

CHAPTER 12: Emergency Low-Income Housing and Preservation Act (ELIHPA)
Plans of Action

Section A

- 12-1. The ELIHPA, Title II of the Housing and Community Development Act of 1987, as amended by the Stewart B. McKinney Homeless Assistance Amendments of 1988, and the Department of Housing and Urban Development Reform Act of 1989, restricts the ability of an owner of "eligible low-income housing" from prepaying a project's mortgage note after 20 years if the mortgage note is eligible to be prepaid without the Secretary's consent. The regulations, 24 CFR Part 248, with conforming amendments in Parts 50, 241, 219, 221 and 236, carry out these legislative provisions.
- 12-2. Evaluation and Processing. Though Low-Income Housing Preservation Resident Homeownership Act (LIHPRHA) (Title VI of the 1990 Affordable Housing Act) replaces ELIHPA (Title II) and makes it a permanent part of the statute, there are enough differences in LIHPRHA particularly concerning rents and allowable incentives to warrant separate treatment in this Handbook. The procedures described here are intended for use by owners and loan servicers to develop, process, evaluate and monitor an ELIHPA Plan of Action, (POA). To avoid undue repetition, ELIHPA program elements already covered in the LIHPRHA portion of the Handbook (Chapters 1-11) will be specifically noted e.g., Notices of Intent (NOI), Eligibility Rules, Terminations.
- 12-3. Eligibility. ELIHPA and LIHPRHA eligibility criteria are the same except with respect to delinquent HUD-held mortgages (See Chapter 2).
- A. Under ELIHPA, a POA involving a defaulted HUD-held mortgage must include a plan to reinstate the defaulted HUD-held mortgage.
- B. HUD encourages owners to use incentives, i.e., an equity loan, to reinstate the defaulted HUD-held mortgage. (Further discussion of eligibility for HUD-held projects is in Paragraph 12-10L).
- 12-4. Notice of Intent (NOI). The NOI (HUD Form-9608-B), APPENDIX 12-1 starts an owner's participation in the ELIHPA program. Distribution and posting requirements are the same as the LIHPRHA requirements described in Chapter 3, paragraphs 3-4 and 3-5 with the following exceptions:

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- (12-4) A. HUD does not supply foreign language translations of the NOI for posting.
- B. ELIHPA NOI's that propose termination of affordability restrictions will be filed according to LIHPRHA guidelines In

Chapter 4.

C. References to the Homeownership Program (available only under LIHPRHA) have been deleted in the Notice to the tenants.

12-5. Access to CFS/Tracs. On receipt of the NOI Form HUD-9608-B, the Asset Management (AM) staff will access the CFS\TRACS system for the following information:

- A. All Section 8 contracts outstanding and closed for the project.
- B. Number of LMSA units associated with the project.
- C. Number of 236 or BMIR units associated with the property.
- D. Current tenant profile information for the project.

12-6. Preservation Capital Needs Assessment (PCNA). The POA stage begins when the local HUD Office receives from the owner the NOI HUD Form-9608-B. The Production Branch, Architectural, Engineering and Cost staff (A/E&C) performs the PCNA. On completion of the PCNA, the Preservation Coordinator sends the PCNA to the owner. Tenant notification requirements of Title VI apply.

12-7. Appraisal Options. To establish a preservation value before the POA submission, the owner has two options regarding the submission of an independent, professional appraisal:

A. An owner may submit an appraisal within 60 days of HUD's receipt of the NOI.

Valuation then has 60 days to:

- 1. Review the appraisal;

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(12-7) 2. Make any necessary adjustments or do its own appraisal;
and

- 3. Provide the value determination to the owner.

B. An owner may submit the appraisal with the POA within 6 months. All tenant notification requirements of Title VI apply.

The appraisal:

- 1. Conforms to the requirements set forth in Notice H93-21, "Production Branch Instructions for Processing POA Under Title II of the Housing and Community Development Act of 1987, and Associated Section 241(f) Loan Applications."
- 2. Determines the highest and best use of the property.

Permissible incentives will only be approved when it can be shown that the property has a higher and better use than subsidized rental property. This determination is central to the HUD review appraiser's function in ELIHPA processing.

3. Provides an estimate of the owner's equity based on consideration of one or more of the following approaches, depending upon which is deemed appropriate by the processing appraiser:
 - 1) capitalization of net income;
 - 2) direct sales comparisons; and
 - 3) replacement cost.
4. Documents how hypothetical costs, if any, for the purchase and installation of any upgrade improvements were derived.
5. Provides reasonable specification data for major upgrades. Similar documentation also supports the derivation of hypothetical conversion costs.
6. Should be effective not later than 30 days before the date of submission of the POA.

