
Chapter 8. PLANS OF ACTION

Section A. General

- 8-1. Purpose. This Chapter describes the requirements for Plans of Action (POAs) to terminate or extend low-income affordability restrictions. It also sets forth guidelines the Field Office staff must follow when processing and either approving or recommending a POA for approval.
- 8-2. Categories of Plans of Action and Organization of the Chapter. Owners may submit POAs to achieve one of three purposes: terminate, extend through retention or extend by sale of the project the low-income affordability restrictions. This Chapter is divided into Sections A through G. It is organized, as stated in Paragraphs A through G below, to specify what is required in a POA for each category. Paragraph H tells where to find information about the requirements of Resident Homeownership Plans (RHPs), and Paragraph I describes a hybrid POA/RHP.
- A. Requirements for all POAs. Section A describes the requirements for all POAs, regardless of purpose.
- B. Prepayment of the Mortgage and Termination of Low-Income Affordability Restrictions. Section B describes the requirements which apply only to POAs to prepay the mortgage and terminate low-income affordability restrictions. A POA to prepay a mortgage must therefore meet the requirements of Sections A and B. The owner must have submitted an Initial Notice of Intent (NOI) in accordance with Chapter 3 and received information from HUD in accordance with Chapter 4. Under this category, the owner has sole responsibility for submitting the POA.

- C. Extension of Low-Income Affordability Restrictions by Retention or Sale of the Project. Section C describes the requirements which apply to all POAs to extend low-income affordability restrictions, whether the owner wishes to retain the project or sell it. A POA to extend low-income affordability restrictions must also meet the requirements described in either Section D or E, depending on whether the owner will retain or sell the project. Therefore, the POA must meet the requirements contained in both Sections A and C and also in either Section D or E.

- D. Extension of Low-Income Affordability Restrictions by Retention of the Project. Section D describes the requirements which apply to all POAs to extend low-income affordability restrictions by the owner retaining the project. A POA to extend low-income affordability restrictions by retaining the project must meet all requirements contained in Sections A, C, and D. The owner must have submitted an Initial NOI in accordance with Chapter 3 and received information from HUD in accordance with Chapter 5. Under this category, the owner has sole responsibility for submitting the POA.

- E. Extension of Low-Income Affordability Restrictions by Selling the Project. Section E describes the requirements which apply to all POAs to extend low-income affordability restrictions by selling the project. A POA to extend low-income affordability restrictions through the sale of the project must meet all requirements contained in Sections A, C, and E. The owner must have submitted an Initial NOI in accordance with Chapter 3, received information from HUD in accordance with Chapter 5, submitted a Second NOI in accordance with Chapter 7,

accepted (under a voluntary sale) a bona fide offer to purchase in accordance with Chapter 7. Under this category, the owner and purchaser have the responsibility to submit the POA jointly.

- F. Approval of a Plan of Action. Section F describes the procedures that the Loan Management Branch must follow to approve and fund a POA.
- G. Implementation of a Plan of Action. Section G describes the procedures that the owner must follow to implement a POA.
- H. A Resident Council Purchasing the Project Under a Resident Homeownership Program. Chapter 9 describes the Resident Homeownership Plan (RHP) required when a Resident Council (RC) purchases the project under a Resident Homeownership Program.
- I. A Resident Council Purchasing Under a Resident Homeownership Program but Forming a Limited Equity Cooperative may purchase the project in one of two ways. If it purchases the project with a grant, only the RHP requirements of Chapter 9 will apply. However, if the RC intends to assume the mortgage, some of the benefits outlined in Sections C and E of this Chapter may be applicable. This is a hybrid POA/RHP and will be explained in Chapter 9.

8-3. Submission of Plans of Action.

- A. Submission to HUD.
 - 1. Timeframes for Submission. The owner, or owner and purchaser, where applicable, must submit six copies of a complete POA to the Chief, Loan Management Branch within the timeframes specified below. LOG date POA package is received, whether complete or not The date a

complete or incomplete POA package is received will be used to determine the time frame for Loan Management staff's evaluation of the POA for completeness in accordance with Paragraph 8-6.B. The timeframes for submission are:

- a. Prepayment of the Mortgage and Termination of Low-Income Affordability Restrictions. Within six months of receiving economic and market analysis information from HUD in accordance with Chapter 4;
 - b. Extension of Low-Income Affordability Restrictions by Retention of the Project. Within six-months of receiving the reconciled appraised values and corollary information from HUD in accordance with Chapter 5;
 - c. Extension of Low-Income Affordability Restrictions by Selling the Project. For offers approved by HUD, in accordance with Chapter 7:
 - i. Under the voluntary sales process, within six months of the owner's acceptance of a bona fide offer; or
 - ii. Under the mandatory sales process, within six months of the owner's receipt of a bona fide offer.
2. Complete POAs. POAs will not be considered to have been submitted nor will the clock for processing POAs in accordance with Paragraph 8-6.A. begin until the Loan Management Branch receives a complete POA package. To be considered complete,

the POA package must contain all the pieces of information, completed to the best ability of the owner, required by the applicable Sections of this Chapter and the appropriate checklist contained in Appendix 8-3 or 8-4 for those planning to extend low-income affordability restrictions or Appendix 8-8 for owners who intend to terminate low-income affordability restrictions. If the owner submits a POA that is incomplete because required project information is not available, e.g., poor financial records or lack of required tenant certifications, then it may miss submitting a complete POA package within the required timeframe. In such a case, the owner would have to wait six months and begin the process over by submitting a new Initial NOI.

- B. Submission to Tenants. Simultaneously with submission to HUD, the owner must notify the tenants about the Plan by posting a summary of the POA in each occupied building. This summary must state that the tenants have 60 days to comment on the POA to the Loan Management Branch. The owner must also give a copy of the entire POA to the tenant representative, if any, and send a copy of the summary to the Loan Management Branch. The summary must indicate that a copy of the POA is available for inspection and copying, at a reasonable cost, during normal business hours through:

1. The tenant representatives, whose names, addresses and telephone numbers are listed on the summary. If the owner knows of no current tenant representative, the owner must so certify to HUD along with submission of the POA. Owners should be aware that if any new

tenant representatives have been established since the submission of the POA, it must notify those tenant representatives along with all others;

2. The Chief of the Loan Management Branch whose name, address, and phone number are shown on the summary; and
3. The on-site office for the project or, if there is none, the local office where rents are collected.

C. Submission to State or Local Government. Simultaneously with submission to HUD, the owner must submit the POA to that officer of State or local government to whom the owner submitted an Initial NOI and must include with its POA to HUD, a certification to confirm this action. Loan Management staff should send a letter to all State and local government agencies referenced in Chapter 1, Paragraph 1-10.A.4. Requesting comments within 50 days of HUD's receipt of a complete POA. The letter should address all issues referenced in Paragraph 8-7. Appendix 8-6, Letter to State and Local Governments, may be used as a guide. LOG date letter sent

8-4. Failure to Submit a Plan of Action. If the owner or owner and purchaser fail to submit a POA to HUD within the six-month period specified in Paragraph 8-3.A., the Initial NOI will expire, and the owner will be prohibited from submitting another Initial NOI until six months after that expiration.

8-5. The Contents of All Plans of Action. The specific requirements for the three categories of POAs are outlined in Sections B, C, D and H of this Chapter. However, the following elements are required of all POAs:

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

regulatory agreement or a statement that there are no changes;

- B. A description of any proposed changes in the low-income affordability restrictions, i.e., rents, occupancy restrictions, etc., and a detailed assessment of the effect of these proposed changes on each of the tenants or a statement that there are no changes. Relocation and displacement requirements are described in Chapter 10;
- C. A description of any outstanding audit findings or findings of noncompliance with the Fair Housing Act; Title VI of the Civil Rights Act of 1964; Executive Order 11063; Section 504 of the Rehabilitation Act of 1973; the project Regulatory Agreement along with a description of the resolution, or proposed resolution, of any such findings, or a certification that no violations exist. If there are violations, the owner must correct them prior to POA approval; and
- D. Any waivers requested by the owner or a statement that it has not requested any waivers.

