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CHAPTER 1. OVERVIEW

1-1. BACKGROUND

A. Purpose

1. The Section 8 Loan Management Set Aside (LMSA) Program for projects with HUD-insured and HUD-Held mortgages is designed to reduce claims on HUD's insurance fund by stabilizing the financial condition of troubled HUD-insured or HUD-held multifamily projects. The program is intended to assist projects with immediately or potentially serious financial problems.
2. The LMSA program provides Section 8 rental assistance to the project. The Section 8 assistance is a mechanism that allows tenants to afford rent levels necessary to maintain the project and allows increases in income. The rental subsidy for the residents makes it possible for the owner to receive higher unit rents. To qualify for the program, owners must show how LMSA assistance will enable them to overcome the project's problems.
3. Assistance is also provided under the LMSA program for other purposes as authorized in applicable legislation, such as incentives to owners to prevent prepayment of HUD mortgages, incentives in exchange for extending low income affordability restrictions, or conversions to the Section 8 program from Rent Supplement, Rental Assistance Payment (RAP) or other defunct HUD subsidy programs. When funds are made available for conversion of Rent Supplement and RAP, a Notice of Fund Availability (NOFA) will appear in the Federal Register.

B. Authority

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The program is authorized by Section 8 of the U.S. Housing Act of 1937, as amended, and is covered in Federal regulations at 24 CFR Part 886 Subpart A.

C. Additional References

This Handbook should be used in conjunction with the following additional Handbooks and Departmental issuances, including the current Notice of Fund Availability (NOFA) for the Section 8 LMSA Program:

- o Occupancy Requirements of Subsidized Multifamily Housing Programs (HUD Handbook 4350.3);
- o Insured Project Servicing Handbook (HUD Handbook 4350.1);
- o Housing Fund Control Handbook (HUD Handbook 7400.10);
- o Management Documents, Agents, and Fees (HUD Handbook 4381.5).

1-2. ELIGIBLE PROJECTS

Four types of HUD multifamily projects are eligible for LMSA assistance:

1. HUD-Insured projects and HUD-Held mortgages with or without subsidy are eligible for new units, except such projects which already have a contract for project-based Section 8 assistance for all units;
2. any project described in (1) above that has been assigned to the Secretary;
3. any multifamily project acquired by the Secretary and thereafter sold under a Secretary-held purchase money mortgage; or
4. a property financed under Section 202 of the Housing Act of 1959.

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References to HUD-Held or Secretary-Held projects throughout the handbook include any projects that meet one of the descriptions (Paragraph 1-2.) above.

1-3. FORM AND TERM OF SUBSIDY

A. Form of Subsidy

1. Section 8 assistance is a rental subsidy that provides the difference between the approved rent for a covered unit and the amount determined by formula to be payable by the Section 8 eligible tenant.
2. The program also provides the following additional benefits to the owner;
  - o HUD payment of limited claims for unpaid rent and tenant damages; and
  - o HUD payment of limited claims for vacancy losses.

B. Term of Assistance

1. Section 8 Housing Assistance Payments (HAP) Contracts are executed between HUD and the owner.
  - o Because of the appropriations language, the initial term of contracts executed since 1983 may not exceed 5 years. Upon expiration of the contract term, HUD will offer to extend the contract for additional five-year increment periods to the extent appropriations are made available. Total contract shall not exceed 15 years. Owners not in compliance with housing quality standards and not maintaining the project in a decent, safe, and sanitary manner will not be offered an opportunity to extend the Section 8 contract.

The total number of years in the

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contract term for HAP contracts executed between 1976 and 1983, including renewals, must not exceed 15 years. At the option of the owner, these contracts can be extended in five-year increments up to a maximum term of 15 years.

- o Upon expiration of the contract term,

HUD will offer to extend the contract for additional five-year incremental periods to the extent appropriations are made available.

