

## CHAPTER 11. WORKOUTS FOR HUD-HELD PROJECTS

## SECTION 1. INTRODUCTION

## 11-1.\* GENERAL WORKOUT PHILOSOPHY

HUD's basic objective for projects with HUD-held mortgages is to develop a workable plan to stabilize the property, both financially and physically, and to minimize losses to the Department. One way in which HUD tries to accomplish this objective is by providing the borrower with debt service relief for a limited period of time. This type of arrangement is referred to as a provisional workout arrangement ("Workout" or "Workout Agreement").

Since the sale of HUD-held notes provides an efficient resolution for the assigned inventory of properties, it is generally contemplated that a Workout will be a short-term arrangement, for instance 36 months or sooner depending on when the next applicable note sale is planned. Longer term Workout Agreements may be permitted upon the receipt of prior approval of the State Director of Housing or, if the office has none, then the Director, Multifamily Housing Division, where sufficient economic rationale exists for taking such an action. Longer term options, however, are expected to be used less frequently in the future when taking into account the effect of longer workout terms on mortgage values in note sales (see Paragraph 11-3) and the Department's debt collection goals. In most instances shorter workout terms will make the most economic sense in light of current market conditions and the new cancellation language that is required in all Workouts Agreements for unsubsidized mortgages. Additionally, no Workout should contemplate or contain agreements regarding future actions by the Department. Specifically, no Workout should contain an agreement or imply that the Department will modify a mortgage or extend the term of the Department's forbearances after the Workout is completed. While a mortgage or note modification ("Modification") might be appropriately agreed to by the Department after the Workout is successfully completed, no decision to modify a loan should be made until the Workout is completed and the required analysis to ensure the ability of the owner to pay under the Modification is performed.

Though workout durations vary, depending on the circumstances, and may run for a number of years, the workout should be terminable at the end of each 12 month increment. At the end of each 12 month increment, the HUD office should reevaluate the physical and financial condition and management of the project. Though there is less likelihood that the loan can be brought fully current

by the end of the workout term, particularly under short-term arrangements, since the syndication market is not generating as many proceeds as in years past, progress toward stabilizing the project is expected to be made from year to year. This could be measured in any number of ways including but not limited to: a decrease in account payables; an increase in occupancy at the project; or needed repairs being made. The Workout should be terminated if it is determined that it is not in the best interests of the Department to continue to forbear from enforcement of the note and mortgage terms.

Owners, understanding the financial consequences of their actions, will continue to be motivated to enter into Workout Agreements with HUD offices. In an event of default under the loan documents, HUD may seek to foreclose upon the project. Foreclosure can lead to costly tax consequences for the owner and partners. In order to prevent that from happening, owners seek forbearance from HUD in the form of a Workout Agreement.

The specific relief provided in a Workout must be based on a thorough analysis of the project, considering the tenant mix, availability of funds to address the physical and financial needs of the project, examination of the project's market area, and the possibility of assistance from other government or private agencies, examination of the current and anticipated supply and demand conditions in the housing market area relative to the market demand for the project at the rents needed for financial viability. Such thorough project analysis will aid the Asset Manager in determining whether or not a workout is feasible. In some cases it may not be in the tenants' or HUD's best interest to enter into a Workout. Workouts will address all of the following objectives:

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- A. Stabilizing a project's physical and financial problems to ensure that an acceptable living environment is maintained for the tenants.
- B. Obtaining competent, interested owners and managers who demonstrate a willingness to resolve the project's problems, provide an improved living environment for the tenants, and keep the mortgage current.
- C. Developing a reinstatement plan that will protect the long term financial interest of HUD and ensure that the project can continue to be a viable operation.
- D. Requiring ownership (when appropriate) to provide additional capital to address project's physical and financial problems and implement the reinstatement plan.

Foreclosure may be considered when:

- A. the owners refuse to cooperate fully in solving the project's problems;
- B. ownership with sufficient resources is not available;
- C. unauthorized distributions or diverted project funds have not been returned to the project; or,
- D. it is otherwise in the best interests of the Department.

11-2.\* NEW TERM LENGTH FLEXIBILITY

- A. The old handbook provision which required that all Workouts have terms of 3, 6 or 9 years is hereby rescinded. Section 6 to this Chapter, originally issued 6/93, extended the fixed term for workouts from the original 3 years to permit longer terms of 6 and 9 years. Experience to date and a reevaluation of procedures have shown that, while most Workouts will be short-term arrangements, term length options are needed which field Asset Hangers can employ on an individual project basis.

The Office of Multifamily Housing Management has thus moved away from the idea of only 3, 6 and 9 year Workout term options. What the Office hopes to foster is an environment in which creative, individually designed strategies and solutions are encouraged.

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- B. This Chapter focuses on Workouts for HUD-held projects, i.e., post default/assignment when HUD becomes the mortgagee. For identifying and addressing the needs of still insured troubled or potentially troubled projects, and what can be done to stabilize the financial and physical condition of troubled real estate before the event of default/assignment takes place, while at the same time mitigating future losses to the FHA Insurance Fund, readers are referred to the accompanying Job Aid, "Loss Mitigation Job Aid: Educational Supplement to Outstanding Handbook Procedures." Applying workout-type arrangements to still insured assets with the intention of avoiding a default/assignment in the first place (the practice of which is commonly referred to as "loss mitigation") is a proactive asset management tool and a fitting component of sound portfolio management.
- C. Under the new Field leadership and front line empowerment inherent in the Department's reorganization plans, the Field now has the ability to consider and design more flexible approaches to Workouts by providing for terms ranging from 1 to 9 years. The

bottom line is to devise a Workout that makes good economic sense and restores troubled real estate to sound financial and physical condition while protecting and enhancing the quality of life for residents. Any serious proposals, creative financing or sale to resolve mortgage delinquencies may be considered that would further the objectives of sound portfolio management.

- D. As a guiding principal, a Workout is not a science but rather an art form that does not lend itself easily to a prescribed or normative pattern because each circumstance is different and must be carefully thought out. That is why it is imperative that each transaction be analyzed on its own merits.
- E. The concept of flexibility is something that has been evolving over time. This revision builds upon earlier efforts and thinking in this area. The old Paragraph 11-25 of the Handbook caused considerable interest, debate and discussion when first introduced in 1993, and hopefully raised a new way of thinking with its call to consider alternative approaches to Workouts that were deemed acceptable but could not be easily transposed to fit the strict 3, 6 or 9 year framework.

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The old paragraph 11-25 was Multifamily Housing Management's attempt to remind everyone that there may be other solutions to a property's problems than those suggested in the Handbook.

- F. Readers will note that the longer term Workout options have not been completely removed from the Handbook and may continue to be used as appropriate where sufficient economic rationale exists for taking such an action. These options, however, are expected to be used less frequently in the future given the experiences learned from the on-going multifamily HUD-held note sales being conducted by the Department around the country.
- G. Potential bidders/mortgage purchasers generally prefer to acquire mortgages that are not encumbered with long-term Workout Agreements. Note purchasers generally prefer the flexibility to reach whatever agreement he/she can negotiate with the owner. Thus, Workout Agreements, particularly long-term ones, lower the value and, as a result the sales price, of mortgage notes held for sale. See Paragraph 11-3 for a discussion of the effect that Workouts can have on note sales.
- H. As an additional tool in meeting workout/loss mitigation objectives, HUD Field Asset Management staff are reminded that they may waive handbook or other directives whenever a waiver is economically prudent and/or furthers the goal of providing decent, safe and sanitary housing, so long as the requirement to be

waived is not statutory or regulatory in nature. Asset Managers are reminded that any and all such handbook waivers must include the bases or justification for taking such action along with concurrences by Field counsel, to ensure that the request for waiver of handbook directive does not conflict with any statutory or regulatory provision, and the Manager/Housing Director, to ensure supervisory review, proper coordination and sound management control practices. Specially designed form [HUD-2](#) may be used for this purpose.

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11-3.\* UNDERSTANDING THE IMPACT OF WORKOUTS ON NOTE SALES.

- A. The guidelines and requirements contained in this Paragraph are derived from the experience gleaned and lessons learned from the various note sales being conducted by the Department around the country. They are presented with a eye toward maximizing the return to HUD in future sales while not discouraging Workout Agreements and Modifications necessary for the protection of the health and safety of the residents. They key is to think through the process and ask the following questions as Workouts are being negotiated - "Is a Workout Agreement necessary to protect the health or safety of the residents?" "How would this term, provision or condition affect the potential price HUD would get at a future sale of this note?"
- B. The terms of a Workout Agreement and/or Modification have a significant impact on the value of a load and thus on the price the Department receives for that loan upon its sale. Once a Workout Agreement or Modification is executed, the mortgage purchaser is bound by its terms. Prospective purchasers, particularly those interested in non-performing loans, want to acquire loans unencumbered by Workout Agreements, particularly long-term ones. The existence of any Workout Agreement or Modification obligation limits the flexibility of the loan purchaser to negotiate with the property owner. The requirement that all Workout Agreements for unsubsidized loans include "cancellation language" permitting the loan purchaser to cancel the Workout Agreement on any anniversary by providing the borrower with notice within 60 days prior to such year anniversary mitigates but does not eliminate this effect. Therefore, the impact of a Workout Agreement or Modification must be carefully considered and weighed against its need before entering into negotiations.
- C. Since non-standard language and provisions in a Workout Agreement can confuse potential purchasers unfamiliar with them and, therefore, lower the price the

Department could hope to receive, make sure that all terms, provisions and conditions are consistent with the sample Workout Agreement in Appendix 4 and with normal, standard procedures designed to assure that the loan will be brought current. The following are some additional requirements which have been established and

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must be followed with respect to Workout Agreements and Modifications considered or entered into with respect to loans likely to be offered for sale:

1. As individual auction sales are conducted around the country based on geographical locale, the DAS for Multifamily Housing shall establish by policy memorandum a date after which no Workout negotiations may begin and a cut-off date by which time all negotiations relating to a Workout of a mortgage must be concluded and the agreement executed by all parties. If the agreement is not signed by all parties by the time of the cut-off date, discussions must cease and no Workout Agreement may be executed.
2. HUD local office staff will be asked to review all projects included in a sale to determine if any Modification obligations exist. If so, a title endorsement insuring HUD's first priority lien status for the entire amount of the outstanding indebtedness (after being increased by the Modification) must be obtained simultaneously with recording the Modification. If the Department cannot obtain first lien status, then a default should be declared and any Modification (if it has been prepared) must be marked void and not recorded.
3. For projects in which first lien status is assured to HUD, the HUD Office should have the borrower for that project execute and return to HUD the Modification. HUD Office personnel should record those Modifications (assuming HUD continues to have a first lien status at the time of recordation) prior to the cut-off date for the sale. Otherwise, the Modification executed by the borrower should be forwarded to Headquarters.
4. Because HUD may apply funds in replacement reserves to the indebtedness prior to a loan's sale, outstanding requests for disbursements from

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replacement reserve and similar accounts (i.e.,

[Form 9250](#)) must be processed by the date that is 2 weeks in advance of the sale. If there remain any unprocessed requests after that time and there is either a life threatening emergency or a written agreement requiring HUD to make disbursements, then such unprocessed requests must be sent to Headquarters.

5. Copies of all executed Workout Agreements and Modifications must be sent to Headquarters prior to the loan sale so they can be included in the Project Loan Information Files. \*

#### 11-4. GLOSSARY

For the purposes of this Chapter, terms are used as follows:

##### A. HUD-Held Mortgage

HUD-held mortgages are assigned mortgages and purchase money mortgages (PMMs) . These do not include direct loans under Section 202 or college housing subsidy grants.

Although authority to execute Workout Agreements has not been delegated to local HUD offices for Section 202, Housing for the Elderly and Handicapped Direct Loan Program, the Information Sheet - Section 202 Reinstatement (Appendix 11), outlines the information field staff should compile when developing Workout proposals. The completed Information Sheet should accompany the HUD Office's proposal and recommendation which should be sent to: Director, Assisted Elderly and Handicapped Housing Division, Headquarters.

##### B. Capital Contributions

These are funds advanced, contributed or loaned to the project by the ownership entity to fund operating deficits that have occurred since the project finally endorsed. In order for the owner to qualify for relief under this Chapter the owner's capital contributions

cannot create a lien on the project and may only be repaid from surplus cash. Such capital contributions are in addition to those required for initial endorsement (insured advances) or final endorsement (insurance upon completion) such as an Initial Operating Deficit (IOD) Escrow. The contributions must total at least 5% of the original mortgage amount. Generally, funds advanced to pay construction costs, to fulfill TPA requirements or fund an IOD are not considered to be capital contributions for Workout purposes. Ownership must provide evidence in a form

acceptable to the HUD Office that the required capital contributions have been or will be made as required by the Workout Agreement. They must appear on current or future annual audited financial statements (Balance Sheet).

