

CHAPTER 12. OTHER PROVISIONS

- 12-1. INTRODUCTION. The Section 312 Rehabilitation Loan Program must be administered in compliance with all applicable Federal statutes and regulations, as they may be amended from time to time, including, but not limited to statutes, regulations and executive orders pertaining to truth-in-lending, real estate settlement, flood plains and wetlands, freedom of information and privacy, equal opportunity, environmental review, lead-based paint, handicapped accessibility, cost effective energy conservation, labor standards and relocation. Each of these is summarized below.
- 12-2. TRUTH IN LENDING
- a. Applicable Statutes and Regulations. The applicable statutes and regulations are The Truth-in-Lending Act (15 U.S.C. 1601, et seq) and 12 CFR Part 226 (Regulation Z).
 - b. Requirements. See Paragraph 9-2-d of this Handbook for discussion of requirements.
- 12-3. REAL ESTATE SETTLEMENT
- a. Applicable Statutes and Regulations. The applicable statutes and regulations are The Real Estate Settlement Procedures Act of 1974 (RESPA) (12 U.S.C. 2601, et seq), as amended, and 24 CFR 3500.
 - b. Requirements. See Paragraphs 9-2-d and 9-2-g-(3) of this Handbook for discussion of these requirements.
- 12-4. FLOOD INSURANCE
- a. Applicable Statutes and Regulations. The National Flood Insurance Act of 1968 as amended by the Flood Disaster Protection Act of 1973, particularly Sections 102(a) and 202(a), are the applicable provisions (42 U.S.C. 4106(a) and 4012a(a)). Guidelines for the Mandatory Purchase of Flood Insurance were published at 43 Federal Register 7142-7148 on February 17, 1978. The regulations of the National Flood Insurance Program (44 CFR Parts 59 through 79) are of interest.
 - b. Requirements. There are two requirements for approving a Section 312 loan for a property located in a special flood hazard area

identified on flood maps issued by the Federal Emergency Management Agency (FEMA) under the National Flood Insurance Program (NFIP). The first requirement applies to the building owner, whose responsibility is threefold: (a) to purchase the

requisite flood insurance coverage; (b) to renew the coverage so that the flood insurance policy does not lapse during the mandatory period; and (c) to provide proof of purchase to the LPA processing the Section 312 loan, for inclusion in the loan file. (See Paragraph 9-2-e for additional requirements concerning hazard and flood insurance.)

The second requirement applies to the locality, whose responsibility is the following: (a) to establish and maintain its eligibility as a participant in the NFIP; otherwise new Section 312 loans are prohibited for buildings located in special flood hazard areas by Section 202(a) of the Act; and (b) to comply with Section 102(a), which prohibits Section 312 assistance in a special flood hazard area, unless the property is covered by flood insurance; for this the LPA must check NFIP flood maps against property locations to determine whether properties to be assisted are located in special flood hazard areas and require flood insurance. See Paragraph 9-2-e which sets forth additional loan processing responsibilities of the LPA, including obtaining proof of purchase of flood insurance where necessary.

c. Underwriting Loans In Special Flood Hazard Areas

- (1) In completing the flood insurance application form (see Exhibit 12-1, which is a copy of FEMA Form 81-16) the loan applicant or the LPA should indicate the name and address (item #6 or #7 on FEMA Form 81-16) of the Master Servicer. Thereafter, the national flood insurance renewal premium notice and national flood insurance expiration reissue premium notice will be forwarded automatically by FEMA to the Master Servicer and also forwarded to the insured (see Exhibits 12-2 and 12-3). The amount of flood insurance coverage required need not exceed the outstanding principal balance of the loan and must be continued for the term of the loan. If the loan is in the first lien position, the insurance premium is escrowed monthly by the Master Servicer. If the loan is a subordinate lien, the Mortgagor, at loan closing, must show evidence that HUD has been added as a lienholder on an existing flood insurance policy and that the insurance is an amount sufficient to protect HUD's interest. If payments on an existing flood insurance policy are not being escrowed by a superior lienholder or the LPA in accordance with Paragraph 9-2-e of this Handbook, the Mortgagor agrees to pay all premiums promptly and submit to HUD for examination receipts or other evidence of payment. Flood insurance premium renewal binders are customarily forwarded to the Master Servicer by the insurer as HUD is named as lienholder on the policy.

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- (2) The borrower must document to the LPA prior to loan settlement that he/she has all required flood insurance.

This proof of insurance must be documented either with a policy declaration issued to the borrower (see Exhibit 12-4 for a sample Policy Declaration issued by the National Flood Insurance Program to homeowners, which is used for this purpose) or with a fully executed copy of the flood insurance application form (Exhibit 12-1) issued by the insurance agent as a paid receipt.

- (3) Should the locality lose its eligibility for participation in the National Flood Insurance Program (NFIP), flood insurance would no longer be available to residents in that locality and the assisted owner's responsibility to renew an existing flood insurance policy would automatically be terminated.
- (4) Elevating the basement of buildings or otherwise flood proofing a building (in accord with NFIP standards or in compliance with Executive Order 11988) does not remove the legal obligation to purchase and maintain flood insurance for the life of the loan, so long as the building remains located in the designated special flood hazard area; such precautions are generally designed to reduce the potential of flooding damage to buildings, but do not eliminate potential flooding or financial loss caused by flooding. To obtain information about the insurability of any particular property, contact your local property insurance agent or the NFIP's servicing contractor at toll-free number (800) 638-6620.
- (5) For further guidance, contact the Environmental Officer in the HUD Field Office.

12-5. FREEDOM OF INFORMATION AND PRIVACY ACTS

- a. Applicable Statutes and Regulations. Applicable statutes and regulations are The Freedom of Information Act (5 U.S.C. 552), 24 CFR Part 15, and The Privacy Act of 1974 (5 U.S.C. 552a), 24 CFR Part 16.
- b. Requirements
 - (1) Freedom of Information Act
 - (a) Records and Information in HUD Custody. HUD procedures under the Freedom of Information Act (5 U.S.C. 552) concerning disclosure to the public of records and information in HUD's custody are contained in 24 CFR Part 15.

- (b) Records and Information in Local Records Custody. Requests from the public for records or information in local custody are governed by State and local law,

except as otherwise provided in this Section.