2. The Housing and Community Development Act of 1987 changed the procedures regarding contract expirations. Prior to the Act, renewals and extensions were initiated with the mutual agreement of HUD and the owner. Since the Act, all owners must provide advance notice of their intent to terminate the HAP Contract upon expiration. (See Paragraph 3-4 for more detailed information about expiring contracts and extensions.)

1-4. PROGRAM FUNDING

A. Competitive Process

LMSA assistance is not an entitlement. HUD selects projects to receive assistance through a competitive awards process announced in an annual Notice of Fund Availability (NOFA) published in the Federal Register. In making awards, HUD considers the type of project (insured or HUD-held), the immediacy of the project's financial problems, the quality of the owner's plan for correcting these problems, and the likelihood that the assistance will avoid an insurance claim. Funds designated for assistance to troubled projects are awarded under competitive procedures. The competitive awards process described herein does not apply to LMSA assistance provided for special purposes such as incentives to prevent mortgage prepayment, Rent Supplement/RAP conversions, etc.

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B. Types of Funding

Owners of eligible projects can apply for assistance under either general funding or emergency funding procedures.

1. General Funding: Most LMSA funds that are available each year will be awarded through general funding procedures. To receive LMSA general funding assistance owners submit an application in response to a NOFA (see

2. Emergency Funding

- o In most cases, Headquarters retains a limited portion of each annual LMSA funding allocation for emergency funding requests. The portion of annual funds potentially available for emergency requests will be announced in the NOFA published each year.
- o Applications for LMSA assistance received after the general funding deadline will be considered under emergency funding procedures. Applications for emergency assistance may be submitted according to instructions described in the NOFA. However, before preparing an application, owners should check with the HUD Field Office to determine if emergency funding is likely to be available and whether or not the project would be a good candidate for emergency assistance.
- o In evaluating emergency funding requests, the Field Office will assess the likelihood that the assistance requested will prevent a mortgage default or assignment in the near future and the reasons the funds are needed on

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an emergency basis. The Field Office will assess the immediacy of a project's financial problems using the indicators described in Paragraph 2-11.

- o Headquarters will consider emergency requests only to the extent that adequate funds are available to fulfill the request.

1-5. CONDITIONS OF ASSISTANCE

- A. Disclosure of Tax Credits and Other Federal Assistance to the Project

HUD is required to certify that the amount of assistance it will provide through the LMSA program will not exceed the amount needed to provide affordable housing. This certification must be made before HUD can execute LMSA contracts for new or additional units of assistance, or reserving funds for those units. This requirement does not apply to contract renewals or cost amendments.

To enable HUD to make this certification, owners must disclose information about low-income housing tax credits and other government assistance received by the project.

1. Tax Credits

If a project does not have tax credits, the owner must sign a certification that no tax credits have been received and agree to notify the Field Office of any changes in the project's tax credit status.

If a project has received tax credits, the owner must provide the following information with the application:

- o A brief summary of the terms under which the owner will participate in the program, including:

- annual credit amount
  - type of credit (acquisition or rehab)
  - date the 10-year credit period will begin
  - credit percentage awarded for each type of credit
  - maximum qualified basis for each type of credit
  - the applicable income eligibility limit
  - number of units, if any, for deep rent skewing
- o a copy of:
    - IRS Form 8609, Low Income Housing

- Credit Allocation Certification; or 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 the agency's intent to award credits to the project
- o In the case of a Transfer of Physical Assets (TPA), documentation of whether the credits will be claimed by the current owners or new owners
- o a list of all federal, state and 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
- o a sources and uses of funds statement as contained in Chapter 13, Appendix F of HUD Handbook 4350.1, itemizing:
  - all funds available (gross amounts available before syndication,

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- legal, or other intermediary costs);
  - all purposes for which funds will be disbursed; and dates any investor contributions are due.
  - o a statement in which the applicant agrees to promptly notify the HUD Field Office of any change in the information provided pursuant to the project's tax credits
2. Other Government Assistance

If the amount of government assistance the applicant will receive or can reasonably expect to receive during the Federal Fiscal year in which the LMSA application is submitted exceeds \$200,000, the applicant

must disclose the types and amount of other government assistance received. Examples of other government assistance include: mortgage insurance, loans, grants, payments, subsidies or indirect assistance from a federal, state or local government agency.