Note: Owner advances to meet short term project obligations are not to be treated as capital contributions for Workout purposes if they will be repaid. Repayment of such advances for non-workout projects is covered in HUD Handbook 4370.2, Chapter 2, Paragraph 8.

C. Reinstatement Plan

A reinstatement plan is any course of action agreed to between HUD as the mortgagee and the mortgagor designed to reinstate (i.e., bring current) the mortgage and to stabilize a project both physically and financially. A reinstatement plan can encompass several steps, including a Workout Agreement, a physical repair plan, etc. A Mortgage Modification may also accomplish reinstatement but should be evaluated separately and should not be included in the Workout Agreement. \*

D. Provisional Workout Agreement

A Workout Agreement is a written agreement between the mortgagor and HUD acknowledging that the mortgagor's loan is in default, that the parties have agreed on steps to be taken to remedy the physical and financial problems of the property and stabilize the project, and that HUD will hold the loan in default and will not begin foreclosure\* proceedings against the project as long as the owner is complying with the terms

agreed to in the Workout. Workouts do not change the sequence in which the funds received for a monthly payment are applied. A Workout will delineate all steps to be taken by both the owner and HUD to correct any physical and other problems of the project as well as cure the financial default. It is contemplated that Workouts will be short-term, for instance 36 months or sooner depending on the next applicable note sale. In addition, Workouts should never obligate HUD to take actions at the end of the Workout's term. Therefore, the Workout must not provide for Modifications or automatic extensions of the Workout's term. In addition, Workouts must be terminable by the Department at the end of each 12-month period if, following a review and analysis of the physical and financial condition of the project and its management, it is determined that it is not in the best interests of the Department to continue to forbear from enforcement of



the note and mortgage terms as set forth in the Workout. Finally, all Workouts must now be cancellable by a purchaser of the note. For a more detailed discussion of workout agreements and a listing of all current requirements, see Paragraph 11-12(E).

E. Modification of Note and Mortgage

A Modification is a written agreement between HUD and the mortgagor which permanently modifies the terms of the mortgage and note secured by the property. Depending on local law, Modifications may be recorded. A Modification recasts the principal balance of the mortgage note and establishes a new amortization schedule. For a more detailed discussion of Mortgage Modifications, and current requirements in light of the note sale policy, see Paragraph 11-9(B) and 11-15. A Modification is separate from a Workout. Although the Department may decide that it is in its best interests to enter into a Modification following a Workout, no Workout should obligate the Department to do so.

F. Capitalizing Delinquent Interest and/or Recasting Unpaid Principal Balance

Capitalizing delinquent interest means adding delinquent mortgage interest to the principal balance of the mortgage and recasting the new principal balance over a set term (the remaining term of the mortgage).

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This will create a new amortization schedule. The loan will be current at commencement of amortization under the new schedule. This is usually accomplished using a Mortgage Modification.

Recasting the delinquent principal balance of a mortgage means amortizing the unpaid principal balance over a set term (usually the remaining term of the mortgage). This creates a new amortization schedule for a mortgage. The loan will be current at commencement of amortization under the new schedule. Capitalization of delinquent interest and the recasting of the unpaid principal balance of the mortgage are subject to the following limitations:

- (1) the loan must be amortized over the remaining term of the mortgage;
- (2) the remaining term of the mortgage must be at least 15 years;
- (3) there must be sufficient net operating income (NOS) to support the increased debt service at commencement of amortization under the new

schedule; and,

- \* (4) if the property is serving or was designed to serve low and very low income tenants, then the rents after the recasting must continue to be affordable. \*

- \* (NOTE: the previous requirement which limited the amount of delinquent interest that could be capitalized to no more than 10% of the original mortgage amount has been rescinded. See paragraph 11-9(B) for additional guidance and safeguards in lieu of this flat cap limitation.) \*

G. Call Provision

A call provision is a term included in the Mortgage/Deed of Trust and Mortgage Note/Deed of Trust Note that gives the holder of the mortgage and note the option to declare the entire indebtedness due and payable on or after a certain future date or upon a set of circumstances or events.

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H. Through Interest

Looking at form HUD-2771, "Statement of Multifamily Mortgage Account," and the account items ranked by priority of payment according to MIAS, this term means that the loan is to be brought current through interest. That is, all delinquencies in interest on advances, advances, service charge (if applicable), taxes, hazard insurance premiums (if applicable), and mortgage interest must be current.

I. Through Principal

Looking at form HUD-2771, "Statement of Multifamily Mortgage Account," and the account items ranked by priority of payment according to MIAS, "Through Principal" means that delinquent principal must be brought current, in addition to the delinquencies through interest.

SECTION 2: PREVENTING MORTGAGE ASSIGNMENTS; PROCEDURES UPON ASSIGNMENT

11-5.\* LOSS MITIGATION

This Chapter focuses on Workouts for HUD-held projects, i.e., post default/assignment when HUD becomes the mortgagee. For identifying and addressing the needs of still insured troubled or potentially troubled projects, and what can be done to stabilize the financial and physical condition of troubled real

estate before the event of default/assignment takes place, while at the same time mitigating future losses to the FHA Insurance Fund, readers are referred to the accompanying Job Aid, "Loss Mitigation Job Aid: Educational Supplement to Outstanding Handbook Procedures." Applying workout-type arrangements to still insured assets with the intention of avoiding a default/assignment in the first place (the practice of which is commonly referred to as "loss mitigation") is a proactive asset management tool and a fitting component of sound portfolio management. \*

One of the Department's primary goals is to minimize mortgage assignments due to monetary and covenant defaults thereby protecting the insurance fund. HUD encourages cooperation among mortgagors and mortgagees to do what is necessary to avoid assignments. However,

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HUD will use administrative sanctions (limited denial of participation, suspension and/or debarment, civil money penalties,) or initiate affirmative litigation against mortgagors and management agents where there is evidence that they contributed to or caused the assignment. Action required of the HUD Office staff to detect and avert potential defaults and assignment is discussed in Section 1., Prevention of Defaults, Chapter 5 of this Handbook. Enforcement of mortgagor requirements is outlined in Chapter 8 of this Handbook.

11-6. MORTGAGES IN THE PROCESS OF BEING ASSIGNED

Upon receipt of a mortgagee's election to assign an insured mortgage, the Asset Manager shall use all insured mortgage servicing procedures in an effort to obtain loan reinstatement and the mortgagee's withdrawal of the election. If reinstatement does not result and the loan is assigned, the Asset Manager must contact the owner, outline HUD requirements as mortgagee, and request the owner's plan for mortgage reinstatement. If the HUD Office determines that an owner intentionally defaulted and precipitated assignment, the Director, Multifamily Housing Division, must immediately forward a foreclosure recommendation to the appropriate official and must also initiate administrative sanctions, civil money penalties, or affirmative litigation as appropriate.

11-7. OWNER RESPONSIBILITIES AFTER ASSIGNMENT

The owner of a project with a newly assigned mortgage shall be notified in writing by certified mail of HUD requirements as mortgagee. The Director of Multifamily Housing shall ensure that such notifications are sent timely. A record of the receipt of these letters must

be kept by HUD offices. The letter must state that HUD expects to have a written reinstatement plan in effect within 90 days following mortgage assignment if the loan is in default. The letter must be sent to the owner within 10 working days from the date the HUD Office receives notice that the assignment of the mortgage has been accepted. (See Appendix 3a or 3b, as appropriate, for a sample letter). The following are HUD's requirements:

- A. Owner must pay all costs for reasonable and necessary improvements to restore and upgrade the project.

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- B. Each month, all remaining funds or net cash must be remitted to the lock box contracted for by the Multifamily Notes Servicing Branch of the Office of Mortgage Insurance Accounting and Servicing (MIAS). An owner is required to remit net cash by both the mortgage or deed of trust and the regulatory agreement. HUD offices may not exempt owners from this requirement. The project name and number should be clearly stated and the check should be sent to the lock box contracted for by the Multifamily Notes Servicing Branch of MIAS.
- C. Owner will submit Monthly Reports for Establishing Net Income, Forms HUD-93479, HUD-93480, and HUD-93481. Copies of these forms should be enclosed with the letter the HUD Office sends to the owner.
- D. Owner will submit to the local HUD Office within 30 days from the date of HUD's letter, a preliminary plan for mortgage reinstatement and property improvement or arrange a meeting with field office personnel to discuss reinstating the mortgage. If the owner does not submit a plan or request a meeting within 30 days of HUD's letter, the HUD Office may consider foreclosure. If the owner has a meeting with field staff to discuss reinstatement criteria, the reinstatement plan must be submitted 30 days from the date of the meeting.
- E. Owner will submit an executed pre-workout waiver letter in the form of Appendix 12. The HUD Office should not negotiate a borrower's plan prior to receipt of the pre-workout waiver letter. If the owner fails or refuses to execute and return this letter, the local HUD Office may consider foreclosure.

11-8. BEGINNING THE FORECLOSURE PROCESS

The owner should be notified of HUD's note sale policy  
\* and foreclosure policy when HUD receives:

- a delinquency alert,
- a default notice, or,
- a notice of an election to assign a mortgage.

Therefore, upon receipt of one of these notices, HUD field staff must notify the owner as noted below in writing of the possibility of foreclosure.

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- Appendix 1 - Use when HUD receives a delinquency alert.
- Appendix 2 - Use when HUD receives a default notice.
- Appendix 3a or 3b - Use when HUD receives an election to assign the mortgage.

Subject to the receipt of the pre-workout waiver letter executed by the owner, HUD field staff should begin to work with an owner on a reinstatement plan, if feasible, immediately upon receipt of a default notice or, in the case of a partial payment of claim (PPC) , an election to assign a mortgage in an attempt to prevent a full assignment of the mortgage. For a discussion of PPCs, refer to Chapter 14 of this Handbook.

### SECTION 3: REINSTATING HUD-HELD MORTGAGES

#### 11-9. INTRODUCTION

Before HUD will accept a reinstatement plan, the mortgagor will have to demonstrate to HUD that the plan is in the best interests of the tenants, the project, and the Department. For a plan to be in the best interests of the Department, it must provide for all of the following:

- competent ownership and management to resolve project problems;
- resolution of the physical and financial problems of the project;
- correction of all regulatory agreement violations; and,
- \* - reinstatement of the mortgage to current status or, if that is not possible, stabilize the property's physical and financial condition during the period covered by the reinstatement plan. \*

HUD will evaluate each HUD-held mortgage to determine whether reinstatement is feasible and appropriate. HUD

will not consider reinstating a loan or withdrawing it from foreclosure when HUD concludes that the mortgagor deliberately caused or contributed to the assignment. If the Department decides to reinstate the loan in lieu of immediate foreclosure, there are two ways the reinstatement can be effected:

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A. Workout Agreement

This is a formal written agreement between the project owner and HUD under which HUD agrees to hold the loan in default, provided the owner submits to HUD specified payments each month. A Workout Agreement is designed to stabilize the physical and financial condition of the property. Workout durations vary, depending on the circumstances, but are generally construed as short term arrangements, for instance 36 months or sooner depending on when the next applicable note sale is planned, unless a\* longer period is negotiated pursuant to Section 6 of this Chapter. While the local HUD Office has the authority to provide mortgage relief, the Workout should be terminable at the end of each 12 month increment. At the end of each 12-month term, the HUD Office should reevaluate the physical and financial condition and management of the project. The Workout should be terminated if it is determined that it is not in the best interests of the Department to continue to forbear from enforcement of the note and mortgage terms. If, at any time, there is a default under the Workout, the Workout should be immediately terminated and foreclosure should be initiated. Only at the end of the Workout should the Department consider or agree to a Modification. The Workout should not obligate HUD or imply that the Department will agree to enter into a Modification in the future. Because a Workout does not change the loan documents, it is not recorded. The minimum monthly payments must be stated in a specific dollar amount and be based on the greater of:

- (1) the amount of the net operating income (NOI); or
- (2) service charge (if applicable), taxes, and at least 70% of monthly accruing interest. Workouts calling for interest payments of less than 70% of monthly accruing interest must be approved by the State Director of Housing, or if the office has none, the Director, Multifamily Housing Division. See Paragraph 11-12(E) (15) for circumstances under which minimum payments may be less than 70% of monthly accruing interest.

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B. Mortgage Modifications

Modifications are instruments which permanently change the terms of the mortgage and mortgage note. For example, a Modification might recast delinquent interest and principal. A Workout should always precede a Modification in order that the mortgage delinquencies can be reduced to the lowest amount possible. Local HUD Offices have authority to approve Modifications which recast unpaid principal and delinquent interest subject to the following conditions:

- (1) the loan must be amortized over the remaining term of the mortgage;
- (2) the remaining term of the mortgage must be at least 15 years;
- (3) there must be sufficient net operating income (NOI) to support the increased debt service at the end of the Workout period; and,
- (4) if the property is serving or was designed to serve low and very low income tenants, then the rents after the recasting must continue to be affordable.