(2) Privacy Act

- (a) Records and Information in HUD Custody. Information in the custody of HUD, including HUD's contractors (not LPA's) and loan servicers, which is retrievable by the name or other identifier of a Section 312 applicant or borrower is subject to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a) and 24 CFR Part 16.
- (b) Records and Information in Local Custody. Section 312 records or information in local custody are not subject to the Privacy Act of 1974. However, it is HUD's administrative policy under the Section 312 Loan Program that State and local officials must not permit the release of any records or information concerning any applicant or borrower that would constitute a "clearly unwarranted invasion of personal privacy" within the meaning of 5 U.S.C. 552 (b) (6) unless required under local or state law. In applying this standard, HUD, State, and local officials may release:
 - 1 The name of the borrower or applicant.
 - 2 The address of the property.
 - 3 The proposed or actual amount of the loan.

12-6. RIGHT TO FINANCIAL PRIVACY ACT

- a. Applicable Statutes & Regulation. The applicable statute is the Right to Financial Privacy Act (12 U.S.C. 3401).
- b. Requirements. HUD, any locality and any person or organization acting for HUD or the locality, must comply with the Right to Financial Privacy Act (12 U.S.C. 3401) in obtaining financial records or information from any financial institution, concerning any individual or any partnership of five or fewer individuals in connection with any Section 312 loan.

The LPA must notify the applicant that HUD has the right of access to such documents. The Guideform that appears as Exhibit 12-5, Financial Privacy Notice to Applicants, may be used for such notice. Where financial information must be obtained or verified for co-signors or endorsers, the individual concerned must

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authorize the financial institution and/or any servicing agent to release such information to HUD. The Guideform that appears

as Exhibit 12-6, Customer Authorization of Disclosure of Financial Records, may be used for this purpose. The failure of the loan applicant to authorize such disclosure of necessary financial information is grounds for disapproval of the Section 312 loan.

HUD must certify to each financial institution from which financial records or information are requested by or on HUD's behalf that HUD is acting in compliance with the Right To Financial Privacy Act. The Guideform that appears as Exhibit 12-7, Certification to Financial Institution, may be used for this purpose.

Similarly, the LPA, HUD or any loan servicer acting for HUD under contract shall have the same documents completed by the corresponding parties in connection with each application to assume a Section 312 loan.

Financial records and information may be used only for the purposes for which they were originally obtained.

12-7. EQUAL OPPORTUNITY

- a. Applicable Statutes and Regulations. The applicable statutes and regulations are: Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and 24 CFR Part 1; Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601), as amended; Executive Order 11063, as amended by Executive Order 12259; Executive Order 11246 (41 CFR Chapter 60); Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 170), as amended, (24 CFR Part 135); The Equal Credit Opportunity Act of 1976 (15 U.S.C. 1691) (12 CFR Part 202); 24 CFR 200.600; Section 504 of The Rehabilitation Act of 1973 (29 U.S.C. 794), as amended; the Age Discrimination Act of 1975 (42 U.S.C. 6101); Executive Orders 11625, 12432 and 12138.
- b. Requirements
 - (1) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, et seq.) and 24 CFR Part 1, requires that no person be subjected to Discrimination under this Program on the basis of race, color, or national origin.
 - (2) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601, et seq.), as amended, requires that the Program affirmatively further fair housing, and prohibits discrimination against persons on the basis of race, color, religion, sex or national origin.

- (3) Executive Order 11063, as amended by Executive Order 12259, prohibits discrimination on the basis of color, religion, sex or national origin in the sale and rental of housing

improved under the Program.

The borrower must ensure that rehabilitated units be marketed for rental or sale in a manner to affirmatively further fair housing to carry out HUD'S responsibilities under Title VIII of The Civil Rights Act of 1968, Section 8C8 (e)(5). If a rehabilitated unit is advertised for rental or sale, it must be done in a manner which will inform persons who would otherwise be least likely to apply for the unit. The "Equal Opportunity" logo must be displayed in all advertising. Fair housing posters shall be displayed wherever rental transactions occur.

Investment-owner borrowers and all multi-family loan applicants must certify that for the life of the Section 312 loan, whenever rental units become vacant or the property is sold, these units will be affirmatively marketed to attract tenants or buyers, regardless of sex, of all minority and majority groups. See Exhibit 12-8, Certification of Property Owners Participating in the Section 312 Rehabilitation Loan Program to Affirmatively Market Vacant Units, for a suggested guideform.

- (4) Executive Order 11246, 41 CFR Chapter 60, requires that no person shall be discriminated against during the performance of non-exempt construction contracts under the program, based on race, color, religion, sex, or national origin. Contractors and subcontractors participating in the program must take affirmative action to ensure fair treatment in employment, upgrading, demotion, transfer, recruitment and recruitment advertising; lay-off and termination; rates of pay and compensation; and selection for training and apprenticeship. Construction contracts are only exempt if the contractor or subcontractors have engaged in \$10,000 or less of otherwise exempt contracts in any twelve month period, or if an exemption is otherwise granted by the Director of the Office of Federal Contract Compliance Programs.
- (5) Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u.), as amended, and 24 CFR Part 135, require that, to the greatest extent feasible, opportunities for training and employment arising in connection with any project assisted by the program be given to lower income persons residing within the unit of local government or the metropolitan area (or non-metropolitan county), as determined by the Secretary. Contracts awarded in connection with the Program must, to the greatest extent feasible, be awarded to eligible business concerns which are located in, or are owned in substantial

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part by persons residing in the same metropolitan area (or

non-metropolitan county) as the project.

In selecting a local financial institution to serve as the recipient of electronic fund transfers of loan disbursements, the locality must consider any local minority financial institutions approved by the Treasury Department for this purpose.

- (6) The Equal Credit Opportunity Act of 1976 (15 U.S.C. 1691), and 12 CFR Part 202, require that no person be denied credit based on race, color, religion, national origin, sex, marital status, age (as long as there is the legal capacity to enter into a contract), public assistance as an income source, or the exercise of any right under the Consumer Credit Protection Act of 1976 (15 U.S.C. 1601).

LPA's must pay particular attention to the Equal Credit and Opportunity Act of 1976 when underwriting loans, including but not limited to the following requirements:

- (a) Borrower's Age. Loan assistance must not be denied solely and exclusively because of a borrower's age (providing the borrower has the capacity to enter into a binding contract). However, age may be considered for the purpose of determining a pertinent element of creditworthiness. Thus, if a borrower's age indicates that he or she is nearing retirement, the LPA may consider whether the borrower's retirement income will support the extension of credit until the maturity of the loan. In such cases, however, the LPA may also give more weight to the adequacy of any security offered if the term of the loan will exceed the life expectancy of the borrower.
- (b) Intentions Relative to Bearing and Rearing Children. Assumptions that any group of persons will bear or rear children and/or, for that reason, will receive diminished or interrupted income in the future must not be used in evaluating the creditworthiness of a borrower. Information about intentions concerning the bearing or rearing of children may not be requested. This does not preclude inquiries about the number and ages of a borrower's dependents or about dependent-related financial obligations or expenditures provided such information is requested without regard to sex or marital status.

