in proportion to the share of occupied units in each category;

8-33

1/93

4350.6-CHG.1

- b. Units occupied by market rate tenants should be counted as moderate-income; and
 - c. Approved non-revenue units should not be counted.
- G. Certification that the owner has submitted or will submit all required loan applications for Section 241 equity,

acquisition or rehabilitation loans and for any Flexible Subsidy loans.

- H. Other information required to be submitted when the project is to be sold under voluntary or mandatory sale, in accordance with Section E, Paragraph 8-21; and
- I. Any other information the Loan Management staff determines necessary to evaluate the POA.

8-18. Reviewing POAs to Extend Low-Income Affordability Restrictions. In addition to information required by Paragraph 8-17, Loan Management staff should use the guidelines contained in the Form HUD-50061, Evaluation of Plan of Action for Incentives to Extend Affordability, Appendix 8-1 and 8-1A, or Form HUD-50062, Evaluation of Plan of Action to Sell a Project, Appendix 8-2 and 8-2A, as applicable, to review and evaluate POAs.

- A. In Order to Approve a POA, Loan Management staff must determine that it meets the requirements detailed in Forms HUD-50061 or 50062, regarding incentives and finances. In addition, the staff must find that:
 - 1. Due diligence has been given to ensuring that the package of incentives is, for the Federal government, the least costly alternative that is consistent with the full achievement of the purposes

1/93

8-34

4350.6-CHG.1

of the program. This is generally achieved by limiting the selling price to the appropriate Extension or Transfer Preservation Value and by limiting PPR to the FCL. This is also achieved through a subsidy layering analysis to be conducted by Loan Management staff in accordance with Notice H90-17, "Combining Low Income Housing Tax Credits with HUD Programs". Loan Management staff will advise qualified purchasers of assistance available from State and local governments and will cooperate

in helping them to obtain such assistance. If the owner or purchaser receives assistance from State and local governments, other than LIHTC, or assistance from private sources, Loan Management staff should contact the Preservation Division for guidance in reducing Federal costs;

2. The project will be retained as low-income affordable housing for its remaining useful life;
3. The owner is prepared to use the Tenant Income Profile, developed in accordance with Paragraph 8-17.F., which represents the higher proportion of very low-income families, as the basis for future occupancy of the project. After POA approval, units must remain available and affordable to the same proportions of very low-, low- and moderate-income families shown on the profile selected, or on an updated profile with a larger proportion of very low-income tenants provided by the owner at POA approval. This requirement will not prohibit a higher proportion of very low-income families from occupying the project;

8-35

1/93

4350.6-CHG.1

4. Throughout the remaining useful life of the project, adequate expenditures will be made for maintenance and operation and the project will continue to meet the housing standards as determined by inspections conducted by HUD;
5. Tenants residing at the project at POA approval will not be involuntarily displaced, except for "good cause." Involuntary displacement will be evaluated as described in Paragraph 8-13.A.1.b.i.;
6. The TTP will generally be set at the lower of the FMR or 30 percent of

the Adjusted Monthly Income (AMI). For moderate-income tenants whose incomes decrease so that 30 percent of the AMI is lower than a Minimum Rent established in accordance with Paragraph 13 below, TTP will be set at the lower of FMR or the Minimum Rent. The TTP for tenants not receiving Section 8 assistance may not be reduced because of POA approval;

7. Any resulting increase in TTP for any tenant living in the project at POA approval (except for increases made necessary by increased operating costs) must be phased in. The method for implementing the phase-in is provided in Appendix 11. The rules for the phase-in are:
 - a. If the total increase is 30 percent or more of the current TTP, it must be phased in equally over a period of not less than three years. The first increase will occur upon the effective date of the POA and the subsequent two increases will occur annually thereafter.

1/93

8-36

4350.6-CHG.1

- b. If the total increase is greater than ten percent but less than 30 percent of the current TTP, it must be phased in at no more than ten percent of the current TTP each year;
 - c. Increases may not be phased in slower than allowed by both Paragraphs a. and b. above.
8. Section 8 assistance must be provided, to the extent appropriations are available, for all tenants designated very low- and low-income on the tenant profile. If the TTP is an increase for tenants who will be receiving Section 8 rental assistance after POA approval but were not receiving

it before, the increase will be phased in at the same rate as described in Paragraph 7 above. If the TTP is a decrease for these tenants, it will be reduced to the lower of the FMR or 30 percent of the AMI;

9. Provision must be made for the phase-in of the owner's or purchaser's receipt of the increased annual authorized return, to coordinate with the phase-in of project rents to pay for the incentives;
10. Section 8 Gross Rents for each unit will be set at levels approved by the Loan Management Branch, taking into account the PPR required because of anticipated incentives to be provided under the approved POA, documentation of required utility allowances, and the rent projected to be paid by moderate-income tenants, in accordance with Paragraph 8-17.C.2;

8-37

1/93

4350.6-CHG.1

11. Future rent increases will be handled in accordance with Chapter 11;
12. Any net savings from reductions in operating expenses due to management efficiencies will be deposited into the project's reserve for replacement account. With the approval of Loan Management staff, the owner who retains the project and purchasers will have periodic access to such reserves to pay for return to owner to the extent that Loan Management staff determines that the level of the reserves is adequate and that the project is maintained in accordance with housing standards. Priority purchasers may only withdraw this amount from the reserve account under the conditions specified in Paragraph 8-21.A.1.b;

13. Minimum Rents are established for all tenants designated as moderate-income. The Minimum Rent is 30 percent of the Section 8 low-income limit for the applicable family size, divided by 12, and further adjusted by the allowances specific to the family in accordance with Paragraph 3-11 in HUD Handbook 4350.3, Occupancy Requirements of Subsidized Multifamily Housing Programs. However, the FMR should be used where it is lower than the Minimum Rent;
14. Requested utility allowances were submitted for each unit type for the period beginning at implementation of the POA along with appropriate documentation of the method used to derive the utility allowance;
15. The mortgage on the project remains current;

1/93

8-38

4350.6-CHG.1

16. There are no open audit findings, open findings of non-compliance with Title VI of the Civil Rights Act of 1964, the Fair Housing Act, Executive Order 11063, the Age Discrimination Act of 1975, Section 504 of the Rehabilitation Act of 1973, and all regulations promulgated under such statutes and authorities or outstanding violations of the regulatory agreement; and
17. The following additional requirements will be met:
 - a. Those in accordance with Section D, Paragraph 8-20, Escrow Requirements, for POAs to retain the project; or
 - b. Those in Section E, Paragraph 8-23, Headquarters Review of Grants, for POAs to sell the project.

B. Loan Management Processing.

1. If a purchaser is requesting a grant, Loan Management staff should follow the guidelines in Section E, Paragraph 8-23.
2. On the basis of its review of the POA and comments received from tenants in accordance with Paragraph 8-3.B. and State and local governments in accordance with Paragraph 8-3.C., Loan Management staff should determine whether a POA meets the requirements under this Chapter and should be approved or disapproved. A letter will be sent to the owner or owner and purchaser, as applicable, within 180 days of receipt of a complete POA LOG date letter sent , informing them of the approval or disapproval of the POA.

8-39

1/93

4350.6-CHG.1

- a. If Loan Management staff approves the POA, follow the guidance in Section F of this Chapter.
 - b. If Loan Management staff disapproves the POA, the letter must cite the reasons for disapproval and suggest alternatives. The alternatives may include offering the owner advice on incentives which may be requested to extend the low-income affordability restrictions, if an inappropriate request for incentives was a factor in the disapproval. Loan Management staff should offer the owner an opportunity to meet and discuss these other options.
3. If the owner receives a letter disapproving the POA, it may request an extension of the time for POA approval up to an additional 185 days. Loan Management staff must advise the owner that the final revision must be submitted within 305 days of HUD's initial receipt

date which is stamped on the POA. if the POA cannot be approved within 305 days of initial receipt, the initial NOI must be voided for the purposes of filing a POA. In order to receive incentives, the owner must file a new Initial NOI requesting incentives after waiting six months.

4. By POA approval, the owner must have firm financing commitments for all loans in the amounts, rates, and terms shown in the POA. The owner is responsible for submitting all applications to the banks and HUD and obtaining all commitments.

1/93

8-40

4350.6-CHG.1

5. If the POA cannot be approved because of an outstanding civil rights violation, audit finding or finding of non-compliance with the Regulatory Agreement, the finding must be closed before HUD may approve the POA within the 365-day timeframe established above. Please note that these findings of non-compliance need not be those which existed prior to the owner's submission of the Initial NOI. It could be any finding made during the POA approval process including those found due to the POA process itself.

8-41

1/93

4350.6-CHG.1

Section D.

Incentives to Retain the Project

- 8-19. Contents of Plans of Action. A POA requesting incentives should be submitted in the same manner as described in Paragraph 8-17.
 - A. Amount of Assistance Requested. In addition to the incentives available in

accordance with Paragraph 8-17.A., qualified owners may request an annual authorized return of eight percent of Extension Preservation Equity (EPE) in accordance with Paragraphs B.1 and B.2. below.

B. Methods for Funding the Incentives. In addition to the methods for funding the incentives allowed by Paragraph 8-17.B., the owner may request:

1. Access of up to 70 percent of EPE in the project. HUD may provide this access to equity through the provision of an equity loan insured under Section 241(f) of the National Housing Act, or through a non-insured mortgage loan approved by HUD and the mortgagee with the condition that debt service on the loan, along with other return to owner, does not exceed the limits described in Paragraph 2. below; and
2. An increase in the amount of allowable distributions, not to exceed eight percent of EPE. This amount may be used to pay an annual authorized return to owner and/or debt service on an equity loan up to the limit described in Paragraph 1 above except that the following two conditions apply:
 - a. Debt service may not exceed 90 percent of the allowable return on equity; and

1/93

8-42

4350.6-CHG.1

b. The equity loan is amortized over the time periods shown below. If the time period is not yet known, it should be assumed to be 20 years.

- i. Insured Section 241(f) Loan. The lower of 20 years or the remaining term of the existing mortgage; or
- ii. Non-insured Loan. Any

term agreed upon between
the purchaser and
mortgagee.

- C. Determination of Preservation Project Rent. The Preservation Project Rent (PPR) needed to fund all incentives may not exceed the Federal Cost Limit (FCL). The projected budget must demonstrate that it will not exceed that limit.

- 8-20. Escrow Requirements. In addition to the requirements in paragraph 8-18.A. for POAs for retention of a project requesting an equity loan, Loan Management staff must be certain that the owner provides a certification with the POA that ten percent of any equity loan will be escrowed. This must remain escrowed for a minimum of five years or until the owner is in compliance with HUD's Housing Quality Standards.

8-43

1/93

4350.6-CHG.1

Section E.

Voluntary or Mandatory Sale of the Project Other
than for Sale to Resident Councils

- 8-21. Contents of Plan of Action. A POA requesting assistance should be submitted in the same manner as described in Paragraph 8-17.
- A. Amount of Assistance Requested.
1. In addition to the incentives available in accordance with Paragraph 8-17.A., purchasers of a project may request the following assistance:
 - a. A loan to acquire the project for a purchase price not greater than the Transfer Preservation Value (TPV);
 - b. Receipt by the purchaser of an annual authorized return in an amount equal to eight percent on the cash investment made to acquire the project. Priority purchasers may withdraw this return from the project only if it is needed to pay debt

service on a non-Federal loan to acquire the project.

- c. In the case of a priority purchaser, reimbursement for transaction expenses relating to the acquisition of the project. The reimbursement will be offered in accordance with Paragraphs B.3. and D.2. below and may be subject to review by the Preservation Division in accordance with Paragraph 8-23; and

1/93

8-44

4350.6-CHG.1

- d. In the case of an approved Resident Homeownership Program, a grant to cover costs specified in Chapter 9. All grants are subject to approval by the Preservation Division in accordance with Paragraph 8-23.
- B. Methods for Funding the Incentives. In addition to the methods for funding incentives allowed by Paragraph 8-17.B., the owner and purchaser may also request that the purchaser receive:
- 1. An acquisition loan of up to 95 percent of Transfer Preservation Equity (TPE) in the project. The loan may either be insured under Section 241(f) of the National Housing Act or be provided through a non-insured mortgage loan approved by HUD and the mortgagee. A Section 241(f) insured loan may be amortized for a period of up to 20 years. A non-insured loan may be amortized over whatever period is agreed upon between the mortgagee and the purchaser. If the loan commitment is not firm at the time of POA submission, the term will be assumed to be 20 years for purposes of reviewing the POA.
 - 2. A distribution not to exceed eight percent of actual cash invested, and never more than eight percent of five percent of the TPE.

3. In the case of priority purchasers, a loan in an amount which may not exceed five percent of TPE. This loan may be used for acquisition costs, costs of organizing the nonprofit organization, and for tenant training and education, if necessary. These costs must be based on documented expenses. Acquisition costs may include legal

8-45

1/93

4350.6-CHG.1

fees and closing costs for purchasing the project. It may not include brokers' fees. This loan may be added to the loan amount allowed by Paragraph 1. above.

4. Grants for specified purposes for certain purchasers as described in Paragraph D. below.
- C. Determination of Preservation Project Rent (PPR). The projected budget must demonstrate that the following conditions will be met:
1. Mandatory Sales. In most cases, PPR will be equal to the Federal Cost Limit (FCL). However, if rents are clearly not needed at this level, Loan Management staff must approve rents at a lower level. If higher rents are needed, grants to reduce rents, will be available to purchasers, in accordance with Paragraph D.3. below.
 2. Voluntary Sales.
 - a. Priority Purchasers Buying Projects in which Transfer Preservation Rent (TPR) did not Exceed the FCL. Annual PPR will be established, as needed, to meet all costs required by the benefits shown in Paragraph 8-17 and Paragraphs A. and B. above and the total of utility allowances for all tenants. If PPR that exceeds the FCL is needed, HUD may provide grants

to priority purchasers to reduce rents in accordance with Paragraph D.3. below.

- b. Qualified, Non-Priority Purchasers and/or All Purchasers Buying a Project where TPR Exceeded the FCL. PPR may not exceed the FCL.

1/93

8-46

4350.6-CHG.1

Grants will not be available to help the purchaser reduce rents to the FCL. Therefore, a purchaser may have to accept reduced benefits from those shown in paragraph 8-17 and Paragraphs A. and B. above, to avoid exceeding the FCL.

- D. Request for Grants to Purchasers. Grants are available for Resident Councils purchasing projects under approved Resident Homeownership Programs in accordance with Chapter 9. There are three types of grants available to certain other purchasers. All grants are subject to approval by the Preservation Division, in accordance with paragraph 8-23. The owner may request grants for the purposes and amounts shown below. Documentation that the request meets all requirements must be included.
 - 1. In the case of priority purchasers who cannot raise the equity requirement elsewhere, a grant for up to five percent of TPE.
 - 2. In the case of priority purchasers, a grant for the purpose(s) shown in paragraph B.3. above, which when combined with any loan made in accordance with paragraph B.3. above, does not exceed five percent of the Transfer Preservation Equity (TPE).
 - 3. In certain cases where the projected PPR exceeds the FCL, a grant to reduce the first year's PPR to the level of the FCL. The amount and conditions of this grant will be

determined in accordance with Paragraph 8-22 below. This grant is available to:

- a. Qualified purchasers buying under the mandatory sales process; or

8-47

1/93

4350.6-CHG.1

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- b. Priority purchasers, when the TPR developed by the Valuation Branch did not exceed the FCL.
- E. A complete Transfer of Physical Assets Package in accordance with HUD Handbook 4350.1., Insured Project Servicing Handbook, including any documents of sale.
 - F. Seller financing may be provided in the form of a loan to any qualified purchaser of the project. The amount, rates, and terms must be specified in a contract with the purchaser and in the POA. Seller financing must meet the following requirements:
 1. The rate of interest charged and the term of the loan may not exceed that of the federally-insured acquisition or rehabilitation loan, as appropriate; and
 2. The seller may provide financing to the following limits:
 - a. Purchase Money Note Financing for Acquisition. The principal amount of such financing may not exceed:
 - i. TPE of the project minus the amount of the acquisition loan; and
 - ii. In the case of priority purchasers, expenses associated with the acquisition not to exceed five percent of TPE (see Paragraph 8-21.B.3.).
 - b. Cash Financing for

Rehabilitation. The principal amount of such financing may not exceed the equity requirements for a

1/93

8-48

4350.6-CHG.1

rehabilitation loan in accordance with Section C, Paragraph 8-17.B.5.

8-22. Grants to Reduce Preservation Project Rent. Whether the project is sold under voluntary or mandatory sale, the method for computing the grant amount authorized in accordance with Paragraph 8-21.D.3. will be the same. The amount of the grant will be the amount to which the acquisition loan must be reduced in order to make the annual PPR equal to the FCL. An example of the calculation is provided in Paragraph C. below.

- A. In the case of a priority purchaser buying under the voluntary sale provisions, the grant may not exceed the present value of the projected FMRs for the next ten years, or longer if necessary. The maximum will be calculated by the Preservation Division.
- B. In the case of any purchaser buying under the mandatory sale provisions, the grant may not exceed the difference between the PPR necessary to pay for allowable benefits, in accordance with Paragraphs 8-17 and 8-21, and the FCL.
- C. Example:

PPR needed: \$132,000

Maximum rent which may be collected (This equals the Federal Cost Limit): \$128,000

Debt Payment must be reduced by

\$132,000
-128,000

\$ 4,000

The acquisition loan must therefore be reduced by an amount sufficient to reduce the debt payment by \$4,000 annually.

Anticipated annual debt payment for each \$1,000 of acquisition loan at 10 percent interest (including mortgage insurance premium) for 20 years: \$115.92 To reduce

8-49

1/93

4350.6-CHG.1

debt payment by \$4,000 annually, the acquisition loan is reduced by \$34,500.

The additional \$34,500 is awarded to the purchaser as a grant.

- 8-23. Headquarters Review of Grants. If a POA contains a request for a grant in accordance with Paragraph 8-21.D., Loan Management staff will review the entire POA to determine if it can be approved, including the grant(s), in accordance with Paragraph 8-18. Within 150 days of receipt of the POA, if the rest of the POA can be approved, Loan Management staff will forward the complete POA and a copy of the completed Form HUD-50062, with a request for confirmation of availability of funds to the Preservation Division. LOG date approval requested The Preservation staff must issue its approval or disapproval within 15 days of receipt. LOG date approval or disapproval received

1/93

8-50

4350.6-CHG.1

Section F.

Final Decision and Action on the Plan of Action

- 8-24. Delegation of Authority. The authority to approve a Plan of Action (POA) has been delegated to the Regional Administrator who may further delegate this authority to the Field Office Manager or, in a case where the area and Regional Office are collocated, to the Regional Housing Director. If delegation to the Field Office has not been made, the Field Office Manager must prepare a recommendation to the Regional Administrator for POA approval.

8-25. Timeframes for Final Approval.

A. Approval Granted.

1. No earlier than the 60 days required for the tenant and State and local government comment period and not later than 180 days after receipt of a POA, the Field Office Manager must notify the owner or owner and purchaser in writing advising whether or not the POA is approved.
2. An attachment must be provided to any approval letters for the owner to post, notifying the tenants of the approval. The owner must post the attachment along with the notice of rent increase required by Paragraph 8-28.
3. If the owner requests an extension of the time for approval, it may be extended but never to more than 365 days after receipt of the POA. LOG date letter sent An example of a valid reason where the owner may request an extension is when the loan commitments have not yet been received.

8-51

1/93

4350.6-CHG.1

- B. Approval Withheld. If the approval is withheld, a notice must be sent LOG date sent to the owner or owner and purchaser giving:
 1. The reasons for withholding approval; and
 2. Suggestions to the owner for meeting the criteria for approval.
- C. Opportunity to Revise. When approval is denied, the Loan Management Branch will give the owner an opportunity to revise the POA, but not more than 60 days after notification or 305 days of POA submission, whichever is earlier. If the owner fails to comply with this time period, the project will not be eligible for relief under Paragraph 8-25.D.

- D. Delayed Approval. If HUD fails to initially approve or disapprove a POA within 180 days for reasons other than deficiencies in the POA, owner error, or owner non-compliance, it must provide retroactive incentives and assistance to an entitled owner in accordance with Sections C, D and E of this Chapter. The incentives and assistance must be in the amount that the owner would have received if HUD had met the time limitations. In these cases, the direction in Paragraph 8-35 should be followed.

8-26. Plan of Action Approval. In order to approve a POA, Loan Management staff must:

- A. Make the determinations required by Section B or Sections C and D or E of this Chapter, as applicable;
- B. If the POA involves a Transfer of Physical Assets (TPA), evaluate the TPA and issue preliminary approval of sale to the purchaser. Preliminary approval of the TPA must be made simultaneously with approval of the rest of the POA;

1/93

8-52

4350.6-CHG.1

- C. Assure that all loan commitments are firm for the amounts, rates, and terms shown in the POA;
- D. If the POA was initially disapproved because of an outstanding FHEO or audit finding, or violation of the Regulatory Agreement, assure that the finding is closed. Owners should be aware that this requirement will be firmly adhered to even if the entire POA process is complete. An outstanding finding could include instances where non-compliance with regulations in the past leads to the owner's inability to comply with regulations in the present; e.g., if inappropriate tenant selection procedures produces a tenant profile which contains too many moderate-income tenants, or if lack of tenant income certifications makes it impossible to produce a tenant profile.

8-27. Updating the Tenant Profile. If, after

receiving the POA approval letter, an owner wishes to update the project's tenant profile because there was a significant profile change favoring very-low income tenants, between POA submission and POA approval, an owner may, within 15 days of receiving the approval letter, submit a new profile in accordance with Paragraph 8-17.F. If an updated profile is submitted, Loan Management Branch must recalculate Section 8 rents based on the new profile. The profile will be forwarded to the Preservation Division, in accordance with Paragraph 8-29.B.1.

8-28. Notifications of Approval of a POA.

A. Tenants.

1. The owner must post the letter provided by Loan Management staff advising tenants of the approval of the POA. This notice must provide tenants with HUD's reasons for the approval. The owner also must write

8-53

1/93

4350.6-CHG.1

to each affected tenant explaining how the POA approval will personally affect the tenant.

2. If the approval of the POA contains provisions for a rent increase, the owner's letter must explain the rent phase-in provisions, if applicable. All additional requirements for rent increases, contained in Chapter 7 of HUD Handbook 4350.1, Insured Project Servicing Handbook, must be followed and the owner must post a notification of the rent increase:
 - a. After POA approval;
 - b. Prior to execution of the Use Agreement; and
 - c. At least 30 days prior to the effective date of any rent increase.

- B. State and Local Government. Loan Management staff must write to all affected State and local governments to

advise them that the POA has been approved.

8-29. Submissions to HUD Headquarters. Within 30 days of approval of a POA, the Loan Management staff must LOG date sent :

A. Request funding from the Preservation Division through the Regional Office of Housing for the owner to implement the approved POA. This request may include:

1. Section 8 new unit funding requests that include unit composition, approved rents, contract authority, and budget authority in accordance with the annual funding instructions, i.e., five-year budget authority. Funding should be requested for the number of units

1/93

8-54

4350.6-CHG.1

designated as very low- and low-income on the tenant profile even if Section 8 assistance is not currently needed for all the units;

2. Section 8 amendment requests that require contract authority and budget authority;
3. Flexible subsidy capital improvement loan requests which must conform to the instructions in Chapter 5 of HUD Handbook 4355.1, Flexible Subsidy Handbook, issued May 17, 1991. Please note that POA funding requests are not subject to either Section 8 or Flexible Subsidy NOFA requirements; and
4. Information about the amount of grant funds approved in accordance with Paragraph 8-21.D.

B. Submit the following information to the Preservation Division for the development of the Use Agreement and Amendment to the Regulatory Agreement, Grant Agreement, and any other required loan or grant documents with a request that the Office of the General Counsel (OGC) prepare any documents which are not normally prepared

by Field Counsel. The Use Agreement will take priority over any Regulatory Agreement currently in effect.

1. Tenant Income Profile that the purchaser will maintain at the project for the remaining useful life of the project;
2. All restrictions on Total Tenant Payment (TTP);
3. The Section 8 contract and gross rents and utility allowances with documentation of how the rents and utility allowances were established;

8-55

1/93

4350.6-CHG.1

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4. The method by which moderate-income tenants' TTP will be established;
 5. Methods by which TTP for tenants living at the project at POA approval will be phased-in, when applicable;
 6. An indication of whether the owner's annual percentage or equity base for return to owner has been increased, and if so, to what level;
 7. Number of units of Section 8 and contract authority for new units, as well as any amendment needs for existing contracts;
 8. Details of any other incentives, e.g., Flexible subsidy, Section 241(f) loan, etc., that the owner will receive under the POA;
 9. A copy of the POA signed by the owners;
 10. If the POA involves a TPA, the name and type of entity of the purchaser and the terms and changes required by the TPA;
 11. A copy of the preliminary approval letter for the TPA attached as background documentation;

12. A copy of the POA approval letter;
 13. A copy of all financing commitments;
 14. Documentation of any provision for seller financing; and
 15. All restrictions on the manner in which general project rent increases will be granted.
- C. Execute a Section 8 or Amended Section 8 Contract.

1/93

8-56

4350.6-CHG.1

- D. Request Field Counsel to prepare any loan documents for which they have the authority.
- 8-30. Extension of Low-Income Affordability Restrictions.
- A. The Use Agreement and Amended Regulatory Agreement must be recorded by the owner if the owner retains the project, or by the purchaser, if the project is sold, to implement the terms of the POA and the continuation of the low-income affordability restrictions. The owner and purchaser must provide evidence to the Loan Management staff that the aforementioned documents were recorded. The term of the Use Agreement will be for the remaining useful life of the project.
 - B. An owner/purchaser may file an appeal to HUD no earlier than 50 years after POA approval for a determination that the useful life of the project has expired. The owner/purchaser should be aware that in making a determination pursuant to such a petition, the owner will have the burden of proof in establishing such expiration. HUD will not determine that the useful life of any project has expired if such determination results primarily from failure to make regular and reasonable repairs and replacement, as became necessary during the previous 50 years.
- 8-31. Permissible Prepayment for Those Filing a Plan

of Action to Extend Low-income Affordability Restrictions.

- A. Conditions for Prepayment. An owner who submitted a POA to extend low-income affordability restrictions through retention or sale may be allowed to prepay its mortgage for the following reasons:

8-57

1/93

4350.6-CHG.1

1. A POA is approved but there are insufficient funds available within specific timeframes to implement any portion of the approved POA other than insurance for the equity take-out or rehabilitation loan. The conditions and time frames for funding are:
 - a. Retaining Project: HUD approves a POA to extend low-income affordability restrictions as described in Sections C and D of this Chapter, but does not provide the assistance contained in such a POA within 15 months of approval;
 - b. Selling Project: HUD approves a POA as part of a voluntary or mandatory sale in accordance with Sections C and E of this Chapter, but does not provide the assistance contained in such a POA the earlier of:
 - i. For Projects Whose POA is Approved After 20 Years of Final Endorsement. Two months after the beginning of a new fiscal year or six months after final approval; or
 - ii. For Projects Whose POA is Approved Prior to 20 Years of Final Endorsement. Two months after the beginning of a new fiscal year or nine months after POA approval.

2. An owner complied with all requirements for sale but did not receive a bona fide offer, or accepted a bona fide offer and the sale failed due to no fault of the

1/93

8-58

4350.6-CHG.1

owner and the owner complied with the requirements of Paragraph 7-12 and received no other bona fide offer from a qualified purchaser.

- B. Acceptance of Prepayment. An owner, meeting the criteria of Paragraph A. above, and intending to prepay its mortgage, must make a request to prepay to the mortgagee with a copy to the Loan Management Branch. LOG request received. If it is a HUD-held mortgage, the owner will contact the Multifamily Notes Servicing Branch in HUD Headquarters. The letter will notify them of the date of the anticipated payout and request the pay-off figure. Loan Management Branch will notify Preservation Division that the request has been received and recommend approval. The mortgagee or Multifamily Notes Servicing Branch will obtain approval from the Preservation Division before sending a reply to the owner. Prepayment will be accepted in accordance with Chapter 11. The termination of low-income affordability restrictions is subject to compliance with the provisions of Chapter 10 covering displaced tenants.
- C. Tenant Protection. The termination of low-income affordability restrictions is subject to compliance with the provisions of Chapter 10 covering displaced tenants.

8-59

1/93

4350.6-CHG.1

Section G.

Implementation of a Plan of Action

- 8-32. Effective Date. The approved Plan of Action (POA) is effective when the owner or purchaser:
- A. Prepays the mortgage and terminates low-income affordability restrictions and signs a Use Agreement for current tenants, LOG effective date ; or
 - B. Executes and records the Use Agreement to extend low-income affordability restrictions LOG execution date . No other action (e.g., rent increases, Section 8 contracts, Section 241(f) loan closing, Flexible Subsidy contracts, distribution of surplus cash, etc.) is permissible prior to the owner's or purchaser's execution of the Use Agreement. The loan closing and execution of the Use Agreement should occur simultaneously.
- 8-33. Failure to Consummate Sales Transactions. If, under a voluntary or mandatory sale, an owner and purchaser fail to close on a transfer of physical assets within 90 days after POA approval the transaction will be treated as a terminated sales transaction and the project must again be placed for sale pursuant to Chapter 7, Paragraphs 7-9, 13 and 14.
- 8-34. Plan of Action Expenses. Expenses incurred by the owner pursuant to filing and negotiating a POA are the owner's responsibility until the POA is approved. Such expenses may be paid as project expenses from residual receipts or surplus cash, with proper documentation of expenses and Loan Management approval, and/or from distributions as approved in the POA, only after the POA is effective. Expenses charged to the project prior to POA approval and approval of the expenses by HUD, require Loan Management staff's normal regulatory enforcement action and prevent approval of the POA until they have been repaid.

1/93

8-60

4350.6-CHG.1

- 8-35. Retroactive Incentives for Delayed POA Approval. If an acceptable POA has not received a letter of approval or initial disapproval within 180 days of receipt by HUD,

due to no fault of the owner, the owner is entitled to benefits retroactive to the 180th day of HUD's receipt of the POA. In these cases, upon approval of the POA, Loan Management staff should send a memorandum to the Preservation Division explaining the reasons for the delay and recommending approval of retroactive benefits. They should enclose the complete POA, the completed Form HUD 50061 or 50062, as applicable and any other documentation relevant to the delay.

8-36. Distribution of the POA. Loan Management staff should maintain one copy of the executed POA and give one copy the owner.

8-37. Provision of Incentives. The owner and purchaser will receive approved incentives at the following times:

- A. Retention of Project by the Current Owner.
 - 1. All incentives if the project meets Housing Quality Standards (HQS) at POA approval.
 - 2. Incentives needed to bring the project to HUD's Housing Quality Standards (HQS), as soon as the rehabilitation loan closing takes place; and
 - 3. Other incentives, as soon as possible after HQS have been met.
- B. Sale of Project. As soon as all loan closings and execution of appropriate documents are completed.

[\[Search\]](#) [\[Prev List\]](#) [\[Doc List\]](#) [\[Next List\]](#) [\[First Doc\]](#) [\[Prev Doc\]](#) [\[Curr Doc\]](#) [\[Next Doc\]](#) [\[Last Doc\]](#)
[\[Bottom\]](#) [\[Next Hit\]](#) [\[Help\]](#) [\[Text Only\]](#)

Processing Plans of Action Under the Low-Income Housing

Directive Number: [\[Prev Hit\]](#)[\[Next Hit\]](#)4350.6

4350.6-CHG.3

Chapter 9. Resident Homeownership Program

Section A. General

- 9-1. Purpose. This chapter describes the requirements of the Resident Homeownership Program.
- A. General. A tenant group may form a Resident Council (RC) which may acquire a project under a Resident Homeownership Program. In accordance with Paragraphs 9-2.A., B., and C. below, as applicable, the RC will organize a Homeowners Association or Condominium Association, to be in effect at the time the RC purchases the project, or a Cooperative Association which will be the actual purchaser of the project. The RC will make the units available for purchase by residents who wish to become homeowners. RCs intending to purchase the project as rental housing may not acquire the project under a Resident Homeownership Program, but instead, should follow the guidelines in Chapter 8, Sections C and E.
- B. Organization of the Chapter. This Chapter is organized into Sections A through F as follows:
1. Section A covers:
 - a. The formation of a Resident Council;
 - b. The forms of homeownership a RC may use.
 - c. The procedures a RC must follow in its attempt to purchase the project.
 2. Section B describes the requirements for Resident Homeownership Plans (RHPs) submitted by RCs seeking funds to purchase the project when the mortgage on the project is to be prepaid. The

following conditions apply:

9-1

3/94

4350.6-CHG.3

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- a. The RC will purchase the project, initially fund the reserve for replacement and operating cost accounts, and pay for other costs associated with the Resident Homeownership Program, i.e., tenant counseling, RC training, and consultant fees, by means of a grant from HUD. All insured loans remaining on the project will be paid off.
 - b. The discussion in Section B assumes that the RC is using a condominium or other fee simple form of homeownership. However, the RC also may establish a cooperative form of housing under the Resident Homeownership Program. If the RHP is for cooperative housing, the terminology used in Section C would be the appropriate language and should be substituted, as applicable, in Section B.
3. Section C describes the requirements for establishing a Limited Equity Cooperative (LEC) where the existing mortgage on the property is assumed and the RC receives the same incentives as other purchasers.
 4. Section D describes the protection afforded tenants who do not purchase units or become members of a housing cooperative.
 5. Section E describes the requirements for resale of units or memberships to subsequent homeowners or members of a housing cooperative and the limits on homeowner or member equity. For LECs that assume the mortgages, this information is contained in Section C.
 6. Section F describes the requirements HUD staff must follow to monitor projects with Resident Homeownership Programs.
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9-2. Forms of Homeownership. There are several forms of homeownership available to RCs. In addition, RCs may establish several types of financing to assist residents to buy their units including the option of using HUD single-family insurance programs for homeownership, if available. If the RC plans to use HUD single-family mortgage insurance to finance the sale of units, the guidelines for the RHP shown be low must be supplemented by requirements in HUD Handbook 4135.1, Appendix 9. The RC must be certain that the RHP meets the provisions required by any source of mortgage financing sought for homeowners' purchases. Following are descriptions of the major eligible forms of homeownership that RCs may use:

- A. Fee simple ownership of units (non-condominium) is most commonly used for detached properties. Usually, title to the unit, all of its walls, and the land underlying the unit are conveyed to the individual. For many multifamily properties, condominium ownership is the most feasible form of fee simple ownership because of unit configurations and shared spaces involved. However, other fee simple arrangements are possible for multifamily properties, and the other arrangements may be preferable when the units take the form of attached units, e.g., townhouses.
1. Planned Unit Development (PUD). In one common form of fee simple ownership (known as a PUD) which is suitable both for attached and detached units, homeowners hold title to the individual units and the land under the units. However, the shared common space (such as grounds, parking, recreation facilities, and possibly stairways and elevators in multifamily buildings) is owned by a Homeowners Association in which the homeowners are members. Ordinarily there may be no need for a PUD with a Homeowners Association where there is little or no shared common space. For example, the interest of townhouse owners

4350.6-CHG.3

sharing a wall may be governed by a recorded party wall agreement, and other forms of recorded mutual easements may govern the interests of owners if there are shared driveways or entryways. However, projects purchased under LIHPRHA which will be operated as fee simple homeownership must establish a PUD with a Homeowners Association. Establishment of a PUD with a Homeowners' Association ensures that there will be a long-term organization controlled by the owners and capable of compliance with ongoing responsibilities, including control of any units not purchased by homeowners.

2. Homeowners Association. The RC must establish the Homeowners Association prior to or at the time of purchasing the project, so that it can own common property and eventually take over remaining functions of the RC when units have been sold. Legal documents establishing and governing the Homeowners Association must be executed and recorded.
3. Organization of Homeowners Association. It is important that the RC establish the Homeowners Association in a form that will be acceptable under the programs of major organizations involved in home purchase financing; e.g., the Federal Housing Administration (FHA), the Veterans Administration (VA), the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC) and the Farmers Home Administration (FmHA). Because of the special involvement of the RC, it is probable that some changes must be made to standard PUD documentation and the RC should obtain the necessary approval for these changes from potential financing organizations before documents are recorded. The RC should anticipate the future needs of subsequent homeowners when the documents are written; not just those of initial homeowners.

4350.6-CHG.3

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4. Control of Units. HUD requires that the RC establish the Homeowners Association so that the RC has authority to exercise the special powers of control vis-a-vis unit purchasers that would normally be exercised by a developer in a for-profit environment. Under such an arrangement, the RC would control and provide the financing for the operations of the Homeowners Association, given through a HUD grant and other sources, until most of the units (typically 75 percent) have been sold. Once 75 percent of the units are sold, the unit owners would take control of the Homeowners Association. The RC can retain a voice in the Homeowners Association, proportionate to the number of units it still owns, or it can choose to transfer the remaining unsold units to the Homeowners Association if the Association is authorized and capable of exercising the remaining responsibilities of the RC under the RHP, Use and Grant Agreements and this Handbook.

 5. Requirements of a Homeowners Association. The Homeowners Association established by the RC must meet the following general requirements, local law (many states now have legislation governing the establishment and operation of Homeowner Associations), and any special requirements necessary to preserve the eligibility of the units for home purchase financing:
 - a. It must be organized and operated to provide for the acquisition, construction, management, maintenance and care of association property.
 - b. The gross income of the Homeowners Association must come from contributions, membership dues, fees or assessments from owners of residential units, including the RC as long as it remains as an owner of units.

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- c. The expenditures of the Homeowners Association must be for the acquisition, construction, management, maintenance and care of association property and other incidental functions.
 - d. No part of any net earnings of the Homeowners Association may inure to the benefit of any private individual.
 - e. Every homeowner must be a member of the Homeowners Association and is entitled to voting representation regarding its operations. No tenants or non-residents of the project may be members of the Homeowners Association.
- B. Ownership of a condominium unit is a form of fee simple ownership. Condominiums are established under state law, but a common understanding of the interests of a condominium unit owner is set forth in Section 234(c) of the National Housing Act. These interests include fee simple title (or long-term leasehold interest in fee simple title) in a one-family unit in a multifamily project, including a project in which the dwelling units are attached, semi-detached or detached, and an undivided interest in the common areas and facilities which serve the project.
- 1. Condominium Association. The condominium owners are members of a Condominium Association which operates much like a Homeowners Association in a PUD. When a for-profit developer establishes a Condominium Association it has control at the start and passes control to the homeowners when most of the units (typically 75 percent) have been sold. The RC should proceed in the same manner by establishing a Condominium Association that will eventually be controlled directly by the unit owners. The RC can

retain a voice in the Condominium Association, proportionate to the number of units it still owns, or it can choose to transfer the remaining unsold units to the Condominium Association if the Association is authorized and capable of exercising the remaining responsibilities of the RC under the RHP, Use and Grant Agreements and this Handbook.

2. Organization of Condominium Association. The Condominium Association established by the RC must meet the general requirements listed above for a Homeowners Association for a PUD. As with a Homeowners Association, the legal documents establishing and governing the Condominium Association must be executed and recorded by the time of project transfer, and the documents should be in a form acceptable under the programs of major financing organizations such as FHA, VA, FNMA and FHLMC. In a properly structured project, if it chooses and is qualified, a family may purchase its unit by way of a HUD/FHA insured mortgage made by a private lender under Section 234(c) of the National Housing Act.

- C. Ownership of cooperative housing shares means stock ownership in a corporation that owns the property. Stock ownership gives a member the right to occupy a unit in the cooperative. Stockholders are cooperative housing members. For purposes of this Handbook, stockholders will be referred to as "members." Members occupy units under a proprietary lease. This financing approach is advantageous to low-income homeownership because the low-income homebuyers do not have to qualify individually for much of the mortgage debt carried by the cooperative.

1. Conversion to Cooperative Status. Generally, the project is converted to cooperative status when 70 percent of the memberships have either been purchased or have commitments to purchase from

prospective members. In LIHPRHA projects, this number of commitments

would have been made by the prospective members prior to the RC making the purchase offer because earnest money deposits representing a commitment to purchase shares has been received from 75 percent of current tenants.

2. Project Purchased by Cooperative. Subscription Agreements from a minimum of 70 percent of tenants must be signed and the Cooperative must be formed prior to the Grant closing and project transfer, if allowed by State and local law. Therefore, although the RC makes application to purchase the project, in most cases, the grant will be made and the project will be sold to a Cooperative Association.
- D. A Limited Equity Cooperative will have, in its by-laws, a limited equity formula that ensures long-term low-income affordability. The formula restricts the profits that members can receive when they resell their interests in the cooperative. There are two types of LECs that may be developed under the Resident Homeownership Program:
1. Those that acquire the project with a grant from HUD, prepay the mortgage, and carry out its housing cooperative program exclusively in compliance with the requirements of the Resident Homeownership Program; or
 2. Those that acquire the project by assuming the FHA-insured mortgage and implement its housing cooperative program as a priority purchaser in compliance with the requirements for a POA in accordance with a combination of Chapter 8 and certain elements of the Resident Homeownership Program. This form of LEC may receive Section 8 rental assistance for its members. All information specific to this type of LEC is in Section C.

3/94

9-8

4350.6-CHG.3

9-3. The Role of the Resident Initiatives Specialist (RIS). The RIS, located in the Loan Management Branch of the local HUD Field Office, is

responsible for providing the expertise to RCs and nonprofit organizations working with RCs to achieve the objectives of the Resident Homeownership Program. Prior to working with RCs and nonprofit organizations to develop Resident Homeownership Programs, the RIS will:

- A. Conduct special outreach activities to inform tenants and tenant representatives about the Title VI Resident Homeownership Program. This outreach effort will include providing tenants with information about:
 - 1. The goals and objectives of the Resident Homeownership Program;
 - 2. The technical and financial assistance available from HUD to assist in the formation of a RC;
 - 3. The available forms of homeownership;
 - 4. HUD assistance available for paying costs (see Paragraph 9-9.D.) necessary to implement a Resident Homeownership Program; and
 - 5. Funding from other sources such as State and local governments, corporations and private foundations
- B. Carry out the tasks in Paragraph A:
 - 1. Through written communication;
 - 2. By holding meetings with tenant groups at HUD or the project site (where the Field Office travel budget permits); and
 - 3. By sending the organizations any HUD publications on resident homeownership.
- C. Assist Loan Management staff with the development and maintenance of a list of priority/qualified purchasers who will be notified when purchasing opportunities are available in accordance with Paragraph 7-3.

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- 9-4. Organization of and Assistance to Resident Councils. Tenants interested in homeownership must establish a RC, which is a tenant-controlled nonprofit group organized, in this case, to

develop a Resident Homeownership Program or LEC. They must also organize a Homeowners Association, Condominium Association, or Cooperative to take responsibility for the project after sufficient units or memberships have been sold. To ensure that tenant groups have the capacity and experience necessary to organize a RC and a Homeowners Association, Condominium Association, or Cooperative, as appropriate, and to own and manage the project, the statute requires that they work with a public or private nonprofit organization. Such organizations must have sufficient experience to help the tenants organize, write the RHP, and then purchase and manage the project. The tenants may also seek assistance from HUD during their initial efforts to organize as a RC.

- A. Organization of a Resident Council. The RC must meet the requirements defined in Paragraph 1-15. A suggested method for organizing is described below:
1. Organize a Petition Drive to Incorporate. While this step is not necessarily required, it encourages the involvement of residents in the process. The petition also can authorize a committee of residents to work with an attorney to draft a corporate charter and by-laws.
 2. Retain an Attorney. Obtaining professional legal advice is an essential early step toward incorporation. Residents can hire an attorney, or possibly find one willing to help free of charge. In either case, the attorney should be familiar with low-income housing, sympathetic to resident homeownership goals, and able to devote sufficient attention to the needs of the project. Community Legal Services agencies are a possible source of such assistance.

3/94

9-10

4350.6-CHG.3

3. Draft By-Laws and a Corporate Charter. By-laws and a corporate charter define the purpose of the organization, identify its name and address, list the officers, and state the rules by which the organization will be governed. Most practicing attorneys can provide standard

language for these documents or model documents prepared by National Associations or other organizations could be adapted for RCs in the Preservation program. Even if RCs obtain model documents, however, residents should work with an attorney to shape these model documents to meet their particular needs.

4. Elect Board Members and Officers. A Board of Directors governs the RC and represents the interests of residents. The Preservation Program requires that board members be democratically elected to their positions by the residents and that all these positions be held by residents. The board serves on a voluntary basis and watches over the paid manager of the organization (if one exists). The number of board members must be defined in the by-laws and typically ranges from four to eight persons. The by-laws must also contain written procedures for electing RC officers on a regular basis.
5. Form Committees. Committees can play a very important role in getting full participation and cooperation from the organization membership. Some committees, such as the finance committee, may be required under the corporate by-laws. Others may be formed or dissolved in response to the changing needs or desires of the organization membership. Once the governing body is assembled and officers appointed, the process of forming committees can begin.
6. Meet other needs of the RC during and immediately after incorporation. First, a room large enough to accommodate an audience of residents must be found for

board meetings. Second, office space and office equipment may be needed in order for the RC to perform its administrative functions. Also, the RC will need a corporate identity, which can be created by designing a logo, printing letterhead stationery, and fabricating plaques or banners to post in offices or the board

room. Together, the physical setting, functional supports, and graphic symbols of the new organization signify its ambitions, both to those involved and to others in the residential community.

B. The nonprofit organization working with the RC must:

1. Be a public agency or a public or private nonprofit organization;
2. Be incorporated or sanctioned under State or local law;
3. Have sufficient experience to help the tenants consider their options. Such organizations must demonstrate their capacity to help tenants organize, acquire and manage the project, and develop a viable Resident Homeownership Program.
4. Demonstrate Its Ability to Manage the Project, if Necessary.
 - a. HUD may approve either the nonprofit organization or the RC to manage the project if one or the other can demonstrate that it has effectively managed an eligible property for at least three years;
 - b. If the nonprofit organization manages the project, it must:
 - i. Meet the requirements for experience cited in HUD Handbook 4381.5, Management Documents, Agents and Fees, Chapter 2, Section I; and

3/94

9-12

4350.6-CHG.3

ii. In accordance with HUD Handbook 4381.5, Chapter 2, Paragraph 2-4, certify in the Management Certification that it has obtained fidelity bond or employee dishonesty coverage; and

c. Nonprofit organizations or the RC

are not precluded from arms length subcontracting with for-profit organizations to provide management services.