NOTE: The previous requirement of this Paragraph which limited the amount of delinquent interest that could be capitalized to no more than 10% of the original mortgage amount has been rescinded. The removal of the 10% limitation assumes that HUD Office staff will thoroughly analyze the project's ability to generate sufficient cash to pay the increased debt service agreed to in a Modification. Expanded Handbook guidance narrative below should aid the Asset Manager in determining the amount of capitalization of delinquent interest that may be prudently undertaken.

It is extremely important that, before entering into a Modification, local HUD personnel evaluate the project's projected rent structure to assure that the rents required to support the proposed Modification are projected to be sufficient to maintain the marketability of the project and that there will be sufficient projected project income to pay the

increased debt service. To avoid overemphasizing current estates of project income and to achieve the stated objectives, reviewing the stability and growth of project actual income over time is also recommended. Evaluating project owner ability to repay based on

actual as opposed to an inflated future income stream is less risky. Comprehensive Needs Assessments when fully implemented would aid in weighing past vacancy and turnover rates as well as evaluating the project's physical needs. HUD's potential loss could be reduced if consideration of current conditions and past owner/manager performance of project financial or operational viability is integrated into part of the overall analysis and is not postponed until a later time period.

11-10. OWNER REQUESTS FOR RELIEF

An owner must make a written request for financial relief and state the basis for the relief sought. The Director, Multifamily Housing Division, is responsible for

- \* determining the cause of default and that the reinstatement plan for stabilizing the property's physical and financial condition is viable. HUD \* personnel must verify the cause of default and include an explanation with supporting detail in the servicing file for future reference.

Owners who are subject to any administrative sanction, including a Limited Denial of Participation, Suspension or Debarment are ineligible for reinstatement consideration.

The owner must:

- A. Demonstrate that operating deficits have been funded in cash "Capital Contributions." An owner requesting financial relief must have advanced, loaned or contributed funds that have not created a lien on the project and are repayable only from surplus cash in an amount not less than 5% of the original mortgage amount. Only funds to pay reasonable and necessary operating expenses from the time of final endorsement or capital improvements previously approved by HUD that have enhanced the marketability of the project should be given credit. See Paragraph 11-4(B).
- B. Remit all net cash to HUD as noted in Paragraph 11-7(B). HUD's local offices may not negotiate with owners who are holding net cash. Owners must be

informed that their failure to remit net cash is a regulatory violation and is cause for HUD to proceed with foreclosure and to otherwise exercise its rights with respect to the property.



- C. Demonstrate that default is not a result of any deliberate or voluntary action. Completion of the Failing Project Checklist (HUD-5815) will assist the Asset Manager in making this determination.
- D. Restore to the project any funds or assets improperly withdrawn or distributed.
- E. Correct any violations of the regulatory agreement to HUD's satisfaction.
- F. Resolve any open audit findings.
- G. Provide management acceptable to HUD.
- H. Correct any physical deficiencies to HUD's satisfaction.
- I. Prepare a Management Improvement and Operating (MIO) Plan if extensive repair work is needed or changes in management procedures are required. A copy of the MIO Plan must be attached to the Workout Agreement and made a part of it by incorporation.
- J. Prepare an Operating Budget using the standard HUD chart of accounts.

11-11. DEVELOPING THE WORKOUT

The local HUD Office develops a Workout from a detailed analysis of the project's problems as well as intensive discussions and negotiations with the project owner and management agent. The Workout is approved only when the owner is responsible and cooperative and provides satisfactory project management. In developing a Workout, the following analysis should be prepared:

A. Analyzing the Project

Diagnose and document the project's physical, financial, and management problems and their causes. An on-site review of project management and physical condition must be made and recorded on the Management

Review Report, Form HUD-9834, and the Report of Physical Condition and Estimate of Repair Costs, Form HUD-9822. The Project Analysis Work Sheet, Form HUD-9815, parts A through G should be used to record the information gathered in this step.

B. Analysis of Market Conditions

Consider the market conditions in the housing market

area where the property is located including: the current and anticipated supply and demand conditions in the market for that type of housing, i.e., elderly, congregate, general occupancy, at the rent levels necessary for financial feasibility; taking into consideration the impact of these conditions on the project's present and future occupancy and the potential for the project to achieve financial viability within the specified time limit. Aspects of the project that relate to its financial feasibility and marketability prospects include: the project's potential annual net absorption and an estimate of the time necessary to achieve a sustained occupancy taking into account industry standards and local trends in similar projects; changes to marketing, management, operations (or support services in the case of congregate housing or residential care facilities); and the project's competitive position in the market given its location and characteristics.

C. Legal Review

Workout Agreements are significant legal documents setting forth the contractual obligations of both HUD and the project owner under the Workout. Prior to execution, Area Counsel must review all Workout Agreements. All the recorded legal documents secured by the project should also be reviewed at this time to assure that the Secretary's first lien status is protected, complete, valid and enforceable so that, in case there is a default under the Workout Agreement, foreclosure can be instituted quickly and effectively.

D. Determining Project Needs and Abilities

Based on the information collected in step A. above, identify the project's needs and the project's ability to increase operating income. Review the following in order to develop an estimate of the

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time required to stabilize project operations. Then structure a short-term arrangement that will enable the note to be sold at the next scheduled auction: \*

- (1) Estimate maximum permissible rentals which can be anticipated each year based on past project operations, market conditions, projected future market changes, etc. This information may be available from Economic Market Analysis Division staff (EMAD), Valuation, or local industry sources.
- (2) Using a certified rent roll of the project, estimate and deduct an economic vacancy rate from

gross rentals. An economic vacancy reflects the project's gross potential rent by allowing for rent concessions or other items that reduce the project's income. Make judgments regarding the time required to overcome vacancies caused by marketing problems, uninhabitable units, general market conditions, concessions, etc.

- (3) Estimate and deduct operating expenses. Judgment must be used with regard to increases in expenses caused by inflation, rehabilitation, increased project services, staff changes, etc. Consider decreases in operating expenses which may be the result of capital improvements or improved operations.
- (4) Deduct owner escrow account payments for real estate taxes, insurance, mortgage insurance premium (HIP) or service charge and reserve for replacement.
- (5) Determine cash flow available for debt service on existing mortgage.
- (6) Determine amount of mortgage payment the current cash flow can support.
- (7) During the on-site review, consider the location and neighborhood to determine the project's competitive position and potential for turnaround.

The results of this analysis are to be recorded in Section H of Form HUD-9815.

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#### E. Reviewing Available Relief Tools

The type of mortgage relief selected must be based on a thorough analysis of the project. This analysis must consider:

- the availability of funds to address the physical and financial needs of the project at the least possible cost to HUD;
- an examination of the various factors within the project's market area which may be influencing its potential; and,
- the various types of assistance that may be available from state and local government agencies.

The Asset Manager must determine the tools needed to solve the project's problems and to pay the mortgage in

- full by its original maturity date. If additional subsidies are contemplated, the HUD Office must assure that the owner certifies whether the project will participate in the Low Income Housing Tax Credit (LIHTC) program. HUD Headquarters must review all cases where the current owner or prospective owner plans to utilize LIHTC. The reinstatement plan and the budget will give estimates of the funds required to make the project
- \* viable. HUD's funds and contributions traditionally used in the past such as Flexible Subsidy, Section 8 Loan Management Set-Aside (LMSA), and approved Section 8 rent increases, are diminishing resources and cannot be counted on in the years ahead. Other sources available \* to fund cash requirements are:
    - (1) Owner contributions include owner advances, loans and capital contributions. See Paragraph 11-4(B).
    - \* (2) Other sources may include Community Development Block Grant funds, HOME funds, syndication proceeds \* including those from low income housing tax credits (LIHTC), state assistance programs, new owners, and supplemental loans including 241(a) and operating loss loans. One or more of these tools may be needed in conjunction with the owner contributions and debt service relief provided by the Workout Agreement.

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F. Negotiating A Specific Relief Plan

- (1) A Workout cannot be implemented without the consent of both the owner and HUD. Both parties must agree on the amount of delinquency to be cured, the changes needed in management procedures, the repairs needed, and a time frame for accomplishing the proposed results.

- (2) Use of Income for Repairs or Delinquencies

No hard and fast rules exist regarding how much project income should be made available for repairs. The Asset Manager must put the repair work cost in context with the overall reinstatement and give consideration to various possibilities. For example:

- (a) Where substantial portions of net income would be necessary for repairs, the delinquency might increase to such an amount that loan reinstatement would be nearly impossible. In this case, substantial owner contributions would be required.

- (b) Because an owner can obtain greater tax benefits for funds advanced for repairs than for payment of either current or accrued principal delinquencies, allocation of owner contributions might be structured to provide owner tax benefits, which should lead to increased owner's contributions.

G. Capital Contributions

- (1) Capital Contributions. An owner is expected to have made cash contributions to fund operating deficits. These capital infusions may be in the form of advances, loans or contributions that have not created a lien on the project and are repayable only from surplus cash. They must total at least 5% of the original mortgage amount. Only funds to pay reasonable and necessary operating expenses or HUD approved capital improvements should be given credit.
- (2) Additional contributions should be required of limited dividend and profit-motivated owners when the Asset Manager determines that:

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- (a) Additional funds will be needed to make the project viable within a reasonable period of time.
- (b) There are delinquencies in service charge, taxes, and late charges and project funds are not available to cure these delinquencies during the first month of the Workout.
- (3) The tax consequences of foreclosure can affect the amount an owner will be willing to contribute. The Asset Manager should recognize that the owner's potential loss resulting from foreclosure normally has a direct bearing on the amount of additional owner contributions. The income tax consequence of foreclosure may frequently motivate an owner to make substantial additional contributions.
- (4) When there have been unauthorized distributions or repayments of advances when the project is in default, the owner must return the monies to the project before any relief is granted. These funds must be applied directly to the delinquency or used to pay for authorized repairs. Deliberate diversions will be referred to Office of Inspector General (OIG)
  - \* for investigation and should also be brought to the attention of Area Counsel for possible prosecution under Operation Safe Home. The return

of diverted funds is not to be considered a capital contribution.\*

#### H. Escrows for Repairs

The Workout Agreement should not provide for disbursements from or payments to the Replacement Reserve. However, if the condition of the project is life-threatening or presents health or safety risks to the residents, the Asset Manager may decide that it is necessary to establish a special repair escrow account with an appropriate local escrow agent and specify the deposits to and withdrawals of funds from that account. If so, an MIO Plan should be prepared and made a part of the Workout, and the Workout Agreement should be explicit that the escrow account established under the Workout is separate from the Replacement Reserve and not governed by the terms of any other loan documents.

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\* The escrow agreement must provide that HUD approval is received before any funds in escrow are disbursed. The escrow must be funded by cash or a letter of credit, approved by HUD, in an amount sufficient to pay for the repairs estimated by HUD. Any funds remaining in the repair escrow after repairs are completed are to be applied in accordance with the terms of the mortgage. \* If a local escrow agent is used, the escrow agreement should be reviewed by the Asset Manager in consultation with Area Counsel for compliance with the following procedures:

- (1) The owner must notify the local HUD Office when work has been completed and a HUD representative must inspect the work.
- (2) If an inspection reveals that the work has not been satisfactorily completed, the Asset Manager will so notify the owner.
- (3) For that portion of the work that has been completed satisfactorily, the Asset Manager will notify the escrow agent holding the repair funds and request a release from the escrow in the following manner:
  - (a) If payment is to be made to the owner and/or the contractor, the HUD Office should designate the payee and the payee's mailing addresses.
  - (b) If funds are to be applied to the mortgage, the HUD Office should authorize in writing a transfer of the amount from the escrow account. The owner may adjust the following

month's mortgage payment accordingly.

I. Pre-Workout Waiver Letter

Before entering into or completing any ongoing negotiations with respect to a proposed Workout, a letter in the form attached as Appendix 12 must be sent to and obtained from the owner. Unless an executed copy of this letter is obtained from the owner, negotiations should cease and no Workout should be executed. If the owner fails to provide the letter, foreclosure may be considered.

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11-12. PREPARING THE PROVISIONAL WORKOUT ARRANGEMENT

The Workout Agreement is a document requiring the agreement of parties with diverse interests. It must protect HUD's interests as mortgagee by not exposing the Department to excessive loss through unjustified leniency, yet it also must respond to both the needs of the tenants and the owner's situation. The arrangement formalizes what HUD and the owner agreed to during the negotiation process. It also serves as the focus for administrative and monitoring procedures. The Workout is not effective until the Workout Agreement is signed both by the owner and the authorized HUD representative. The authorized HUD representative at the local office level shall be the Director, Multifamily Housing Division.