8-6. HUD Action upon Receipt of a Plan of Action.

- A. Loan Management staff must review and process LOG date a complete POA is received the complete POA within 180 days of its submission. WARNING: Loan Management staff should be aware that if it does not send a letter approving an acceptable POA or disapproving an unacceptable POA within the 180-day deadline, upon approval, the owner will receive incentives retroactive to the 180th day, in accordance with Paragraph 8-35. If a POA is not

acceptable within the 180 days, the owner may request an extension. Requests for extensions may not result in a total time of more than 365 days until approval.

The following reviews must be completed:

1. An initial evaluation of the adequacy of the POA as described in Paragraph B below.
 2. A review of the POA for deficiencies and conformity to the following applicable Sections of this Chapter:
 - a. Section B for termination of low-income affordability restrictions;
 - b. Sections C and D and Appendix 8-1 for extension of low-income affordability restrictions through retention of the project; and
 - c. Sections C and E and Appendix 8-2 for extension of low-income affordability restrictions through the sale of the project.
 3. Approval of the POA as described in Section F of this Chapter.
- B. Initial Evaluation. Loan Management staff will:
1. Review the POA for:
 - a. Timeliness. The POA must have been submitted within the time specified in Paragraph 8-3 of this Chapter; and
 - b. Completeness. The POA must contain the major components of a POA in accordance with Paragraph 8-5. It must also contain the components for specific types of POAs in

checklists. These checklists are contained in Appendix 8-3 for owners wishing to extend low-income affordability restrictions by retaining the project, or 8-4 for owners who wish to extend low-income affordability restrictions by selling the project, or Appendix 8-8 for owners who wish to terminate low-income affordability restrictions.

2. Send the owner a letter within ten working days of receipt of the POA stating whether or not the package is complete. LOG date of acknowledgement letter. If components are missing, the POA should be returned to the owner along with a letter identifying the missing component(s) and stating that:
 - a. HUD cannot begin its review until a complete POA is submitted; and
 - b. Submission of the complete POA must be made within the required six-month period. If the owner fails to meet such deadline, its Initial NOI will become ineffective and the owner may not submit another Initial NOI until six months after the expiration of such deadline.
3. Date stamp all six copies of the POA as of the date a complete POA is received. The date that HUD receives a complete POA will be the date of record and will be the date used to determine deadlines required to complete the review process.

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- C. Distribution of POA. Within ten working days of receipt of a POA, the Loan

Management staff must: LOG distribution dates

1. Distribute a copy of the complete POA, as appropriate to the requirements of Sections B through E, to other Divisions/Branches including the Field Counsel, Fair Housing and Equal Opportunity (FHEO), Economic and Market Analysis Staff (EMAS), the Environmental Officer, and Housing Programs Branch, Attention: Valuation Branch. Loan Management staff also should send a copy of the Transfer of Physical Assets (TPA) to the Field Counsel; and
2. Request their evaluations and comments on the POA within 30 days. LOG date distributed and date comments received These Branches/Divisions should comment on any aspect of the POA which they feel is relevant to their areas of concern. For example, FHEO and EMAS should be certain that market issues addressed by the owner are accurate when prepayment of the mortgage is requested; Housing Programs Branch should be certain that POAs to extend low-income affordability restrictions contain accurate preservation values, preservation rents, and Federal cost limits and that the rehabilitation requested along with the costs are appropriate. Loan applications, TPA packages and other submissions which are not specific to the POA must be evaluated in accordance with their own applicable procedures.

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- 8-7. State and Local Agency Responsibility.
 - A. State or local officials should review POAs within 50 days of HUD's receipt of a complete POA. LOG date comments received

- B. In cases where the POA indicates possible displacement or relocation of tenants due to prepayment of the mortgage, State or local agencies should advise the tenants, in a timely manner, of any local programs that could assist them in retaining their residences as affordable housing, or minimize the effects of displacement, without restricting the owner's rights.
- C. In the case of an expressed interest from a RC to purchase the project, the agencies should advise the RC of local programs that would facilitate the purchase of the project under a Resident Homeownership Program.
- D. The agencies should advise HUD of any deficiencies and other information of which they are aware that would affect processing the POA. This could include:
 - 1. Information about the violation of building codes, fair housing and equal opportunity or other infractions;
 - 2. Information about the project's financial situation which is not adequately addressed in the POA; or
 - 3. Any other information that could influence approval of the POA.

8-8. Deficiencies in the Plan of Action.

- A. A deficiency is anything in a POA which prohibits HUD from approving it, e.g., a projected budget which does not accurately reflect past expenses or requested incentives which are greater

than those allowed. However, a deficiency does not include issues not specific to the POA such as errors in a Section 241 loan application.

- B. Not later than 60 days after the receipt

of a POA, Loan Management staff must notify the owner (or owner and purchaser, if applicable), in writing, if there are any deficiencies that prevent approval. To make this decision, Loan Management Branch will use information received from other Divisions/Branches and State and local governments. In the letter, Loan Management staff must identify the deficiencies LOG date of deficiency notice and suggest alternative ways in which the POA may be revised to meet the criteria for approval. Also, the letter should advise the owner that the Loan Management Branch will forward any comments about deficiencies which it receives from State and/or local governments after their 50-day comment period.

- C. If Loan Management staff request legal advice from the Field Counsel about any issue concerning the POA, the request must contain a statement advising Field Counsel of the status of its evaluation of the POA and how quickly it needs a legal response.

8-9. Revisions.

A. Timeframes for Revisions.

- 1. The owner or owner and purchaser, if applicable, may revise and amend the POA to obtain approval. No matter how many revisions are necessary, however, the POA must be approved within 365 days of submission or the owner will have to begin the Initial NOI process over again.

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- 2. Circumstances under which HUD Must Require a POA Revision.
 - a. Deficiencies in the initial submission of the POA. The owner must submit all revisions within 60 days of notification from HUD that the initial

submission of the POA has deficiencies.

- b. After HUD denies approval of the POA, the owner has up to 60 days to revise it.
 - c. Amendments to Information Submitted in the POA. Within 30 days of receiving changes in information required in the POA, such as in the address of the owner or purchaser, participating parties, types of incentives, or receipt of assistance from another source, etc., the owner must amend the POA by submitting POA revisions to HUD.
 - d. Deficiencies in Subsequent Revisions. The timeframes specified in Paragraphs a., b., and c. above will apply no matter how many times Loan Management staff returns the POA. If the owner fails to comply with the 60-day time period cited in Paragraphs a. and b. above, the project will not be eligible for relief in accordance with Paragraphs 8-25.D, and 8-35 which address delayed approval.
3. Loan Management Review of Revisions. Loan Management staff must always be allowed 60 days from the date a revised POA is submitted to approve or disapprove it. Therefore, revisions and/or amendments required

by Paragraph 8-8 must be submitted no later than 60 days after notification of deficiencies or 305 days after HUD's receipt of the POA, whichever is earlier. LOG date changes were received

4. Waiver of the Time Limit to Submit a POA. In the event the owner feels there are compelling reasons for waiving the 365 day limitation to submit a POA, it may submit justification to the Loan Management Branch. Such a waiver request must document how a good faith effort was made to meet the deadline. Loan Management staff may, at its option, recommend to the Preservation Division that the time limit be waived. However, in no case may the 30-month limit on the use of appraisals be waived.
 - B. The owner, or owner and purchaser, must submit six copies of any revision and/or amendments to the same HUD Field Office to which the original POA was submitted. The revised POA must also be submitted to all the individuals and agencies and in the same format required for the original POA. The owner must certify to HUD that all these submissions have been made.
 - C. Loan Management staff will, to the greatest extent possible, facilitate the efforts of the owner or owner and purchaser to obtain HUD approval of the POA by giving assistance in meetings or by telephone.
 - D. Loan Management staff must notify the owner or owner and purchaser, as applicable, within 60 days of receipt of the corrected POA, if deficiencies still exist.
- 8-10. Retention of Materials. One copy of the original POA should remain in the Loan Management Branch along with one copy of all revisions.

Section B.