- C. If the nonprofit organization is to be paid for its activities, the Loan Management Branch must determine that the nonprofit organization working with tenants, meets the requirements specified in Paragraph B. above. The tenants involved with the establishment of the RC should submit information about the nonprofit organization or public agency to the Chief, Loan Management Branch, as early in the prepayment process as possible so that the RC and the nonprofit organization will not incur expenses that HUD later determines are not eligible for reimbursement under an approved RHP. Log when information is received from the RC about the nonprofit organization

D. GRANTS

1. Technical assistance planning grants are available to qualified Community Based Nonprofit Organizations (CBOs) or RCs under Notices of Fund Availability (NOFAs). The Preservation Division will provide guidance and information to Field Office staff by way of HUD Notices that provide instructions for processing grant applications received in response to the NOFA. The Preservation Division will also work directly with the Resident Initiatives Specialist (RIS) to make grant information available to eligible applicants. The planning grants provide

9-13

3/94

4350.6-CHG.3

funding to facilitate the: (1) organization of a RC or CBO, (2) acquisition of a project, or (3) preparation of an RHP, Plan of Action (POA), or Limited Equity Cooperative Plan of Action (LEP). The operative NOFAs for these grants will vary each year. In general, if the owner of an eligible project has submitted an Initial Notice of Intent (NOI) to sell the project, or if the Initial NOI is to extend affordability but the owner has been working with a resident group which

wishes to purchase the project, a qualified applicant may be able to apply for a planning grant under the NOFA. The specific qualifications for receiving a grant may differ in each NOFA. In some cases, intermediaries will be selected by HUD to administer the grants. Potential applicants may obtain copies of NOFAs and application packages from either the RIS in the local HUD Field Office or from the administering intermediary. The RIS will make available names of those intermediaries.

2. Other Grants will be made available through NOFA publication to State and local government agencies, nonprofit intermediaries (as defined in Paragraph 1-15), community-based nonprofit housing developers, and experienced resident organizations and CBOs to carry out resident capacity building, predevelopment activity, community outreach, training programs, and organizational activities.

- E. Ineligibility of Grants under the Homeownership and Opportunity for People Everywhere (HOPE 2) Programs. HOPE 2 Planning Grants are not available to RCs of any project for which an owner has submitted an Initial Notice of Intent (NOI). If Loan Management staff receives an Initial NOI for a project that has a HOPE 2 grant in process, the loan servicer must return the Initial NOI in

3/94

9-14

4350.6-CHG.3

accordance with HUD Notice 92-32, Processing Instructions for the Fiscal Year 1992 for Homeownership of Multifamily Units Program (HOPE 2) - Applications for Grants, Paragraph 9.

- 9-5. The RC is responsible for:

- A. Electing a Board of Directors and/or creating a Homeowners Association, Condominium Association, or Cooperative to exercise the legal control over the project. The organization of this entity must be done in accordance with State and local laws. The decision must be made whether the entity will

operate in conjunction with the RC or will assume all responsibilities of the RC after the required number of units are sold. If the entity is to manage the project, the determinations specified in Paragraph 9-4.B.4. must also be made;

- B. Submitting an expression of interest (EOI) and bona fide offer to purchase the project in accordance with Chapter 7, and executing all other agreements;
- C. Developing and submitting the RHP in accordance with Section B or a LEP in accordance with Section C;
- D. Executing a grant agreement and/or other agreements with HUD;
- E. Providing, or contracting for, counseling services that will help residents gain the skill, build the organizational capacity, and acquire the confidence to carry out the Resident Homeownership Program, including developing the ability to identify and obtain the financial resources needed to purchase and manage the project;
- F. Administering the Resident-Homeownership Program by:
 - 1. Maintaining or contracting for maintenance of the project in accordance with the housing standards in Chapter 11, Paragraph 11-13.

9-15

3/94

4350.6-CHG.3

- 2. Managing or contracting for the management of the Resident Homeownership Program in accordance with the RHP. This responsibility includes submitting all forms and reports required by the RHP to HUD in a timely manner;
- G. The overall administration and policy making decisions for the project regardless of whether it contracts with a nonprofit organization to manage it;
- H. Arranging for financing of units by individual homeowners and maintaining relations with lenders and other entities who may provide grant funds. In some jurisdictions

participating in locally administered HOME Investment Partnerships programs, the RC may be able to negotiate to "recycle" homeownership funds paid in accordance with Paragraph 9-36. Current homeowners may then use these funds to finance rehabilitation of units. Subsequent homeowners may use the funds to purchase units; and

- I. Submitting required reports in accordance with a RHP or LEP.

9-6. Offer to Purchase. Tenants who wish to form or have already formed a RC to purchase the project in which they live must follow the process outlined below. This process describes the timeframe in which an owner may accept a bona fide offer from a RC, the requirements for submission of an Expression of Interest (EOI), the components of a bona fide offer, acceptance or rejection of the offer, and what actions must be taken next. For additional guidance, please refer to Paragraphs 7-4 through 7-12.

- A. For the first six-month period beginning on the date that HUD receives a complete and accurate Second NOI reflecting the owner's intention to sell the project, the tenants and RC control the selection of the purchaser. This situation exists because the purchaser must have the RC and tenant support in order to purchase the project.

3/94

9-16

4350.6-CHG.3

1. Residents should understand that if they sign a statement signifying that they wish to form a RC to purchase the project, they should not also sign a statement giving support to another organization to purchase the project. Since CBOs may also purchase the project during this period if they can demonstrate support of a majority of the tenants, a tenant who signs more than one statement could create competition for the purchase.
2. Although a RC may offer to buy a project at any time during the 15-month offering period, it should proceed as quickly as possible, to preclude the possibility of the owner accepting another offer after

the initial six-month period.

- B. Expression of Interest (EOI). As soon as the owner submits a Second Notice of Intent (NOI) to HUD, a RC may begin the purchase process by submitting a written EOI to the Chief, Loan Management Branch, in accordance with Paragraph 7-5.
- C. Information from HUD and the Owner. Within 30 days of receipt of an EOI, Loan Management staff will determine the eligibility of the RC to purchase the project under a Resident Homeownership Program, notify it in writing of its eligibility and provide the information identified in Paragraph 7-6. Upon notification from HUD of the RC's EOI, the owner also will provide the RC with any relevant information necessary to complete the sale.
- D. Bona Fide Offer. An eligible RC may submit a bona fide offer to the owner with a copy to the Chief, Loan Management Branch. The components of a bona fide offer are identified in Paragraph 7-7. The requirements include the following provisions:
 - 1. The RC must demonstrate that tenants representing at least 50 percent of all units and 75 percent of the occupied units have expressed an interest in

9-17

3/94

4350.6-CHG.3

participating in the Resident Homeownership Program to be developed by the RC; and

- 2. While an owner may not waive an earnest money deposit for a RC, it may, if the tenants agree, and if allowed by State and local law, accept an assignment of any portion of the tenants' security deposits in lieu of the earnest money deposit. The amount of the earnest money or assigned security deposit must be at least \$200 from each prospective purchasing tenant representing at least 75 percent of the occupied units. This deposit will represent a firm commitment on the part of the tenant to purchase (unless released from the commitment by the RC for emergency reasons) and must be

applied to the tenant's downpayment for the unit or membership.

- E. Acceptance or Rejection of Offer. The owner must accept or reject the offer within 30 days of receipt. If an owner rejects the offer, it must return any cash earnest money deposit to the RC. Where pledges of security deposits were used as the earnest money deposit, they must be returned to the tenants' security deposit accounts. Any acceptance must be contingent upon HUD's approval of the offer and of a RHP. Within ten days of notification from HUD that the offer is acceptable, the owner must issue a final acceptance to the RC contingent upon satisfactory completion of a RHP.
- F. Additional Conditions. Guidance provided in Paragraphs 7-9, 7-10, 7-12, and 7-13, dealing with acceptance of the offer and procedures to follow if the sale is not consummated also apply to the implementation of a Resident Homeownership Program.
- G. Submission of a Resident Homeownership Plan or Limited Equity Plan of Action. The requirements and the conditions for approval for a RHP and LEP are in Sections B and C, respectively. The RC must submit a RHP or LEP to the Loan Management Branch within the following timeframes LOG date POA received :

3/94

9-18

4350.6-CHG.3

1. In the case of a voluntary sale, within six months of the owner's acceptance of an offer which contains a contingency clause requiring HUD's approval; and
2. In the case of a mandatory sale, within six months of the owner's receipt of the offer.

9-7. Seller Financing is permitted for RCs on a case by case basis. The Loan Management staff must check with the Preservation Division to determine the acceptability of a specific proposal.

9-8. Notification to New Tenants. Any tenant who moves into the project after the submission of the RHP must sign a certification, before occupancy, indicating that it has been informed by the owner of the pending change in ownership of the project and is aware that a Resident Homeownership Program

is being established. The notification should further indicate:

- A. The tenant's option to purchase its unit;
- B. The length of time that the tenant will likely be allowed to remain in the project as a renter and that the tenant must move at the end of a period clearly specified in the lease if it does not purchase the unit;
- C. The possibility of rent increases;
- D. That the tenant may be eligible for Section 8 rental assistance if it remains in the project as a tenant after approval of the RHP; and
- E. That relocation assistance will not be available.

9-9. Financial Assistance.

- A. From HUD. A RC may receive financial assistance to pay for the expenses shown in Paragraph D. below if the Loan Management staff determines that the RHP submission meets the requirements of Section B of this Chapter and Appendix 9-2, Evaluation of a Resident Homeownership Plan. The financial assistance

9-19

3/94

4350.6-CHG.3

provided by HUD must be the least costly alternative to the Federal government consistent with establishing a viable Resident Homeownership Program. In most cases, this financial assistance will take the form of a grant from HUD.

- B. From State or Local Government Agencies or Other Sources. This assistance may come in whole or in part from these sources as described in Paragraph 8-17.E.
- C. Total Maximum Assistance. HUD will subtract any funds that the RC, or the nonprofit organization working with the RC, receives from other sources if it duplicates HUD funding for the same purpose.
- D. Types of Assistance.
 - 1. The purchase price, not to exceed

Transfer Preservation Value;

2. Transaction expenses as outlined in Paragraph 8-21(A) (1) (c);
3. Reimbursement for the costs of all items listed in Paragraph a. through c. below. The expenses and amount of funds requested for such items must be necessary and documented. The funding level will be limited to the lower of \$500 per unit or \$200,000 per project.
 - a. Training for the RC;
 - b. Homeownership counseling and training; and
 - c. Fees for the HUD-approved nonprofit organization or public agency working with the RC;
4. Eligible relocation expenses for tenants who elect to move, rather than lease or purchase a unit, as described in Paragraph 9-34.E.;

3/94

9-20

4350.6-CHG.3

5. The documented cost of rehabilitation identified by the Capital Needs Assessment plus any other rehabilitation costs justified and documented in the RHP;
6. The establishment of an adequate initial reserve for replacement account; and
7. The establishment of an operating reserve escrow account, including contingencies against unexpected increases in expenses or shortfalls in homeowners' payments, if the RC documents the need.

9-21

3/94

4350.6-CHG.3

Section B. Resident Homeownership Plan of Action

- 9-10. Submission of the Resident Homeownership Plan of Action (RHP). The RHP serves the same purpose as the Plan of Action (POA) submitted by other types of purchasers and must contain all of the elements, documentation, and information required by this Section and the checklist contained in Appendix 9-1, Resident Homeownership Plan Checklist. The Loan Management staff should follow the guidance in Paragraphs 8-3 through 8-5 when processing the submission of a RHP. NOTE: The required conditions of a POA for a Limited Equity Cooperative (LEC) which assumes the mortgage are described in Section C and will be called a Limited Equity Plan of Action (LEP). While any Cooperative which is not an LEC which assumes the mortgage submits an RHP in accordance with this Section, terminology for such RHPs will be in accordance with that specified in Section C. The Resident Council (RC) must submit six copies of a complete RHP to the Chief, Loan Management Branch within the following time frames: LOG date received whether complete or not
- A. Under the voluntary sales process, within six months of acceptance of a bona fide offer by the owner; and
 - B. Under the mandatory sales process, within six months of the owner receiving an offer from the RC.
- 9-11. Required Review of the RHP. The Loan Management staff must review the RHP and respond to the owner and RC in the same manner and within the same time frames as required for reviewing POAs in Paragraphs 8-6 through 8-10. The staff should use Form HUD-91110, Evaluation of a Resident Homeownership Plan, Form HUD 91110-A, Worksheet for Individual Resident Homeownership Feasibility, and Form HUD 91110-B, Summary Worksheet for Resident Homeownership Feasibility to evaluate the RHP.
- 9-12. Required Conditions of a Resident Homeownership Plan. The RHP must spell out all the duties and responsibilities of the RC and the Homeowners or Condominium Association, meet all of the conditions

3/94

9-22

4350.6-CHG.3

listed in this Paragraph and fully address all of the elements listed in Paragraph 9-13. This

chapter assumes that the RC will continue to operate in conjunction with a Homeowners or Condominium Association. However, the RHP must specify whether these duties will be retained by the RC or will be turned over to the successor entity at a certain time.

A. Unit values.

1. At the time of sale of the unit to the initial homeowner, the RC should determine the unit values so that the total of all values equals the project's Transfer Preservation Value (TPV) or purchase price, if lower than the TPV. The RC must develop the unit values proportionately and describe the method in the RHP.
2. At the time of sale of the unit to a subsequent homeowner:
 - a. If the promissory note that the homeowner signs with HUD is still in effect in accordance with Paragraph 9-37, the RC must determine the value of the unit by means of an appraisal. If an appraisal is required by the lender for mortgage purposes, the subsequent homeowner must submit a copy of the appraisal to the RC. If the lender does not require an appraisal or the RC is the lender, the RC must contract for it.
 - b. If the promissory note that the homeowner signs with HUD is no longer in effect and if resale restrictions still exist, the RC will determine the value of the unit using the method described in its RHP.

B. Limits on Homeowner Expenses.

1. An initial homeowner's monthly expenses must not exceed 35 percent of its adjusted monthly income.

9-23

3/94

4350.6-CHG.3

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- a. An initial homeowner will not qualify to purchase a unit if, during the first year of

homeownership, it must spend more than 35 percent of its adjusted monthly income (AMI) on debt service (principal and interest), utility costs, taxes, insurance and homeownership fees.

- b. Depending on the RHP and the form of homeownership desired, these costs may be allocated in different ways between those expenses paid directly by the homeowner and those paid by the RC from project funds. At a minimum, the total homeownership fees must be sufficient to cover all operating and administrative costs of the Resident Homeownership Program and maintenance of the common areas. However, a homeowner's maximum total out-of-pocket monthly payments may not exceed 35 percent of its AMI, regardless of how the costs are allocated between those paid by the homeowner and those paid by the RC.

2. For subsequent homeowners, the RC, at its option, may limit the amount of monthly income which can be used to cover housing expenses. The RC also, at its option, may use funds from the general operating reserve account (GOR), established in accordance with Paragraph 9-26.I., to provide subsidies to subsequent homeowners to reduce housing costs. Use of funds from the GOR account, must meet the guidelines developed in the RHP.

C. Unit purchase price.

1. For Initial Homeowners.
 - a. The unit purchase price must never exceed the unit value. The unit purchase price, established individually for each initial homeowner, must be set so that the debt service on the mortgage for the

3/94

9-24

4350.6-CHG.3

unit can be supported by the difference between 35 percent of the homeowner's AMI and all other ongoing expenses connected with

homeownership in accordance with Paragraph B. above.

- b. For purposes of determining the unit purchase price, the RC must determine both 35 percent of the homeowners AMI and the expenses connected with homeownership as of the date it transfers the unit to the homeowner. However, for purposes of RHP approval, the RC should use information concerning prospective homeowners as of the date it submits the RHP.
- c. The minimum purchase price for initial homeowners may never be less than the down payment made in the form of the earnest money deposit paid in cash or pledge of security deposit by the tenant. The RHP may set a higher minimum purchase price, and apply it to other initial purchasers, based on unit type, thus limiting eligibility of some prospective initial homeowners. However, the total number of initial homeowners must meet the criteria set forth in the RHP in accordance with Paragraphs D.2. and E. below.

2. For Subsequent Homeowners.

- a. When the Unit Purchase Price and the Unit Selling Price are the Same. The unit purchase price is the amount the subsequent homeowner pays for the unit. Ordinarily, the selling price for which the current homeowner sells the unit and the purchase price for which the subsequent homeowner buys the unit will be the same.

9-25

3/94

4350.6-CHG.3

- b. When the Unit Purchase Price and the Unit Selling Price Differ. When the unit selling price and the unit purchase price differ, (e.g., when the current homeowner sells the unit to the RC for one amount but the subsequent homeowner purchases the

unit from the RC for another amount or if the RHP requires that the selling price be set at the unit value for the current homeowner and the purchase price be computed as 35 percent of the AMI for the subsequent homeowner), the Handbook will use the term selling price when referring to the seller and purchase price when referring to the purchaser.

- D. The RC must transfer ownership of all units which are to be sold to the initial homeowners no later than four years from the date of its purchase of the project. However, the transfer of ownership will begin when the RC purchases the project. It is anticipated that only units to be sold to non-residents and to residents who need time to escrow down payments prior to purchase, will require the maximum allowable time for transfer. The RC must ensure, to the greatest extent practicable, that a sufficient number of tenants residing in the project on the date it submitted its RHP, intend and can afford to purchase their unit by:
1. Performing a financial analysis of each prospective tenant's income and assets to ensure that the tenant can afford to purchase the unit and meet the applicable required conditions of the RHP.
 2. Seeking and using financing programs that enable a sufficient percentage of current tenants who reside in the project at RHP submission to purchase their units within that four-year period.
 - a. We recommend that the RHP contain documentation that a minimum of 65 percent of current tenants, in the

3/94

9-26

4350.6-CHG.3

same proportion of very low-, low- and moderate-income families that resided in the project at the time of RHP submission, are purchasing their units.

- b. For example, if on the date of submission of the RHP, a fully

occupied 100-unit project contains 50 very low-income, 40 low-income, and 10 moderate-income tenants, the RHP would contain evidence that at least 33 very-low income, 26 additional very low- or low-income, and at least six additional current tenants will be able to purchase their units. There would be no restrictions on the income category of the additional six or more current tenants who will purchase. Suggestions for ensuring the tenant's ability to meet this requirement are in Paragraphs I. and J. below.

3. Requiring a written expression of interest, from all tenants who are potential homeowners in at least the proportions required by the RHP, certifying the tenants' intent to purchase their units and not rent it to another family for 15 years.

E. Tenant Income Profile. The RHP must include tenant income profiles submitted in accordance with Paragraph 8-17.F. Initial purchasers who do not reside at the project on the date the RC submitted its RHP must be selected in a manner that ensures that the total number of initial homeowners that are very low-, low-, and moderate-income meets the requirements for tenant selection described in Paragraph 8-18.A.3. The RHP should specify any restrictions on above moderate-income purchasers with the following limitations:

1. Above moderate-income tenants who live at the project at the time of RHP approval may purchase a unit and become initial

9-27

3/94

4350.6-CHG.3

homeowners, if allowed by the RHP.
(PLEASE NOTE: They may also continue to rent a unit at the project as tenants.)

2. Non-resident above moderate-income families may not become initial homeowners.
3. However, above moderate-income families

may purchase units and become subsequent homeowners if allowed by the RHP.

F. Use of Project Income.

1. Immediately upon receipt or annually, at the RC's option, the RC must remit to HUD 50 percent of the proceeds from the sale of units to initial homeowners. Depending upon the method of financing used, this will be paid in different stages:
 - a. If the RC receives cash from the sale of a unit because the homebuyer received a loan from a conventional lender, the RC must return half the purchase price to HUD at the time of sale.
 - b. If the RC carries back the mortgage, it must remit half the principal to HUD as it is collected.
 - c. If a unit is sold by the initial homeowner and the initial homeowner pays the RC the total debt, the RC must pay HUD 50 percent of the amount received. (NOTE: If a subsequent homeowner assumes the initial homeowner's remaining debt, the RC would have to continue to remit to HUD 50 percent of all amount it receives in payment of principal, as it is collected.)
2. The RC may use any initial sales proceeds not required to be paid to HUD, along with any interest charged for financing the debt on the units, for costs of the homeownership program, including

3/94

9-28

4350.6-CHG.3

improvements to the project, operating and replacement reserves, additional homeownership opportunities in the project, and other project related activities approved by HUD. Other project related activities will include expenses other than normal operating expenses for the project. For example, the RC may use such funds for purchasing units which homeowners are selling,

subsidizing homeowner interest payments, or training subsequent purchasers.

3. The RC should use proceeds retained from any subsequent sales proceeds, for costs of the homeownership program, including purchasing units which homeowners are selling, subsidizing homeowner interest payments, training subsequent purchasers, or other HUD approved project-related activities.
4. Monthly homeowners fees should be used for expenses for project maintenance, operating and replacement reserves, and RC-paid taxes, insurance, and utility bills, and other expenses typical of all rental and homeownership projects.

G. Promissory Note.

1. Each initial homeowner must sign a promissory note, payable to HUD, agreeing to repay the difference between the value of the unit and the purchase price. These values are established in accordance with Paragraphs A. and C. above. Subsequent homeowners may have to sign a promissory note in accordance with Paragraph 9-37.
2. The promissory note bears no interest, is not amortized, is non-recourse, and must be secured by a mortgage.
3. The requirements of a promissory note, including the requirements for repayment by both the initial and any subsequent purchasers, are contained in Paragraphs 9-36 and 9-37, respectively.

9-29

3/94

4350.6-CHG.3

H. Restrictions on Equity and Resale.

1. RCs should specify in contracts with homeowners and in the RHP whether they have the first right to purchase the unit from the initial homeowner for a specified amount before any other prospective buyer. The RHP must specify the maximum length of time the RC may own the units prior to their sale to an eligible family. The period established

must be reasonable, e.g., a period of two years.

2. The RC may place reasonable restrictions, beyond those required by statute and approved by HUD, on the amount of equity appreciation a homeowner may retain. If restrictions are placed, the RC must, at the time of initial sale, enter into an agreement with the family to establish such a maximum.
- I. RCs may develop and offer any method or combination of methods of loan repayment to homeowners to purchase their units. At the RC's option, these methods may differ for initial and subsequent homeowners. The RC should ensure, however, that the financing method selected by the purchasers does not result in violation of the requirements of Paragraphs B. through E. Possible methods of financing include but are not limited to:
1. Arranging with a bank or other lending institution for mortgage financing for individual tenants;
 2. Helping tenants qualify for State and local homeownership programs;
 3. Arranging for State-supported mortgages for the potential homeowners;
 4. Arranging with a bank to finance all units through the RC with the RC collecting payments from individual homeowners and then making the bank payments;

3/94

9-30

4350.6-CHG.3

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5. Using proceeds and interest payments from previous sale of units to provide RC financing of all homeowner mortgages;
 6. Use of Federal Agency programs for which the homeowner and property are eligible, such as HUD mortgage insurance, the Department of Veterans Affairs loan guarantees, or Farmers Home Administration financing. If the RC plans to use any of these programs, it should be certain that the discretionary

aspects of their RHP do not conflict with the requirements for the specific program. For instance, if any homeowner's mortgage is to be insured by HUD under Section 203 or Section 234, the RHP must state that legal restrictions on conveyance (e.g. prohibition against the homeowner renting the unit, restrictions on sales proceeds retained by the owner, and the right of first refusal by the RC) may have to be terminated if:

- a. The mortgage is transferred by foreclosure;
 - b. The mortgage is transferred by deed in lieu of foreclosure; or
 - c. The mortgage to the property is assigned to HUD.
7. Using other methods of financing depending upon the income level of the tenant or other financial criteria.
- J. RCs may use any homeowner loan repayment method or combination of methods to enable as many residents as possible to purchase units. At the RC's option, these methods may also be used for subsequent purchasers. Some suggested methods include but are not limited to:
1. Subsidizing the lending institution's interest rate. The amount of subsidy would be based on the amount the homeowner may spend in accordance with Paragraph B. above. The RC should

9-31

3/94

4350.6-CHG.3

specify whether there is a floor (e.g. one percent) below which it would not subsidize the interest rate.

2. Determining rates and terms for loans payable to the RC to bring the homeowner's payments to the level determined in accordance with Paragraph B. above. It is advisable that the RC not reduce the interest rate that the homeowner pays on the loan to less than one percent nor extend the amortization period beyond 40 years.

3. While the purchase price is determined at the time of closing the sale on the unit, the RC may, at its option, adjust interest rates based on certifications of the homeowner's income at periods specified in the RHP. If the RHP allows it, the RC may also accelerate an extended payment period if the homeowner's income increases.
 4. The RC may provide for homeowner repayment of interest subsidized in accordance with Paragraphs 1. through 3., upon sale of the unit, if there are any funds remaining after repayment of the promissory note to HUD.
 5. It is advisable that the RHP not allow mortgages which contain negative amortizations, balloon payments, or any other requirement which could act to the homeowner's long-term financial detriment.
- K. In the case of loans made by the RC to initial homeowners, it is recommended that the RHP establish the down payment and closing cost requirements so that they do not exceed ten percent of the homeowner's adjusted annual income, with a minimum of the \$200 earnest money deposit for initial homeowners who are current tenants. The homeowner should have the option to contribute a greater downpayment in order to increase its equity. The RC, at its option, may set the down payment and closing cost guidelines for subsequent purchasers.

3/94

9-32

4350.6-CHG.3

- L. All initial homeowners must sign a certified statement that the unit will be used as their principal residence. At the RCs option, the RHP may require a similar certification from subsequent purchasers.
- M. Restrictions on Renting the Unit.
1. Initial Homeowner. The property must be occupied by the initial homeowner for at least 15 years from the date of purchase or until the initial homeowner sells the unit, whichever comes first. The unit may not be leased or otherwise made

available to other families during this period. A family is exempted from this rule if it temporarily moves outside the market area for employment or because of an emergency. The exemption will end when the emergency ceases to exist. The RC has the option to extend the 15-year period by establishing such a policy in the RHP.

2. Subsequent Homeowners. At its option, the RC may restrict the rental of units by subsequent homeowners in the RHP.
- N. The RC must develop a method to keep residents informed of their rights and to make sure that they have the opportunity to participate in the decision making process.
- O. The RC must determine whether they will pay moving expenses for tenants who choose to move rather than purchase or continue to lease a unit. If they do, the RHP should specify whether they will pay actual and reasonable expenses for such tenants or develop a schedule of relocation allowances in accordance with Paragraph 9-34.E.
- P. The RC must comply with any State and local government laws about cooperative housing or Resident Homeownership Programs. This includes any requirement that a minimum number of residents participate in the housing program where the requirement is more stringent than HUD's.

9-33

3/94

4350.6-CHG.3

- Q. The RC must specify whether all responsibilities for the project will be turned over to a successor entity, and if so, the sales conditions which must be met prior to this event, or if the RC will continue to operate in conjunction with the Homeowners Association or other applicable entity.

- 9-13. Required Elements of a Resident Homeownership Plan (RHP). The RC must use the RHP to describe the major elements of and schedules for the development of the Resident Homeownership Program and show how each criteria will be met. Loan Management staff may use Appendix 9-1, Resident Homeownership Plan Checklist, to ensure that the RHP submission is

complete and Appendices 9-2, 9-2A, and 9-2B, Forms HUD-91110, 91110-A, and 91110-B to evaluate it. The RHP must include, at a minimum:

- A. Information About the Sale of Units to Tenants Who Reside in the Project at the Time the RC Submits Its RHP. All issues described below must be addressed:
1. The type of homeownership contemplated (e.g., condominium or fee simple) along with methods and a schedule for conversion to homeownership;
 2. The financing arrangements for the units, including the underwriting standards and rates and terms for loans available for tenants in the various income categories;
 3. The methods by which eligibility for purchase and credit, other than income, will be determined;
 4. The down payment (with a minimum of the earnest money deposit paid by initial homeowners) and other costs to be paid by the homeowner at closing, including whether sweat equity may be used for all or part of the downpayment and how the sweat equity would be valued;
 5. A statement describing the monthly homeownership fees and estimates of utility costs, taxes, and insurance for each unit size;

3/94

9-34

4350.6-CHG.3

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6. An analysis of the unit purchase price for each potential initial homeowner, given anticipated fees in accordance with Paragraph 5. above and methods of financing, underwriting standards, and other considerations, in accordance with Paragraphs 2. through 4. above;
 7. The number of existing residents who wish and are eligible to purchase;
 8. Documentation that current tenants who wish to purchase units will be able to purchase in the proportions required by the RHP in accordance with Paragraph 9-12.D.2.; and

9. Identification of the actual proportions of initial homeowners in the three income categories intending to purchase units consistent with Paragraph 9-12.E.
- B. Information about Marketing Unsold Units.
1. How vacant units will be marketed to achieve the required tenant income profile in accordance with Paragraph 9-12.E.;
 2. A workable sales schedule;
 3. An Affirmative Fair Housing Marketing Plan;
 4. Credit and income requirements potential purchasers must meet in order to qualify for a loan;
 5. Any preferences other than those required by Paragraph 9-12.D.2. and E.; and
 6. Whether financing and other factors described in Paragraph A. above will be the same or different for non-resident initial purchasers.
- C. Considerations for Non-purchasing tenants.
1. Anticipated number of tenants requesting relocation assistance;

9-35

3/94

4350.6-CHG.3

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2. What relocation expenses will be provided in accordance with Paragraph 9-34.E.;
 3. Determination of rents in the project if non-purchasing tenants do not relocate in accordance with Paragraph 9-34.C. and D.;
 4. Developing phased-in rents for non-purchasing tenants in accordance with guidelines in Chapter 8, Paragraph 8-18.A.7.;
 5. Eligibility of non-purchasing tenants for Section 8 rental assistance, whether they remain or relocate; and
 6. Nondiscrimination counseling to

familiarize non-purchasing tenants with opportunities to select replacement dwellings from a full range of neighborhoods within the housing market area; their rights under the Fair Housing Act and other applicable Civil Rights laws; and how to search for suitable replacement housing.

D. Financial Considerations:

1. The amount of grant funds requested from HUD;
2. The amount of funds requested from State and local governments or other sources;
3. The anticipated waivers or abatements in taxes or other charges;
4. The provision of free or reduced price services to be provided by local organizations or other anticipated means of saving expenses. All such funding, abated expenses or the provision of free services, must be documented and guaranteed for a minimum of five years;
5. Funds, received as technical assistance grants by either the RC or nonprofit organization, which may be used to offset eligible expenses;

3/94

9-36

4350.6-CHG.3

6. The anticipated use of:
 - a. HUD grant funds;
 - b. Funds from State and local governments;
 - c. Proceeds from the sales price and interest payments of units to initial purchasers consistent with Paragraph 9-12.F.;
 - d. Technical assistance grants; and
 - e. Any other funds received pursuant to Paragraphs 3, 4, and 5 above.
7. Organizational costs;

8. Documented costs for training and other technical assistance;
9. The RC's acquisition costs for the project;
10. A summary of cost estimates for major rehabilitation activities to be carried out, including repairs, replacements and improvements as well as any costs for temporary relocation activities;
11. Anticipated homeownership fees, what the fees pay for, a description of how they are allocated to various unit types, and estimates, with documentation, of other costs to be paid by homeowners;
12. A statement as to responsibility for payment of taxes, insurance, and utility bills for the individual units; and
13. Proforma cash flow analyses for the four years after RHP approval. This proforma must reflect the financial feasibility and viability of the Resident Homeownership Program, taking into account any rental activity resulting from non-purchasing tenants of the project.

9-37

3/94

4350.6-CHG.3

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- a. Homeownership Activities.
 - i. Project Operation.
 - (a) Income from homeownership fees, laundry and any other sources;
 - (b) Expenses for operating the project including maintenance, administrative costs, utilities, taxes, insurance, deposits to a reserve for replacement account;
 - ii. Unit Purchases and Sales.
 - (a) Income from the sale of

units;

- (b) Payment to HUD of 50 percent of the net proceeds from the sale of units to initial purchasers, in accordance with Paragraph 9-12.F.1.; and
- (c) Expenses for purchase of units, homebuyer interest subsidies, orientation of new homeowners, and other expenses which are unique to a Resident Homeownership Program;

b. Rental Income and Expenses.

- i. Proportionate share of income and expenses from the rental portions of the operating budget. The budgets should show decreases in the rental portion and increases in the homeownership portion over the four-year period in accordance with the anticipated sales schedule; and

3/94

9-38

4350.6-CHG.3

- c. Any anticipated relocation costs for non-purchasing tenants.

E. Relocation Information.

- 1. An estimate of the number of tenants who plan to relocate and, if the RHP provides for relocation assistance, the estimated cost for such relocation determined in accordance with Paragraph 9-34.
- 2. An estimate of the number of nonpurchasing tenants who plan to remain as renters but who must temporarily relocate during the rehabilitation work, the estimated cost of temporary relocation, and the availability of temporary relocation resources.

F. Rehabilitation Information.

1. Expected scope of rehabilitation with justification for any rehabilitation over and above that required by the Preservation Capital Needs Assessment; and
 2. Details on how the rehabilitation will be accomplished.
- G. The expected scope of technical assistance, training and counseling for the RCs, homebuyers, and nonpurchasing tenants.
- H. Requirements for Resale of Units.
1. Any restrictions on resale by homeowners over and above those specified in Paragraph 9-35 and any restrictions on homeowners' equity, over and above those specified for the first six years of homeownership in Paragraph 9-36.A.1.c.
 2. Any differences in other parameters between those established for initial homeowners and subsequent homeowners, e.g., establishment of purchase price, downpayments, and financing. If the RC is not establishing a condition for any of the parameters for subsequent homeowners, that fact must be stated.

9-39

3/94

4350.6-CHG.3

- I. A tenant income profile representing the tenants who resided in the project on the date of RHP submission and pursuant to Paragraph 9-12.E. This profile will be used for two purposes:
 1. To designate the percentage of initial homeowners who must fall into each income category;
 2. To designate the percentage of tenants who must fall into each income category in accordance with the requirements of Paragraph 8-18.A.3. For the remaining useful life of the project, any new tenants must be selected to fulfill the tenant profile requirements.
- J. Copies of all forms, guidelines, worksheets, and contracts developed to implement the Resident Homeownership Program and all other documents required to justify elements of the

RHP.

- K. A proposed method for submitting any applicable forms, annual reports, and audits to HUD to demonstrate compliance with Federal regulations.
- L. Information about the Management of the Project.
 - 1. A Management Plan detailing all aspects of management including:
 - a. Whether the project will have a resident manager and, if so, the resident manager's duties and remuneration; and
 - b. The different methods that will be used to manage the homeownership and rental components of the project;
 - 2. Management Agent
 - a. If the RC is the management agent, the RHP must contain evidence that it has managed the property effectively and efficiently for at least three years; or

3/94

9-40

4350.6-CHG.3

- b. If a nonprofit organization is the management agent, the RHP must contain:
 - i. The name and address of the nonprofit organization or public agent selected to manage the property and support documents that reflect the qualifying experience it has to meet the standards in HUD Handbook 4381.5, Management Documents, Agent and Fees, Chapter 2, Section I;
 - ii. An executed contract between the RC and the management agent, contingent upon HUD's approval; and
 - iii. A statement confirming that the RC will retain primary responsibility to handle and

resolve problems such as regaining control of a unit if the homeowner moves or if the unit becomes uninhabitable.

- c. If the nonprofit organization contracts with a profit-motivated management agent, the RHP must contain:
 - i. The name and address of the profit-motivated management agent selected to manage the property and support documents that reflect the qualifying experience it has to meet the standards in HUD Handbook 4381.5, Management Documents, Agent and Fees, Chapter 2, Section I;
 - ii. An executed contract between the nonprofit organization, RC and the profit-motivated management agent, contingent upon HUD's approval; and

9-41

3/94

4350.6-CHG.3

- iii. A statement confirming that the RC will retain primary responsibility to handle and resolve problems such as regaining control of a unit if the homeowner moves or if the unit becomes uninhabitable.

- M. The Policy for Repurchasing and Sale of Units.
 - 1. The RC may pursue several options when purchasing units from homeowners who wish to sell, including purchasing all units and reselling them, serving as the buyer of last resort for unsold units, or maintaining the right of first refusal for the purchase of units. If the last option is chosen, the RC must describe the guidelines it will use to make the decision to purchase or not.
 - 2. The RC must describe the method by which it will establish the purchase and selling price for units which it purchases.

3. The RC must describe guidelines for future marketing of such units to ensure that any units it buys are resold to an eligible family, in accordance with the RHP.
- N. Information about any limitations on subsequent purchasers, including income and other requirements. This information should include an underwriting analysis showing that restrictions on eligible subsequent purchasers, as defined in Paragraph 9-35, would not jeopardize the operating feasibility of the project.
- O. A certification that the RC will comply with the provisions of:
 1. The Fair Housing Act;
 2. Title VI of the Civil Rights Act of 1964;
 3. Executive Order 11063;
 4. Age Discrimination Act of 1975;

3/94

9-42

4350.6-CHG.3

5. Section 504 of the Rehabilitation Act of 1973;
 6. Section 3 of the Housing and Urban Development Act of 1968, as amended;
 7. All regulations promulgated under such statutes and authorities cited in Paragraphs 1 through 6 above; and
 - P. A Complete Transfer of Physical Assets (TPA) package.
 - Q. A description of the interaction of the RC and other entity formed by the homeowners and/or the schedule by which the RC will be supplanted by the successor entity.
- 9-14. Approval of a Resident Homeownership Plan. In order to approve the RHP, Loan Management staff must determine that it meets all of the requirements contained in this Section and on Form HUD-91110, 91110-A, and 91110-B, is financially feasible and is the least costly alternative to HUD that is consistent with establishing a viable Resident Homeownership Program.

- 9-15. Headquarter's Review of the Required Conditions of a RHP. Within 30 days of their approval of the RHP, the Loan Management Branch must submit to the Preservation Division a request for grant funds, Section 8, and the preparation of required documents. LOG date request made The request should include the information and certifications shown below, along with a copy of the approved RHP, to ensure that the RHP meets all required conditions. Any conditions clearly specified in the RHP need not be repeated.
- A. RC name, project name, number and location and amount of grant required;
 - B. The projected number of initial homeowners that are very low-, low-, and moderate-income families to meet the requirements outlined in Paragraph 9-12.D. and E.;
 - C. An analysis showing that projected debt service payments, occupancy charges (taxes, insurance, homeownership fees) and utilities

9-43

3/94

4350.6-CHG.3

- payable by the initial homeowners will not exceed 35 percent of their AMI;
- D. An analysis showing that the aggregate incomes of initial homeowners and other sources of funds are sufficient to allow occupancy charges that cover the full operating costs of the project and any debt service while permitting the RC to comply with all requirements of this Chapter and the RHP;
 - E. Certifications showing that homeowners will occupy their projects for a minimum of fifteen years or such longer period as required by the RHP;
 - F. Evidence that potential homeowners are aware that at closing of their individual loans, they must execute a nonrecourse promissory note for a term of 20 years in accordance with Paragraph 9-36;
 - G. All other elements and conditions required for a Resident Homeownership Program including minimum purchase price of units, period of transfer and financing method for the potential initial and subsequent homeowners;

- H. The proposed schedule and methodology for release of grant funds and methods for monitoring the release;
- I. The proposed method of monitoring the Use and Grant Agreements for their full term along with all reporting requirements with which the project must comply;
- J. Any terms or conditions unique to the project or RHP or Special Conditions which Loan Management staff believe should be met which should be included in the Grant Agreement; and
- K. Other relevant required conditions for POAs as prescribed in Chapter 8, Sections C and E.

9-16. Grant and Use Agreements. Within 15 days of receipt of the request, the Preservation Division must examine the information for accuracy and completeness and, if acceptable, forward the documents to the Office of General Counsel (OGC).
LOG

3/94

9-44

4350.6-CHG.3

- A. Within 30 days of receipt of the request to prepare documents, the OGC will prepare and send the Grant and Use Agreements to the Preservation Division, which will forward them to the Chief, Loan Management Branch. LOG date received The agreements will cover:
 - 1. The funding described in Paragraph 9-9.D.;
 - 2. The RHP conditions cited in Paragraph 9-15;
 - 3. Procedures governing the drawdown of funds and remedies for noncompliance with the requirements of the program; and
 - 4. Remedies for noncompliance with the requirements of the program including possible cancellation of the Grant Agreement, withholding of further disbursements, repayment of Grant amounts already disbursed including those held in escrow accounts funded through the Grant.
- B. Within 30 days of receipt of the grant agreement, Loan Management staff must meet with the RC LOG date of meeting to review

the grant agreement, including repayment penalties for noncompliance, and any other issues relevant to the conversion to and operation of the Resident Homeownership Program.

- C. Relinquishing Duties to the Successor Entity. The Homeowners Association, Condominium Association, or Cooperative must be established by receipt of the Grant and transfer of the project. The duties of the RC must be transferred to the successor entity in accordance with the approved RHP.

9-17. Phase-In Period for Sales.

A. Timely Homeownership.

1. Transfer to RC. The RC must acquire ownership of the project no later than 90 days after approval of the RHP unless the RC and the owner agree to extend this

9-45

3/94

4350.6-CHG.3

date and the owner waives its right, in writing, to prepay during this extension.
LOG date transferred

2. Sale of Units. The RC must transfer ownership of all designated units in the project (other than units occupied by nonpurchasing tenants) to the initial homeowners within a reasonable time thereafter. This will be an on-going process, but in no event may take longer than four years from the date of transfer of the project to the RC. LOG number of units transferred quarterly HUD may seek contractual remedies, in accordance with the grant agreement, against any RC which fails to appropriately transfer ownership of all designated units within the four-year period.

B. Tenant Selection.

1. The RC must submit a written tenant selection plan in accordance with Chapter 2 of HUD Handbook 4350.3, Occupancy Requirements of Subsidized Multifamily Housing Programs, and the tenant profile requirements in accordance with Paragraph 8-17.F. It also must submit a statement

of the rules it will use for tenant selection and occupancy during the sales period when it continues to operate and manage the project partially as rental housing. Tenant selection procedures, rental payments, and other occupancy requirements must conform to those for preservation projects in accordance with Chapter 11. The RC must meet all Affirmative Fair Housing Marketing standards and must inform rejected tenants, in writing, of the reasons for rejection.

2. Loan Management staff must evaluate, or send to other appropriate Divisions to evaluate, these criteria for approval based on the RCs ability to continue to provide housing for very low-income families during this interim period.

3/94

9-46

4350.6-CHG.3

3. Before occupancy, the RC must advise all new tenants, by a signed statement, of its policy for new tenants as prescribed in Paragraph 9-8.

9-47

3/94

4350.6-CHG.3

Section C. Limited Equity Cooperatives

- 9-18. Introduction. This Section addresses the requirements for a Resident Council (RC) which acquires a project under a Resident Homeownership Program by assuming the federally-insured mortgage and converts the form of homeownership to a Limited Equity Cooperative (LEC). A LEC is a cooperative form of housing as described in Paragraph 9-2.C., with a limited equity formula in its by-laws which restricts the profits the members can receive when they resell their interests. Model Forms of Articles of Incorporation, By-Laws, Subscription Agreements, and Occupancy Agreements are in HUD Handbook 4550.1, Basic Cooperative Housing Insurance Handbook, and should be modified as

appropriate.

- A. A LEC is established as a nonprofit corporation whose specific purpose is to provide low-income housing for its residents, referred to as members, who are stockholders in the corporation.
- B. A LEC will be required to follow the procedures and requirements applicable to the purchase and operation of projects with mortgages insured under the applicable HUD program with continued low-income affordability restrictions.

9-19. The Resident Initiatives Specialist (RIS) will provide assistance to LECs in the same manner as it does to other RCs in accordance with Paragraph 9-3.

9-20. Organization and Responsibilities of a LEC. Tenants interested in organizing a RC and forming a LEC form of homeownership are subject to the requirements of the Resident Homeownership Program specified in Paragraphs 9-2 C and D, 9-4, and 9-5, with the following exceptions and suggestions:

- A. A LEC must:
 - 1. Develop a Limited Equity Plan of Action (LEP) which will include applicable elements of a Resident Homeownership Plan (RHP) and Plan of Action (POA) in accordance with Chapter 8, Sections C and E;

3/94

9-48

4350.6-CHG.3

- 2. Administer the Cooperative Housing Program through a Board of Directors in accordance with the legal documents specified in Paragraph B.4. below; and
- 3. Establish the minimum number or percentage of participants for the pre-sale threshold. In accordance with HUD Handbook 4350.1, Paragraph 29-4 D, we recommend this participation be set at a minimum of 90 percent of units, but it may be as low as the 75 percent of current tenants who contributed to the Earnest Money Deposit. The 90 percent threshold helps to ensure that the IRS Code requirement of 80 percent of project income be derived from members' carrying

charges be met. Initial participation must be in proportion to the current tenant profile.

B. Formation of a LEC.

1. Members of the LEC will buy a share of the housing corporation, usually called a membership certificate, which entitles the purchaser to occupy the unit through an occupancy agreement;
2. The Members will elect a Board of Directors which has the major responsibility to administer the LEC.
3. Membership Agreements. These are legally binding documents that establish the rights and obligations of the members of the LEC and of the Board of Directors:
 - a. A subscription agreement is the document that allows prospective members to demonstrate their intent to join the LEC and requires a membership fee.
 - b. An occupancy agreement that lasts as long as the member owns its stock in the LEC, describes the terms and conditions and gives the purchaser the exclusive right to occupy a unit in the project and participate as a member in the operation of the LEC.

9-49

3/94

4350.6-CHG.3

- c. State and local requirements may supplant or supplement the agreements shown in Paragraphs a. and b. above. In these cases, State and local requirements should be followed, unless they have been preempted by HUD requirements.
4. Other Principal Legal Documents include:
 - a. The Articles of Incorporation which sets forth the authority for the LEC to operate the corporation;
 - b. The By-Laws which establishes the method of operation of the LEC;
 - c. The HUD Use Agreement which restrict

the operation of the LEC to certain
FHA requirements; and

d. The Limited Equity Cooperative Plan
of Action.

C. Other questions and issues suggested by HUD
Handbook 4350.1, Chapter 29 should be reviewed.

9-21. Offer to Purchase. A LEC is subject to the process
outlined in Paragraph 9-6 which includes
information about the time frames in which an owner
may accept a bona fide offer from a RC, the
requirements for submission of an expression of
interest (EOI) and the components of a bona fide
offer.

9-22. Receipt and Acceptance of an Offer. Loan
Management staff should follow the guidance in
Paragraph 7-8 in making a determination about the
owner's receipt and acceptance of an offer from a
LEC and about how to determine the level of
incentives. The term Preservation Project Income
will be substituted for the term Preservation
Project Rent referred to in Paragraph 7-8.