A. Format

A sample Workout Agreement appears as Appendix 4. Appendix 8 also includes suggested language for additional paragraphs which may be added. Appendix 7 contains language for Call Provisions to be included in Modifications, but no such language should be \* included in the Workout Agreement. It is strongly recommended that all Workout Agreements be in the form of Appendix 4. Provisions other than the \* optional provisions in Appendix 8 should not be included.

B. Specific Dollar Amount Due

Workout Agreements must state a specific dollar amount to be remitted each month. For example, arrangements calling for "net cash" or "payment to service charge, taxes, and interest" are not acceptable because they do not state a dollar amount. A typical Workout will state the specific amount the owner must pay, plus any net cash.

C. MIO Plans

As previously noted, if an MIO Plan is used, it must be

attached to the Workout Agreement and made a part of the Agreement by incorporation. Where no MSO Plan is required, the Workout terms should not provide for funds to be deposited to or withdrawn from the Replacement Reserve or any special repair escrow.

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- (3) Workout Agreements will no longer contain an equity kicker for the Department.
- (4) All Workout Agreements must describe both the specific dollar amount to be paid monthly, and how the balance of any delinquencies will be addressed. These payments must be remitted to HUD by the first of each month in accordance with the note and mortgage.
- (5) All Workouts must provide for making all repairs to the project necessary to remedy life threatening conditions and situations that present health or safety risks. When repairs are required, a MIO Plan must be prepared and a repair escrow must be established as outlined in Paragraph 11-11(H). This escrow must be distinguishable from the Replacement Reserve Account. The provision for a repair escrow should be included in the Workout. The MIO Plan developed to schedule the repairs should be attached to and made a part of the Workout Agreement by incorporation.
  - (a) Where the owner agrees to make all necessary repairs, the HUD Office may consider waiving the delinquency in the Reserve for Replacement account.
  - (b) In addition, when the owner agrees to make all necessary repairs, the HUD Office may consider waiving deposits to the Reserve for Replacement account during the term of the workout. A provision requiring the owner to resume or increase deposits to the Reserve for Replacement account in the future should be included in the workout.
- (6) Owner contributions during the term of the Workout shall be scheduled as follows:
  - (a) Looking at form HUD-2771, "Statement of Multifamily Mortgage Account," and the account items ranked by priority of payment according to MIAS, all delinquencies through tax escrows or hazard insurance premium escrows (if applicable) must be paid at Workout approval.



- (b) The balance of the delinquencies may be paid in equal monthly installments during the Workout or may be paid in periodic lump sum payments over the term of the Workout.
  - (c) All owner contributions that are made as lump sum payments should be sent to the lock box and a copy of the check should be sent to the local HUD Office.
- (7) All Workouts will provide that any net cash remaining, over a specified amount at the end of the month, after payment of all operating expenses, will be remitted to HUD in addition to the minimum monthly payment.
  - (8) All Workouts will provide that if the monthly payment is received after the 15th of the month, HUD will charge the late fee specified in the mortgage or deed of trust.
  - (9) All Workouts will require the owner to submit monthly accounting reports to HUD for each month of the Workout term.
  - (10) All Workouts will contain an effective date and the forbearance provisions will contain an expiration date. There will be no open ended forbearances. The Workout should not have an excessive term unless special approval for a longer term is obtained as set forth in Section 6 of this Chapter.
  - (11) Workouts may be terminable by the Department at the end of each 12-month period. All Workout Agreements for unsubsidized mortgages must also contain the language found in the sample Workout Agreement in Appendix 4 which provides the purchaser of the note with the option of cancelling the Workout upon any anniversary of the Workout upon 60-days prior notice to the borrower.
  - (12) All Workouts will contain language informing the mortgagor that HUD is holding the mortgage in default and is allowing the owner an opportunity to cure the default through this reinstatement plan, and that if the owner does not perform the obligations agreed to in the Workout, HUD will

immediately terminate the workout and begin foreclosure proceedings and exercise its other

remedies.

(13) All Workouts will contain a provision stating that failure of the owner to comply with the terms of the Workout is basis for HUD to take administrative sanctions against the owner including, but not limited to, limited denial of participation, suspension and/or debarment from participation in HUD programs, and civil or criminal penalties as provided in the Housing and Community Development Act of 1987.

(14) All Workouts will contain language stating that distributions are prohibited on mortgages or projects under Workout or in default.

(15) Minimum Monthly Payments

(a) HUD Offices may approve Workout Agreements with monthly payments based on the greater of: (1) the amount of the net operating income (NOI); or (2) service charge (if applicable), taxes, and at least 70% of monthly accruing interest. Workout Agreements calling for interest payments of less than 70% of monthly accruing interest must be approved by the State Director of Housing or, if the office has none, the Director, Multifamily Housing Division. Such workouts must be based on unusual circumstances, e.g., if the owner has contributed more than 5% of the original mortgage amount, the project has experienced temporary marketing problems, etc. No Workout Agreement may call for a minimum payment of less than service charge (if applicable), taxes, and a minimum of 50% of the monthly interest payment.

(b) HUD Offices must review owners projections of income and expenses in order to determine the maximum monthly payment which may be expected. The amount of net operating income (NOI) must be analyzed. If possible, the monthly payment must include additional payments with the objective of retiring the delinquency as soon as possible. For Section 236 projects, payments are based on the owner's share of the interest.

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(c) Proposed Workouts for projects with vacancies due to poor physical condition must also include rehabilitation plans and provisions for an escrow that is sufficient to pay for the estimated cost of the repairs, discussed in Paragraph 11-11(R).

(16) All Workouts will contain language clarifying that

HUD may apply funds in replacement reserve, escrow and similar accounts as well as residual receipts to the indebtedness. Therefore, unless the physical needs of the property are of an emergency or life threatening nature, no provision should be included in a Workout which would restrict the ability of HUD to apply funds in the replacement reserve account to the indebtedness. Nor should any Workout restrict in any manner HUD's ability to apply to the indebtedness residual receipts or funds held in any escrow or similar account. Accordingly, the Department forbears only from foreclosing on the project during the term of the Workout (provided the borrower complies with all of its terms) and not from taking any other action. If there are questions as to whether a proposed provision of a Workout would restrict such an application of funds, they should be addressed to Area Counsel before finalizing or executing the Workout Agreement.

- (17) All Workouts must include language stating that the mortgage and note remain in full force and effect, that there are no other agreements, oral or written, among the parties with respect to the subject matter thereof, that the Workout Agreement constitutes the entire agreement between the parties with respect to the subject matter thereof, and that the Workout Agreement supersedes all prior agreements and understandings with respect thereto, if any.
- (18) All Workouts must contain language stating that HUD reserves the right to sell the note and assign the Workout Agreement.
- (19) All Workouts must require the borrower to notify HUD forty-five (45) days prior to the expiration of the forbearance provisions of the Workout.
- (20) Any default under the mortgage that occurs after the date of the Workout (other than a default

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which HUD specifically agrees to forbear from enforcing in the Workout) will expressly constitute a default under the Workout. Conversely, any default under the Workout will be expressly stated to constitute a default under the mortgage.

- (21) All Workout Agreements must be prospective and not retroactive. In other words, no Workout Agreement can have an effective date prior to the date on which the Agreement is executed by all parties. \*

F. Provisional Workout Arrangements--Optional Terms

In addition to the mandatory provisions discussed above, HUD staff may want to include other provisions in Workout Agreements depending upon the particular circumstances of each project and each mortgagor. Some of these optional provisions may apply only to very unusual cases, while others may be more generally applicable. The list that follows is not designed to be all-inclusive. HUD field staff may have cases where it would be appropriate to include provisions other than these in Workouts. Sample language which may be included in Workout Agreements is shown in Appendix 8.

HUD may want to require an owner to post an unconditional, irrevocable letter of credit or another similar security instrument to secure lump sum payments under the Workout. This may be particularly appropriate in those cases where a mortgagor had committed to providing large lump sum payments toward delinquencies during the Workout. With a letter of credit, if the owner does not make the required payments at the specified time, HUD may draw on the letter of credit for the payments. If the owner makes the appropriate payments, the letter of credit may be reduced accordingly. All letters of credit should be reviewed by Area Counsel.

#### 11-13. EXECUTING AND DISTRIBUTING WORKOUT AGREEMENTS

- A. HUD Office staff should prepare an original and at least 5 copies of each Workout Agreement.
- B. The original and 5 copies of the Workout Agreement should be forwarded to the owner for signature. The owner shall be instructed to return the signed original and all five signed copies to the local HUD Office within 15 days.

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- C. HUD Signs the Workout Agreement.
- D. The fully executed original Workout Agreement and the MARS Input Data Sheet shall be sent to the Office of Mortgage Insurance Accounting and Servicing, Attention: Multifamily Notes Servicing Branch. The MARS Workout Cover Sheet Instructions and Input Data Sheet are in Appendix 5 of this Chapter. They must be received in the Multifamily Notes Servicing Branch by the 10th of the month prior to the effective date.
- E. The 5 copies shall be distributed as follows:
  - the project owner.
  - Area Counsel
  - the HUD Office project file,

- the State Director of Housing or, if the Office has none, the Director, Multifamily Housing Division,
- the Operations Division, Office of Multifamily Housing Management, Headquarters.

#### 11-14. MONITORING OWNER COMPLIANCE

The Asset Manager has full responsibility for monitoring an owner's performance under the Workout Agreement. Monitoring activities include:

- A. Detailed and timely review of monthly accounting reports to ensure that project funds are being properly disbursed and that net income, if any, above the stipulated minimum mortgage payment and sharing arrangement, if any, is being remitted.

Procedures for reviewing monthly accounting reports are set forth in Reviewing Annual and Monthly Financial Reports, HUD Handbook 4370.1.

- B. Periodic on-site inspections, when repairs are required, to assure that the required work is being made and is in a manner acceptable to HUD.
- C. Forwarding a written plan of action or foreclosure recommendation to the State Director of Housing or, if the office has none, the Director, Multifamily Housing Division when there is a default under a Workout. A default has occurred when the mortgagor

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has failed to make the minimum monthly payment required by the terms of the Workout for 2 consecutive months. The Branch Chief must make this submission within 10 working day's from the second month's default.

- D. All projects under Workout Agreements are considered to be Troubled Projects and must have an annual physical inspection and management review.

#### 11-15. MODIFICATIONS OF NOTES AND MORTGAGES

A Modification is a permanent change in the terms of the mortgage and note. The mortgage and note may be modified to recast the principal balance and/or capitalize delinquent interest (see Paragraph 11-9(B), or insert a call provision. Because a Modification changes the terms of the mortgage and note, it should be recorded in accordance with State and local law. Modifications to capitalize interest are only permitted if at least 15 years of amortization remain on the note.

- A. The mortgagor must demonstrate that project income can support the increased debt service on the

modified mortgage or must agree to underwrite any operating deficit.

- B. A Modification may be utilized in conjunction with a Workout, as the final step in a plan to reinstate the mortgage provided that the conditions of Paragraph 11-9(B) are satisfied. However, the Workout itself should not obligate HUD to enter into a Modification; nor should it or HUD Office staff imply in any way that a Modification will be agreed to by HUD in the future. Only at the end of the Workout term should HUD decide whether and, if so, how to modify a note and mortgage.
- C. No Workout should include a modification obligation. However, if on any of the following kinds of projects a Modification is agreed to at the end of the Workout's term, then the Modification must include a call provision. Call provision language is shown in Appendix 7.
  - (1) All Workouts on market rate projects where the project does not receive project based Section 8 assistance shall provide for a Modification to include a 10-year call provision.

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- (2) All Workouts on market rate projects not subject to Title II of the Housing and Community Development Act of 1987 (Title II) or Title VI of the Cranston-Gonzalez National Affordable Housing Act (Title VI) where the project receives project based Section 8 assistance shall provide for a Modification to include a call provision which may be exercised at the option of the holder at any time on or after the longer of 10 years, or the remaining term of the Section 8 contract (if not renewed on expiration).
- D. HUD will not require call provisions on the Modifications for the following types of projects-- Section 236, Section 221(d) (3) market rate projects that are or potentially will constitute "eligible low-income housing" projects under Title II or Title VI, Section 221(d) (3) BMIR, projects that receive Rent Supplement payments, projects that receive Rental Assistance Payments (RAP), projects that have received Flexible Subsidy assistance, or projects with Use Agreements. HUD does not require call provisions on these mortgages in order that the low or moderate-income character of these projects may be maintained for at least the original term of the mortgage.
- E. If a provision for collecting a late fee is not

included in the mortgage or deed of trust, such a provision must be included as part of any Modification.

11-16. REINSTATEMENT REQUIREMENTS DURING FORECLOSURE PROCEEDINGS

Once a mortgage has been referred to OGC and a Foreclosure Commissioner appointed, the mortgagor must make a lump sum payment sufficient to bring the loan current through principal before the Department will consider withdrawing the foreclosure action. Instructions for submitting payoffs and payments of foreclosure sales proceeds are in Appendix 6.