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- 12-8. ELIHPA POA. Requesting extension of low-income affordability restrictions through retention or sale of the project in exchange for incentives.
- A. POA. The POA may or may not involve a prepayment of the mortgage.
 - B. Contents of the POA. Includes the following: (Checklists in APPENDICES 8-3 and 8-4 may be helpful, but note differences in requirements for ELIHPA submissions):
 1. Tenant Income Profiles.
 - a. The owner submits two income profiles of the tenants.
 - 1) One profile should reflect tenant data as of the date of the PA submission, and the second, as of January 1, 1987, (based on the median income limits established by HUD in February, 1987) or if the January 1, 1987, profile is unavailable, a certification of unavailability and a profile as of January 1, 1989, (each based on appropriate income limits).
 - 2) For tenants with Section 8 vouchers or certificates, the owner may have to contact the local Public Housing Authority (PHA) to get the information.

- 3) The profile as of POA submission must include the following information for each unit:
 - o A code number to maintain tenant anonymity;
 - o Unit type;
 - o Family size;

b. Family's gross annual income and its classification as very low, low-, or moderate-income;

- 1) Very low-income (gross annual income is less than or equal to 50 percent of area median income adjusted for family size);

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- 2) Low-income (gross annual income is greater than 50 percent, yet less than or equal to 80 percent of the area median income)
- 3) If an owner chooses to use Flat Rents, the low-income group is further divided into the following sub-groups:
 - a. Low One (51-60 percent of area median income);
 - b. Low Two (61-70 percent of area median income);
 - c. Low Three (71-80 percent of area median income);
- 4) Moderate-income (81 percent to 95 percent of the median family income adjusted for family size).
- 5) Market income tenants (95 percent of median and above) are included in the tenant census for purposes of phased-in rents and proportionality though these tenants will be replaced by moderate-income tenants when they move out.
- 6) Number of vacant units (allocated to very low-, low- and moderate income in proportion to the share of occupied units in each category);
- 7) Approved non-revenue units are not counted.

2. A description of any proposed changes in the status or terms of the mortgage or regulatory agreement.

3. A description of any proposed changes in the low-income affordability restrictions (i.e., rents, occupancy restrictions), and a detailed assessment of the effect of these proposed changes on each tenant of the project or a statement that there are no changes.

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Relocation and displacement requirements are covered in Chapter 10.

4. A complete Transfer of Physical Assets (TPA) package [if the POA proposes a change in ownership]. (See Chapter 13 of HUD Handbook 4350.1 REV-1). The TPA must contain complete details of any secondary financing.
5. A description of any outstanding findings of noncompliance with the Fair Housing Act (FHA); Title VI of the Civil Rights Act of 1964; Executive Order 11063; Section 504 of the Rehabilitation Act of 1973; Age Discrimination Act of 1975; or with respect to the project Regulatory Agreement.
6. A waiver request by the owner, if appropriate.
7. A list of any incentives (refer to paragraph 12-10) which the owner may request in exchange for extending the low-income use of the project for the remaining mortgage term. The list should include dollar values for each incentive, e.g., rent increases, amount of the Section 241(f) equity loan, amount of Flexible Subsidy (FS) loan, etc.
8. A FS Capital Improvement Loan Application (CILA) by a nonprofit purchaser (only a nonprofit will qualify) if the POA proposes to make improvements using this program. Purchaser submits a complete FS package, including a comprehensive Management Improvement and Operating Plan (MIO), supported by specifications and cost estimates. HUD Handbook 4355.1 contains guidance and procedures for completing a Flexible Subsidy application. HUD will not award final approval of the POA until the CILA is fundable under a Notice of Fund Availability (NOFA).
9. Documentation that the owner has sought assistance through State and local government agencies and a complete description of any assistance which such agencies will provide.

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10. Complete description of the present debt secured by the project, including current balances, interest rate, monthly mortgage payments to principal, interest and MIP,

maturity date of the mortgage and copies of:

The first note and mortgage,

All ancillary notes and mortgages, loans by public agencies, e.g., loan for rental rehabilitation and any other mortgage liens and, Partnership debt secured by a mortgage lien.

11. A detailed statement of the proposed rental structure (Form HUD-92458) at the property reflecting all the project information and the rental structure with incentives. Rents may be increased; however, they must remain affordable.
12. Certification using the format provided in APPENDIX 8-5, Form HUD-9611, Low-Income Housing Tax Credits (LIHTC) certification of owners, concerning the owner's intent regarding the use LIHTC. Owner must disclose information detailing the use of LIHTC, or certify that tax credits will not be used.

C. Results of HUD's Review. (See Chapter 8 for detailed discussion):

1. Prepayment is approved and the owner will receive incentives from the Federal government in return for agreeing to conditions related to the continued use of the project as low-income housing;
2. Prepayment is not approved but incentives are granted under the same conditions as in the preceding paragraph;
3. Prepayment is not approved, and HUD will not offer incentives of any kind.