A. Acceptance of Offer. In the case of a LEC,
the owner may issue an acceptance of a bona
fide offer contingent upon the satisfactory
completion of a LEP.

3/94

9-50

4350.6-CHG.3

B. Guidance provided in Paragraphs 7-9, 7-10,
7-12, 7-13, and 7-15 for RCs also apply to
LECs implementing a cooperative housing
program.

9-23. Notification to New Tenants. New tenants must be
notified by the LEC of its intention to purchase
the project in the same manner required of other
RCs in Paragraph 9-8.

9-24. Submission and Review of a Limited Equity
Cooperative Plan of Action (LEP). In the case of a
voluntary sale, the LEC will submit a LEP within
six months of acceptance of an offer by the owner.
In the case of a mandatory sale, the LEC must
submit a LEP within six months of the owner's
receipt of the offer. The LEC must submit six
copies of the LEP to the Loan Management Branch in
the same manner described in Paragraphs 8-3 and
8-4. Log date received whether complete or not

A checklist of items required for a complete LEP is in Appendix 9-3, Checklist for a Complete Limited Equity Cooperative Plan of Action. Because a LEP is a combination of an RHP and POA, Loan Management staff should follow guidance in this Chapter and Chapter 8, Sections C and, E when reviewing a LEP submission. Loan Management staff will use Form HUD-50007, Appendix 9-4, Evaluation of a Limited Equity Plan of Action, to review a LEP.

- 9-25. Requests for Incentives. The LEC must submit requests for incentives as part of the LEP. Requirements for the requests are the same as those for priority purchasers submitting a POA in accordance with Chapter 8, Sections C and E except:
- A. A LEC may not budget an annual authorized return which is provided to other purchasers in Paragraph 8-21.A.1.b. except to pay debt service on a non-Federal loan to acquire the project;
 - B. LECs may receive a grant for specific Resident Homeownership purposes pursuant to Paragraph 8-21.D. and as outlined in Paragraphs 9-9.C. and D.2. through 4.;
 - C. An organization receiving Low-income Housing Tax Credits (LIHTC) is not eligible to be a LEC because it is not eligible to become a priority purchaser;

9-51

3/94

4350.6-CHG.3

- D. The LEC may request project oversight charges but the charges must be based solely on the project's Gross Income Potential. The oversight charges may not be based on income that is unique to the operation of a LEC which is placed in the Cooperative Reserve Account as defined in Paragraph 9-26.I. below.
- E. The following changes in terminology will apply:
 - 1. "Member" will be used in lieu of "tenant."
 - 2. "Carrying charges" will be used in lieu of "rent."
 - 3. "Aggregate Basic Carrying Charge" and "Aggregate Market Carrying Charge" will be used in lieu of "Aggregate Basic Rent" and "Aggregate Market Rent."

4. "Minimum carrying charge" will be used in lieu of "minimum rent."
5. Total Member Payment (TMP) will be used in lieu of Total tenant payments (TTPs) for those who purchase memberships. TMPs are the monthly carrying charges paid by members to meet the financial and operating costs of the LEC plus the utility allowance, if any. They will be phased in the same way as TTPs.
6. "Section 8 Contract Payments" will be used in lieu of "Section 8 Contract Rents." They will be established in proportion to the established FMR for the unit.
7. "Preservation Project Income" (PPI) will be used in lieu of "Preservation Project Rent" (PPR). The PPI is the amount of income the LEC needs to fund all approved assistance. The PPI may not exceed the Federal Cost Limit (FCL). The PPI will not include income unique to a LEC such as membership fees. Further, it may not be used to pay expenses unique to a LEC such as the repurchase of memberships.

3/94

9-52

4350.6-CHG.3

8. "Gross Income Potential" (GIP) will be used in lieu of "Gross Rent Potential" (GRP). It will include member carrying charges and all other project income including the rental payments from non-members. The GIP may not include income nor be used to pay expenses unique to a LEC, such as repurchasing of memberships.
9. Increases in PPI will be calculated via an Operating Cost Adjustment Factor (OCAF) in the same manner as described in Paragraph 11-7.

9-26. Components of a Resident Homeownership Program which are relevant to LECs pursuant to Paragraphs 9-12 and 9-13, must be submitted as part of the LEP. The following list identifies exceptions and requirements for LECs.

- A. The following terms will be used for LECs in lieu of those used for other Resident

Homeownership Programs:

1. The term "member" will be used in lieu of "homeowner."
 2. The term "occupancy agreement" will be used in lieu of "lease."
 3. The term "membership fee" will be used in lieu of "downpayment."
- B. Section 8 subsidies are available for LECs. Therefore, TMP will be set in accordance with Paragraph 8-18.A.6. Phase-in of TMP will be done in accordance with Paragraphs 8-18.A.7. and A.8.
- C. The units in a LEC project are not sold. Instead, "memberships" are sold for an amount which represents the purchase price. The amount of the membership fee is established in accordance with Paragraph 9-27 for initial members and Paragraph 9-30 for subsequent members.

3/94

9-53

4350.6-CHG.3

- D. Memberships.
1. There is no requirement that all memberships be sold within any specific timeframe. However, the LEP should specify a period of time in which all initial sales are anticipated to be complete.
 2. The requirements for proportionality of initial members, established in Paragraph 9-12.E., are applicable to members of LECs.
 3. Current tenants who are prospective members but can not pay the membership fee in cash, may pay it in a variety of ways, such as through loans and/or by assigning a portion of their security deposits, subject to State and local law. If the RC makes the loan for the downpayment, a non-amortizing promissory note specifying the requirements contained in Paragraph 9-27 should be signed by the prospective member.

4. All prospective members must sign a Subscription Agreement or similar document in accordance with State and local law.
 5. The tenant income profile requirements established in Paragraph 8-18.A.3. is applicable for all initial and subsequent members.
- E. The LEC holds title to the property and executes the mortgage. The individual member does not sign a note nor mortgage and does not have a personal obligation thereunder. Therefore, individual financing is not necessary for members of a LEC.
- F. (Reserved)
- G. The transfer value of memberships is established in Paragraph 9-29 and the equity limitation requirements specified therein apply to members of LECs.

3/94

9-54

4350.6-CHG.3

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- H. A LEC must specify in its By-Laws whether it will purchase memberships and resell them. A suggested method for handling this is described in Paragraph 9-28.
- I. It is advisable that the LEC establish a Cooperative Reserve account to which it will deposit all membership fees and credit any interest or equity accrued. This account should be used to accrue enough funds to allow the LEC to purchase and resell memberships.
- J. The LEC occupancy agreement must restrict the ability of members to rent, lease, or sublet their units without written permission of the Board of Directors.
- K. A four-year cash flow analysis must be submitted instead of a three-year analysis as required for rental projects. If a Cooperative Account has been established in accordance with Paragraph I, the LEC must include a four year projection of income and expenses for the account.
- L. All considerations of Paragraph 9-13.C. for nonpurchasing tenants apply, including provision for payment of relocation expenses.

- M. All requirements of Paragraph 9-12.E. for tenant selection and tenant profiles are applicable.
- N. All State and local laws regarding LECs are applicable, except those which have been preempted by HUD.
- O. Copies of all forms, guidelines, worksheets, and contracts developed to implement the LEC Program and all other documents required to justify elements of the LEP.

9-27. Membership Fees from Initial Members will be required in order to obtain a commitment from tenants to participate in the LEC.

- A. The amount of the membership fees will be set in accordance with the approved budget for the Cooperative Reserve Account and the need to identify sufficient numbers of residents who

9-55

3/94

4350.6-CHG.3

will become members of the LEC. The following guidelines apply:

1. The minimum membership fees will be allocated to unit size and type in proportion to the FMR for the unit.
 2. The LEP must specify how membership fees will be established. They should be high enough to show tenant commitment to purchase the membership and low enough to allow all interested members to purchase memberships. For instance, the membership fees for individual units may be set so that each member pays a minimum of the higher of 25 percent of FMR or 60 percent of Adjusted Monthly Income (AMI). However, no LEC should set the membership fee for any unit lower than the amount of the earnest money deposit required by Paragraph 7-7.C.2. The RC, at its option, may also set membership fee and closing cost guidelines for subsequent purchasers.
- B. Method of Payment. Where the membership fee is paid through a loan from the LEC, the LEC must establish guidelines to determine how a prospective member will pay its membership

fee. This method must be clearly specified in the Subscription Agreement. The following method is recommended:

1. The prospective member's existing security deposit minus any charges against it should be assigned to the membership fee if permitted by State and local law.
2. It is generally desirable that no more than half the membership fee be financed by the LEC. The prospective member may pay the financed portion of the membership fee in installments.
3. The prospective member remains a tenant throughout the period when the membership fee is being paid. It becomes a member at whatever time the total membership fee has been paid.

3/94

9-56

4350.6-CHG.3

9-28. Resale of Memberships. The LEP must specify whether the LEC will purchase all memberships sold by members and resell them to new members. If this option is chosen, it is recommended that the LEC purchase all memberships for its Transfer Value, as determined in Paragraph 9-29. The LEC would then either resell the units using Transfer Value as the required membership fee or another method, approved with the LEP, to determine the membership fee. If the LEC resells the membership for less than its Transfer Value (or the purchase price), then the residual equity must accrue to the LEC. The appreciation will be credited to the Cooperative Reserve Account. Membership fees for subsequent members would be financed in accordance with Paragraph 9-30.

9-29. Transfer Value is the amount of equity a member has accrued as its share of the cooperative. Memberships may be sold at no more than the transfer value which will be calculated as the sum of:

- A. The membership fee paid by the initial member;
- B. The value of any improvements installed at the family's expense during its tenure as owner. The LEC will make this determination using documentation of the amounts the family spent on the improvements, including records that

reflect the cost of materials and labor, and estimates of the value the improvement added to the unit;

- C. The amount of amortized principal paid by the selling member in the following manner:
1. The unit's proportionate share of the project mortgage payment will be determined by the same ratio method as the Section 8 Contract Payment is determined. An amortization schedule based on the proportionate share will be established;
 2. First, each member's TMP will be used to pay for member-paid utilities to the extent of the utility allowance. Then, the remainder of the payment will be

9-57

3/94

4350.6-CHG.3

credited to the amortized interest and principal, in that order, regardless of whether or not the member receives Section 8 subsidy.

3. Examples: The amortization schedule for a specific month shows the amortized principal payment as \$50 and interest as \$150. The utility allowance for the unit is \$45 for a total of \$245. Under the Section 8 formula:
 - a. Member A has a TMP of \$250. \$45 is applied to the utility allowance and \$150 is applied to interest. \$50 is credited toward the principal payment. The remaining \$5 is credited toward the carrying charge.
 - b. Member B has a TMP of \$200. \$195 is applied to the utility allowance and interest payment and \$5 is credited toward the principal payment.
 - c. Other members have TMPs of \$195 or below. The first \$45 for each member is to the utility allowance. The remainder is paid as interest. Nothing is credited to the principal payment; and

- D. If approved as part of the LEP, an amount

corresponding to the appreciated value, determined by applying the Consumer Price Index (urban consumers) to the contribution to equity under Paragraphs A, B and C. Be certain the Consumer Price Index, for any year, is only applied to the portion of equity already established in that year.

- 9-30. Subsequent Members Payment of Membership Fees. The LEC should indicate in the LEP how membership fees will be assessed for subsequent members. The Subscription Agreement must clearly specify the method for determining the amount and payment schedule of the membership fee. Following is one possible method the LEC may use to assess membership fees:

3/94

9-58

4350.6-CHG.3

- A. Require a subsequent member to pay cash or finance up to three months of TMP (90 percent of AMI) prior to becoming a member.
- B. Require the member to initially pay a minimum of five percent of its AMI toward the membership fee, or more if the member chooses.
- C. The remainder of the membership fee, if any, would be made in monthly payments of a maximum of five percent of AMI.
- D. As the membership fee is paid, it will be used as the beginning equity for the subsequent member with additional amortized principal added, as in Paragraph 9-29.C., to determine such member's Transfer Value upon sale of its membership.

- 9-31. Final Actions and Implementation of a LEP. LECs are subject to all of the provisions of Chapter 8, Sections F and G for the determination of final actions and the implementation of a LEP.

- 9-32. Other Requirements. The Loan Management staff must review the LEC's compliance with any sales phase-in schedule established in the LEP. The Relocation staff in the Office of Community Planning and Development (CPD) is responsible for monitoring compliance with certain tenant assistance, relocation, and real property acquisition requirements. The Loan Management staff will consult with the Relocation staff with respect to technical assistance needs and monitoring to ensure that there is no duplication of effort.

- 9-33. Monitoring. A LEC is subject to the housing standards, audit, and reporting requirements of the HUD program under which it is insured. Loan Management staff must follow the guidance in applicable sections of Chapter 11 when monitoring a project owned by a LEC in addition to the applicable portions of Section F of this Chapter.

9-59

3/94

4350.6-CHG.3

Section D. Nonpurchasing Tenants

- 9-34. Protection of Nonpurchasing Families. Nonpurchasing families who continue to reside in a project subject to a Resident Homeownership Program must be protected as follows:
- A. Notification to Tenants by Loan Management Staff. Upon approval of a bona fide offer from a Resident Council (RC), the Loan Management staff must send each tenant in the project a letter in the form of Appendix 9-5, Notification to Non-Purchasing Tenants of Available Protections. The Loan Management staff also must send this letter to the RC and owner instructing the owner to post a copy in the project. The letter advises the tenants that the owner is transferring the project to the RC or LEC which will develop a Resident Homeownership Program. It further advises tenants of the percentage of the units which must be transferred to current tenants in accordance with the RHP, in at least the same proportions of very low- and low-income as are currently residing at the project.
 - B. Displacement prohibited. Tenants residing in a project may not be displaced (forced to move permanently) as a result of a Resident Homeownership Program. The tenants who do not purchase their units may reside at the project for as long as they choose. This does not, however, preclude termination of tenancy for serious or repeated violation of the terms and conditions of the lease, violation of applicable Federal, State or local law, or other good cause. Displacement of any tenant in violation of this policy will trigger the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970, as amended, because Federal financial assistance is used in the project.

C. Section 8 Rental Assistance.

1. HUD will make Section 8 certificates or vouchers available to each Section 8 eligible tenant who does not purchase a unit. Eligible tenants may use the Section 8 rental assistance to rent its current unit or a unit elsewhere.

3/94

9-60

4350.6-CHG.3

2. HUD will provide Section 8 LMSA to the LEC for each very low- and low-income tenant living at the project at LEP approval who does not purchase a membership.
 3. Federal Preference. The requirement for giving Federal preference to certain categories of eligible families does not apply in the provision of Section 8 rental assistance to protected tenants living in a project operating under a Resident Homeownership Program.
- D. Rent Increases for Nonpurchasing Tenants. Total tenant payment (TTP) for tenants living in the project at RHP approval, who do not purchase a unit and are ineligible for Section 8 rental assistance under Paragraph 9-34.C. may be increased to a level consistent with Paragraph 8-18.A.6. Rent increases must be phased-in in accordance with Paragraph 8-18.A.7. and form HUD-90010, Owner's Calculation of Tenant Rent Phase-In Due to Approval of POA. These rent limitations would continue in effect until the tenant moves. Therefore, nonpurchasing tenants will receive the same level of protection against rent increases as those provided to tenants residing in a project at POA approval that is not transferred under a Resident Homeownership Program.
- E. Relocation Assistance. The LEP or RHP must specify the amount of relocation assistance it will grant to non-purchasing tenants who move. At the RC's option, this assistance may be up to 100 percent of relocation costs. The RC or LEC must inform each tenant who resided in the project at RHP or LEP submission, how much it, as owner of the project, will pay for relocation expenses for any tenant who chooses to move. This protection does not apply to

new tenants who were told of the Resident Homeownership or Limited Equity Program. The RCs and LECs must inform new tenants at the time they apply for occupancy in the project, that they will not be eligible for relocation assistance. The RC or LEC may limit payment

9-61

3/94

4350.6-CHG.3

of moving expenses to the cost of moving a reasonable distance, based on the availability of other suitable housing in the area. Disabilities and other special needs must be considered when determining if suitable housing is available. The RC or LEC may determine payment in either of the following ways, and must specify the method in the RHP or LEP.

1. Payment of Actual Reasonable and Related Expenses. A tenant who elects to relocate may receive payment based on actual moving and related costs for up to four years after the RC or LEC purchases the project. The RC or LEC has the authority to determine which relocation costs are reasonable and necessary, including expenses for:
 - a. Transportation of the person and personal property for a reasonable distance;
 - b. Packing, crating, uncrating and unpacking of the personal property;
 - c. Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances, and other personal property;
 - d. Utility hook-ups, including reinstallation of telephone and cable television service;
 - e. Insurance for the replacement value of the property in connection with the move and necessary storage;
 - f. Credit checks; and
 - g. Other moving-related expenses, as the RC or LEC determines to be

reasonable and necessary.

3/94

9-62

4350.6-CHG.3

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2. Moving Expense and Dislocation Allowance. The RC may offer tenants who elect to relocate a moving expense and dislocation allowance as an alternative to a payment for actual reasonable moving and related expenses described in Paragraph 1 above. The amount of the allowance will be determined in accordance with a schedule of allowances, established by the RC, which takes into account the number of rooms in the person's present dwelling unit and whether the person owns and must move the furniture.

9-63

3/94

4350.6-CHG.3

Section E. Resale of Units

- 9-35. Restrictions on Resale by Homeowners. A member of a LEC is bound by the rules restricting the transfer of membership under the LEC program in Section C. Homeowners under other types of homeownership programs may sell their interests in a unit. The RC may limit the homeowner's right by placing certain restrictions on such a resale. If the RC imposes resale restrictions, the restrictions must be specified in the RHP.
- A. Permitted Transfers. A homeowner may transfer its ownership interest in the unit subject to the right of the RC to purchase the unit in accordance with the RHP. If the RC exercises this option:
1. It must determine the purchase price and conditions for purchase by the subsequent purchaser in accordance with the method established in the RHP and specified in a firm contract at initial sale between the RC and the homeowner. The price at which the RC purchases the unit may never be less than the amount specified in a firm

contract between the homeowner and a prospective buyer;

2. It must resell the unit to an eligible family within the timeframe established in the RHP or LEP in accordance with Paragraph 9-13.M.

B. Execution and Repayment of a Promissory Note.

1. An initial homeowner is required to execute a promissory note and mortgage in accordance with Paragraph 9-36.
2. A subsequent homeowner may be required to execute a promissory note and mortgage, as specified in Paragraph 9-37, if it purchases the unit during the initial 20-year period of homeownership.
3. The repayment of the promissory note must be made in accordance with either Paragraph 9-36 or 9-37.

3/94

9-64

4350.6-CHG.3

- C. Resale restrictions established by the RC should not jeopardize the operating feasibility of the project nor unreasonably restrict the sellers by limiting the pool of purchasers or the resale prices.

9-36. Initial Homeowner's Promissory Note. At closing, the RC will require the initial homeowner to execute a nonrecourse promissory note for a term of 20 years with no interest. This promissory note, made payable to HUD, must equal the difference between the value of the unit as established in Paragraph 9-12.A. and the purchase price established for the purchaser in accordance with Paragraph 9-12.C. The promissory note will accompany the mortgage securing the obligation of the note. When the initial homeowner sells the unit, whether to the RC or a subsequent homeowner, it will repay the promissory note to the extent determined in Paragraphs B.1. and B.2. below. The initial homeowner will use the net sales proceeds, calculated in the manner described in Paragraphs A.1. and A.2. below, to repay the promissory note. If there are insufficient net sales proceeds to repay the amount due on the promissory note, the subsequent purchaser may be required to execute a promissory note in accordance with Paragraph 9-37.

Any residual proceeds remaining after the amount due on the promissory note is repaid, will be handled in accordance with Paragraph C. below. (PLEASE NOTE: For FHA single-family insurance purposes, the Department has determined that LIHPRHA's calculation of homeowner's equity is acceptable.)

- A. Net Sales Proceeds. The net sales proceeds is the amount of money available to the homeowner to repay the promissory note. It is determined by subtracting from the owner's gross sales proceeds (or the selling price), the owner's retained proceeds calculated in accordance with Paragraph 1. below.
1. Initial Homeowner Sells Unit Within First Six Years. When an initial homeowner sells its unit during the first six years after acquisition, it must pay the amounts computed in accordance with Paragraphs a. and b. below and may keep

9-65

3/94

4350.6-CHG.3

the owner's retained proceeds which the RC computes in accordance with Paragraph c. below. The homeowner must repay the entire amount of its net sales proceeds in accordance with Paragraphs B and C below. To calculate the net sales proceeds, the RC must subtract from gross sales proceeds:

- a. Any outstanding debt which was incurred in connection with the purchase of the property and which must be repaid at closing as shown on Line 101 of Form HUD-1, Settlement Statement;
- b. Any other costs incurred in connection with the sale, including closing costs and transfer taxes, which must be repaid at closing as shown on Line 103 of Form HUD-1, Settlement Statement; and
- c. The homeowner's share of the equity, or retained proceeds, computed as the sum of the following:
- i. The contribution to equity paid by the family, if any,

including any down payment and any amount paid towards principal on a mortgage loan during the period of ownership. This will be calculated as the original purchase price minus the outstanding debt;

- ii. The cost of any improvements installed at the family's expense during its tenure as owner. The RC will make this determination using documentation of the amounts the family spent on the improvements, including records that reflect the cost of materials and labor. If the homeowner does not have a mortgage insured by HUD under

3/94

9-66

4350.6-CHG.3

Section 203 or 234 of the National Housing Act, the RHP may specify that the value of any improvements will be substituted for cost;

- iii. The lower of the results obtained in Paragraph (a) or (b) below:
 - (a) The appreciated value, determined by applying the Consumer Price Index (urban consumers) against the contribution to equity determined in Paragraphs i and ii, excluding the value of any sweat equity or volunteer labor used to make improvements to the unit. (Be certain the CPI is only applied to the portion of equity established in any one year. That is, if additional equity is paid in the form of principal payments in any one year, the CPI would be applied to increasing amounts for each year).

- (b) Any limits on equity appreciation the RC established in the RHP. In order to use the RHP to limit equity at the time of initial sale, the RC must have entered into a written agreement with the family to limit the amount of appreciation at the time of purchase.
2. Initial Homeowner Sells Unit Between the Seventh and Twentieth Year. When the initial homeowner sells its unit seven to 20 years after acquisition, there are no retained proceeds calculated. The homeowner must pay the amounts which the

9-67

3/94

4350.6-CHG.3

RC computes in accordance with Paragraphs 1.a. and 1.b. above. The amounts determined in accordance with Paragraph 1.c. are not applicable. The homeowner must repay the amount of the net sales proceeds but no more than the amount required by the promissory note in accordance with Paragraph B. below.

3. Initial Homeowner Sells Unit After the Twentieth Year. When the initial homeowner sells its unit after the twentieth year of acquisition, it must pay all costs in accordance with Paragraphs 1.a. and 1 b. above, and may retain all net sales proceeds.
- B. Payment Due Under the Promissory Note. The homeowner must repay the amount of the net sales proceeds in the amounts shown below. To the extent the amount due on the promissory note exceeds the net sales proceeds, the subsequent homeowner may be required to sign a Promissory Note in accordance with Paragraph 9-37.
1. Initial Homeowner Sells Unit Within First Six Years. When an initial homeowner sells its unit during the first six years after acquisition, the entire amount of the Promissory Note is due and payable to HUD.

2. Initial Homeowner Sells Unit Between Seventh and Twentieth Year. When an initial homeowner sells its unit seven to 20 years after acquisition, the amount payable under the promissory note will be reduced by 1/168th of the principal amount for each month before the subsequent homeowner sells the unit. That is, for each of the 168 months remaining in the 14-year period, the promissory note will be reduced proportionate to the length of time before the homeowner sells the unit.
3. Initial Homeowner Sells Unit After Twentieth Year. When the initial homeowner sells its unit after the twentieth year of ownership, the

3/94

9-68

4350.6-CHG.3

promissory note will have been satisfied, and no payment is required.

- C. Residual Proceeds. If residual proceeds remain after the amount due under the promissory note is repaid, it will be distributed as follows:
 1. Initial Homeowner Sells Unit Within the First Six Years. All residual proceeds must be paid to the HOME Investment Trust Fund in accordance with Paragraph 9-38.A. The homeowner may not retain any residual proceeds.
 2. Initial Homeowner Sells Unit Between the Seventh and Twentieth Year. The initial homeowner retains all residual proceeds.
- D. Examples:
 1. Initial Homeowner Sells Unit Within First Six Years: Assume the initial homeowner purchases a unit valued at \$50,000. The purchase price to the homeowner is \$25,000. The homeowner, therefore, signs a \$25,000 promissory note. The homeowner sells the unit in the fifth year of homeownership for \$40,000. First, the owner's costs and retained proceeds would be determined as in Paragraph A.1.a. through c. and would be subtracted from the gross sales proceeds to yield net

sales proceeds.

- a. For this example, we will assume that the amount needed to repay debt and any closing costs is \$9,000 and retained proceeds is \$1,000 for a total of \$10,000. Therefore \$30,000 (\$40,000 - \$10,000) is available to repay the promissory note.
- b. The homeowner must use the \$30,000 in net sales proceeds to repay the entire amount of the \$25,000 promissory note to HUD and the remaining \$5,000 to pay the HOME Investment Trust Fund. The subsequent purchaser of the unit

9-69

3/94

4350.6-CHG.3

would not have to sign a promissory note since the entire promissory note was repaid.

- c. If the net sales proceeds was under \$25,000, the initial homeowner would only repay the amount of the net sales proceeds and the subsequent homeowner may be required to sign a promissory note as described in Paragraph 9-37.
2. Initial Homeowner Sells Unit Between Seventh and Twentieth Year: In the example in Paragraph 1. above, assume the homeowner sells the unit at the end of the 14th year of homeownership. This is exactly 8 years or 96 months after the end of the sixth year.
 - a. The RC would first determine the homeowner's net sales proceeds as in Paragraph B.2. above. Using the same amounts as in the above example, this amount is \$31,000 (\$1,000 greater than in the example in Paragraph 1. above, since there are no retained proceeds).
 - b. $96/168 = 57$ percent. This percentage is applied to the amount of the promissory note to determine the amount by which it is to be reduced. $\$25,000 \times .57 = \$15,750$.

\$25,000 - \$15,750 = \$9250.

- c. The homeowner would repay \$9,250 from the net sales proceeds. The homeowner could retain all remaining \$21,750 in proceeds and the subsequent homeowner would not have to sign a Promissory Note.
- d. If the net sales proceeds was under \$9,250, the initial homeowner would only repay that amount and the subsequent homeowner may be required to sign a promissory note as described in Paragraph 9-37.

3/94

9-70

4350.6-CHG.3

- E. If the initial homeowner retains ownership for 20 or more years, the entire amount of the note will be satisfied.

9-37. Subsequent Homeowner's Promissory Note.

- A. If a subsequent purchase is made during the 20-year period specified in the initial promissory note, whether from the initial purchaser or from the RC, a copy of the appraisal of the unit must be submitted by the purchaser to the RC, unless the RC contracts for the appraisal. At closing, the subsequent purchaser must execute a promissory note under the conditions specified in Paragraph 1. below and for the amounts specified in Paragraph 2. below. The term of the subsequent promissory note must be for the period remaining on the original 20-year promissory note. The term on the subsequent note ends on the date specified in the original note.
 - 1. The subsequent purchaser must execute a promissory note under the following conditions:
 - a. The appraised value of the unit exceeds the purchase price; and
 - b. The initial homeowner did not repay the total or discounted amount due on the promissory note.
 - 2. The promissory note signed by the subsequent purchaser will be for the lower of:

- a. The outstanding balance, if any, on the original or discounted promissory note; or
 - b. The difference between the appraised value of the unit and the purchase price at the time the subsequent homeowner purchases the unit.
- B. When a subsequent homeowner sells its unit in less than 20 years from the date of the initial purchase, the RC will calculate the owner's net sales proceeds in the same manner

9-71

3/94

4350.6-CHG.3

as for the initial homeowner, in accordance with:

1. Paragraph 9-36.A.1., if the subsequent homeowner sells the unit within the first six years after the initial homeowner purchased the unit; or
 2. Paragraph 9-36.A.2., if the subsequent homeowner sells the unit between the seventh and twentieth year after the initial homeowner purchased the unit. Please note that the date on which the subsequent homeowner purchased the unit is not relevant to this calculation.
- C. When a subsequent homeowner sells its unit in less than twenty years from the date of the initial purchase, the amount due on the promissory note will be calculated as follows:
1. If the subsequent homeowner purchased the unit within six years after the initial homeowner purchased it, the amount due on the promissory note and the distribution of residual proceeds will be calculated in the same manner as for the initial homeowner, in accordance with:
 - a. Paragraph 9-36.B.1. and C.1., if the subsequent homeowner sold the unit within six years after the initial homeowner purchased the unit; or

- b. Paragraph 9-36.B.2. and C.2., if the subsequent homeowner sold the unit between seven and twenty years after the initial homeowner purchased it.
2. If the subsequent homeowner purchased the unit between the seventh and twentieth year after the initial homeowner purchased it, the amount due will be calculated in accordance with Paragraph 9-36.B., except that the RC will reduce the

 3/94

9-72

 4350.6-CHG.3

amount payable on the subsequent promissory note by a percentage of the principal amount of the subsequent promissory note for each full month of homeownership by the subsequent homeowner. The RC will compute the percentage to be discounted by determining the proportion of the term of the subsequent promissory note that the subsequent homeowner has owned the property. The subsequent homeowner may retain any residual proceeds not payable to HUD under the promissory note.

- D. A similar process will be used for all subsequent purchases until:
 1. The initial 20-year period has expired;
 2. The total amount due on the promissory note has been paid; or
 3. A subsequent homeowner purchases the unit for its full appraised value.
- E. Examples:
 1. Subsequent Homeowner Does Not Sign a Promissory Note. If the conditions described in Paragraph a. or b. below are applicable, the subsequent homeowner and all additional subsequent homeowners of the unit, need not sign a Promissory Note.
 - a. In the examples given in Paragraphs

9-36.D.1.a. and b. and 9-36.D.2.a., b., and c., the subsequent homeowner would not sign a promissory note because either the total promissory note or the amount due on the discounted promissory note was repaid.

- b. In the examples given in Paragraphs 9-36.D.1.c. and 9-36.D.2.d., if the unit is appraised for \$40,000 at the time of sale, even though the

9-73

3/94

4350.6-CHG.3

initial homeowner did not repay the total amount due on the promissory note, the subsequent homeowner need not sign a promissory note. This is because the subsequent homeowner purchased the unit for its full appraised value.

2. Subsequent homeowner purchases unit in first six years after the original promissory note was signed and signs a promissory note. Assume that the unit sold at the end of the fifth year after purchase in accordance with Paragraph 9-36.D.1., has a purchase price of \$27,000, and the owner's costs at closing plus the retained proceeds are \$15,000. Therefore only \$12,000 (\$27,000 - \$15,000) in net sales proceeds will be used to repay the \$25,000 promissory note and \$13,000 remains due on the Promissory Note. We also will assume that the appraised value of the unit has decreased from \$40,000 to \$38,000. The appraised value is therefore \$11,000 greater than the purchase price.
 - a. The subsequent homeowner must therefore sign a promissory note for \$11,000 (the difference between the unit value and the purchase price) because this is lower than the \$13,000 remaining on the initial homeowner's promissory note. The term of the promissory note is the 15 years remaining on the original promissory note.
 - b. If the purchaser sells the unit

within one year (within six years from the date of the initial purchase), the full amount of the promissory note must be repaid if sufficient funds remain in the net sales proceeds. If any additional residual proceeds remain, it must be paid to the HOME Investment Trust Fund.

3/94

9-74

4350.6-CHG.3

- c. If the unit is sold at any time between the seventh and twentieth year after the initial promissory note was signed, the amount due under the subsequent promissory note is reduced in accordance with Paragraph C.1.b. above. Any residual proceeds may be retained by the homeowner.
 - d. No amount is due if any conditions specified in Paragraph D. above are operative.
3. Subsequent Homeowner Purchases Unit Between the Seventh and Twentieth Year after Initial Promissory Note was Signed and Signs a Promissory Note.
- a. Assume the initial homeowner who sold the unit in Paragraph 2. above for \$27,000 (it appraised at \$38,000) sold the unit to the subsequent purchaser eight years after the initial purchase.
 - i. The homeowner's original \$25,000 promissory note is reduced by 24/168 (14 percent) or 1/168 for each month past 6 years. $\$25,000 \times 14 \text{ percent} = \3500 . $\$25,000 - \$3500 = \$21,500$. \$21,500 is due on the Promissory Note. However, the net sales proceeds only total \$12,000. Therefore, the initial homeowner pays \$12,000 of the \$21,500 remaining due.
 - ii. The subsequent homeowner signs a promissory note for \$9500 ($\$21,500 - \$12,000$) because it

is lower than the \$11,000 difference between the purchase price and the appraised value. The promissory note is for the 12 years or 144 months remaining on the original 20-year promissory note.

9-75

3/94

4350.6-CHG.3

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- b. The subsequent homeowner sells the unit to a second subsequent homeowner at the end of the 18th year. The value of the unit is \$60,000 and the purchase price is \$40,000 with \$18,000 calculated as costs to be paid at closing, leaving \$22,000 in net sales proceeds, in accordance with Paragraph 9-36.A.2.
- c. Since the subsequent homeowner owned the unit for 10 years or 120 months, the \$9,500 promissory note would be reduced by $120/144 = 83$ percent of its original amount. The amount due is therefore reduced by $\$9500 \times .83 = \7885 and $\$9500 - \$7885 = \$1615$ remains due. The homeowner repays \$1615 from the \$22,000 net sales proceeds and keeps the \$20,385 remaining.
- d. In this case, the second subsequent homeowner need not sign a promissory note even though it purchased the unit for less than its appraised value. This is because the discounted promissory note has been completely repaid.
- F. Resident Council Purchases and Sells the Unit. When a homeowner sells the unit to the RC and the RC sells the unit to a subsequent homeowner, the purchase price to the RC and to the subsequent homeowner may differ. In these cases:
1. The net sales proceeds, amount paid on the promissory note by the selling homeowner, and residual proceeds will be calculated based on the purchase price to the RC.
 2. The amount of the promissory note for the purchasing homeowner will be the lower of

the amount remaining due on the promissory note of the selling homeowner or the difference between the Purchase price to the purchasing homeowner and the appraised value of the unit.

3/94

9-76

4350.6-CHG.3

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3. No promissory note will be signed if one of the conditions specified in Paragraph D. above are met.

9-38. Payment of Residual Proceeds.

- A. Any residual proceeds remaining after the homeowner pays the promissory note to HUD (within six-years of initial purchase) must be paid to the HOME Investment Trust Fund for the unit of general local government in which the project is located. If the project is located in a unit of general local government that is not a participating jurisdiction, then the residual proceeds must be paid to the HOME Investment Trust Fund for the State in which the project is located.
- B. With respect to any proceeds transferred to a HOME Investment Trust Fund under this Paragraph, HUD must ensure that the proceeds are immediately available for eligible activities to expand the supply of affordable housing under the HOME Program. These activities may include funding of activities under the Resident Homeownership Program. Loan Management staff will monitor the payments made to the HOME Investment Trust Fund for each State and unit of local government and will require units of government to maintain any records necessary to calculate accurate payments due under this Paragraph.

9-77

3/94

4350.6-CHG.3

Section F. Monitoring

- 9-39. Housing Standards: Inspections.
- A. Until the Resident Council (RC) has transferred all units or shares in the project (other than those occupied by nonpurchasing current tenants) to the initial purchasers or members, the Loan Management staff must monitor the project to ensure that it is being maintained in accordance with the housing standards set forth in Paragraph 11-9.
 - B. Loan Management staff must inspect the project at least annually in order to determine compliance with the Housing Standards.
- 9-40. Section 8 Rental Assistance. Loan Management staff has the responsibility to continue monitoring existing Section 8 Housing Assistance Payment contracts.
- 9-41. Promissory Note. The RC must keep, and make available to HUD, all records and source documents necessary to calculate that the payments due HUD are accurate.
- 9-42. Audits.
- A. Each RC will be subject to HUD audit requirements in accordance with Part 45 and must submit an annual audit to HUD in the form prescribed by the Department in HUD Handbook 2000.4, Investigator General Audit Handbook. The RC must keep records that are necessary to fully disclose the amount and disposition of the proceeds from assistance it receives from HUD. This record keeping requirement includes information about:
 - 1. Any proceeds from sales to eligible families and/or from recaptured funds;
 - 2. The total cost of the Resident Homeownership Program for which such assistance is given or used;

3/94

9-78

4350.6-CHG.3

- 3. The amount and nature of that portion of funds for the Resident Homeownership Program supplied by other sources;
- 4. Compliance with all financial requirements of the grant agreement and

the approved Resident Homeownership Plan (RHP) to confirm that the requirements have been met;

5. Any other aspects of the financial assistance received that would facilitate an effective audit; and
6. The income and expense amounts for the rental and the Resident Homeownership components of the project in each year. Such rental and homeownership accounts must be maintained in separate and distinct accounts.

B. For the purpose of an audit and examination of records:

1. HUD or its authorized representative will have access to any books, documents, papers, and records of the RC that are pertinent to the assistance it receives under the Resident Homeownership Program; and
2. The Comptroller General of the United States, or any of its authorized representatives, will also have access to any books, documents, papers, and records of the Resident Council that are pertinent to the assistance it receives under this program.

9-43. Reports. The RC must submit reports to HUD to demonstrate continued compliance with the requirements of the Resident Homeownership Program. The RC may use forms from the existing HUD programs for these reporting requirements. However, if such HUD forms do not exist because the RC has unique requirements, then the RC will describe the method of reporting it intends to use and will develop and provide samples of such forms. Loan Management staff will review reports submitted to determine

9-79

3/94

44350.6-CHG.3

compliance with the approved RHP or LEP. The areas of the Resident Homeownership Program that require reports are:

- A. Annual compliance with proportionality during the initial sales which end in four years;
- B. Annual status of Section 8 eligible tenants;

- C. Annual report on training and technical assistance provided to homeowners;
- D. Annual reports on the extent of participation of minorities and women in the program (e.g. homeownership, employment opportunities, etc.);
- E. Annual review of the operating budget, separated into homeownership and rental components, where applicable;
- F. Semi-annual report on vacancies;
- G. Semi-annual report survey of non-purchasing tenants;
- H. Semi-annual status of rehabilitation activities;
- I. Quarterly review of grant expenditures for the term of the grant;
- J. Monthly status of resales;
- K. Monthly status of relocation activities, while applicable;
- L. Monthly status of sales activity until all units have been initially sold;
- M. Changes in closing costs as needed;
- N. All records necessary to accurately calculate payments due HUD pursuant to repayment of the Promissory Note;
- O. All records necessary to accurately calculate payments due the HOME Investment Trust Fund in repayment of homeowners' residual proceeds; and

3/94

9-80

4350.6-CHG.3

- P. Documentation that the amount turned over to HUD or the Home Investment Trust Fund are the amounts required; and
- Q. Any other reports that Loan Management Branch or the RC determine necessary to demonstrate compliance with the Grant Agreement and RHP.

9-44. Tenant Selection Procedures. Tenant selection

during the period when units are being sold or for units which are not sold must follow approved tenant selection procedures in accordance with the RHP or LEP. Loan Management staff should monitor this in accordance with HUD 4350.6.

9-81

3/94

[\[Search\]](#) [\[Prev List\]](#) [\[Doc List\]](#) [\[Next List\]](#) [\[First Doc\]](#) [\[Prev Doc\]](#) [\[Curr Doc\]](#) [\[Next Doc\]](#) [\[Last Doc\]](#)
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[\[Search\]](#) [\[Prev List\]](#) [\[Doc List\]](#) [\[Next List\]](#) [\[First Doc\]](#) [\[Prev Doc\]](#) [\[Curr Doc\]](#) [\[Next Doc\]](#) [\[Last Doc\]](#)
[\[Bottom\]](#) [\[Next Hit\]](#) [\[Help\]](#) [\[Text Only\]](#)

HUD Handbook 4350.6, Procesing Plans of Action Under the Low

Directive Number: [\[Prev Hit\]](#)[\[Next Hit\]](#)**4350.6**

4350.6-CHG.2

CHAPTER 10. PREPAID PROJECTS

- 10-1. Introduction. Prepayment may occur in conjunction with the actions stated in Paragraphs A. through C. below:
- A. Approval of a Plan of Action (POA) to Prepay the mortgage or terminate low-income affordability restrictions pursuant to Chapter 8 Section B. Tenants may not be displaced when this type of prepayment occurs. For guidance, see Paragraph 10-2.
 - B. Permissible Prepayments for reasons listed below. Tenants may be displaced when permissible prepayment occurs. For guidance, see Paragraphs 10-3 through 10-6.
 - 1. Inability to sell the project under voluntary or mandatory sale provisions pursuant to Chapter 7, Paragraphs 7-14 or 7-15.
 - 2. Approval of a POA for incentives but HUD does not provide the assistance approved in the POA within the time frames specified in Chapter 8, Paragraph 8-31.
 - 3. Expiration of a Section 8 LMSA contract which HUD is unable to renew in accordance with Chapter 11, Paragraph 11-11.
 - C. Sale of a Project to a Resident Council under the Resident Homeownership Program. Tenants may not be displaced. For guidance see Chapter 9.
- 10-2. Approval of a POA to Terminate the Low-Income Affordability Restrictions. Loan Management Branch may approve a POA to terminate the low-income affordability restrictions only if the conditions specified in Paragraph 8-13 can be met. These conditions include: (1) comparable and affordable

housing is readily available in the community at project rent levels; (2) the owner must sign a Use Agreement guaranteeing that tenants living at the

10-1

10/93

4350.6-CHG.2

project at POA approval will not be involuntarily displaced, due to the approval, prior to the maturity date of the initial mortgage; and (3) rent increases due to the POA approval are limited to the amounts shown in Paragraph 8-13.A.1.a. Rent increases above those specified in Paragraph 8-13.A.1.a. constitute involuntary displacement. Because one of the conditions of POA approval includes the aforementioned rent limits, the actions that HUD and the owner are required to take to help involuntarily displaced tenants should be minimal and are described below:

- A. Loan Management Staff Actions: At least 30 days prior to acceptance of the prepayment, Loan Management staff must send each tenant in the project a letter in the form of Appendix 10-1, Notification to Tenants of Acceptance of Prepayment. LOG letters sent A copy of this letter also must be sent to the owner who must post it in each affected building. The letter advises tenants to contact the Loan Management Branch if the owner violates the Use Agreement which it signed in order to receive approval of the POA.
- B. Owner's Actions:
 - 1. Within five days of receiving Appendix 10-1 from HUD, the owner must post copies in each affected building.
 - 2. At its option, the owner may provide reasonable relocation assistance to tenants who voluntarily move. Any tenant may choose to accept or reject an incentive to move offered by the owner. HUD will not make Section 8 rental assistance available to help owners induce tenants to move.
- C. If the Loan Management Branch receives notification of violations of the Use Agreement, it will contact the Preservation Division for further guidance since Field Offices do not have the authority to take the necessary actions. The owner may be found to have violated the Use Agreement even if no one

actually moves from the project; e.g., if the owner raises rents more than allowed.

10/93

10-2

4350.6-CHG.2

10-3. Relocation of Displaced Tenants Under Permissible Prepayment. Loan Management staff may approve a permissible prepayment for the reasons specified in Paragraph 10-1.B. When any one of those things occur, owners and Loan Management staff are required to take certain actions to help tenants who are displaced due to the prepayment. There are additional actions owners may volunteer to take. Please note that the Uniform Relocation Act is not triggered by the permissible prepayments defined in Paragraph 10-1.B. The required and voluntary actions consist of the following:

A. Owners' Actions:

1. By the earlier of 15 days after approval of the permissible prepayment or 30 days before HUD accepts the prepayment, the owner must provide the Loan Management staff with the names and addresses of all project residents. LOG date when resident listings are received
2. Loan Management staff will send the owner Appendix 10-2, Notification to Tenants of Available Protection or Appendix 10-3, Notification to Tenants in Low-Vacancy Areas of Available Protection. Within five days of receiving the notification from HUD, the owner must post a copy of such notice from HUD in each affected building. In some cases, as described in Paragraph B. below, both notices must be posted.
3. The owner must review the tenant profiles to identify and compile a list of tenants living at the project at the time of POA approval who are expected to be displaced. A tenant who moves permanently will be considered displaced if the move occurs after:
 - a. The tenant is ordered to vacate the property;
 - b. The owner refuses to renew the tenant's lease;

10-3

10/93

4350.6-CHG.2

- c. The tenant's rent is increased, causing the Total Tenant Payment (TTP) of rent plus utility allowance to increase more than the amounts allowed in POAs to prepay. These amounts are defined in Chapter 8, Paragraph 8-13.A.1.a. The owner must calculate these percentages and increases for each tenant, maintain the information at the project office, and make it available to HUD staff upon request.
4. By the earlier of 30 days after identifying the tenants expected to be displaced, or 30 days prior to the date the owner prepays the mortgage, the owner must submit the following information to the Loan Management Branch for each tenant identified in Paragraph 3 above:
 - a. Name and address;
 - b. The unit size in which the tenant is currently dwelling;
 - c. Whether the tenant qualifies as a special needs tenant in accordance with Chapter 1, Paragraph 1-15, along with a statement describing the nature of the special need and the date the tenant first occupied the project;
 - d. A list of tenants receiving Section 8 rental assistance;
 - e. A list of tenants who are very low-income but not receiving Section 8 rental assistance, along with documentation of their eligibility; and
 - f. Whether the tenant currently pays more than 30 percent of its adjusted monthly income for TTP along with the percentage of income the tenant is paying.