11-17. CASH FINAL SETTLEMENTS

HUD will not accept any offer from a mortgagor that contemplates a mortgagor paying off a mortgage loan for less than the total indebtedness secured by the mortgage except in conjunction with a publicly advertised HUD

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project mortgage auction. Of course, HUD reserves the right to accept or reject any bid in a mortgage auction. Also, no prepayments may be accepted if they are otherwise prohibited by contract, regulation or law. Instructions for submitting payoffs and payments of foreclosure sale proceeds are in Appendix 6.

SECTION 4: OFFSETTING OF SECTION 8 PAYMENTS

11-18. GENERAL INFORMATION

The policies and procedures stated in this section apply only to HUD-administered Section 8 contracts. The welfare of the tenants necessitates forethought before Section 8 payments are offset. Often offsetting Section 8 payments does not have the desired effect. Section 8 payments should only be offset for the amount of the monthly workout or mortgage payment and then, only if all other necessary project expenses are being paid. If it is necessary to abate Section 8 payments for some other reason (e.g. because of Section 8 contract violations, such as units not meeting the appropriate repair standard) the procedures in the Section 8 Contract Administrator's Handbook should be followed.

11-19. PROCEDURES FOR OFFSETTING SECTION 8 PAYMENTS

- A. Both the Section 8 HAP Contract and Regulatory Agreement permit the exercise of remedies, including the offsetting of Section 8 payments. Prior to offsetting any Section 8 payments, Area Counsel must perform a legal review to assure that the applicable contract provisions have been complied with. Before HUD can begin to offset the

Section 8 payments, HUD must notify the mortgagor of HUD's intent to offset the payment, reasons why the Department is offsetting the payments, and rights the mortgagor has to appeal the offsetting procedure. This notice should provide the mortgagor 30 days in which to appeal the Department's decision. (See Appendix 9 for an example of the mortgagor letter.)

- B. HUD field staff should reduce the amount of Section 8 assistance being offset if there is a clear basis to show that the project could not operate at the reduced level of Section 8 payments (i.e., if there are court-ordered repairs or unpaid utility bills, etc.).

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- C. HUD will begin offsetting the Section 8 payments the first day of the first full month following the expiration of the 30-day period. For example, if a mortgagor is sent a notice of intent to offset Section 8 payments on July 15, the mortgagor has 30 days from July 15 to appeal the decision, i.e., August 15. If the appeal is denied, the offsetting may begin September 1. If the mortgagor exercises his/her right to review the Department's record pertaining to the offsetting the offsetting action will be stayed for no more than a 30-day period pending the outcome of the review.
- D. At the same time that HUD notifies the mortgagor of the Department's intent to offset Section 8 payments, HUD Loan Management Staff must also notify the appropriate Accounting Division of the date to begin offsetting the Section 8 payments. (See Appendix 10 for a sample memorandum.) Asset Management staff must notify the Accounting Division of the identity of the project and the amount of monthly subsidy to be offset. Asset Management staff must give the Accounting Division notice by the tenth of the month prior to the month in which the offset is to occur. Asset Management staff must also notify the Accounting Division by the tenth of any month if there are any changes to the offset.

## SECTION 5: APPROVAL AND APPEAL PROCESS

### 11-20. HUD STATE OR AREA OFFICE APPROVAL

The State Housing Director or, if the office has none, the Director, Multifamily Housing Division:

- A. Will review all appeals of decisions regarding Workout proposals. All appeals, must be presented in writing 30 calendar days from the date of the HUD decision letter. Each request shall outline why that decision should be changed. Copies of all correspondence with the HUD Office should be attached. All appeals, after consultation with the Asset Management Branch Chief, will



be answered in writing 30 calendar days from the date of the receipt. The decision of the State Housing Director or, if the office has none, the Director, Multifamily Housing Division is final.

- B. May approve all Workouts when the minimum monthly payments call for a payment less than 70% of monthly accruing interest. See Paragraph 11-12 (E)(15).

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- C. May approve longer-term Workouts in excess of 36 months.

#### 11-21. ASSET MANAGEMENT BRANCH

The Asset Management Branch Chief has the authority to approve the following actions:

- A. All Workout Agreements on mortgages not in foreclosure \* and not involving an excessive term, generally not more than 36 months, that will stabilize the project's physical and financial condition and will ensure that \* necessary repairs are completed.
- B. All Modifications on projects not in foreclosure that contemplate recasting of unpaid principal and delinquent interest that meet the requirements of Paragraph 11-9(B).
- C. Recommend foreclosure on projects.

#### 11-22.\* WAIVER OF HANDBOOK DIRECTIVES.

As an additional tool in meeting workout/loss mitigation objectives, HUD Field Asset Management staff are reminded that they may waive handbook or other directives whenever a waiver is economically prudent and/or furthers the goal of providing decent, safe and sanitary housing, so long as the requirement to be waived is not statutory or regulatory in nature. Asset Managers are reminded that any and all such handbook waivers must include the bases or justification for taking such action along with concurrences by Area Counsel, to ensure that the request for waiver of handbook directive does not conflict with any statutory or regulatory provision, and the Manager/Housing Director, to ensure supervisory review, proper coordination and sound management control practices. Specially designed form [HUD-2](#) may be used for this purpose.

#### SECTION 6: LONGER WORKOUT ARRANGEMENTS

- 11-23. GENERAL INFORMATION. This section covers Workout proposals for those projects with financial problems that \* cannot be resolved within a short-term arrangement, i.e., within 36 months. In response to those project owners \* who need Workout Agreements with a term in excess of 36

months, HUD has developed alternative methods and mechanisms using a longer Workout Agreement designed to reinstate the mortgage and restore the project to financial and physical health. The State Director of Housing or, if the office has none, then the Director, Multifamily Housing Division is the approval level for any Workout request in excess of 36 months.

Paragraphs 11-1 and 11-11 discuss procedures for a thorough analysis of the project prior to accepting a Workout proposal. The HUD Office is also encouraged to consider the physical and financial condition of the project, project occupancy, and the performance of the owner. If it is determined that the project has been satisfactorily maintained, has stable occupancy, and the owner is in compliance with HUD requirements, the HUD Office may entertain a request for a Workout proposal in excess of 36 months.

- 11-24. APPLICABILITY. This section discusses alternative methods for stabilizing HUD-Held mortgages insured under\* any section of the National Housing Act and formerly coinsured loans, endorsed for full insurance, which have defaulted and been assigned to HUD. As stated in Paragraph 11-4(A), authority to execute Workout Agreements for Section 202 has not been delegated to local HUD Offices, therefore, these guidelines do not apply to Section 202 Housing for the Elderly and Handicapped Direct Loan Program.

- 11-25. ALTERNATIVE METHODS OF WORKOUT AGREEMENTS. The following represents methods of Workout Agreements that HUD will consider in an effort to restore the project:

- A. PARTIAL PAYMENT OF CLAIM. Upon receipt of a mortgagee's election to assign, the local HUD Office should immediately contact the owner and the mortgagee to request consideration of a partial payment of claim in lieu of an assignment and full payment of the mortgage insurance claim.

Procedures for reviewing and processing partial payment of claims are in Chapter 14 of this Handbook. Coinsured and formerly coinsured projects are not eligible for partial payment of claims. Current policy under a partial payment of claim requires, among other things, the following:

1. Owner's contribution must equal or exceed 5% of the original mortgage amount, since final endorsement.

2. Mortgage value-sharing (formerly called equity kicker) is determined by dividing the amount of the partial payment of claim by the unpaid principal balance of the delinquent mortgage.
- B. 3-YEAR WORKOUT AGREEMENTS. HUD Offices may approve a Workout Agreement of varying term length options up to 36 months.
- C. 4 to 9-YEAR WORKOUT AGREEMENTS. If it is determined by the HUD Office that an additional amount of time will allow the delinquency to be stabilized, the HUD Office may accept a Workout proposal from the owner within 4 to 9 years. The Asset Management Branch must submit any Workout request beyond 3 years, along with a recommendation to approve or disapprove the Workout proposal, to the State Director of Rousing or, if the office has none, then the Director, Multifamily Rousing Division. After completing its review, the State Director of Housing or, if the office has none, then the Director, Multifamily Housing Division will make the determination to approve or disapprove the owner's request for a Workout Agreement in excess of 3 years. The State Director of Housing or, if the office has none, then the Director, Multifamily Housing Division will return the proposal to the Asset Management Branch who in turn will inform the owner of the terms and conditions of any approved Workout.
1. With the exception of the longer term, the Workout must contain the mandatory Workout provisions specified in Paragraph 11-12.
  2. If the owner agrees to a Workout in excess of 3 years but no more than 6 years, the owner is also expected to do the following:
    - i. The owner is expected to provide a capital contribution of up to 10% of the original mortgage amount.
    - ii. Normally, the owner would be allowed to pay, as a minimum, 70% of interest for the first 2 years; however, if the owner can only pay 60% to 70% during the first year, the HUD Office should require the owner to increase its payment more in the later years. The HUD Office may consider the owner's proposal for increasing the amounts in the

later years of the Workout, e.g., up to 80% for the 3rd year, 90% for the 4th year, 100% for the 5th year, and 110% for the 6th year.

The objective is to stabilize the delinquency, so

that at the end of the Workout term, the project's financial problems can be resolved by modifying the mortgage if, at that time, a Modification is determined to be appropriate.

3. If the owner agrees to Workout in excess of 6 but no more than 9 years, the owner is expected to do the following:
  - i. The owner is expected to provide a capital contribution of more than 10% and up to 15% of the original mortgage amount.
  - ii. The owner will be required to pay 70% of interest for the first 2 years; up to 90% interest for the 3rd year; 100% interest for the 4th year; 110% for the 5th and 6th year; and 120% interest for 7th through 9th year.

11-26. NO WORKOUT IN EXCESS OF 9 YEARS. If it is determined that the mortgage cannot be reinstated within 9 years, the HUD Office must recommend foreclosure.

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APPENDIX 1

SAMPLE LETTER TO BE SENT TO  
MORTGAGORS UPON RECEIPT OF A  
DELINQUENCY ALERT

Dear [Mortgagor)

HUD has received a notice from your mortgagee that it has not received the [month) payment for [Project Name) , HUD Project No.

If the project is experiencing physical or financial problems that are affecting your ability to make timely mortgage payments please advise this office. A meeting to discuss the project's ability to meet its financial obligations can be arranged with my office if it would be helpful. Please contact \_\_\_\_\_ of my staff at \_\_\_\_\_ to arrange a meeting.

We would like to remind you of your obligation to make monthly mortgage payments by the first of the month. We would also like to remind you that if your mortgage is assigned to the Secretary, HUD has policies that may have a financially undesirable effect on you. These policies include pursuing foreclosure upon assignment if the loan delinquency cannot be stabilized during the period covered by the reinstatement plan and requiring you to report all defaults on HUD Form 2530, whenever that form is required to be submitted.

In order to live up to your obligations under the mortgage

and note, and to avoid these potentially undesirable actions, please make your monthly payments in a timely fashion.

Sincerely,

Director, Multifamily Housing  
Division

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APPENDIX 2

SAMPLE LETTER TO MORTGAGORS TO BE SENT  
UPON RECEIPT OF A DEFAULT NOTICE

(Mortgagor)

Dear \_\_\_\_\_:

HUD has received a notice from your mortgagee that the mortgage for (Project Name) , HUD Project No. \_\_\_\_\_, is in default. You must cure this default immediately. HUD has policies designed to make it financially undesirable to have your mortgage assigned. These policies include:

1. HUD may begin the foreclosure process at assignment. HUD's intent is to foreclose on all mortgages that have been assigned and cannot demonstrate that the loan delinquency will be stabilized during the period covered by the reinstatement plan. The Department will withdraw mortgages from foreclosure only when it is in the best interests of the Department to do so.
2. If you want to have the mortgage withdrawn from foreclosure, you may have to accept an increase in the interest rate in the mortgage note.
3. You may be required to insert a call provision in the note and mortgage.
4. HUD will take administrative sanctions against you and/or your management agent if there is evidence that one or both of you caused the assignment.

HUD wants to remind you that we are very serious about preventing the assignment of insured mortgages. If your mortgagee assigns this mortgage, HUD will require you to either cure the default or submit an acceptable reinstatement plan.