Plans of Action to Terminate Low-Income Affordability
Restrictions

- 8-11. Timeframe for Submission of a Plan of Action (POA). Within six months of receipt of the information about the market area from HUD in accordance with Chapter 4, Paragraph 4-3, an owner seeking to terminate the low-income affordability restrictions through prepayment of the mortgage must submit its POA. A checklist of items required for a complete POA for terminating low-income affordability restrictions is contained in Appendix 8-8, Checklist for Submission of a Plan of Action To Terminate the Low-Income Affordability Restrictions.
- 8-12. Contents of Plans of Action Requesting to Terminate Low-Income Affordability Restrictions. In addition to the requirements specified in Paragraph 8-5, POAs to terminate low-income affordability restrictions will contain:
- A. An assessment of the effect of the proposed changes on each tenant living at the project at POA approval so that HUD can make the findings in accordance with Paragraph 8-13.A.1.;
 - B. Evidence and an analysis of the effect of the proposed changes on the supply of housing affordable to low- and very low-income families or persons in the housing market area within which the project is located so that the Economic and Market Analysis Staff (EMAS) can make the findings in accordance with Paragraph 8-13.A.2. This analysis must focus on the area that the housing could reasonably be expected to serve;
 - C. The following occupancy information at the time of POA submission:

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- 1. A rent roll showing current income and total tenant payment (TTP) for rent and utility allowance for all residents of the project;
 - 2. A copy of any tenant waiting list at the project with family size and

incomes of the applicants or documentation of the project's vacancy rate, if there is no waiting list; and

3. Vacancy and turnover rates at the project for the past three years along with documentation of the data;
- D. A description of any change in ownership that is related to prepayment of the mortgage;
- E. A statement of the intention of the owner to sign a Use Agreement, consistent with Paragraph 8-13.A.1., to maintain low-income affordability restrictions. The intent of the Use Agreement is to protect tenants living in the project at the time of POA approval from displacement. It will include any plans for tenants who voluntarily move when comparable and affordable housing is available;
- F. If owners provide incentives and relocation assistance to tenants to induce them to move voluntarily, where comparable, decent, safe, sanitary and affordable housing is available, they should include an explanation of such plans in the POA, although HUD staff will not use evaluation of these plans to make the findings required by Paragraph 8-13. If such arrangements are made between the tenant and owner, they must be made on an individual basis since no tenant may be involuntarily displaced.
- G. Any other information the owner feels is needed by HUD, or that HUD has asked the owner to submit, to make the findings in Paragraph 8-13.

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- 8-13. Review of Plans of Action to Terminate Low-Income Affordability Restrictions. In addition to those requirements cited in Paragraph 8-12, the following guidelines for review and evaluation apply to POAs involving

prepayment and the termination of low-income affordability restrictions:

A. Findings. Using information provided by EMAS, FHEO, and the Valuation Branch, Loan Management staff may approve a POA to terminate the low-income affordability restrictions if it can make the following findings:

1. Tenant Economic Hardship. The owner must sign a Use Agreement in accordance with Paragraph 8-12.E. Therefore, the findings required by Paragraphs a. and b. below may be made by virtue of the owner signing the Use Agreement guaranteeing continued occupancy by tenants living at the project at POA approval until the date the initial mortgage terminates.

a. Tenants living in the project, at the time of POA approval, will not experience a material increase in economic hardship as a result of the prepayment:

i. For a tenant currently paying 30 percent, or less, of adjusted monthly income for Total Tenant Payments (TTP), an economic hardship is defined as a monthly TTP increase greater than the lesser of: (a) a TTP exceeding 30 percent of the monthly adjusted income of the tenant, or (b) an increase in the TTP in any year that exceeds ten percent; or

ii. For a tenant currently paying more than 30 percent of adjusted monthly income for TTP, an economic hardship is

defined as an increase in the TTP in any year that exceeds the lesser of the increase in the Consumer Price Index (urban all items for the four census regions and for 72 metropolitan areas for which local indices are available), or ten percent of the current TTP.

b. Involuntary Displacement.

- i. Tenants living at the project at POA approval will not be involuntarily displaced (except for good cause) where comparable and affordable housing is not readily available. Involuntary displacement will be presumed to occur not only if the owner evicts the tenant or refuses to renew the lease, but also (a) if rents are raised above the amounts allowed by Paragraph a. above, or (b) if the conditions of occupancy, (e.g., project rules or additional charges such as late fees, lock-out charges, etc.) are changed to deter low-income residents from continuing to reside at the project.

- ii. The findings in Paragraphs A.1.a. and b.i. above, must be made without regard to the availability of Federal rental housing assistance (Section 8 certificates and vouchers) that would address any such hardship or

involuntary displacement. The owner must comply with the Use Agreement until the date of termination of the initial mortgage or until all tenants living in the project at POA approval move voluntarily, despite the lack of Section 8 rental assistance.

Notwithstanding this limitation, HUD may provide housing assistance to tenants, if such assistance is not essential to making these findings.

- 2. Market Impact. The supply of vacant, comparable housing is sufficient to ensure that such prepayment will not materially affect:
 - a. The availability of decent, safe and sanitary housing affordable to low- and very low-income families or persons in the area that the housing could reasonably be expected to serve;
 - b. The ability of low- and very low-income families or persons to find affordable, decent, safe and sanitary housing near employment opportunities; and

- c. The housing opportunities of minorities in the community within which the housing is located.

- 3. Fair Housing and Equal Opportunity and Regulatory Agreement Compliance. The owner has no outstanding findings of noncompliance with the Fair Housing Act, Title VI of the

Civil Rights Act of 1964, Executive Order 11063, the Age Discrimination Act of 1975, Section 504 of the Rehabilitation Act of 1973, and all regulations promulgated under such statutes and authorities (including, but not limited to 24 CFR Part 100), or with respect to the project's Regulatory Agreement.

- B. EMAS, FHEO, and Valuation. In order to determine whether the required findings can be made to approve a POA terminating low-income affordability restrictions, Loan Management staff must use the information provided by EMAS, FHEO, and the Valuation Branch in accordance with Paragraph 8-6.C.
 - 1. EMAS is responsible for making the findings required in Paragraphs A.2.a. and b. above. The EMAS review of the POA to terminate low-income affordability restrictions is comprised of two parts.
 - a. The first part of the review involves a determination of whether there is an adequate supply of rental housing sufficient to ensure that the prepayment will not affect the availability of decent, safe and sanitary housing affordable to low-and very low-income families in the area that the housing could reasonably be expected to serve.

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- i. For the purposes of a POA that terminates low-income affordability restrictions, an adequate supply of housing is defined as a surplus of rental housing (soft market conditions) in the overall rental market. The guidelines for

determining whether an area should be determined to be a soft market are set forth in Appendix 8-9, Guidelines for Conducting the Review of a Plan of Action to Terminate Low-Income Affordability Restrictions.

- ii. The analysis should include an assessment of the current and anticipated supply/demand conditions within the overall rental market in the housing market area that the housing could reasonably be expected to serve. The analysis should also take into consideration the occupancy and vacancy situation in assisted housing projects in the area, as well as information on waiting lists for assisted housing and the experience of certificate and voucher holders in finding units.
- b. The second part of the review involves a determination of whether the prepayment would materially affect the housing opportunities of very low- and low-income families in the

area, based on the specific characteristics of the project, and violate the public policy objectives.

- i. A market area may have an abundant supply of housing (soft market conditions), but a shortage of the particular type of rental

housing provided by the project.

- ii. The analysis should take into account such characteristics as the type of tenancy of the project (elderly, disabled, or large family); the bedroom sizes of the units (three or more bedroom units); the location of the project with respect to its proximity to employment opportunities; and the availability of other assisted housing within the immediate area (the project may be the only source of such housing in that part of the community).

2. FHEO is responsible for:

- a. Evaluating the impact of the potential prepayment on the ability of minorities to find housing in the area, and recommending whether the FHEO staff can make the finding that prepayment would not materially affect the housing opportunities of minorities in the community within which the housing is located; and

- b. Informing Loan Management Staff whether the owner of the project has any outstanding findings of noncompliance with the Fair Housing Act, Title VI of the Civil Rights Act of 1964, Executive Order 11063, Age Discrimination Act of 1975, Section 504 of the Rehabilitation Act of 1973, regulations or the regulatory

agreement.

