
CHAPTER 1: OVERVIEW OF THE FLEXIBLE SUBSIDY PROGRAM

1-1. USE OF THIS HANDBOOK

a. Organization of the Handbook

This handbook is designed to be used by HUD Field Office staff, owners, and State Housing Finance Agency personnel who administer the Flexible Subsidy Program. After this introductory chapter, the Handbook provides separate chapters explaining the details of the two Flexible Subsidy programs: Chapter 2 for the Operating Assistance Program and Chapter 3 for the Capital Improvement Loan Program. Chapter 4 provides information about approving and funding projects under either program. Chapter 5 explains the requirements for the Management Improvement and Operating (MIO) Plan. Chapter 6 explains the steps required for project monitoring, close-out and accounting.

b. Additional References

The Handbook should be used in conjunction with the following additional Handbooks:

- (1) Handbook 4350.1 -- Insured Project Servicing
- (2) Handbook 4350.3 -- Occupancy Requirements of Subsidized Multifamily Housing Programs
- (3) Handbook 1378 -- Tenant Assistance, Relocation and Real Property Acquisition
- (4) Handbook 4381.5 -- Management Documentation, Agents and Fees
- (5) Handbook 4370.2 -- Financial Operations and Accounting Procedures

1-2. PROGRAM AUTHORITY AND OVERVIEW

a. Flexible Subsidy Components

The Flexible Subsidy Program has two components:

- (1) The Operating Assistance Program (OAP), which is designed to provide temporary funding to replenish project reserves, cover operating costs and pay

Assistance (OA) is provided in the form of a non-amortizing "contingent" loan.

- (2) The Capital Improvement Loan Program (CILP), is intended to assist projects with the cost of major capital improvements when funding such improvements cannot be done with project reserves. CILP assistance is provided in the form of an amortizing loan, generally with an interest rate of 6 percent.

Exhibit 1-1 summarizes key differences between the OAP and the CILP programs.

b. Legislative History

The OAP component of the program was initially authorized by Section 201 of the Housing and Community Development Amendments of 1978. Additional amendments in 1983 and 1987, respectively, clarified that a project need not be FHA insured to be eligible for assistance and created the CILP program.

c. Program Intent

Both programs are designed to restore or maintain the physical and financial soundness of eligible projects at the lowest possible cost to the federal government. Owners and Field Offices are expected to seek out other tools to supplement or to be used in place of Flexible Subsidy assistance, including bond refunders, partial payment of claim, work-out agreements, rental increases, Section 8 assistance, possible mortgage modifications, and owner contributions to the project, other market rate or below-market rate loans, and other grants.

d. Funding Source

The Flexible Subsidy Fund is comprised of excess rental receipts paid to HUD from owners of Section 236 projects, interest earned on the fund, repayment of OA and CILP loans and amounts appropriated by Congress.

The Flexible Subsidy programs are authorized and funded in the appropriations act as a grant program.

ISSUE AREA	OA	CILP
Eligible Items	<p>OA can be used for three types of items:</p> <ul style="list-style-type: none"> - Correct financial deficiencies - Fund projected deficits for the assistance year - correct physical deficiencies caused by deferred maintenance 	<p>CILP can only be used for capital improvements that are not the result of deferred maintenance.</p>
Selection Criteria	<p>Largely based on financial and physical condition of the development.</p>	<p>Largely targeted to preserve low/moderate income housing stock.</p>
MIO Plan	<p>All applicants must submit a complete MIO Plan.</p>	<p>Applicants must submit a full MIO only under some circumstances.</p> <p>All applicants must submit a work Write-up. They must fill out the MIO Part II Sections A and C.</p>
Disbursement Procedures	<p>Funds for physical improvements can be requested only after work is complete.</p> <p>Funds to cover a projected deficit can be allocated based on anticipated expenses for the month.</p> <p>Funds to correct a financial deficiency can be allocated only after all MIO Plan obligations have been met.</p>	<p>Funds can be requested only after work is complete.</p>
Pay-Back Arrangements	<p>OA is treated as a deferred/contingent loan.</p> <p>Residual receipts may be used to pay off the loan at the end of each fiscal year.</p> <p>If the property is sold, the mortgage insurance is terminated, or the mortgage is paid off, the Flexible subsidy loan should normally be paid in full.</p>	<p>CILP is an amortizing loan, and payments begin after the loan proceeds have been distributed.</p>

NOTE: The requirements above are true for the normal flexible subsidy projects, but in all cases the secretary reserves the right to waive requirements enforced by regulation, but not statute.