12-9. POA REQUESTING PREPAYMENT AND TERMINATION OF AFFORDABILITY RESTRICTIONS. See Chapter 8, Section 6 for the list of findings HUD must make to approve a POA to terminate low-income affordability restrictions, submission requirements, and processing instructions.

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12-10. INCENTIVES TO EXTEND LOW-INCOME USE. The following are incentives available to owners who agree to extend the projects affordability restrictions for the duration of the original mortgage:

NOTE: HUD WILL PROVIDE INCENTIVES ONLY IF: (1) THE APPRAISAL DEMONSTRATES THAT THE PROPERTY HAS A "HIGHER AND BETTER USE" THAN AS LOW-INCOME RENTAL HOUSING; AND (2) LOW-INCOME AFFORDABILITY RESTRICTIONS AT THE PROJECT ARE EXTENDED FOR THE REMAINING TERM OF THE MORTGAGE.

A. Increased Distributions. An incentive distribution may: 1)

stay at 6 percent of revalued equity; 2) increase the percentage of existing or revalued equity; or 3) be subject to the surplus cash computation. Section 221(d)(3) mortgagors may retain all rental collections beyond normal operating costs and debt service as distributable, subject to the surplus cash computation.

1. The percentage of equity allowed as distributions will be calculated as the projected net cash flow (after full rent stabilization with a 5 percent vacancy factor and management fee not to exceed \$45.00 per unit per month) divided by the new equity base (recalculated equity). Using current projections, the resulting increased percentage is the mortgagor's annual authorized return on equity. HUD applies this rate of return to the projects new equity base (equalling the appraised value as concurred by HUD at POA approval) minus the amount of secured debt. If the mortgagor chooses to obtain secondary financing, the amount of the second mortgage will be subtracted from the new appraised value, with the remaining balance of the first mortgage, to calculate the new equity base. Annual adjustment increases will be budget-based.
2. Surplus Cash Distribution. There will be no restrictions on the distribution of surplus cash, as defined in the Regulatory Agreement. Total rents for surplus cash projects are subject to annual increases using an Annual Adjustment Factor (AAF).

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3. Section 236 projects remain subject to the surplus cash computation and collection and remittance to HUD of all excess income. Distributions may be taken only after the local HUD Office has determined that the project is properly maintained and all reserve accounts are properly funded.
- B. The Production Branch appraiser can approve an increase in an owner's equity based on the "As Is" value of the property. "As Is" value is the unsubsidized fair market value of the property, less the costs of any required repairs, upgrade improvements, and net discounted conversion costs that an owner would have incurred by an owner/converter in the marketplace to get the hypothetical highest and best use. Owner's equity is the net value of the property obtained by deducting all HUD-approved indebtedness from the "As Is" value.
- C. Section 241(f) Equity Loan. If an owner borrows against the revalued equity base by obtaining a Section 241(f) equity loan, a conventional loan or any other long-term indebtedness, either secured against the property or unsecured, the equity portion of the Section 241(f) loan amount shall be added to the existing outstanding indebtedness for purposes of

recalculating the remaining equity base, i.e., recalculated equity, to determine the amount of limited distribution. An owner entity that does not request a 241(f) loan as an incentive either because it does not require a rehab loan, or prefers to apply for an equity loan at some future date will have the approved Authorized Annual Return (AAR) applied to the Revalued Equity amount to determine the amount of distribution. Refer to Production Branch Instructions for Processing POA under Title II of the Housing and Community Development Act of 1987;" Section 17, pp.40-41.

1. HUD cannot issue a commitment to insure a Section 241(f) loan before Final Approval of a POA. Approval of the POA qualifies the owner for loan eligibility and provides sufficient operating income to support a 241(f) loan.
2. Section 241(f) loan applications must be accompanied by the certification of LIHTC tax credits required by Notice H90-17. Refer to APPENDIX 8-7 for the required documents.

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- (12-10) D. Non-Insured Financing. HUD will only approve proposed non-insured secondary financing if, upon evaluation, it proves to be cost effective and assures HUD's security.
- E. Access to Reserves in Extensions and Sales Transactions. Owners may be permitted access to the Residual Receipts Account if projects are in good physical condition, as determined by the local HUD Office. Escrow and trust accounts (tax, insurance, and tenant security deposits) must be properly funded. Owners may also have access to the Reserve for Replacement Account (RRA) provided the required repairs have been completed. AM will determine if the RRA is sufficiently funded. Also, current policy permits access to RRAs in sales transactions.
- F. Rent Increases. "Monitoring Project Rent Increases After POA Approval".
- G. Section 8 Loan Management Set Aside (LMSA).
1. Existing units. HUD will increase section 8 rents to the lesser of:
 - a. The Fair Market Rents (FMR) or
 - b. The Project Specific Rent (PSR).
 2. New units. HUD will provide new Section 8 Loan Management Set Aside (LMSA) units for all very low-income tenants at the lesser of the FMR or the Project Specific Rents (PSR). HUD also may provide Section 8 assistance to lower income tenants (51-80 percent of median income) in a sale to the tenants or a qualified nonprofit entity.

