

Chapter 2. Eligibility

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

until the Plan of Action (POA) is approved;

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

2-3. Ineligibility Due to Default Under the Mortgage. An owner of eligible low-income housing intending to prepay the mortgage or voluntarily terminate the mortgage insurance contract, extend the low-income affordability restrictions of the housing, or transfer the housing to a qualified purchaser, may file an Initial Notice of Intent (NOI) unless the mortgage covering the project:

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

2-2

4/92

4350.6

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

2-4. Ineligibility Due to Use Restrictions. Projects

listed in Paragraph 2-2.A. above are ineligible if:

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

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

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

- B. Thus, Section 250(a) governs the prepayment of Sections 221(d)(3) market rate mortgages with Rent Supplement Assistance, as well as Section 221(d)(3) BMIR and Section 236 mortgages if less than 20 years have expired from the date of final endorsement or if the project is owned by a non-profit mortgagor. Section 250(a) is not applicable to a Section 221(d)(3) market rate project with Section 8 LMSA assistance, or to a purchase money mortgage.

- C. Exception. During the 20th year from final endorsement, a project may be subject to Section 250(a) and yet still be eligible to file a POA under Title VI. In such cases, the mortgage may be prepaid during the 20th year only if HUD makes the determinations listed in Section 250(a). Once the 20th year has ended, the mortgage may be prepaid only in accordance with a POA approved by HUD under Title VI.
- 2-6. Projects Governed by neither Title VI nor Section 250(a). The prepayment of certain mortgages (eg., Section 221(d)(3) market rate mortgages with a limited distribution type mortgagor where prepayment occurs during the first twenty years, and purchase money mortgages with prepayment prohibitions) requires HUD's approval, but is subject to neither Section 250(a) nor Title VI. Loan Management staff should contact the Office of Multifamily Housing Preservation and Property Disposition, Affordable Housing Branch, in Headquarters, regarding the standards for approval of prepayment of such mortgages.
 - 2-7. Transition Provisions for Those Who Filed Title II Notices of Intent.
 - A. Eligibility for Transition Election. An owner of eligible low-income housing may, under certain circumstances, choose whether to proceed under the provisions of Title II or Title VI. Owners may elect to be subject to provisions of either Title II or Title VI if:
 - 1. Their projects became eligible low-income housing before January 1, 1991, because the

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

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

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

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

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

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

3. An owner who meets the qualifications of Paragraph B above and desires to proceed under Title VI must submit to the Loan Management Branch within 30 days of the effective date of the interim rule or within 30 days after the Department notifies the owner of HUD's final approval of the Title II POA, whichever is later, a Form HUD-9610, Notice of Election to Proceed, Appendix 2-2.
- D. Failure to Take Appropriate Action for Transition Election.
1. Forfeit Right to Elect Title II Provisions.
 - a. Any eligible owner who failed to file a Form HUD-9610 within 30 days of publication of the Interim Rule, may not proceed under Title II, but may proceed only under Title VI by filing a new Form HUD-9608.
 - b. Any owner who filed a Form HUD-9610 within 30 days after the effective date of the Interim Rule and chose to proceed through the Title VI appraisal process, but did not choose Title II incentives by submitting a NOI within 30 days of receiving the information

2-6

4/92

4350.6

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

2. Forfeit Right to Elect Title VI Provisions. If an owner eligible under Paragraph B above fails to file a NOI within the timeframe specified in Paragraph C.3. above, it forfeits its right of conversion.
- E. Deadlines for Further Action. The date on which the Notice of Election to Proceed, Form HUD-9610, or a new Initial NOI, Form HUD-9608, is received in the Field Office will be deemed the date of the filing of the Initial NOI for all deadlines required of the owner or of the Department.

- F. Owner Changes Mind after Conversion. Any owner, who exercised its option under the Transition Provisions and then decides to switch its participation from Title VI to Title II after the Department incurs the cost of having an appraisal performed, as required under Title VI, must reimburse HUD for any cost incurred by HUD for the appraisals within 30 days of receipt of a bill covering these expenses.