- (c) Part-Time Employment, Annuity or Pension. The income of either a borrower or the spouse of a borrower must not be discounted or excluded from consideration because the income is derived from part-time employment, or from an annuity, pension,

or other retirement benefit. However, the amount and probable continuance of such income may be considered in evaluating the borrower's creditworthiness.

- (d) Alimony, Child Support, or Separation Maintenance. The borrower may choose to declare or not to declare income from other sources such as maintenance, child support, alimony etc. However, where the borrower receives alimony, child support, or separation maintenance payments, such payments must be likely to be consistently received by the borrower to be considered income. Supportive documentation to this effect may include, but not be limited to, a written agreement or court order, length of time and regularity of receipt, availability of procedures to compel payment and the creditworthiness of the payor.

If the borrower chooses to declare such payments, this income will be counted for both purposes of underwriting the Section 312 loan, and for determining eligibility for a 3% loan.

Income from alimony, child support, or separation maintenance payments need not be revealed if the borrower does not wish such income to be considered in the LPA assessment for a Section 312 loan. However, if the borrower chooses not to reveal this income, they become ineligible for a 3% Section 312 loan.

- (e) The Borrower's Spouse. The LPA may request information concerning the borrower's spouse (or former spouse if the borrower is relying on alimony, child support, or separation maintenance payments as a basis of repayment) if the spouse will be contractually liable; if the borrower is relying on the spouse's income as a basis for repayment of the loan; or if the borrower resides in a community property state or the property upon which the borrower is relying as a basis for repayment of the loan requested is located in such a state.

The credit history of accounts that the borrower and a spouse are permitted to use or for which both are contractually liable may be considered in evaluating the creditworthiness of an applicant, as well as any information that the borrower may present tending to

indicate that the credit history being considered does not accurately reflect the borrower's

creditworthiness.

- (f) Sex of Borrower. The LPA must not ask the sex of a borrower. The borrower may be requested to designate a title, such as Ms., Miss., Mrs., or Mr., if the form appropriately discloses that the title is optional.
- (7) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended, requires that no otherwise qualified handicapped individual be subjected to discrimination solely because of handicap, in any program or activity which receives Federal assistance. Properties rehabilitated with Section 312 funds must also meet accessibility requirements under Paragraph 12-11 of this Handbook.
- (8) The Age Discrimination Act of 1975 (42 U.S.C. 6101), as amended, prohibits discrimination based on age in programs or activities receiving federal financial assistance.
- (9) Executive Orders 11625, 12432 and 12138 require that efforts be made to encourage the use of minority and women's business enterprises in connection with federally funded programs. The LPA must keep records of the extent (number and dollar amount) of participation by minority and women owned businesses, including owners, and must assess the results of its efforts to encourage the use of these businesses. Such efforts may include the following, or other efforts appropriate to the Section 312 activity of the LPA: (a) establishing local dollar or other measurable targets based on factors that the LPA regards as appropriate and related to the purpose of its Section 312 Program activity; (b) including qualified minority and women's businesses on bid solicitation lists, if any; (c) using the services and assistance of the Minority Business Development Agency of the Department of Commerce and the Interagency Committee on Women's Business Enterprise, as needed and (d) requiring prime contractors to take affirmative action with regard to minority and women owned businesses in letting subcontracts.

12-8. ENVIRONMENTAL REVIEW

- a. Applicable Statutes and Regulations. The National Environmental Policy Act (NEPA) (42 U.S.C. 4321, et seq.); the Council on Environmental Quality (CEQ) Regulations (40 CFR Parts 1500-1508); and implementing Rules issued by HUD, namely 24 CFR Part 50 for Department-administered programs subject to environmental review and 24 CFR Part 58 for authorized grant recipients of HUD financial assistance subject to environmental review. Other environmental

statutes, Executive Orders and HUD standards, with which HUD and/or applicants must comply where applicable, are cited in 24 CFR Parts 50.4 and 58.5. Guidelines are provided in the HUD publication entitled "Environmental Review Guide for Community Development Block Grant Programs" (HUD-CPD-782, January 1985).

b. Requirements

- (1) LPA Demonstration of Compliance and HUD Approval. Prior to the approval of loans for individual properties, the LPA must demonstrate compliance with the National Environmental Policy Act (NEPA), as implemented by regulations issued by the Council on Environmental Quality (CEQ), and any related authorities cited in HUD Regulations 24 CFR Part 58, Section 58.5 (or 24 CFR Part 50, Section 50.4) which are triggered by the particular loan proposal.

The environmental review responsibilities for the Section 312 Loan Program ultimately rest with HUD, under 24 CFR Part 50, so HUD must review and approve LPA evidence of compliance. However, HUD provides for local participation in the process as follows: (1) HUD may adopt a prior environmental review where the locality, for purposes of its separate CDBG, UDAG, HoDAG or Rental Rehabilitation Program, has completed a review in that target area which includes the review of rehabilitation activity of the type contemplated by the Section 312 loan or (2) where there is no such prior review, HUD requires the LPA to provide documentation that will enable HUD to complete the review.

If HUD finds, after reviewing the locality's prior review or the LPA's environmental review documentation, that further action is required to fully comply with the applicable federal statutes and regulations, HUD must complete such compliance actions. Alternatively, HUD may require that the LPA conduct a new review or partial review to comply with the applicable federal authorities. In either case, the LPA must not approve the Section 312 loan until HUD authorization to proceed is received; upon notification by HUD that the environmental review process is complete, the locality may proceed with Section 312 loan approval. Whether localities are otherwise authorized to approve loans without other referral to HUD or whether they do not have such local loan approval authority, the LPA must submit its environmental review documents to HUD. Localities without loan approval authority must submit their environmental documents along with the Section 312 application for which approval is recommended, and HUD must not approve the Section 312 loan until HUD determines that the environmental review process is complete. For cities with local loan approval authority, environmental review documents

do not have to be submitted with each Section 312 Loan application, but may be submitted on an annual or batching basis, if there is or is not a prior review. This submission must be made prior to any Section 312 loan approvals.