10/93

10-4

5. Owners are required to pay 50 percent of the actual, reasonable, relocation expenses for all displaced tenants as described in Paragraph 10-5. Additional protections are available to special needs tenants and those living in low-vacancy areas in accordance with Paragraph 10-4.
 6. The owner must provide, as part of any relocation assistance program, 50 percent of the expense of fair housing related counseling to those tenants affected by the proposed prepayment. Such counseling, advisory services and referrals should include information on the individual's rights under the Fair Housing Act and State and local fair housing laws and the process for filing and adjudicating a complaint of discrimination.
- B. Loan Management Staff Actions:
1. At least 30 days prior to acceptance of the permissible prepayment, Loan Management staff must send each tenant in the project a letter in the form of Appendix 10-2. If it has been determined that the project is located in a low-vacancy area, Appendix 10-3 should be sent in lieu of Appendix 10-2; or, in addition to Appendix 10-2 if it has already been sent. LOG letters sent Loan Management staff must also send a copy of the appropriate letter to the owner who must post it in each affected building.
 2. Subject to appropriations, the Loan Management staff must make Section 8 vouchers or certificates available to help very low- or low-income tenants who are displaced. Further direction is provided in Paragraph 10-6.
 3. Loan Management staff must attempt to help tenants identified as likely to be displaced in Paragraph A.3. above to locate new housing by:

4350.6-CHG.2

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- a. Coordinating with local public housing agencies to help any identified very low- or low-income tenant acquire a suitable, decent, safe, sanitary, and affordable dwelling unit in the same or nearby area;
 - b. Requesting from the public housing agencies located in the same area as the affected project, a list of vacant units in low-rent public housing and other affordable projects that would be suitable for the displaced tenants; and
 - c. Providing the identified tenants with the list of vacant units in low-rent public housing, along with the addresses of the local public housing agencies and a list of other HUD-subsidized housing. The lists must identify both the units and projects located within and outside of areas of minority and low-income concentration.
- C. Displaced Tenants who are not Identified by the Owner. Tenants living in the project at the time HUD accepts the prepayment, who should have been identified as displaced, in accordance with Paragraphs A.3. and A.4. above, but were not, are eligible for all benefits described in this Chapter.

10-4. Mandatory Continued Occupancy for Permissible Prepayment. The following protections apply to tenants living in projects subject to permissible prepayment in accordance with Paragraph 10-1.B.:

- A. Protected Tenants. There are two categories of potentially displaced tenants who have guaranteed protection if they occupied a unit on the date of submission of the Initial Notice of Intent (NOI):
 1. Tenants with special needs as defined in Chapter 1, Paragraph 1-15; and

10/93

10-6

4350.6-CHG.2

2. Tenants living in low-vacancy areas (vacancy rate under four percent) where the owner has been notified by the local Field Office within 30 days of the request to prepay, in accordance with Chapter 11, Paragraph 11-12, that the area is designated low-vacancy.

B. Tenant Protection.

1. Tenants meeting the requirements of Paragraph A. above, must be allowed to remain in the project for a period of at least three years from the date of prepayment or termination of the mortgage insurance contract. The TTP may not be raised for special needs tenants, except where rent increases are made necessary by increased operating costs and utility rates.
2. If the tenant voluntarily agrees, the owner may meet the provision of continued occupancy by providing the assistance necessary for the tenant to rent a decent, safe, and sanitary unit in another project for the same three-year period and at a cost to the tenant not to exceed the tenant's projected TTP in the owner's project. The owner would pay relocation expenses incurred by displaced tenants who relocate pursuant to this Paragraph, to the extent necessary to induce affected tenants to move voluntarily, but in no case less than the expenses outlined in Paragraph 10-5.
3. At least three months prior to the expiration of the three-year protection period, the owner must:
 - a. Identify the tenants whose protection is ending and who will be involuntarily displaced. The identification will be made in the manner outlined in Paragraph 10-3. A.3;
 - b. Send identified tenants a letter similar to that in Appendix 10-2 with appropriate modifications; and

c. Send a list of identified tenants to the Loan Management staff.

4. The Loan Management staff must help identified tenants locate new housing in the manner prescribed in Paragraph 10-3.B.3.

C. Violation of Tenant Protection. Appendices 10-2 and 10-3, at least one of which is sent to all tenants in the project, explain that if rents for protected tenants are raised prior to the expiration of the three-year period, or other occupancy or relocation rights are violated, the tenant should notify the Loan Management Branch. If the Loan Management Branch receives such notification, it should contact the Preservation Division for further guidance because Field Offices do not have the authority to take the necessary actions.

D. If the Area Ceases to Be a Low-Vacancy Area. If, prior to the expiration of the three-year period, the owner feels that the area in which the project is located is no longer a low-vacancy area, the owner may request a reassessment from HUD. A request for reassessment should be sent to the Loan Management Branch which will forward the request to EMAS. The owner may only make one such request during the three-year tenant protection period. If EMAS finds that the area is no longer a low-vacancy area, the Loan Management staff must appropriately modify Appendix 10-2 and mail it to tenants of the project. All other actions required of the owner and Loan Management staff by Paragraph 10-3 must be taken.

10-5. Relocation Expenses for Permissible Prepayment.

A. For projects identified in Paragraph 10-1.B., the owner must pay a minimum of 50 percent of the actual, reasonable relocation expenses of each family which is relocated in accordance with Paragraph 10-3 or 10-4. The Loan Management staff may increase this percentage to the extent that State or local law of general applicability requires a higher payment. Such allowable expenses are cited in Paragraph B. below.

10/93

10-8

4350.6-CHG.2

- B. Allowable costs for moving: The owner may choose one of the following options to determine actual, reasonable moving expenses:
1. Provide actual, reasonable and necessary moving expenses for the unit's legitimate occupants. Each tenant should contact a moving company of their choice to obtain information about the amount of actual costs for moving and give this information to the owner. Such expenses may include, but are not limited to:
 - a. Transportation of the person and personal property for a reasonable distance;
 - b. Packing, crating, uncrating and unpacking of the personal property;
 - c. Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances, and other personal property;
 - d. Utility hook-ups, including reinstallation of telephone and cable television service;
 - e. Insurance for the replacement value of the property in connection with the move and necessary storage;
 - f. Credit checks;
 - g. Other moving-related expenses determined to be reasonable and necessary. Documentation of special needs may be required; and
 - h. Necessary advisory services, i.e., timely information, counseling (including Fair Housing Counseling), and referrals to suitable, affordable, decent, safe, and sanitary housing, as defined in Paragraph 1-15.

10-9

10/93

4350.6-CHG.2

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2. Offer tenants a moving expense and dislocation allowance. The amount of the

allowance must be determined in accordance with a schedule of allowances established by the owner that takes into account the number of rooms in the tenant's present dwelling and whether the tenant owns and must move the furniture. The moving allowance also must include the costs of advisory services shown in Paragraph 1.h. above. Any tenant may refuse the dislocation allowance and request actual expenses in accordance with Paragraph 1. above.

- C. When the procedures outlined in Paragraphs A. and B. above have been completed, the owner and tenant must agree in writing on the cost of the move and the amount to be reimbursed. If the owner and tenant do not agree on a moving expense payment, then each of them may contact the Loan Management Branch to receive further guidance.

10-6. Section 8 Assistance for Permissible Prepayment.

A. Available to Tenants.

1. Each very low- or low-income family displaced as a result of a prepayment described in Paragraphs 10-1.B., subject to the availability of funds, will be eligible to receive Section 8 rental assistance in the form of Section 8 certificates or vouchers in accordance with HUD requirements. At its discretion, PIH may set the Section 8 existing fair market rent levels for the project at "the exception rent" in order to allow tenants to use certificates to remain at the project. Exception rents will be established in accordance with HUD requirements.
2. Special needs tenants, whose three-year protection period has expired, will be given priority by HUD for receiving Section 8 assistance, if eligible.

10/93

10-10

4350.6-CHG.2

- B. Owners Must Accept. The owner of a prepaid project that continues to be used as residential rental property may not refuse to rent, refuse to negotiate for the rental of, or otherwise make unavailable or deny the

rental of a dwelling unit in such project to any person who receives a Section 8 certificate or voucher. Further, the owner may not discriminate against any such person in the terms, conditions, privileges or rental of a unit, or in the provision of services or facilities in connection with the unit because the family or the person receives Section 8 rental assistance.

- 10-7. Applicability of the Uniform Relocation Act (URA). The relocation policies of the URA are not triggered by multifamily housing preservation activities carried out in accordance with the policies and requirements of Title VI of the 1990 Act. If a tenant is displaced as a direct result of acquisition, demolition, or rehabilitation for a federally assisted project in conjunction with the Preservation process, the tenant would qualify for URA assistance as a "displaced person."
- 10-8. Provisions of the Use Agreement. In addition to the requirements for Use Agreements stated elsewhere in this Chapter, all Use Agreements must require compliance with the Fair Housing Act and all its applicable regulations, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973 and the Age Discrimination Act of 1975.

[\[Search\]](#) [\[Prev List\]](#) [\[Doc List\]](#) [\[Next List\]](#) [\[First Doc\]](#) [\[Prev Doc\]](#) [\[Curr Doc\]](#) [\[Next Doc\]](#) [\[Last Doc\]](#)
[\[Bottom\]](#) [\[Next Hit\]](#) [\[Help\]](#) [\[Text Only\]](#)

HUD Handbook 4350.6, Procesing Plans of Action Under the Low

Directive Number: [\[Prev Hit\]](#)[\[Next Hit\]](#)**4350.6**

4350.6-CHG.2

CHAPTER 11. SERVICING A PROJECT AFTER EXECUTION OF THE USE AGREEMENT

Section A.

Introduction and Actions Required After Approval of a Plan of Action to Prepay

- 11-1. Introduction. Loan Management Staff has the responsibility for monitoring the implementation of approved Plans of Action (POAs). This responsibility includes monitoring the Use Agreement, the Regulatory Agreement, the Grant Agreement, the Section 8 Contract and any other regulatory obligations. This Chapter contains guidelines for carrying out these responsibilities. In most cases, the servicing and monitoring requirements of this Chapter are in addition to the servicing requirements which would have been required if a POA to extend low-income affordability restrictions had not been implemented. Where the requirements of this Chapter conflict with other servicing requirements, the requirements stated in this Chapter will prevail.
- 11-2. Actions After Prepayment Approval.
- A. When a Plan of Action (POA) has been approved to terminate low-income affordability restrictions through prepayment:
1. The owner must:
 - a. Execute a Use Agreement with HUD to maintain the rent levels for tenants living at the project at POA approval. Despite the lack of Section 8 funding, the owner must comply with the Use Agreement until the earlier of the maturity date of the initial mortgage or until all tenants living in the project at POA approval voluntarily move. Both HUD

and the tenants have the right to enforce compliance with the occupancy requirements contained in

11-1

10/93

4350.6-CHG.2

the Regulatory Agreement, Use Agreement, and HUD Handbook 4350.3.

- b. Limit rent increases for current tenants to the restrictions cited in Paragraph 8-13.A.1. If additional income is needed to cover increased operating costs, it must be derived from increased rents charged to tenants who initially occupy the project after POA approval.

2. The Loan Management staff will:

- a. Inform tenants of the rent protection which HUD and the owner must ensure that they receive, using Appendix 10-1, Notification to Tenants of Acceptance of Prepayment. If, after the owner prepays the mortgage, the tenant is paying rents higher than those allowed by Paragraph 8-13.A.1., the tenant should notify the Loan Management Branch which will take appropriate actions in accordance with Paragraph b. below.
- b. Contact the Preservation Division for further guidance if it has questions about such cases, since Field Offices do not have the authority to take necessary actions.

- B. When an owner is allowed to prepay due to lack of funding or an inability to sell a project, in accordance with Paragraphs 7-14 and 7-15 or Paragraph 8-31, HUD is obligated to regulate rents for certain protected tenants who were living in the project at the time of the Initial NOI submission and who continue to reside at the project. The rents are limited for a period of three years in accordance with Paragraph 10-4.

- 1. The protected tenants are those living in projects located in areas designated as low-vacancy in accordance with Paragraph

11-12 and special needs tenants living in all projects.

10/93

11-2

4350.6-CHG.2

2. Rent increases for tenants who remain in the project or to whom the owner provides a replacement unit in another project, will be limited to the application of the Operating Cost Adjustment Factor (OCAF), established in accordance with Paragraph 11-7.C.1., to the portion of the rent attributable to operating expenses. The owner should contact HUD annually to receive the updated OCAF. It may be necessary for the owner to subsidize the rents of tenants to whom they provide a replacement unit, in order to meet this requirement.
 3. If a tenant is paying more than the regulated rent, or if the owner is not providing other required protection, the tenant should notify the Loan Management Branch which will take the appropriate actions. If the Loan Management staff have questions about such cases, they should contact the Preservation Division for further guidance, since the Field Offices do not have the authority to take necessary actions.
- C. Revised Tenant Leases. For all approved prepayments of the mortgages or terminations of mortgage insurance contracts, the owner must propose the language which will be inserted into or appended to tenant leases to advise tenants of the changes in lease terms. These lease terms must specify the protection the owner will guarantee the tenant. This protection must include limitations on rent increases and restrictions on involuntary displacements in accordance with Chapter 10. If the proposed lease language meets these conditions, Loan Management staff will provide written approval to the owner prior to the prepayment. The prepayment of the mortgage may not be accepted until Loan Management staff reviews and approves the lease language. At the discretion of the Chief, Loan Management Branch, Field Counsel advice and concurrence on the lease language may be obtained. The Loan Management staff is relieved of all further monitoring

responsibilities for the project and need only investigate if notified of a violation.

11-3

10/93

4350.6-CHG.2

Section B. Projects in Which Low-Income Affordability Restrictions Have Been Extended

- 11-3. Monitoring Projects after Approval of a Plan of Action (POA) to Extend Low-Income Affordability Restrictions Through Retention or Sale. The date of POA implementation will be the same date the Use Agreement is executed. The Loan Management staff must monitor the project in accordance with the remainder of this Chapter for its remaining useful life.
- A. Projects Which are Sold. Within 90 days of POA approval, the Transfer of Physical Assets (TPA) and the loan must be closed, and the Use Agreement, Amended Regulatory Agreement and Section 8 contract must be signed. LOG date Use Agreement is executed. If the Section 241 loan cannot be closed within 90 days of POA approval, except for reasons beyond the owner's control, HUD will rescind the POA approval and the owner must wait six months before submitting another Initial NOI. Please note that since loan commitments must be obtained prior to POA approval, a lender's inability to close the loan within the required time would not automatically be considered a reason beyond the owner's control.
- B. Projects Which are Retained by the Owner. There is no time limit for the closing of the Section 241(a) or 241(f) loan nor for the execution of the Use Agreement, Amended Regulatory Agreement, and Section 8 Contract.
- 11-4. Tenant Income Profile. Records for tenant income profiles must be maintained at the project office along with tenant income data. The Loan Management staff will review tenant income profiles during occupancy reviews or in response to complaints received, to ensure that the proportion of tenant income levels shown in the profile conforms to that contained in the Use Agreement. This limitation will not prohibit the owner from renting to a higher proportion of very low-income families and persons if it so desires.

10/93

11-4

4350.6-CHG.2

- A. The Loan Management staff must monitor to ensure that the profile requirements are met, to the greatest extent possible, as tenant turnover takes place. That is, tenant selection should result in the same proportion of very low-, low-, and moderate-income families and persons residing in the project as determined in the tenant profile established in accordance with Paragraph 8-27.
- B. A classification of very low-, low- or moderate-income is established for each tenant. The owner classifies tenants residing in the project at POA approval in accordance with Paragraph A. above, or upon occupancy, for those entering the project after POA approval. A tenant's classification remains the same for purposes of the tenant profile for as long as the tenant resides at the project, regardless of subsequent changes in income. Therefore, documentation of the income designation for each tenant must be maintained in the tenant file for as long as the tenant continues to reside at the project.
- C. Tenants, residing in the project at the time the tenant profile was selected and whose incomes exceeded 95 percent of area median income, are counted as moderate-income for purposes of developing the tenant profile. However, other potential tenants, with incomes at or above this level, may not be admitted after POA approval.
- D. All other applicable occupancy requirements of the Multifamily Housing Programs under which the mortgage was insured, which do not conflict with the criteria in Paragraphs A. through C. above, must be met in accordance with HUD Handbook 4350.3, Occupancy Requirements of Subsidized Multifamily Housing Programs. Such requirements must be integrated with the criteria cited in Paragraphs A. through C. above. For example:
1. Separate waiting lists must be maintained for each income category required by the tenant profile.

11-5

10/93

4350.6-CHG.2

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2. Within each income category, other preferences and priorities in effect prior to the preservation process, will be maintained.
 - a. Unit Size. Within each income category, tenant selection should be made to meet appropriate unit-size requirements.
 - b. Military and other Federal and Local Preferences. Other preferences will continue to be used, within the appropriate income category and unit size.
 3. If a Section 8 unit becomes available (e.g., due to increase in a low-income tenant's income) and is not needed for a tenant designated as very low- or low-income on the tenant profile, it must be assigned in accordance with the occupancy policies established in HUD Handbook 4350.3, Occupancy Requirements.
 4. Tenant selection must be done in accordance with established occupancy policy so long as the tenant profile is not violated.
 5. Tenant profile waivers, and waivers to admit above moderate-income tenants to the project, will be handled as all other waivers for occupancy.
- 11-5. Availability of Section 8 Rental Assistance to Tenants. HUD will ensure that the Section 8 Housing Assistance Payment (HAP) Contract has sufficient funding through Section 8 LMSA to provide Section 8 rental assistance for all tenants designated as very low- or low-income on the tenant profile list and for the number designated very low- and low-income families on the tenant profile. HUD will fund the HAP contract at this level even if the entire amount of the rental assistance is not needed at the project immediately after POA approval for reasons such as: (1) the existence of vacant units in the project at POA approval; (2) some of the eligible tenants hold Section 8 vouchers or certificates; (3) the Section 8 gross rent for the unit does not exceed 30

percent of the tenant's AMI; or (4) the number of Section 8 units needed to fulfill the tenant profile requirement is not needed immediately for the current very low- and low- income tenants. The unused portion of the Section 8 HAP contract will be held in abeyance and used as needed. A condition of approval of the POA is that the owner agrees to extend the low-income affordability restrictions at the project throughout the remaining term of the Use Agreement executed in accordance with Paragraph 8-30. The owner will achieve this objective by providing Section 8 LMSA rental assistance for the number of units indicated in the Use Agreement. The Loan Management staff must monitor the project to ensure that the owner honors this commitment.

A. Eligibility for Section 8 project-based rental assistance is different under the Preservation program from that of other HUD programs in that all tenants designated very low- or low- income on the tenant profile are eligible. The owner must provide the Section 8 LMSA units to all of the very low- and low-income residents who would pay more than 30 percent of their adjusted monthly income (AMI) for total tenant payment (TTP) after approval of the POA, whether the tenant resides in the project at POA approval or satisfies a very low- or low-income allocation on the tenant profile upon entering the project.

1. Tenants who are eligible for Section 8 rental assistance upon POA approval or upon entering the project after POA approval, retain their eligibility for Section 8 rental assistance until they move from the project. If these tenants' incomes increase so that their TTP exceeds the Section 8 Gross Rent, the Section 8 rental assistance may be suspended. However, if income decreases again so that their TTP is lower than the Section 8 Gross Rent, these tenants would be eligible for Section 8 rental assistance at whatever time the assistance is needed to reduce the tenants' TTP. Under Title VI, they must receive first priority for the rental assistance as soon as it becomes available.

2. Any tenant who is filling a moderate income tenant profile allocation at POA approval or initial occupancy, and whose income drops below the low-income limit for the area, must meet the Section 8 eligibility requirements in order to receive rental assistance. Since the tenant continues to fill a moderate-income allocation on the tenant profile, Section 8 assistance is not guaranteed.
- B. Section 8 LMSA Total Tenant Payment (TTP).
1. The TTP for tenants receiving Section 8 will be calculated on Form HUD-50059-E. An exception to this policy will apply to tenants living at the project at POA approval where the rent is being phased in pursuant to Paragraph 2 below.
 2. For tenants living at the project at POA approval, if the required TTP represents an increase of over ten percent because the tenant was not receiving Section 8 rental assistance before POA approval ordinarily residents of Below Market Interest Rate (BMIR) Projects, any increase greater than ten percent will be phased in as described in Paragraph 11-8.D. For tenants who are currently being phased up to Section 8 rents (e.g., conversion from rent supplement to Section 8), the current phase-in should continue, and the phase-in due to approval of the POA, will not apply.
 3. As with other Section 8 programs, if the TTP for a Section 8 tenant is a negative amount, the owner will pay the tenant a utility reimbursement.
- C. Number of Units in the Section 8 Contract. HUD will not increase the number of units in a project-based Section 8 contract, after POA approval, to accommodate a greater number of tenants who need Section 8 rental assistance after POA approval.

 10/93

11-8

 4350.6-CHG.2

1. If incomes of tenants classified as moderate-income decrease, they may receive Section 8 LMSA rental assistance,

if available in the current contract. Those tenants also may receive Section 8 vouchers or certificates, if available. However, to the extent practicable, when a moderate-income tenant's income decreases, the owner must continue to maintain the tenant profile while continuing to designate the tenant as moderate-income, as described in Paragraph 11-4.B. Therefore, it is possible that the tenants whose incomes decrease will not be able to receive Section 8 LMSA rental assistance because it must be given as a priority to tenants designated as very low- or low-income on the tenant profile.

2. Nothing may prevent an owner from renting to a higher proportion of very low-income tenants. However, these tenants would have to fill a moderate-income vacancy on the tenant profile and Section 8 rental assistance, if available, would have to be provided through Section 8 vouchers, certificates, or any unused Section 8 LMSA rental assistance not needed for a tenant designated as very low- or low-income.

- D. Tenants with Section 8 Vouchers or Certificates. Tenants who enter the project after POA approval with vouchers or certificates may be designated moderate-income on the tenant profile. Project rents for these purposes will be set at FMR level. It is to the owner's advantage to provide every tenant designated low- and very low-income on the tenant profile, with a Section 8 LMSA unit.

- 11-6. Total Tenant Payment for Moderate-Income Tenants. Loan Management staff will send the owner a copy of the Existing Section 8 Fair Market Rents (FMRs) whenever changes are published in the Federal Register. They will also send updated information about Existing Section 8 income limits whenever

11-9

10/93

4350.6-CHG.2

changes are issued by the Economic and Market Analysis Division (EMAD). Except for tenants whose rents are being phased in, the owner will use Form HUD-90012, Appendix 11-3, to calculate tenant rents. Moderate-income tenants ordinarily will pay

the lower of 30 percent of AMI (In BMIR projects, adjustments to income will be made in the same manner as for Section 236 Projects.) or the FMR for TTP, with the following four exceptions:

- A. After POA approval, rent increases will be phased in, as described in Paragraph 8-18.A.7.
- B. If a moderate-income tenant's income decreases substantially and Section 8 rental assistance is unavailable, the tenant will make a TTP not less than the Minimum Rent, unless the FMR is lower. Minimum Rent will be set at 30 percent of the Section 8 low-income limit for the applicable family size adjusted by family allowances, in accordance with Paragraph 8-18.A.13.
- C. Any tenant who refuses to certify or recertify income, will be charged the FMR. If such a tenant is subject to a phase-in of rents, 30 percent of AMI will be assumed to equal the FMR for the unit type and this amount will be the target rent.
- D. No moderate-income tenant's rent will decrease as a result of the POA approval.

11-7. Determination of Project Rent, General Project Rent Increases and Section 8 Contract and Gross Rents. Paragraphs A. and B. below describe the method for calculating Preservation Project Rent (PPR), Paragraphs C.1. through C.6. describe the method for granting general project rent increases and Paragraph C.7. describes the method for determining Section 8 Gross Rents. Paragraph D. contains additional information relevant to project rent and rent increases.

- A. Annual gross rent potential (GRP) after POA approval is determined in accordance with Paragraph 8-17.C.

10/93

11-10

4350.6-CHG.2

- B. Preservation Project Rent may be calculated using lines A. through C. of Form HUD-90011, Calculation of Section 8 Gross Rents in Appendix 11-2. The PPR is derived by adding the sum of the annual utility allowances for all units to the GRP.
- C. Future increases for the annual GRP will be handled in the manner described below. No

other rent increases (e.g., for increased operating expenses in mid-year) will be allowed.

1. Each year the EMAD will develop and publish an operating cost adjustment factor (OCAF) based on underwriting considerations and the Consumer Price Index (CPI) for metropolitan areas.
2. At least 60 days prior to the anniversary of implementation of the POA or the date a later rent increase is desired, the owner should request a determination of the next year's budgeted operating expenses from the Loan Management Branch. LOG receipt of request With this request the owner will submit requested utility allowances, along with documentation for the amount requested, a profile of the current occupancy of the units and a projection of anticipated occupancy of vacant units, which will meet the tenant profile.
3. Within 15 days of receipt of the request, Loan Management Branch will apply the most recent OCAF to the portion of the GRP attributable to operating expenses adjusted for vacancies, management fees, etc., and in the case of priority purchasers, to the oversight costs. If non-operating costs increase or decrease, e.g., a loan secured by the project is repaid, the budget will be adjusted for the change. The Loan Management staff must send the owner a letter notifying it of the result. LOG date letter sent

11-11

10/93

4350.6-CHG.2

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4. Owner Appeals Operating Cost Adjustment Factor. If the owner finds that the HUD determined rent increase will not cover expenses and wishes to submit a formal appeal to request higher rents, it must do so within 30 days of receiving HUD's notification of the projected GRP. The project oversight costs portion of the submitted budget may never be increased more than the amount which results by applying the OCAF. Also, the percentage of the total rents which may be paid as management fees may not exceed the

percentage determined at POA approval. The owner should request and Loan Management staff should evaluate requests for higher rents using the method set forth in Chapter 7 of HUD Handbook 4350.1 Insured Project Servicing Handbook. The resulting rents, if approved, will remain in effect until the following year's OCAF is applied.

5. Using OCAF in Subsequent Years.

- a. For the second and all subsequent years, the OCAF will be applied by Loan Management staff to the adjusted operating budget amount derived by using the OCAF in the prior year. Specifically, any operating cost increases approved as a result of an appeals process will not be used in determining the GRP for the next year. If the owner determines that the next year's increase will not cover expenses, it must file another appeal. The owner must follow this procedure for all future rent increases until the GRP is at a level where it would have been if all rent increases had been based on application of the OCAF.

b. Example:

Budget for Year 1:
Adjusted Operating Costs: \$300,000

10/93

11-12

4350.6-CHG.2

For Year 2: OCAF = 1.087

Based on OCAF, adjusted operating costs: $\$300,000 \times 1.087 = \$326,100$

Owner justifies a budget, which is approved with \$350,000 operating costs.

For Year 3: OCAF = 1.069

Based on OCAF, adjusted operating costs: $\$326,100 \times 1.069 = \$348,601$

Owner justifies a budget, which is approved with \$370,000 operating

costs.

For Year 4: OCAF = 1.092

Based on OCAF, adjusted operating costs: $\$348,601 \times 1.092 = 380,672$

Expenses based on $\$380,672$ is used and OCAFs are applied in subsequent years.

- c. The owner may request rent increases based on the application of the OCAFs in accordance with Paragraphs a. and b. above on the anniversary of POA approval even if a previous rent increase request was made late or never made at all. For instance, the owner in the example in Paragraph b. would be eligible for the $\$380,672$ operating cost even if no rent increase request was submitted in Year 3.
6. Loan Management Staff Calculates Preservation Project Rent. The PPR is calculated at each rent increase by adding the GRP and all utility allowances for the projected year using Form HUD-90011, Appendix 11-2. Increases in the utility allowance will be evaluated at the time of the rent increase. Owners must submit documentation of actual utility costs to justify the utility allowances requested.

11-13

10/93

4350.6-CHG.2

7. Loan Management staff will apportion Section 8 Gross Rents to the unit sizes to achieve the PPR by using form HUD 90011, Appendix 11-2 as follows:
 - a. Calculate the sum of the annual rents projected to be paid by moderate-income tenants as determined in accordance with Paragraph 8-17.C.2.;
 - b. Subtract the result in Paragraph a. above from the PPR calculated in Paragraph 6. above. For example:
 - i. Assume approved GRP is $\$900,000$

and the sum of annual utility allowances are \$50,000 for a PPR of \$950,000.

- ii. Projected rents for all moderate-income tenants are \$5,000.
- iii. Section 8 gross rents must be established so that they total \$945,000 (\$950,000 minus \$5,000).

- c. Allocate the amount calculated in Paragraph b. above to the gross rents by unit size using the method outlined in form HUD 90011, Appendix 11-2.

- D. Notification to tenants of rent increases must be handled in accordance with HUD Handbook 4350.3.

11-8. Tenant Rents. The Loan Management staff must monitor tenant rents to ensure continued compliance with all of the above requirements and their interaction. During the rent phase-in period, the owner should use Form HUD-90010, Owner's Calculation of Tenant Rent Phase-In Due to Approval of POA in Appendix 11-1, to guarantee:

- A. Appropriate phase-in of rents, in accordance with Paragraph 8-18.A.7, for tenants whose TTP will increase more than 10 percent;

10/93

11-14

4350.6-CHG.2

- B. Annual tenant recertification;
- C. Project rent increases granted in accordance with Paragraph 11-7 above;
- D. Appropriate interaction of the issues listed in Paragraphs A. through C. above. Form HUD-90010, in Appendix 11-1, is designed to achieve this interaction and enable the owner to calculate the annual phase-in of the tenant's TTP. The steps in this process are as follows:
 - 1. Determining Which Tenants Must Have Rents Phased In. Upon POA approval, the owner will determine which tenants are paying less than both FMR and 30 percent of AMI

for TTP. This determination is made because any tenant already paying either 30 percent of AMI or FMR is paying the target TTP and does not need to have rent phased in. Primarily, moderate-income tenants will be identified. However, tenants in BMIR projects who will begin receiving Section 8 rental assistance as a result of the POA approval will also be identified. PLEASE NOTE that in any project in which tenants pay their own utilities, a utility allowance must be established, if none previously existed, in order to determine TTPs.

2. Determining the Target TTP. The owner will determine a target TTP for each tenant identified as paying less than both FMR and 30 percent of AMI for the TTP. The target TTP is the payment the tenant would be expected to make at the end of the phase-in period if there were no rent increases nor changes in the tenant's income. This is the lower of 30 percent of AMI or FMR.
3. Determining the Percentage of Income to be Paid During Phase-In.
 - a. The phase-in requirements described in Chapter 8, Paragraph 8-18.A.7 and Paragraphs 1. and 2. above, will be used to determine the percentage of

11-15

10/93

4350.6-CHG.2

income the tenant would pay each year for TTP if there were no rent increases nor a change in the tenant's income. Percentage of income may be used in lieu of actual TTP to determine the phase-in because both methods yield the same results, as shown in the following example:

- b. Example:

Assume that at POA approval, a tenant's AMI is \$1000 and the tenant is paying \$200 for TTP.

Target TTP: 30 percent of \$1000 =
\$300

Current TTP: 20 percent of \$1000 =
\$200

Since the \$100 increase is 50 percent of current TTP (greater than a 30 percent increase), it will be phased in over a three-year period.

Amount of annual increase if no other factors change:
\$100/3 = \$33.33; or
10 percent/3 = 3.33 percent of AMI

At POA implementation, TTP becomes:
\$200 + \$33.33 = 233.33; or
20 percent + 3.33 percent = 23.33 percent

At first anniversary, TTP becomes:
\$233.33 + \$33.33 = \$266.66; or
23.33 percent + 3.33 percent = 26.67 percent

At second anniversary, phase-in is complete and TTP becomes:
\$266.66 + \$33.33 = \$300; or
26.67 percent + 3.33 percent = 30 percent.

10/93

11-16

4350.6-CHG.2

4. Application of Calculated Percentages.
At each anniversary of POA approval and at each recertification of income, the owner must apply the calculated percentages to the tenant's current certified income. If Loan Management Branch has approved a general project rent increase since POA approval, the owner must apply the rent increase factor, as described in Paragraph 5 below, to the calculated TTP.

5. Adjustment by Rent Increase Factor.

A proportionate share of approved general project rent increases may be added to the tenant's TTP during phase-in but not after the phase-in is completed; i.e., until 30 percent of AMI or FMR is reached or the phase-in period ends. This will be accomplished as follows:

- a. PPR is determined for the period beginning at POA approval in accordance with Paragraphs 11-7.A. and B.
- b. General project rent increases will be granted and new PPRs will be calculated in accordance with Paragraphs 11-7.C.1. through 6.
- c. At the time of each general project rent increase during the phase-in period, Loan Management staff must determine a rent increase factor using Form HUD-90010-A, Appendix 11-1A, Section II, and provide it to the owner in the letter approving the rent increase. The owner will apply the factor to each tenant's phased-in TTP calculated in accordance with Paragraph 4. above. The factor is determined by:
 - i. Calculating the PPR after the rent increase as specified in Paragraph b. above.

11-17

10/93

4350.6-CHG.2

- ii. Dividing the latest PPR by the PPR at POA implementation to obtain a rent increase factor. The factor at POA implementation will therefore be 1.0. The reason the factor is determined by using the first PPR after POA implementation rather than the PPR for the previous year is that the factor is applied to a percentage of tenant income which was calculated based on a target rent at POA approval.
- iii. Example: The example used in Paragraph 11-7.C.5. shows an approved operating cost budget for the first year after POA approval of \$300,000, for the second year of \$340,000, and for the third year of \$370,000. We will assume that total approved GRP at POA approval is \$900,000, making GRP for the

second year, \$940,000 and for the third year, \$970,000. We will also assume that approved utility allowances for the same three periods were \$50,000, \$55,000, and \$60,000 respectively.

After POA Approval:
 Total Project Budget: \$900,000
 Total utility allowances: 50,000
 PPR \$950,000

Rent Increase Factor:
 $\$950,000/\$950,000 = 1.00$

Second Year:
 Total Project Budget: \$940,000
 Total utility allowances: 55,000
 PPR \$995,000

Rent Increase Factor:
 $\$995,000/\$950,000 = 1.05$

 10/93

11-18

 4350.6-CHG.2

Phased-in TTPs for the second year will be multiplied by 1.05 to adjust for the rent increase.

Third Year:
 Total Project Budget: \$ 970,000
 Total utility allowances: 60,000
 PPR \$1,030,000

Rent Increase Factor:
 $\$1,030,000/\$950,000 = 1.08$

Phased-in TTPs for the third year will be multiplied by 1.08 to adjust for the rent increases.

6. Exceptions to the Rules. The method described in Paragraphs 1. through 5. above will determine the tenant's current TTP with the following three exceptions:
- a. During the phase-in period, TTP is never reduced unless it would exceed either 30 percent of AMI (or Minimum Rent, when applicable, in accordance

with Paragraph c. below) or FMR. If the calculated TTP would result in a reduced payment, the previous year's TTP will be used;

- b. The tenant will not pay more than the lower of 30 percent of AMI (or Minimum Rent in accordance with Paragraph c. below) or FMR even if the TTP calculated for the phase-in exceeds one or both these amounts;
- c. For moderate-income tenants whose incomes are reduced to below the Section 8 low-income limit, the TTP will not be reduced to less than the Minimum Rent if Minimum Rent exceeds 30 percent of AMI but does not exceed FMR; and
- d. Tenants who do not receive Section 8 rental assistance will not receive utility reimbursement, no matter how substantially their incomes decrease.

11-19

10/93

4350.6-CHG.2

- E. Inapplicability of Interim Certifications.
The TTP will not be changed based on interim certifications, unless it exceeds 30 percent of AMI (or Minimum Rent, when applicable) or FMR without the change.
- F. Rents Phased In Over More than Three Years.
At the owner's option, phase-in may take more than three years. The owner may do this by modifying Form HUD-90010, Appendix 11-1, as described in the Instructions to the Form HUD 90010.
- G. All rent increase notification requirements contained in HUD Handbook 4350.3, Occupancy Requirements of Subsidized Multifamily Housing Programs, must be followed.

11-9. Tenant Leases. In a letter to HUD, the owner should propose, and Loan Management staff must review and approve language to be added to all tenant leases to reflect compliance with the requirements of this Chapter. At its discretion, the Chief, Loan Management Branch, may wish to seek the advice and concurrence of the Field Office Counsel regarding the revised lease language. In

addition to the provisions of HUD Handbook 4350.3 and the regulations at 24 CFR 247.1, the new lease language must include:

- A. A statement that the tenant will always pay the lower of FMR or 30 percent of AMI for TTP with certain exceptions:
 - 1. A tenant who was classified as moderate-income at the time of POA approval, or upon entering the project, may be required to pay a Minimum Rent if the tenant's income decreases below the Section 8 low-income limit, the Minimum Rent exceeds 30 percent of the tenant's AMI and Section 8 assistance is not available; or
 - 2. A tenant who receives Section 8 rental assistance and occupies the project after POA approval, will pay rent calculated by the normal Section 8 formula;

10/93

11-20

4350.6-CHG.2

- B. A statement that if the tenant is designated as very low- or low-income at POA approval or upon initially occupying the project, the tenant will always be eligible for Section 8 rental assistance if Section 8 Gross Rent exceeds 30 percent of its AMI and will receive Section 8 assistance when it is available;
- C. A statement that if a moderate-income tenant refuses to certify income, the tenant will be charged the FMR for TTP;
- D. A description of the rent phase-in process;
- E. A statement that security deposits for in-place tenants will not be increased due to POA approval; and
- F. Any other provisions required by Loan Management staff.

11-10. Receipt and Distribution of Project Funds.

- A. Basic Rent, Market Rent, and Excess Income.
 - 1. Basic Rent.
 - a. Section 236 Projects. Basic Rents for Section 236 Projects with

approved POAs will be set only as a monthly aggregate for the entire project. It is defined as GRP divided by 12. If the project has no utility allowance, so that the GRP equals PPR, the basic rent will also equal PPR divided by 12. The owner must make this calculation whenever a rent increase or utility allowance is approved.

- b. Below Market Interest Rate Projects. While BMIR projects have no basic rents, the owner will calculate the monthly aggregate rent for the entire BMIR project using the method to determine Basic Rent in Paragraph a. above in order to determine the amount of excess income.

11-21

10/93

4350.6-CHG.2

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2. Market Rent and its calculation is only relevant to Section 236 projects. It will equal the project's specific annual subsidy amount (interest reduction payment), divided by 12, added to the basic rent.
3. Excess Income. In any month, any rents collected, which exceed the monthly aggregate amount calculated in Paragraph 1. above, will be considered excess income.
- a. Section 236 Projects. Excess income must be remitted to HUD, up to an amount equal to the project's specific annual subsidy amount divided by 12. The remainder must be deposited to the project's residual receipts account.
- b. BMIR Projects. All excess income must be deposited to the project's residual receipts account.
- B. Residual Receipts and Reserve for Replacement Accounts will be treated by the owner and monitored by the Loan Management staff in the same manner as discussed in HUD Handbook 4350.1.
- C. Owner's Distribution. The owner may have

periodic access to the residual receipts or reserve for replacement accounts to the extent specified in Paragraphs 1. through 3. below provided the Loan Management staff determines that the levels of the accounts are adequate, that the project is maintained in accordance with the Housing Quality Standards (HQS), and the owner is complying with the Use and Amended Regulatory Agreements, in accordance with Paragraph 11-13.

1. An owner who retained ownership of the project may take an approved distribution from surplus cash not to exceed eight percent of the extension preservation equity as established by the appraisal process. The distribution is reduced by

10/93

11-22

4350.6-CHG.2

the debt service applied to any equity loan that the owner receives. It should be noted that some owners may have agreed to accept a smaller, or no, return in order to keep PPR below the FCL.

2. A for-profit purchaser may receive an approved eight percent return on any actual HUD-approved cash investment made to purchase or rehabilitate the project unless it agreed to accept a smaller, or no return in order to keep the PPR below the FCL.
 3. A priority purchaser may receive an approved eight percent return on any HUD approved cash investment made to purchase the project. This return may only be withdrawn to pay for activities authorized by the nonprofit organization's charter, or to pay debt service on a non-insured loan to acquire the project.
- D. Exceptions During Phase-In Period. During the phase-in period, tenant rents may not provide adequate income to pay the approved owner's distribution. If this occurs, the following procedures apply:
1. Owners who Retain the Project. An owner who retains the project will be ensured receipt of the annual authorized return (AAR) during the phase-in period, even if

insufficient income is generated from tenants' rents that are being phased in. However, the owner is not ensured the AAR if: (1) insufficient income is due to excess project vacancies, or (2) the AAR is greater than the amount the owner agreed to accept at POA approval in order to keep PPR below the FCL. During the phase-in period only, AAR will be ensured in the following manner:

- a. Section 236 Projects.
 - i. During the first year after POA approval, excess income in any month must be remitted to HUD.

11-23

10/93

4350.6-CHG.2

Any unspent proceeds will be deposited to the residual receipts account.

- ii. At the end of the first year, the owner may have access to the residual receipts account up to the amount of the approved AAR. If there are insufficient funds to pay the AAR, the owner must show, through an audit, how much of the shortfall was caused by the tenant phase-in.
- iii. During the second year after POA approval, the owner may retain the excess income up to the amount of the shortfall due to the rent phase-in, determined in accordance with Paragraph ii. above. If this amount is sufficient over the year to pay the shortfall, the same process will continue through the third and fourth years. If excess income is insufficient to pay the shortfall, the amount due the owner will be temporarily added to the project's approved rent during the third and fourth year after POA approval. Form HUD-90011 provides a method for calculating this temporary

increase. The owner will then retain excess income each month until past years' shortfalls are recovered.

- b. BMIR Projects.
 - i. During the first year after POA approval, any unspent proceeds will be deposited to the residual receipts account. At the end of the first year, the owner may have access to the residual receipts account up to

10/93

11-24

4350.6-CHG.2

the amount of the approved AAR. If there are insufficient funds to pay the AAR, the owner must show, through an audit, how much of the shortfall was caused by the tenant rent phase-in.

- ii. During the second and subsequent years, up to the end of the rent phase-in period, a temporary rent increase may be granted to pay the portion of the AAR shortfall caused by the rent phase-in. The owner may retain excess income, up to the amount of the shortfall in previous years. Form HUD-90111 provides a method for calculating this temporary increase.
- 2. Purchasers. Purchasers may not receive the full owner's distribution if there are not adequate funds in the residual receipts account to pay for it. This shortfall may not be compensated by means of a temporary or permanent rent increase. Loan Management staff should be cautious in reviewing utility allowances during the phase-in period, since an underestimate for utility allowances will generate a higher rent, given the same TTP.

11-11. Non-Renewal of Section 8 LMSA Contract and Permissible Prepayment. If HUD is unable to renew

a Section 8 LMSA contract because of the lack of funding, the owner may request a modification of the low-income Use Agreement on the mortgage.

- A. Loan Management staff must notify the owner at least 30 days prior to the expiration date of the Section 8 HAP contract if funds will not be available to renew the contract and will continue to be unavailable so that HUD will not be able to fund the contract retroactively. LOG date owner notified

11-25

10/93

4350.6-CHG.2

- B. Within 30 days of receipt of the notice that HUD is unable to fulfill the terms of the original POA, the owner must inform the Loan Management Branch that it is requesting a modification of the low-income Use Agreement. The owner must request that HUD take action to amend the terms of the contract or that it be allowed to prepay the mortgage. LOG notification from owner received
- C. Within 30 days of receipt of the request from the owner to prepay the mortgage in accordance with Paragraph B. above, HUD must make a determination of whether the project is located in a low-vacancy area, in accordance with Paragraph 11-12, and return such information to the owner. LOG date returned
- D. Not later than 90 days from receiving the owner's request, Loan Management staff must take action to amend the terms of the POA so that the owner will receive comparable benefits. LOG action taken If, within the 90 days, Section 8 LMSA funds become available, HUD will renew the Section 8 HAP contract retroactively.
- E. If Loan Management staff cannot extend or amend the Section 8 HAP contract or give comparable benefits, then the owner may terminate the low-income affordability restrictions in accordance with Paragraph 8-31.B. The owner must provide protection to all project tenants pursuant to the requirements cited in Paragraphs 10-3 through 10-6.

11-12. Designation of a Low-Vacancy Area. Within five days of receipt of an owner's request to prepay, in accordance with Paragraphs 7-14, 7-15, 8-31 or

11-11, the Loan Management staff must request EMAS LOG date request made to determine whether the project is located in a low vacancy area as defined in Paragraph 1-15. EMAS must notify the Loan Management Branch of its determination within 15 days. LOG date notification received Within 30 days of receipt of the owner's request, the Loan Management staff must advise the owner if the area has been designated low-vacancy. If the area is

10/93

11-26

4350.6-CHG.2

designated low-vacancy, the Loan Management staff must further advise the owner of the additional protection it must give potentially displaced tenants in accordance with Paragraph 10-4.

11-13. Violations of the Housing Quality Standards (HQS) or Use Agreement and Amended Regulatory Agreement. As a condition for receiving incentives, the owner must sign a Use Agreement that specifies occupancy standards and that sets TTP and tenant rent levels, and an Amended Regulatory Agreement that specifies other conditions described in this Handbook. The owner must also have agreed to maintain the project in accordance with local housing codes and HQS. Where the HQS differs from local housing codes, the owner must maintain the project in compliance with the stricter standard.

A. Monitoring Compliance.

1. Physical Assessment of the Project. Loan Management staff must conduct an annual physical assessment LOG date each assessment of the project to determine compliance with the HQS using Form HUD-9822, Physical Inspection Report. The assessment will be conducted in two parts:

a. Physical Inspection.

i. At least 30 days prior to the inspection, Loan Management staff must notify the tenant representatives, if any, and the project owner or manager of the date and time it will conduct the inspection. LOG date notified If they choose, the tenant representatives may accompany the inspectors.

- ii. Tenant representatives are responsible for getting comments from other tenants about the project's physical condition and presenting them to HUD. If there is no tenant representative, Loan Management

11-27

10/93

4350.6-CHG.2

staff will provide the owner with a notice that must be posted in each affected building, stating the time and date of the inspection and exit conference and advising any interested tenants that they may attend the exit conference and/or submit any comments to HUD that they may have about the project's physical condition.

- b. Exit Conference. Immediately following the physical inspection, Loan Management staff must hold an exit conference with management and tenant representatives to discuss the findings of the inspection.
- 2. Monitoring Compliance with Agreements. As part of normal project monitoring activities, Loan Management staff must monitor compliance with the Use and Amended Regulatory Agreements. If a tenant or tenant representative reports a violation, Loan Management staff must investigate within 30 days.
 - 3. Correcting Deficiencies.
 - a. Within 30 days after the inspection or determination of a violation of any Agreements, Loan Management staff must notify the owner of the findings. LOG date owner notified
 - b. Within 90 days of receipt of notification of the findings, the owner must correct any deficiencies in order to resolve the findings. LOG date deficiency corrected
This action would include rebating excess rent paid by the tenants or

paying relocation expenses for tenants who were accepted for occupancy inappropriately.