3. Valuation Branch is responsible for providing whatever data is already available on rents for comparable, unsubsidized housing in the area to both Loan Management staff and EMAS.

C. Timeframes for Response. EMAS, FHEO, and Valuation Branch must provide a response to the Loan Management staff within 40 days of HUD's receipt of the POA.

8-14. Loan Management Review.

A. On the basis of responses from EMAS, FHEO, and the Valuation Branch, any comments received from tenants or State or local Governments, and its own review, Loan Management staff will determine whether a POA to prepay a mortgage and terminate low-income affordability restrictions meets the requirements under this Chapter. Within 60 days of completion of the combined reviews, but not later than 180 days of receipt of the complete POA (unless the owner requests an extension), Loan Management staff will send a letter to the owner informing it of HUD's approval or disapproval. LOG date letter sent .

B. If the POA is disapproved, the letter must cite the reasons for disapproval and suggest alternatives, including advising the owner that, after six months, a new Initial NOI may be submitted to request incentives to extend low-income

affordability in accordance with Sections C, and D or E of this Chapter. The owner should be offered the opportunity to meet with Loan Management staff for further assistance.

C. If the POA cannot be approved because of an outstanding civil rights violation, audit finding, or finding of non-compliance with the Regulatory Agreement,

the finding must be closed before HUD may approve the POA. Please note that findings need not necessarily be those which existed prior to submission of the Initial NOI. It could be any finding made during the POA approval process, including deficiencies found due to the POA process itself.

- 8-15. If the Plan of Action is approved, Loan Management staff will process it in accordance with Section F.

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Section C.

Plans of Action to Extend Low-Income
Affordability Restrictions

- 8-16. Timeframe for Submission of Plan of Action (POA).
- A. Retention of Project by Current Owner. Within six months of receipt of the information from HUD, in accordance with Chapter 5, an owner seeking to extend low-income affordability restrictions by retaining the project must submit a POA. A checklist of items required for a complete POA for retention of projects is contained in Appendix 8-3, Checklist for Complete Plan of Action for Owner's Retention of Project.
 - B. Sale of Project. Within six months of the owner's acceptance of a bona fide offer under the voluntary sale process or within six months of the purchaser making a bona fide offer under the mandatory sale process, an owner and purchaser who propose to extend low-income affordability restrictions through sale of the project, must jointly submit a POA to transfer the project. A checklist of items required for a complete POA for transferring a project is contained in Appendix 8-4, Checklist for Complete Plan of Action for Sale of Project.
- 8-17. Contents of Plans of Action. In addition to

the requirements specified in Paragraph 8-5, POAs that propose extension of the low-income affordability restrictions must include the information shown below. This information should be in narrative form with documentation consisting of any relevant materials such as budgets, Management Agreements, tenant rent rolls, contractor estimates, etc.

A. Amounts of Assistance Requested. The owner may request and HUD may approve incentives to:

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1. Pay the debt service on the federally-assisted mortgage covering the project;
 2. Pay the debt service on any rehabilitation loan for the project amortized over a 20-year period;
 3. Meet project operating expenses and establish adequate reserves; and
 4. Provide additional assistance:
 - a. For owners retaining their projects, see Section D, Paragraph 8-19.A.; or
 - b. For projects which are being sold, see Section E, Paragraphs 8-21.A. and D. and 8-22.
- B. Methods for Funding the Requested Federal Incentives which the owner may request and HUD may approve:
1. An increase in the rents permitted under an existing project-based Section 8 contract to produce a Gross Rent Potential (GRP) to fund the incentives under the POA, with limitations in accordance with Paragraph C. below;
 2. Additional project-based Section 8 assistance to very low- and low-income tenants, or an extension of

any project-based assistance
attached to the housing;

3. An increase in the total tenant payment (TTP) on each unit up to the lower of 100 percent of Fair Market Rents (FMRs) or 30 percent of the tenant's adjusted monthly income (AMI) with a Minimum Rent for moderate-income tenants in accordance with Paragraph 8-18.A.13.

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Please note that the TTP may not be reduced for those tenants not receiving Section 8 rental assistance to achieve this purpose;

4. Financing of capital improvements through provision of a Flexible Subsidy Capital Improvement Loan;
5. Insuring rehabilitation loans of up to the value of the improvements, additions, or equipment with the maximum loan based on the equity requirements of the program under which the loan is made;
6. Redirection of the Interest Reduction Payment subsidies to a second mortgage for projects which are insured, assisted or held by HUD or a State or State Agency under Section 236. This incentive has no effect on project finances;
7. Increased access to residual receipts as needed to enable the owner or purchaser to realize the annual authorized return in accordance with Paragraphs 8-19.B. or 8-21.B.2.;
8. Any additional incentives, in accordance with Section D, Paragraph 8-19.B., for owners planning to retain the project and Section E, Paragraph 8-21.B., for projects being sold under voluntary or

mandatory sale; and

9. Any other incentives authorized by law.

- C. Determination of Annual Gross Preservation Project Rent (PPR). A projected budget for the year following POA approval should show all expenses and rents required to meet project expenses. The budget must take all the following requirements into account.

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1. The PPR has two components; the GRP plus all tenant-approved utility allowances. The GRP is determined in accordance with procedures outlined in HUD Handbook 4350.1, Insured Project Servicing Handbook Chapter 7. For preservation projects, the GRP also includes the income needed to fund all approved assistance. The PPR may not exceed the Federal Cost Limit (FCL). However, project income to fund all assistance in projects being sold may be subject to the higher limitations described in Paragraph 8-21.C.
 - a. The FCL used to determine PPR will be based on 120 percent of the Section 8 Existing Fair Market Rents (FMRs) or 120 percent of the prevailing rents in the local market area at the time of POA approval. The FMRs will be used in all cases except where the prevailing rents were used to determine Extension and Transfer Preservation Rents for the information returned to owner in accordance with Chapter 5. In those cases, the Valuation Branch will be asked to determine the current prevailing rent in the market area unless the owner requests

use of the FMRs.

- b. In the case of some sales, in accordance with Paragraph 8-21.D.3., operating deficits caused by limitations in PPR may be compensated by grants calculated in accordance with Paragraph 8-22.

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- 2. The total of annual Section 8 Gross Rents will be the amount necessary to produce a PPR sufficient to fund all approved assistance, after subtracting out the sum of the annual TTPs projected to be made by moderate-income tenants. The projected annual TTPs are the sum of the projected monthly TTPs multiplied by 12. The projected sum of monthly TTPs to be made by moderate-income tenants will be calculated as the lower of:

- a. FMR for the unit size; or
- b. Thirty percent of the applicable Section 8 low-income limit, adjusted for family size to reflect the number of bedrooms in the unit, divided by 12. This amount is calculated by multiplying the income limit determined for bedroom size by .025. The income limit used for each bedroom size is as follows:

Family Size	No. of Bedrooms
1	studio
2	1
4	2
6	3
8	4
10	5+

- 3. Excess Rents. The method for

projecting moderate-income TTP may lead to receipt of excess rents for the project. Excess rents collected must be treated by the owner as follows:

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- a. Section 236 Projects.
 - i. Total project basic rent is established as the (annual) GRP divided by 12 (months).
 - ii. The project's specific annual subsidy amount, (the amount by which interest is subsidized to produce the Basic Rent), divided by 12, is the project's specific monthly subsidy amount.
 - iii. Total project market rent is established by adding the project's specific monthly subsidy amount to the basic rent.
 - iv. In any month in which the project receipts exceed the basic rent, the excess amount, but never more than the project's specific monthly subsidy amount, will be returned to HUD as excess rents.
 - v. Any amount, over that remitted to HUD, will be deposited annually to the residual receipts account. These funds may be used to pay shortfalls in the annual authorized return on investment and any future shortfalls in operating expenses.
- b. Below Market Interest Rate

(BMIR) Projects. Any amount collected over the GRP must be deposited annually to the residual receipts account.