- (2) "Batching" of Environmental Reviews. Although the environmental requirements apply to each individual loan action, the required review and compliance may address all similar rehabilitation activity in any given project area; thus one review process may be used for all Section 312 actions where they involve a specific and fairly contiguous area. This applies to cases in which the LPA is able to submit a prior locality review (e.g. prepared under the CDBG Program) and in cases where there is no prior review. Where several prospective Section 312 properties are "batched" in a single review and HUD determines that some additional environmental requirements apply to one or more but not all of the properties, HUD may authorize approval of the loans not so affected.
- (3) Environmental Review Formats & Guidance. For purposes of the Section 312 Program, the LPA or locality may proceed with its environmental review in accordance with the procedures and review formats prescribed in 24 CFR Part 58 (see Exhibits 12-9 and 12-10). For further information on assessment methods and techniques, refer to HUD publication HUD-CPD-782, Environmental Review Guide for Community Development Block Grant Program. The Environmental Review Guide contains a great deal of information regarding all aspects of the environmental review process which LPA's will find valuable. It is important that LPA's secure a copy of this and the HUD formats from the HUD Field Office. The HUD Field Office Environmental Officer can provide additional guidance.
- (4) Categorical Exclusions and Exempt Activities
 - (a) Exclusions Under NEPA. Sections 58.35 (or Section 50.20) of HUD regulations identifies categorical exclusions under NEPA. Exclusions are types of activities, including levels of rehabilitation activity, that normally do not require any compliance with NEPA. Under 24 Part 50, (but presently not under 24 Part 58) individual loan actions on structures involving 1-to-4 dwelling units are excluded; therefore, in preparing a local review, no NEPA review of 1-to-4 unit loan actions or evidence of such review, is required. Also some activities are exempt (generally meaning they are excluded under NEPA, and it is also found that none of the other environmental authorities of Section 58.5 (or 50.4) are applicable). Section 312 reviews should

identify whether the exclusions apply and briefly indicate why activities are excluded or exempt. For efficient management of the process, the applicability of exclusions should be determined at a very early stage. In cases where all loan activity is categorically excluded, the locality should use only the Statutory Checklist pursuant to Paragraph 12-8-b-(4)-(b) of this Handbook (Exhibit 12-9).

- (b) Other NEPA-Related Authorities. Categorical exclusions are available under NEPA only, so that even where Section 312 loan activity is so excluded, compliance with the related authorities in Section 58.5 of 24 Part 58 (or Section 50.4 of 24 Part 50) is required if any such authorities are triggered by the proposed loan activity, such as historic preservation or floodplain management authorities. Therefore, in commencing the environmental review process, the locality should determine the applicability of any of the NEPA-related authorities. To do so, the locality must complete the Statutory Checklist found in HUD's environmental review formats and publication HUD-CPD-782 (Exhibit 12-9).

If it is found that the nature and location of the Section 312 loan action do not trigger any of the NEPA-related authorities, no further environmental requirements apply to them. However, evidence of this examination and the use of resource identification procedures under the related authorities must be documented in the checklist for HUD review. (It is possible that loan activity may be both categorically excluded under NEPA and free from requirements of the NEPA-related authorities, based on examination and findings.)

Where applicable, each authority has its own process for compliance. If an action would not require an Environmental Impact Statement (EIS) under NEPA, it will not normally require an EIS where the impacts arise solely under any NEPA-related authority.

- (5) Environmental Assessment. If the proposed rehabilitation is not categorically excluded in accordance with Paragraph 12-8-c-(4) of this Handbook, and if there is no adequate prior review of rehabilitation in the area or of the proposed rehabilitation of the property in accordance with Paragraph 12-8-b-(1) of this Handbook, the locality must conduct an Environmental Assessment to gather information as to whether the proposed rehabilitation could significantly affect the quality of the human environment. This assessment may address

all similar rehabilitation activity in any given project area, in accordance with Paragraph 12-8-b-(2) of this handbook.

To conduct the Environmental Assessment, the locality must complete the Statutory Checklist and the Environmental Assessment Checklist found in HUD's CDBG environmental review formats and in HUD Publication CPD-782 (Exhibits 12-9 and 12-10, or other equivalent forms). For additional information on the documentation that must be sent to HUD, and on the actions HUD may take after it receives the locality's assessment, see Paragraph 12-8-c of this Handbook.

- (6) Environmental Impact Statement (EIS). An EIS is rarely required for Section 312 loan activities, but it is possible. For example, if it is determined that a single loan for a large-scale multifamily project could have "significant impact" on the human environment under NEPA, an EIS would be required. The need for an EIS may be disclosed from findings in an Environmental Assessment or from readily apparent factors which indicate significant environmental impact. The preparation of an EIS both draft and Final is covered in Subpart I of 24 CFR Part 58 (or Subpart F of 24 CFR Part 50). All environmental issues of significance, alternatives to the proposed actions, and the means to mitigate effects must be presented. HUD requires that, at least, the Final EIS address issues under the NEPA-related authorities as well as the issues arising under NEPA. If the LPA believes that an EIS is required, but was not previously prepared, the locality should; (1) contact the Environmental Officer in the HUD Field Office; and (2) determine appropriate roles of lead and cooperating Agency with HUD. HUD participation as Lead Agency and LPA participation as a Cooperating Agency in preparing the EIS would be expected, pursuant to CEQ regulations 40 CFR 1506.5(c).
- (7) Finding of No Significant Impact (FONSI). A FONSI is required under CEQ's NEPA process and HUD regulations where actions (loan activities) are not categorically excluded and an Environmental Assessment indicates that the proposed rehabilitation action will not significantly affect the quality of the human environment, and therefore will not require an EIS. Thus, the FONSI is based on and results from an Environmental Assessment. A FONSI is not required (nor is an assessment under NEPA) when all loan activity is categorically excluded. The review process established by CEQ under NEPA provides for a FONSI for all other cases where it is determined that an EIS is not required. FONSI's, where required, must be prepared by HUD unless the locality previously prepared and issued one

for broader purposes as described in Paragraph 12-8-c-(1) of this Handbook. Under

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Part 50, since HUD's environmental review process includes reviews under the NEPA-related authorities as well as NEPA, HUD will not issue any needed FONSI (and the required FONSI Notice) until all applicable authorities have been met and impacts have been evaluated, or until HUD approves or accepts the locality's reviews. In contrast, under Part 58, a FONSI and FONSI notice are not required in the case where all loan activities are both categorically excluded under NEPA and none of the related authorities are found applicable.