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The OA portion of the Flexible Subsidy Program is administered by HUD as a contingent/deferred loan program. HUD has the authority to require the owner to repay a part of or the full balance of the note:

- o from residual receipts (See Section 2-4(c)); or
- o when the ownership of the project changes hands in a TPA transaction; or
- o if the mortgage is paid in full.

The Capital Improvement portion of the Flexible Subsidy Program is administered by HUD as a monthly amortized loan program.

1-3. ELIGIBLE PROJECTS

The types of rental or cooperative housing projects that are eligible for assistance are summarized in Exhibit 1-2, and include:

- a. A project assisted under the Section 236 Interest Reduction program, including State Agency non-insured projects, the Section 221(d)(5) Program (commonly known as the 221(d)(3) Below Market Interest Rate Program), or the Rent Supplement Program.
- b. A project that was constructed more than 15 years before assistance is to be provided under this program with a loan under the Section 202 Program for Housing for the Elderly or Handicapped.
- c. A project assisted under Section 23 of the United States Housing Act of 1937 (1937 Act) as in effect immediately before January 1, 1975, that is ineligible for assistance under the modernization program operated under the 1937 Act. (Most Section 23 projects were converted to Section 8 some years ago, so it is not anticipated they will be a major component of the program.)
- d. A project assisted under the Section 8 Housing Assistance Payments Program after conversion from assistance under the Section 236 Rental Assistance Payments Program or the Rent Supplement Program.

EXHIBIT 1-2

ELIGIBLE SECTIONS OF THE ACT

PROGRAM	LIMITATIONS
Section 236 Interest Reduction Program	NONE. All 236 projects eligible.
Section 221(d)(5), known as 221(d)(3) Below Market Interest Rate Program	NONE. All 221(d)(5) projects eligible.
Rent Supplement Program	NONE. All Rent Supplement Program projects eligible.
Section 202 Program for Housing for the Elderly or Handicapped	Only 202 projects constructed more than 15 years before assistance is to be provided under this program are eligible.
Section 23	Only projects funded under Section 23 as in effect before January 1, 1975 and ineligible for modernization assistance under the 1937 Act are eligible.
Section 8 Housing Assistance Program	Section 8 projects are eligible only if converted from: <ul style="list-style-type: none"> o Section 236 or o Rent Supplement
Projects formerly assisted under any of the above	Projects are eligible if: <ul style="list-style-type: none"> o the project was acquired by the Secretary and sold; and o the project is now subject to a HUD-insured or HUD-held mortgage; and o the project is now under an agreement assuring low and moderate income character of the project

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- e. A project that met the criteria in paragraphs (a) or (b) before acquisition by the Secretary and that has been sold subject to a mortgage insured or held by the Secretary and subject to an agreement (in effect during the period of assistance under this program) which provides that the low- and moderate-income character of the project will be maintained.

1-4. ELIGIBLE USES OF FUNDS

a. Operating Assistance

Operating Assistance can be used to fund:

- (1) corrections of project deficiencies existing at the beginning of year of assistance caused by the deferral of regularly scheduled maintenance and repairs or the failure to make necessary and timely replacements of equipment and other components of the project.
- (2) a capital improvement, only if it is necessary to meet local building codes or to maintain the project in a decent, safe and sanitary condition and it is determined that OAP is the most efficient way of funding this improvement;
- (3) reserve account and operating cost deficits;
- (4) cost-effective energy conservation improvements;
and
- (5) reasonable alterations needed to make the project accessible to people with handicaps, as required under Section 504.

b. Capital Improvement Loan Program

CILP funds can be used to repair or replace major systems including:

- (1) major project components that have failed or are likely to fail within the next 24 months;
 - (2) capital items that can be upgraded to meet cost-effective energy efficiency standards;
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- (3) supplements or enhancements to mechanical equipment to the extent they are needed for health or safety reasons;
- (4) reasonable alterations needed to provide accessibility for people with handicaps, as required under Section 504; and
- (5) lead-based paint abatement, once an owner has tested in accordance with HUD regulations, certified to testing and established a cost estimate for abatement.