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These funds may be used to pay shortfalls in the annual authorized return on investment and any future shortfalls in operating expenses.

- D. Budgets, Management Plan and Occupancy Policy for the Project including, but not limited to:
1. Budgets with cash flow projections for the first three years after POA approval;
 2. An analysis of how the owner or purchaser will address any physical and/or financial deficiencies of the project;
 3. An explanation of how the low-income affordability restrictions of the project will be maintained;
 4. Any tenant preferences that will be used and/or other occupancy requirements that do not violate the tenant profile requirements in accordance with Paragraph F;
 5. Anticipated utility allowances with justification of how they were derived; and
 6. Any other conditions Loan Management staff or the owner feels need to be addressed in order to evaluate the Management Plan, Occupancy Policy and projected cash flow.
- E. A Description of Assistance from State or Local Government Agencies or Other Sources along with an analysis of how this assistance will reduce costs to HUD. For example, State and local assistance

may enable HUD to reduce the amount of loan guarantees, Section 8 rents, and/or grants.

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1. The description should include information about any Low Income Housing Tax Credits (LIHTC) that have been offered to the owner or non-priority purchaser or for which the owner or non-priority purchaser has applied or intends to apply. If the transaction involves the use of LIHTC, information about the allocation of credits by the State Agency required by HUD Notice H90-17, Combining Low Income Housing Tax Credits with HUD Programs, must be included with the submission. The list of information that must be submitted may be found in Appendix 8-7, Materials LIHTC Participants Must Submit. If the owner or non-priority purchaser will not receive LIHTC, it must so certify on Form HUD-9611, Owner's Certification that Project Will Not Participate in the Low-Income Housing Tax Program, Appendix 8-5. PLEASE NOTE: Priority purchasers are not eligible for LIHTCs.
 2. Loan Management staff should advise and encourage any qualified purchaser to secure funding and other assistance from State and local governments or other sources. Such other assistance may include tax and assessment reductions or direct financial assistance from governments, private foundations, or corporate sources.
- F. Tenant Income Profiles. The owner must submit two income profiles of the tenants. One profile should reflect tenant data as of the date of POA 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 from the owner stating its unavailability and a profile as of January 1, 1988, or, if

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that is also unavailable, a profile as of January 1, 1989 (each based on appropriate income limits). The profile as of the past date must include the information for each unit requested in Paragraphs 1-5 and 9 below as of the date of the profile. The profile as of POA submission must include the following information for each unit as of the date of the profile:

1. A code number to maintain tenant anonymity;
2. Unit type;
3. Family size;
4. Family's gross annual income;
5. Family's adjusted gross annual income (in accordance with the definition in Chapter 1) and its classification as very low-, low-, or moderate-income;
6. Rent and utility allowance for the unit;
7. Proposed utility allowance for the unit;
8. Section 8 Existing FMR for the unit type;
9. A summary showing the number and proportion of very low-, low- and moderate-income (based on gross income) tenants at the project, rounded to the nearest full percentage, using the following considerations:
 - a. Vacant units should be

allocated to very low-,
low- and moderate-income in
proportion to the share of
occupied units in each
category;

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- b. Units occupied by market rate tenants should be counted as moderate-income; and
 - c. Approved non-revenue units should not be counted.
 - G. Certification that the owner has submitted or will submit all required loan applications for Section 241 equity, acquisition or rehabilitation loans and for any Flexible Subsidy loans.
 - H. Other information required to be submitted when the project is to be sold under voluntary or mandatory sale, in accordance with Section E, Paragraph 8-21; and
 - I. Any other information the Loan Management staff determines necessary to evaluate the POA.
- 8-18. Reviewing POAs to Extend Low-Income Affordability Restrictions. In addition to information required by Paragraph 8-17, Loan Management staff should use the guidelines contained in the Form HUD-50061, Evaluation of Plan of Action for Incentives to Extend Affordability, Appendix 8-1 and 8-1A, or Form HUD-50062, Evaluation of Plan of Action to Sell a Project, Appendix 8-2 and 8-2A, as applicable, to review and evaluate POAs.
 - A. In Order to Approve a POA, Loan Management staff must determine that it meets the requirements detailed in Forms HUD-50061 or 50062, regarding incentives and finances. In addition, the staff must find that:
 - 1. Due diligence has been given to ensuring that the package of

incentives is, for the Federal government, the least costly alternative that is consistent with the full achievement of the purposes

of the program. This is generally achieved by limiting the selling price to the appropriate Extension or Transfer Preservation Value and by limiting PPR to the FCL. This is also achieved through a subsidy layering analysis to be conducted by Loan Management staff in accordance with Notice H90-17, "Combining Low Income Housing Tax Credits with HUD Programs". Loan Management staff will advise qualified purchasers of assistance available from State and local governments and will cooperate in helping them to obtain such assistance. If the owner or purchaser receives assistance from State and local governments, other than LIHTC, or assistance from private sources, Loan Management staff should contact the Preservation Division for guidance in reducing Federal costs;

2. The project will be retained as low-income affordable housing for its remaining useful life;
3. The owner is prepared to use the Tenant Income Profile, developed in accordance with Paragraph 8-17.F., which represents the higher proportion of very low-income families, as the basis for future occupancy of the project. After POA approval, units must remain available and affordable to the same proportions of very low-, low- and moderate-income families shown on the profile selected, or on an updated profile with a larger proportion of very low-income tenants provided by the owner at POA approval. This requirement will not

prohibit a higher proportion of very low-income families from occupying the project;

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4. Throughout the remaining useful life of the project, adequate expenditures will be made for maintenance and operation and the project will continue to meet the housing standards as determined by inspections conducted by HUD;
5. Tenants residing at the project at POA approval will not be involuntarily displaced, except for "good cause." Involuntary displacement will be evaluated as described in Paragraph 8-13.A.1.b.i.;
6. The TTP will generally be set at the lower of the FMR or 30 percent of the Adjusted Monthly Income (AMI). For moderate-income tenants whose incomes decrease so that 30 percent of the AMI is lower than a Minimum Rent established in accordance with Paragraph 13 below, TTP will be set at the lower of FMR or the Minimum Rent. The TTP for tenants not receiving Section 8 assistance may not be reduced because of POA approval;
7. Any resulting increase in TTP for any tenant living in the project at POA approval (except for increases made necessary by increased operating costs) must be phased in. The method for implementing the phase-in is provided in Appendix 11. The rules for the phase-in are:
 - a. If the total increase is 30 percent or more of the current TTP, it must be phased in equally over a period of not less than three years. The first increase will occur upon

the effective date of the POA and the subsequent two increases will occur annually thereafter.

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- b. If the total increase is greater than ten percent but less than 30 percent of the current TTP, it must be phased in at no more than ten percent of the current TTP each year;
 - c. Increases may not be phased in slower than allowed by both Paragraphs a. and b. above.
- 8. Section 8 assistance must be provided, to the extent appropriations are available, for all tenants designated very low- and low-income on the tenant profile. If the TTP is an increase for tenants who will be receiving Section 8 rental assistance after POA approval but were not receiving it before, the increase will be phased in at the same rate as described in Paragraph 7 above. If the TTP is a decrease for these tenants, it will be reduced to the lower of the FMR or 30 percent of the AMI;
 - 9. Provision must be made for the phase-in of the owner's or purchaser's receipt of the increased annual authorized return, to coordinate with the phase-in of project rents to pay for the incentives;
 - 10. Section 8 Gross Rents for each unit will be set at levels approved by the Loan Management Branch, taking into account the PPR required because of anticipated incentives to be provided under the approved POA, documentation of required utility allowances, and the rent projected

to be paid by moderate-income tenants, in accordance with Paragraph 8-17.C.2;