- (8) Compliance with NEPA-Related Authorities. As indicated, the required environmental review Process includes compliance with each of the NEPA-related authorities cited in 24 CFR Section 58.5, or in 24 CFR Section 50.4. Unless, as described below, a locality for other purposes already has complied with all the applicable authorities, HUD should be a party to any Agreements and review any practicable alternatives where applicable authorities require them.
- (9) Historic Preservation. For communities which have completed an assessment for purposes of a HoDAG or Rental Rehabilitation program and, specifically where needed, have complied with the historic preservation procedure of 24 CFR Section 58.17, HUD currently must determine whether any additional steps are needed in order to assure that Section 312 rehabilitation activity complies with 36 CFR Part 800 which is applicable to HUD (and to CDBG communities) but not to HoDAG or Rental Rehabilitation programs. However, if any Memorandum of Agreement on historic properties has been duly executed by the locality and the Advisory Council on Historic Preservation, or if there is other evidence that the locality has accepted comments which may have been obtained from the Advisory Council affecting the Section 312 loan property, this shall be evidence that historic preservation requirements have been met and therefore HUD need not take any additional steps with respect to these requirements. Conversely, any remaining historic preservation requirements shall be completed in concert with HUD, in accord with 36 CFR Part 800. If completion of these requirements will entail a Memorandum of Agreement with the Advisory Council on Historic Preservation, HUD and the locality as well as the Advisory Council must be parties to the Agreement and the State Historic Preservation Officer shall be given an opportunity to be a party to it.
- (10) Cases Where State Law Requires Environmental Review. In

cases where state law requires environmental review of proposed rehabilitation activity, a single environmental review meeting State requirements and the requirements of 24 Part 58 (or Part 50) may be employed or prepared.

c. Documentation to HUD and Resulting Action

- (1) Cases of Completed Prior Reviews. If, under a separate CDBG, UDAG, HoDAG or Rental Rehabilitation Program, the locality has completed an environmental review for rehabilitation for the property or the area for which a Section 312 loan is proposed, it must send HUD the review documents and any findings of environmentally exempt activities and categorical exclusions, and any other tangible evidence of compliance with applicable federal authorities from its Environmental Review Record. In the case of rehabilitation activity that is categorically excluded from NEPA but not exempt from all related authorities, evidence of compliance with the related authorities must be included. If HUD finds the prior review and compliances adequate, it will notify the locality that it has adopted the review and will authorize the loan actions. If HUD finds that further compliance action is required, HUD will complete the compliance and possibly involve the locality in the compliance, (e.g., a needed Memorandum of Agreement where historic property may be adversely affected) before authorizing the commencement of loan activities.
- (2) Cases of New Reviews. If a locality must undertake an Environmental Assessment in an area or on a particular property because there is no adequate prior review, the locality must send HUD its environmental review documents and findings, including identification of the property involved, based on the locality's use of HUD publication HUD-CPD-782 and HUD regulations 24 CFR Part 58. These environmental review documents and findings must be prepared in accordance with Paragraph 12-8-b of this Handbook. HUD will review the local documentation and will complete any further compliance action that may be needed, in accord with 24 CFR Part 50 and the authorities cited in Section 50.4. If remaining compliance requires Agreements with a third party, HUD and the locality will be parties to the Agreement (as in the case of historic preservation requirements). If compliance requires the consideration of practicable alternatives (as in the case of floodplains or wetlands) HUD must concur in the locality's selection and treatment of practicable alternatives. If compliance with environmental authorities requires the use or publication of public notices, HUD will issue them.
- (3) HUD Approval. Upon finding that all applicable

environmental authorities have been met, HUD will authorize the commencement of loan activities.

- (a) Any conditions or agreements resulting from locally completed compliance under 24 CFR 58 or from HUD's completion of compliance under 24 CFR 50 must be

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in the approval of a loan and in the execution of rehabilitation activity. Also, where proposed rehabilitation activities are subject to State environmental permits, these must be obtained prior to the commencement of the activities.

- (b) Where a single environmental review addresses a number of proposed loan properties but one or more of the properties requires additional compliance action, HUD may authorize loan actions for properties for which compliance has been achieved or for which compliance action is not required. Loan action on the remaining property is contingent upon a HUD notice that indicates completion of requirements.
- (4) Recommended Approach. LPA's are encouraged to work closely with their locality's CDBG program office and to make use of appropriate environmental reviews the locality has completed or is planning to undertake. Where the LPA must prepare new assessments and reviews, it should develop a systematic review process, which ultimately will save time and effort. In this approach, the LPA should make appropriate use of categorical exclusions for NEPA purposes and the Statutory Checklist for related authorities. This will help identify (i) whether categorical exclusions apply, and (ii) whether any NEPA-related authorities of Section 58.5 of 24 CFR Part 58 (or Section 50.4, 24 CFR Part 50) apply. Grouping actions which are both categorically excluded under NEPA (including actions on 1-to-4 family housing properties) and which do not trigger any related authorities will help expedite HUD's ability to authorize loan actions. Then, by grouping loan actions which require a NEPA assessment or EIS and compliance with particular related authorities, the LPA may employ a common compliance strategy. This also will expedite compliance for these loan actions and HUD's approval to proceed.

12-9. LEAD-BASED PAINT

- a. Applicable Statutes and Regulations. Applicable statutes and regulations are the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801, et seq) and HUD Lead-Based Paint Regulations, 24 CFR Part 35.

- b. Requirements. Regulations are subject to court ordered rulemaking carried out by the Department in 1986. Rehabilitation financed in whole or in part by a Section 312 loan must comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4301) and 24 CFR Part 35, as amended. The LPA must ensure that immediate lead-based paint hazards are identified and treated as part of the

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required work under an approved Section 312 loan. Specifically, the applicable lead-based paint rules require:

- (1) That the treatment of identified immediate lead-based paint hazards in residential structures will be in accord with 24 CFR 35.24(b)(3);
 - (2) That the LPA notify all owners and tenants of pre-1950 residential structures of the possible existence and potential hazards of lead-based paint poisoning, and of the precautions to be taken to avoid lead-based paint poisoning;
 - (3) That the borrower's agreement to comply with this Paragraph will be a condition of receiving a Section 312 loan. The locality is responsible for identifying and assuring the treatment of immediate lead-based paint hazards as part of the required work under an approved Section 312 loan.
- c. Rehabilitation Contract - Lead-Based Paint Requirements. The LPA must require that all rehabilitation contracts and subcontracts between contractors and the borrowers, and all Self-Help Agreements, include provisions for work necessary to eliminate existing lead-based paint hazards on applicable surfaces and for the prohibition of the use of lead-based paint on applicable surfaces, as required by the Department's final lead-based paint regulations. The construction contract between the contractor and the borrower or, if applicable, the self-help agreement between LPA and the borrower must contain the necessary provisions.
- d. Information Available. Brochures on the hazards of lead-based paint and methods for eliminating such hazards are available from the HUD Field Office for distribution to applicants.

12-10. ASBESTOS

- a. Applicable Statutes and Regulations. The applicable federal regulations are United States Environmental Protection Agency (USEPA) Standards for Hazardous Air Pollutants (NESHAPS); Asbestos Regulations (40 CFR 61, Subpart M); and the U.S. Department of Labor Occupational Health and Safety (OSHA)

Asbestos Regulations (29 CFR 1910.1001). In addition, state and local authorities may have asbestos regulations and codes.

b. Requirements

(1) Federal

- (a) OSHA: OSHA Regulations apply to all private sector work places where there is an employee/employer relationship

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(for example, between a contractor and his workers), where asbestos is present.