1-5. STATUTORY REQUIREMENTS

Flexible Subsidy assistance is only available to projects in which the Field Office determines that the following statutory requirements can be met:

- a. **Physical Soundness.** Flexible Subsidy, when used with other available tools, must restore or maintain the project's physical soundness. An on-site inspection (Form HUD-9822) must verify that structural soundness can be obtained reasonably.
- b. **Financial Soundness.** Flexible Subsidy, when used with other available tools, must restore or maintain the project's financial soundness. A project's problems may be acute, but they must be curable.
- c. **Low- and Moderate-Income Character.** The owner must agree to maintain the low- and moderate-income character of the project for the remaining term of the project mortgage.
- d. **Least Costly Alternative.** Flexible Subsidy should only be provided if it will be less costly to the federal government over the useful life of the project than other reasonable alternatives that would maintain the low- and moderate-income character of the project.
- e. **Owner Contribution.** Limited dividend owners must agree to provide the required owner contribution.
- f. **Competent Management.** The project managers must meet satisfactory levels of competence and experience as determined in the management review process.

- g. Management Improvement and Operating (MIO) Plan. Most projects must be operated in accordance with an approved MIO Plan. Some projects receiving only CILP funding are exempt from this requirement.

1-6. PROGRAM FUNDING

a. Funding Allocations

- (1) Flexible Subsidy assistance is not an entitlement. Owners must compete for assistance on a nationwide basis. HUD will publish Notices of Funding Availability (NOFAs) that will provide specific information about funding availability and selection and ranking criteria. Applicants for funding should refer to both the NOFA and the Flexible Subsidy handbook, since the NOFA requirements may expand upon the handbook requirements.
- (2) Legislation requires that a portion of the Flexible Subsidy funds be set aside for CILP projects, although any part of this amount that is not used before the last 60 days of the fiscal year becomes available for the OAP.
- (3) Funds for State Agency-financed non-insured projects are allocated separately from all other projects, but the same program requirements apply.

b. Funding Process

Owners must submit applications for assistance to the appropriate HUD Field Office for review. The Field Office will forward those it recommends for approval to Headquarters. Headquarters will perform a final eligibility review, and rank projects according to the criteria set forth in the NOFA. While this process is competitive nationwide, once the applications are ranked into categories the funding process is noncompetitive within the category assuming there is a sufficient amount of funds to fund all applicants in the category. Once funding reaches a category where the dollar amount needed to fund the category exceeds the dollar amount available for funding, then the applicants will be ranked and the process will become competitive.

1-7. PRIORITIES FOR FUNDING

Funding will be awarded within each project type (State Agency financed non-insured and other) and within each component of the Flexible Subsidy Program (OAP and CILP). Unless otherwise noted in the NOFA, decisions will be based on the following priorities:

a. Operating Assistance Priorities

(1) Category 1 -- Troubled projects with emergency health and safety problems

- o The project must be identified by the Field Office as "troubled".
- o More than half of the required funding must be for emergency health or safety problems that are of such a magnitude that :
 - they could not be mitigated at a cost that could be absorbed in any way by the operating budget, and
 - their continuance could potentially cause tenant displacement.

Examples of emergency health and safety problems involving possible capital improvements are broken heating systems, leaking gas stoves and unsafe balconies.

- o Normally, the projects should be current under the terms of the mortgage at the time of application.
- o Generally, accounts payable items that could be included under OA would not trigger an emergency condition. However, payables that directly relate to vital services (e.g., utility payables) could qualify a project for this category.

(2) Category 2 -- Projects with serious financial or physical problems

- o The project must be identified by the Field Office as troubled.