3. Subject to appropriations, law and the availability of funds, HUD will extend the contracts pursuant to a POA.

H. If HUD is unable to extend these LMSA contracts or provide comparable assistance, HUD will take the following successive actions:

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1. Modify the rent and occupancy restrictions that are dependent on the Section 8 LMSA and which the owner agreed to maintain in executing the Use Agreement;
2. Release an owner from the rent and occupancy restrictions. If these actions result in default of the insured loan, revise the POA affordability restrictions.

I. Flexible Subsidy. Flexible Subsidy Capital Improvement Loans (CILS) are only available to nonprofit Purchasers of ELIHpa projects with insured mortgages. The loan may be a deferred note (payable on sale or refinancing of the project) with a term coincident with the expiration of the project's insured mortgage note, accruing interest at a rate of 1 percent. Projects with HUD-held mortgages or State Agency non-insured financing are eligible for CILs as an ELIHPA incentive and will be funded according to a published NOFA funding schedule. Although the POA may request a CIL as an incentive and AM may review and give Preliminary approval of the POA including a CIL, HUD may not give final approval until the CIL is funded under a Notice of Fund Availability (NOFA). If an owner requests this incentive, a complete Flexible Subsidy package including a Management Improvement and Operating (MIO), detailed specifications, cost estimates, and LIHTC tax credit certification must be included with the POA. HUD Handbook 4355.1 contains instructions for Flexible Subsidy assistance.

J. Prepayment of the original HUD-insured or HUD-held loan provided project meets criteria for prepayment and termination of the regulatory agreement. See Chapter 11 for processing instructions.

K. Transfer of Physical Assets (TPA). Transfers to a qualified nonprofit organization, limited equity tenant cooperative, public agency, or other entity acceptable to HUD will be considered. If a POA involves a TPA, the POA and the TPA must be reviewed and approved concurrently. Approval of the TPA should be obtained before granting preliminary approval of the POA. TPA applications must be prepared according to the instructions in HUD Handbook 4350.1, REV-1, Chapter 13,

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(12-10) L. Delinquent and Defaulted HUD-held Mortgages. Will include a plan to reinstate and maintain the HUD-held loan at the time

of approval of the POA.

1. Incentives such as equity loans may be used to reinstate the defaulted HUD-held mortgage. In rare instances, a provisional workout agreement may be necessary, e.g., a project requiring an extensive repair program.
2. Mortgages in default and under workout may provide for incentive compensation to be received by the owner only after reinstatement of the mortgage. The approval of the POA proposing incentives is contingent on satisfactory completion of the workout. (Increases in distribution rates or amounts provide little incentive when the regulatory agreement prohibits distributions due to the mortgage default). All proposed workouts must be consistent with the instructions contained in Handbook HUD 4350.1 REV-1, Chapter 11.

M. Project Oversight Costs are reasonable expenses incurred by a nonprofit purchaser in hiring third parties to help the purchaser's board of directors in making ownership decisions.

1. Retroactive requests: Nonprofit purchasers with approved POAs receiving incentives before the publication of the Regulation at 24 CFR Part 248.5, are eligible to apply for this additional incentive. A POA may be amended to include project oversight costs.
2. Project Expenses: Limited to the lower of:
 - a. justified costs for approved purposes;
 - b. one (1%) percent of the Gross Rent potential (GRP);
or
 - c. \$10,000.
3. HUD will allow additional expenses, as required, for maintenance of the nonprofit organization itself,

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organization itself, including changes in organizational documents (articles and by-law amendments).

4. The Multifamily Housing Director may adjust these standards based on the actual costs for these services.
5. The AM Branch will provide the Production Branch appraiser with the determination of the oversight costs to be included in the operating expenses on the Form HUD-92264 before the completion of the Section 241(f) loan commitment.