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11. Future rent increases will be handled in accordance with Chapter 11;
12. Any net savings from reductions in operating expenses due to management efficiencies will be deposited into the project's reserve for replacement account. With the approval of Loan Management staff, the owner who retains the project and purchasers will have periodic access to such reserves to pay for return to owner to the extent that Loan Management staff determines that the level of the reserves is adequate and that the project is maintained in accordance with housing standards. Priority purchasers may only withdraw this amount from the reserve account under the conditions specified in Paragraph 8-21.A.1.b;
13. Minimum Rents are established for all tenants designated as moderate-income. The Minimum Rent is 30 percent of the Section 8 low-income limit for the applicable family size, divided by 12, and further adjusted by the allowances specific to the family in accordance with Paragraph 3-11 in HUD Handbook 4350.3, Occupancy Requirements of Subsidized Multifamily Housing Programs. However, the FMR should be used where it is lower than the Minimum Rent;
14. Requested utility allowances were submitted for each unit type for the period beginning at implementation of the POA along with appropriate documentation of the method used to derive the utility allowance;

15. The mortgage on the project remains current;

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16. There are no open audit findings, open findings of non-compliance with Title VI of the Civil Rights Act of 1964, the Fair Housing Act, Executive Order 11063, the Age Discrimination Act of 1975, Section 504 of the Rehabilitation Act of 1973, and all regulations promulgated under such statutes and authorities or outstanding violations of the regulatory agreement; and
17. The following additional requirements will be met:
 - a. Those in accordance with Section D, Paragraph 8-20, Escrow Requirements, for POAs to retain the project; or
 - b. Those in Section E, Paragraph 8-23, Headquarters Review of Grants, for POAs to sell the project.

B. Loan Management Processing.

1. If a purchaser is requesting a grant, Loan Management staff should follow the guidelines in Section E, Paragraph 8-23.
2. On the basis of its review of the POA and comments received from tenants in accordance with Paragraph 8-3.B. and State and local governments in accordance with Paragraph 8-3.C., Loan Management staff should determine whether a POA meets the requirements under this Chapter and should be approved or disapproved. A letter will be sent to the owner or owner and purchaser, as applicable, within 180 days of

receipt of a complete POA LOG date letter sent , informing them of the approval or disapproval of the POA.

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- a. If Loan Management staff approves the POA, follow the guidance in Section F of this Chapter.
 - b. If Loan Management staff disapproves the POA, the letter must cite the reasons for disapproval and suggest alternatives. The alternatives may include offering the owner advice on incentives which may be requested to extend the low-income affordability restrictions, if an inappropriate request for incentives was a factor in the disapproval. Loan Management staff should offer the owner an opportunity to meet and discuss these other options.
3. If the owner receives a letter disapproving the POA, it may request an extension of the time for POA approval up to an additional 185 days. Loan Management staff must advise the owner that the final revision must be submitted within 305 days of HUD's initial receipt date which is stamped on the POA. if the POA cannot be approved within 305 days of initial receipt, the initial NOI must be voided for the purposes of filing a POA. In order to receive incentives, the owner must file a new Initial NOI requesting incentives after waiting six months.
 4. By POA approval, the owner must have firm financing commitments for all loans in the amounts, rates, and terms shown in the POA. The owner is responsible for submitting all

applications to the banks and HUD
and obtaining all commitments.

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5. If the POA cannot be approved because of an outstanding civil rights violation, audit finding or finding of non-compliance with the Regulatory Agreement, the finding must be closed before HUD may approve the POA within the 365-day timeframe established above. Please note that these findings of non-compliance need not be those which existed prior to the owner's submission of the Initial NOI. It could be any finding made during the POA approval process including those found due to the POA process itself.

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Section D.

Incentives to Retain the Project

- 8-19. Contents of Plans of Action. A POA requesting incentives should be submitted in the same manner as described in Paragraph 8-17.
- A. Amount of Assistance Requested. In addition to the incentives available in accordance with Paragraph 8-17.A., qualified owners may request an annual authorized return of eight percent of Extension Preservation Equity (EPE) in accordance with Paragraphs B.1 and B.2. below.
- B. Methods for Funding the Incentives. In addition to the methods for funding the incentives allowed by Paragraph 8-17.B., the owner may request:

that it will not exceed that limit.

- 8-20. Escrow Requirements. In addition to the requirements in paragraph 8-18.A. for POAs for retention of a project requesting an equity loan, Loan Management staff must be certain that the owner provides a certification with the POA that ten percent of any equity loan will be escrowed. This must remain escrowed for a minimum of five years or until the owner is in compliance with HUD's Housing Quality Standards.

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Section E.

Voluntary or Mandatory Sale of the Project Other than for Sale to Resident Councils

- 8-21. Contents of Plan of Action. A POA requesting assistance should be submitted in the same manner as described in Paragraph 8-17.
- A. Amount of Assistance Requested.
1. In addition to the incentives available in accordance with Paragraph 8-17.A., purchasers of a project may request the following assistance:
 - a. A loan to acquire the project for a purchase price not greater than the Transfer Preservation Value (TPV);
 - b. Receipt by the purchaser of an annual authorized return in an amount equal to eight percent on the cash investment made to acquire the project. Priority purchasers may withdraw this return from the project only if it is needed to pay debt service on a non-Federal loan to acquire the project.
 - c. In the case of a priority purchaser, reimbursement for transaction expenses relating

to the acquisition of the project. The reimbursement will be offered in accordance with Paragraphs B.3. and D.2. below and may be subject to review by the Preservation Division in accordance with Paragraph 8-23; and

- d. In the case of an approved Resident Homeownership Program, a grant to cover costs specified in Chapter 9. All grants are subject to approval by the Preservation Division in accordance with Paragraph 8-23.
- B. Methods for Funding the Incentives. In addition to the methods for funding incentives allowed by Paragraph 8-17.B., the owner and purchaser may also request that the purchaser receive:
1. An acquisition loan of up to 95 percent of Transfer Preservation Equity (TPE) in the project. The loan may either be insured under Section 241(f) of the National Housing Act or be provided through a non-insured mortgage loan approved by HUD and the mortgagee. A Section 241(f) insured loan may be amortized for a period of up to 20 years. A non-insured loan may be amortized over whatever period is agreed upon between the mortgagee and the purchaser. If the loan commitment is not firm at the time of POA submission, the term will be assumed to be 20 years for purposes of reviewing the POA.
 2. A distribution not to exceed eight percent of actual cash invested, and never more than eight percent of five percent of the TPE.
 3. In the case of priority purchasers, a loan in an amount which may not

exceed five percent of TPE. This loan may be used for acquisition costs, costs of organizing the nonprofit organization, and for tenant training and education, if necessary. These costs must be based on documented expenses. Acquisition costs may include legal

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fees and closing costs for purchasing the project. It may not include brokers' fees. This loan may be added to the loan amount allowed by Paragraph 1. above.

4. Grants for specified purposes for certain purchasers as described in Paragraph D. below.
- C. Determination of Preservation Project Rent (PPR). The projected budget must demonstrate that the following conditions will be met:
1. Mandatory Sales. In most cases, PPR will be equal to the Federal Cost Limit (FCL). However, if rents are clearly not needed at this level, Loan Management staff must approve rents at a lower level. If higher rents are needed, grants to reduce rents, will be available to purchasers, in accordance with Paragraph D.3. below.
 2. Voluntary Sales.
 - a. Priority Purchasers Buying Projects in which Transfer Preservation Rent (TPR) did not Exceed the FCL. Annual PPR will be established, as needed, to meet all costs required by the benefits shown in Paragraph 8-17 and Paragraphs A. and B. above and the total of utility allowances for all tenants. If PPR that exceeds the FCL is needed, HUD may provide grants

to priority purchasers to reduce rents in accordance with Paragraph D.3. below.

- b. Qualified, Non-Priority Purchasers and/or All Purchasers Buying a Project where TPR Exceeded the FCL. PPR may not exceed the FCL.

Grants will not be available to help the purchaser reduce rents to the FCL. Therefore, a purchaser may have to accept reduced benefits from those shown in paragraph 8-17 and Paragraphs A. and B. above, to avoid exceeding the FCL.