- o Normally, the project should be current under the terms of the mortgage at the time of application.
- o The project sponsors do not have the funds available to cure the immediate problems.
- o The project's income stream cannot be improved sufficiently to meet the project's expenses without first correcting the physical problems.

(3) Category 3 -- Projects with delinquencies

This category includes projects that:

- o are identified by the Field Office as troubled or potentially troubled and are delinquent under the terms of the HUD-insured mortgage or State Agency mortgage at the time of the application for assistance, or
- o are owned by State Agencies and meet all programmatic eligibility requirements.

b. CILP Priorities

The Secretary will establish an annual set-aside to provide incentives for owners to continue to operate their projects as low- to moderate-income housing under Plans of Action (see administrative guidance issued pursuant to 24 CFR 248) to assure that top priority for funding capital improvement loans is given to these projects. This set-aside may be increased or decreased during the year if the Secretary determines that it is appropriate.

To the extent that funds are available for projects other than those under Plans of Action, priority will be given to projects based on the extent to which:

- o the capital improvements for which the loan is requested are required immediately;
- o the project serves as the residence of low-income families and the extent to which other suitable housing is unavailable for such families in the area in which the project is located;

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- o the capital improvements for which the loan is requested involve the life safety or health of the residents of the project, or involve major capital improvements in the project; and
 - o the project demonstrates the greatest financial distress, while continuing to meet the general requirements for Flexible Subsidy assistance.

NOTE: The factors listed above are selection criteria only and are not listed according to the weight given to each factor.

c. Funding Disclosure

During the funding allocation process there are restrictions on the information HUD employees may release before the announcement of the selection of successful Flexible Subsidy applicants (24 CFR, Part 4). The Housing and Urban Development Reform Act of 1989 contains provisions for informing applicants of which funding category they have been placed in for funding categories in which all applicants will be funded. For funding categories in which only some applicants will be funded no information can be released until the announcement of the selection of successful applicants.

HUD employees involved in reviewing applications and in making funding decisions are prohibited from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving an applicant an unfair competitive advantage. Those who apply for Flexible Subsidy assistance should confine their inquiries to the subject areas permitted under 24 CFR Part 4. Applicants who have questions about permissible inquiries should contact the HUD Office of Ethics.

The Office of Ethics can provide information of a general nature to HUD employees. However, a HUD employee who has a specific program question, such as whether particular subject matter can be discussed with individuals outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

1-8. FINANCIAL DISTRESS RANKING

a. Funding by Category

The above categories represent the initial ranking of applications received for the OA and CILP components of the Flexible Subsidy program. Headquarters will fund all applicants in a category until it reaches a point where the funds needed to fund a category exceed the amount of funding available. At this time, Headquarters will rank projects within a category if available funds are not sufficient to meet the needs of all applicants.

For example, assume that the Department has \$100 to fund projects under OAP, and that the applications for assistance fall into the following categories:

Category 1 projects	\$ 75
Category 2 Projects	\$ 50
Category 3 Projects	\$ 35
Total All Categories	\$160

In this example, Headquarters will fund all eligible projects in Category 1. Projects in Category 2 will be scored, ranked, and selected to the extent funds are available (or \$25 in this case) in descending order of funding score. Category 3 projects will not be funded.

b. Funding Within Categories

The financial distress of a project will be assessed to determine which projects within a funding category are most in need of assistance. The severity of a project's financial condition and its ability to meet short-term operating needs and obligations, including debt service payments, will be measured by HUD Headquarters using financial data contained in the project's most recent audited financial statement.

In assessing financial distress, Headquarters will use the following ratios, awarding a maximum of 15 points for each ratio, for a maximum score of 30 points per project. Projects with poor financial ratios (e.g., income/expense ratios with a negative value) will be assigned higher point scores than projects with break-even or positive values.

1. Income/Expense Ratio:

Net Income (Loss) before depreciation LESS
annual debt service and reserve payments

Total annual cost of operating the project

2. Mortgage Coverage Payment Ratio:

Current Assets LESS Current Liabilities

Total Monthly Mortgage Payment

1-9. DIVISION OF RESPONSIBILITIES

Housing's Office of Multifamily Housing Management is responsible for administering the program. The Director, Regional Accounting Division (RAD), is responsible for recording and controlling Field Office fund subassignments and for disbursing funds against such assignments.