- (b) USEPA: USEPA standards and NESHAPS regulations apply to all commercial, institutional and industrial structures, and residential properties of five or more units. EPA regulations and standards apply in two cases:

- 1 Renovation, where 260 linear feet of pipe wrap or 160 square feet of asbestos materials from other surfaces are to be removed from the premises; and
- 2 Demolition, where any asbestos is to be removed. Demolition is defined as "the wrecking or taking out of any load supporting structural member of a facility together with any related handling operations."

In such cases, EPA must be notified immediately and removal regulations apply.

(2) State and Local

States, counties and cities may also have asbestos regulations and codes. These codes may be different or more stringent than the federal regulations, and the LPA should also check with the various appropriate local and state authorities regarding rules and regulations relative to the identification and removal of such asbestos materials.

- (c) Identification of Asbestos and LPA Training. Asbestos is found frequently in older buildings which are to undergo rehabilitation. The LPA should provide training to its personnel in the identification and hazards of asbestos, and/or the LPA should obtain an independent inspection if asbestos is suspected. The cost of such an independent inspection is an eligible loan cost.

- (d) Notification to Borrowers. Where asbestos materials are identified by LPA personnel, or LPA personnel suspect the presence of asbestos materials, they should so notify the borrower and inform the borrower of the potential hazards, of the borrower's responsibilities, and of the responsibilities of the contractor. Care should be taken that only qualified contractors experienced in asbestos removal be allowed to work on the project.
- (e) LPA Contact with OSHA and EPA. The LPA should contact the regional OSHA Office and the regional EPA Office for complete information regarding OSHA and EPA standards and regulations and requirements with regard to asbestos.

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- (f) Information and Guidance. The Environmental Protection Agency publication, Guidance for Controlling Asbestos-Containing Materials in Buildings, contains the USEPA standards, NESHAPS regulations and OSHA regulations, and lists the regional NESHAPS contacts and Regional Asbestos Coordinators. The document also contains a checklist for hiring experienced contractors, and has much useful information on asbestos. Copies are available from the Office of Pesticides and Toxic Substances, U.S. Environmental Protection Agency, Washington, D.C. 20560.

The OSHA publication, #3040, Health Hazards of Asbestos, provides a summary of OSHA regulations and requirements.

The EPA publication, Asbestos Fact Book, is a useful booklet for public distribution. Copies can be secured from the Office of Public Affairs (A-107), Environmental Protection Agency Washington, D.C. 20460. Tel: (800)424-9065 or (202) 554-1404.

12-11. HANDICAPPED ACCESSIBILITY

- a. Applicable Statutes and Regulations, The applicable statutes and regulations are The Architectural Barriers Act of 1968 (42 U.S.C. 4151 and 24 CFR Part 41).
- b. Requirements. The Architectural Barriers Act of 1968 (42 U.S.C. 4151) requires that certain buildings financed with Federal funds be designed and constructed so as to be accessible to the physically handicapped. Since Section 312 loans are made only on privately owned properties, only non-residential and the non-residential portions of mixed-use properties assisted under Section 312 are directly subject to

Architectural Barriers Act requirements.

- c. Information. For further information contact the HUD Field Office Rehabilitation Management Specialist.

12-12. COST EFFECTIVE ENERGY STANDARDS

- a. Applicable Statutes and Regulations. The applicable statutes and regulations are action 312 (i) of the Housing and Urban Development Act of 1964, as amended in 1978 (42 U.S.C. 1452b) and 24 CFR Part 39 "Cost Effective Energy Conservation and Efficiency Standards for Rehabilitation of Residential Properties," (42 U.S.C. 1425b), et. seq., Pub. L. 95-557.

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- b. Requirements. Residential rehabilitation work financed by a section 312 loan must meet the Cost Effective Energy Conservation and Efficiency Standards. In determining the kind and extent of energy conservation measures required for any particular property or element, the LPA should, as a general rule, follow a common sense cost effectiveness approach. At a minimum, caulking and weatherstripping of all openings to the exterior must be accomplished.

For mid-rise, high-rise and many low-rise multifamily projects, an energy audit must be carried out to identify and specify the energy and cost savings which are estimated to result from installing energy conservation measures.

The energy audit can be completed by trained LPA staff or a private firm, in which case the fee for the service is an eligible loan cost.

- c. Reference. See Paragraph 3-1-b-(2) of this Handbook for additional information on requirements and procedures.
- d. Additional Information. The implementation of cost effective energy conservation and efficiency measures is discussed in detail in the publication entitled Applying the Cost Effective Energy Standards in Rehabilitation, Office of Urban Rehabilitation, Community Planning and Development, HUD. Copies are available from the Field Area Office.

12-13. LABOR STANDARDS

- a. Applicable Statutes and Regulations. Applicable statutes and regulations are The Davis-Bacon Act (40 U.S.C. 276a) as amended, the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), all regulations issued under these acts, and other applicable Federal laws and regulations pertaining to labor standards.
- b. Requirements.

(1) Applicability of Statutes and Regulations. These statutes and regulations apply to Section 312 loans for the following types of properties:

- (a) Residential properties containing 12 or more dwelling units after rehabilitation;
- (b) Non-residential properties if the cost of rehabilitation work exceeds \$2,000; and

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(c) Mixed-use properties, if the residential portion will contain 12 or more dwelling units after rehabilitation.

c. Guidance on Applicability. HUD Handbook 1344.1-Federal Labor Standards Compliance in Housing and Community Development Programs provides crucial guidance to LPA's concerning labor requirements. It is the responsibility of the HUD Field Office to make this Handbook available to LPA's, who must comply with all applicable requirements in this Handbook. Where several properties are rehabilitated under a single rehabilitation loan agreement or rehabilitation contract, Federal Labor Standards apply on the aggregate number of units covered by either of those loan documents. Where the rehabilitation financing is provided by Section 312 and other sources, the total rehabilitation cost is the determinative figure. Federal Labor Standards provisions apply to the entire project, not just the work financed through Section 312 proceeds.

For example, if there is a 20-unit building where at least 12 residential units are to undergo rehabilitation, Federal Labor Standards apply to all work performed, even if funds to rehabilitate six of the units are to be provided from a source other than Section 312.