- D. Request for Grants to Purchasers. Grants are available for Resident Councils purchasing projects under approved Resident Homeownership Programs in accordance with Chapter 9. There are three types of grants available to certain other purchasers. All grants are subject to approval by the Preservation Division, in accordance with paragraph 8-23. The owner may request grants for the purposes and amounts shown below. Documentation that the request meets all requirements must be included.
 - 1. In the case of priority purchasers who cannot raise the equity requirement elsewhere, a grant for up to five percent of TPE.
 - 2. In the case of priority purchasers, a grant for the purpose(s) shown in paragraph B.3. above, which when combined with any loan made in accordance with paragraph B.3. above, does not exceed five percent of the Transfer Preservation Equity (TPE).
 - 3. In certain cases where the projected PPR exceeds the FCL, a grant to

reduce the first year's PPR to the level of the FCL. The amount and conditions of this grant will be determined in accordance with Paragraph 8-22 below. This grant is available to:

- a. Qualified purchasers buying under the mandatory sales process; or

- b. Priority purchasers, when the TPR developed by the Valuation Branch did not exceed the FCL.

- E. A complete Transfer of Physical Assets Package in accordance with HUD Handbook 4350.1., Insured Project Servicing Handbook, including any documents of sale.
- F. Seller financing may be provided in the form of a loan to any qualified purchaser of the project. The amount, rates, and terms must be specified in a contract with the purchaser and in the POA. Seller financing must meet the following requirements:
 - 1. The rate of interest charged and the term of the loan may not exceed that of the federally-insured acquisition or rehabilitation loan, as appropriate; and
 - 2. The seller may provide financing to the following limits:
 - a. Purchase Money Note Financing for Acquisition. The principal amount of such financing may not exceed:
 - i. TPE of the project minus the amount of the acquisition loan; and
 - ii. In the case of priority purchasers, expenses

associated with the acquisition not to exceed five percent of TPE (see Paragraph 8-21.B.3.).

- b. Cash Financing for Rehabilitation. The principal amount of such financing may not exceed the equity requirements for a

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rehabilitation loan in accordance with Section C, Paragraph 8-17.B.5.

8-22. Grants to Reduce Preservation Project Rent. Whether the project is sold under voluntary or mandatory sale, the method for computing the grant amount authorized in accordance with Paragraph 8-21.D.3. will be the same. The amount of the grant will be the amount to which the acquisition loan must be reduced in order to make the annual PPR equal to the FCL. An example of the calculation is provided in Paragraph C. below.

- A. In the case of a priority purchaser buying under the voluntary sale provisions, the grant may not exceed the present value of the projected FMRs for the next ten years, or longer if necessary. The maximum will be calculated by the Preservation Division.
- B. In the case of any purchaser buying under the mandatory sale provisions, the grant may not exceed the difference between the PPR necessary to pay for allowable benefits, in accordance with Paragraphs 8-17 and 8-21, and the FCL.
- C. Example:

PPR needed: \$132,000

Maximum rent which may be collected (This equals the Federal Cost Limit): \$128,000

Debt Payment must be reduced by

\$132,000
-128,000

\$ 4,000

The acquisition loan must therefore be reduced by an amount sufficient to reduce the debt payment by \$4,000 annually. Anticipated annual debt payment for each \$1,000 of acquisition loan at 10 percent interest (including mortgage insurance premium) for 20 years: \$115.92 To reduce

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debt payment by \$4,000 annually, the acquisition loan is reduced by \$34,500.

The additional \$34,500 is awarded to the purchaser as a grant.

- 8-23. Headquarters Review of Grants. If a POA contains a request for a grant in accordance with Paragraph 8-21.D., Loan Management staff will review the entire POA to determine if it can be approved, including the grant(s), in accordance with Paragraph 8-18. Within 150 days of receipt of the POA, if the rest of the POA can be approved, Loan Management staff will forward the complete POA and a copy of the completed Form HUD-50062, with a request for confirmation of availability of funds to the Preservation Division. LOG date approval requested The Preservation staff must issue its approval or disapproval within 15 days of receipt. LOG date approval or disapproval received

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Section F.

Final Decision and Action on the Plan of Action

8-24. Delegation of Authority. The authority to approve a Plan of Action (POA) has been delegated to the Regional Administrator who may further delegate this authority to the Field Office Manager or, in a case where the area and Regional Office are collocated, to the Regional Housing Director. If delegation to the Field Office has not been made, the Field Office Manager must prepare a recommendation to the Regional Administrator for POA approval.

8-25. Timeframes for Final Approval.

A. Approval Granted.

1. No earlier than the 60 days required for the tenant and State and local government comment period and not later than 180 days after receipt of a POA, the Field Office Manager must notify the owner or owner and purchaser in writing advising whether or not the POA is approved.
2. An attachment must be provided to any approval letters for the owner to post, notifying the tenants of the approval. The owner must post the attachment along with the notice of rent increase required by Paragraph 8-28.
3. If the owner requests an extension of the time for approval, it may be extended but never to more than 365 days after receipt of the POA. LOG date letter sent An example of a valid reason where the owner may request an extension is when the loan commitments have not yet been received.

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- B. Approval Withheld. If the approval is withheld, a notice must be sent LOG date sent to the owner or owner and purchaser giving:

1. The reasons for withholding approval; and
 2. Suggestions to the owner for meeting the criteria for approval.
- C. Opportunity to Revise. When approval is denied, the Loan Management Branch will give the owner an opportunity to revise the POA, but not more than 60 days after notification or 305 days of POA submission, whichever is earlier. If the owner fails to comply with this time period, the project will not be eligible for relief under Paragraph 8-25.D.
- D. Delayed Approval. If HUD fails to initially approve or disapprove a POA within 180 days for reasons other than deficiencies in the POA, owner error, or owner non-compliance, it must provide retroactive incentives and assistance to an entitled owner in accordance with Sections C, D and E of this Chapter. The incentives and assistance must be in the amount that the owner would have received if HUD had met the time limitations. In these cases, the direction in Paragraph 8-35 should be followed.

8-26. Plan of Action Approval. In order to approve a POA, Loan Management staff must:

- A. Make the determinations required by Section B or Sections C and D or E of this Chapter, as applicable;
- B. If the POA involves a Transfer of Physical Assets (TPA), evaluate the TPA and issue preliminary approval of sale to the purchaser. Preliminary approval of the TPA must be made simultaneously with approval of the rest of the POA;

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- C. Assure that all loan commitments are firm for the amounts, rates, and terms shown in the POA;
 - D. If the POA was initially disapproved

because of an outstanding FHEO or audit finding, or violation of the Regulatory Agreement, assure that the finding is closed. Owners should be aware that this requirement will be firmly adhered to even if the entire POA process is complete. An outstanding finding could include instances where non-compliance with regulations in the past leads to the owner's inability to comply with regulations in the present; e.g., if inappropriate tenant selection procedures produces a tenant profile which contains too many moderate-income tenants, or if lack of tenant income certifications makes it impossible to produce a tenant profile.

8-27. Updating the Tenant Profile. If, after receiving the POA approval letter, an owner wishes to update the project's tenant profile because there was a significant profile change favoring very-low income tenants, between POA submission and POA approval, an owner may, within 15 days of receiving the approval letter, submit a new profile in accordance with Paragraph 8-17.F. If an updated profile is submitted, Loan Management Branch must recalculate Section 8 rents based on the new profile. The profile will be forwarded to the Preservation Division, in accordance with Paragraph 8-29.B.1.

8-28. Notifications of Approval of a POA.

A. Tenants.

1. The owner must post the letter provided by Loan Management staff advising tenants of the approval of the POA. This notice must provide tenants with HUD's reasons for the approval. The owner also must write

to each affected tenant explaining how the POA approval will personally affect the tenant.

2. 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, Insured Project Servicing Handbook, must be followed and the owner must post a notification of the rent increase:

- a. After POA approval;
- b. Prior to execution of the Use Agreement; and
- c. At least 30 days prior to the effective date of any rent increase.

B. State and Local Government. Loan Management staff must write to all affected State and local governments to advise them that the POA has been approved.