The Regional Administrator is authorized to execute Flexible Subsidy contracts with owners or to delegate this authority to a level no lower than the Field Office Director of Housing Management.

Loan Management Staff is responsible for performing the day-to-day functions related to administering the program.

1-10. GENERAL PROGRAM REQUIREMENTS

a. Resident Involvement

- (1) Purpose: Most owners are required to solicit input from residents before they submit their preliminary Flexible Subsidy applications (see Section 2-17 and 3-23) to the Field Office, including:

- o all owners receiving OA; and
- o owners receiving CILP assistance who request rent increases.

Owners receiving CILP assistance who do not request rent increases are not required to solicit resident input.

- (2) Goals: This requirement has two goals:
- o to gain support from the resident community to maintain the development once the improvements have taken place; and
 - o to assure that resident suggestions about what should be done, and how it can best be accomplished, are considered. Resident comments can provide valuable insights that a non-resident may not have.
- (3) Notice: Owners covered under 1-10(a)(1) must notify the project's residents of their intent to obtain HUD assistance and must allow residents to review and comment on their applications. The notice must be distributed directly to each resident and posted in common areas within the project, including but not limited to the project office, laundry rooms, and common entry ways (see Appendix 1).
- (4) Availability of the Plan: Owners covered under 1-10(a)(1) must make the application available to the residents for at least 15 calendar days. During the 15 day period, the proposed application must be available at the project site for at least four hours on the weekend, one evening per week and during all normal office hours.
- (5) Summary of Comments: At the end of the comment period, the owner must summarize the residents' comments and prepare recommendations on how (or if) the application should be altered to accommodate the comments. The owner must assemble copies of the summary, the recommendations, the residents' comments, and a copy of the notice distributed to the residents, and submit them to the Field Office.

b. Low- and Moderate-income Character

Owners must agree to retain the low- and moderate-income character of their projects for at least the duration of the existing mortgage.

c. Financial Audit Findings

All major financial audit findings must be resolved or a plan must have been established to resolve the findings to HUD's satisfaction before approval of a Flexible Subsidy application. For example, it is a violation of the Regulatory Agreement to underfund the security deposit account. The Field Office should review the project's financial statements and monthly accounting reports to assure that this account is properly funded. If the account is not properly funded, Flexible Subsidy assistance should not be provided until the owner has properly funded it or has submitted an acceptable plan to do so.

d. Environmental Review

Only Flexible Subsidy applications that include capital improvements require an environmental review. This review is limited to the 100 year floodplain and historic preservation issues (24 CFR 219.125)

Loan Management Staff must document compliance for this limited environmental review on HUD Form 4128.1, Compliance and LAC Conditions Record (Appendix 2).

1) 100 Year Floodplain

If the proposed capital improvements involve major mechanical equipment, Loan Management Staff must determine, using a FEMA, Flood Hazard Boundary Map or Flood Insurance Rate Map, if the project/structure is located in the 100 year floodplain. For projects located in the 100 year floodplain the Department must take all feasible actions to minimize the impact of flooding on mechanical systems. To document compliance, the FEMA map panel name, number and date must be recorded on the HUD 4128.1 and if applicable any "minimizing actions."

2) Historic Preservation

Generally, capital improvements with in-kind replacements will not trigger review under the National Historic Preservation Act of 1966.

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- a) If the project is listed on the National Register of Historic Places and exterior in-kind replacement is not planned, consultation with the State Historic Preservation Officer

(SHPO) must be pursued.

- b) If the project is located in a Historic District listed on the National Register of Historic Places and proposed alterations to the exterior are not in-kind replacement, consultation with the State Historic Preservation officer (SHPO) must be pursued.