In determining whether assistance to a project exceeds the \$200,000 threshold, owners should count the total amount of a multi-year assistance award as assistance received during the Federal fiscal year of the application. The total amount of LMSA assistance requested in the current application and the total amount of existing LMSA contracts should be included when making this determination.

B. Lobbying Restrictions Agreement

Under the federal lobbying regulations, federal funds, including LMSA assistance, may not be used to influence or attempt to influence any Executive or Legislative branch personnel in connection with the award of any Federal contract, loan or grant, or the entering into of any cooperative agreement.

This prohibition also applies to payments made to influence a Federal official in connection with the extension, continuation, renewal, amendment or modification of any contract, grant, loan or cooperative agreement. As part of the LMSA application, owners must certify that they have not used, are not using and will not use federally appropriated funds for lobbying. Owners must also agree to require comparable certification language in contracts and agreements with subrecipients of LMSA funds, such as property managers.

Owners who apply for LMSA funds in excess of \$100,000 are required to disclose payments made with non-federally appropriated funds for lobbying activities, and must certify that they will disclose such activity should it occur in the future. Certification regarding lobbying activities must be submitted as part of the application. Disclosure statements, if warranted, regarding lobbying activities must also be submitted as part of the application. Applicants

are responsible for determining whether their disclosure statements need to be updated at the end of any calendar quarter, using the criteria set forth in 24 CFR 87.110(c).

Certification and disclosure statements, if warranted, regarding lobbying activities must be submitted as part of the application. Upon receipt of a disclosure form (SF-LLL), the Field Office Loan Management staff must make a duplicate of the disclosure form and forward the original to the Office of Ethics in Headquarters. Applicants are responsible for determining whether their disclosure statements need to be updated each quarter. Sample certification language and a lobbying disclosure form (SF-LLL) are included in Appendices 5 and 6.

In addition, if applicants spend non-federally appropriated funds for the purpose of influencing a HUD funding decision or management action regarding their LMSA application, they must keep records of all such expenditures and, if the total amount of money on such expenditures exceeds

\$10,000 in a calendar year, report to HUD on such expenditures between January 1 and January 10 of the following year. Each person receiving payment or consideration to influence HUD's decision must register with HUD's Office of Ethics in Headquarters. These requirements do not apply to expenditures incurred in complying with conditions, requirements, or procedures imposed by HUD as part of the application.

C. HUD Fair Housing Requirements

Owners must certify on their applications that they will comply with the Fair Housing requirements that apply to multifamily rental properties. These requirements are set forth in the Fair Housing Act, Title VI of the Civil Rights Act of 1964, Executive Orders 11063 and 11246, Section 504 of the Rehabilitation Act of 1973, Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Section 3 of the Housing and Urban Development Act of 1968, as well as with all regulations issued pursuant to these authorities. The specific requirements can be

found in Exhibit A to the HAP Contract, Form HUD-52537 (see Appendix 2).

In addition, owners must submit and comply with their Affirmative Fair Housing Marketing Plan.

D. Housing Quality Standards (HQS)

The units for which assistance is requested must meet the standards for decent, safe, and sanitary housing as specified in 24 CFR 886.113. Since eligible LMSA projects have already met minimum property standards and housing quality standards (HQS) at the time of construction, the Field Office must inspect the units to ensure continued compliance with HQS and also that unit maintenance is satisfactory. If the Field Office finds that units do not meet HQS requirements, HUD can provide assistance for those units only if the owner presents an acceptable plan for bringing the deficient units into compliance. Further details

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and discussion of housing quality standards are found in Paragraph 2-5 of this Handbook.