- (1) Provisions of the Davis-Bacon Act (40 U.S.C. 276a to a-5) and Other Federal Labor Standards. These provisions are enumerated in the HUD-4010, "Federal Labor Standards Provisions." This document must be incorporated into all rehabilitation contracts where Federal Labor Standards apply. See Exhibit 12-11, HUD - 4010 (2-84) Federal Labor Standards Provisions, which has been altered (pending the issuance of a revised form) to eliminate reference to overtime after eight hours a day in accordance with Section 1241 of the Department of Defense Authorization Act of 1986, which amended The Contract Work Hours and Safety Standards Act effective January 1, 1986.
- (2) Residential and Building Wage Scales. All laborers and mechanics employed by contractors and subcontractors on covered rehabilitation work must be paid wages at rates not

less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor. It should be noted that different wage scales pertain for residential and commercial rehabilitation projects. Residential rates apply on all fully residential projects. Building rates apply on all non-residential projects. Mixed-use projects may involve the use of both building and residential wage schedules. Consult the HUD Field Office Labor Relations staff in such cases.

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- (3) No Collusive Agreements to Avoid Adherence to Labor Standards Provisions. It is the responsibility of the LPA to exercise reasonable care to assure that separate collusive agreements between the borrower and the contractor are not made to avoid adherence to Labor Standards requirements.
- (4) LPA Responsibilities with Regard to Federal Labor Standards. The LPA has the following responsibilities for all rehabilitation contracts where Federal Labor Standards provisions apply:
 - (a) Name a staff person to handle all Labor Standards issues and so advise the HUD Field Office Labor Relations staff.
 - (b) Contact the HUD Field Office Labor Relations staff to obtain current wage rates and any technical assistance and advice they may require, as soon as the LPA identifies a potential Section 312 Project as applicable to Federal Labor Standards provisions.
 - (c) Request wage determinations from the HUD Area Office Labor Relations staff.
 - (d) Verify with HUD Labor Relations staff the eligibility of all contractors and subcontractors.
 - (e) Conduct preconstruction conferences with all contractors and advise HUD Labor Relations staff in advance.
 - (f) Notify HUD Labor Relations staff of the date the LPA notifies the borrower and the contractor under Paragraph 10-2-a that construction may begin for all contracts where Federal Labor Standards apply.
 - (g) Maintain all Labor Standards information relative to any particular loan in the permanent loan file.
 - (h) Retain and review all payrolls.

- (i) Conduct job-site inspections.
 - (j) Send the HUD Field Office Labor Relations staff written reports on any actual or potential problems.
- (5) HUD Responsibilities. The HUD Field Office Labor Relations staff, in coordination with the Rehabilitation Management Specialist, has the responsibility to ensure that LPA's perform their enforcement responsibilities and to provide

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administrative, investigative, and technical support to recipients.

The HUD Area Office Labor Relations staff's responsibilities include:

- (a) Providing wage determinations to applicants and LPA's;
 - (b) Verifying contractors' eligibility;
 - (c) Receiving notices of preconstruction conferences;
 - (d) Receiving notification of the date the LPA notifies the borrower and the contractor that construction may begin;
 - (e) Receiving and responding to applicant's reports of job-site problem; and
 - (f) Participating in Labor Standards Compliance Reviews.
- (6) Waiver Determination: Donation of Labor by Residents. On a case-by-case basis, pursuant to Section 312 and Section 402 (f) of the Housing Act of 1950, the HUD Rehabilitation Management Specialist may determine that the labor standards of this Paragraph 12-13 shall not apply to some or all of the rehabilitation of a particular property to the extent that he or she finds that:
- (a) the rehabilitation will actually be carried out by residents of the property (not otherwise employed at any time in the rehabilitation) who donate their services without full compensation for the purposes of lowering the costs of rehabilitation, and
 - (b) any benefit resulting from the donated services will be passed through to the residents of the property.

In an appropriate case, the LPA shall request in writing a waiver determination under this authority from the Rehabilitation Management Specialist prior to the

development of the Rehabilitation Construction Contract for the property, and the contract shall reflect the extent to which the Rehabilitation Management Specialist has determined that labor standards requirements apply to the work, or do not apply. The determination of the Rehabilitation Management Specialist shall be in writing, and shall be included in the LPA's loan file.

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12-14. RELOCATION/DISPLACEMENT

- a. Regulations Governing Displacement. HUD regulations governing the displacement by a Section 312 Rehabilitation Loan Project of any Person (family, individual, business, nonprofit organization or firm) on or after March 17, 1987, are contained in 24 CFR 510.52. A copy of this rule is contained in Appendix 5 of the Relocation and Real Property Acquisition Handbook 1377 (CHG 1, dated 3/87). Present HUD regulations at 24 Part 42, which implement the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act), apply to a Section 312 project only when a "State agency" acquires the real property in connection with the project. However, on April 2, 1987, the Uniform Act was amended to, among other things, extend Uniform Act coverage to persons displaced as a direct result of Section 312 rehabilitation. The extended coverage will be effective on the effective date of a final Uniform Act rule implementing the changes, or April 2, 1989, whichever is earlier.
- b. Technical Guidance. Because the Section 312 Program relocation/ displacement requirements were changed, effective March 17, 1987, and will be changed again when Uniform Act coverage is effective, the locality is urged to contact the Field Office CPD Relocation Specialist for advice and assistance whenever it has a tenant-occupied property under consideration for a Section 312 Rehabilitation Loan.

12-15. CONFLICT OF INTEREST

- a. Provisions Against Payment of Fees. The borrower must not pay any bonus, commission or fee to HUD, the locality, or the LPA for the customary processing of a loan, including the preparation of work write-ups and cost estimates, approval of the loan, or any concurrence required to complete the rehabilitation work, except for generally applicable licenses, taxes and fees such as recordation fees and taxes, water and sewer hook-up fees, building permits, business licenses and similar items.
- b. Persons not Eligible. No person who is an employee, agent, contractor, consultant, officer, or elected or appointed official of the locality or the LPA and:

- (1) who exercises or has exercised any functions or responsibilities in connection with the administration of a Section 312 Loan Program, or with respect to assisted rehabilitation activities, or
- (2) who is in a position to participate in a decisionmaking process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any

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contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

- c. Exceptions. Upon the written request of the locality or LPA, HUD may grant an exception to this exclusion on a case-by-case basis when it determines that such an exception will serve to further the purposes of the Section 312 Rehabilitation Loan Program and the effective and efficient administration of the locality's or LPA's Section 312 Rehabilitation Loan Program or the project. An exception may be considered only after the locality or LPA has provided a disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict, a description of how the public disclosure was made and an opinion of the locality's or LPA's attorney that the interest for which the exception is sought would not violate state or local law. In determining whether to grant a requested exception, HUD shall consider the cumulative effect of the following factors, where applicable:
- (1) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the Section 312 Rehabilitation Loan Program or the project that would otherwise not be available;
 - (2) Whether an opportunity was provided for open competitive bidding or negotiation;
 - (3) Whether the person affected is a member of a group or class intended to be the beneficiaries of the rehabilitation activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;
 - (4) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decisionmaking process, with respect to the specific rehabilitation activity in question;
 - (5) Whether the interest or benefit was present before the

affected person was in a position as described in this paragraph;

- (6) Whether undue hardship will result either to the public agency, locality or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and
- (7) Any other relevant consideration.

