

Chapter 1. General

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- A. Subtitle A of Title VI of the National Affordable Housing Act of 1990 (Title VI), which repealed and replaced Title II of the Housing and Community Development Act of 1987 (Title II), restricts an owner of "eligible low-income housing," insured, formerly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

below, on or after November 1, 1987. Subpart C pertains only to administering Title II. Subpart A of Part 248 consists of provisions

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

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

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

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

4/92

1-2

4350.6

- E. Provides an application and approval procedure for a State Agency to be delegated some or all responsibility for receiving Notices of Intent and processing Plans of Action.

1-4. Revisions to Section 250(b) and (c) of the National Housing Act were implemented by Mortgagee letter 91-25 in Appendix 1-2.

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

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

review, evaluate and approve a State's Preservation Plan in accordance with the criteria set forth below.

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

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

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

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

1-5

4/92

4350.6

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

C. Implementation Agreements. The Department may

enter into any agreements necessary to implement and approve a State Preservation Plan.

D. Certifications Required:

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

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

4/92

1-6

4350.6

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

1-10. Consultation with Other Interested Parties.

- A. The Chief, Loan Management Branch, will designate a person to serve as the liaison between HUD and States, local governments, and other interested parties to:
1. Ensure that the Initial and Second Notices of Intent (NOIs) are sent to the Chief Executive Officer (CEO), or its designee, at the lowest level of government in a metropolitan area (eg., the CEO of the city rather than the county or State) and to the CEO, or its designee, at the highest level of government, which would be the State, in a non-metropolitan area.

2. Elicit feedback from State and local governments where projects are located to make sure that the owner has filed the Initial Notice of Intent and the Second Notice of Intent (where applicable) with them and that all Federal requirements have been met.
3. Gather information specified in Paragraph A.2. above and find out if the owner has provided other information, required by Title VI, to the appropriate State or local agencies, including appraisal information it received from HUD.
4. Develop a list which contains the name of the person, designated by the State or local CEO, to be responsible for implementing the low-income affordable housing program so that HUD:

1-7

4/92

4350.6

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

about Plans of Action or a Resident Homeownership Plan of Action.

- D. The Department must confer with appropriate interested parties (e.g., community groups, nonprofit organizations, tenant groups) that it believes could assist in the development of a Plan of Action that best achieves the purpose of preserving and maintaining, to the maximum extent possible, housing that is affordable to low-income families or persons; minimizes the involuntary displacement of tenants currently residing in low-income housing; or facilitates the sale of housing to residents under a Homeownership Program.

4/92

1-8

4350.6

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

enter information on the log, as specified in this Handbook, whenever the word LOG appears.

- 1-14. Timelines. Appendix 1-1A, 1-1B and 1-1C are timelines that contain the clock Loan Management staff must adhere to when processing NOIs and Plans of Actions.
- 1-15. Definitions.

4350.6

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

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

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

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

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

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

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

Community-Based Nonprofit Organization (CBO). A

private nonprofit organization that:

A. Is organized under State or local laws;

4/92

1-10

4350.6

- B. Has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual;
- C. Is neither controlled by, nor under the direction of, individuals or entities seeking to derive profit or gain from the organization;
- D. Has applied for, or has a tax exemption ruling from the Internal Revenue Service under Section 501(c) of the Internal Revenue Code of 1986;
- E. Does not include a public body (including the participating jurisdiction) or an instrumentality of a public body. An organization that is State or locally chartered may qualify as a CBO. However, the State or local government may not have the right to appoint more than one-third of the membership of the organization's governing body and no more than one-third of the board members can be public officials;
- F. Has standards of financial accountability that conform to Attachment F of OMB Circular No. A-110 (Rev.) "Standards for Financial Management Systems";
- G. Has among its purposes the provision of decent housing that is affordable to low-income and moderate-income persons, as evidenced in its charter, articles of incorporation, resolutions or by-laws;
- H. Maintains accountability to low-income community residents by:
1. Maintaining at least one-third of its governing board's membership for low-income neighborhood residents, other low-income community residents, or elected representatives of low-income neighborhood organizations.
 - a. For urban areas, "community" may be a neighborhood or neighborhoods, city, county, or metropolitan area;

 4350.6

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

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

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

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

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

A. That is financed by a loan or mortgage:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Initial Notice of Intent. An owner's notification to the Department of its intention to terminate the

low-income affordability restrictions on the project through prepayment of the mortgage or voluntary termination of the insurance contract, to extend the low-income affordability restrictions on the project, or to transfer the project to a qualified purchaser.

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

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

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

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

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

4350.6

rental vacancy rates and other factors as appropriate.

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

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

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

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

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

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

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

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

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

Personal Benefit Expenses (PBEs). HUD's or the contract administrator's estimate of the average monthly utility bills (except telephone) for an

energy-conscious household paid directly by the tenant.

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

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

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

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

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

4350.6

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

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

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

NOTE: A nonprofit organization or State or local agency that is affiliated with a for-profit

entity for purposes of purchasing a project under Subpart B of Part 248 will not be considered a priority purchaser.

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

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

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

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

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

1. The purchaser and the owner will not be deemed related parties on the basis that financing is provided to the purchaser by the seller or a management company affiliated with the seller, as long as:
 - A. Only a loan, and not a grant, is provided;
 - B. The financing is provided for the

acquisition of the project, the rehabilitation of the project, or both;

- C. In the case of financing for the acquisition of the project, the sum of the principal amount of the loan, plus the amount of the Section 241(f) acquisition loan and any Federal grant to cover acquisition of the project, does not exceed the sum of the sales price and the expenses associated with the acquisition, loan closing and implementation of the plan of action and, in the case of financing for the rehabilitation of the project, the principal amount of the loan does not exceed the equity requirements applicable to the rehabilitation loan or capital improvement loan obtained by the purchaser under Part 241 or Part 219;

1-19

4/92

4350.6

- D. The loan is not a condition of accepting a bona fide offer or entering into a sales contract;
 - E. The seller has no input in the continued operation of the project as a result of the loan; and
 - F. In the case of a loan provided by a management company that is affiliated with the seller, the execution of a management contract between the purchaser and the management company is not a condition of the loan.
2. This rule does not bar an owner, or former owner, from membership on a nonprofit organization's board of directors, as long as:
- A. The owner, or former owner, participates only in its personal capacity, without compensation, and holds a nonvoting membership; and
 - B. The purchaser and the owner will not be deemed related parties solely by reason of the purchaser's retention of a property management entity of a company that is owned or controlled by the owner or a principal thereof, if retention of the management company is neither a condition of sale nor part of consideration paid for

the project and the property management contract is negotiated by the qualified purchaser on an arm's length basis.

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

Relocation Expenses. Relocation expenses consist of payment for:

1-20

4/92

4350.6

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

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

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

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

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

Residual Receipt Fund. The fund established under

the Regulatory Agreement for holding cash remaining after the distribution of all allowable distributions from surplus cash as it is defined in the Regulatory Agreement.

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

1-21

4/92

4350.6

Secretary. The Secretary of Housing and Urban Development.

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

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

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

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

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

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

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

- A. The transfer preservation value of the project determined under Section 248.111; less

- B. The outstanding balance only of the federally-assisted mortgage(s) secured by the project prior to the granting of incentives.

1-22

4/92

4350.6

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

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

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

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

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

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

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

objectives under Title VI.

1-23

4/92