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Section B

Reviewing and Evaluating the ELIHPA POA

- 12-11. General. AM staff reviews and analyzes a POA adhering to strict statutory review and processing time frames The guidelines that follow apply to all POAs:
- A. Initial review. The AM staff of the local HUD Office performs an Initial review of the POA.
 - 1. All major components of the contents of the POA (listed in Paragraphs 2-5 (A through I) above must be present.
 - 2. An acknowledgement or rejection letter (APPENDIX 12-2) must be issued within 5 days of receipt of the POA [LOG date).
 - 3. If major components are missing, immediately return the POA to the owner with a brief letter which indicates the missing parts.
 - B. Receipt. Upon receipt and acknowledgement of a complete POA, AM staff begins the formal review.
 - C. Project history. The AM staff reviews the project's history (mortgage documents, the docket, and other project files) for agreements such as a Flexible Subsidy Use Agreement, Urban Renewal Agreement, Land Disposition Agreement, known zoning restrictions or rent control ordinances that may restrict the occupancy or use of a project.
 - 1. If a POA proposes prepayment and termination of affordability restrictions, a prior agreement may not preclude prepayment of the mortgage; however, it may restrict the use of the property to low-income use for the duration of the original mortgage.
 - 2. If a POA requests Incentives in exchange for an extension of affordability; such a restrictive agreement may preclude the Project from having a "higher and better use" than low-income housing, and therefore, prohibit the Department from awarding incentives.
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- (12-11) D. A deficiency in the POA is anything that prohibits HUD from approving the POA.
 - 1. Inform the owner of any deficiencies in the Plan within 60 days [Log date sent] of the Office's acknowledgement of the POA.
 - 2. A complete Notice of Deficiencies must contain sufficient detail to enable the owner to make the necessary

corrections and must include the local HUD Office's recommendations for correction.

- 12-12. POA Requesting Incentives and Extension of Affordability Restrictions. The following guidelines cover POAs involving incentives and the extension of low and moderate-income restrictions at the property:
- A. Requirements For Approval. To approve a POA involving incentives, HUD must determine that the project meets the following requirements;
1. The owner will maintain the low and moderate income affordability restrictions at the property for a period not less than the remaining term of the original mortgage. If the mortgage was reduced at final endorsement and the amortization schedule and monthly Level Annuity Monthly Payment (LAMP) were not adjusted, amortization of the mortgage note may be completed before the original 40-year term. The owner must, in these cases, agree to maintain the affordability restrictions for the original 40-year term.
 2. The project has a higher and better use other than low and moderate-income housing.
 3. The incentives are necessary to provide a fair return to the owner, but equity takeout loans may never exceed HUD's determination of the owner's "As Is" revalued net equity in the property, regardless of available surplus cash, loan source, or any other factors.
 4. A description of any outstanding audit findings or findings of non-compliance with the FHA; Title VI of the Civil Rights Act of 1964; Executive Order 11063; Section 504 of the Rehabilitation Act of 1973; Americans
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- (12-12) with Disabilities Act; Age discrimination Act of 1975; the project Regulatory Agreement with a description of the resolution, or proposed resolution, of any such findings, or a certification that no violations exist.
- NOTE: The owner must correct any violations before POA approval.
5. Repairs are determined by the required project Preservation Capital Needs Assessment (PCNA). The AM staff will not approve a POA for a project that is in poor physical condition.
 6. Throughout the remaining term of any insured mortgage or use agreement, adequate expenditures will be made for the proper maintenance and operation of the housing.

7. The owner cannot displace current tenants (except for good cause).
8. If the POA involves a TPA, the local HUD Office will issue preliminary approval of the TPA.
9. If rents are increased because of incentives to maintain affordability:
 - a. The owner must recertify all tenants annually.
 - b. Any increase in rent contributions by current tenants will be to a level that does not exceed 30 percent of the adjusted gross monthly income of the tenant or the Section 8 Fair Market Rent (FMR) for the area, whichever is lower. The rent contribution must include all utilities. If utility allowances are in place, the amount of the utility allowance must be included to figure out the total tenant rent.
 - c. Any increase in rents paid by tenants living in the project at POA approval (except for increases made necessary by increased operating costs) must be

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must be phased-in. Increases attributable to increased operating costs may also add to the amount of the phased-in rent increase. However, this "pass through" of operating costs occurs only during the phase-in period. The requirements at Paragraph 12-14 still govern maximum tenant rents.

- d. Rent Phase-In. If the total rent increase is:
 - 1) Greater than 30 percent of the existing rent, it must be phased-in equally over a period of not less than 3 lease years; the first increase will occur upon the effective date of the POA and the subsequent two increases will occur annually.
 - 2) Greater than 10 percent yet less than 30 percent, it must be phased-in at no more than 10 percent per year.
- e. Rent increases may not be phased-in less time than allowed by the above Paragraphs, c. and d. THE METHOD FOR IMPLEMENTING THE PHASE-IN IS PROVIDED IN (APPENDIX 11-1), FORM HUD-90010, "Owner's Calculation of Rent Phase-In Due to Approval of POA" designed to enable the owner to calculate the annual phase-in of the Total Tenant's Rent (TTP). This form calculates rent phase-in for both LIHPRHA and ELIHPA with a few minor changes noted on the

form and instructions where Flat Rents and Floor Rents come into play.