8-29. Submissions to HUD Headquarters. Within 30 days of approval of a POA, the Loan Management staff must LOG date sent :

- A. Request funding from the Preservation Division through the Regional Office of Housing for the owner to implement the approved POA. This request may include:
 1. Section 8 new unit funding requests that include unit composition, approved rents, contract authority, and budget authority in accordance with the annual funding instructions, i.e., five-year budget authority. Funding should be requested for the number of units

designated as very low- and low-income on the tenant profile even if Section 8 assistance is not currently needed for all the units;

2. Section 8 amendment requests that

require contract authority and budget authority;

3. Flexible subsidy capital improvement loan requests which must conform to the instructions in Chapter 5 of HUD Handbook 4355.1, Flexible Subsidy Handbook, issued May 17, 1991. Please note that POA funding requests are not subject to either Section 8 or Flexible Subsidy NOFA requirements; and
 4. Information about the amount of grant funds approved in accordance with Paragraph 8-21.D.
- B. Submit the following information to the Preservation Division for the development of the Use Agreement and Amendment to the Regulatory Agreement, Grant Agreement, and any other required loan or grant documents with a request that the Office of the General Counsel (OGC) prepare any documents which are not normally prepared by Field Counsel. The Use Agreement will take priority over any Regulatory Agreement currently in effect.
1. Tenant Income Profile that the purchaser will maintain at the project for the remaining useful life of the project;
 2. All restrictions on Total Tenant Payment (TTP);
 3. The Section 8 contract and gross rents and utility allowances with documentation of how the rents and utility allowances were established;

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4. The method by which moderate-income tenants' TTP will be established;
 5. Methods by which TTP for tenants living at the project at POA approval will be phased-in, when

applicable;

6. An indication of whether the owner's annual percentage or equity base for return to owner has been increased, and if so, to what level;
 7. Number of units of Section 8 and contract authority for new units, as well as any amendment needs for existing contracts;
 8. Details of any other incentives, e.g., Flexible subsidy, Section 241(f) loan, etc., that the owner will receive under the POA;
 9. A copy of the POA signed by the owners;
 10. If the POA involves a TPA, the name and type of entity of the purchaser and the terms and changes required by the TPA;
 11. A copy of the preliminary approval letter for the TPA attached as background documentation;
 12. A copy of the POA approval letter;
 13. A copy of all financing commitments;
 14. Documentation of any provision for seller financing; and
 15. All restrictions on the manner in which general project rent increases will be granted.
- C. Execute a Section 8 or Amended Section 8 Contract.

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- D. Request Field Counsel to prepare any loan documents for which they have the authority.
- 8-30. Extension of Low-Income Affordability Restrictions.

- A. The Use Agreement and Amended Regulatory Agreement must be recorded by the owner if the owner retains the project, or by the purchaser, if the project is sold, to implement the terms of the POA and the continuation of the low-income affordability restrictions. The owner and purchaser must provide evidence to the Loan Management staff that the aforementioned documents were recorded. The term of the Use Agreement will be for the remaining useful life of the project.
- B. An owner/purchaser may file an appeal to HUD no earlier than 50 years after POA approval for a determination that the useful life of the project has expired. The owner/purchaser should be aware that in making a determination pursuant to such a petition, the owner will have the burden of proof in establishing such expiration. HUD will not determine that the useful life of any project has expired if such determination results primarily from failure to make regular and reasonable repairs and replacement, as became necessary during the previous 50 years.

8-31. Permissible Prepayment for Those Filing a Plan of Action to Extend Low-income Affordability Restrictions.

- A. Conditions for Prepayment. An owner who submitted a POA to extend low-income affordability restrictions through retention or sale may be allowed to prepay its mortgage for the following reasons:

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- 1. A POA is approved but there are insufficient funds available within specific timeframes to implement any portion of the approved POA other than insurance for the equity take-out or rehabilitation loan. The conditions and time frames for funding are:

- a. Retaining Project: HUD approves a POA to extend low-income affordability restrictions as described in Sections C and D of this Chapter, but does not provide the assistance contained in such a POA within 15 months of approval;
 - b. Selling Project: HUD approves a POA as part of a voluntary or mandatory sale in accordance with Sections C and E of this Chapter, but does not provide the assistance contained in such a POA the earlier of:
 - i. For Projects Whose POA is Approved After 20 Years of Final Endorsement. Two months after the beginning of a new fiscal year or six months after final approval; or
 - ii. For Projects Whose POA is Approved Prior to 20 Years of Final Endorsement. Two months after the beginning of a new fiscal year or nine months after POA approval.
2. An owner complied with all requirements for sale but did not receive a bona fide offer, or accepted a bona fide offer and the sale failed due to no fault of the

owner and the owner complied with the requirements of Paragraph 7-12 and received no other bona fide offer from a qualified purchaser.

- B. Acceptance of Prepayment. An owner, meeting the criteria of Paragraph A. above, and intending to prepay its

mortgage, must make a request to prepay to the mortgagee with a copy to the Loan Management Branch. LOG request received. If it is a HUD-held mortgage, the owner will contact the Multifamily Notes Servicing Branch in HUD Headquarters. The letter will notify them of the date of the anticipated payout and request the pay-off figure. Loan Management Branch will notify Preservation Division that the request has been received and recommend approval. The mortgagee or Multifamily Notes Servicing Branch will obtain approval from the Preservation Division before sending a reply to the owner. Prepayment will be accepted in accordance with Chapter 11. The termination of low-income affordability restrictions is subject to compliance with the provisions of Chapter 10 covering displaced tenants.

- C. Tenant Protection. The termination of low-income affordability restrictions is subject to compliance with the provisions of Chapter 10 covering displaced tenants.

Section G.

Implementation of a Plan of Action

- 8-32. Effective Date. The approved Plan of Action (POA) is effective when the owner or purchaser:
 - A. Prepays the mortgage and terminates low-income affordability restrictions and signs a Use Agreement for current tenants, LOG effective date ; or
 - B. Executes and records the Use Agreement to extend low-income affordability restrictions LOG execution date . No other action (e.g., rent increases, Section 8 contracts, Section 241(f) loan closing, Flexible Subsidy contracts, distribution of surplus cash, etc.) is permissible prior to the owner's or purchaser's execution of the Use

Agreement. The loan closing and execution of the Use Agreement should occur simultaneously.

- 8-33. Failure to Consummate Sales Transactions. If, under a voluntary or mandatory sale, an owner and purchaser fail to close on a transfer of physical assets within 90 days after POA approval the transaction will be treated as a terminated sales transaction and the project must again be placed for sale pursuant to Chapter 7, Paragraphs 7-9, 13 and 14.
- 8-34. Plan of Action Expenses. Expenses incurred by the owner pursuant to filing and negotiating a POA are the owner's responsibility until the POA is approved. Such expenses may be paid as project expenses from residual receipts or surplus cash, with proper documentation of expenses and Loan Management approval, and/or from distributions as approved in the POA, only after the POA is effective. Expenses charged to the project prior to POA approval and approval of the expenses by HUD, require Loan Management staff's normal regulatory enforcement action and prevent approval of the POA until they have been repaid.

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- 8-35. Retroactive Incentives for Delayed POA Approval. If an acceptable POA has not received a letter of approval or initial disapproval within 180 days of receipt by HUD, due to no fault of the owner, the owner is entitled to benefits retroactive to the 180th day of HUD's receipt of the POA. In these cases, upon approval of the POA, Loan Management staff should send a memorandum to the Preservation Division explaining the reasons for the delay and recommending approval of retroactive benefits. They should enclose the complete POA, the completed Form HUD 50061 or 50062, as applicable and any other documentation relevant to the delay.
- 8-36. Distribution of the POA. Loan Management staff should maintain one copy of the executed POA and give one copy the owner.
- 8-37. Provision of Incentives. The owner and

purchaser will receive approved incentives at the following times:

- A. Retention of Project by the Current Owner.
 - 1. All incentives if the project meets Housing Quality Standards (HQS) at POA approval.
 - 2. Incentives needed to bring the project to HUD's Housing Quality Standards (HQS), as soon as the rehabilitation loan closing takes place; and
 - 3. Other incentives, as soon as possible after HQS have been met.
- B. Sale of Project. As soon as all loan closings and execution of appropriate documents are completed.