10/93

11-28

4350.6-CHG.2

- c. Upon notification by the owner that the deficiencies have been corrected, Loan Management staff will reinspect the project or investigate to confirm that the violation has been corrected. LOG date of reinspection or investigation If there are any outstanding findings or deficiencies remaining, the owner forfeits the annual authorized distributions and HUD may take additional actions to bring the owner into compliance with the program regulations.
- B. Sanctions for Noncompliance. If Loan Management staff determine that an owner has continued its noncompliance with the Agreements, including those to maintain the project in accordance with HQS, Loan Management staff may recommend sanctions to the Field Office Counsel to bring the project into compliance. The Field Office Counsel must approve these sanctions prior to implementation of them by the Loan Management staff. Sanctions may include:
1. Directing the mortgagee to withhold the disbursement to the owner of any escrowed equity take-out loan proceeds, and if the project is not in compliance with HQS, requiring that such proceeds be used for repair of the project;
 2. In the case of a violation of the HQS, reducing allowable distributions to four percent of the extension preservation equity or (in the case of a purchaser) four percent of the cash investment, as appropriate, for a period ending upon a determination by HUD that the project is in compliance with HQS. Any amount withheld may not be withdrawn until the repairs are made, and at that time may only be withdrawn to pay for the repairs; and
 3. In the case of violations of other

Agreements, withholding the allowable distributions for a period ending upon a

11-29

10/93

4350.6-CHG.2

determination by HUD that the project is no longer in violation of the Agreements. Amounts withheld may be used to rectify violations of the Agreements.

4. Fair Housing Monitoring. Loan Management staff must refer any possible violations of the civil rights provisions of any agreement to the FHEO Program Operations Division in the Regional Office or the FHEO Division in the Field Office. If the information includes a formal complaint of discrimination under the Fair Housing Act or other Civil Rights Statute, the complaint must be referred to the Regional FHEO Compliance Division for further investigation.
- C. Monitoring After Compliance. To ensure continued compliance with the HQS and other Agreements for a project subject to the sanctions under Paragraph B. above, HUD may limit access to and use by the owner of the amounts identified in Section B above for not more than a two year period. This period will begin upon a determination made by the Loan Management staff that the project has been brought back into and remains in compliance with the HQS and Agreements.
- D. Sanctions for Continuous Noncompliance. If Loan Management staff determine, upon inspection or investigation, that the owner has failed to comply with the HQS or other Agreements for two consecutive years, they may, upon notification to the owner of the noncompliance, take one or more of the following actions:
1. Subject to the availability of appropriations, provide assistance in the form of Section 8 vouchers or certificates for any tenant eligible for such assistance who desires to terminate occupancy in the project. For each Section 8 voucher or certificate provided, the Loan Management Branch may, notwithstanding any other law or contract for rental assistance, reduce the

provision of Section 8 project-based

10/93

11-30

4350.6-CHG.2

assistance by one unit, in accordance with HUD Handbook 4350.2, Section 8 Loan Management Set Aside, Appendix 6. Reduction of the Section 8 assistance does not release the owner from the obligation to rent to tenants in the proportions shown on the tenant profile in accordance with Paragraph 8-17.F. or permit the owner to charge very low- or low-income tenants more than they would have paid under the Section 8 TTP formula.

2. Direct the mortgagee to declare all equity and rehabilitation loans to be in default and accelerate the maturity dates of the loans. In the case of loans provided by HUD, including Flexible Subsidy loans, declare, them to be in default and accelerate the maturity date of the loans; and
3. Suspend payments under, or terminate any contract for Section 8 project-based rental assistance. Taking such action does not constitute abrogation of the Use Agreement on HUD's part and therefore, does not allow the owner to prepay.

E. Other Sanctions. HUD may take any other action, authorized by the law or the project's Amended Regulatory Agreement or Use Agreement, to ensure that the project is brought into compliance with all Agreements and with HQS or with other requirements pertaining to the condition of the project.

11-14. Sale by a Priority Purchaser to a Non-Priority Purchaser. In the case of a voluntary sale, if a priority purchaser becomes affiliated with or transfers the project to a non-priority purchaser within ten years of approval of a POA, HUD may seek reimbursement of assistance from the priority purchaser. This reimbursement will be in the amount that represents the difference between the assistance actually provided and the amount the non-priority purchaser would have received.

11-31

10/93

4350.6-CHG.2

- 11-15. Partially Assisted Projects. In several states, there are Section 236, State Agency, non-insured projects with blended rate mortgages where only a portion of the units are subsidized. In these projects, rents for the proportion of the project which is subsidized may not be used to help pay any expenses for the unsubsidized portion of the project.
- A. In partially assisted projects, Loan Management staff and the owner must be certain that only an appropriate portion of the project budget is allocated to subsidized units. Loan Management staff must closely examine the project's PPR at POA approval and at the time of any rent increase in which the PPR determined by the OCAF is appealed to ensure that only expenses attributable to the subsidized portion are allowed.
 - B. Unless otherwise specified in approved documents, the ratio of subsidized units of each size and type must be the same as the ratio of subsidized units in the entire project.
 - C. The owner may use a variety of methods to present the budget, including separating the subsidized and unsubsidized portions of the budget into two budgets or proportionately allocating a single budget between subsidized and unsubsidized units. Loan Management staff must be certain that proper allocation of expenses has taken place.
 - D. The projected rent for moderate-income tenants in the subsidized portion of the project must be subtracted from the PPR allocated to the subsidized portion. Section 8 Gross Rents will be used to make up the difference for that portion of the project only. In no case may Section 8 rents be used to subsidize shortfalls in rents in the unsubsidized portion of the project.
 - E. Loan Management staff should contact the Preservation Division with questions concerning review of budgets in unique circumstances.

10/9311-32

4350.6-CHG.2

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- 11-16. Projects with Commercial Space. In projects where there is commercial space, rents for the subsidized units may not be used to pay any expenses for the commercial space.
- A. The Loan Management staff and the owner must be certain that only the appropriate portion of the project budget is allocated to rental units. The Loan Management staff must closely examine the project's PPR at POA approval and at the time of any rent increase in which the PPR determined by the OCAF is appealed to ensure that only expenses attributable to the subsidized rental units are allowed.
 - B. The owner must separate any income and expenses for the commercial space. The Loan Management staff must be certain that proper allocation of expenses has taken place. It may be necessary for some expenses (e.g., administrative and utilities) to be allocated proportionately.
 - C. In no case may tenant-paid rents or HUD-paid Section 8 rents be used to subsidize shortfalls in commercial income to cover the costs of operating the commercial space.
 - D. Loan Management staff should contact the Preservation Division with questions concerning review of budgets in unique circumstances.
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11-33

10/93

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HUD Handbook 4350.6, Procesing Plans of Action Under the Low

Directive Number: [\[Prev Hit\]](#)[\[Next Hit\]](#)**4350.6**

4350.6 CHG-4

CHAPTER 12: Emergency Low-Income Housing and Preservation Act (ELIHPA)
 Plans of Action

Section A

- 12-1. The ELIHPA, Title II of the Housing and Community Development Act of 1987, as amended by the Stewart B. McKinney Homeless Assistance Amendments of 1988, and the Department of Housing and Urban Development Reform Act of 1989, restricts the ability of an owner of "eligible low-income housing" from prepaying a project's mortgage note after 20 years if the mortgage note is eligible to be prepaid without the Secretary's consent. The regulations, 24 CFR Part 248, with conforming amendments in Parts 50, 241, 219, 221 and 236, carry out these legislative provisions.
- 12-2. Evaluation and Processing. Though Low-Income Housing Preservation Resident Homeownership Act (LIHPRHA) (Title VI of the 1990 Affordable Housing Act) replaces ELIHPA (Title II) and makes it a permanent part of the statute, there are enough differences in LIHPRHA particularly concerning rents and allowable incentives to warrant separate treatment in this Handbook. The procedures described here are intended for use by owners and loan servicers to develop, process, evaluate and monitor an ELIHPA Plan of Action, (POA). To avoid undue repetition, ELIHPA program elements already covered in the LIHPRHA portion of the Handbook (Chapters 1-11) will be specifically noted e.g., Notices of Intent (NOI), Eligibility Rules, Terminations.
- 12-3. Eligibility. ELIHPA and LIHPRHA eligibility criteria are the same except with respect to delinquent HUD-held mortgages (See Chapter 2).
- A. Under ELIHPA, a POA involving a defaulted HUD-held mortgage must include a plan to reinstate the defaulted HUD-held mortgage.
- B. HUD encourages owners to use incentives, i.e., an equity loan, to reinstate the defaulted HUD-held mortgage. (Further discussion of eligibility for HUD-held projects is in Paragraph 12-10L).
- 12-4. Notice of Intent (NOI). The NOI (HUD Form-9608-B), APPENDIX 12-1 starts an owner's participation in the ELIHPA program. Distribution and posting requirements are the same as the LIHPRHA requirements described in Chapter 3, paragraphs 3-4 and 3-5 with the following exceptions:

11-1

7/95

4350.6 CHG-4

- (12-4) A. HUD does not supply foreign language translations of the NOI for posting.
- B. ELIHPA NOI's that propose termination of affordability restrictions will be filed according to LIHPRHA guidelines In Chapter 4.
- C. References to the Homeownership Program (available only under LIHPRHA) have been deleted in the Notice to the tenants.
- 12-5. Access to CFS/Tracs. On receipt of the NOI Form HUD-9608-B, the Asset Management (AM) staff will access the CFS\TRACS system for the following information:
- A. All Section 8 contracts outstanding and closed for the project.
- B. Number of LMSA units associated with the project.
- C. Number of 236 or BMIR units associated with the property.
- D. Current tenant profile information for the project.
- 12-6. Preservation Capital Needs Assessment (PCNA). The POA stage begins when the local HUD Office receives from the owner the NOI HUD Form-9608-B. The Production Branch, Architectural, Engineering and Cost staff (A/E&C) performs the PCNA. On completion of the PCNA, the Preservation Coordinator sends the PCNA to the owner. Tenant notification requirements of Title VI apply.
- 12-7. Appraisal Options. To establish a preservation value before the POA submission, the owner has two options regarding the submission of an independent, professional appraisal:
- A. An owner may submit an appraisal within 60 days of HUD's receipt of the NOI.

Valuation then has 60 days to:

1. Review the appraisal;

7/95

12-2

4350.6 CHG-4

- (12-7) 2. Make any necessary adjustments or do its own appraisal;
and
3. Provide the value determination to the owner.
- B. An owner may submit the appraisal with the POA within 6 months. All tenant notification requirements of Title VI apply.

The appraisal:

1. Conforms to the requirements set forth in Notice

H93-21, "Production Branch Instructions for Processing POA Under Title II of the Housing and Community Development Act of 1987, and Associated Section 241(f) Loan Applications."

2. Determines the highest and best use of the property. Permissible incentives will only be approved when it can be shown that the property has a higher and better use than subsidized rental property. This determination is central to the HUD review appraiser's function in ELIHPA processing.
3. Provides an estimate of the owner's equity based on consideration of one or more of the following approaches, depending upon which is deemed appropriate by the processing appraiser:
 - 1) capitalization of net income;
 - 2) direct sales comparisons; and
 - 3) replacement cost.
4. Documents how hypothetical costs, if any, for the purchase and installation of any upgrade improvements were derived.
5. Provides reasonable specification data for major upgrades. Similar documentation also supports the derivation of hypothetical conversion costs.
6. Should be effective not later than 30 days before the date of submission of the POA.

12-3

7/95

4350.6 CHG-4

- 12-8. ELIHPA POA. Requesting extension of low-income affordability restrictions through retention or sale of the project in exchange for incentives.
- A. POA. The POA may or may not involve a prepayment of the mortgage.
 - B. Contents of the POA. Includes the following: (Checklists in APPENDICES 8-3 and 8-4 may be helpful, but note differences in requirements for ELIHPA submissions):
 1. Tenant Income Profiles.
 - a. The owner submits two income profiles of the tenants.
 - 1) One profile should reflect tenant data as of the date of the PA submission, and the second, as of January 1, 1987, (based on the median income limits established by HUD in February, 1987) or if the January 1, 1987, profile is unavailable, a certification of unavailability and a profile as of January 1, 1989, (each based on appropriate income limits).
 - 2) For tenants with Section 8 vouchers or

certificates, the owner may have to contact the local Public Housing Authority (PHA) to get the information.

- 3) The profile as of POA submission must include the following information for each unit:
 - o A code number to maintain tenant anonymity;
 - o Unit type;
 - o Family size;

b. Family's gross annual income and its classification as very low, low-, or moderate-income;

- 1) Very low-income (gross annual income is less than or equal to 50 percent of area median income adjusted for family size);

7/95

12-4

4350.6 CHG-4

(12-8)

- 2) Low-income (gross annual income is greater than 50 percent, yet less than or equal to 80 percent of the area median income)
- 3) If an owner chooses to use Flat Rents, the low-income group is further divided into the following sub-groups:
 - a. Low One (51-60 percent of area median income);
 - b. Low Two (61-70 percent of area median income);
 - c. Low Three (71-80 percent of area median income);
- 4) Moderate-income (81 percent to 95 percent of the median family income adjusted for family size).
- 5) Market income tenants (95 percent of median and above) are included in the tenant census for purposes of phased-in rents and proportionality though these tenants will be replaced by moderate-income tenants when they move out.
- 6) Number of vacant units (allocated to very low-, low- and moderate income in proportion to the share of occupied units in each category);
- 7) Approved non-revenue units are not counted.

2. A description of any proposed changes in the status or terms of the mortgage or regulatory agreement.

3. A description of any proposed changes in the low-income affordability restrictions (i.e., rents, occupancy restrictions), and a detailed assessment of the effect of these proposed changes on each tenant of the project or a statement that there are no changes.

12-5

7/95

4350.6 CHG-4

(12-8)

Relocation and displacement requirements are covered in Chapter 10.

4. A complete Transfer of Physical Assets (TPA) package [if the POA proposes a change in ownership]. (See Chapter 13 of HUD Handbook 4350.1 REV-1). The TPA must contain complete details of any secondary financing.
5. A description of any outstanding findings of noncompliance with the Fair Housing Act (FHA); Title VI of the Civil Rights Act of 1964; Executive Order 11063; Section 504 of the Rehabilitation Act of 1973; Age Discrimination Act of 1975; or with respect to the project Regulatory Agreement.
6. A waiver request by the owner, if appropriate.
7. A list of any incentives (refer to paragraph 12-10) which the owner may request in exchange for extending the low-income use of the project for the remaining mortgage term. The list should include dollar values for each incentive, e.g., rent increases, amount of the Section 241(f) equity loan, amount of Flexible Subsidy (FS) loan, etc.
8. A FS Capital Improvement Loan Application (CILA) by a nonprofit purchaser (only a nonprofit will qualify) if the POA proposes to make improvements using this program. Purchaser submits a complete FS package, including a comprehensive Management Improvement and Operating Plan (MIO), supported by specifications and cost estimates. HUD Handbook 4355.1 contains guidance and procedures for completing a Flexible Subsidy application. HUD will not award final approval of the POA until the CILA is fundable under a Notice of Fund Availability (NOFA).
9. Documentation that the owner has sought assistance through State and local government agencies and a complete description of any assistance which such agencies will provide.

7/95

12-6

4350.6 CHG-4

(12-8)

10. Complete description of the present debt secured by the project, including current balances, interest rate, monthly mortgage payments to principal, interest and MIP, maturity date of the mortgage and copies of:

The first note and mortgage,

All ancillary notes and mortgages, loans by public agencies, e.g., loan for rental rehabilitation and any other mortgage liens and, Partnership debt secured by a mortgage lien.

11. A detailed statement of the proposed rental structure (Form HUD-92458) at the property reflecting all the project information and the rental structure with incentives. Rents may be increased; however, they must remain affordable.
12. Certification using the format provided in APPENDIX 8-5, Form HUD-9611, Low-Income Housing Tax Credits (LIHTC) certification of owners, concerning the owner's intent regarding the use LIHTC. Owner must disclose information detailing the use of LIHTC, or certify that tax credits will not be used.

C. Results of HUD's Review. (See Chapter 8 for detailed discussion):

1. Prepayment is approved and the owner will receive incentives from the Federal government in return for agreeing to conditions related to the continued use of the project as low-income housing;
2. Prepayment is not approved but incentives are granted under the same conditions as in the preceding paragraph;
3. Prepayment is not approved, and HUD will not offer incentives of any kind.

12-9. POA REQUESTING PREPAYMENT AND TERMINATION OF AFFORDABILITY RESTRICTIONS. See Chapter 8, Section 6 for the list of findings HUD must make to approve a POA to terminate low-income affordability restrictions, submission requirements, and processing instructions.

12-7

7/95

4350.6 CHG-4

12-10. INCENTIVES TO EXTEND LOW-INCOME USE. The following are incentives available to owners who agree to extend the projects affordability restrictions for the duration of the original mortgage:

NOTE: HUD WILL PROVIDE INCENTIVES ONLY IF: (1) THE APPRAISAL DEMONSTRATES THAT THE PROPERTY HAS A "HIGHER AND BETTER USE" THAN AS LOW-INCOME RENTAL HOUSING; AND (2) LOW-INCOME AFFORDABILITY RESTRICTIONS AT THE PROJECT ARE EXTENDED FOR THE REMAINING TERM OF THE MORTGAGE.

- A. Increased Distributions. An incentive distribution may: 1) stay at 6 percent of revalued equity; 2) increase the percentage of existing or revalued equity; or 3) be subject to the surplus cash computation. Section 221(d)(3) mortgagors may retain all rental collections beyond normal operating costs and debt service as distributable, subject to the surplus cash computation.

1. The percentage of equity allowed as distributions will be calculated as the projected net cash flow (after full rent stabilization with a 5 percent vacancy factor and management fee not to exceed \$45.00 per unit per month) divided by the new equity base (recalculated equity). Using current projections, the resulting increased percentage is the mortgagor's annual authorized return on equity. HUD applies this rate of return to the projects new equity base (equalling the appraised value as concurred by HUD at POA approval) minus the amount of secured debt. If the mortgagor chooses to obtain secondary financing, the amount of the second mortgage will be subtracted from the new appraised value, with the remaining balance of the first mortgage, to calculate the new equity base. Annual adjustment increases will be budget-based.
2. Surplus Cash Distribution. There will be no restrictions on the distribution of surplus cash, as defined in the Regulatory Agreement. Total rents for surplus cash projects are subject to annual increases using an Annual Adjustment Factor (AAF).

7/95

12-8

4350.6 CHG-4

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3. Section 236 projects remain subject to the surplus cash computation and collection and remittance to HUD of all excess income. Distributions may be taken only after the local HUD Office has determined that the project is properly maintained and all reserve accounts are properly funded.
- B. The Production Branch appraiser can approve an increase in an owner's equity based on the "As Is" value of the property. "As Is" value is the unsubsidized fair market value of the property, less the costs of any required repairs, upgrade improvements, and net discounted conversion costs that an owner would have incurred by an owner/converter in the marketplace to get the hypothetical highest and best use. Owner's equity is the net value of the property obtained by deducting all HUD-approved indebtedness from the "As Is" value.
- C. Section 241(f) Equity Loan. If an owner borrows against the revalued equity base by obtaining a Section 241(f) equity loan, a conventional loan or any other long-term indebtedness, either secured against the property or unsecured, the equity portion of the Section 241(f) loan amount shall be added to the existing outstanding indebtedness for purposes of recalculating the remaining equity base, i.e., recalculated equity, to determine the amount of limited distribution. An owner entity that does not request a 241(f) loan as an incentive either because it does not require a rehab loan, or prefers to apply for an equity loan at some future date will have the approved Authorized Annual Return (AAR) applied to the Revalued Equity amount to determine the amount of distribution. Refer to Production Branch Instructions for Processing POA under Title II of the Housing and Community

Development Act of 1987;" Section 17, pp.40-41.

1. HUD cannot issue a commitment to insure a Section 241(f) loan before Final Approval of a POA. Approval of the POA qualifies the owner for loan eligibility and provides sufficient operating income to support a 241(f) loan.
2. Section 241(f) loan applications must be accompanied by the certification of LIHTC tax credits required by Notice H90-17. Refer to APPENDIX 8-7 for the required documents.

12-9

7/95

4350.6 CHG-4

- (12-10) D. Non-Insured Financing. HUD will only approve proposed non-insured secondary financing if, upon evaluation, it proves to be cost effective and assures HUD's security.
- E. Access to Reserves in Extensions and Sales Transactions. Owners may be permitted access to the Residual Receipts Account if projects are in good physical condition, as determined by the local HUD Office. Escrow and trust accounts (tax, insurance, and tenant security deposits) must be properly funded. Owners may also have access to the Reserve for Replacement Account (RRA) provided the required repairs have been completed. AM will determine if the RRA is sufficiently funded. Also, current policy permits access to RRAs in sales transactions.
- F. Rent Increases. "Monitoring Project Rent Increases After POA Approval".
- G. Section 8 Loan Management Set Aside (LMSA).
1. Existing units. HUD will increase section 8 rents to the lesser of:
 - a. The Fair Market Rents (FMR) or
 - b. The Project Specific Rent (PSR).
 2. New units. HUD will provide new Section 8 Loan Management Set Aside (LMSA) units for all very low-income tenants at the lesser of the FMR or the Project Specific Rents (PSR). HUD also may provide Section 8 assistance to lower income tenants (51-80 percent of median income) in a sale to the tenants or a qualified nonprofit entity.
 3. Subject to appropriations, law and the availability of funds, HUD will extend the contracts pursuant to a POA.
- H. If HUD is unable to extend these LMSA contracts or provide comparable assistance, HUD will take the following successive actions:

7/95

12-10

4350.6 CHG-4

- (12-10) 1. Modify the rent and occupancy restrictions that are

dependent on the Section 8 LMSA and which the owner agreed to maintain in executing the Use Agreement;

2. Release an owner from the rent and occupancy restrictions. If these actions result in default of the insured loan, revise the POA affordability restrictions.
- I. Flexible Subsidy. Flexible Subsidy Capital Improvement Loans (CILS) are only available to nonprofit Purchasers of ELIHpa projects with insured mortgages. The loan may be a deferred note (payable on sale or refinancing of the project) with a term coincident with the expiration of the project's insured mortgage note, accruing interest at a rate of 1 percent. Projects with HUD-held mortgages or State Agency non-insured financing are eligible for CILs as an ELIHPA incentive and will be funded according to a published NOFA funding schedule. Although the POA may request a CIL as an incentive and AM may review and give Preliminary approval of the POA including a CIL, HUD may not give final approval until the CIL is funded under a Notice of Fund Availability (NOFA). If an owner requests this incentive, a complete Flexible Subsidy package including a Management Improvement and Operating (MIO), detailed specifications, cost estimates, and LIHTC tax credit certification must be included with the POA. HUD Handbook 4355.1 contains instructions for Flexible Subsidy assistance.
 - J. Prepayment of the original HUD-insured or HUD-held loan provided project meets criteria for prepayment and termination of the regulatory agreement. See Chapter 11 for processing instructions.
 - K. Transfer of Physical Assets (TPA). Transfers to a qualified nonprofit organization, limited equity tenant cooperative, public agency, or other entity acceptable to HUD will be considered. If a POA involves a TPA, the POA and the TPA must be reviewed and approved concurrently. Approval of the TPA should be obtained before granting preliminary approval of the POA. TPA applications must be prepared according to the instructions in HUD Handbook 4350.1, REV-1, Chapter 13,

12-11

7/95

4350.6 CHG-4

- (12-10) L. Delinquent and Defaulted HUD-held Mortgages. Will include a plan to reinstate and maintain the HUD-held loan at the time of approval of the POA.
1. Incentives such as equity loans may be used to reinstate the defaulted HUD-held mortgage. In rare instances, a provisional workout agreement may be necessary, e.g., a project requiring an extensive repair program.
 2. Mortgages in default and under workout may provide for incentive compensation to be received by the owner only after reinstatement of the mortgage. The approval of the POA proposing incentives is contingent on satisfactory completion of the workout. (Increases in distribution rates or amounts provide little incentive when the regulatory agreement prohibits distributions due to the mortgage default). All proposed workouts must be

consistent with the instructions contained in Handbook HUD 4350.1 REV-1, Chapter 11.

- M. Project Oversight Costs are reasonable expenses incurred by a nonprofit purchaser in hiring third parties to help the purchaser's board of directors in making ownership decisions.
1. Retroactive requests: Nonprofit purchasers with approved POAs receiving incentives before the publication of the Regulation at 24 CFR Part 248.5, are eligible to apply for this additional incentive. A POA may be amended to include project oversight costs.
 2. Project Expenses: Limited to the lower of:
 - a. justified costs for approved purposes;
 - b. one (1%) percent of the Gross Rent potential (GRP); or
 - c. \$10,000.
 3. HUD will allow additional expenses, as required, for maintenance of the nonprofit organization itself,

7/95

12-12

4350.6 CHG-4

(12-10)

organization itself, including changes in organizational documents (articles and by-law amendments).

4. The Multifamily Housing Director may adjust these standards based on the actual costs for these services.
5. The AM Branch will provide the Production Branch appraiser with the determination of the oversight costs to be included in the operating expenses on the Form HUD-92264 before the completion of the Section 241(f) loan commitment.

12-13

7/95

4350.6 CHG-4

Section B

Reviewing and Evaluating the ELIHPA POA

- 12-11. General. AM staff reviews and analyzes a POA adhering to strict statutory review and processing time frames The guidelines that follow apply to all POAs:
- A. Initial review. The AM staff of the local HUD Office performs an Initial review of the POA.
 1. All major components of the contents of the POA (listed in Paragraphs 2-5 (A through I) above must be present.
 2. An acknowledgement or rejection letter (APPENDIX 12-2) must be issued within 5 days of receipt of the POA [LOG date).

3. If major components are missing, immediately return the POA to the owner with a brief letter which indicates the missing parts.
- B. Receipt. Upon receipt and acknowledgement of a complete POA, AM staff begins the formal review.
- C. Project history. The AM staff reviews the project's history (mortgage documents, the docket, and other project files) for agreements such as a Flexible Subsidy Use Agreement, Urban Renewal Agreement, Land Disposition Agreement, known zoning restrictions or rent control ordinances that may restrict the occupancy or use of a project.
1. If a POA proposes prepayment and termination of affordability restrictions, a prior agreement may not preclude prepayment of the mortgage; however, it may restrict the use of the property to low-income use for the duration of the original mortgage.
 2. If a POA requests Incentives in exchange for an extension of affordability; such a restrictive agreement may preclude the Project from having a "higher and better use" than low-income housing, and therefore, prohibit the Department from awarding incentives.

7/95

12-14

4350.6 CHG-4

- (12-11) D. A deficiency in the POA is anything that prohibits HUD from approving the POA.
1. Inform the owner of any deficiencies in the Plan within 60 days [Log date sent] of the Office's acknowledgement of the POA.
 2. A complete Notice of Deficiencies must contain sufficient detail to enable the owner to make the necessary corrections and must include the local HUD Office's recommendations for correction.
- 12-12. POA Requesting Incentives and Extension of Affordability Restrictions. The following guidelines cover POAs involving incentives and the extension of low and moderate-income restrictions at the property:
- A. Requirements For Approval. To approve a POA involving incentives, HUD must determine that the project meets the following requirements;
1. The owner will maintain the low and moderate income affordability restrictions at the property for a period not less than the remaining term of the original mortgage. If the mortgage was reduced at final endorsement and the amortization schedule and monthly Level Annuity Monthly Payment (LAMP) were not adjusted, amortization of the mortgage note may be completed before the original 40-year term. The owner must, in these cases, agree to maintain the affordability restrictions

for the original 40-year term.

2. The project has a higher and better use other than low and moderate-income housing.
3. The incentives are necessary to provide a fair return to the owner, but equity takeout loans may never exceed HUD's determination of the owner's "As Is" revalued net equity in the property, regardless of available surplus cash, loan source, or any other factors.
4. A description of any outstanding audit findings or findings of non-compliance with the FHA; Title VI of the Civil Rights Act of 1964; Executive Order 11063; Section 504 of the Rehabilitation Act of 1973; Americans

12-15

7/95

4350.6 CHG-4

(12-12)

with Disabilities Act; Age discrimination Act of 1975; the project Regulatory Agreement with a description of the resolution, or proposed resolution, of any such findings, or a certification that no violations exist.

NOTE: The owner must correct any violations before POA approval.

5. Repairs are determined by the required project Preservation Capital Needs Assessment (PCNA). The AM staff will not approve a POA for a project that is in poor physical condition.
6. Throughout the remaining term of any insured mortgage or use agreement, adequate expenditures will be made for the proper maintenance and operation of the housing.
7. The owner cannot displace current tenants (except for good cause).
8. If the POA involves a TPA, the local HUD Office will issue preliminary approval of the TPA.
9. If rents are increased because of incentives to maintain affordability:
 - a. The owner must recertify all tenants annually.
 - b. Any increase in rent contributions by current tenants will be to a level that does not exceed 30 percent of the adjusted gross monthly income of the tenant or the Section 8 Fair Market Rent (FMR) for the area, whichever is lower. The rent contribution must include all utilities. If utility allowances are in place, the amount of the utility allowance must be included to figure out the total tenant rent.
 - c. Any increase in rents paid by tenants living in the project at POA approval (except for increases made necessary by increased operating costs) must be

7/95

12-16

4350.6 CHG-4

(12-12)

must be phased-in. Increases attributable to increased operating costs may also add to the amount of the phased-in rent increase. However, this "pass through" of operating costs occurs only during the phase-in period. The requirements at Paragraph 12-14 still govern maximum tenant rents.

- d. Rent Phase-In. If the total rent increase is:
- 1) Greater than 30 percent of the existing rent, it must be phased-in equally over a period of not less than 3 lease years; the first increase will occur upon the effective date of the POA and the subsequent two increases will occur annually.
 - 2) Greater than 10 percent yet less than 30 percent, it must be phased-in at no more than 10 percent per year.
- e. Rent increases may not be phased-in less time than allowed by the above Paragraphs, c. and d. THE METHOD FOR IMPLEMENTING THE PHASE-IN IS PROVIDED IN (APPENDIX 11-1), FORM HUD-90010, "Owner's Calculation of Rent Phase-In Due to Approval of POA" designed to enable the owner to calculate the annual phase-in of the Total Tenant's Rent (TTP). This form calculates rent phase-in for both LIHPHA and ELIHPA with a few minor changes noted on the form and instructions where Flat Rents and Floor Rents come into play.
- f. Rents for units becoming available to new tenants must be affordable at the lower of 30 percent of adjusted income or the FMR.
- g. Tenant Profiles. The owner must agree to maintain the units as affordable to the same tenant income

12-17

7/95

4350.6 CHG-4

(12-12)

profile (percentages of tenants who are very low-, low-, or moderate-income) when determining the proportions.

- 1) When determining proportions, count market rate tenants as moderate-income tenants. Moderate-income tenants replace market rate tenants when they move out. The owner may admit a higher proportion of very low-income tenants; however, such additional very low-income tenants will not receive Section 8 assistance under the POA, but may receive other Section 8 assistance or be subsidized by the owner.

- 2) If an owner chooses to divide the low-income group into subgroups of Low 1 (51-60 percent of Median Income), Low 2 (61-70 percent), and Low 3 (71-80 percent), because the owner chooses to use FLAT RENT FACTORS (FRF) for low and moderate-income families, the owner must maintain the tenant income profile for those subgroups. Vacant units divide in the same proportions as occupied units.
 - 3) The owner will reclassify a tenant when the tenant's income changes. A moderate-income tenant whose income decreases to below the very low-income limit may be reclassified and eligible for Section 8 assistance, if available.
- B. Reviewing and Evaluating the POA. To determine that the POA has met the above requirements, AM staff will require input from the Fair Housing and Equal Opportunity (FHEO) Division,

7/95

12-18

4350.6 CHG-4

(12-12)

Production Branch, Valuation Branch and AE/C Branch. The Loan Management staff must send a copy of the POA and instructions for POA approval to each Branch.

1. FHEO is responsible for informing AM whether the owner or management of the project has any outstanding findings of noncompliance with the FHA, Title VI of the Civil Rights Act of 1964, Executive Order 11063, Age Discrimination Act of 1975, the Rehabilitation Act of 1973.
2. Production Branch Appraiser. To establish the preservation value before the POA submission, an owner has the option to submit the appraisal within 60 days of receipt of the PCNA. The HUD appraiser, then, has 60 days to review the appraisal, make adjustments, if necessary, do its own appraisal and provide the value determination to the owner. The owner then has an additional 6 months from the date of the HUD value determination to submit a POA.
3. The HUD Appraiser reviews the owner's appraisal to determine:
 - a. whether:
 - (1) the appraisal's content and conclusions are accurate, and
 - (2) the project has a higher and better use than subsidized low and moderate income housing.
 - b. provides:
 - (1) a determination of value as non-residential housing both as restricted and unrestricted

market rate rental housing, and

- (2) rent comparables for unassisted units in the area to help the AM staff in determining Section 8 rents.

12-19

7/95

4350.6 CHG-4

Section C

Preservation Rents

12-13. Establishing Affordable Preservation Rents. The following are rules for achieving affordable rents under an ELIHPA POA involving the extension of affordability restrictions.

- A. Section 8 LMSA. The number of Section 8 units will be based on:
1. Very Low-Income Tenants. (Tenants whose gross annual income is less than or equal to 50 percent of the area median income). Section 8 may be provided for the greater of the number of very low-income tenants who either currently reside at the project, or resided at the project on January 1, 1987, (as determined by the income limits effective February 6, 1987).
 2. Lower Income Tenants. (Tenants whose gross annual income is greater than 50 percent, yet less than or equal to 80 percent of the area median income Section 8 assistance may be provided to lower income tenants if the POA involves a sale of the property to the tenants or a qualified nonprofit entity. The number of LMSA units provided is dependent on which tenant income profile the owner will maintain: the profile established at January 1, 1987, or the current profile.
 3. Section 8 Contract rents may exceed the rents established for comparable non-Section 8 units in the project, but may not exceed the lesser of the FMR for existing housing or the Project Specific Rents (PSR).
- B. FRFs. The Department has developed factors which produce rents which are substantially higher than current rents yet remain affordable for new low and moderate-income tenants. The rents are based on the "effective" median income for the area in which the project is located.

The effective median income is the lesser of the median income or 125 percent of the national median income. If an owner

7/95

12-20

4350.6 CHG-4

(12-13) median income. If an owner chooses to use "flat" rents for low-income families, the low-income groups (51 - 80 percent) divide into subgroups (51-60 percent, 61-70 percent, 71 - 80 percent) to establish equitable rents for these households. To find the affordable factored rent multiply the "effective"

median income by the appropriate "FRF." Factors break down by unit size and by income category. APPENDIX 12-3 lists the FRFs. Owners may find factors advantageous because they provide predictable Net Operating Income for purposes of refinancing or secondary financing.

C. Special Requirements for Projects under the Section 236 Program. Under a POA approved for surplus cash distribution, rents collected up to the Basic Rent (BR) are available to cover operating expenses, debt service, and distributions (subject to the surplus cash computations). Rents collected in excess of the aggregate BR constitute "excess rents." These excess rents must be remitted to HUD in accordance with 236 regulations and procedures. Basic Rents are calculated as follows:

1. Units assisted by Section 8 subsidy will have a BR set at the Section 8 contract rent.
2. For low-income units, the BR will be set at a factor applied to the effective median income. This factor approximates what a family at 75 percent of the median income would pay for rent with 30 percent of adjusted gross monthly income, and is equal to the factors used for the 71-80 percent income level.
3. For moderate income units, the BR also will be set at a factor applied to the effective median income. This factor approximates what a family at 90 percent of the median income would pay for rent with 30 percent of adjusted gross monthly income.
4. The computation of Section 236 market rents does not change.
5. The 236 Basic Rent Factors are:

4350.6 CHG-4 (12-13)	Bedroom Size	12-21 Low Income	7/95 Moderate Income
	Studio	0.013125	0.01575
	1	0.0140625	0.016875
	2	0.016875	0.02025
	3	0.01933593	0.02320313
	4	0.02109375	0.0253125
	5	0.02285	0.02742

* Notwithstanding these Special Requirements, the maximum rent that may be charged for any unit is the FMR.

** NOTE: THE BASIC AND MARKET RENTS ARE ESTABLISHED AS A WAY OF DETERMINING HOW MUCH EXCESS INCOME THE OWNER MUST RETURN TO HUD; AND HOW MUCH THE OWNER GETS TO KEEP. IT HAS NOTHING TO DO WITH WHAT A TENANT ACTUALLY PAYS FOR RENT.

12-14. NON-SECTION 8 TENANT RENTS. All Section 8 gross rents, rents based

on 30 percent of adjusted income, FMRs, and PSRs include utilities. If a tenant pays some or all of the utilities, tenant rent payments are adjusted by a utility allowance. The following are rules for setting tenant rents under a POA.

- A. In a project for which an owner has not selected FRFs, the Total Tenant Payment will be the lower of:
1. The FMR (or PSR, where applicable) or
 2. The higher of 30 percent of Adjusted Gross Monthly Income (AGMI) or the Floor Rent (Minimum Rent).
- B. Current Tenants. In a project for which an owner is charging the Flat Rents, the TTP for current non-subsidized tenants (tenants living at the project at POA approval), will be the lowest of:
1. The FMR (or PSR where applicable); or
 2. The higher of 30 percent of AGMI or the Floor rent
 3. The FRF.

7/95

12-22

4350.6 CHG-4

- (12-14) C. Future Tenants. In a project for which an owner is charging the Flat Rents, the TTP for future nonsubsidized tenants (not living at the project at POA approval) will be the lower of:
1. The FMR (or PSR where applicable)
 2. The FRF.

12-23

7/95

4350.6 CHG-4

Section D

APPROVING THE POA

- 12-15. A. Time frames for approval. The AM staff will approve the POA within 180 days and notify the owner in writing if the POA is not approvable. If the AM staff is unable to approve the POA within 180 days, the local HUD Office must notify the owner in writing that the POA is not approvable. [LOG date notice sent] The notice to the owner must:
1. Describe the reasons why the POA is not approvable, including delays by the owner in the submission of the revised POA;
 2. Describe actions that the owner must take to meet the criteria for approval; and
 3. Give the owner an opportunity to revise the POA and resubmit it for approval.
- B. Preliminary Approval. The local HUD Office approves a POA in

two stages, preliminary approval and final approval.

1. Preliminary Approval of a POA involving a prepayment and termination of the low-income affordability restrictions. The Multifamily Housing Director may grant preliminary approval of a POA involving prepayment and termination of the low-income affordability restrictions only if the POA meets the requirements of Chapter 8, Section B.
2. Preliminary approval of a POA involving extension of the low-income affordability restrictions. The Multifamily Housing Director may grant preliminary approval of a POA including incentives in exchange for extension of the low-income affordability restrictions only after ensuring that the POA meets the requirements indicated in Paragraph 12-12. A copy of the approved POA must be attached to the letter granting the owner preliminary approval.
 - a. Once the POA receives preliminary approval, the owner must notify all the tenants of its terms and provide 60 calendar days for the tenants to comment.

7/95

12-24

4350.6 CHG-4

(12-15)

- b. If the POA involves a TPA, the AM staff must evaluate the TPA and issue preliminary approval of the sale to the purchaser. Preliminary approval of the TPA must be made simultaneously with approval of the rest of the POA.
- c. Tenant Notice. AM staff will prepare a notice advising tenants of the approval of the POA and summarizing the transaction. The owner must post a copy of this notice in a conspicuous place in each occupied building of the project. At a minimum, the notice must include:
 - 1) A statement that the POA is approved pursuant to Title II, Subtitle B of the Housing and Community Development Act of 1987, and HUD's implementing regulations at 24 CFR Part 248.
 - 2) A statement of the rents that will be charged to current tenants, the procedure by which these rents will be increased, and the anticipated dates for carrying out these rent increases.
 - 3) A statement describing any assistance that will be made available to the current tenants, and the duration of the assistance. If tenants will be relocated, a description of the relocation plan.
 - 4) A statement describing the duration of the terms of the PA.

- 5) A statement that indicates that each tenant will receive a recorded copy of the Use Agreement/Amended Regulatory Agreement.
- 6) The following statement concerning the tenant's right to comment on the proposed POA:
"HUD has granted preliminary approval of this

12-25

7/95

4350.6 CHG-4

(12-15)

preliminary approval of this POA. If you have any comments concerning the POA, HUD will take your comments into consideration before granting final approval. If you wish to submit a comment, you must do so within 60 calendar days from the date of this notice. Please address them to the local HUD Office AM Branch Chief."

- 7) The owner must also write to each affected tenant explaining how that tenant will be affected by the POA. If the approval of the POA contains provisions for a rent Increase, the owner's letter must explain the rent phase-in provisions, if applicable. All additional requirements for rent increases, contained in Chapter 7 of HUD Handbook 4350.1, REV-1, Insured Project Servicing Handbook, must be followed and the owner must post a notification of the rent increase:
 - a) After POA approval;
 - b) Before execution of the Use Agreement; and
 - c) At least 30 days before the effective date of any rent increase.
- d. State and Local Government Notice. AM staff must write to all affected State and local governments to advise them that the POA has been approved.

12-16. Request for Fund Reservation. Within 30 days after issuing preliminary approval, the local HUD Office must request funding to implement the approved POA from the Office of Multifamily Housing Preservation and Property Disposition.

- A. Section 8 new unit funding requests require unit composition, approved rents, contract authority, and budget authority according to annual funding instructions.

7/95

12-26

4350.6 CHG-4

- (12-16) B. Section 8 amendment funding requests require existing contract number - and contract authority and budget authority needed.
- C. Flexible Subsidy requests from nonprofit applicants must

conform to Departmental NOFA requirements for Capital Improvement Loans and instructions for processing (HUD Handbook 4395.1 REV-1, Flexible Subsidy).

IMPORTANT: POA funding requests for Section 8 LMSA are not subject to NOFA requirements.

- 12-17. Final approval. The period between the dates granting preliminary and final approval of the POA allows the tenants sufficient time to propose comments to the Plan, and the local HUD Office to consider the comments and make any changes to the POA. This period also allows the local HUD Office sufficient time to prepare any required Use Agreements and amendments to Regulatory Agreements, and to ensure that Section 8 and Flexible Subsidy funds are reserved.
- A. The AM staff cannot issue final approval until it has reviewed the tenant comments and the resulting changes, if any, have been made.
- B. Effective date. The approved POA is effective when the owner or purchaser:
1. Prepays and terminates affordability restrictions and executes and records a Use Agreement for current tenants [LOG effective date], or
 2. Executes the Use Agreements to extend affordability restrictions [LOG execution date]. In the latter case, no other action (e.g., rent increases, Section 8 contracts, Section 241(f) loan commitments, Flexible Subsidy contracts, distribution of surplus cash, etc.), is permissible before the owner's execution and recording of the Use Agreement.
- C. POA expenses incurred by the owner pursuant to filing and negotiating a POA are the owner's responsibility until POA approval. Such expenses may be paid as project expenses only

12-27

7/95

4350.6 CHG-4

- (12--17) expenses may be paid as project expenses only from residual receipts, surplus cash or distributions as approved in the POA and only after the POA is effective. Expenses charged to the project before POA approval require the local HUD Office's normal regulatory enforcement action and prevent approval of the POA.

7/95

12-28

4350.6 CHG-4

Section E

- 12-18. Monitoring: Project Rent Increases After POA Approval
- A. Limited Distribution Projects. Rent increases will be approved only after the State/Area Office has determined that the project is properly maintained and that the Reserve Accounts are properly funded. All rent increase requests will be reviewed, processed, and approved by the AM staff. The

requirements for posting a Notice to Tenants of Intention to Request a Rent Increase (24 CFR part 245) must be observed even though tenants are not directly affected by project rent increases.

1. Methodology. Using the tables in Form HUD-90011-A (APPENDIX 12-4) calculate section 8 gross rents as follows:

For Section 8 contract units, rent increases will be budget based. The section 8 contract rents will be calculated by projecting the rents paid by the lower and moderate income tenants and subtracting these rents from the total amount required to support the increased project budget.

2. The rent projection for Moderate-Income Tenants is based on calculations using 80 percent of the area median income.
 3. The rent projection for Low-Income Tenants is based on calculations using 65 percent of the area median income.
 4. When FRFs are used the rent projections for the three Lower Income subgroups is based on 55 percent, 65 percent, and 75 percent of the area median income. Rents are adjusted by applying the factored rent to increases in the median income. The Section 8 Income Limits are established by a Notice regularly published by HUD.
- B. Surplus Cash (Unlimited) Distribution Projects. Section 8 rent increases for projects approved for surplus cash distribution will be (1) the application of the Section 8 Annual Adjustment Factor to Section 8 LMSA unit rents and (2) either the application of FRFs to the change in median income, changes

12-29

7/95

[\[Search\]](#) [\[Prev List\]](#) [\[Doc List\]](#) [\[Next List\]](#) [\[First Doc\]](#) [\[Prev Doc\]](#) [\[Curr Doc\]](#) [\[Next Doc\]](#) [\[Last Doc\]](#)
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Processing Plans of Action Under the Low-Income Housing

Directive Number: [\[Prev Hit\]](#)[\[Next Hit\]](#)4350.6

4350.6-CHG.1
APPENDIX 1-1A

TIMELINE WHEN:

A. OWNER REQUESTS EXTENSION OF AFFORDABILITY RESTRICTIONS

Months Since Initial Notice of Intent received	Time to Complete Each Step	Processing Steps	Handbook Reference
	Day 1	HUD receives Initial Notice of Intent (NOI) to Extend or Sell. HUD determines eligibility.	Ch. 2-2, 2-3, 2-4 Ch.3
	20 days	HUD gives owner appraisal requirements. HUD gives owner, tenants, tenant representative, and State and Local governments information about Preservation Capital Needs Assessment.	Ch. 5-4, 5-5, 5-6 Appraisal Guidelines

Appraisal Cycle:

2 Months	1 Month	HUD performs Preservation Capital Needs Assessment and gives both appraisers the results within 60 days of receiving NOI.	Ch. 5-7
4 Months	3 Months and 10 days	Appraisers submit appraisal reports. HUD and owner exchange appraisals.	Ch. 5-8

4350.6-CHG.1
APPENDIX 1-1A

Months Since Initial Notice of Intent received	Time to Complete Each Step	Processing Steps	Handbook Reference
5 Months	1 Month	Valuation, with appraisers, and owner review and reconcile appraisals.	Ch. 5-9
6 Months	1 Month	Select third appraiser if value(s) cannot be reconciled. Must select third appraiser within 6 months of receiving NOI.	Ch. 5-9 B. Ch. 5-10
8 Months	2 Months	Conduct third appraisal.	Ch. 5-9 C.
9 Months	1 Month	LM reviews third appraisal, if needed. HUD determines Preservation Values, Preservation Equity, and whether Preservation Rents are above Federal Cost Limits. HUD sends information on incentives, and preparing Plan of Action to owner, tenant representative and State and Local governments.	Ch. 5-12

1/93

Page 2 of 5

4350.6-CHG.1
APPENDIX 1-1A

Months Since Initial Notice of Intent received	Time to Complete Each Step	Processing Steps	Handbook Reference
10 Months	30 days	Thirty (30) days after receipt of information from HUD, owner of	Ch. 2-7

Transition (Sec. 604)
project must indicate
whether it will utilize
Title II or Title VI.