If either of these situations exist, Loan Management Staff must request guidance and assistance from the Field Office Environmental Staff in conferring with the SHPO and resolving issues prior to the recommendation of funding. Documentation of this compliance action must be recorded on the HUD 4128.1

For projects not listed or in a Historic District on the National Register of Historic Places, the HUD 4128.1 should indicate review of Field Office environmental data base including National Register of Historic Places, as compliance documentation.

e. Lobbying Restrictions

- (1) Flexible Subsidy funds, and any other federally appropriated funds, may not be used to pay for influencing or attempting to influence Executive or Legislative branch personnel through lobbying in connection with the award of any Federal contract or loan or the extension, continuation, renewal, amendment, or modification of any contract or loan. Owners who receive Flexible Subsidy loans in excess of \$150,000 are required to disclose payments made with non-federally appropriated funds to influence or attempt to influence Federal personnel through lobbying concerning the award, extension, continuation, renewal amendment or modification of a Federal contract or loan, and to certify that they will disclose such activity should it occur in the future.

- (2) Certification statement or disclosure forms, if warranted, must be submitted as part of the Flexible Subsidy application. Applicants are responsible for determining whether their disclosure statements need to be updated each

quarter pursuant to 24 CFR 87.110 (d) and for submitting this information to the Field Office. See Appendix 3 for Sample Lobbying Certification Language and SF-LLL, Disclosure of Lobbying Activities (Byrd Amendment).

- (3) The Field Office must include a copy of each disclosure form in the project file, and must forward each original to the Office of Ethics at Headquarters.

f. LIHTC and Other Subsidy Layering

Before approving any new or additional assistance for a project, HUD must certify that the amount is not more than is necessary to provide affordable housing, after taking account of any other government assistance to be used in connection with the project. Other government assistance includes mortgage insurance, loans, grants, payments, subsidies, rebates, credits, tax benefits, or other indirect or direct assistance from a federal, state, or local government agency or instrumentality thereof.

Field Offices should follow HUD's subsidy layering guidelines as outlined in Appendix 4 to assure that the Flexible Subsidy assistance they plan to approve is not excessive when considered in combination with other subsidies.

- (1) In order to prevent owners from receiving excess profits, Field Offices are required to determine whether the project will use Low Income Housing Tax Credits (LIHTC) or other subsidies in addition to Flexible Subsidy. HUD Headquarters must review all cases that will use LIHTCs. This must be done before:
 - o approving fund reservations, new contracts, or contract increases or extensions; or
 - o depositing Flexible Subsidy funds in a working capital fund/replacement reserve account when closing out an OA contract.

- (2) Owners who do not intend to use the LIHTC or other subsidies must sign certifications to this effect, and agree to notify the Field Office if the project does receive or apply for the LIHTC or

other subsidies not already disclosed. Sample certification and disclosure language and HUD's subsidy layering guidelines are included in Appendix 4.

- (3) Owners who do intend to use the LIHTC must follow HUD's guidelines, as outlined in Appendix 4. Headquarters will assess the project's Tax Credit proceeds and adjust the loan and rents accordingly.
- (4) Concerning subsidy layering issues, applicants must comply with Section 102 of the HUD Reform Act of 1989. See 24 CFR Part 12 for detailed information. Subpart C provides for (1) initial reports from applicants for HUD assistance and (2) updated reports from recipients of HUD assistance. All applicants for assistance from HUD for a specific project or activity must make a number of disclosures, if the applicant meets a dollar threshold (\$200,000) for the receipt of covered assistance during the fiscal year in which the application is submitted. The applicant must also make the disclosures if it requests assistance from HUD for a specific housing project that involves assistance from other governmental sources. HUD Form 2880 (see Appendix 4) provides for these disclosures and is made available to the public through the application package.

g. Identity-of-interest Disclosure

- (1) As part of the effort to assure that owners do not reap excessive profits, the federal government has imposed strict regulations on identity-of-interest firms. Owners may purchase goods and services from firms in which they have an interest, but they must carefully document that the prices charged are competitive.