- f. Rents for units becoming available to new tenants must be affordable at the lower of 30 percent of adjusted income or the FMR.
- g. Tenant Profiles. The owner must agree to maintain the units as affordable to the same tenant income

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profile (percentages of tenants who are very low-, low-, or moderate-income) when determining the proportions.

- 1) When determining proportions, count market rate tenants as moderate-income tenants. Moderate-income tenants replace market rate tenants when they move out. The owner may admit a higher proportion of very low-income tenants; however, such additional very low-income tenants will not receive Section 8 assistance under the POA, but may receive other Section 8 assistance or be subsidized by the owner.
- 2) If an owner chooses to divide the low-income group into subgroups of Low 1 (51-60 percent of Median Income), Low 2 (61-70 percent), and Low 3 (71-80 percent), because the owner chooses to use FLAT RENT FACTORS (FRF) for low and moderate-income families, the owner must maintain the tenant income profile for those subgroups. Vacant units divide in the same proportions as occupied units.
- 3) The owner will reclassify a tenant when the tenant's income changes. A moderate-income tenant whose income decreases to below the very low-income limit may be reclassified and eligible for Section 8 assistance, if available.

- B. Reviewing and Evaluating the POA. To determine that the POA has met the above requirements, AM staff will require input from the Fair Housing and Equal Opportunity (FHEO) Division,

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Production Branch, Valuation Branch and AE/C Branch. The Loan Management staff must send a copy of the POA and instructions for POA approval to each Branch.

- 1. FHEO is responsible for informing AM whether the owner or

management of the project has any outstanding findings of noncompliance with the FHA, Title VI of the Civil Rights Act of 1964, Executive Order 11063, Age Discrimination Act of 1975, the Rehabilitation Act of 1973.

2. Production Branch Appraiser. To establish the preservation value before the POA submission, an owner has the option to submit the appraisal within 60 days of receipt of the PCNA. The HUD appraiser, then, has 60 days to review the appraisal, make adjustments, if necessary, do its own appraisal and provide the value determination to the owner. The owner then has an additional 6 months from the date of the HUD value determination to submit a POA.
3. The HUD Appraiser reviews the owner's appraisal to determine:
 - a. whether:
 - (1) the appraisal's content and conclusions are accurate, and
 - (2) the project has a higher and better use than subsidized low and moderate income housing.
 - b. provides:
 - (1) a determination of value as non-residential housing both as restricted and unrestricted market rate rental housing, and
 - (2) rent comparables for unassisted units in the area to help the AM staff in determining Section 8 rents.

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Section C

Preservation Rents

- 12-13. Establishing Affordable Preservation Rents. The following are rules for achieving affordable rents under an ELIHPA POA involving the extension of affordability restrictions.
 - A. Section 8 LMSA. The number of Section 8 units will be based on:
 1. Very Low-Income Tenants. (Tenants whose gross annual income is less than or equal to 50 percent of the area median income). Section 8 may be provided for the greater of the number of very low-income tenants who either currently reside at the project, or resided at the project on January 1, 1987, (as determined by the income limits effective February 6, 1987).

2. Lower Income Tenants. (Tenants whose gross annual income is greater than 50 percent, yet less than or equal to 80 percent of the area median income Section 8 assistance may be provided to lower income tenants if the POA involves a sale of the property to the tenants or a qualified nonprofit entity. The number of LMSA units provided is dependent on which tenant income profile the owner will maintain: the profile established at January 1, 1987, or the current profile.
 3. Section 8 Contract rents may exceed the rents established for comparable non-Section 8 units in the project, but may not exceed the lesser of the FMR for existing housing or the Project Specific Rents (PSR).
- B. FRFs. The Department has developed factors which produce rents which are substantially higher than current rents yet remain affordable for new low and moderate-income tenants. The rents are based on the "effective" median income for the area in which the project is located.

The effective median income is the lesser of the median income or 125 percent of the national median income. If an owner

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median income. If an owner chooses to use "flat" rents for low-income families, the low-income groups (51 - 80 percent) divide into subgroups (51-60 percent, 61-70 percent, 71 - 80 percent) to establish equitable rents for these households. To find the affordable factored rent multiply the "effective" median income by the appropriate "FRF." Factors break down by unit size and by income category. APPENDIX 12-3 lists the FRFs. Owners may find factors advantageous because they provide predictable Net Operating Income for purposes of refinancing or secondary financing.

- C. Special Requirements for Projects under the Section 236 Program. Under a POA approved for surplus cash distribution, rents collected up to the Basic Rent (BR) are available to cover operating expenses, debt service, and distributions (subject to the surplus cash computations). Rents collected in excess of the aggregate BR constitute "excess rents." These excess rents must be remitted to HUD in accordance with 236 regulations and procedures. Basic Rents are calculated as follows:
1. Units assisted by Section 8 subsidy will have a BR set at the Section 8 contract rent.
 2. For low-income units, the BR will be set at a factor applied to the effective median income. This factor approximates what a family at 75 percent of the median income would pay for rent with 30 percent of adjusted gross monthly income, and is equal to the factors used

for the 71-80 percent income level.