Plan of Action
Cycle:
To Retain
Project with
Incentives

15 Months	6 Months	Owner has elected to retain project and extend the affordability restrictions. Within 6 months of receiving information from HUD, owner prepares and submits Plan of Action to HUD, State or Local Government, and tenant representative and posts summary in each occupied building. If complete POA not filed within 6 months of receiving information from HUD, the NOI expires and the process ends. Owner prohibited from submitting another NOI until 6 months after expiration date.	Ch. 8-3, 8-4 Ch. 8-16
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Page 3 of 5

1/93

4350.6-CHG.1
APPENDIX 1-1A

Months Since Initial Notice of Intent received	Time to Complete Each Step	Processing Steps	Handbook Reference
	10 days	Upon receipt of POA, LM date stamps. Ten working days after POA received at HUD, Loan Management sends owner letter indicating if POA is complete.	Ch. 8-6
15 Months	6 Months	Upon receipt of a complete POA the processing clock	Ch. 8-6, 8-7 Ch. 8-9

begins. Within 10 working days, HUD sends POA to State or local government, EMAS and FHEO for review. Reviews from EMAS and FHEO due back in 30 days, State and local government due in 50 days. Tenants may also comment on POA. LM notifies owner within 60 days of deficiencies.

21 Months	6 Months	HUD has 180 days, from receipt of complete POA, to review and process it. Owner must be notified of its approval or disapproval within the 6 months. At time of POA approval the reconciled appraisal can't be more than 30 months old. Owner must submit revised POA within 60 days, but no later than 305 days from receipt of complete POA. POA processing time can be extended at the owner's request, but for not more than 365 days from the submission date of the complete POA.	Ch. 8-6, 8-18
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1/93

Page 4 of 5

4350.6-CHG.1
APPENDIX 1-1A

Months Since Initial Notice of Intent received	Time to Complete Each Step	Processing Steps	Handbook Reference
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Monitoring Cycle:

24th Month	90 days	Within 90 days of preliminary approval of a POA, the Transfer of Physical Assets, the closing of all loans, the completion of the Use Agreement, the Amended Regulatory Agreement, and the signing of the Section	Ch. 11-3
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8 HAP Contract must occur.
 Within 5 days of implementing
 POA, LM staff notifies
 the Preservation Division,
 Headquarters.

Prepayment Cycle:

39th Month	15 Months	An owner may prepay the mortgage and terminate the affordability restrictions: If the funds requested for the POA's incentives are not provided within 15 months of HUD's POA final approval.	Ch. 8-31
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10 days	Within 10 days of determining that a project may prepay, and at least 30 days prior to acceptance of prepayment, LM must notify each tenant of the available protections. Owner must post, Notice of Available Protection, in each building.	Ch. 10-2
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4350.6-CHG.1
 APPENDIX 1-1B

TIMELINE WHEN:

B. OWNER REQUESTS TERMINATION OF AFFORDABILITY RESTRICTIONS

Months Since Initial NOI received	Time to Complete Each Step	Processing Steps and Participants	Handbook Reference
	Day 1	HUD receives Initial Notice of Intent (NOI) to Terminate. HUD determines eligibility.	Ch. 2-2, 3, 4 Ch. 3
	5 Days	LM distributes NOI to EMAS, FHEO, and Valuation with request that they supply information	Ch. 4-2 A.

relevant to market area.

	90 Days	EMAS, FHEO and Valuation provide LM with information available on market area for owner.	Ch. 4-2 B.
6 Months	6 Months	HUD provides owner, State and local governments, tenants, and tenant representative criteria for termination, available information on market area and information on preparing Plan of Action.	Ch. 4-3, 4-4, 4-5

Page 1 of 3

1/93

4350.6-CHG.1
APPENDIX 1-1B

Months Since Initial Notice of Intent received	Time to Complete Each Step	Processing Steps	Handbook Reference
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Plan of Action Cycle:
To Prepay or
Terminate

12 Months	6 Months	Owner has elected to prepay the mortgage and terminate the affordability restrictions. Owner prepares and submits Plan of Action to HUD, State or Local Government, and tenant representative and posts summary in each occupied building. If complete POA not filed within 6 months of receiving information from HUD, the NOI expires and the process ends. Owner prohibited from submitting another NOI until 6 months after expiration date.	Ch. 8-3, 8-4 Ch. 8-16
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10 days Upon receipt of POA,
LM date stamps. Ten
working days after POA
received at HUD, Loan
Management sends owner
letter indicating if
POA is complete.

Ch. 8-6

1/93

Page 2 of 3

4350.6-CHG.1
APPENDIX 1-1B

Months Since Initial Notice of Intent received	Time to Complete Each Step	Processing Steps	Handbook Reference
12 Months	6 Months	Upon receipt of a complete POA the processing clock begins. Within 10 working days, HUD sends POA to State or local government, EMAS and FHEO for review. Reviews from EMAS and FHEO due back in 30 days, State and local government's due in 50 days. Tenants may also make comments on POA. LM notifies owner within 60 days of deficiencies.	Ch. 8-6, 8-7 Ch. 8-9
18 Months	6 Months	HUD has 180 days, from receipt of complete POA, to review and process it. Owner must be notified of its approval or disapproval within the 6 months. Owner must submit revised POA within 60 days, but no later than 305 days from receipt of complete POA. POA processing time can be extended at the owner's request, but for not more than 365 days from the submission date of the complete POA.	Ch. 8-6, 8-18
		Within 10 days of determining that a project may prepay, and at least	Ch. 10-2

30 days prior to acceptance of prepayment, LM must notify each tenant of the available protections. Owner must post, Notice of Available Protection, in each building.

Page 3 of 3

1/93

4350.6-CHG.1
APPENDIX 1-1C

TIMELINE WHEN:

C. OWNER OFFERS TO SELL THE PROJECT

Months Since Initial Notice of Intent received	Time to Complete Each Step	Processing Steps	Handbook Reference
	Day 1	HUD receives Initial Notice of Intent (NOI) to Extend or Sell. HUD determines eligibility.	Ch. 2-2, 2-3, 2-4 Ch.3
	20 days	HUD gives owner appraisal requirements. HUD gives owner, tenants, tenant representative, and State and Local governments information about Preservation Capital Needs Assessment.	Ch. 5-4, 5-5, 5-6 Appraisal Guidelines

Appraisal Cycle:

2 Months	1 Month	HUD performs the Preservation Capital Needs Assessment and gives both appraisers the results within 60 days of receiving NOI.	Ch. 5-7
4 Months	3 Months and 10 days	Appraisers submit appraisal reports. HUD and owner exchange appraisals.	Ch. 5-8

Page 1 of 9

1/93

4350.6-CHG.1
APPENDIX 1-1C

Months Since Initial Notice of Intent received	Time to Complete Each Step	Processing Steps	Handbook Reference
5 Months	1 Month	Valuation, with appraisers and owner, review and reconcile appraisals.	Ch. 5-9
6 Months	1 Month	Select third appraiser if value(s) cannot be reconciled. Must select third appraiser within 6 months of receiving NOI.	Ch. 5-9 B. Ch. 5-10
8 Months	2 Months	Conduct third appraisal.	Ch. 5-9 C.
9 Months	1 Month	LM reviews third appraisal, if needed. HUD determines Preservation Values, Preservation Equity, and whether Preservation Rents are above Federal Cost Limits. HUD sends information on incentives, and preparing Plan of Action to owner, tenant representative and State and Local governments.	Ch. 5-12

1/93

Page 2 of 9

4350.6-CHG.1
APPENDIX 1-1C

Months Since Initial Notice of Intent received	Time to Complete Each Step	Processing Steps	Handbook Reference
10 Months	30 days	Thirty (30) days after receipt of information from HUD, owner of	Ch. 2-7

Transition (Sec. 604)
project must indicate
whether they will utilize
Title II or Title VI.

Second Notice
of Intent Cycle:

10 Months	30 days	Owner has elected to transfer the property. Within 30 days of receipt of information from HUD, owner submits a Second Notice of Intent to HUD, State or Local Government, mortgagee and tenant representative. This is true of transition projects and projects whose Initial Notice of Intent was for Title VI.	Ch. 6-3, 6-5
	5 days	Within 5 days of 2nd NOI receipt, LM Staff must review for accuracy and compliance. If NOI acceptable, LM notifies potential qualified purchasers of the availability of the property for sale.	Ch. 7-2

Page 3 of 9

1/93

4350.6-CHG.1
APPENDIX 1-1C

Months Since Initial Notice of Intent received	Time to Complete Each Step	Processing Steps	Handbook Reference
		If approvable 2nd NOI not filed within 30 days of owner receiving information from HUD, process ends. If owner changes mind and decides to request incentives, must submit POA within 6 months of receiving	Ch. 6-3, 6-5 Ch. 7-3

information from HUD.
 If owner fails to submit
 2nd NOI or POA within
 proper time frame, owner
 must wait six months from
 the deadline for filing the
 POA before filing a new
 Initial NOI.

Sales Cycle:

16 Months	6 Months	Resident Council or Community-based nonprofit with tenant support, may make a bona-fide offer.	Ch. 7-4, 7-7
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	30 days	Any priority purchaser making an offer to purchase must submit a written Expression of Interest (EOI). Within 30 days of receiving EOI, HUD must determine the purchaser's status and notify owner of potential purchaser's EOI.	Ch. 7-5, 7-6 Ch. 7-10
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1/93

Page 4 of 9

4350.6-CHG.1
APPENDIX 1-1C

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Months Since Initial Notice of Intent received	Time to Complete Each Step	Processing Steps	Handbook Reference
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22 Months	6 Months	State and local Housing Agencies and all other priority purchasers may make a bona-fide offer. Must submit EOI in the manner described above.	Ch. 7-4, 7-7
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25 Months	3 Months	Qualified purchasers may make a bona-fide offer.	Ch. 7-4, 7-7
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26 Months	30 days	Owner must accept or reject a bona-fide offer	Ch. 7-9
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within 30 days of its receipt and inform HUD. If offer is rejected and later accepted, HUD must notify purchaser that it has 30 days to resubmit earnest money deposit.

27 Months	30 days	Once owner notifies HUD that offer has been accepted, HUD has 30 days to notify owner in writing, that offer is acceptable.	Ch. 7-10
	10 days	Within 10 days of HUD acceptance, owner sends purchaser and LM staff a letter indicating the final acceptance of Contract for sale, contingent upon satisfactory completion of POA requirements.	Ch. 7-11

4350.6-CHG.1
APPENDIX 1-1C

Months Since Initial Notice of Intent received	Time to Complete Each Step	Processing Steps	Handbook Reference
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Plan of Action Cycle:
To Sell the
Project

32 Months	6 Months	Owner and purchaser prepare and submit Plan of Action to HUD, State or Local Government, and tenant representative and posts summary in each occupied building. If complete POA not filed within 6 months of acceptance of bona fide offer by the owner or receipt of the offer if its a mandatory sale, the NOI expires and the process ends. Owner prohibited from	Ch. 8-3, 8-4 Ch. 8-16, 7-12
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submitting another NOI
until 6 months after the
expiration date.

10 days	Upon HUD's receipt of POA, LM date stamps. Within ten working days LM sends owner letter indicating if POA is complete.	Ch. 8-6
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1/93

Page 6 of 9

4350.6-CHG.1
APPENDIX 1-1C

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Months Since Initial Notice of Intent received	Time to Complete Each Step	Processing Steps	Handbook Reference
32 Months	6 Months	Upon receipt of a complete POA the processing clock begins. Within 10 working days, HUD sends POA to State or local government, EMAS and FHEO for review. Tenants may also make comments on POA. Reviews from HUD sections due back in 30 days, State and local government's due in 50 days. LM notifies owner within 60 days of any deficiencies.	Ch. 8-6, 8-7 Ch. 8-9
38 Months	6 Months	HUD has 180 days, from receipt of complete POA, to review and process it. Owner must be notified of its approval or disapproval within the 6 months. At time of POA approval the appraisal can't be more than 30 months old. Owner must submit revised POA within 60 days, but no later than 305 days from receipt of complete POA. POA processing	Ch. 8-6, 8-18

time can be extended at the owner's request, but for not more than 365 days from the submission date of the complete POA.

Page 7 of 9

1/93

4350.6-CHG.1
APPENDIX 1-1C

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Months Since Initial Notice of Intent received	Time to Complete Each Step	Processing Steps	Handbook Reference
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Monitoring Cycle:

41 Months	90 days	Within 90 days of final approval of a POA, the Transfer of Physical Assets, the closing of all loans, the completion of the Use Agreement, the Amended Regulatory Agreement, and the signing of the Section 8 HAP Contract must occur. Within 5 days of implementing POA, LM staff notifies the Preservation Division, Headquarters.	Ch. 11-3
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Sales Cycle:

43 Months	2 Months	If the contract to purchase the project falls through (within 15 month offering period) or does not close within 90 days after HUD's approval of the Plan of Action, the owner may offer it for sale to any qualified purchaser for remainder of the original 15 month sales period or 60 days, whichever is longer. If the sales transaction ended after 15 month offering	Ch. 7-13
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period, owner makes property available for sale for a 60 day period.

1/93

Page 8 of 9

4350.6-CHG.1
APPENDIX 1-1C

Months Since Initial Notice of Intent received	Time to Complete Each Step	Processing Steps	Handbook Reference
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Prepayment Cycle:

50 Months	9 Months	An owner may prepay the mortgage and terminate the affordability restrictions: If the funds requested to cover the POA's incentives are not provided within the earlier of; 2 months after the first fiscal year of the date of its final approval, or 6 months from the POA final approval date for a project that would have been eligible to prepay and 9 months, if it is not yet eligible to prepay.	Ch. 8-31
		An owner may also prepay if no bona fide offer to purchase the project is received within the 15 month offering period.	Ch. 7-18
	10 days	Within 10 days of determining that a project may prepay, and at least 30 days prior to the acceptance of prepayment, LM must notify each tenant of this action.	Ch. 10-2

Page 9 of 9

1/93

U. S. Department of Housing and Urban Development
Washington, D.C. 20410-8000

4350.6

May 28, 1991

APPENDIX 1-2

OFFICE OF THE ASSISTANT SECRETARY
FOR HOUSING-FEDERAL HOUSING COMMISSION

Mortgagee Letter 91-25

TO: ALL APPROVED MORTGAGEES

SUBJECT: Prepayment of a HUD-Insured Mortgage by an owner of
Low Income Housing

On November 28, 1990, the President signed into law the Cranston-Gonzalez National Affordable Housing Act of 1990; Subtitle A, Title VI of the Act, entitled the Low Income Housing Preservation and Resident Homeownership Act of 1990, repeals and replaces the Emergency Low Income Housing Preservation Act of 1987. Section 211 of the 1990 Act prohibits an owner of "eligible low income housing" from prepaying, and bars a mortgagee from accepting prepayment of, a mortgage on such housing except in accordance with a plan of action approved by the Secretary of Housing and Urban Development. Likewise, the mortgage insurance contract with respect to such a project may be terminated only in accordance with a HUD-approved plan of action. Section 211 also prohibits a mortgagee from foreclosing upon the mortgage of, or acquiring by deed-in-lieu of foreclosure, any eligible low income housing project to the Secretary in connection with a claim for insurance benefits. Section 602(b) of the 1990 Act appears to extend the prohibition on foreclosure to all categories of projects listed in paragraph (a) of the definition of "eligible low income housing" set forth below, regardless of whether or not the mortgage or applicable regulations permit prepayment without HUD's consent.

HUD is currently drafting regulations which will establish standards for the approval of such plans of action. Since Section 211 is now in effect, mortgagees should not accept a prepayment from an owner of eligible low income housing, request voluntary termination of mortgage insurance with respect to any such project, or foreclosure on any such project (unless the mortgagee then conveys title to the Secretary). Any prepayment or termination of mortgage insurance in violation of this provision will be null and void.

1 of 2

4/92

4350.6
APPENDIX 1-2

The term "eligible low income housing" includes housing financed by a loan or mortgage:

(a) that is :

(i) insured or held by the Secretary under the Section 221(d) (3) market rate program, if the project receives

Rent Supplement or project-based Section 8 assistance;

(ii) insured or held by the Secretary under the Section 221(d)(3) Below Market Interest Rate (BMIR) program;

(iii) insured, assisted or held by the Secretary under the Section 236 program; or

(iv) a Purchase Money Mortgage held by the Secretary and originated by HUD with respect to a project which, prior to HUD's acquisition, was insured under a program referred to in clauses (i), (ii) or (iii) above; and

(b) that, under the terms of the mortgage or applicable regulations in effect before February 5, 1988, is, or will, within 24 months become eligible for prepayment without HUD's consent.

Any requests for prepayment of, or voluntary termination of mortgage insurance on, mortgages to which Section 211 of the Low Income Housing Preservation and Resident Homeownership Act of 1990 is, or may be, applicable should be forwarded to the Department of Housing and Urban Development, 451 7th Street, SW, Washington, D.C. 202410-8000, Attention: Affordable Housing Branch, Room 6176.

Very sincerely yours,

Arthur J. Hill
Assistant Secretary for Housing
-Federal Housing Commissioner

4/92

2 of 2

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Processing Plans of Action Under the Low-Income Housing

Directive Number: [\[Prev Hit\]](#)[\[Next Hit\]](#)**4350.6**

U.S. Department of Housing and Urban Development

H O U S I N G

4350.6

APPENDIX 2-1

Special Attention of:

Notice H 91-57 (HUD)

Administrators-Regional

Housing Commissioners

Directors, Office of Regional Housing

Managers, Division Directors, Loan

Management Category A, B, and C Offices

Field office Housing Management

Division; Regional Counsel,

Chief Counsel and Chief Attorneys

Issued: 6/27/91

Expires: 6/30/92

Cross References:

Subject: Restrictions on the Sale of Subsidized Rental
Housing Imposed by Section 181(g) of the Housing
and Community Development Act of 1987

The purpose of this Notice is to discuss the applicability and requirements of Section 203(h)(2) of the Housing and Community Development Amendments of 1978, as amended by Section 181(g) of the Housing and Community Development Act of 1987. This Notice amends the TPA processing instructions in Notice 84-37. Section 203 of the 1978 Amendments sets forth the goals and requirements applicable to the management and disposition of HUD-owned multifamily rental projects. Section 181 of the 1987 Act expands Section 203's applicability to include projects with HUD-held mortgages that are "delinquent, under a workout agreement or being foreclosed upon by the Secretary." In addition, Section 181(g) adds requirements governing the sale of HUD-held subsidized mortgages and transfers of physical assets (TPAs) of subsidized projects. With respect to transfers of physical assets, Section 203(h)(2) provides as follows:

- (2) The Secretary may not approve the sale of any subsidized project (A) that is subject to a mortgage held by the Secretary; or (B) if the sale transaction involves the provision of any additional subsidy funds by the Secretary or the recasting of the mortgage, unless such sale is made as part of a transaction that will ensure that such project will continue to operate at least until the maturity date of the loan or mortgage in a manner that will provide rental housing on terms at least as advantageous to existing and

future tenants as the terms required by the program under which the loan or mortgage was made or insured prior to the proposed sale of the project.

1

TPAs subject to Section 203(h)(2). Sale transactions covered by Section 203(h)(2) include projects undergoing a transfer of ownership. The Office of General Counsel has concluded that the restrictions set forth in Section 203(h)(2) apply to TPAs requiring either a modified or full review. The phrase "the provision of any additional subsidy funds by the Secretary" includes, but is not limited to, an increase in the number of units under a Section 8 HAP Contract and an increase in the Section 8 contract rents based on rent increases approved in connection with the TPA. For purposes of this Notice, the term "recasting" means any mortgaged indebtedness modification which entails a change in the principal amount, interest rate, monthly mortgage payment, or maturity date.

Projects subject to Section 203(h)(2). The definition of "subsidized project" is set forth in Section 203(i)(2) of the 1978 Amendments, as amended by Section 181(h) of the 1987 Act and Section 1010(d) of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, Under this definition, the term "subsidized project," for purposes of Section 203(h)(2), includes a project receiving any of the following forms of assistance:

- (1) a Section 221(d)(3) BMIR loan;
- (2) Section 236 Interest Reduction Payments;
- (3) Rent Supplement assistance;
- (4) the Section 202 or Section 312 programs; or
- (5) project-based assistance under Section 23 or Section 8 regardless of the number of units assisted. (Examples: A project sold by HUD with a purchase money mortgage and Section 8 Property Disposition Set-Aside assistance, or a Section 221(d)(3) market rate project with Section 8 Loan Management Set-Aside assistance.)

With respect to the TPA approval requirements of Section 203(h)(2), a project is considered "subsidized" even if the only subsidy is Section 8 project-based assistance covering less than 50 percent of the units.

Restrictions imposed pursuant to Section 203(h)(2). In cases where Section 203(h)(2) is applicable, HUD must condition its approval of the TPA on the purchaser's agreement to extend the prepayment prohibition to the maturity date of the mortgage or execute a use agreement to maintain the project in accordance with the tenant-related provisions of the applicable mortgage insurance program until the maturity date of the mortgage. The nature of the restriction required by Section 203(h)(2) is determined by the "program under which the loan or mortgage was made or insured," and not by the requirements of the Section 8 program. Thus, for example, if the project's mortgage was insured under the Section 221(d)(4) program and the owner and HUD

4350.6
APPENDIX 2-1

agree to comply with Section 203(h) (2) through the execution of a use agreement, the agreement would include only those tenant protections (e.g., maintenance of rental use) which are derived from the Section 221(d) (4) program requirements.

Implementation. Upon receiving an application for TPA approval, the field office should take the following steps in order to implement Section 203(h) (2):

1. Determine whether the project is a "subsidized project" for purpose of Section 203(h) (2), and if so, whether (a) the mortgage is HUD-held, or (b) the sale transaction involves the provision of any additional subsidy funds by the Secretary or a recasting of the mortgage.
2. If the project is a subsidized project for purposes of Section 203(h) (2), and either (a) the mortgage is HUD-held or (b) the sale transaction involves the provision of any additional subsidy funds by the Secretary or a recasting of the mortgage, notify the applicant that the purchaser will have to comply with Section 203(h) (2), and inquire whether the purchaser intends to meet this requirement by extension of the prepayment prohibition until the maturity date of the mortgage or by execution and recordation of a use agreement that would have priority over all liens and encumbrances other than the HUD mortgage (except as approved by HUD). The use agreement would not have priority over liens and encumbrances placed on the property prior to the TPA and approved by HUD, but would have priority over liens and encumbrances imposed in connection with the TPA. The use agreement would be enforceable by HUD as well as tenants and potential tenants, and would continue in effect until the maturity date of the mortgage.
3. If the purchaser elects to comply with Section 203(h) (2) by extending the prepayment prohibition, the field office should execute a Modification of Note and Mortgage to effect such an extension at the time of TPA approval. For TPAs involving HUD insured mortgages, the mortgagor must obtain consent of the mortgagee to extend the prepayment prohibition, and the mortgagee and mortgager, as well as HUD, must execute the Modification of Note and Mortgage. For TPAs involving HUD-held mortgages, the Modification is executed by the mortgager and HUD. Prior to execution of the Modification, the mortgagor must obtain a sample title insurance policy endorsement from the title insurance company and submit it to HUD for review. Once the Modification has been executed it should be recorded,

APPENDIX 2-1

and Field Counsel should obtain, at the mortgagor's expense, a title endorsement updating to the date of recordation the effective date of the title policy without adding any senior liens or other senior encumbrances (except as approved by HUD). Should the mortgagee withhold consent of the modification of the mortgage or mortgage note, the owner must execute a use agreement as described in the following paragraph.

4. If the purchaser elects to comply with Section 203(h)(2) through the execution of a use agreement, Field Office staff should obtain a use agreement for the appropriate project type. The Office of the General Counsel's Multifamily Mortgage Division (Loan Management and Property Disposition Section) will be responsible for the development of these agreements, except in the case of Section 202 in which case the Office of General Counsel's Assisted Housing Division will be responsible for the development of a sample agreement. Sample use agreements for each type of project (221(d)(3), 236, 202, etc.) will be forwarded to Field Offices. Upon execution, the use agreement should be recorded. Field Counsel should ensure that the use agreement has priority over all liens other than the HUD mortgage (except as approved by HUD) and will continue in effect until the maturity date of the mortgage. See paragraph 2 above.

Finally, the effective date of these requirements is June 16, 1989. A memo dated June 16, 1989, from Donald Kaplan, Director, Office of multifamily Housing management, directed field offices not to accept, process or approve any TPA application for any subsidized project with a HUD-held mortgage, and to cease processing any TPAs that had already been submitted. Likewise, in the case of any TPA application involving a subsidized project with an insured mortgage in which the TPA included additional HUD assistance or the recasting of the mortgage, field offices were to inform owners that the TPA would be held by the field office until further instructions were received. Field Offices should not have given preliminary approval for any TPAs falling into these categories without first having secured a written agreement from the owner stating that the owners would continue to manage the project under its current program for the remaining term of the mortgage.

Field Office staff should review each TPA processed since the effective date, in order to determine whether Section 203(h)(2) is applicable to the TPA. In cases where Section 203(h)(2) is applicable and the Field Office obtained the written agreement described above from the owner, the Field Office Loan Management staff should write a certified letter to the owner of record at the address of record as soon as possible. This letter

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form HUD-9610 (04/07/92)
ref. Handbook 4350.6

4/92

1 of 1

4350.6

APPENDIX 2-2A

Instructions for Completing Form HUD-9610

NOTICE OF ELECTION TO PROCEED

1. Fill in the project's official name, with complete address
2. Fill in the address of the Local HUD Field Office which will be processing this Notice and the Plan of Action.
3. Fill in the FHA Project Number.
4. Fill in the submission date of this Notice.
5. a. Check this box if the election is for Title II incentives without going through the Title VI appraisal process.
- b. Check this box if the election is to proceed through the Title VI appraisal process before making the decision for either Title II or Title VI incentives.
- c. All owners submitting this form must check this box to certify that they are eligible for incentives under the Transition Rule.
6. Fill in the owner's full name and complete business address.
7. Owner must certify the truth of the above information with a signature and date in this box.

1 of 1

4/92

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Processing Plans of Action Under the Low-Income Housing

Directive Number: [\[Prev Hit\]](#)[\[Next Hit\]](#)4350.6

4350.6
APPENDIX 3

Initial Notice of Intent
To Terminate or Extend Low-Income
Affordability Restrictions

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ref. Handbook 4350.6 form HUD-9608(04/03/92)

4350.6
APPENDIX 3A

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form HUD-9608

4/92

1 of 1

4350.6

APPENDIX 3B

instructions for Completing Form HUD-9608

INITIAL NOTICE OF INTENT

1. Fill in the submission date of this Notice.
2. Check box which appropriately describes owner's intent for the project. Please note that if the third box is checked, HUD has six months to respond with information for Plan of Action submission. If either Extend or Offer to Sell is checked, HUD has 20 days to respond with appraisal instructions. If Extend is checked, owner maintains option to Offer to Sell, if Offer to Sell is checked owner maintains option to Extend.
3. Use lines 3a. through f. to provide project information including: Name of borrower entity, FHA Number or State Agency Number, if applicable; official Project Name; complete address; and the date of final endorsement of the insured mortgage.
4. List the name of the current mortgagee.
5. List the name of the State or Local Agency receiving this Notice of Intent pursuant to Chapter 1, Paragraph 1-10.A.1.
6. Owner must certify that the information on this form is accurate and that the form has been submitted to all appropriate parties. This certification must include owner's signature and date, along with the owner's printed or typed name and complete business address. If the owner knows of no tenant representatives, the box indicating this should be checked.

4 /92

1 of 2

4350. 6

APPENDIX 3B

Reverse side of Form HUD-9608

Complete the name and address of project at the top of the reverse side of the form.

List the names, addresses and phone numbers of any tenant representatives known to the owner.

On the bottom of the reverse side of the form, list the name of the Chief, Multifamily Loan Management Branch and the complete address and phone number of the Multifamily Loan Management Branch in the local HUD field office. This should be the same office which will be processing this Notice and the Plan of Action.

4/92

2 of 2

4350.6
APPENDIX 3C

Notice of the Availability
of Translations of
Forms HUD-9608 and 9609

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ref. Handbook 4350.6 form HUD9608-A(04/03/92)

4/92

1 of 1

[\[Search\]](#) [\[Prev List\]](#) [\[Doc List\]](#) [\[Next List\]](#) [\[First Doc\]](#) [\[Prev Doc\]](#) [\[Curr Doc\]](#) [\[Next Doc\]](#) [\[Last Doc\]](#)
[\[Top\]](#) [\[Prev Hit\]](#) [\[Help\]](#)

[\[Search\]](#) [\[Prev List\]](#) [\[Doc List\]](#) [\[Next List\]](#) [\[First Doc\]](#) [\[Prev Doc\]](#) [\[Curr Doc\]](#) [\[Next Doc\]](#) [\[Last Doc\]](#)
[\[Bottom\]](#) [\[Next Hit\]](#) [\[Help\]](#) [\[Text Only\]](#)

Processing Plans of Action Under the Low-Income Housing

Directive Number: [\[Prev Hit\]](#)[\[Next Hit\]](#)4350.6

4350.6

APPENDIX 4

FIELD OFFICE LETTERHEAD

LETTER TO OWNER TRANSMITTING INFORMATION FOR
 TERMINATING AFFORDABILITY RESTRICTIONS

DATE _____

Dear _____:

This is in response to the Initial Notice of Intent (NOI) to terminate affordability of (Name of Project) which you submitted on _____. You should use the following information as a guide to develop a Plan of Action (POA) to execute your intent. That POA must be submitted to HUD no later than six months after you receive this letter.

(HUD Field Office, include the following sentence if applicable)

However, HUD records show that you have an open audit or other finding which prevents approval of a POA until it is resolved.

- A. You must submit evidence that termination of affordability restrictions for this project will not:
1. Materially increase economic hardship for current tenants, and will not, in any event, result in a monthly rental payment by any current tenant that exceeds 30 percent of monthly adjusted income or an increase in the monthly rental payment in any year that exceeds ten percent (whichever is lower); or in the case of a current tenant who already pays more than 30 percent of adjusted gross income for rent, an increase in the monthly rental payment, in any year, which exceeds the Consumer Price Index or ten percent (whichever is lower); or

1 of 4

4/92

4350.6

APPENDIX 4

2. Involuntarily displace current tenants (except for good cause) where comparable and affordable housing is not readily available. This determination must be made without regard to the availability of Federal housing assistance that would address any such hardship or involuntary displacement;
- B. You must submit evidence that the supply of vacant, comparable housing is sufficient to ensure that such prepayment will not materially affect:
1. The availability of decent, safe, and sanitary housing affordable to low- and very low-income families or persons in the area that the housing could reasonably be expected to serve;
 2. The ability of low- and very low-income families or persons to find affordable, decent, safe, and sanitary housing near employment opportunities;
or
 3. The housing opportunities of minorities in the community within which the housing is located.
- C. You must advise HUD of anticipated changes in the mortgage and/or regulatory agreement, and provide HUD with a description of any planned change in ownership, any relocation help which you plan to provide to tenants, any affordability restrictions you are willing to maintain in the project, and any other information which you consider to be relevant.

HUD will evaluate your POA to be certain that the conditions stated above can be met.

To further assist you in developing your POA, we are appending information available in this office about other comparable affordable housing in your market area, as well as some statistics on minority concentration in the market area and potential impact on minorities, both in your project and in the market area in general.

4/92

2 of 4

4350.6

APPENDIX 4

- D. You should be sure that your POA reflects the appended information, if applicable, and also contains the following data:
1. A current project rent roll showing incomes and rents for all existing tenants;

2. Copies of all waiting lists for the project which include family size and incomes of the applicants on the waiting list, or documentation of the projects vacancy rate, if there is no waiting list;
3. Turnover and vacancy rates at the project for the past three years; and
4. Any other information you feel will document your ability to meet the conditions outlined in Paragraphs A. and B. above.

If we cannot approve the POA to terminate affordability restrictions, you may submit a new NOI to extend affordability. Under these provisions, HUD may be able to offer incentives to extend affordability by retaining or selling the project, that may include increased access to residual receipts, an increase in rents, additional project based Section 8 rental assistance, financing of a capital improvement or rehabilitation loan, redirection of interest reduction payment subsidies to a second mortgage, access to a portion of the preservation equity in the project, and/or an increase in the amount of allowable distributions.

Simultaneously with submitting a POA to HUD, you must notify the tenants about the plans by posting a summary of the POA in each affected building. This summary must state that the tenants have 60 days to comment on the POA. You must also give a copy of the POA to any tenant representative(s). The summary must indicate that a copy of the POA is available for inspection and copying, at a reasonable cost during normal business hours from:

3 of 4

4/92

4350.6

APPENDIX 4

1. The tenant representatives, whose names, addresses and telephone numbers are listed on the summary;
2. The local HUD Field Office (include address); and
3. The on-site office for the project or in the location where rents are collected.

If you know of no tenant representative, this statement must be certified to the Department within a reasonable period after the POA is submitted.

The POA must also be submitted to the officer of the State or local government to whom you have submitted an Initial

NOI.

You must post the attached Notice, Information for Tenants, in each affected building with this letter and include the Attachment, Information about Market Area (see Appendix 4A), behind it.

Sincerely,

Chief, Loan Management Branch

cc: Posting for each affected building
Tenant representative(s)
State and Local Officials

Attachments: 4A, 4B, 4C

4/92

4 of 4

4350.6

APPENDIX 4A

FIELD OFFICE LETTERHEAD

INFORMATION ABOUT MARKET AREA

The following information should be used in developing your Plan of Action. Any other information you have concerning your market area or potential minority impact may also be incorporated into the Plan of Action, and documentation of how you arrived at the facts you are using should be attached.

HUD FIELD OFFICE:

1. INSERT INFORMATION FROM EMAS CONCERNING LOW-INCOME HOUSING IN THE AREA INCLUDING OTHER PROJECTS, NUMBER OF UNITS, UNIT SIZE, RENTS, VACANCY RATES, TURNOVER RATES, WAITING LISTS, AND ACCESSIBILITY TO EMPLOYMENT.
2. INSERT INFORMATION RECEIVED FROM VALUATION CONCERNING ALL ITEMS IN 1 ABOVE.
3. INSERT INFORMATION FROM FHEO CONCERNING MINORITY CONCENTRATIONS IN THE AREA AND POTENTIAL IMPACT OF PLANNED CHANGE IN HOUSING USE ON MINORITIES.

1 of 1

4/92

4350.6

APPENDIX 4B

FIELD OFFICE LETTERHEAD

INFORMATION FOR TENANTS

The attached information was sent to the owner of _____ in response to a request to prepay the HUD-assisted mortgage or terminate the HUD insurance on this project. This would mean that the apartments would no longer be subject to HUD restrictions which keep rents affordable. We want tenants to know that HUD will be making a decision on this request and would like you to let us know what you think. The owner will let you know when a Plan for the prepayment is submitted and we will welcome your comments on that Plan.

HUD will only allow the prepayment or termination of the mortgage insurance if we determine that no tenants will be involuntarily displaced due to rent increases or that housing which is comparable to yours is available at rents which will be affordable for you. Even if there is comparable housing, however, the owner would have to agree to allow you to remain in your apartment at affordable rents.

If you do move, HUD may be able to help reduce any of your rent payments through the Section 8 program after you move. Therefore, we must be certain the owner will comply with all the provisions stated above. If you think any of the conditions are being violated, please notify us.

If you have any comments, please contact _____
_____ Chief, Loan Management Branch at the HUD Office
below:

HUD Field Office _____

Address _____

City, State, Zip Code: _____

Telephone No. _____

(Loan Management Branch)

1 of 1

4/92

[\[Search\]](#) [\[Prev List\]](#) [\[Doc List\]](#) [\[Next List\]](#) [\[First Doc\]](#) [\[Prev Doc\]](#) [\[Curr Doc\]](#) [\[Next Doc\]](#) [\[Last Doc\]](#)
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[\[Bottom\]](#) [\[Next Hit\]](#) [\[Help\]](#) [\[Text Only\]](#)

Processing Plans of Action Under the Low-Income Housing

Directive Number: [\[Prev Hit\]](#)[\[Next Hit\]](#)4350.6

4350.6

APPENDIX 5-1

FIELD OFFICE LETTERHEAD

LETTER TO OWNER TRANSMITTING APPRAISAL GUIDELINES

Appraisal Guidelines

Dear _____:

We have received your Notice of Intent (NOI) to extend low-income affordability restrictions for the remaining useful life of the project or to transfer the project to an owner who will extend low-income affordability restrictions. We have determined your project, _____, located in _____, _____ to be an eligible project, subject to the results of the Windfall Profits Test. In order to determine fair compensation for you for not prepaying your mortgage, Section 213 of Subtitle A of Title VI of the National Affordable Housing Act of 1990 requires the owner and HUD to separately contract for independent appraisers. These appraisers will each perform an appraisal based on certain assumptions as outlined in the enclosed Appraisal Guidelines.

An independent appraiser is defined as one who is not an employee of the Federal Government or an employee or officer of any entity that is affiliated with the owner of the property. The appraiser must not be the subject of a charge issued following a reasonable cause determination under the Fair Housing Act.

The appraiser must meet the following qualifications:

1. Six years of appraisal experience with three years in appraising multifamily projects; and

4350.6

APPENDIX 5-1

2. Certified or licensed by the State in accordance with Title 11 of the Federal Financial Institution Reform, Recovery Act of 1989. The States are scheduled to have licensing procedures and standards in place by December 31, 1992.

Appraisers have four months from the date HUD received your NOI to complete their assignments. HUD Loan Management will forward to its appraiser, and we are requesting that you provide your appraiser, the following:

1. A set of original plans and specifications, if available.
2. Last three years of audited financial statements.

In addition, please provide both appraisers access to the project to the extent needed to complete the appraisals.

There will be a physical inspection of your property to determine the Capital Needs for your project (required repairs and replacement reserve analysis) followed by an exit conference to discuss the findings with all interested parties. The required repairs will bring the property up to good condition and meet local codes and the Housing Quality Standards as outlined in 24 CFR 886.113. Those present at this inspection should be HUD's Architectural and Engineering staff or contractor, you or your representative, both appraisers or their representatives, any local code enforcement officials and tenant representatives who wish to attend, and HUD Loan Management staff. All these people in addition to any tenants and representatives of State and local government who wish to attend are invited to the exit conference. We will be in contact with you and the concerned parties as to the time and exact meeting place for both the physical inspection and exit conference. You are encouraged to submit at this inspection any studies, reports on the physical condition of your property, etc. to the HUD inspector / contractor. Comments from tenants and State and Local officials may also be provided to the inspector / contractor up to the time of the exit conference. The exit conference will be used to discuss the results of the inspection. You must post the date and time when advised of it.

4/92

2 of 3

4350.6

APPENDIX 5-1

Within 60 days of HUD's receipt of the NOT, HUD will provide you and your appraiser a preliminary list of the repairs and their cost (See Appraisal Guidelines for further explanation). Only those repairs required to bring the

property up to good condition, exclusive of HUD regulatory requirements that are not a requirement of the local governing body or local appraisal custom, will be furnished the appraisers for their consideration in their value estimates. Within 120 days of receipt of the NOI, HUD will provide you with the total results of the Capital Needs Assessment.

When the appraisals are completed they will be exchanged for review by HUD and yourself. Once the appraisals have been found acceptable (adheres to the appraisal guidelines, proper support for conclusions, and etc.), we will attempt to come to a agreement with you on the preservation values. If agreement cannot be reached on the values, a third appraiser will be hired by you from HUD's pool of independent appraisers. You may not give the appraiser any of the data from either of the two previous appraisals. HUD will reimburse you for half the cost of the third appraisal. The appraiser will have two months to complete the assignment. Once reviewed by HUD and yourself and found to be acceptable with respect to the appraisal guidelines and adequate documentation, the values as set by this appraisal will be binding.

Once the values have been set, we will provide you with further information.

Attached is a Tenant Notice which must be posted in all occupied buildings of the project. Copies of the Tenant Notice, along with this letter, should be given to any known tenant representative.

Sincerely

Chief, Loan Management Branch

ATTACHMENTS: Appraisal Guidelines and Notice to Tenants
cc: All tenant representatives
State and Local Officials

3 of 3

4/92

4350.6

APPENDIX 5-1A

FIELD OFFICE LETTERHEAD

NOTICE TO TENANTS

As you were previously told, there will be an inspection of (name of project) to determine what repairs need to be made by the owner or purchaser. If there are repairs you would like to have considered, please submit your list to the Housing and Urban Development (HUD) Office whose address is shown below. You will only be given a few days, notice of the date on which the inspection is to be held and you will have to submit your list by that date, so you may want to be sure to complete it now. You may also submit your list to

any tenant representative whose name and address are shown on this letter and ask that representative to help to see that your request is taken into account.

At the time you are told the date of the inspection, you will also be told the date and time for a meeting following the inspection. The purpose of this meeting will be to discuss the repairs which need to be done. The tenant representatives listed on the next page, as well as any other tenant representatives, are all invited to attend the inspection and the meeting. While you are also invited to attend the meeting, it is not necessary for you to do so if you have submitted your list to either HUD or a tenant representative.

HUD intends to give incentives to the owners or purchasers of _____, in order to keep the housing affordable for you. You will be advised of the steps taken and decisions made during the lengthy process and will be given further opportunity to comment.

The address for the HUD Office is:

Name of Field Office: _____

Address: _____

City, State, and Zip Code: _____

4/92

1 of 2

4350.6

APPENDIX 5-1A

Telephone Number: _____
(Loan Management Branch)

The tenant representatives that we have contacted are:

(1)

Name: _____

Address: _____

City and State: _____

Telephone Number: _____

(2)

Name: _____

Address: _____

City and State: _____

form HUD-9607

4/92

2 of 2

4/92

4350.6

APPENDIX 5-3

USE FIELD OFFICE LETTERHEAD

LETTER TO OWNER TRANSMITTING INFORMATION FOR
EXTENDING AFFORDABILITY RESTRICTIONS
THROUGH RETENTION OR SALE

DATE _____

Dear _____:

We have completed our review of the appraisal information you submitted on __ (date) __ in order to extend the affordability of (name of project). You should use the following information as a guide to develop a Plan of Action (POA) to carry out your intentions:

(All answers are copied from the corresponding section of Form HUD-9607 except that those in Section X should be entered into Paragraph IX 4a ii below.)

- I. Extension Preservation Value\$ _____.
- II. Transfer Preservation Value\$ _____.
- III. Extension Preservation Equity ...\$ _____.
- IV. Transfer Preservation Equity.....\$ _____.
- V. Annual Authorized Return to Owner.\$ _____.

If you are retaining ownership of the project, the annual authorized return is the maximum amount you may take as an annual distribution. A portion of this distribution may be used to pay debt service on an incentive equity loan. However, there are two conditions:

- (1) The debt service payment may not exceed 90 percent of the authorized return; and
- (2) The equity loan may not exceed 70 percent of the extension preservation equity shown in Paragraph III above. Ten percent of any equity loan will be

4/92

1 of 9

4350.6

APPENDIX 5-3

escrowed in an interest bearing account for a five-year period until a history of proper project maintenance is established.

VI. Federal Cost Limit \$_____.

The Federal Cost Limit (FCL) is based on (check one):

- 1. Fair Market Rents (FMR)
- 2. Prevailing Market Rents (PMR)

VII. Extension Preservation Rent\$_____.

Extension Preservation Rent (EPR) includes debt service and debt service coverage on the underlying mortgage and on any required loan(s) for 90 percent of rehabilitation costs as determined by the Capital Needs Assessment, the annual authorized return to owner, estimated operating expenses, required deposits to the reserve account, and a three percent vacancy allowance.

The values of these component factors are shown on Form HUD-9607, Calculation of Information to be Returned to Owner, which is appended to this letter.

Attachment B to this letter, Required Repairs and Estimated Costs, describes any rehabilitation that HUD has identified as necessary. You will have to obtain actual costs for these repairs when submitting your POA. We will also evaluate any additional rehabilitation items and costs you wish to include in your POA.

VIII. Transfer Preservation Rent\$_____.

Transfer preservation rent (TPR) includes debt service and debt service coverage on the underlying mortgage, acquisition loan, and any required loan(s) for 90 percent of rehabilitation costs as determined by the Capital Needs Assessment, estimated operating expenses, required deposits to the reserve account, and a three percent vacancy allowance.

4350.6

APPENDIX 5-3

The values of these component factors are shown on Form HUD-9607 which is appended to this letter.

Attachment B to this letter describes any rehabilitation that HUD has identified as necessary. You will have to obtain actual costs for these

repairs when submitting your POA. We will evaluate any additional rehabilitation items and costs you wish to include in your POA.

The maximum acquisition loan HUD will insure is 95 percent of the transfer preservation equity shown in Paragraph IV above or 95 percent of the purchase price minus the unpaid balance of all federally-assisted mortgages, whichever is lower.

IX. Federal Cost Limit Compared with Preservation Rents

All the conditions checked below apply to your options. You may choose to follow whichever course you like.

(Field Office please check all that apply)

HUD records show that you have an open audit finding or other finding of non-compliance which prevents approval of a POA until it is resolved.

1. EPR is less than or equal to the FCL:
 - a. Within six months of receipt of this letter, you may submit a POA to extend affordability. This Plan should reflect the information included in Paragraphs V and VII above about annual return to owner/equity loan and rehabilitation loans. The approvable annual gross rent for the project may not exceed the FCL, which will be 120 percent of FMRs or PMRs in your area.
 - b. Section 8 rental assistance is available for all current very low- and low-income tenants who need it.

3 of 9

4 /92

4350.6

APPENDIX 5-3

However, current moderate-income tenants may only pay the lower of 30 percent of adjusted income or FMR.

- c. The POA should include all incentives requested, cash flow projections to show how physical and financial requirements for the project will be met, a current tenant income profile as well as the earliest one available for January, 1987, 1988, or 1989 along with a certification that the earlier profile is no longer available if the

one for January, 1987 is not used, a description of all other assistance to be received including tax credits, and any other information deemed necessary to make the POA approvable. For more information, see HUD Handbook 4350.6, Chapter 8.