- (2) Identity-of-interest includes any relationship which would give the owner control or influence over its management agent, or any relationship which would give the owner or its management agent control or influence over the price paid to an individual or business supplying goods or services to the project.
- (3) A typical identity-of-interest relationship

involves a mortgagor or management agent with a financial interest in a contractor or supplier, but could also involve a family relationship. An identity-of-interest may be construed to exist under any of the following conditions:

- o When the owner or its management agent, or any officer, director or stockholder of the owner or its management agent:
 - has a financial interest (other than the fee for services or supplies) in the contractor, subcontractor, or supplier;
 - is also an officer, director or stockholder of the contractor, subcontractor or supplier;
 - o When the owner or any officer, director or stockholder of the owner:
 - has a financial interest (other than the fee for services or supplies) in the management agent;
 - is also an officer, director or stockholder of the management agent.
- (4) Owners must ensure that any transactions with identity-of-interest firms are carefully documented and that an arms-length transaction would not be more cost effective for the project. Loan Management Staff will be responsible, through the approval of fund releases, for assuring the cost effectiveness of all work performed in connection with a Flexible Subsidy contract.

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- (5) Owners must disclose any identity-of-interest relationships when applying for the Flexible Subsidy program. (See Appendix 5 for sample language.)
- h. Energy Efficiency
- (1) Most projects that are eligible for Flexible Subsidy were constructed at a time when energy was less expensive. That situation has changed, and installing items such as double glazed windows, additional insulation, fuel efficient heating and

cooling systems, etc., can have a rapid payback on the investment, and can contribute to significant reductions in a project's operating costs.

- (2) HUD's energy conservation guidelines require Flexible Subsidy recipients to determine whether cost effective energy efficiency strategies are available and appropriate for their projects, and if so, to implement them. This process is spelled out in detail in Chapter 12 of HUD Handbook 4350.1.

i. Handicapped Accessibility

- (1) Section 504 of the Rehabilitation Act of 1973, as amended, and the implementing regulations (24 CFR Part 8), establish the goal of making programs supported with federal assistance readily accessible to and usable by individuals with handicaps.
- (2) Different types of project renovations trigger specific Section 504 requirements. Alterations to common areas must, to the maximum extent feasible, be made accessible to and usable by individuals with handicaps. This is also true of all alterations to components of individual units until five percent of the units are accessible to people with mobility impairments (see CFR 8.22 and 8.23). Owners must also review their administrative and employment practices and procedures to assure they do not discriminate against individuals with handicaps.

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- (3) Section 504 is not intended to require that owners make any part of their properties accessible if doing so would impose undue financial and administrative burdens. Because the projects funded with Flexible Subsidy will tend to be older projects, many will not be accessible to people with handicaps. This presents a challenge to owners. It is imperative that Field Offices help owners find ways to make projects as accessible as possible to people with handicaps. (See Chapter 2, HUD Handbook 4350.3 or 24 CFR 100.203 and 100.204 for detailed Section 504 Requirements.)

j. Previous Participation Certification

The owner must submit a Previous Participation Certification, Form HUD-2530 (see Appendix 6), for all principals requiring clearance under these procedures. Flexible Subsidy will not be awarded if there are any outstanding findings of noncompliance by any of the principals listed on the Previous Participation Certification.

k. Uniform Relocation Act Requirements

- (1) The Uniform Relocation Act (URA) protects tenants who are either permanently or temporarily displaced as a result of activities undertaken with Flexible Subsidy funds.
- (2) URA requirements are triggered at the time of application for assistance, at execution of the Flexible Subsidy contract and upon completion of the contract.
- (3) Tenants may become eligible for relocation benefits in three ways:
 - o Tenants who are required to move temporarily because of project renovations funded with Flexible Subsidy must be reimbursed for out-of-pocket expenses including additional living expenses.

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Families who leave the project permanently because they did not receive adequate notice or reimbursement of out-of-pocket expenses,, or because the terms of the temporary relocation were unreasonable, may be eligible for URA benefits.

- o Tenants who are permanently and involuntarily displaced as a result of project renovations may be eligible for URA benefits.
- (4) Additional relocation requirements may be triggered if Community Development Block Grant (CDBG) funds are used in the project.
 - (5) See Handbook 1378, Section 19, entitled Flexible Subsidy Program, for additional information on relocation requirements.
 - (6) When relocation issues arise, Loan Management

Staff should consult a Field Office Relocation Specialist in the Community Planning and Development Division (CPD) for assistance in determining how this Act will apply to the specific situation.