E. Lead-Based Paint

1. The owner is required to inspect all units proposed for assistance under the LMSA program which were constructed prior to 1978 for defective paint surfaces. These are surfaces on units which have cracking, scaling, chipping, peeling or loose paint.
2. If the lead-based paint or defective paint surfaces are discovered in any unit proposed for assistance, follow the guidelines outlined in Paragraph 1-5.E.3.c.i. below, as a condition for approval of the new HAP contract.
3. For HAP contracts executed on or after May 1, 1987, the following requirements apply:
  - a. A random sample of all dwelling units shall be tested for lead-based paint in chewable surfaces. Chewable surfaces are defined as protruding painted surfaces up to five feet from the floor

or ground which are readily accessible to children under seven years of age. These surfaces include, but are not limited to, protruding corners, window sills and frames, doors and other protruding woodwork.

- i. For projects with twenty or more units, ten units shall be tested.
- ii. For projects with fewer than twenty units, six units shall be tested.
- iii. A sampling of common areas and exterior surfaces frequently used by children under 7 years of age, such as play grounds and day care centers, shall also be tested.

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If all of the units tested in the sample are found to be lead free, then the project may also be considered lead free and no further testing or abatement will be necessary. If lead is found in any of the tested units, then all assisted units and units proposed for assistance in the project must be tested. If lead is found to be present in any of the common areas, then all common areas must be tested.

- b. Elevated Blood Level (EBL) Child. If an owner is presented with test results that indicate a child seven years or younger living in a unit has an elevated blood level (25 micrograms per deciliter of blood or greater unless otherwise specified by HUD) then the owner is required to test the unit and if the test is positive for lead-based paint abate the unit following the guidelines outlined in Paragraph 2-6, or the owner may forego testing and abate all unit surfaces.
- c. Requirement to test and abate. If lead-based paint is discovered in any assisted units or units proposed for assistance, abatement will be required

under the following conditions:

- i. For all new applications :  
defective paint surfaces. For the approval of new units under LMSA, the owner is required to inspect for defective surfaces. All defective paint surfaces and chewable paint surfaces must either be abated, or tested for lead-based paint and abated if found to be positive (see Paragraph 2-6.B. for required abatement procedures).
- ii. For all new applications - chewable

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surfaces. For the approval of new units under LMSA, the owner is required to conduct the random sampling test for chewable surfaces as described above, in accordance with the testing requirements described in Paragraph 2-6, and abate the entire interior and/or exterior chewable surfaces (if test results indicate the presence of lead-based paint). The owner and testing entity must certify that a unit is free of lead-based paint, as a condition prior to the execution of a HAP contract.

- iii. In the case of an EBL child. If an owner is presented with test results that a child living in an assisted unit has an EBL as defined above, and the unit tested positive for lead-based paint then the owner must abate the unit according to procedures set forth in Paragraph 2-6 or relocate the family to a unit free of lead-based paint.

F. Resident Input

1. Purpose: Project owners subject to 24 CFR Part 245 are required to solicit input from residents when they request a rent increase as part of their LMSA application. This

requirement seeks to ensure that owners consider the impact of requested rent increases on residents of projects that do not receive a project-based rental subsidy.

2. Notice: HUD will take resident comments prior to executing the HAP contract with owner, not during the application stage. Project owners subject to 24 CFR Part 245 must notify the project's residents of their intent to request a rent increase as part of an application for LMSA assistance. The notice must be distributed directly to each

resident and posted in common areas within the project, including, but not limited to, the project office, laundry rooms, and common entry ways. For further information, refer to Chapter 7 of HUD Handbook 4350.1.

3. Comment Period: Owners must give tenants a period of at least 30 days following the date of the notice to submit written comments on proposed rent increases. Owners should specify in the notice to tenants the final date comments can be accepted.
4. Summary of Comments: At the end of the comment period, the owner must summarize the residents' comments, and prepare a recommendation on whether the proposed rent increase should be revised to accommodate the comments. Owners must assemble copies of the summary, the recommendation, the residents, comments and a copy of the notice distributed to tenants, and submit them to HUD along with their rent increase request.