- d. All POAs should also include:
- i. An agreement to extend affordability restrictions for the remaining useful life of the project. A petition to HUD for a hearing to determine that the useful life has expired may not be filed for 50 years from the date of Plan of Action approval.
 - ii. An agreement to maintain the same proportion of very low-, low-, or moderate-income tenants at the project as prevailed at whichever of the following times yields the highest proportion of very low-income tenants: (1) The time the Plan is submitted; or (2) January, 1987, or if the January, 1987 profile is not available, the earliest profile available after that date. This

4/92

4 of 9

4350.6

APPENDIX 5-3

requirement does not mean that a larger proportion of very low-income tenants cannot be served.

- iii. An agreement to rehabilitate the project to its conditions at original rent-up including required repairs identified in the Capital Needs Assessment and any additional repairs relating to Housing Quality Standards (HQS) and Minimum Property Standards (MPS) including any lead-based paint and asbestos abatement requirements, and to provide a 10 percent commitment of equity for the rehabilitation loan.
- iv. An agreement that 10 percent of any incentive equity loan will be

escrowed for a minimum of five years to assure project rehabilitation and maintenance.

- v. An agreement to accept Section 8 or other rental assistance, if needed.

- e. Simultaneously with submitting a POA to HUD, you must submit it to the same official of the State or local government to whom you submitted your NOI. In addition, you must notify the tenants about the plan by posting a summary of the POA in each occupied building. This summary must state that the tenants have 60 days to comment on the POA. You must also give a copy of the POA to any tenant representative(s). The summary must indicate that a copy of the POA is available for inspection and copying, at a reasonable cost during normal business hours from:

4/92

5 of 9

4350.6

APPENDIX 5-3

- i. The tenant representatives, whose names, addresses and telephone numbers are listed on the summary;
 - ii. The local HUD Field Office; and
 - iii. The on-site office for the project or in the location where rents are collected. If you know of no tenant representative, this statement must be certified to the Department when the POA is submitted.
2. EPR exceeds FCL: Within six months of receipt of this letter, you may submit a POA to extend affordability. All conditions in Paragraph 1 above apply. Since the other expense components that must be covered by project income are likely to be fixed, choosing this option may entail accepting a cash return and/or equity loan lower than that calculated as the annual authorized return shown in Paragraph V above.

3. TPR is less than or equal to FCL:
 - a. Within 30 days of receipt of this letter, you may submit Form HUD-9609, Second Notice of Intent (NOI) (enclosed), for a voluntary sale of the project. When you have a purchaser, you and the purchaser will prepare a POA to transfer and repair the project. (See Paragraphs 1 c through e above for further direction) The purchaser may also request eight percent of the equity paid as an annual return. If the purchaser is a nonprofit organization, the return must be deposited in the project's residual receipts account. The

4/92

6 of 9

4350.6

APPENDIX 5-3

approvable annual gross rent for the project may not exceed the FCL, which will be 120 percent of FMRs or PMRs in your area. A priority purchaser may be eligible to receive a grant to pay any portion of the costs which will not be paid by rents. it may also apply for a loan or grant to cover acquisition costs.

- b. Section 8 rental assistance is available for all current very low- and low-income tenants who need it. However, current moderate-income tenants may only pay the lower of 30 percent of adjusted income or FMR.
 - c. Attachment A to this letter, Instructions for Sales of Projects: Voluntary or Mandatory Sales, describes requirements for sales to priority and qualified purchasers.
4. TPR exceeds the FCL:
 - a. Within 30 days you may submit one of the following:
 - i. Form HUD-9609, Second NOI (enclosed) to prepay your loan by first trying to sell the project through a mandatory sale;
 - ii. Form HUD-9609 for a voluntary sale conditioned on an annual

gross rent that does not exceed the FCL. Since the other expense components that must be covered by project income are likely to be fixed, choosing this option may entail accepting a sales price lower than the Transfer Preservation Value (TPV) shown in Paragraph II above. To bring current TPR to the FCL, your

7 of 9

4/92

4350.6

APPENDIX 5-3

acquisition loan would have to be reduced to \$_____, which, at current rates and terms, can support a sales price of \$_____ (copy from Form HUD-9607, Section X, C and E);

- b. When you have a purchaser, you and the purchaser will prepare a POA to acquire and repair the project. (See Paragraphs 1 c through e above for further direction.) The purchaser may also request eight percent of the equity paid as an annual return. If the purchaser is a nonprofit organization, the return must be deposited in the project's residual receipts account. If this is a mandatory sale, any qualified purchaser may qualify for a grant to reduce the approvable annual gross rent for the project to the FCL. A priority purchaser may be eligible to receive a grant to pay acquisition costs.
- c. If this project is sold through a transfer of physical assets (TPA), Section 8 rental assistance is available for all current very low- and low-income tenants who need it. However, current moderate-income tenants may only pay the lower of 30 percent of adjusted income or FMR.
- d. Attachment A to this letter, Instructions for Sales of Projects: Voluntary or Mandatory Sales, which is attached, describes requirements for sales to priority and qualified purchasers.

4/92

8 of 9

4350.6

APPENDIX 5-3

Attachments to this letter, Required Repairs and Estimated Costs, Notice to Tenants, and Form HUD-9607, Calculation of Information to be Returned to Owner, along with this letter must be posted at each affected building. The Notice to Tenants, should be placed on top.

Sincerely,

Chief, Loan Management Branch

ENCLOSURE: Form HUD 9609, Second Notice of Intent

ATTACHMENTS: A, B, C, Form 9607

cc: Tenant representatives
State and Local Officials
Copies for posting

9 of 9

4/92

4350.6

APPENDIX 5-3A

ATTACHMENT A
INSTRUCTIONS FOR SALES OF PROJECTS:
VOLUNTARY OR MANDATORY SALES

1. For a 12-month period commencing when the Second Notice of Intent is received, offers may only be accepted by a priority purchaser. During the first six-month period, offers may only be accepted from a Resident Council offering to purchase the project under a Resident Homeownership Program or a Resident Council or community-based nonprofit organization, which has the support of a majority of the tenants and which intends to maintain the project as rental housing. During a second six-month period, offers may be accepted from other priority purchasers (i.e. State or Local governments and any other nonprofit organizations).
2. Between the 12th and 15th month, offers may be accepted from any qualified purchaser, which includes limited dividend partnerships, as well as priority purchasers.
3. A bona fide offer consists of a contract of sale signed by the purchaser contingent upon approval by HUD of the offer and of a subsequent Plan of Action (POA), and an earnest money deposit of the lowest of

one percent of the transfer preservation value (TPV), \$50,000, or \$500/unit. For mandatory sales, the offering price must be at TPV. At the time of submission of Form HUD-9609 Second Notice of Intent (NOI), the owner may choose to waive the requirement for or reduce the amount of an earnest money deposit for all potential purchasers, except Resident Councils purchasing under a Resident Homeownership program. If this requirement is waived, it must be clearly stated on the Second NOI. The owner may also waive or reduce the earnest money deposit during the sales period through written notice to HUD. Such a waiver must also be equally applicable to all purchasers, except Resident Councils purchasing under a Resident Homeownership Program.

1 of 2

4/92

4350.6

APPENDIX 5-3A

If the purchaser is a Resident Council or community-based nonprofit organization purchasing the project for rental with the support of a majority of the tenants, the offer must include certification of the tenant support.

If the purchaser is a Resident Council purchasing under a Resident Homeownership Program, the earnest money deposit will be a minimum of \$200 per unit from 75 percent of the occupied units. The offer from a Resident Council must also include a certified list representing 75 percent of all occupied units and 50 percent of all units in the project.

4. A purchase offer may not be for more than the TPV. An owner may not prepay if at least one bona fide offer is received from a qualified purchaser. An owner seeking a mandatory sale must accept the first bona fide offer received from a qualified purchaser. If any owner receives an offer to purchase the project for a sales price less than the TPV of the project, the owner may accept the offer but is not obligated to do so.
5. The purchaser and seller of the project will jointly submit a POA, which includes a Transfer of Physical Assets package. Appropriate information will be provided by HUD to the prospective purchaser at acceptance of a bona fide offer.

4/92

2 of 2

4350.6

APPENDIX 5-3B

ATTACHMENT B
REQUIRED REPAIRS AND ESTIMATED COSTS

REPAIRS

ESTIMATED COSTS

1 of 1

4/92

4350.6

APPENDIX 5-3C

FIELD OFFICE LETTERHEAD

ATTACHMENT C
NOTICE TO TENANTS

The attached information has been sent to the owner of (name of project) in response to the request to get incentives to keep the project affordable for you. These attachments include information about required repairs to the project as well as the options the owner has for extending the affordability. You may obtain further information by contacting HUD or your tenant representative(s) at the addresses below.

Chief, Loan Management _____

HUD Field Office: _____

Address: _____

City, State, Zip Code: _____

Telephone Number: _____

TENANT REPRESENTATIVES

1. Name: _____

Address: _____

City, State, Zip Code: _____

Telephone Number: _____

2. Name: _____

Address: _____

City, State, Zip Code: _____

Telephone Number: _____

4/92

1 of 2

4350.6

APPENDIX 5-3C

ATTACHMENTS:

Attachment B, Required Repairs and Estimated Costs

Form HUD-9607, Calculation of Information to Be Returned to
Owner

Letter to Owner Transmitting Information

4/92

2 of 2

[\[Search\]](#) [\[Prev List\]](#) [\[Doc List\]](#) [\[Next List\]](#) [\[First Doc\]](#) [\[Prev Doc\]](#) [\[Curr Doc\]](#) [\[Next Doc\]](#) [\[Last Doc\]](#)
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[\[Bottom\]](#) [\[Next Hit\]](#) [\[Help\]](#) [\[Text Only\]](#)

Processing Plans of Action Under the Low-Income Housing

Directive Number: [\[Prev Hit\]](#)[\[Next Hit\]](#)**4350.6**

4350.6
APPENDIX 6

Second Notice of Intent
To Sell Rental Housing or
Terminate Affordability

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ref Handbook 4350.6 form HUD-9609(04/13/92)

1 of 1 4/92

4350.6
APPENDIX 6A

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form HUD-9609

4/92

1 of 1

4350.6

APPENDIX 6B

Instructions for Completing
 SECOND NOTICE OF INTENT
 Form HUD-9609

1. Fill in the submission date of this Notice.
2. Check box which appropriately describes owner's intent for the project. Please note that the owner may choose Mandatory Sale only if the information received from HUD indicated that the Transfer Preservation Rent for the project exceeds the Federal Cost Limit.
3. Use lines a. through d. to provide project information including: FHA Number or State Agency Number, if applicable; official Project name; and complete address.
4. List the name of the current mortgagee.
5. List the name of the State or Local Agency receiving this Second Notice of Intent pursuant to Chapter 1, Paragraph 1-10.
6. Check one box indicating whether or not you are willing to accept a reduced or no earnest money deposit.
7. Owner must certify that the information on this form is accurate and that the form has been submitted to all appropriate parties. This certification must include owner's signature and date, along with the owner's printed or typed name and complete business address. If you know of no tenant representatives, indicate by checking the box.

Reverse of Form HUD-9609

In the body of the letter, indicate the date on which the information from HUD regarding the appraisal was posted in each building of the project.

On the bottom of the reverse of the form list the complete address and phone number of the Multifamily Loan Management Branch in the local HUD field office. This

should be the same office which will be processing this
Notice and the Plan of Action.

1 of 1

4/92

[\[Search\]](#) [\[Prev List\]](#) [\[Doc List\]](#) [\[Next List\]](#) [\[First Doc\]](#) [\[Prev Doc\]](#) [\[Curr Doc\]](#) [\[Next Doc\]](#) [\[Last Doc\]](#)
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Processing Plans of Action Under the Low-Income Housing

Directive Number: [\[Prev Hit\]](#)[\[Next Hit\]](#)4350.6

4350.6-CHG.1

APPENDIX 7-1

EARNEST MONEY DEPOSIT WORKSHEET

Project Name: _____

Project No: _____

I. Sales to All Purchasers Except Those Buying Under a Resident Homeownership Program (All or part of the earnest money deposit may be waived at owner's discretion)

A. 1. Transfer Preservation Value (from Form HUD 9607, Item II)..... \$ _____
2. A.1. x 0.01 \$ _____

B. 1. Number of units at the project..... _____
2. B.1. x \$500 \$ _____

C. \$50,000..... \$50,000

D. Lowest of A.2., B.2., or C \$ _____

E. Did owner waive or reduce required earnest money deposit? yes no

1. No. Enter D \$ _____

Go to F.

2. Yes. To what amount? \$ _____

3. Lower of D or E.2 \$ _____

Go to F.

F. Earnest Money Deposit (from E.1. or E.3., whichever is completed)..... \$ _____

II. Resident Councils Purchasing Under a Resident Homeownership Program

A. Number of units in project _____

B. Number of occupied units _____

C. 75 percent of occupied units (B x .75)..... _____

D. \$200 from each unit that represents 75 percent of occupied units (C x \$200)\$ _____

The amount in Line D is the earnest money deposit required. At owner's option, the earnest money deposit may come from pledged security deposits of at least \$200 from each of 75 percent of occupied units.

USE FIELD OFFICE LETTERHEAD

NOTIFICATION TO NONPROFIT ORGANIZATIONS OF THE AVAILABILITY FOR SALE OF A MULTIFAMILY HOUSING PROJECT

Please send to: All Housing Sponsors, Other Nonprofit Organizations and Nonprofit Clearinghouses Which Have Expressed Interest in Purchasing Multifamily Housing Projects in (Name of Community)

Subject: _____
Name of project

Project address

State and Zip Code

Dear _____,

Subject property is for sale under the Low-Income Housing Preservation and Resident Homeownership Program (Title VI of the National Affordable Housing Act) administered by the U.S. Department of Housing and Urban

Development (HUD). This program is designed to preserve low-income affordability restrictions in multifamily housing projects. If you purchase the project you will be required to maintain its low-income affordability restrictions for the project's remaining useful life.

Name of Owner (or owner's representative)

Address of Owner (or owner's representative)

State and Zip Code

4350.6-CHG.1

APPENDIX 7-2

The project has the following number of units of each type:

_____ One bedroom units	_____ Four bedroom
_____ Two bedroom units	_____ Other: (specify below)
_____ Three bedroom units	_____

Transfer Preservation Value of the property \$ _____

Required amount of earnest money deposit..... \$ _____

To obtain general information about the Low-Income Housing Preservation program under Title VI, you may request a copy of the HUD Handbook 4350.6, Processing Plans of Action Under the Low-Income Housing Preservation and Resident Homeownership Act of 1990 from your local Field Office. For assistance with specific questions, such as information about (1) the procedure for submitting an Expression of Interest (EOI) in a property, or (2) the requirements for the times in which you may submit a bona fide offer, please contact the Chief of Loan Management at the HUD Office at the address shown on this letterhead.

Sincerely,

Chief, Loan Management Branch

[\[Search\]](#) [\[Prev List\]](#) [\[Doc List\]](#) [\[Next List\]](#) [\[First Doc\]](#) [\[Prev Doc\]](#) [\[Curr Doc\]](#) [\[Next Doc\]](#) [\[Last Doc\]](#)
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4350.6-CHG.1

APPENDIX 8-1

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form HUD-50061

Page 4 of 6

1/93

4350.6-CHG.1

APPENDIX 8-1

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detailed description should be included for each cost listed. If any questions exist about the validity of a particular cost, the owner should be instructed to provide clarification.

- B. The outstanding debt is simply the outstanding principal balance on the mortgage. The debt service is the amount of annual payments made to principal, interest, and Mortgage Insurance Premium (MIP).
- C. For project funds, the loan servicer should ensure that all escrow accounts, income levels, and other funds are listed. The sources of these funds should be listed as well. For example, do funds come from rents, government sources, private foundations, etc.? Is any funding from any source missing? Furthermore, there should be a detailed cash flow analysis that projects for the next 3 years what the project's anticipated cash flow will be, including income and expenses.
- D. The loan servicer should ensure that the use of all funds are shown. There should be no funds without a corollary expense. All sources of funding should be accounted for. The POA should indicate whether or not the owner plans to use Low Income Housing Tax Credits (LIHTCs). If the owner does not plan to use LIHTC, the POA must include a form (Appendix 8-5), signed by the owner, that certifies LIHTCs will not be used. If the owner is using LIHTCs, are the funds accounted for?
- E. For all expenses, the POA must be specific. Be cautious of any headings like "Miscellaneous" or "Other."

4350.6-CHG.1

APPENDIX 8-1A

- F. The loan servicer should scrutinize the POA to ensure that the owner plans to use funds efficiently. Similarly, the servicer should make sure the owner has not overestimated or underestimated costs and consequently the need for funding.
- G. Proposed utility allowances should be based on historical data with possible adjustments made for items in the rehabilitation plan that would lower utility costs.
- H. Has the owner made allowance in the budget for the

fact that 10 percent of the equity loan will be withheld for a minimum of 5 years?

- I. This space is for LM comments on the above questions. If any of the above answers are not satisfactory, the POA is deficient and should be returned to the owner.

II. Capital Improvement, Rehabilitation, and Repairs

- A. Two methods for funding requested incentives include (1) financing of capital improvements through provision of a Flexible Subsidy Capital Improvement Loan, and (2) insuring rehabilitation loans of up to 90 percent of rehabilitation costs with the maximum loan based on the equity requirements of the program under which the loan is made. Unless the project is devoid of physical deficiencies, the owner should include a list of capital improvements and rehabilitation that will restore the project to good physical condition. The list must include all items specified in the Capital Needs Assessment.
- B. The A Branch of HUD has completed a Capital Needs Assessment for the project. The owner must address all capital improvements listed in this report. These capital improvements include those required by HUD regulations. All other improvements are at the owner's discretion, subject to the approval of HUD.
- C. Has the owner justified the need for capital improvements not required by HUD?

1/93

Page 2 of 12

4350.6-CHG.1

APPENDIX 8-1A

- D. Are the cost estimates for these capital improvements reasonable and justified.
- E. Check to ensure that the owner is making the correct minimum contribution to the costs of capital improvements as required by the appropriate program. For example, a profit-motivated owner must contribute 25% of the capital costs to qualify for a Flexible Subsidy Loan and 10% of the capital costs for a Section 241(a) loan.
- F. For each capital improvement, list the cost, the value of the improvement (what it adds to value of mortgaged property as determined by A & E and Cost Branch), the program under which it will be

financed, and the percentage the owner must contribute.

- G. List the total amount under each loan program that will be used to fund the rehabilitation and capital improvements.
- H. Identify the program through which the loan will be made.
- I. List the anticipated interest rates for the loan(s).
- J. List the anticipated annual debt service payment for each loan.
- K. Add the anticipated annual debt service payment for each loan. This provides the total annual debt service for rehabilitation and capital improvement loans. This total will be included in the calculation of the total annual debt service for the project.
- L. The owner must submit a schedule for completion of all rehabilitation and capital improvements.
- M. Consult the A & E and Cost Branch for guidance in making the determination.
- N. The owner needs to describe how the contracts will be awarded.

4350.6-CHG.1

APPENDIX 8-1A

- O. This space is for comments on any of the questions pertaining to capital improvements, rehabilitation, and repairs. If the answers to any of the questions are unsatisfactory, the POA is deficient and should be returned to the owner.

III. Annual Authorized Return (AAR) on Investment and Equity Loan

The owner is entitled to an 8% AAR on total Extension Preservation Equity (EPE). (EPE is the fair market value of the project based on the highest and best use of the project as multifamily market-rate rental housing, minus the outstanding balance of any debt secured by the property). The owner can collect the 8% in three ways: through debt service to pay for an insured equity loan, a cash return, or a combination of the two. There are limitations specific to the equity

loan, and the annual debt service on said loan plus the AAR cannot exceed the 8% annual return on EPE.

- A. Enter EPE.
- B.
 - 1. Owners are allowed to collect an 8% return on their total equity.
 - 2. Only 90% of the 8% can be used for debt service. The total amount of return the owner is allowed to finance is discounted 10% to provide a cushion against default. Hence, we multiply the (AAR) by 90%, or .9.
- C. The maximum equity loan HUD will insure is equal to 70% of EPE.
- D.
 - 1. Enter amount of equity loan requested by owner on POA.
 - 2. HUD will insure the lesser of 70% of EPE or the loan amount requested by owner (provided that the annual debt service does not exceed the AAR).
 - 3. Enter interest rate for equity loan that owner has arranged with a lender. At initial submission, the owner may use rates and terms in the local market. The rates and terms in the commitment letter would be updated at POA approval.

1/93

Page 4 of 12

4350.6-CHG.1

APPENDIX 8-1A

- 4. Enter amortization period for the loan. If not yet known, use 20 years.
- 5. By using either amortization tables or a financial calculator, determine the annual debt service that would be required to finance the loan amount in D2 at the given interest rate for the appropriate number of years.
- E. Is 90% of the AAR greater than or equal to the annual debt service on the allowable equity loan which was requested?
 - 1. If Yes, then the requested loan meets the limitations specific to the loan portion of the total AAR, and, does not exceed the annual AAR. Therefore, the loan requested is approvable. In addition, the owner is still entitled to an annual return in addition to the equity loan, thus capturing the total 8% AAR. The annual return is the amount shown on

line c.

2. If No, then the requested loan is unapprovable because the annual debt service would exceed 90% of the AAR. The loan must be reduced to an amount so that the annual debt service is equal to 90% of the AAR. The amount of the loan is shown on line a. The residual 10% of the AAR is captured by a cash return to the owner. The amount of the return is shown on line b.

IV. Total Annual Debt Service for:

In this section, we are adding the annual debt service on the specified loans. Enter debt service, not actual debt. Once again, we provide a cushion against default by dividing by .9. (Note that to discount debt, we multiply by .9; to provide a cushion for debt service, we divide by .9.)

V. Rents

- A. In this section, we assess the accuracy of some key items in the projected budget before we proceed to calculate how incentives will be funded. The level and type of incentives requested depend on these items. If the items are artificially high or low,

4350.6-CHG.1

APPENDIX 8-1A

then the level and type of incentives will most likely be inappropriate. Item A.5. enforces the regulation that the cash return plus the debt service on the equity loan cannot exceed the maximum allowable AAR on equity of 8%.

- B. 1. The Preservation Project Rent (PPR) is defined as the Annual Gross Rent Potential (GRP) plus total annual utility allowances, or, the rents needed to fund all expenses plus tenant utility allowances. The PPR needed to operate the project (with costs of incentives built into the budget) and allow for utility allowances cannot exceed the Federal Cost Limit (FCL). The FCL is the greater of 120 percent of the Section 8 existing fair market rent for the market area in which the project is located or 120 percent of the prevailing rents in the relevant local market area. If the PPR exceeds the FCL, the POA cannot be approved.

Logic underlying parts B2 through D5:

The PPR needed to operate the project, including incentives, and to support utility allowances has two components: TTPs from moderate-income tenants and Section 8 gross rents. We must allocate the rents from these two sources to fund the PPR. In essence, the TTPs for moderate-income tenants will be raised to a level where each tenant pays the lower of FMR or 30% of their adjusted monthly income. These TTP increases will be raised by the greater of 10% of the current TTPs each year or 1/3 of the total increase in any one year. The difference between the TTPs projected to be collected from the moderate-income tenants and the TTPs needed to fund the POA will be bridged by higher Section 8 gross rents.

To arrive at this conceptually, start with the PPR needed to operate the project, including incentives, and to support the utility allowances. Subtract from this total the TTPs that are projected to be generated by the moderate-income tenants after the phase-in of TTPs is complete. We now have the portion of GRP needed to be funded from Section 8 assistance. The rents needed from Section 8 are then distributed among the units which will be receiving Section 8 rental assistance. They will be allocated by unit type.

1/93

Page 6 of 12

4350.6-CHG.1

APPENDIX 8-1A

It is important to understand that the new Section 8 Gross Rents may exceed FMR. The relevant cost restriction is that total annual TTPs projected for moderate-income tenants plus Section 8 rents cannot exceed the FCL (Federal Cost Limit). For example, assume a 100 unit project has 99 moderate-income tenants and one Section 8 tenant. Provided that total annual receipts are no greater than FCL, the Section 8 gross rent for that one unit may be 900% of FMR. (Be careful not to confuse Section 8 Gross Rents with TTPs. Section 8 tenants pay a TTP. After the utility allowance is subtracted from the TTP, HUD supplements that amount up to the Section 8 Gross Rents).

Instructions by line item:

In B2., we calculate the rents which would be generated if FMR or PMR were paid for all Section 8 units. This is completely theoretical. It is only used to derive a ratio to be applied to FMRs to yield actual Section 8 gross rents to be paid.

Item 2e is the total monthly rent which would be generated by Section 8 units if all Section 8 units

generated FMR or PMR rents.

Item 2f converts total monthly rent to total annual rent.

Part C is the total annual projected TTPs that would be paid by moderate-income tenants after the phase-in of TTP increases is completed if each moderate-income tenant paid the projected amount. Please note that this process leads to a low estimate of projected TTPs. This amount is assumed to be the lower of the FMR or 30% of the low-income limit each month.

Item C.2. Enter the number of moderate-income tenants in each size unit.

Item C.3. This item lists the number of persons for each income limit to be used for that unit size. For example, for a two-bedroom unit, use the low-income limit for four persons rather than the number of people in the unit.)

Item C.4. Enter the appropriate income limit in accordance with Item C.3.

4350.6-CHG.1

APPENDIX 8-1A

Item C.5. Multiply the income limit by .025. This is the amount each moderate-income tenant would pay if each paid 30% of the low-income limit divided by 12 each month.

Item C.6. Enter the FMR for each unit size.

Item C.7. Enter the lower of the FMR or the TTP projected in Item C.5. since no tenant pays more than FMR for that unit size.

Items C.8 and 11. These items sum the projected TTPs for all moderate-income tenants.

Item 12. Multiply the result by 12 to derive the total projected annual TTPs for all moderate-income tenants.

Item D.1.c. is the total annual income necessary to complement the moderate-income projected TTPs in order to support the PPR.

Item D.2 calculates the factor by which current FMR or PMR will be multiplied. In most cases, it will be greater than one, but it may be equal to or less than one. The purpose of the factor (or ratio) is to adjust the Section 8 rents to the levels needed to fund the

incentives. The FMR for each unit size is adjusted by the same factor. The adjusted monthly rents are shown in Item D.3.d. D.3.f. shows total rents to be collected from all Section 8 contracts for units of that size.

Item D.3.g. is the total monthly rent to be collected from all Section 8 contracts.

Item D.4. converts D.3.g. to total annual rent for the Section 8 units.

Item D.5.: D.4. and D.1.c. should be equal. Item D.4. is the aggregated annual Section 8 rents after they have been adjusted to support the new TTPs; by definition, this is the same as D.1.c. and should differ only by amounts due to rounding. If there is a discrepancy due to rounding, add to or subtract from the rents in D.3.d. until the totals in g., when multiplied by 12, add up to D.1.c. Do not alter D.1.c. to match D.4. If the discrepancy is larger than an amount due to rounding, check your calculations.

1/93

Page 8 of 12

4350.6-CHG.1

APPENDIX 8-1A

E. TTPs for Section 8 tenants who are not paying 30% of their adjusted income prior to the POA will also need to be phased-in. This will generally only apply to tenants in BMIRs who do not receive Section 8 prior to POA approval. This phase-in will not affect project income.

F. Minimum rents are intended to protect the owner from sudden and substantial reductions in project income. This could occur if moderate income tenants suffer a large decline in income and still had to pay only 30% of income for rent.

G. This space is reserved for comments.

VI. Evaluation of additional Incentives which the owner may request.

Two additional methods of funding incentives include: (1) Increased access to residual receipts accounts as needed to enable the owner to realize the AAR, and (2) Redirection of the Interest Reduction Payment subsidies to a second mortgage for projects which are insured, assisted or held by HUD or a State or State Agency under Section 236.

VII. The POA must contain an acceptable Management Plan.

VIII. The answer to each question in this section must be Yes

for the POA to be approvable.

The project must remain affordable for the remainder of its useful life. A statement that it will remain affordable for the remaining term on the original mortgage is unacceptable.

The owner must include a statement and budget showing that expenditures will be adequate for proper maintenance and operation.

Tenant profiles must be submitted for two periods. One profile should reflect tenant data as of the date of POA submission. The second profile should reflect tenant data as of January 1, 1987. Tenant data as of January 1, 1988, or 1989, may be substituted for the second profile if accompanied by a certification for the unavailability of the prior year's data.

Page 9 of 12

1/93

4350.6-CHG.1

APPENDIX 8-1A

Based on the two tenant profiles submitted, the owner must maintain the tenant profile which contains the highest number of very low-income tenants.

Future rent increases must be made using an operating cost adjustment factor or required rent increase provisions.

- IX. There cannot be any outstanding findings against the owner. If some exist, they must be resolved to Loan Management's satisfaction before the POA can be approved.
- X. The owner must have financing commitments in writing, although they may be conditioned upon POA approval.
- XI. Has a subsidy layering analysis and any other analysis deemed necessary by the loan servicer been done?
- XII. This space is reserved for comments.

1/93

Page 10 of 12

4350.6-CHG.1

APPENDIX 8-1A

- C. Calculation of Total Tenant Payment for Moderate-Income Tenants

- (1) Enter apartment number.
 - (2) Enter number of bedrooms.
 - (3) Enter FMR.
 - (4) Enter current TTP.
 - (5) Enter adjusted monthly income.
 - (6) Enter 30% of adjusted monthly income. Mathematically, multiply amount in (5) by .3.
 - (7) Moderate-income tenants will pay the lesser of the FMR or 30% of their adjusted monthly income.
 - (8) The TTP increase is calculated by subtracting the current TTP from the new target TTP.
 - (9)-(12) If the total TTP increase (8) is greater than 30% of the current TTP ($.3 \times (4)$), it must be phased-in equally over a period of not less than three years. Thus, the maximum TTP at POA approval is the current TTP plus one-third of the total increase $(4) + (10)$. The TTP increase must be phased-in by at least 10% each year $(4) + (9)$.
- If the total TTP increase is greater than ten percent but less than 30% of the current TTP, it must be phased-in at no more than 10% of the current TTP each year $(4) + (9)$.
- (13) Enter the TTP at POA Approval (after final stage of phase-in is complete). It must fall within the range of TTPs established by (11) and (12).
 - (14)-(16) The actual TTP increase is calculated by subtracting the current TTP from the new TTP. It will almost always be the higher of (9) or (10). This amount will be added each year to the TTP for the previous year until the TTP equals the Target TTP (7). Use additional columns if the phase-in will take more than three years.

 4350.6-CHG.1

APPENDIX 8-1A

Finally, add columns (7), (13), (14), (15), (16), and any subsequent columns for phase-ins that will take longer than three years. Next, multiply the totals by 12 to make the amounts annual. The totals in columns (7) and (16) (or the last column if there are more than 16) should be equal.

* * * * *

form HUD-50062

Page 7 of 7

1/93

4350.6-CHG.1

APPENDIX 8-2A

INSTRUCTIONS FOR FORM HUD-50062

I. Type of Sale/Purchase

A. Identify the type of sale. An owner is eligible to proceed under the Mandatory Sale Provisions only if the Transfer Preservation Rent (TPR) exceeded the Federal Cost Limit (FCL) when the appraisal information was returned. There are certain benefits available to purchasers under Mandatory Sales.

An owner may choose to proceed under the Voluntary Sale Provisions whether or not TPR exceeded the FCL. However, if the TPR did exceed the FCL, the incentives received by the purchaser cannot require a Project Preservation Rent (PPR) which exceeds the FCL. The PPR is defined as Annual Gross Rent Potential (GRP) plus Gross Annual utility allowances for all tenants, or, the rents needed to fund all expenses including incentives plus tenant utility allowances.

B. Identify the type of purchaser. Only Priority Purchasers are eligible for some benefits such as certain types of grants and reimbursement of transaction costs related to acquisition.

II. General Project Finances

All information comes from the Plan of Action (POA) to Sell a Project. If information is missing, the POA is deficient and should be returned to the owner and purchaser.

A. 1. In a Voluntary Sale, the offering price for a bona fide offer may not exceed the Transfer Preservation Value (TPV) of the project. In a Mandatory Sale, the

offering price in a bona fide offer must equal the TPV. The owner may, however, accept a lower offer.

1/93

Page 1 of 17

4350.6-CHG.1

APPENDIX 8-2A

2. This is the maximum sales price HUD will use to determine the amount of incentives it will provide. Reducing the offering price by the amount of residual receipts to be retained by the seller is required by statute.
 - 3-5. HUD will use the lower of the Purchase Price that meets the criteria of 2. or the TPV to determine the amount of incentives it will provide.
- B. The outstanding debt is the outstanding principal balance on the mortgage. The debt service is the amount of annual payments made to principal, interest, and Mortgage Insurance Premium (MIP).
 - C. The loan servicer should ensure that all project funds, such as escrow accounts, income levels, and other funds are fully described. For example, do funds come from rents, government sources, private foundations, etc.? Is any funding from any source missing? There should be a detailed cash flow analysis that projects for the next 3 years what the project's anticipated cash flow will be, including income and expenses. If the seller provides financing for the acquisition or rehabilitation, ensure that it does not violate any restrictions detailed in 4350.6, chapter 8, paragraph 8-21F. Finally, list the sources of these funds and their respective amounts.
 - D. The loan servicer should ensure that the use of all funds are shown. There should be no funds without a corollary expense. That is, all sources of funding should be accounted for. The POA should indicate whether or not the owner plans to use Low Income Housing Tax Credits (LIHTCs). If the owner does not plan to use LIHTC, the POA must include a Form HUD-9611, signed by the purchaser, that certifies LIHTCs will not be used. If the purchaser is using LIHTCs, are the funds accounted for?

4350.6-CHG.1

APPENDIX 8-2A

- E. For all expenses, the POA must be specific. Be cautious of any headings like "Miscellaneous" or "Other."
- F. The loan servicer should scrutinize the POA to ensure that the owner plans to use funds efficiently. Similarly, the servicer should make sure the owner has not overestimated or underestimated costs and consequently the need for funding.
- G. Proposed utility allowances should be based on historical data with possible adjustments made for items in the rehabilitation plan that would lower utility costs.

III. Capital Improvement, Rehabilitation, and Repairs

- A. Two methods for funding requested incentives include (1) financing of capital improvements through provision of a Flexible Subsidy Capital Improvement Loan, and (2) insuring rehabilitation loans of up to 90 percent of rehabilitation costs with the maximum loan based on the equity requirements of the program under which the loan is made. Unless the project is devoid of physical deficiencies, the owner should include a list of capital improvements and rehabilitation that will restore the project to good physical condition.
 - B. The A Branch of HUD has completed a Capital Needs Assessment for the project. All capital improvements listed in this report must be addressed by the owner. These capital improvements include those required by HUD regulations. All other improvements are at the owner's discretion, subject to the approval of HUD.
 - C. Has the owner justified the need for capital improvements not required by HUD?
 - D. Are the cost estimates for these capital improvements reasonable and justified.
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4350.6-CHG.1

APPENDIX 8-2A

- E. Check to ensure that the owner is making the correct minimum contribution to the costs of capital improvements as required by the appropriate program. For example, a profit-motivated owner must contribute 25% of the capital costs to qualify for a Flexible Subsidy Loan and 10% of the capital costs for a Section 241(a) loan.
- F. For each capital improvement, list the cost, the value of the improvement (what it adds to value of mortgage property as determined by A and Cost Branch), the program under which it will be financed, and the percentage the owner must contribute.
- G. List the amount for each loan program that will be used to fund the rehabilitation and capital improvements.
- H. Identify the program through which the loan will be made.
- I. List the anticipated interest rates for the loan(s).
- J. List the anticipated annual debt service payment for each loan.
- K. Add the anticipated annual debt service payment for each loan. This provides the total annual debt service for rehabilitation and capital improvement loans. This total will be included in the calculation of the total annual debt service for the project.
- L. The owner must submit a schedule for completion of all rehabilitation and capital Improvements.
- M. If the schedule is not reasonable, consult the A Cost Branch for guidance in making the determination.
- N. The owner needs to describe how the contracts will be awarded.

APPENDIX 8-2A

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- O. This space is for comments on any of the questions pertaining to capital improvements, rehabilitation, and repairs. If the answers to any of the questions are unsatisfactory, the POA is deficient and should be returned to the owner and purchaser.

IV. Acquisition Loan and Grant

All purchasers are eligible for an acquisition loan. This loan may not exceed 95% of Transfer Preservation Equity (TPE). Priority Purchasers are also eligible for grants of not more than 5% of TPE.

- A. Enter TPE. TPE is the Transfer Preservation Value (TPV) minus the outstanding balance of only the federally-assisted mortgage(s).
- B-C. One method of funding incentives is the provision of insurance under Section 241(f) for an acquisition loan to the purchaser. Alternatively, the purchaser may obtain a non-insured mortgage loan approved by HUD. The maximum insured acquisition loan will be 95% of either the TPE or the Purchase Price minus Outstanding Debt, whichever is lower, minus the total amount of funding the purchaser receives from other sources. However, in the case of Priority Purchasers, funds from other sources should first be used to reduce the amount of the grant. The loan will be reduced only if the funds from other sources exceed the amount the purchaser may receive in grant funds. Therefore, to complete C.2., the amount of other funding is first subtracted from the allowable grant. The remainder (if any) is subtracted from the allowable loan and entered on this line.
- D. 1. This means that the purchaser may receive an acquisition loan of up to 95% of TPE less total funding from all sources. However, the loan may not exceed the purchaser's actual need.
- D. 2. Enter amount of Acquisition Loan requested in the POA.

APPENDIX 8-2A

- D. 3. The owner may contribute more than the minimum 5% required. Therefore, the acquisition loan requested may be lower than would be allowed. The difference between the maximum allowable acquisition loan and the loan amount actually requested represents an additional amount of equity over and above the minimum 5% required by HUD on which the purchaser may receive a return.
- E. Enter Annual Debt Service on Acquisition Loan.
- F. (Only Priority Purchasers are eligible for this grant.) All purchasers are expected to contribute 5% of TPE or the difference between the Purchase Price and the loan amount. If a Priority Purchaser is unable to do so, however, the Priority Purchaser may request a grant for up to 5% of TPE minus any funding received from other sources, subject to approval by Headquarters. If the entire POA, including any requests for grants, is deemed approvable, Loan Management must forward the complete POA, a copy of the completed Form HUD-50062, and a recommendation for approval of the grant to Preservation Division in Headquarters. Preservation staff must issue a decision on the grant within 15 days.
- G. This space is reserved for any comments on the acquisition loan and grant, if applicable.
- V. In this section, we add the annual debt service on the specified loans. We provide a cushion for debt service to protect against default by dividing by .90 for a Limited Dividend Purchaser. For Non-Profit Purchasers, we divide by .95 because HUD requires a smaller cushion for non-profits.
- VI. A. Purchasers may receive a maximum of 8% return on the equity they contribute up to a purchase price no greater than TPV. Part A. calculates the equity contributed by the purchaser. We start with the minimum 5% equity contribution required by HUD, then add the amount by which the purchaser exceeds this minimum contribution. Finally, for Priority

Purchasers, we subtract any grant amount provided by HUD to reach the minimum required contribution. Priority Purchasers may not take the return out of the project except to pay authorized loans, but may include it in the budget to increase project receipts.

- B. Here, we apply an 8% rate of return to the purchaser's equity contribution to determine the Maximum Annual Return on their investment.

VII. Gross Annual Rents

- A. In this section, we assess the accuracy of some key items in the projected budget before we proceed to calculate how incentives will be funded. The level and type of incentives requested depend on these items. If the items are artificially high or low, then the level and type of incentives will most likely be inappropriate. Item A.5. enforces the regulation that the return on the purchaser's investment cannot exceed 8%.
- B. 1. We add the total annual rent necessary to operate the project and the sum of the utility allowances for all tenants to determine the Preservation Project Rent (PPR). The PPR (Total Tenant Payment (TTP) plus all utility allowances) needed to operate the project cannot exceed the Federal Cost Limit. If it does, either the purchaser must be eligible for a grant as determined in X. below or the POA cannot be approved.
2. In order for a POA to be approvable, one of three conditions must exist. One, gross TTPs needed to operate the project are less than or equal to the FCL. Two, it is a Mandatory Sale. Or three, it is a Voluntary Sale to a Priority Purchaser and the TPR is less than or equal to the FCL. If none of these conditions exist, the POA cannot be approved.

VIII. Grant or loan to priority purchasers for transaction and other costs.

- A. An additional incentive available to Priority Purchasers is the reimbursement for transaction expenses and other expenses related to acquisition of the project.
- B. The loan and/or grant amount cannot exceed 5% of the TPE.
- C. This loan and/or grant may be made for acquisition costs, costs of organizing the nonprofit organization, and for tenant training and education. These costs must be based on documented expenses that have not and will not be reimbursed. Transaction costs may include legal fees and closing costs for purchasing the project. Broker's fees may not be included.
- D. HUD will only provide assistance for actual costs, subject to the cap determined in B.
- E.
 - 1. This is the amount by which the FCL exceeds the allowed PPR. This amount represents a capacity for the project to incur the cost of debt service for a loan to cover the expenses described in C. To the extent that the capacity allows, that is, until total costs to operate the project equal the FCL, the assistance will take the form of a loan. If no such capacity exists, then any debt service on a loan would cause costs to exceed the FCL. Therefore, the assistance must take the form of a grant as calculated in F.
 - 2. Once we determine the difference between the FCL and the allowed PPR, we determine how much debt that amount will support.
 - 3. The assistance for the costs described in Part C will take the form of a loan to the extent that the debt service on the loan can be added to the total costs of operating the project without exceeding the FCL.

- 4. If less than all of the assistance for the costs described in Part C. will take the form of a loan, then the debt service

on the loan should be the difference between the FCL and the allowed PPR. (This taps the entire capacity to increase total rents up to the FCL.)

5. Here, we add the debt service on this loan to the PPR calculated earlier. This amount should not exceed the FCL. If the loan amount covers all the costs described in Part C., there is no grant for these costs. If the loan amount is inadequate to cover all eligible costs, then the remainder of the assistance will take the form of a grant as calculated in F.

- F. To determine the grant amount, subtract the loan amount from the total costs eligible for reimbursement (subject to the cap imposed in B.). Remember that all grants must be approved by Headquarters.

IX. Section 8 Rents

Logic underlying A. through D5:

The PPR needed to operate the project, including incentives, and to support utility allowances has two components: TTPs from moderate-income tenants and Section 8 gross rents. We must allocate the rents from these two sources to fund the PPR. In essence, the TTPs for moderate-income units will be raised to a level where each tenant pays the lower of FMR or 30% of their adjusted monthly income. These TTP increases will be raised by the greater of 10% of the current TTPs each year or 1/3 of the total increase in any one year. The difference between the TTPs projected to be collected from the moderate-income tenants and the TTPs needed to fund the POA will be bridged by higher Section 8 gross rents.

4350.6-CHG.1

APPENDIX 8-2A

To arrive at this conceptually, start with the PPR needed. Subtract from this total the TTPs that are projected to be generated by the moderate-income tenants after the phase-in of the TTPs is complete. We now have the portion of TTPs needed to be funded from Section 8 assistance. The rents needed from Section 8 are then distributed among the units which will be receiving Section 8 rental assistance. They will be allocated by unit type.

It is important to understand that the new Section 8 Gross Rents may exceed FMR. The relevant cost restriction is that total annual projected moderate-income TTPs plus Section 8 Gross Rents cannot exceed the FCL (Federal Cost Limit). For example, assume a 100 unit project has 99 moderate-income tenants and one Section 8 tenant. Provided that total annual receipts are no greater than the FCL, the Section 8 gross rent for that one unit may be 900% of FMR. (Be careful not to confuse Section 8 Gross Rents with TTPs. Section 8 tenants pay a TTP. After the utility allowance is subtracted from the TTP, HUD supplements that amount up to the Section Gross Rent.)

Instructions by line item:

In A., we calculate the rents which would be generated if FMR or PMR were paid for all Section 8 units. This is completely theoretical. It is only used to derive a ratio to be applied to FMRs to yield actual Section 8 gross rents to be paid.

Item A.5. is the total monthly rent which would be generated by Section 8 units if all Section 8 units generated FMR or PMR rents.

Item A.6. converts total monthly rent to total annual rent.

Part B. is the total annual projected TTPs that would be paid by moderate-income tenants after the phase-in of TTP increases is completed if each moderate-income tenant paid the projected amount. Please note that this process leads to a low estimate of projected TTPs. This amount is assumed to be the lower of the FMR or 30% of the low-income limit each month.

Item B.2. Enter the number of moderate-income tenants in each size unit.

Item B.3. This item lists the number of persons for each income limit to be used for that unit size. For example, for a two-bedroom unit, use the low-income limit for four persons rather than the number of people in the unit.)

Item B.4. Enter the appropriate income limit in accordance with Item C.3.

Item B.5. Multiply the income limit by .025. This is the amount each moderate-income tenant would pay if each paid 30% of the low-income limit divided by 12 each month.

Item B.6. Enter the FMR for each unit size.

Item B.7. Enter the lower of the FMR or the TTP projected in Item B.5. since no tenant pays more than FMR for that unit size.

Items B.8 and 11. These items sum the projected TTPs for all moderate-income tenants.

Item 12. Multiply the result by 12 to derive the total projected annual TTPs for all moderate-income tenants.

Item C. This is the total annual income necessary to operate the project including all incentives plus the sum of utility allowances for all tenants. This total is capped by the FCL.

Item D.1.c. is the total annual income necessary to complement the projected TTPs for moderate-income tenants in order to support the PPR.

Item D.2. calculates the factor by which current FMR or PMR will be multiplied. In most cases, it will be greater than one, but it may be equal to or less than one. The purpose of the factor (or ratio) is to adjust the Section 8 rents to the levels needed to fund the incentives. The FMR for each unit size is adjusted by the same factor. The adjusted monthly rents are shown in Item D.3.d. D.3.f. shows total rents to be collected from all Section 8 contracts for units of that size.

4350.6-CHG.1

APPENDIX 8-2A

Item D.3.g. is the total monthly rent to be collected from all Section 8 contracts.

Item D.4. converts D.3.g. to total annual rent for the Section 8 units.

Item D.5.: D.4. and D.1.c. should be equal. Item D.4. is the aggregated annual Section 8 rents after they have been adjusted to support the new TTPs; by definition, this is the same as D.1.c. and should differ only by amounts due to rounding. If there is a discrepancy due to rounding, add to or subtract from the rents in D.3.d. until the totals in g., when multiplied by 12, add up to D.1.c. Do not alter D.1.c. to match D.4. If

the discrepancy is larger than that due to rounding, check your calculations.