Sincerely,

Director, Multifamily Housing  
Division

Enclosures

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APPENDIX 3a

## FORMAT - LETTER TO OWNER AT DEFAULT ASSIGNMENT

Addressee: Project Owner

Subject: Project Number, Name, and Location

Dear \_\_\_\_\_,

The mortgage on the above project was assigned to the Department of Rousing and Urban Development (HUD) on [date] As HUD is now the lender, you must submit your plan for reinstating the loan or arrange a meeting in our office to discuss a reinstatement plan within 30 days. You must also execute and return to enclosed pre-waiver workout letter before any discussions in this regard can take place. The Department expects to have a written reinstatement plan in effect within 90 days. Effective immediately you are to pay all reasonable and necessary project operating expenses (including debt service requirements) and each month remit all remaining net cash to HUD (in accordance with Section 239 of the National Housing Act) through the lock box operated by the Multifamily Notes Servicing Branch. All monthly payments are to be made to the lock box. The project name and number should be clearly stated and the check sent to: Multifamily Payment Processing Center, Post Office Box 70764, Chicago, IL 60673.

HUD does not currently escrow for property insurance. Therefore, you must arrange for insurance coverage as required by the mortgage and make premium payments either from project income or other sources. Insurance escrows were terminated at mortgage assignment and any funds in the escrow were applied to sums due under the mortgage. HUD shall be named as an additional insured and as the loss payee on all property and casualty insurance in force with respect to the property securing this loan. You are responsible for providing certification of insurance to the Department within 10 days from the date of this letter.

Until you bring the mortgage fully current, you are prohibited from taking any owner distribution, repaying any funds advanced to the project, or repaying either interest or principal on any project obligation junior to HUD's mortgage. Further, be advised that Sections 1715z-4a, 1715z-19 and 1735f-15 of the National Housing Act discipline the improper use of project funds. Section 1715z-4a provides for double damages in the event that project funds are used in violation of the Regulatory Agreement. Section 1715z-19 provides for fines and imprisonment in the event that project funds are used for other than actual

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APPENDIX 3a

and necessary operating expenses. Section 1735f-15 provides for civil money penalties in the event that project funds are used for other than reasonable operating expenses and necessary repairs.

In addition, you are required to submit Monthly Reports for Establishing Net Income, Forms HUD-93479, HUD-93480 and HUD-93481, copies enclosed.

It is imperative that an owner of a project with an assigned mortgage operate in accordance with a HUD-approved Workout Agreement which is based on the owner's reinstatement proposal. Your proposal should outline how you plan to reinstate the mortgage (bring it current and resume full amortization) within 36 months. Your plan should also demonstrate that you:

1. Did not cause the default by any deliberate or voluntary act;
2. Save restored to the project any funds or assets improperly withdrawn, distributed or disbursed;
3. Will correct any conditions constituting violations of the Regulatory Agreement and thereafter conform to its requirements;
4. Will provide and maintain management acceptable to the SOD Asset Management Branch Chief; and
5. Will correct any physical deficiencies and make any general upgrading repairs or renovation the project may require.

Unless you have already submitted a detailed reinstatement plan, you must, within 30 days from the date of this letter, arrange a meeting in our office to discuss the terms and conditions of an acceptable-proposal. Any questions you may have can be answered during the meeting. It is essential that you submit your written reinstatement proposal within 30 days of the meeting because, as noted above, SOD expects to have a written reinstatement plan in effect within 90 days following assignment. In the event no acceptable plan is submitted within that time period, this office will initiate foreclosure.

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APPENDIX 3a

To arrange a meeting time, you should contact [Asset Manager's Name] at [Telephone No.]. We look forward to working with you to reinstate this loan.

Sincerely,

Director, Multifamily Housing

Division

Enclosures

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APPENDIX 3b

FORMAT - LETTER TO OWNER AT G-4 ASSIGNMENT

Addressee: Project Owner

Subject: Project Number, Name, and Location

Dear \_\_\_\_\_:

The mortgage on the above project was assigned to the Department of Housing and Urban Development on [date] Each month you should remit the scheduled mortgage payment to the lock box operated by the Notes Receivable Branch. The project name and number should be clearly stated and the check sent to:

Multifamily Payment Processing Center  
Post Office Box 70764  
Chicago, IL 60673

If you should have any questions regarding this matter, please contact [Asset Manager] at [telephone number].

Sincerely,

Director, Multifamily Housing  
Division

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APPENDIX 4

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

PROJECT NO.  
PROJECT NAME  
LOCATION

PROVISIONAL WORKOUT ARRANGEMENT

The undersigned Mortgagor hereby expressly acknowledges that it is in default in the payment and/or performance of certain obligations under the promissory note in the original principal amount of \$ \_\_\_\_\_ (the "Note") secured by the Project identified above. The Mortgagor requests the Secretary ("Secretary") of the Department of Rousing and Urban Development ("HUD") to forbear from the exercise of certain rights and remedies that HUD has as a result of such default, on the terms and conditions stated herein:



1. Definitions. The Secretary of HUD is the owner and holder of the above-referenced [first lien] [insert when appropriate] mortgage loan (the "Loan") made to \_\_\_\_\_-[("Mortgagor")] [if Mortgagor is the original borrower] [Note: If the original borrower has sold the Project, the following additional language must be inserted:

" \_\_\_\_\_[insert name of Mortgagor] ("Mortgagor") subsequently purchased the Project and, in connection therewith, assumed full obligation and liability for repayment of the Loan and for satisfaction of the terms and conditions of the Loan Documents (as hereinafter defined)."). The Loan was insured by mortgage note insurance issued by the Federal Housing Administration pursuant to the provisions of the National Housing Act. The Secretary of HUD has succeeded to all -right, title and interest of the original lender in and to the Loan. The Loan is evidenced by the Note, which is secured by, among other documents, a [mortgage] [deed of trust] [and assignment of rents and profits]. (The Note, [mortgage] [deed of trust] and all other documents executed in connection therewith evidencing or securing the Loan are collectively referred to herein as the "Loan Documents.")

2. Waiver of Notice. Grace Periods and Defenses. Mortgagor expressly acknowledges and agrees that, as a result of Mortgagor's default, (a) HUD is entitled to assume possession of the Project and all other encumbered

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property, whether real or personal; and (b) that the assignment of rents and profits from the Project to HUD is present, complete and irrevocable and Mortgagor disclaims any interest in such rents and profits.

Mortgagor acknowledges and agrees that HUD has revoked the license granted to Mortgagor to collect and receive the rents and profits from the Project. Mortgagor further acknowledges and agrees that no formal action is required for HUD to perfect its interest in the rents and profits and that the assignment of rents and profits to HUD is now perfected. Mortgagor also acknowledges and agrees that if, however, an affirmative act is deemed required, this Agreement is intended to constitute an affirmative act by HUD to perfect its interest in the rents and profits. Mortgagor covenants and agrees irrevocably not to assert any claim or cause of action against HUD or to seek to recover the rents and profits on the grounds that HUD's interest in the rents and profits is not present and perfected. Until the Loan is repaid, Mortgagor will collect the rents and profits in trust for HUD. Mortgagor further acknowledges

that, as a result of Mortgagor's default, HUD is entitled to immediate and unfettered control of and access to any and all accounts, including reserve and escrow accounts, that are funded, in whole or in part, by rents or proceeds from the Project and all residual receipts.

Mortgagor acknowledges and agrees that an event of default presently exists under the Loan Documents. Mortgagor also acknowledges and agrees that, while no notices regarding such default are necessary, Mortgagor has received notice of its default. Mortgagor further acknowledges and agrees that no notices of default will be required or necessary in the future with respect to existing or future defaults, but that if any such notices should be deemed required, Mortgagor waives any and all rights to notice of payment default or any other default, protest and notice of protest, dishonor, diligence in collecting and the bringing of suit against any party, notice of intention to accelerate, notice of acceleration, demand for payment and any other notices whatsoever regarding the Note or the other Loan Documents, and further hereby expressly waives any claims that any notices previously given are insufficient for any reason. Mortgagor also waives any grace period that may exist under the Loan Documents or

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by reason of any local, state or federal law. Mortgagor waives any and all claims and defenses now or hereafter arising, including, but not limited to, those based upon statutes of limitations or laches, to an action that HUD in the future may bring under the Loan Documents arising from or related to any delay by HUD in exercising any rights or remedies under the Loan Documents.

3. Forbearance. Provided that Mortgagor satisfies all of its obligations under this Agreement and under the Loan Documents (except as HUD has agreed in this Agreement to forbear from enforcing the Loan Documents), HUD agrees not to foreclose or attempt to foreclose on the Project securing the Note or institute suit for collection of the Note against Mortgagor from the effective date as defined in Section 18 of this Agreement (the "Effective Date") through [insert here the date through which payments are modified pursuant to Sections 5(a) and (b)]. If any default shall occur under this Agreement or under the Loan Documents (except to the extent such default shall be expressly excused hereby), then HUD may seek to foreclose upon the Project or any other collateral and to exercise any and all other remedies to which HUD may be entitled under the Loan Documents or applicable law, without the requirement of any notice to or cure period for the benefit of Mortgagor.

Mortgagor agrees that it will not, during the period in

which the forbearance agreed to in the immediately preceding paragraph is in force, initiate any action of any kind against HUD, exercise any remedy available under the Loan Documents or otherwise or make any type of demand upon HUD with respect to the Loan Documents, the Project or the Loan.

4. Junior Obligations Mortgagor agrees that project revenues will not be used to repay either interest or principal for any project obligation, other than Operating Expenses (as hereinafter defined) that is junior to the Secretary's lien.
5. Payment Provision. Mortgagor agrees to make the following payments, all of which payments shall be applied in accordance with the Loan Documents:

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- a. Beginning on the Effective Date and continuing through the date \_\_\_\_\_ years thereafter, Mortgagor shall remit by the first of the month [insert minimum monthly payment amount].
  - b. Any funds over \$[insert approximately one month's principal and interest] remaining in the operating account each month after payment of project operating expenses will be remitted in addition to the minimum monthly payment.
  - c. Past delinquency, if any, in the Reserve for Replacement is hereby forgiven. Payments into the Reserve for Replacement for the duration of this workout period are hereby waived.
  - d. Mortgagor shall remit, as liquidated damages, a two percent (2%) late charge for any payment not received by the fifteenth of the month.
  - e. Mortgagor shall pay the service charges due HUD.
6. Lump Sum Payments. Mortgagor agrees to make the following payments, to be applied to mortgage delinquencies, on the dates indicated:  
  
\$ \_\_\_\_\_ (\*) on or before [insert date]  
\$ \_\_\_\_\_ on or before [insert date]  
  
(\* )OR payment in an amount to bring the mortgage current through (interest) (principal) (approximately \$ \_\_\_\_\_).
  7. Repairs. Mortgagor agrees to deliver to HUD (simultaneously with [within \_\_\_\_\_ (\_\_\_\_) days of]) the Effective Date of this Agreement] funds in the amount of \$ \_\_\_\_\_ for repairs. HUD, or its agent, shall hold such funds in

escrow. Such escrow agent shall make such disbursements from this fund as may be requested by Mortgagor and consented to by HUD, in HUD's sole and absolute discretion. Any such reserve or escrow accounts shall be separate and distinct from any accounts that may be established under the Regulatory Agreement relating to the Project and shall not be governed by the terms and conditions of the Regulatory Agreement. Any provisions of this Agreement relating to

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reserve or escrow accounts shall control and supersede any provisions of the Regulatory Agreement relating to reserve or escrow accounts and shall survive any termination of the Regulatory Agreement.

Mortgagor acknowledges and agrees that HUD, in its sole and absolute discretion, may direct that the funds in any reserve or escrow account whether established hereunder or under any of the Loan Documents (a) be delivered to a purchaser of the Loan and administered by the purchaser as the purchaser so directs, (b) in the event of a default under this Agreement or the Loan Documents or a sale of the Loan, be applied to any outstanding delinquency that exists or would have existed with respect to the Loan but for this Agreement, or (c) in the event of a default under this Agreement or the Loan Documents or a sale of the Loan, be applied to any outstanding unpaid amount that exists with respect to the Loan.

8. Accounting Reports. During the term of this Agreement, the mortgagor shall submit Monthly Reports for Establishing Net Income (Forms HUD-93479, 93480, and 93481). The first report shall be for the month of \_\_\_\_\_. The original reports are to be mailed to the HUD Office in \_\_\_\_\_ [identify proper HUD office].
9. Cancellation Clause. This Agreement shall enter into force as of the effective date, as defined in Section 17 of this Agreement, and continue until and unless terminated earlier in accordance with its terms. The forbearance by HUD provided pursuant to this Agreement shall automatically terminate, without any requirement of notice or opportunity to cure, (a) in the event Mortgagor fails to comply with any of the terms of this Agreement; (b) in the event any default occurs under the Loan Documents which does not exist as of the effective date of this Agreement and which is not the subject of a forbearance provided pursuant to this Agreement; (c) Mortgagor files a petition for bankruptcy under any chapter of the Federal Bankruptcy Code or seeks to avail itself of any other debtor relief law, or there is filed against Mortgagor an involuntary petition for bankruptcy under any chapter of the Federal Bankruptcy Code, or any other judicial action is taken with respect to

Mortgagor by any of Mortgagor's creditors; or (d) HUD

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discovers that Mortgagor had, in any material respect, misrepresented its or the Project's financial position in connection with the negotiation of this Agreement.