G. Other HUD Requirements

1. Applicants must comply with Section 102 of the HUD Reform Act of 1989. See 24 CFR Part 12, Subpart C for detailed information. Subpart C provides for (1) initial reports from applicants for HUD assistance and (2) update reports from recipients of HUD assistance. All applicants for assistance from HUD for a specific project or activity must make a number of disclosures, if the

applicant meets a dollar threshold for the receipt of covered assistance during the fiscal year in which the application is submitted. The applicant must also make the disclosures if it requests assistance from HUD for a specific housing project that involves assistance from other governmental sources. HUD Form 2880, which provides for these disclosures, is provided to the public through the application package. A copy of

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HUD-2880 is included at Appendix 18.

2. The owner must be in compliance with the Regulatory Agreement and all other HUD regulations and guidelines. For example, the Field Office should confirm that the security deposit account for the project is adequately funded. If an owner is not in compliance, LMSA assistance, cannot be awarded until the owner presents an acceptable plan to correct all deficiencies.

1-6. KEY STEPS IN THE PROCESS

Exhibit 1-1 summarizes key steps in the approval of LMSA funds.

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EXHIBIT 1-1

KEY STEPS IN LMSA APPROVAL PROCESS

Publication of Notification of Fund Availability (NOFA) -- General Funding and Emergency Funding

Owner submits application to HUD Field Office

Field Office Review

- o Local Government Review and Comment
- o Field Office Review
- o Annual Needs Survey

Acceptable applications submitted to  
Headquarters by Field Offices

Headquarters Review and Selection Based  
upon Selection Criteria and Priorities  
established in the NOFA

Allocation and Reservation of Funds

- o Headquarters allocation to Regional  
Office
- o Regional Office notification Field Office
- o Field Office reservation of funds

Execution of HAP Contract

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1-7. PROGRAM ADMINISTRATION

A. Headquarters Role

1. The Office of Multifamily Housing Management reviews acceptable applications forwarded by the Field Offices in the Annual Needs Survey and selects projects to receive LMSA awards. The Field Offices are then notified of the results of the selection process.
2. The Funding Control Division, Office of Budget and Field Resources, issues Section 8 funds for approved projects to the Regions for distribution to the Field Offices.
3. The Operations Division, Office of Multifamily Housing Management, conducts overall program administration.

B. Regional Offices

1. Regional Offices of Housing must review and approve all funding requests when the number of units recommended for assistance by the Field Office exceeds the sum of the vacant

units and the number of tenants paying more than 30 percent of their adjusted income for rent. Any recommendation by the Regional Office of Housing must be submitted in writing to Headquarters and must contain certification by the Regional Director of Housing that the applications have been processed in accordance with all guidelines and instructions. Any additional details and project priority will be described in the NOFA. Regional Offices must also review and provide written concurrence with all applications for emergency funding submitted to Headquarters.

2. The Regional Accounting Division (RAD) Director, is responsible for recording and controlling Section 8 funding authorizations for Field Offices and the disbursement of funds against such authorizations.

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C. Field Offices

1. Loan Management staff
  - o is responsible for the day-to-day activities involved in reviewing owner applications, including lobbying certifications, completing the Annual Needs Survey, and administering the program.
  - o will notify applicants of HUD's decision regarding their application.
2. The Housing Management Division Director
  - o approves all applications recommended to Headquarters and executes contracts with owners whose applications have been approved by HUD.
  - o must assure that reservations and obligations of contract authority for this program do not exceed the amount of contract authority allocations actually received on Form HUD 185.1.

1-8. FUNDING DISCLOSURE

HUD's regulation implementing Section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. This regulation, codified as 24 CFR Part 4 applies to the funding competition. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by Part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving an applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR Part 4.

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Applicants who have questions regarding funding disclosure and lobbying restrictions should contact the HUD Office of Ethics at (202) 708-3815 TDD/Voice (This is not a toll-free number. In addition to the public, the Office of Ethics can provide information of a general nature to HUD employees as well. However, a HUD employee who has a specific program question, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

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