- E. TTPs for Section 8 tenants who were not paying 30% of their adjusted income prior to the POA will also need to be phased-in. This will generally apply to tenants in BMIRs who do not receive Section 8 prior to POA approval. This phase-in will not affect project income.
- F. Minimum rents are intended to protect the owner from sudden and substantial reductions in project income. This could occur if moderate income tenants suffer a large decline in income and still had to pay only 30% of income for rent.

X. Grant to compensate for inadequate rents.

The purpose of this grant is to reduce the acquisition loan in order to lower the debt service to the level where the PPR equals the FCL.

- A. Any purchaser in a Mandatory Sale or a Priority Purchaser in a Voluntary Sale where TPR was less than or equal to FCL is eligible for this grant.
- B. Self-explanatory.
- C. Self-explanatory.

1/93

Page 12 of 17

4350.6-CHG.1

APPENDIX 8-2A

- D. Here, we compare the PPR needed to operate the project to the FCL. If the PPR is at or below the FCL, no grant is needed to reduce costs. A grant is needed only if the cost of funding the allowable incentives exceeds the FCL.
- E.
 1. Subtracting the FCL from the PPR calculates the amount by which annual costs must be reduced to reach the FCL. Annual costs will be lowered by reducing the amount of the acquisition loan with the provision of a grant, thereby reducing annual debt service on the loan.
 2. Enter the current market interest rate for the acquisition loan.
 3. Enter the amount of the previously

calculated and approvable acquisition loan.

4. Use a financial calculator to determine the amount by which the loan needs to be reduced. This is the amount of the grant needed. To arrive at this amount, the debt service needs to be reduced by the amount shown in E.1. This translates to a reduction in the loan by the amount on this line.

5. Self-explanatory.

- F. The new Acquisition Loan is the original loan amount minus the grant amount. The debt service on this new loan amount will bring the PPR needed to operate the project equal to the FCL.

XI. Total of all Grants

Remember that all grants need final approval by the Preservation Division in Headquarters before a POA can be approved.

XII. Evaluation of additional incentives which the purchaser may request.

4350.6-CHG.1

APPENDIX 8-2A

Two additional methods of funding incentives include: (1) Increased access to residual receipts accounts as needed to enable the owner to realize the Annual Authorized Return, and (2) Redirection of the Interest Reduction Payment subsidies to a second mortgage for projects which are insured, assisted or held by HUD or a State or State Agency under Section 236.

XIII. The POA must contain an acceptable Management Plan.

XIV. The answer to each question in this section must be Yes for the POA to be approvable.

The project must remain affordable for the remainder of its useful life. A statement that it will remain affordable for the remaining term on the original mortgage is unacceptable.

The POA must include a statement and budget showing that expenditures will be adequate for proper

maintenance and operation.

Tenant profiles must be submitted for two periods. One profile should reflect tenant data as of the date of POA submission. The second profile should reflect tenant data as of January 1, 1987. Tenant data as of January 1, 1988, or 1989, may be substituted for the second profile if accompanied by a certification for the unavailability of the prior year's data.

Based on the two tenant profiles submitted, the purchaser must maintain the tenant profile which contains the highest number of very low-income tenants.

Future rent increases must be made using an operating cost adjustment factor or required rent increase provisions.

XV. Self-explanatory.

XVI. There cannot be any outstanding findings against the purchaser. If some exist, they must be resolved to Loan Managements's satisfaction before the POA can be approved.

1/93 Page 14 of 17

4350.6-CHG.1
APPENDIX 8-2A

XVII.The purchaser must have financing commitments in writing, although they may be conditioned upon POA approval.

XVIII.Has a subsidy layering analysis and any other analysis deemed necessary by the loan servicer been done?

XIX. This space is reserved for comments.

Page 15 of 17 1/93

4350.6-CHG.1
APPENDIX 8-2A

Calculation of Total Tenant Payment for Moderate-Income Tenants

- (1) Enter apartment number.
 - (2) Enter number of bedrooms.
 - (3) Enter FMR.
 - (4) Enter current TTP.
 - (5) Enter adjusted monthly income.
 - (6) Enter 30% of adjusted monthly income. Mathematically, multiply amount in (5) by .3.
 - (7) Moderate-income tenants will pay the lesser of the FMR or 30% of their adjusted monthly income.
 - (8) The TTP increase is calculated by subtracting the current TTP from the new target TTP.
 - (9)-(12) If the total TTP increase (8) is greater than 30% of the current TTP ($.3 \times (4)$), it must be phased-in equally over a period of not less than three years. Thus, the maximum TTP at POA approval is the current TTP plus one-third of the total increase $(4) + (10)$. The TTP increase must be phased-in by at least 10% each year $(4) + (9)$.
- If the total TTP increase is greater than ten percent but less than 30% of the current TTP, it must be phased-in at no more than 10% of the current TTP each year $(4) + (9)$.
- (13) Enter the TTP at POA Approval (after final stage of phase-in is complete). It must fall within the range of TTPs established by (11) and (12).
 - (14)-(16) The actual TTP increase is calculated by subtracting the current TTP from the new TTP. It will almost always be the higher of (9) or (10). This amount will be added each year to the TTP for the previous year until the TTP equals the Target TTP (7). Use additional columns if the phase-in will take more than three years.

Finally, add columns (7), (13), (14), (15), (16), and any subsequent columns for phase-ins that will take longer than three years. Next, multiply the totals by 12 to make the amounts annual. The totals in columns (7) and (16) (or the last column if there are more than 16) should be equal.

Page 17 of 17

1/93

4350.6-CHG.1

APPENDIX 8-3

CHECKLIST FOR SUBMISSION OF
PLAN OF ACTION TO RETAIN A PROJECT

The numbers in the ()s are paragraph references.

Did the owner submit:	YES	NO
1. A Plan of Action (POA) within six months of receiving the reconciled appraised values and corollary information (8-3.A.1;8-16.A)?	_____	_____
2. Six copies of the POA (8-3.A.1)?	_____	_____
3. A POA summary to tenants (8-3.B)?	_____	_____
4. A POA summary to the Loan Management Branch (8-3.B)?	_____	_____
5. A copy of the POA and POA summary to the tenant representative or a certification stating that the owner is unaware of a tenant representative (8-3.B)?	_____	_____
6. A certification that a copy of the POA to the State or local government official to whom the Initial NOI was submitted (8-3.C)?	_____	_____

Were the following included in the submitted Plan of Action?

1. A. Descriptions of outstanding findings of noncompliance and violations and documented resolution of findings or proposed resolutions?		
OR		
B. A certification of no violations (8-5.C)?	_____	_____
2. A. Description of proposed changes in status or terms of the mortgage or regulatory agreement?		

OR

Page 1 of 3

1/93

4350.6-CHG.1

APPENDIX 8-3

-
- B. A statement of no proposed changes (8-5.A)? _____
 - 3. A. Description of proposed changes in low-income affordability restrictions and a detailed assessment of the effect of these changes on each tenant? _____
 - OR
 - B. A statement that no changes are proposed (8-5.B)? _____
 - 4. A. A request for waivers? _____
 - OR
 - B. A statement that no waivers are requested (8-5.D)? _____
 - 5. List of incentives (assistance) requested and methods to fund listed incentives (8-17.A.B; 8-19.A.B)? _____
 - 6. Projected budgets for three years (8-17.D)? _____
 - 7. Management plan (8-17.D)? _____
 - 8. Occupancy policy (8-17.D)? _____
 - 9. Requested utility allowances (8-17.D.)? _____
 - 10. Other information and conditions/criteria specified by the Loan Management Branch as necessary for evaluating the POA (8-17.H)? _____
 - 11. A. Description of assistance from State or Local Government Agencies, excluding LIHTCs, and an analysis of any cost reduction for HUD? _____
 - OR
 - B. A statement that no assistance will be received (8-17.E)? _____

-
- 12. A. If LIHTCs are part of the transaction, has the information required by Notice

H90-17 been included (8-17.E.1)?

OR

B. If LIHTCs are NOT received by the owner, has form HUD-9611 been included (8-17.E.1)?

13. Two tenant income profiles (8-17.F):

A. One as of the date of submission of the POA?

AND

B. i. One as of January 1, 1987?

OR

ii. A tenant income profile for a year other than 1987 along with a certification that the January 1, 1987 profile is unavailable?

14. A certification that the owner has submitted or will submit all required loan applications (8-17.G.)?

15. A certification that ten percent of any equity loan will be escrowed for five years or until the owner is in compliance with HUD's Housing Quality Standards. (8-20)?

CHECKLIST FOR SUBMISSION OF PLAN OF ACTION TO SELL A PROJECT

The numbers in the ()s are paragraph references.

Did the owner and purchaser submit:

YES NO

1. A Plan of Action (POA) within six months:

A. Of accepting a HUD approved bona fide offer under the voluntary sales process (8-3.A.1. & 8-16.B)? or

B. Of receipt of a HUD approved bona fide offer under the mandatory sale process?

- 2. Six copies of the POA (8-3.A.1)? _____
- 3. A POA summary to tenants (8-3.B)? _____
- 4. A POA summary to the Loan Management Branch (8-3.B)? _____
- 5. A copy of the POA and POA summary to the tenant representative or a certification stating that the owner is unaware of a tenant representative (8-3.B.1)? _____
- 6. Certification that a copy of the POA to the State or local government official to whom the Initial NOI was submitted (8-3.C)? _____

Were the following included in the submitted Plan of Action?

- 1. A. Descriptions of outstanding findings of noncompliance and violations and documented resolution of findings or proposed resolution?

OR
- B. A certification of no violations (8-5.C)? _____
- 2. A. Description of proposed changes in status or terms of the mortgage or regulatory agreement?

4350.6-CHG.1

APPENDIX 8-4

OR

- B. A statement of no proposed changes (8-5.A)? _____
- 3. A. Description of proposed changes in low-income affordability restrictions and a detailed assessment of the effect of these changes on each tenant?

OR
- B. A statement that no changes are proposed (8-5.B)? _____
- 4. A. A request for waivers?

OR

- B. A statement that no waivers are requested

(8-5.D)?

5. List of incentives (assistance) requested and methods to fund listed incentives (8-17.A.,B. & 8-21.A.,B.,D.)?

6. Projected budgets for three years (8-17.D)?

7. Management plan (8-17.D)?

8. Occupancy policy (8-17.D)?

9. Requested utility allowances (8-17.D.)?

10. Other information and conditions/criteria specified by the Loan Management Branch as necessary for evaluating the POA (8-17.H)?

11. A. Description of assistance from State or Local Government Agencies, excluding LIHTCs, and an analysis of any cost reduction for HUD?

OR

B. A statement that no assistance will be received (8-17.E)?

12. A. If LIHTCs are part of the transaction, has the information required by Notice H90-17 been included (8-17.E.1)?

OR

B. If LIHTCs are NOT received by the owner, has form HUD-9611 been included (8-17.E.1)?

13. Two tenant income profiles (8-17.F):

A. One as of the date of submission of the POA?

AND

B. i. One as of January 1, 1987?

OR

ii. A tenant income profile for a year other than 1987 along with a

To: Government Agencies Interested in the Preservation
of Low-Income Housing

From: Chief Loan Management Branch
U. S. Department of HUD

Subject: Memorandum to State and Local Governments
Requesting Comments to the Preservation Plan of
Action to Extend Low-income Affordability
Restrictions for
name of project

The owner or owner and purchaser of subject project have submitted a Plan of Action (POA) to HUD requesting incentives to extend the low-income affordability restrictions. A copy of the POA is enclosed.

We are requesting your comments to the enclosed POA. Please return them to the HUD Office specified below by Date--50 days after HUD receipt of the POA .

We would like you to inform us of any deficiencies at the project of which you are aware and provide any other information that you think would be of interest or benefit to HUD. This could include information about the violation of building codes, fair housing and equal opportunity laws, other State or local ordinances or other violations applicable to the operation of the project. We would also appreciate any information or comment about the project's financial situation which is not adequately addressed in the POA.

In cases where the POA indicates possible displacement or relocation of tenants due to prepayment of the mortgage and termination of the low-income affordability restrictions, we would encourage you to provide additional help to tenants, if your agency administers applicable tenant assistance programs. We request that you advise the tenants living in the project, in a timely manner, of such programs (or of any

Page 1 of 2

1/93

4350.6-CHG.1

APPENDIX 8-6

tenant assistance programs that are administered by other local organizations) that could assist them in retaining their residences as affordable housing, or minimize the effects of displacement.

In the case of a Resident Homeownership Plan from a Resident Council (RC) to purchase the project, you should advise the RC of local programs that would facilitate the purchase of the project under a Resident Homeownership

Program.

Please send your comments or direct your questions to:

Chief, Loan Management Branch

Address _____

City _____ State ____ Zip Code _____

1/93

Page 2 of 2

Notice H90-17 Attachment 2

4350.6-CHG.1

APPENDIX 8-7

MATERIALS LIHTC PARTICIPANTS MUST SUBMIT

1. Briefsummary of the terms on which the owner will participate in the LIHTC program. Include:
 - a. the annual credit amount, the type(s) of credit (acquisition and or rehab); the date the 10-year credit period will begin; the credit percentage awarded for each type of credit; and the maximum qualified basis for each type of credit.
 - b. which income eligibility limit will apply (50/60 percent of of median income) and how many units, if any, will be set-aside for families with incomes below 40 percent of the median income (deep-rent skewing).
 - c. list of units for which credits will be claimed. Give the number of units in each bedroom size and the initial tax credit rent limit for each unit size. Also indicate which units, if any, will be held for families with incomes below 40% of the median income.

Note: The 1989 Omnibus Reconciliation Act sets the rent limit based on the median income of "hypothetical" households having 1.5 persons per bedroom. Under previous law, rent cap was based upon the actual size of the household occupying the unit. See Page H 9396 of Attachment 4 for the new statutory language.

2. Copy of a) IRS Form 8609, Low Income Housing Credit Allocation Certification; or b) a report on the status of any tax credit allocation still in process and a copy of any credit agency reservation form or other document indicating agency's intent to award credits to the project.
3. Whether credit will be claimed by current owners or new owners.
4. List of all federal/state/local government insurance, loan, grant or subsidy programs in which the applicant plans to participate and any grants or below-market loans expected to be received from non-government sources. For each loan, give interest rate, monthly

debt service, loan amount and loan term.

- 5. Sources and Uses of Funds Statement, itemizing: a) all funds available; b) all purposes for which funds will be disbursed; and c) dates any investor contributions are due. For item (a), use gross amounts available before deducting syndication, legal or other intermediary costs.
- 6. A Statement in which the applicant agrees to promptly notify the HUD Field Office of any change in the information provided pursuant to this attachment.

4350.6-CHG.1

APPENDIX 8-7

Notice H90-17 Attachment 2
cont'd

NOTE: The following language must be included in the submission. The applicant's signature must appear immediately below this warning.

WARNING: It is a crime to knowingly make false statements to a federal agency. Penalties upon conviction can include a fine and imprisonment. For details, see Title 18 U.S. code, Section 1001 and 1010.

PUBLIC REPORTING BURDEN. This collection of information is estimated to average 1/2 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to:

- o Reports Management Officer
Office of Information Policies and Systems
U.S. Department of Housing and Urban Development
Washington, D.C. 20410-3600
- o Office of Management and Budget
Paperwork Reduction Project (2502-0377)
Washington, D.C. 20503

4350.6-CHG.1

APPENDIX 8-8

CHECKLIST FOR SUBMISSION OF A PLAN OF ACTION
TO TERMINATE LOW-INCOME AFFORDABILITY RESTRICTIONS

Did the owner submit: YES NO

- 1. A Plan of Action (POA) within six months of receiving the information about the market area from HUD (8-11)? _____
- 2. Six copies of the POA (8-3.A.1.)? _____
- 3. A POA summary to tenants (8-3.B.)? _____
- 4. A POA summary to the Loan Management Branch (8-3.B.)? _____
- 5. A copy of the POA and POA summary to the tenant representative or a certification stating that the owner is unaware of a tenant representative (8-3.B.)? _____
- 6. A certification that a copy of the POA to the State or local government official to whom the Initial NOI was submitted (8-3.C.)? _____

Were the following included in the submitted Plan of Action?

- 1. A. Descriptions of outstanding findings of noncompliance and violations and documented resolution of findings or proposed resolutions?

OR
- B. A certification of no violations (8-5.C.)? _____
- 2. A. Description of proposed changes in status or terms of the mortgage or regulatory agreement?

OR

4350.6-CHG.1

APPENDIX 8-8

- B. A statement of no proposed changes (8-5.A.)? _____
- 3. A. Description of proposed changes in low-income affordability restrictions and a detailed assessment of the effect of these changes on each tenant?

OR
- B. A statement that no changes are proposed (8-5.B.)? _____
- 4. A. A request for waivers?

OR

- B. A statement that no waivers are requested (8-5.D)? _____
- 5. An assessment of the effect of the proposed changes on each tenant living at the project at POA approval (8-12.A.)? _____
- 6. Evidence and an analysis of the effect of the proposed changes on the supply of housing affordable to low-income families in the community where the project is located (8-12.B.)? _____
- 7. Occupancy information (8-12.C.)? _____
- 8. A description of any change in ownership related to prepayment of the mortgage? (8-12.D.) _____
- 9. A statement of the intention of the owner to sign a Use Agreement to maintain low-income restrictions (8-12.E.)? _____
- 10. Other information and conditions/criteria specified by the Loan Management Branch as necessary for evaluating the POA (8-12.F.)? _____

Guidelines for Conducting the Review of a Plan of Action
to Terminate Low-Income Affordability Restrictions

1. General

This guidance outlines the policy and procedures to be followed in reviewing a Plan of Action (POA). The review of a POA to terminate low-income affordability restrictions involves the determination of whether the market area has a surplus of rental housing, i.e., the supply of vacant available rental housing significantly exceeds the demand (surplus market). The review must also take into consideration whether the prepayment would materially affect the housing opportunities of low- and very-low income families in the area, based on the specific characteristics of the project, as described below.

- a. The project is needed to assist in preserving low-income housing in a neighborhood which is being revitalized;

- b. The project represents a rare source or the only source of low- and moderate-income rental housing in the immediate area;
- c. There is a shortage of the particular type of rental housing provided by the project such as units suitable for the disabled, single room occupancy, or units for large families;
- d. The preservation of the housing would be necessary to avoid adversely affecting the housing opportunities of minorities or to avoid adversely affecting the ability of low- and very-low income families to find housing near employment opportunities.

A recommendation of approval of a POA to terminate affordability restrictions can only be made where there has been a determination of a surplus market and a determination that prepayment would not materially affect housing opportunities.

4350.6-CHG.1

APPENDIX 8-9

2. Definition of the Market Area

For the purpose of the analysis, the housing market area (where housing units of similar characteristics are in relative competition with each other) is defined in the case of a non-metropolitan area as the county in which the project is located. For projects located in metropolitan areas, the market area will generally be defined as the entire Primary Metropolitan Statistical Area (PMSA/MSA). In unusual circumstances, such as the case of very large metropolitan areas, the defined market area may be only a part of the larger area.

3. Evidence Indicating a Soft Market Condition (Surplus of Rental Housing)

Experience has shown that certain market conditions are indicative of a soft rental market. The existence of one or more of these conditions does not automatically establish the market area as a soft market but indicates need for further analysis.

- a. Upward trends in the number of defaults and foreclosures in rental projects and the existence of a large inventory of HUD acquired properties.
- b. Unusually low rents being asked for new units or widespread use of concessions for both new and

existing units. Widespread use of short-term leases.

- c. Increases in overall rental vacancy rates and increases in vacancies in existing rental projects which had previously had a history of high occupancy.
- d. Excessive number of vacant rentals (particularly apartments) of particular size, age, project or unit type, or other common characteristic.
- e. Rental vacancy rates of greater than 10 percent overall and 12 percent or more in multifamily rental projects for a sustained period (24 months).
- f. Flat or stable rents in existing projects or rent increases smaller than what could be expected from normal increases in property taxes, utilities, maintenance costs or inflation.

1/93

Page 2 of 6

4350.6-CHG.1

APPENDIX 8-9

- g. Newly built rental units are being absorbed at a slower rate than in previous periods, vacancies in existing projects are on the market for a longer period, new units being absorbed at the expense of existing units.
- h. Significant declines in waiting lists and increases in the size and frequency of advertising.
- i. Construction or proposed construction of a substantial number of rental units.
- j. Downturns in the local economy, as indicated by declining employment growth, reductions by major employers or increased unemployment or evidence that future growth will not be sufficient to increase demand to levels needed to absorb the supply.

A rental vacancy rate of 10 percent or more should generally be considered excessive for almost all markets, unless the area is experiencing a sustained and rapid rate of growth. In market areas with moderate to low levels of household growth, rental vacancy rates of less than 10 percent may also be considered excessive, especially if the impending increase in supply is significant. A vacancy rate cannot be the sole basis for the soft market determination. The current vacancy situation must be considered in the context of other factors.

4. Extent and Length of Time for Soft Market Conditions

Because a housing market is dynamic, the extent of the surplus condition and the estimated length of time the condition is expected to last are important factors in the identification of a surplus rental market. For the purposes of the review, an area should be considered a soft market if:

- a. There is currently a surplus of rental housing such that the current excess supply of vacant available housing, plus units currently under construction that will enter the market within the next 24 months, is expected to exceed demand for at least the next 24 months; or

4350.6-CHG.1

APPENDIX 8-9

- b. The market is anticipated to become a soft market within the next 12 months if, based on the housing production (units currently under construction or with firm planning commitments), in combination with the current supply of available vacant units, supply is expected to exceed demand for at least 24 months.

5. Content of the Analysis

The determination will be based on analysis of the current and anticipated conditions in the overall rental market. The analysis will take into account data from the 1990 Decennial Census and the most recent available locally obtainable data on such factors as: changes in population, households and employment, the housing inventory, residential construction activity, and recent trends in the absorption of rental housing. A determination of market conditions must be a comprehensive view of market forces and trends and comprise the following:

- a. Forecasts of employment, incomes, population and household growth and other relevant economic factors.
- b. Estimates of supply and demand taking into consideration marketability factors, such as, the time period necessary to successfully absorb the projects comprising the existing and planned supply.
- c. Analysis of the potential number of units eligible to prepay during the forecast period relative to any excess supply of vacant available housing plus

units currently under construction.

- d. Estimates of current and future rental vacancies and vacancy rates.
- e. Evaluation of local market absorption rates in terms of reduction of supply and evaluation of rental absorption experience in the area, so as to determine whether new projects coming on the market are adversely effecting existing inventories, that is, successful occupancy is being achieved at the cost of creating sustained vacancies in existing units.

1/93

Page 4 of 6

4350.6-CHG.1

APPENDIX 8-9

6. Content and Format of the Market Report

The specific content and length of the written market report, which will vary depending on the nature of the local market circumstances, are at the discretion of the Field Office EMAS conducting the review. The report should be as comprehensive and explicit as needed to assure an understanding of the rationale of the analysis and its conclusions, findings and recommendations. The market analysis review is expected to contain a specific determination of whether the market area is a soft rental market and whether or not prepayment would materially affect housing opportunities. The report should contain:

- a. A description of the geographic boundaries of the market area for which the determination is being made, including an explanation for the definition based on any relevant characteristics.
- b. An analysis of current market conditions and a forecast of future conditions over the next 24 months, including consideration of the following:
 - (1) The recent trend in household growth and an estimate of growth over the forecast period, comparing the growth to the annual changes in housing production and the current inventory.
 - (2) The current overall rental vacancy rate and a discussion of any specific vacancy problems in the market.
 - (3) A discussion of recent market experience, including absorption experience of new housing projects, current occupancy levels and recent trends in existing projects and a discussion of

current rents and anticipated trends, given anticipated market conditions.

- (4) The number of units under construction and the characteristics of these units. The number of units in advanced planning stages, e.g., with building permits or firm financial commitments.

4350.6-CHG.1

APPENDIX 8-9

-
- (5) An analysis that reconciles the estimates of annual demand with the forecast of household growth and the anticipated supply (current vacancy situation and supply of units in production).
 - (6) A discussion of the length of time the identified market conditions are anticipated to last.
 - (7) A discussion of whether the prepayment would materially affect the housing opportunities of low- and very-low income families in the area, based on the specific characteristics of the project.

[\[Search\]](#) [\[Prev List\]](#) [\[Doc List\]](#) [\[Next List\]](#) [\[First Doc\]](#) [\[Prev Doc\]](#) [\[Curr Doc\]](#) [\[Next Doc\]](#) [\[Last Doc\]](#)
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Processing Plans of Action Under the Low-Income Housing

Directive Number: [\[Prev Hit\]](#)[\[Next Hit\]](#)4350.6

4350.6-CHG.3

APPENDIX 9-1

Resident Homeownership Plan Checklist

- A. Did the RC submit: (see Para. 9-10)
1. The Resident Homeownership Plan (RHP) within six months of the owner's acceptance of a bona fide offer in the case of a voluntary sale or within six months of the owner's receipt of a bona fide offer in the case of a mandatory sale?

YES	NO
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 2. Six copies of the RHP?

YES	NO
-----	----
 3. A RHP summary to residents?

YES	NO
-----	----
 4. A RHP summary to HUD?

YES	NO
-----	----
 5. Certification that a copy of the RHP was sent to the State or local government officials to whom the Initial Notice of Intent (NOI) was submitted?

YES	NO
-----	----
- B. Was the following information included in the submitted RHP in accordance with Paragraphs 9-12 and 9-13?
1. Evidence that the residents worked with a HUD-approved nonprofit organization to organize a RC?

YES	NO
-----	----
 2. A plan for the management of the project, including?

YES	NO
-----	----

4350.6-CHG.3APPENDIX 9-1

- a. A statement that the RC has ultimate responsibility for the management of its project, regardless of whether it is the manager?

YES

NO

3. Descriptions of outstanding findings of noncompliance and violations and documented resolution of findings or proposed resolution?

YES

NO

or

A certification of no violations?

YES

NO

4. Two tenant income profiles (see Para. 9-12.F.)?
- a. One profile representing tenants as of the date of RHP submission? and
- b. One for tenants as of January 1, 1987? or
- c. A tenant income profile for a subsequent year along with a certification that the January 1, 1987 profile is unavailable?

YES

NO

YES

NO

5. Methods and schedules for project conversion, including the type of homeownership contemplated? (E.g., fee simple, condominium, cooperative)

YES

NO

6. Statements regarding unit values, selling prices, homeowner fees, closing costs, and down payments?

YES

NO

7. Statement about the homeownership's eligibility and underwriting standards?

YES

NO

3/94

Page 2 of 4

4350.6-CHG.3

APPENDIX 9-1

8. Methods of financing the sale of individual units?

YES

NO

9. Issues regarding resale of units? (E.g., RC purchase, equity appreciation, methods, and restrictions on resale)

YES

NO

10. A list of prospective purchasing tenants?

YES

NO

a. Along with their certification that they intend to purchase? and

YES

NO

11. A financial plan including a four-year budget projection with documentation?

YES

NO

12. An affirmative marketing plan for vacant, unsold units?

YES

NO

13. Identification of nonpurchasing tenants and plans for their relocation activities?

YES

NO

14. Plans for rehabilitation activities?

YES

NO

15. The scope of technical assistance, training and counseling for the RCs, homebuyers, and nonpurchasing tenants?

YES

NO

Page 3 of 4

3/94

4350.6-CHG.3

APPENDIX 9-1

16. A statement that the RC will comply with:

- (a) The Fair Housing Act; YES NO
- (b) Title VI of the Civil Rights Act of 1964; YES NO
- (c) Executive Order 11063; YES NO
- (d) Age Discrimination Act of 1975; YES NO
- (e) Section 3 of the Housing and Urban Development Act of 1968 YES NO
- (f) Section 504 of the Rehabilitation Act of 1973 and all regulations promulgated under such statutes and authorities; and YES NO

C. Does the RHP contain copies of all forms, guidelines, and worksheets developed by the RC to make annual reports to HUD and implement the Resident Homeownership Program in compliance with applicable Federal regulations?

YES NO

D. Did the RC indicate that it will establish a Homeowners Association, Condominium Association or Housing Cooperative by the time it receives the HUD grant?

YES NO

Evaluation of Resident Homeownership Plan

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Page 1 of 11

3/94

4350.6-CHG.3

APPENDIX 9-2

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Page 2 of 11

3/94

4350.6-CHG.3

APPENDIX 9-2

YES NO

4. A LEP summary to the Loan Management Branch?

YES NO

5. Certification that a copy of the LEP to the State or local government official to whom the Initial NOI was submitted?

YES NO

II. Plan of Action Requirements. Was the following data included in the submitted LEP consistent with the requirements of a Plan of Action?

1. A. Description of proposed changes in the status or terms of the mortgage or regulatory agreement?

YES NO

OR

B. A statement of no proposed changes?

YES NO

4350.6-CHG.3

APPENDIX 9-3

2. A. A request for waivers?

YES NO

OR

B. A statement that no waivers were requested?

YES NO

3. List of incentives (assistance) requested and methods to fund listed incentives?

YES NO

4. Projected budgets for four years?

YES NO

5. A management plan?

YES NO

6. Occupancy policy?

YES NO

7. Requested utility allowance?

YES NO

8. Other information and conditions/criteria specified by the Loan Management Branch as necessary for evaluating the LEP?

YES NO

9. A. Description of assistance from State or Local Government Agencies, which may not include LIHTCs, and an analysis of any cost reduction for HUD?

YES NO

OR

3/94

Page 2 of 5

4350.6-CHG.3

APPENDIX 9-3

B. A statement that no assistance will be received?

YES NO

10. Two tenant income profiles:

A. One as of the date of submission of the LEP?

YES NO

AND

B. i. One as of January 1, 1987?

YES NO

OR

ii. A tenant income profile for a year other than 1987 along with a certification that the January 1, 1987 profile is unavailable?

YES NO

11. A certification that the LEP has submitted or will

submit all required loan applications?

YES

NO

12. A complete Transfer of Physical Assets package?

YES

NO

III. Resident Homeownership Program. Was the following information included in the submitted LEP pursuant to the applicable requirements of the Resident Homeownership Program?

1. Evidence that the residents worked with a HUD-approved nonprofit organization to organize a RC?

YES

NO

2. A plan for the management of the project, including?

YES

NO

Page 3 of 5

3/94

4350.6-CHG.3

APPENDIX 9-3

a. A statement that the RC has ultimate responsibility for the management of its project, regardless of whether it is the manager?

YES

NO

3. Statements regarding membership fees for initial and subsequent members?

YES

NO

4. Issues regarding transfer of memberships? (E.g., LEC purchase of membership, equity appreciation, methods and restrictions on resale)

YES

NO

5. A financial plan including a four-year budget projection with documentation?

YES

NO

6. Identification of nonpurchasing tenants and plans for their relocation activities?

YES

NO

7. Plans for rehabilitation activities?

YES

NO

8. The scope of technical assistance, training and counseling for the LEC, members, and nonpurchasing tenants?

YES

NO

9. A statement that the LEC will comply with:

- | | | |
|---|-----|----|
| (a) The Fair Housing Act; | YES | NO |
| (b) Title VI of the Civil Rights Act of 1964; | YES | NO |
| (c) Executive Order 11063; | YES | NO |

3/94

Page 4 of 5

4350.6-CHG.3

APPENDIX 9-3

- | | | |
|--|-----|----|
| (d) Age Discrimination Act of 1975; | YES | NO |
| (e) Section 3 of the Housing and Urban Development Act of 1968; | YES | NO |
| (f) Section 504 of the Rehabilitation Act of 1973; and | YES | NO |
| (g) All regulations promulgated under such statutes and authorities. | YES | NO |

C. Does the LEP contain copies of all forms, guidelines, and worksheets developed by the RC to make annual reports to HUD and implement the Resident Homeownership Program in compliance with applicable Federal regulations?

YES

NO

D. Did the RC indicate that it will establish a Limited Equity Cooperative by the time it receives the HUD grant?

YES

NO

Page 5 of 5

3/94

USE FIELD OFFICE LETTERHEAD

NOTIFICATION TO NON-PURCHASING TENANTS
OF AVAILABLE PROTECTIONS

The owner of your project is going to sell name of your project to your Resident Council. After purchasing the project, the Resident Council will develop a Resident Homeownership Program that will enable residents to become homeowners. This means that those tenants who have expressed an interest in buying their units will be able to do so under this program. If you do not wish to buy your unit, you may continue to rent at (name of project) under reasonable terms and conditions for as long as you choose. You are also entitled to certain other protections.

1. The Resident Council will not displace you from the project as a result of the Resident Homeownership Program. You may only be evicted for serious or repeated violation of the terms and conditions of the lease, violation of applicable Federal, State or local law, or other good cause.
2. HUD will make sure that Section 8 rental assistance is available, if you qualify.
3. If you do not qualify for Section 8 rental assistance and your rent increases, the new rent will not exceed 30 percent of your adjusted monthly income or the Section 8 existing fair market rent, whichever is lower.
4. If HUD's approval of the Resident Homeownership Plan (RHP) results in an increase in rents (except for increases made necessary by increased operating costs), the Resident Council must phase-in the rent increase as follows:
 - A. If the total rent increase is at least 30 percent of your current total rental payment, the Resident Council must phase-in the increase in equal proportions over a period of not less than three years;

Page 1 of 2

3/94

4350.6-CHG.3

APPENDIX 9-5

- B. If the total increase is greater than ten percent but less than 30 percent of your current total rental payment (rent plus utility costs), the Resident Council must phase-in the rent in proportions that are no more than ten percent of

your current total rental payment each year.

If you were living in the project on (date of RHP approval) and have decided to move, the Resident Council, after getting estimates from moving and utility companies, will advise you in writing of its method for estimating your relocation expenses and how much it will pay for. They will inform you of the types of expenses that are eligible for reimbursement or may offer you a moving expense and dislocation allowance. If you move out of the area, the Resident Council does not have to pay more than it would have if you were moving within area. Costs for "special needs" due to a disability may be included in the moving expense allowance.

If you need additional information about the Resident Homeownership Program, please contact the Chief of the Loan Management Branch:

U.S. Department of Housing and Urban Development
ADDRESS, CITY, STATE AND ZIP CODE.

Sincerely,

Chief, Loan Management
Branch

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3/94

Page 2 of 2

[\[Search\]](#) [\[Prev List\]](#) [\[Doc List\]](#) [\[Next List\]](#) [\[First Doc\]](#) [\[Prev Doc\]](#) [\[Curr Doc\]](#) [\[Next Doc\]](#) [\[Last Doc\]](#)
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HUD Handbook 4350.6, Procesing Plans of Action Under the Low

Directive Number: [\[Prev Hit\]](#)[\[Next Hit\]](#)**4350.6**

4350.6-CHG.2

APPENDIX 10-1

FIELD OFFICE LETTERHEAD

NOTIFICATION TO TENANTS OF ACCEPTANCE OF PREPAYMENT

The Department of Housing and Urban Development (HUD) has approved (choose one: (1) a prepayment of the mortgage or (2) termination of the mortgage insurance contract) on (name of project). We were able to do this because we felt assured that rent increases for current tenants would not be more than they could afford. (Include if applicable: We also know that comparable affordable housing is available in your area.)

The owner has signed an agreement that will keep your rents from increasing more than certain amounts each year until (date mortgage expires). These rules do not apply to new people who may want to move into the project.

You can learn what the rules are for rent increases or the ways that the owner or HUD can help you by contacting HUD at the address shown above. You should also contact HUD if you think that the owner is violating the rules for rent increases in the agreement signed with us.

Sincerely,

Chief, Loan Management Branch
U.S. Department of HUD

Page 1 of 1

10/93

4350.6-CHG.2

APPENDIX 10-2

FIELD OFFICE LETTERHEAD

NOTIFICATION TO TENANTS OF AVAILABLE PROTECTION

The owners of (name of project) have decided to prepay the mortgage insured or held by the Department of Housing and Urban Development (HUD). This means that the apartment in which you live may no longer be kept affordable for you. However, there are certain things the owners and HUD must do to protect you. They are:

1. The owners will review tenant lists and determine whose rents may increase so much that they may have to move. HUD will give owners rules for making these decisions. The owners will send HUD the names of the tenants who are identified.
2. The owners and HUD will work with owners of other housing in the area to help you find suitable housing. If you are on the list, HUD will send you a list of available comparable housing you may consider.
3. The owners will pay at least half your expenses for moving. They may decide how much the move is likely to cost you after getting estimates from moving and utility companies. However, if you disagree, you may give them a list of your expenses based on your situation. If you move out of the area, they do not have to pay more than they would have if you were moving within the area unless your costs will be higher because of your own needs. If there is no available comparable housing in your area, the owner has to pay the costs for moving you to the closest available comparable housing. You and the owner must agree, in writing, on the cost of relocation and the amount to be reimbursed.
4. There are some circumstances in which you may not be forced to move for at least three years even if there are other apartments available for you. These circumstances are:
 - a. If you lived at the project on (insert date of Initial NOI);

4350.6-CHG.2

APPENDIX 10-2

and

- b. Your household contains either:

A person who is 62 years old or older or disabled (you may contact the HUD Office, if

necessary, to determine if your disability meets HUD's criteria); or

Your family contains five or more persons and needs an apartment with at least three bedrooms.

Rents for those three years may only be raised for normal operating expenses, but not due to the owner's decision to prepay the mortgage.

5. In cases where the owners cannot force you to move before the end of three years, they may give you incentives to voluntarily move before that time. If you get an incentive to move, the rent you pay cannot be higher than what you would have paid if you had not moved. If necessary, the owner will pay part of the rent your new landlord charges in order to keep your rent payment the same as it is now. The incentives, which could include increased relocation costs, will be decided between each eligible person and the owner. It will not be decided for the project as a whole.
6. While we cannot guarantee it, in some cases HUD can give you Section 8 rental assistance to help pay your rent whether or not you move from the project.

If you have any comments, or if, in the future, you believe that the owner is not following these procedures properly, please contact the HUD Field Office at:

Chief, Loan Management Branch
U.S. Department of Housing and Urban Development
ADDRESS, CITY, STATE AND ZIP CODE.

Sincerely,

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10/93

Page 2 of 2

4350.6-CHG.2

APPENDIX 10-3

FIELD OFFICE LETTERHEAD

NOTIFICATION TO TENANTS IN LOW-VACANCY AREAS
OF AVAILABLE PROTECTION

The owners of (name of project) have decided to prepay the mortgage held or insured by the Department of Housing and Urban Development (HUD). This means the owner of your apartment may raise the rents.

If you were living in the project on (Date of Initial

Notice of Intent), you may not be forced to move for at least three years even if there are other apartments available for you. In addition, rents for those three years may not be raised except for normal operating expenses due to the owner's decision to prepay the mortgage. At least three months before you may be affected by higher rents, the owner will identify those tenants who may have to move because of higher rents. HUD will give the owners rules for making this decision. The owner will work with managers of other housing in the area to help you to find suitable housing.

You may not wish to wait until the three years end before looking for other housing, since you can move at any time up to then. In fact, if you and the owner agree, the owner may give you incentives to voluntarily move before that time. If you get an incentive to move, the rent you pay cannot be higher than what you would have paid if you had not moved. If necessary, the owner will pay part of the rent your new landlord charges in order to keep your payment the same as it is now. The incentives, which could also include relocation costs which are higher than the owner is required to pay, will be decided between each eligible person and the owner. It will not be decided for the project as a whole. The owner, however, may not discriminate in providing these benefits and must meet Federal antidiscrimination standards.

If you did not live at the project on the date shown above, your rents can be raised, so long as you were told that the project may be prepaid when you moved in. The owners will review tenant lists to determine who may not be able to continue to afford to live there. HUD will give

4350.6-CHG.2

APPENDIX 10-3

owners the rules for making these decisions. The owners will send to HUD the names of all tenants who may be forced to move. The owners and HUD will work with owners of other housing in the area to help you to find suitable housing. If you are on the list, HUD will send you a list of available comparable housing you may wish to consider.

In either case, the owners will pay at least half your expenses for moving. They may decide how much the move is likely to cost you after getting estimates from moving and utility companies. However, if you disagree, you may give them a list of your expenses based on your own situation. If you move out of the area, they do not have to pay more than they would have if you were moving within the area unless your costs are higher due to your own needs. If there is no available comparable housing in your area, the owners have to pay the costs for moving to the closest available comparable housing. You and the owner must agree, in writing, on the

cost of relocation and on the amount to be reimbursed.

While we cannot guarantee it, in some cases HUD can give you Section 8 rental assistance to help pay your rent after you move.

If you have any comments, or if, in the future, you believe that the owner is not following these procedures properly, please contact the HUD Field Office at:

Chief, Loan Management Branch
U.S. Department of Housing and Urban Development
ADDRESS, CITY, STATE AND ZIP CODE.

Sincerely,

cc: For Posting

10/93

Page 2 of 2

4350.6-CHG.2

APPENDIX 10-3

FIELD OFFICE LETTERHEAD

NOTIFICATION TO TENANTS IN LOW-VACANCY AREAS
OF AVAILABLE PROTECTION

The owners of (name of project) have decided to prepay the mortgage held or insured by the Department of Housing and Urban Development (HUD). This means the owner of your apartment may raise the rents.

If you were living in the project on (Date of Initial Notice of Intent), you may not be forced to move for at least three years even if there are other apartments available for you. In addition, rents for those three years may not be raised except for normal operating expenses due to the owner's decision to prepay the mortgage. At least three months before you may be affected by higher rents, the owner will identify those tenants who may have to move because of higher rents. HUD will give the owners rules for making this decision. The owner will work with managers of other housing in the area to help you to find suitable housing.

You may not wish to wait until the three years end before looking for other housing, since you can move at any time up to then. In fact, if you and the owner agree, the owner may give you incentives to voluntarily move before that time. If you get an incentive to move, the rent you pay cannot be higher than what you would have paid if you had not moved. If necessary, the owner will pay part of the rent your new landlord charges in order to keep your payment the same as it is now. The incentives, which could also include relocation costs which are higher than the owner is required

to pay, will be decided between each eligible person and the owner. It will not be decided for the project as a whole. The owner, however, may not discriminate in providing these benefits and must meet Federal antidiscrimination standards.

If you did not live at the project on the date shown above, your rents can be raised, so long as you were told that the project may be prepaid when you moved in. The owners will review tenant lists to determine who may not be able to continue to afford to live there. HUD will give

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[\[Search\]](#) [\[Prev List\]](#) [\[Doc List\]](#) [\[Next List\]](#) [\[First Doc\]](#) [\[Prev Doc\]](#) [\[Curr Doc\]](#) [\[Next Doc\]](#) [\[Last Doc\]](#)
[\[Top\]](#) [\[Prev Hit\]](#) [\[Help\]](#)

[\[Search\]](#) [\[Prev List\]](#) [\[Doc List\]](#) [\[Next List\]](#) [\[First Doc\]](#) [\[Prev Doc\]](#) [\[Curr Doc\]](#) [\[Next Doc\]](#) [\[Last Doc\]](#)
[\[Bottom\]](#) [\[Next Hit\]](#) [\[Help\]](#) [\[Text Only\]](#)

HUD Handbook 4350.6, Procesing Plans of Action Under the Low

Directive Number: [\[Prev Hit\]](#)[\[Next Hit\]](#)4350.6

4350.6 CHG-4
APPENDIX 12-1

APPENDIX 12-1 CONTAINS FROM HUD-9808-B.

4350.6 CHG-4
APPENDIX 12-2

A Format for acknowledgement.

Dear _____:

Subject: Project Number
Project Name
City

The Plan of Action (POA) for the subject development was received in our Office on _____. We have reviewed the POA for completeness and found that:

Option 1

Your POA contains all the elements required by HUD Handbook 4350.6. Your POA will be reviewed by the State/Area Office. If deficiencies are noted, you will be notified within 60 days.

If you have any questions please contact _____ at _____.

=====
Option 2

Your POA does not contain all the elements required by Handbook 4350.6. Specifically, the following details were not included in your POA.

(Insert specific items missing)

Further review of your request will be initiated upon receipt of the above information.

If you have any questions please contact _____ at _____.

4350.6 CHG-4
APPENDIX 12-3

LOWER- AND MODERATE-INCOME MAXIMUM FLAT RENT FACTORS, FLOOR RENT FACTORS
AND 236 BASIC RENT FACTORS

FLAT RENT FACTORS

LOWER-INCOME

Income Bracket	2BR Size	Rent Factor
51-60% (of area median)	Studio	0.009625
	1	0.0103125
	2	0.012375
	3	0.01417968
	4	0.01546875
		0.01676

61-70%	Studio	0.011375
	1	0.0121875
	2	0.014625
	3	0.01675781
	4	0.01828125
		0.01980

71-80%	Studio	0.013125
	1	0.0140625
	2	0.016875
	3	0.01933593
	4	0.02109375
		0.02285

81-95%	Studio	0.0154
	1	0.0165
	2	0.0198
	3	0.0226875
	4	0.02475
		0.0268125

MODERATE-INCOME

FLOOR RENT FACTORS

0-50%	Studio	0.00875
	1	0.009375
	2	0.01125
	3	0.01289067
	4	0.0140625
		0.1523437

4350.6 CHG-4
APPENDIX 12-3

SECTION 236 "BASIC RENT" FACTORS FOR PROJECTS
APPROVED FOR SURPLUS CASH DISTRIBUTION

BR SIZE	LOWER-INCOME	MODERATE-INCOME
Studio	0.013125	0.01575

1	0.0140625	0.016875
2	0.016875	0.02025
3	0.01933593	0.02320313
4	0.02109375	0.0253125
5+	0.02285	0.02742

7/95

PAGE 2 OF 3

4350.6 CHG-4
APPENDIX 12-3

FACTORED RENTS (FRS) WORK SHEET

- A. Area Median Income
- B. National Median Income
- C. Effective Median Income

FRS

	STUDIO	1BR	2BR	3BR	4BR
51-60%					
61-70%					
71-80%					
81-95%					

PAGE 3 OF 3

7/95

4350.6 CHG-4
APPENDIX 12-4

APPENDIX 12-4 CONTAINS FORM HUD-90011-A.

[\[Search\]](#) [\[Prev List\]](#) [\[Doc List\]](#) [\[Next List\]](#) [\[First Doc\]](#) [\[Prev Doc\]](#) [\[Curr Doc\]](#) [\[Next Doc\]](#) [\[Last Doc\]](#)
[\[Top\]](#) [\[Prev Hit\]](#) [\[Help\]](#)