HUD shall have the right to assign this Agreement at any time, including, but not limited to, in connection with the sale of the Loan. This Agreement shall not be assigned by Mortgagor. In the event the Loan is sold, the purchaser may terminate this Agreement or the forbearances provided pursuant to this Agreement by giving sixty (60) days written notice to Mortgagor prior to any yearly anniversary date of this Agreement. Such termination shall be effective as of the anniversary date so specified in such notice.

Mortgagor acknowledges that its failure to meet the terms of this Agreement is also grounds for HUD to impose administrative sanctions on the Mortgagor, including, but not limited to, suspension or debarment from participation in HUD programs.

10. Insurance. Mortgagor agrees that it shall maintain in force such insurance with respect to the Project as is required by the Loan Documents. Mortgagor further agrees that any such insurance policies shall list HUD as an additional insured and as the loss payee.
11. Waiver. The execution, delivery and performance of this Agreement by HUD and the acceptance by HUD of performance of the Mortgagor hereunder (a) shall not constitute a waiver or release by HUD of any default that may now or hereafter exist under the Loan Documents, and (b) except as specifically provided herein, shall be without prejudice to, and is not a waiver or release of, HUD's rights at any time in the future to exercise any and all remedies conferred upon HUD by the Loan Documents or otherwise at law or in equity, including the right to accelerate the Note, if not already accelerated, and to institute foreclosure proceedings and/or to institute collection proceedings against Mortgagor.

No failure or delay by HUD in exercising any right, power or remedy which HUD may have under any of the Loan Documents or this Agreement shall operate as a waiver thereof or of any other right, power or remedy, nor shall any single or partial exercise by HUD of any such

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right, power or remedy preclude any other or further exercise thereof or of any other right, power or remedy. Except as expressly provided herein, no waiver of any provision of any Loan Document and no consent to any departure therefrom shall ever be effective unless it is in writing and signed by HUD, and then such waiver or consent shall be effective only in the specific instances and for the purposes for which given and to the extent specified in such writing. No notice to or demand on Mortgagor or any guarantor or other obligor shall in any case of itself entitle any such person to any other or further notice or demand in similar or other circumstances.

Any default by Mortgagor under the terms of this Agreement shall also be deemed to be a non-curable default under the Loan Documents. Similarly, any default by Mortgagor under the terms of any of the Loan Documents (except to the extent such default shall be expressly excused hereby) shall constitute a non-curable default hereunder.

12. Criminal Sanctions for Misuse of Project Funds. Section 1715z-19 of the National Housing Act provides for equity skimming penalties. Mortgagor acknowledges that the use of Project funds derived from the Project for any purpose other than to meet actual and necessary Project expenses may be a criminal offense punishable by a fine of not more than \$250,000 and imprisonment of not more than five (5) years.
13. Integration. The Loan Documents remain in full force and effect, subject to the forbearances specifically provided for in this Agreement with respect to enforcement of the Loan Documents. This Agreement does not constitute a modification or novation of the Loan Documents and, upon expiration of HUD's forbearance pursuant to this Agreement, all provisions of the Loan Documents shall be fully enforceable by HUD or for its benefit. This Agreement, including any attachments, exhibits, and schedules referred to herein and attached, constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes any and all prior agreements, representations and understandings of the parties, written or oral.
14. Costs. Fees and Expenses. Mortgagor shall be responsible for any and all costs, fees and expenses, including attorney's fees, that HUD may incur in connection with this Agreement. Any such costs, fees

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APPENDIX 4

and expenses shall not be paid out of any funds derived from the Project.

15. Termination. The termination of the forbearance provided

for in this Agreement shall not serve to terminate any of the other acknowledgments and agreements set forth herein. The agreements and acknowledgements of Mortgagor made herein shall survive termination of this Agreement and shall be enforceable against Mortgagor.

16. Notice of Expiration. Forty-five (45) days prior to the expiration of HUD's forbearance pursuant to this Agreement, Mortgagor shall notify HUD of the upcoming expiration of such forbearance period.
17. Effective Date. The Effective Date pursuant to this Agreement shall be the first (1st) day of the calendar month after the month in which this Agreement is fully executed by HUD and Mortgagor.

ASSISTANT SECRETARY FOR HOUSING-  
FEDERAL HOUSING COMMISSIONER,  
DEPARTMENT OF HOUSING AND URBAN  
DEVELOPMENT

By:  
Name:  
Title:

[NAME OF MORTGAGOR]

By:  
Name:  
Title:

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APPENDIX 5

\*\*\*MARS WORKOUT COVER SHEET INSTRUCTIONS\*\*\*

This Cover Sheet is designed to provide the Office of Mortgage Insurance Accounting and Servicing, Multifamily Notes Branch, with a summary of the terms and conditions of the Provisional Workout Agreement. The Cover Sheet should be completed and forwarded to the Multifamily Notes Branch along with the fully signed Provisional Workout Agreement.

1. This item is not applicable unless the Provisional Workout Agreement is being approved as a condition of a Transfer of Physical Assets (TPA). Enter TPA preliminary approval date if applicable.
2. Enter the month/year in which the first payment is due under the Provisional Workout Agreement.
3. Enter the month/year in which the final payment is due under the Provisional Workout Agreement.
4. Enter the period covered by the payment schedule outlined in

items, A through D, below. (If the monthly payments are to change over the term of the Workout, a separate Cover Sheet will have to be done for each period in which the change will take place.)

- A. Enter the monthly payment required under the Workout.
  - B. If the monthly payment includes a portion of the mortgage delinquency, enter both the percentage and amount of the delinquency to be paid.
  - C. Enter the minimum payment due under the Workout for each account. If the monthly payment is less than the full amount billed for that account, specify both the percentage and the amount to be paid.
  - D. Enter all lump sum payments required under the Workout and how the funds are to be applied. Remind the owner that any lump sum payments to be applied for other than the normal allocation under the mortgage will have to be remitted in a separate check.
5. Enter the amount/date for deposits to the special escrow for repairs, if any, under the Workout.

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INPUT DATA SHEET

FHA Project \*:

Project Name:

HQ Housing Specialist:

Telephone #:

FO Housing Specialist:

Telephone #:

- 1. TPA Effective Date (Preliminary Approval Date):
- 2. Workout Effective Date:
- 3. Workout Expiration Date:
- 4. Workout Agreement Payment Data:
  - \*Period covered: From To
  - A. Increment\*\* \$
  - B. Fraction of Delinquency Amount \$
  - C. Minimum Payment From Bill: (check items needed)  
(if less than full amount, indicate %)
    - Int. on Advances
    - Advances
    - Service Charge
    - Tax Escrow
    - Interest
    - Principal





number for deposit messages is 021030004. This number should be entered by the sending bank for all deposit messages sent to the Treasury.

- ITEM 2 - TYPE-SUBTYPE-CD: The type and subtype code will be provided by the sending bank.
- ITEM 3 - SENDER-DFI#: This number will be provided by the sending bank.
- ITEM 4 - SENDING-REF#: The sixteen character reference number is inserted by the sending bank at its option.
- ITEM 5 - AMOUNT: The transfer amount must be punctuated with commas and decimal points; use of the "\$" is optional. This item will be provided by the depositor.
- ITEM 6 - SENDER-DFI-NAME: This information is automatically inserted by the Federal Reserve Bank.
- ITEM 7 - RECEIVER-DFI-NAME: The Treasury Department's name for deposit messages is "TREAS NYC". This name should be entered by the sending bank.
- ITEM 8 - PRODUCT CODE: A product code of "CTR" for customer transfer should be the first data in the RECEIVER - TEXT field. Other values may be entered, if appropriate, using the ABA's options. A slash must be entered after the product code.
- ITEM 9 - AGENCY LOCATION CODE: THIS ITEM IS OF CRITICAL IMPORTANCE. IT MUST APPEAR ON THE FUNDS TRANSFER DEPOSIT MESSAGE IN THE PRECISE MANNER AS STATED TO ALLOW FOR THE AUTOMATED PROCESSING AND CLASSIFICATION OF THE FUNDS TRANSFER MESSAGE TO THE AGENCY LOCATION CODE OF THE APPROPRIATE AGENCY. The agency's unique code must be specified in the funds transfer message in order for the funds to be correctly classified to the respective agency. The ALC identification sequence includes the

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#### APPENDIX 6

beneficiary code field tag, BNF=, and identifier code, "/AC-", followed by the appropriate ALC number. This component must be in the following format:

BNF=/AC-86090300

The ALC identification sequence can, if necessary, begin on one line and end on the next line; however, the field tag "BNF=" must be one line and cannot contain any spaces.

ITEM 10 - THIRD PARTY INFORMATION: This contains the appropriate information to identify the reason for the funds transfer. The Originator to Beneficiary Information field tag "OBI=" is used to signify the beginning of the free- form third party text. The field tag "OBI=" must be on the same line and cannot contain any spaces. The field tag is placed following the ALC identification sequence and preceded by a space. An example of this data line is as follows:

BNF=/AC-86090300 OBI=

Wire Transfer Deposit Message  
Format

(1)				
021030004	(2)			
(3)	(4)		(5)	
(6)				
(7)	(8)			
TREAS NYC/CTR/				
(9)	(10)			
BNF=/AC-86090300 OBI=				
Multifamily Project No.			Account	86X4070
				Notes Receivable Branch Chief
Remitter			(202)	708-4035
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				APPENDIX 6

NOTE: Items 1, 7, 8, 9, and 10 must be completed as shown above.

A separate wire transfer must be made for each mortgage purchased.

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APPENDIX 7

CALL PROVISION LANGUAGE TO BE INSERTED  
IN MODIFICATION AGREEMENTS

The following language has been approved by the Office of General Counsel to be included in any Modification Agreements.

A. NOTE PROVISION.

"At any time after \* or ( \* ) years from the date of the Note, the holder shall have the option to accelerate the unpaid principal together with all other indebtedness under this Note and to declare the unpaid balance of the principal together with all interest thereon and other indebtedness under this Note to be due and payable upon sixty days (60) prior written notice being given by the holder to the maker or its successors or assigns."

B. MORTGAGE PROVISION.

"At any time after \* or ( \* ) years from the date of the (insert name of document) the (Mortgagee) (Beneficiary) shall have the option to accelerate the unpaid principal together with all other indebtedness under the Note secured hereby and to declare that the unpaid balance of principal together with all interest thereon and other indebtedness under the Note and (Mortgage) (Deed of Trust) to be due and payable upon sixty days (60) prior written notice being given by the holder to the (Mortgagor) (Trustor) or its successors or assigns."

\* Insert appropriate number:

The longer of the remaining term of the Section 8 contract or ten years.

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APPENDIX 8

SAMPLE OPTIONAL TERMS THAT MAY BE INCLUDED IN WORKOUT ARRANGEMENTS

The language included here is designed to provide information on the types of optional terms that may be included in workout arrangements. The wording of these optional provisions may be changed to reflect the circumstances of the individual project.

1. Charging Interest on Accrued Delinquencies.

"Interest. Interest on the outstanding delinquent amount at the rate of \_\_\_\_\_ percent (\_\_\_\_%) per annum from \_\_\_\_\_ to \_\_\_\_\_ shall be payable on the date the Lump Sum payment is due."

2. Letter of Credit.

"Security. The mortgagor shall provide irrevocable, non-documentary Letter(s) of Credit securing the Lump Sum payments. The Letter(s) of Credit shall be redeemable by HUD in the amount of the Lump Sum payment then due, upon the mortgagor's failure to make any such payment. The Letter(s) of Credit may be reduced by the amount of each Lump Sum payment made."

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APPENDIX 9

LETTER TO MORTGAGORS  
NOTIFYING THEM OF HUD'S INTENT  
TO OFFSET SECTION 8 PAYMENTS

CERTIFIED MAIL--RETURN RECEIPT REQUESTED

(MORTGAGOR NAME AND ADDRESS)

SUBJECT: Section 8 Offset  
Project No.  
City

Dear \_\_\_\_\_,

Your Section 8 Housing Assistance Payments (HAP) Contract, Regulatory Agreement and the Debt Collection Act allow the Department to offset the Section 8 assistance when a debt is owed to the Federal Government. The Department intends to offset \$\_\_\_\_\_ per month of Section 8 assistance.

HUD will begin offsetting the Section 8 payments on the first monthly payment after the 30 day period. Therefore, HUD will begin offsetting your Section 8 payments on \_\_\_\_\_.

You have the right to request a review of the information the Department used to make this decision. If you want to request a review, you must notify this office in writing within 20 days of the date of this letter. Your letter must state why you are seeking this review. If you wish to inspect or copy the Department's records relating to this debt, you must so state in your letter.