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12-16. SPECIAL CONSIDERATIONS APPLICABLE TO SECTION 312 LOANS TO URBAN HOMESTEADERS. Persons who have executed the legal documents necessary to assume the rights and obligations of an Urban Homesteader (see Paragraph 4-4-d of this Handbook) under Section 590.7(b) (3) of the Urban Homesteading Regulations are eligible for Section 312 loans to rehabilitate homestead properties. However, as with all other applicants for Section 312 funds, being a homesteader does not ensure approval of a Section 312 loan. The Section 312 loan must still be processed, approved, documented, settled, and disbursed in accordance with all applicable provisions of the Section 312 regulations and this Handbook. The following are special considerations applicable to making sound Section 312 loans to homesteaders.

- a. Homesteader Selection. If the Local Urban Homesteading Agency (LUHA) intends to use Section 312 for a particular property, it should then incorporate Section 312 underwriting standards into its "equitable selection" process required under Section 590.7(b)(i) of the Urban Homesteading regulations (24 CFR Part 590). However, because Section 810 (b) (7) (C) of the Housing and Urban Development Act of 1974, as amended, and 24 CFR 590.7(b)(2)(ii) provide that "equitable selection" procedures must take into account a prospective homesteader's ability to contribute a substantial amount of labor to the rehabilitation process or to obtain assistance from private sources, community organizations, or other sources, the homesteader cannot be turned down solely because he or she does not meet Section 312 underwriting criteria for the full amount of the loan. In addition, while the LPA must be reasonably satisfied that the homesteader's self-help contributions will be available (see Paragraph 6-7), and the contributions from private sources or community organizations are legally committed (see Paragraphs 9-3-i-(1) and 7-5-d-(3) for requirements concerning supplemental financing), the LPA cannot turn down Section 312 financing on the basis of its inability to provide self-help related technical assistance to a homesteader/borrower (see last sentence of Paragraph 6-7-a of this Handbook).

To initially incorporate Section 312 underwriting standards into equitable selection procedures for homesteaders, it is first recommended that a work write-up describing the basic required and recommended rehabilitation also be completed prior

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the homesteader, since otherwise the approximate cost of the work cannot be estimated and the financial capacity of the homesteader necessary to carry the loan cannot be determined. Then, after preliminary screening and initial identification of a particular prospective homesteader for a particular property (whether by lottery or otherwise), the homesteader's self-help capacity not be determined (as described above) before the suitability of the homesteader for a Section 312 loan in a specific amount on the property can be determined. Close coordination between the Section 312 LPA and LUHA, if they are not the same agency, is essential to this process.

- b. Consistency of Obligations. The LPA must ensure that the rehabilitation work is contracted for according to Section 312 application requirements, including use of a Section 312 rehabilitation contract or self-help agreement, and that the rehabilitation work required to be done under the Section 312 documents is the same as that required under the Urban Homesteader Agreement. If the homesteader fails to complete the required rehabilitation, both the Section 312 loan documents and the Urban Homesteading documents should provide that he or she is in default. In such a case, the LUHA is obligated, under 24 CFR 590.7(b)(6), "to revoke the conditional conveyance and the homesteader agreement...and, to the extent necessary and practicable,...select one or more successor homesteaders for the property." As a condition of so doing, where there is a Section 312 loan on the property, the LUHA must also get the successor homesteader to assume the Section 312 loan. If they are unable to obtain a successor homesteader for the particular property under these conditions, the LUHA must either attempt to obtain HUD approval of an "alternative use" for the property (see 24 CFR 590.7(c)) or, if the property has a positive liquidating value, must relinquish its reverter interest in the property and allow HUD to realize what it can through foreclosure of its Section 312 security interest. If the property does not have a positive liquidating value, or if an alternative use is otherwise approved, HUD will release its security interest through the Master Servicer.

On the other hand, completion of the Section 312-financed rehabilitation should satisfy the rehabilitation obligations of the Urban Homesteader Agreement, leaving only the occupancy obligations to be completed under the Homesteader Agreement. In addition, in order to avoid the possibility that a homesteader might become entitled to full fee simple title to the homesteading property when he or she was not repaying a Section 312 loan, the LUHA should include substantially the following language in each Urban Homesteader Agreement involving Section 312 rehabilitation financing:

"The homesteader agrees that a default under the promissory note, the rehabilitation loan agreement, or the mortgage (deed of trust) evidencing any Section 312 loan obtained to finance the rehabilitation of the homestead property shall constitute

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a default under this Urban Homesteader Agreement, entitling Local Urban Homesteading Agency to enforce any and all remedies available for a material breach or default under this agreement, including forfeiture of the Homesteader's interest in the property. Specifically, the Homesteader shall have no right to a final conveyance of the Homesteading agency's reversionary interest in the property (or to conveyance of fee simple title to the property) unless the homesteader is current on his or her Section 312 loan."

Similarly, the Section 312 mortgage or deed of trust should provide that default under the Homesteader Agreement or conditional conveyance constitutes a default under the Section 312 mortgage (or deed of trust) entitling HUD to exercise any and all remedies available under the mortgage (or deed of trust) in the event of default.

- c. Documenting the Homesteader's Title and HUD's Lien. With proper attention to homesteader selection, underwriting, and the rehabilitation process, the homesteader should satisfy the obligations of both the Urban Homesteader Agreement and the Section 312 loan documents, and a sound Section 312 loan should result. Copies of the LUHA's deed to the homestead property from HUD, FmHA, or VA, the title evidence obtained by the LUHA from HUD, FmHA or VA (see Paragraph 6-5 of the Urban Homesteading Handbook (6400.1, April 1980), and the documents conditionally conveying the property to the homesteader should be placed in the Section 312 loan file, together with the usually required Section 312 loan documentation. Updates of the HUD title evidence should be obtained at loan settlement and after completion of the urban homesteader's occupancy obligations, copies of whatever evidence the Homesteading Agency uses to document the homesteader's unconditional title should also be placed in the Section 312 loan file. The standard Section 312 security instrument (see Chapter 9) contains an after-acquired property clause, which should assure that HUD's lien attaches to the full fee simple interest in the property. If further action is necessary in any state in that regard, the LPA must cooperate with HUD in taking such action.

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