DETERMINATIVE CRITERIA

The following is the determinative criteria employed by HUD to establish the acceptability of transfer proposals and must be addressed in the Purchaser's Letter:

1. The proposed owner/managing general partner is determined to be qualified by the field office. The proposed principal(s) and managing general partner must obtain previous participation clearance. In addition, the prospective owner/managing general partner must satisfy the field office that his/her net worth is sufficient to sustain the project in time of difficulty and that he/she has sufficient experience to operate the particular project which he/she intends to purchase. The requisite experience and net worth will vary in proportion to the needs of each project. A troubled project requires an owner/managing general partner who has demonstrated the ability to successfully own and manage troubled multifamily projects. **Credit reports must now be submitted as part of the TPA application package; the credit report must be from an acceptable credit reporting agency and must include an original on the agency's letterhead.**

2. The project's physical needs are met by the proposed cash contribution. In order to recommend approval of the proposed transfer, HUD must determine that the project will be restored to sound physical condition within 24 months from the date of transfer.

   To make this finding, HUD must be satisfied that deferred maintenance will be corrected at the time of the transfer or shortly thereafter. Likewise, it must be satisfied that the achievement of necessary repairs and capital improvements, along with requisite energy related alterations, will be completed within an acceptable length of time. The need for and extent of repairs and improvements may be greater when the project at issue is troubled. The field office must be satisfied that funds will be available to effect the plan for physical and capital improvements. HUD may require the purchaser to obtain a letter of credit or a bond in the amount needed to complete the promised improvements.

3. The project's financial needs are met by the proposed cash contribution. In order to recommend approval of proposed transfer, the field office must establish that the mortgage is current and all accounts payable will be cleared at the time of transfer. The Reserve Fund for Replacements must be funded to an acceptable level within 18 months from the date of transfer.

   An analysis of the Reserve Fund for Replacements must be conducted to determine the acceptable level of funding for the particular account under review. HUD must consider both current and anticipated project needs in establishing the "acceptable" funding level. Such factors as the age of the project and structural components of the project will be considered. (Please refer to the Revised Asset Management Procedures outlined in HUD Notice 99-13 issued May 13, 1999. This Notice revised outstanding guidance in Handbook 4350.1 REV-1, Multifamily Asset Management and Project Servicing, Chapter 13, Change in Ownership: Transfer in Physical Assets.

   HUD must determine if the financial needs of the project are met through review of:

   a) Pro-forma Balance Sheet,
   b) Interim unaudited financial statements,
   c) Mortgagee confirmation of escrows and reserves
   d) Sources and Uses Statement

   Cash contributions should be used to fund both immediate and anticipated reserve needs. In addition, the transaction must identify other sources of funds, which will be used to fund the Reserve for Replacement account. If an increase in rents is proposed in order to fund the reserve, you must provide a written agreement to allocate such funds to the Reserve Fund for Replacements in order to maintain an acceptable balance in that account.

4. The Department's outstanding regulations and administrative instructions are satisfied. The transfer of physical assets proposal must comply with all HUD regulations, handbooks, administrative, and legal requirements.

5. Where secondary financing is an element of the transfer, HUD's legal and administrative guidelines pertaining to secondary financing are satisfied. Guidelines pertaining to secondary financing are described in detail in the enclosed Chapter 13 HUD Handbook 4350.1, REV 1, Change in Ownership: Transfer of Physical Assets, and appendices.

6. When conversion to condominium or cooperative ownership is an element of the transfer, the current HUD policy regarding condominium or cooperative conversion must be followed. Every proposal involving conversion to the cooperative form of operation must include either the express consent of the mortgagee to the conversion or an indemnity agreement acceptable to HUD.

Natural Persons ownership

HQ advised on June 15, 1994, that that Tenants in Common ownership (concurrent ownership whereby (co-tenants own the same or different percentages of interest in real or personal property without a right of survivorship) is an acceptable legal form of ownership. In a Tenants in Common form of ownership, the property is held in the name of the individual co-tenants. Paragraph 6(f) of the Regulatory Agreement prohibits an owner of a HUD-insured project from owning any business other than the HUD-insured project. Paragraph 6(f) makes an exception to the single asset requirement for projects owned by natural persons. Consequently, Tenants in Common forms of ownership which have natural persons as the co-tenants, can, pursuant to Paragraph 6(f), own business other than the HUD-insured project. As a result, this office does not consider ownership of a HUD-insured project by Tenants in Common, where the co-tenants are natural persons who own other businesses, to be a violation of the single asset requirement contained in Paragraph 6(f) of the Regulatory Agreement.

Policies: TPA Determinative Criteria2/24/04:Jamison