3. For moderate income units, the BR also will be set at a factor applied to the effective median income. This factor approximates what a family at 90 percent of the median income would pay for rent with 30 percent of adjusted gross monthly income.
4. The computation of Section 236 market rents does not change.
5. The 236 Basic Rent Factors are:

| | | | |
|--------------|--------------|------------|-----------------|
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| (12-13) | Bedroom Size | Low Income | Moderate Income |
| | Studio | 0.013125 | 0.01575 |
| | 1 | 0.0140625 | 0.016875 |
| | 2 | 0.016875 | 0.02025 |
| | 3 | 0.01933593 | 0.02320313 |
| | 4 | 0.02109375 | 0.0253125 |
| | 5 | 0.02285 | 0.02742 |

* Notwithstanding these Special Requirements, the maximum rent that may be charged for any unit is the FMR.

** NOTE: THE BASIC AND MARKET RENTS ARE ESTABLISHED AS A WAY OF DETERMINING HOW MUCH EXCESS INCOME THE OWNER MUST RETURN TO HUD; AND HOW MUCH THE OWNER GETS TO KEEP. IT HAS NOTHING TO DO WITH WHAT A TENANT ACTUALLY PAYS FOR RENT.

12-14. NON-SECTION 8 TENANT RENTS. All Section 8 gross rents, rents based on 30 percent of adjusted income, FMRs, and PSRs include utilities. If a tenant pays some or all of the utilities, tenant rent payments are adjusted by a utility allowance. The following are rules for setting tenant rents under a POA.

- A. In a project for which an owner has not selected FRFs, the Total Tenant Payment will be the lower of:
 1. The FMR (or PSR, where applicable) or
 2. The higher of 30 percent of Adjusted Gross Monthly Income (AGMI) or the Floor Rent (Minimum Rent).
- B. Current Tenants. In a project for which an owner is charging the Flat Rents, the TTP for current non-subsidized tenants (tenants living at the project at POA approval), will be the lowest of:
 1. The FMR (or PSR where applicable); or
 2. The higher of 30 percent of AGMI or the Floor rent

3. The FRF.

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(12-14) C. Future Tenants. In a project for which an owner is charging the Flat Rents, the TTP for future nonsubsidized tenants (not living at the project at POA approval) will be the lower of:

1. The FMR (or PSR where applicable)
2. The FRF.

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Section D

APPROVING THE POA

12-15. A. Time frames for approval. The AM staff will approve the POA within 180 days and notify the owner in writing if the POA is not approvable. If the AM staff is unable to approve the POA within 180 days, the local HUD Office must notify the owner in writing that the POA is not approvable. [LOG date notice sent] The notice to the owner must:

1. Describe the reasons why the POA is not approvable, including delays by the owner in the submission of the revised POA;
2. Describe actions that the owner must take to meet the criteria for approval; and
3. Give the owner an opportunity to revise the POA and resubmit it for approval.

B. Preliminary Approval. The local HUD Office approves a POA in two stages, preliminary approval and final approval.

1. Preliminary Approval of a POA involving a prepayment and termination of the low-income affordability restrictions. The Multifamily Housing Director may grant preliminary approval of a POA involving prepayment and termination of the low-income affordability restrictions only if the POA meets the requirements of Chapter 8, Section B.
2. Preliminary approval of a POA involving extension of the low-income affordability restrictions. The Multifamily Housing Director may grant preliminary approval of a POA including incentives in exchange for extension of the low-income affordability restrictions only after ensuring that the POA meets the requirements indicated in Paragraph 12-12. A copy of the approved POA must be attached to the letter granting the owner preliminary approval.

- a. Once the POA receives preliminary approval, the owner must notify all the tenants of its terms and provide 60 calendar days for the tenants to comment.

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- b. If the POA involves a TPA, the AM staff must evaluate the TPA and issue preliminary approval of the sale to the purchaser. Preliminary approval of the TPA must be made simultaneously with approval of the rest of the POA.

- c. Tenant Notice. AM staff will prepare a notice advising tenants of the approval of the POA and summarizing the transaction. The owner must post a copy of this notice in a conspicuous place in each occupied building of the project. At a minimum, the notice must include:

- 1) A statement that the POA is approved pursuant to Title II, Subtitle B of the Housing and Community Development Act of 1987, and HUD's implementing regulations at 24 CFR Part 248.
- 2) A statement of the rents that will be charged to current tenants, the procedure by which these rents will be increased, and the anticipated dates for carrying out these rent increases.
- 3) A statement describing any assistance that will be made available to the current tenants, and the duration of the assistance. If tenants will be relocated, a description of the relocation plan.
- 4) A statement describing the duration of the terms of the PA.
- 5) A statement that indicates that each tenant will receive a recorded copy of the Use Agreement/Amended Regulatory Agreement.
- 6) The following statement concerning the tenant's right to comment on the proposed POA: "HUD has granted preliminary approval of this

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preliminary approval of this POA. If you have any comments concerning the POA, HUD will take your comments into consideration before granting final approval. If you wish to

submit a comment, you must do so within 60 calendar days from the date of this notice. Please address them to the local HUD Office AM Branch Chief."