If you would like to discuss why HUD is offsetting your Section 8 payments, please contact \_\_\_\_\_ at \_\_\_\_\_.

Sincerely,

[State Director of Housing or  
Multifamily Division Director,  
whichever is higher in office]

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APPENDIX 10

SAMPLE MEMO TO ACCOUNTING DIVISION REQUESTING  
SECTION 8 OFFSET

TO: Director, Accounting Division

FROM: Chief, Asset Management Branch

SUBJECT: Section 8 Offset  
Project Name  
Section 8 Project No.  
FHA Project No.

We have decided to offset the Section 8 assistance on this mortgage because\_\_\_\_\_.  
Therefore, beginning [month] and until further notice, please withhold \$\_\_\_\_\_ from the Section 8 payment to the owner and have it remitted to:

Multifamily Payment Processing Center  
Post Office Box 70764  
Chicago, IL 60673

The FHA number of the project must be included on the check. The balance of the Section 8 payment should continue to be sent directly to the owner or agent.

If you have any questions, please contact \_\_\_\_\_ at \_\_\_\_\_.

cc: HMHO, HUD HQ Rm. 6164  
HOMMN, HUD HQ Rm. 6246

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APPENDIX 11

Information Sheet - Section 202 Reinstatement

Return to Headquarters

Project No.

HUD Office

Project Name

Borrower Name

INFORMATION CURRENT AS OF: (Date)

Project Information

1. Number of Units: Total

0 BR \_\_\_\_\_ 1 BR \_\_\_\_\_ 2 BR \_\_\_\_\_ 3 BR \_\_\_\_\_

2. Number Non-revenue Producing Units

3. Occupancy Type: EH PH DD CMI

4. Date Sustaining Occupancy: (Mo/Yr)

5. Current Occupancy: %

6. No. of vacant units:

7. Date Initial Occupancy: (Mo/Yr)

8. Date Construction Start: Completion

9. Date Comprehensive Mgmt. Review:

Rating\_\_\_\_\_

Rents

10. Current Mo. Rents: 0 BR \$ 1 BR \$ 2 BR \$ 3 BR \$

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11. Rent Increase Request: No; Yes. If Yes, effective date\_\_\_\_\_.

Amount of Increase: 0 BR \$ 1 BR \$ 2 BR \$  
3 BR \$

Financial

12. Is project submitting monthly accounting reports?

Yes No If no, why? Explain below.

13. Is project submitting Annual Financial Statements?

Yes No If no, why? Explain below.

14. Monthly operating expenses \$\_\_\_\_\_ (exclude debt service and escrow deposits)

a) Tax & Insurance Fund:

Monthly Deposit \$ Balance \$

b) Reserve for Replacement Fund:

Monthly Deposit \$ Balance \$

c) Other Continuing Project Expense (specify)

15. Section 8 Vouchers:

a) Project monthly voucher \$  
(average for last 6 months)

b) Accounting Division monthly voucher payment \$ \_\_\_\_\_  
(average for last 6 months)

c) Has the Accounting Division made any off-set from voucher amount?

\_\_\_\_\_Yes \_\_\_\_\_No If yes, amount \$\_\_\_\_\_

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Mortgage

16. Mortgage Amount \$

(Based on Cost Certification dated \_\_\_\_\_Mo/Yr)

17. Interest Rate

18. Total Monthly Payment: \$\_\_\_\_\_

a) Interest \$ \_\_\_\_\_

b) Principal \$ \_\_\_\_\_

19. Delinquent Interest \$ \_\_\_\_\_

20. Amount of Interest Accruing Monthly \$ \_\_\_\_\_

Funds Available

21. a) Funds remaining after cost certification \$ \_\_\_\_\_

b) Amount of above funds available to reduce interest delinquency \$ \_\_\_\_\_

c) Original Minimum Capital Investment \$ \_\_\_\_\_  
Present Balance \$ \_\_\_\_\_

d) Operating Account Balance \$ \_\_\_\_\_

e) Reserve for Replacement Balance \$ \_\_\_\_\_  
Monthly Deposit \$ \_\_\_\_\_

f) Additional Funds from Borrower \$ \_\_\_\_\_

g) Other Funds (specify) \$ \_\_\_\_\_

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Other

22. Identify on-going or completed: audits, investigations, legal or other actions

23. Attach additional details on a separate sheet, identify each item by number.

Information

Prepared by: \_\_\_\_\_

Date: \_\_\_\_\_

Phone Number: \_\_\_\_\_

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APPENDIX 12

FORM OF PRE-WORKOUT WAIVER LETTER

[LETTERHEAD OF THE DEPARTMENT OF  
HOUSING AND URBAN DEVELOPMENT]

[DATE]

BY CERTIFIED MAIL



RETURN RECEIPT REQUESTED

[Name of Borrower]  
[Street Address]  
[City, State Zip Code]  
Attention: [Name of Contact Person]

Re: [Name of Project/Loan] (the "Project")  
FHA #: \_\_\_\_\_

Ladies and Gentlemen:

As you know, the Secretary of the Department of Housing and Urban Development ("HUD") is the owner and holder of the above-referenced [first lien] [insert when appropriate] mortgage loan (the "Loan") made to [insert name of Borrower] ("Borrower"). Borrower and HUD (collectively, the "Parties") acknowledge and agree that HUD is the owner and holder as well of all documents evidencing or securing the Loan (collectively, the "Loan Documents"). The Loan Documents encumber certain real and personal property described more completely in the Loan Documents (the "Property").

Borrower has committed events of default under the Loan Documents, including, but not limited to, failure to pay installments due for the period of \_\_\_\_\_ through \_\_\_\_\_. An aggregate amount of not less than \$\_\_\_\_\_ is due with respect to the Loan. The Parties acknowledge that, in connection with Borrower's default under the Loan, Borrower has requested that HUD modify or forbear from enforcing Borrower's obligations under the Loan Documents. HUD is willing to discuss Borrower's request, but only under the specific terms and conditions set forth below.

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A. Negotiations. The Parties understand and agree that (a) any and all discussions and negotiations, or correspondence or drafts of documents relating to such discussions and negotiations, concerning the Loan or the Loan Documents are to be considered compromise and settlement negotiations and propositions made with a view to a Compromise and settlement and (b) all such negotiations and discussions are to be protected accordingly and are not to be admissible as evidence for any purpose whatsoever on any issue that is or might be before any court or administrative body. The Parties acknowledge and agree that they will use reasonable efforts to reach agreement with respect to the proposed terms and conditions of resolution of the existing defaults under the Loan, but, notwithstanding the foregoing, each of the Parties specifically reserves the right to terminate any such discussions or negotiations upon written notice to the other Party at any time and to pursue immediately enforcement of any and all rights and remedies available under the Loan Documents.

B. Only Written Agreements. The Parties acknowledge and agree that no compromise, settlement, agreement or understanding with respect to the Loan or the Loan Documents will constitute a legally binding agreement or contract or have any force or effect whatsoever unless and until reduced to writing, signed by authorized representatives of each Party and such other persons or entities as are parties to any such agreement and, in the case of HUD, approved by all appropriate committees and/or officials of HUD having responsibility for the Loan and its modification or enforcement. The Parties acknowledge and agree that they are precluded from claiming that any amendment or modification (whether oral or written, express or implied, or otherwise) of, or forbearance or "work-out" with respect to the terms of, the Loan or the Loan Documents has been effected except in accordance with a written agreement approved, executed and delivered pursuant to the terms and conditions of this letter, and the Parties acknowledge and agree that all discussions, negotiations, offers, proposals or agreements to recommend modifications of, or forbearances or "work outs" with respect to the terms of, the Loan or the Loan Documents (whether oral or written, express or implied, or otherwise)

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will be and will remain revocable at will until such time as they are incorporated into a written agreement approved, executed and delivered by the Parties pursuant to the terms and conditions of this letter. Finally, the Parties acknowledge and agree specifically that no party is obligated to reach any agreement with respect to any modification of, or forbearance or "work out" with respect to the terms of, the Loan or the Loan Documents, or any other matter and that HUD field offices, including specifically the HUD field office with responsibility for monitoring the Loan, have no authority to bind HUD in connection with any modification of, or forbearance or "work out" with respect to the terms of, the Loan or the Loan Documents.

C. No Waivers. No negotiations or other action undertaken pursuant to this letter will constitute a waiver of HUD's rights in connection with the Loan or under the Loan Documents, except to the extent specifically stated in this letter or in a written agreement executed by HUD. No delay or failure on HUD's part of any party to exercise any right or remedy with respect to the Loan or under the Loan Documents will constitute a waiver of, or affect adversely in any manner the later enforcement or exercise of, any such rights and remedies. The Parties specifically acknowledge and agree that no discussion, negotiation or action undertaken pursuant to this letter in connection with the Loan or the Loan Documents precludes or prevents Borrower at its election from refinancing the Loan or from obtaining alternative sources of funding for the use and operation of the property in issue, subject to the terms and provisions of the Loan Documents relating to prepayment of the Loan.

D. Loan Documents Still in Force. Notwithstanding any other provision of this letter or any claims of Borrower to the contrary, the Loan Documents (a) formerly have not been altered, amended, modified or rescinded in any way and (b) are in full force and effect.

E. Advice from Independent Counsel. Each Party understands that by executing this letter in the appropriate place it is entering into a legally binding contract that affects its rights. Borrower represents to HUD that it has consulted with its own legal counsel with respect to the

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meaning of this letter and that it is familiar with and understands the terms and provisions of this letter.

F. Termination of Forbearance. Notwithstanding any provision of this letter to the contrary, HUD's agreement to forbear from exercising its rights and remedies under the Loan Documents will terminate and lapse automatically (if such forbearance has not previously been terminated) as of 5:00 P.M. eastern time on (the "Cut-Off Date"), time being of the essence to HUD. HUD has no authority to execute this pre-workout letter after the Cut-Off Date. If the written agreement setting forth the modifications of, or forbearances or "work outs" with respect to the terms of, the Loan and the Loan Documents has not been approved, executed and delivered by the Parties pursuant to the terms and conditions of this letter by no later than the Cut-Off Date, then HUD will be free immediately and without notice to pursue enforcement of any and all rights and remedies under the Loan Documents, including (without limitation) foreclosure and (notwithstanding any contrary provision of the Loan Documents) the application to the indebtedness of funds in reserve for replacement, escrow and similar accounts.

G. HUD's Expenses. Borrower acknowledges and agrees to pay the following charges from funds other than Projects funds or Project assets: Borrower's legal fees on account of Borrower's default under the Loan and all costs and expenses of HUD (including, but not limited to, legal fees, trustee's fees, title insurance charges, recording costs and expenses and other similar costs) that HUD might incur on account of Borrower's default under the Loan, the efforts by HUD to enforce its rights and remedies under the Loan, any modification of, or forbearance or "work out" with respect to the terms of, the Loan and the Loan Documents or otherwise with respect to the Loan. Borrower agrees to pay such costs and expenses upon demand.

H. Miscellaneous. The terms and provisions of this letter will inure to the benefit of and be binding upon the Parties and their respective successors, assigns and legal representatives and will be governed by the federal laws of the United States of

America. All statements,

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representations, negotiations and discussions occurring among the parties to the Loan prior to the sending of this letter are incorporated into this letter and are to be governed by and subject to the terms and provisions of this letter. The terms and provisions of this letter may not be changed, waived, discharged or terminated orally, but only by an agreement in writing, signed by the party against which enforcement of the change, waiver, discharge or termination is asserted. This letter may be executed in one or more counterparts, each of which will constitute an original and all of which, when taken together, will constitute one agreement. The person executing this letter on behalf of Borrower represents that he or she has the full authority to do so.

If the foregoing terms and provisions of this letter summarize accurately the terms of the agreement of the Parties, please indicate your acceptance of the terms and conditions set forth in this letter by signing below and returning the original to the undersigned's attention, while retaining a copy for your records. HUD will not begin or continue negotiations concerning Borrower's requested modification or forbearance unless and until the executed copy of this letter is returned to HUD. If the executed original copy of this letter is not returned to HUD on or prior to the date that is five (5) business days after Borrower's receipt of this letter, then HUD's willingness and ability to accept the terms and provisions of this letter will terminate automatically, and thereafter HUD will not consider or negotiate concerning Borrower's requested modification or forbearance. HUD emphasizes to you that any modification, forbearance or other "work out" of the Loan and the Loan Documents is subject to and is conditioned expressly upon approval by the appropriate HUD credit committees and execution and approval of appropriate Loan modification, forbearance or "work out" documents prior to the Cut-Off Date.

Very truly yours,

DIRECTOR, MULTIFAMILY HOUSING  
DIVISION, THE DEPARTMENT OF HOUSING  
AND URBAN DEVELOPMENT

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By:

Name:

Title:

ACKNOWLEDGED AND AGREED TO:

[Name of Borrower]

By:

Name:

Title:

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