- 7) The owner must also write to each affected tenant explaining how that tenant will be affected by the POA. If the approval of the POA contains provisions for a rent Increase, the owner's letter must explain the rent phase-in provisions, if applicable. All additional requirements for rent increases, contained in Chapter 7 of HUD Handbook 4350.1, REV-1, Insured Project Servicing Handbook, must be followed and the owner must post a notification of the rent increase:
 - a) After POA approval;
 - b) Before execution of the Use Agreement; and
 - c) At least 30 days before the effective date of any rent increase.

- d. State and Local Government Notice. AM staff must write to all affected State and local governments to advise them that the POA has been approved.

12-16. Request for Fund Reservation. Within 30 days after issuing preliminary approval, the local HUD Office must request funding to implement the approved POA from the Office of Multifamily Housing Preservation and Property Disposition.

- A. Section 8 new unit funding requests require unit composition, approved rents, contract authority, and budget authority according to annual funding instructions.

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(12-16) B. Section 8 amendment funding requests require existing contract number - and contract authority and budget authority needed.

- C. Flexible Subsidy requests from nonprofit applicants must conform to Departmental NOFA requirements for Capital Improvement Loans and instructions for processing (HUD Handbook 4395.1 REV-1, Flexible Subsidy).

IMPORTANT: POA funding requests for Section 8 LMSA are not subject to NOFA requirements.

12-17. Final approval. The period between the dates granting preliminary and final approval of the POA allows the tenants sufficient time to propose comments to the Plan, and the local HUD Office to consider the comments and make any changes to the POA. This period also allows the local HUD Office sufficient time to prepare any required

Use Agreements and amendments to Regulatory Agreements, and to ensure that Section 8 and Flexible Subsidy funds are reserved.

- A. The AM staff cannot issue final approval until it has reviewed the tenant comments and the resulting changes, if any, have been made.
- B. Effective date. The approved POA is effective when the owner or purchaser:
 - 1. Prepays and terminates affordability restrictions and executes and records a Use Agreement for current tenants [LOG effective date], or
 - 2. Executes the Use Agreements to extend affordability restrictions [LOG execution date]. In the latter case, no other action (e.g., rent increases, Section 8 contracts, Section 241(f) loan commitments, Flexible Subsidy contracts, distribution of surplus cash, etc.), is permissible before the owner's execution and recording of the Use Agreement.
- C. POA expenses incurred by the owner pursuant to filing and negotiating a POA are the owner's responsibility until POA approval. Such expenses may be paid as project expenses only

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expenses may be paid as project expenses only from residual receipts, surplus cash or distributions as approved in the POA and only after the POA is effective. Expenses charged to the project before POA approval require the local HUD Office's normal regulatory enforcement action and prevent approval of the POA.

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Section E

12-18. Monitoring: Project Rent Increases After POA Approval

- A. Limited Distribution Projects. Rent increases will be approved only after the State/Area Office has determined that the project is properly maintained and that the Reserve Accounts are properly funded. All rent increase requests will be reviewed, processed, and approved by the AM staff. The requirements for posting a Notice to Tenants of Intention to Request a Rent Increase (24 CFR part 245) must be observed even though tenants are not directly affected by project rent increases.
 - 1. Methodology. Using the tables in Form HUD-90011-A (APPENDIX 12-4) calculate section 8 gross rents as follows:

For Section 8 contract units, rent increases will be budget based. The section 8 contract rents will be calculated by projecting the rents paid by the lower and moderate income tenants and subtracting these rents from the total amount required to support the increased project budget.

2. The rent projection for Moderate-Income Tenants is based on calculations using 80 percent of the area median income.
 3. The rent projection for Low-Income Tenants is based on calculations using 65 percent of the area median income.
 4. When FRFs are used the rent projections for the three Lower Income subgroups is based on 55 percent, 65 percent, and 75 percent of the area median income. Rents are adjusted by applying the factored rent to increases in the median income. The Section 8 Income Limits are established by a Notice regularly published by HUD.
- B. Surplus Cash (Unlimited) Distribution Projects. Section 8 rent increases for projects approved for surplus cash distribution will be (1) the application of the Section 8 Annual Adjustment Factor to Section 8 LMSA unit rents and (2) either the application of FRFs to the change in median income, changes